

June 3, 2003 Minutes

MINUTES OF THE SPECIAL MEETING OF THE EMERALD ISLE BOARD OF COMMISSIONERS TUESDAY, JUNE 3, 2003 – 7:00 P.M. – TOWN HALL

Mayor Arthur B. Schools, Jr called the meeting to order at 7:00 P.M. Board members present were Mayor Schools, Commissioners Messer, Marks, McElraft, Farmer and Eckhardt. Staff present was Retiring Town Clerk Carolyn Custy and New Town Clerk Rhonda Ferebee.

All in attendance recited the Pledge of Allegiance after roll call.

ADOPTION OF AGENDA

Commissioner Marks made a motion to adopt the Agenda with the board voting unanimously, 5-0. Motion carried.

PUBLIC COMMENT

Mr. John Grady, 113 Fawn Drive, commented on the standing water in Deer Horn Subdivision on Fawn Drive. He related that the water is stagnated. No human being would allow another human being to live in that kind of situation. He said don't mention environmentalists to him at all. They can't see the trees for the forest. There are too many problems in this County and Town and he feels that the town is throwing money down the drain. He related the town has a \$4 million dollar "Pink Elephant" for a park and it will never be anything but a park. He is in doubt that a drop of water will ever be pumped to it and if it is he will not live to see it. He commented that the sidewalks, \$1 million dollars worth, on Emerald Drive is foolishness. The town is not putting them out for people to walk nor does it give the senior citizens anywhere to walk. At the recreation center, you have to buy a permit to go in. Mr. Grady indicated he had a real problem with what is going on and he thinks the town needs to hold a line on the budget. Money is not free. It is a tough time for everyone and we need to start working together. Mr. Rush talks about a holding pond. There are lots in his neighborhood that could be made into holding ponds that would be a lot cheaper than \$4 million dollars. He also noted the word is out that the town now has a \$250,000 grant which the town has to match and it is pure foolishness.

Mr. Grady talked about what the State is letting the town do? On highway 24 going toward White Oak River, on the opposite side, there are 46 maholes or storm drains. When you come back, there are 30 on the other side. From the red light at 58 to the end of Cedar Point that is a total of 76 storm drains and Mr. Grady

wondered where that water was going. He said he could not even walk in his yard without the mosquitoes eating him up. Mr. Grady also talked about draining the water to the ocean and asked why was Emerald Isle so different.

Commissioner Farmer said she would be glad to sit down with Mr. Grady and talk to him about what DOT can do and what the town can't do about storm water pipes that were put in long before the regulations came out. She was over on Doe Drive and Fawn Drive and she knows what it looks like. The town is pumping to the beach now. She said DOT can do what it wants. The town can not. Commissioner Farmer disagreed with Mr. Grady about storm water not being pumped to that land. That will be the case by 2005.

Mr. Rush clarified that the town has taken some steps to resolve the flooding problems in the area. If there were something he could do, or anyone could do, they would solve it tomorrow. The town staff was called in over the weekend to get out and set up pumps. He has personally spent many hours over the weekend checking the area out and there is about 13" on Deer Horn Drive, about 6" on Fawn Drive and about 11" on Doe Drive. Division of Water Quality says the town cannot pump to the beach unless it is 14". Mr. Rush said the town did pump to the beach on Sunday afternoon. The town does not want people to go through that but it is also not going to violate the law and is not going to risk the town getting a bad name or getting it into legal trouble by doing something that is not acceptable. He reiterated the town is doing what it can to help with the problem.

Commissioner McElraft asked how does the town reduce the rule of 14" from DWQ? Six inches may not be significant to them but to someone who has mosquitoes and the possibility of West Nile virus, that is a very serious thing. Since the town is pumping to the beach anyway, why can't that 6" be pumped off.

Mr. Rush replied he is not sure there is any room for negotiations. He has had several conversations with DWQ and all he has gotten from them was an impression that if the town pumped to the beach on anything less than 14", the town will in fact be cited for a violation. He would like to think there was a cooperative relationship which we have had with them over the last couple of years, would put us in the position like this weekend when we tried to pump to the beach a little early. So far there have not been any negative repercussions for that decision.

Mr. Rush said he thinks that the pumping the town is doing to the trough on Deer Horn will help to relieve some of the pressure on Fawn. The town is actually pumping water from Fawn over to Deer Horn to try to make some kind of

improvement. He said "We are trying but I just did not feel comfortable pumping from Fawn directly to the beach."

Commissioner Marks informed the board and public that mosquito disks were available at Lowes. Her husband spoke to the board a couple of years ago about the trough and the fact is the areas south of Coast Guard Road, you would have to pump down the whole water table in the trough. There are only two things to do to get it off the street and out of their yards (1) pumping to the beach, which is a No No, and (2) pump it over to the other side of Coast Guard Road, which is not within that trough. That is

another whole area. She has lived in Sea Dunes since 1983 and there was water on Conch Court after lots were cleared. That water is now being pumped over to Ocean Oaks and it eventually ends up in Cape Emerald, which is the other side of Coast Guard Road. Until that water can be gotten out of the south side of that trough and into the north side of the Island there is really nothing the town can do and it goes back to this one development.

Mr. Grady complimented Mr. Rush for starting to pump. There is a neighbor who could not get into his house and he lost a sale on it two weeks ago because of high water. Since Mr. Rush has started pumping, it has receded so the man can get to his house today.

Commissioner Marks remarked that pumping on Conch makes the water level fall as long as the pump is going but as soon as it is cut off, it rises up to where it was before because of the water table.

Mr. John Wootten, 103 Eagles Nest, ask if he understood Mr. Rush right, that it would take until December 2004 to get the permits for storm water? Mr. Rush said the entire project has to be completed by June 30, 2005. When the board approved the design contract with Moffatt & Nichol back in December 2002, they laid out a time frame of 12 to 21 months for the permitting design and 9 to 15 months for construction. Using the figure of 9 months for the construction period, the town is looking to have permits in hand, have the bids go out, have the bids back and awarded the construction contract by September 2004 to meet that deadline. There is nothing set in stone about that schedule but that is the projection.

Mr. Wootten questioned the 21 months for getting the permit, when there is only 9 months left in the construction part of this thing is really troublesome. He asked if something could not be done to get the permit process going so the town would know if it is a viable thing or not.

Mr. Rush implied the town is working on it now and has been for the last 2 years or so.

Commissioner Farmer said she thinks it helps that in the meetings that have been held with the agencies they have said point blank, there are no show stoppers to this. Mr. Wootten asked, "Why would it take so long?"

Commissioner Farmer noted that she thinks it was partly on the Town because it was so long negotiating the contract with Moffatt and Nichol for what was remaining to be done.

Mr. Rush agreed and elaborated that the board approved it in December and by the time all of the documents were gotten in, it was March or the beginning of April, trying to work out the kinks in the contract, etc. Even then the schedule that Moffatt and Nichol presented back in December was a generous schedule for getting the project done by June 30, 2005. Mr. Rush feels the town is still well on target to get the project done by June 30, 2005.

Commissioner Farmer answered Mr. Grady's comment on DOT and the storm water, and made it clear that the 14" emergency pumping to the beach rule is not just Emerald Isle, it is everybody, all of Coastal North Carolina including Atlantic Beach. They have the same problem.

Pat Patteson, Emerald Isle Resident and Planning Board Member asked about the water being

pumped from different areas over to Cape Emerald and he guesses that is the reason the ponds are in Cape Emerald. He asked if those ponds overflow directly into the Sound and Commissioner Farmer indicated they did.

Mr. Rush said some water on Conch court has been pumped over into Ocean Oaks into a ditch and flow into Cape Emerald into those ponds and hopefully out to the sound.

Mr. Patteson indicated there is an overflow pipe midway down on the left side and Commissioner Farmer confirmed that was put in before Bogue Sound off Emerald Isle was designated ORW.

Mr. Rush said he is sure the board is aware that Emerald Isle had to post signs out on the beach because of discharging onto the beach and he does not like the indications of that. Shellfish and Sanitation has got more extreme standards for posting recreational water quality. It is going to be more likely there will be postings for water quality on recreational beaches and one of the things they talked to him

about was at Bogue Inlet Pier where he has some drainage pipes that are going out onto the beach with a little mixture of dead fish parts going out into the water there. Chances are that would be poor water quality as seen by them at the pier.

Commissioner McElraft asked if Mr. Rush had checked out some lots for holding ponds? Mr. Rush replied he had not had a chance to do that but would. He would be willing to look into the availability of those lots but he would need someone with hydrology experience to comment appropriately.

Commissioner McElraft reminded him of the Pebble Beach holding pond. Mr. Rush went to Pebble Beach and he thinks he did find a holding pond by the club house that looks like it would accommodate some storm water.

Commissioner McElraft asked about the mosquito repellent, which Mr. Rush said was available in Public Works. She asked that some be taken to Doe Drive residents for use.

FISCAL YEAR 2003-2004 BUDGET

Mr. Rush commented the board has held two workshops thus far and they have agreed to some tentative changes to the recommended budget. There is \$50,000 in the budget for the community center repairs for water and termite damage. The recommended budget includes the use of the Fund Balance on a one time basis for that project. The board has tentatively agreed not to use Fund Balance for that expenditure next year and have identified several expenditure reductions to come up with money to still do those repairs to the community center. Thus far, the board has tentatively agreed to eliminate \$4,000 that was recommended for a computer projector for the board room, they reduced salary adjustment funds by \$22,000, reduced expenditures by \$10,000 for a personnel study that was recommended, they have reduced \$4,000 for resurfacing tennis courts that will have to be identified from other funds or wait to be

done next year, decreased the contribution to the Emerald Isle Business Association by \$1,500. One item that the board has not yet agreed to but Mr. Rush suggested to them, there is \$11,000 in the recommending budget to go to special separation allowance. He would like to take that up to \$14,000 to keep the town current based on the actuary on projected liabilities. There would be \$11,500 of miscellaneous operating reductions that would be a cut across the board from all departments. This would mean that each department would be identifying anywhere from \$1,000 to \$2,000 reductions. This is subject to change after the Public Hearing tonight on the budget and before the budget is adopted.

Mr. Rush said the only other thing that has been changed is the allocation of \$12,000 of the Powell Bill Reserve and that is another sidewalk grant that will be available next year. There was tentative approval of the motion of applying for those grant funds using Powell Bill Reserves. That is still subject to further clarification by the board.

The recommended budget did not include a tax increase maintaining the current 18.5 cents tax rate; does include a \$5.00 increase in Solid Waste Fee primarily associated with enforcement and roll-out service of the Solid Waste Program. The fund balance remains at a healthy level with the changes the board tentatively approved. The town is looking at a total Fund Balance of \$1.44 million dollars at the end of this year.

Commissioner Farmer made a motion to open the public hearing and the board voted unanimously, 5-0.

Mr. John Wootten, 103 Eagles Nest, asked that within the 18.5 cents tax base being considered right now, there is 1 cent that is earmarked for beach renourishment reserve. This is the 1-cent that was established back in 1993-94 and was designated separately on the tax bills, but it still goes into the General Fund and reflects as a transfer from the General Fund to a beach renourishment debt service reserve fund. He asked that the board consider a one-year moratorium, or a one- year don't collect that 1-cent. His logic in doing that is with the 1-cent projected in the budget, the budget reflects as a reserve of \$2.4 million. That is generally a good

plan but with the delay of the eastern phase of the beach renourishment, meaning the actual contracts and expenses have been delayed, will for that part be delayed a year. Mr. Wootten asked the board to consider the fact that they do not need to collect the \$138,000 this coming budget year. The town will probably have to do it in the future and he recognizes that but his viewpoint is don't take money from people unless you need it in the year that you are talking about. The case is that the town does not need that \$138,000 for 12 months starting 1 July 03. He reasoned that it might be said if it is left out this year it would have to be put back in next year. "Yes" probably. It may not be an acceptable thing to do and may be unpopular having to explain the 1-cent increase later on but the greater consideration is that the money is not needed this year.

Commissioner Eckhardt made a motion to close the Public Hearing and the board voted unanimously, 5-0.

Commissioner Eckhardt said he would like to extend on what Mr. Wootten was talking about. When the board held the workshop the other day, his feeling was that the board should try to keep things flat like last year, knowing what they were going into this year, and having deferred the fire engine and some other capital items that the board wanted to raise the taxes last year so they would have a flat flow into this year. Looking at the 1-cent nourishment, \$138,000, but if the town extends that out, the 8 years, that is about \$1.1 million. That would still leave the town, toward the end of the project, with a contingency kitty of well over \$1 million dollars. That is a fairly fat contingency to him so he would say not only do it for this year but he would encourage everybody to take it out for the life of the project. It seems to him that at the end the board is talking about a \$2.4 million dollar kitty. It is nice to have that but as a contingency fund it is too high. Commissioner Eckhardt would say take the 1 cents and extend it over the 8 years.

Commissioner McElraft commented that so far \$720,000 of which about \$500,000 had not been anticipated on the beach nourishment project and she feels the town is in for more permitting costs and things like that. Costs that are being discussed right now like more studies, etc. She could agree to do it for one year but she could not agree to do it for the entire time. She would prefer that there would be money left over to stop paying the bonds at 7 years

That money was put in there like storm water was at 2-cents without a vote from the people and she is for taking it out for one year but not for the entire time. She thinks it should be used to pay off the bonds early or given back to the people if a surplus is left.

Mayor Schools said it is way too early to take money out. There are a lot of costs associated with channel relocation that are not known

Commissioner Farmer implied that it seems to her that it is more than ample, that 1-cent beach renourishment tax, is giving the town more than an ample surplus. It is too much of taxpayers money to be hanging on to. If the board is talking about leaving \$1.3 million, that should be more than ample to do what ever dredging needs to be done, what ever additional studies are needed and frankly, if it isn't enough then Commissioner Farmer thinks they need to sit down and talk about it. The nourishment using Bogue Inlet sand was supposed to be costing the same amount as going offshore. She would say again, she does not want to go offshore. She wants to use the material from Bogue Inlet. It is much better. It is beach compatible. It solves the Point problems. It is the best way to do it to her. She thinks the town has to take that tax away.

Commissioner McElraft said if the town takes that tax away that it will be jeopardizing at the end of this project possibly doing this project. When the board talked about not stepping in the way of the Point project, they obviously have not done that, and she does believe that by taking this tax away totally, it will be jeopardizing the Point project. She does not think that is what the citizens want. The citizens knew when they voted for the beach nourishment tax it was going to be to fix the point and she thinks they

also knew that 1-cent was included in that. She reminded everyone that this year, there was going to almost a 4-cent increase in the taxes had it not been for the beach nourishment sales tax rebate. Those who paid 3-cent already for beach nourishment are getting a credit of almost 4-cent. When you say the people are being taxed for beach nourishment, they truly are not except for that one penny.

Commissioner Farmer said when it was agreed for the beach nourishment project it was for 3-cent and 48-cent. It was not with 4-cent and 49-cent. She sees a huge surplus at the end and she does not think the town should be hanging on to peoples money like that, she does not think it is right. The town should get rid of that tax because she does not think it is needed.

Commissioner Farmer talked about another thing she is having trouble with in the budget. She feels the brush truck is a great idea. She does not see that the town could use it now. If she can be convinced otherwise that is fine. It sounds to her like the town will not be able to get the trash done until 2006.

Mr. Rush replied he had a lot of conversation with Attorney Taylor today and a conversation with Mr. Stroud and he has Dallas Goodwin attempting to reach Mr. Rush at this point but on renewing the contract, Mr. Taylor's opinion and his opinion is that if the town chooses to pay hard ball on it this year, it could certainly have one stop per month or 5 stops per month that would be specified by the contract. Mr. Rush hopes it will not come to that as the town has a cooperative relationship with them but that is what is up for discussion tomorrow with Waste Industries. Mr. Rush will be willing to listen to anything they have that will soften the blow to them but Mr. Rush would like for them to know that the board is adamantly opposed to extending the contract. Mr. Rush said if the town could not get the issue resolved, certainly it will not buy the truck. That money would be directed toward yard waste collection by Waste Industries. Mr. Rush said if that is the only reason, he thought the board could move forward with the budget and that would not have any impact on it.

Commissioner Messer asked about their ability to perform. They are obviously not getting the job done. Mr. Rush said he and Attorney Taylor agree that is another avenue they are going to work on with the number of collection points the town

assigns per month. Mr. Rush and Attorney Taylor feels they can use this as an avenue.

Mr. Rush said if he can get this from Commissioner Farmer and the board as a whole, that the sooner that issue is resolved satisfactorily, it is his understanding the board wants to proceed with that approach.

Commissioner Farmer said she feels the town would be provided with better services on brush and ultimately it would be for a lower cost, if the town does collect the yard waste. She is also a little leary knowing that the town has a contract with Waste Industries until 2006. Having that be an unhappy partnership throughout that time period.

Mayor Schools said he was going to be unhappy with Waste Industries if they fix it so the town cannot get the brush truck. Commissioner Farmer said she had rather limit it to the town, the unhappiness being over the lack of a brush truck rather than having it grow to solid waste issues.

Commissioner McElraft went back to the 1-cent beach nourishment tax and what it has been used for. She asked if it has been used for sandbags at the Point to protect town infrastructure. It has been used and could be used for beach accesses, which the town will have to possibly get into over the next 3 years. She asked for Mr. Rush's feelings on the contingency and how he feels about taking away that 1-cent.

Mr. Rush said that 1-cent was voted in 1998-99 and had been collected for a couple of years. When the plan was brought forth on the beach nourishment referendum, planning included that 1-cent continuing to go forth along with the 3-cent and 48-cent. Mr. Rush is projecting if the Bogue Inlet project comes in on budget, he is projecting about \$2.47 million dollars after all is said and done. He is reluctant to give up the 1-cent primarily because of having that available for the project. If it is \$1.4 million or \$2.3 million is a decision the board will have to make for that. As it stands now, the Bogue Inlet project is on budget. Mr. Rush thinks there is one other option available. He thinks if the board makes a decision to discontinue that 1-cent, any decisions they make on this could be made next year. The decision does not have to be made one way or the other tonight.

Commissioner McElraft clarified that the money is not sitting there right now. It is money that will be collected over the years. Mr. Rush agreed. That is just a projection. Another question is if the town had to use it for sandbags at the Point what was left in the old fund could be used. Commissioner McElraft asked if the tax

district money could be used if the 1-cent was eliminated? That could not be used for sandbags at the Point.

Mr. Rush said he thinks the \$2.47 million dollars for anything beach nourishment related whether it be sandbags at the Point, whether it be public access, etc. That is his personal opinion for use of those funds.

Mayor Schools commented it would be better to wait until after the town has a contract to do the dredging.

Mr. Rush said if the board makes the decision to remove the 1-cent indefinitely and if the town does need additional money for the Bogue Inlet Project, you will have to make that decision again whether to come up with it or change something about the project or what have you. Mr. Rush also commented that he does not feel the decision needs to be made long-term but that is the board's call.

Commissioner Messer said he could go along with the 1-cent for one year simply because the town is not going to be active in the project for that one year.

Commissioner Farmer, moving on, expressed her concern regarding the phone system. The town was trying to save money on the present phone system and she does not feel that is what it ended up with. It would upgrade the system that the town has now and would make it more convenient for staff and also for people who call in. She was concerned that the hardware for the present system was just been paid off a year and a half ago and she would rather hold off on another system until we have gotten a little more use out of the present one if it is not giving any real problems at this time.

Mr. Rush said, when the town started out investigating a new phone system, it was still paying an annual fee for the phone system. Indications were that it would be cheaper for the town to finance a new system over a 5-year period than to continue to pay those lease charges. As it turned out, the town did not have the money to act on it last year so the decision was made to pay off the phone system in the middle of the year and get it out of the way. It was looked at this year so we said we will go ahead with a new phone system and finance it over a year period of time and it would be \$6,000 instead of \$28,000. Mr. Rush thought it would be helpful for the public calling in, it would be helpful for the staff, and would promote productivity. The town could wait for it but he will be coming back to ask for it next year. If the board decides it is something not needed at this time, there would be a decrease in budget of some \$22,000.

Commissioner McElraft commented that she and Ms. Overman had been talking about going back to the carrier and see just how much they could save the town. Mr. Rush said he would be reviewing any plan that came in and comparing plans.

Commissioner Farmer had one more thing that she had a question on which was the park in Ocean Oaks. She is concerned about the water tower going in. Mr. Rush clarified that it was not a water tower it was an elevated water well. According the Ms. Kathy Craft, Bogue Banks Water Administrator, there will be sufficient room there so the town can continue to have some park area there. Commissioner Farmer noted she would like to know how high that water well is going if that is possible and whether they are going to use some kind of enclosure or fencing, the dimensions of it. She also has some kind of general concerns. It seems as though the town is putting an awful lot of town resources into the Coast Guard area and she wishes there were some other area on the other end of town it could be put in.

Commissioner Eckhardt commented until the board gets an idea of what that construction is going to be, whether it is a small elevated well or what ever it is, he doesn't think any money, even though it is only \$4,000, should be put into it until it is known what is going to be down there and how much room will be available. Commissioner Eckhardt could not remember why it was being addressed after he looked at it. The equipment there now seemed to be Okay.

Mr. Rush input it is actually pretty worn out. He does not remember how old it is but it is at least 6 to 7 years old and may be older than that. It is something that in the first draft of the budget, funding was not included. Once he had a chance to go down there and visit it with a 1 year old, he saw the need for putting new equipment in there. It is something that Alesia Sanderson, Parks & Recreation Director feels strongly about. She is also getting a little nervous about the tennis courts being able to hold up for another year and she had asked Mr. Rush if he would work with her and try to identify money within her budget,

let her shift some things around in her budget, and try to do the tennis courts.

Commissioner Eckhardt said, "Lets make that decision as a board and recognize that we do not want to upgrade a park that was going to be torn apart anyway next Spring."

Commissioner Farmer asked about getting a sketch. Mr. Rush replied he is sure they have one but perhaps the questions were not asked of the water company as they should have been. He will also ask Ms. Sanderson if she would be willing to swap out the park for the tennis courts.

Mayor Schools said, he would need to get with Alesia to discuss whether the tennis courts could wait another year or not.

John Grady, Doe Drive, attended the County Commissioners meeting last night and Mayor of Atlantic Beach Joe Stroud was there asking for recreational funds out of the tourist money. Looks like Emerald Isle should be tapping into that too. Don't let it go someplace else when our town could benefit from it.

Mr. Rush asked for direction on the board's feelings about the budget so far. He asked if they were comfortable with the cuts, etc.

Mayor Schools said one of the things he was looking forward to this year was the personnel study. To him, the reason for a personnel study would be to be sure that Emerald Isle is comparable to other towns and probably more important is to make sure you have a good relationship between positions in town. It is something that is complicated and he would feel better if an outside source did it. Mayor Schools also said he does not know if \$10,000 is the right number, it may be lee, but he feels the town needs to get started in that area.

Commissioner Marks commented the board was hoping to start with the Institute of Government and get some information from them. She feels strongly there needs to be job descriptions before any comparisons can be made.

After discussion by the board, Mr. Rush noted that he thinks the department heads are in agreement that the pay study is needed. They will be disappointed to learn that this item did not survive the budget.

Commissioner McElraft had no problems with someone coming in and putting things together but she would like to see the department heads write the Job Descriptions because they know what is going on in their own department. That could save the town a lot of money. What she fears is she is wondering why the employees are so much for it. Town employees are the most wonderful employees there are, so don't get her wrong. There are employees that are compensated well. They are getting a COLA when other towns are not providing one for their employees. Emerald Isle has Longevity Pay She does not think taxpayers money should be used to have an outside study. This town has always gone with the League's guidelines in past years. The Police salaries have been raised. The Firemen's salaries have been raised, things have been done in the Planning Department without these studies. Commissioner McElraft implied that she thinks the employees are happy. People are not leaving because of money. Mr. Rush has

been given \$20,000 to deal with employees for some raises and she is fine with that. She is not for a \$10,000 study.

Mr. Rush said he thinks the board is comfortable with the changes made to the budget with or without the personnel study, park and tennis courts and brush. Commissioner Farmer indicated she would like to have the question answered on the brush truck before considering the budget. She needs some direction on it because of the cost of \$85,000.

Mr. Rush considered having it in the budget and if it does not occur at the next meeting, a budget amendment can be done in July to change that money and reallocate it. The contract with Waste Industries was discussed regarding the yard waste pick-up and the fact that they are not performing on this service.

Commissioner Eckhardt said he would like to know where the board stands on the telephone system. He remarked that if there is any chance at all, he would like to go ahead with the telephone. To him, the board seems to be deferring something. He thinks it should be considered.

Commissioner Messer agreed with Commissioner Eckhardt even if it has to be financed for 5 years for \$6,000 a year and the town was paying \$9,000+ before it was paid the other one off. It will be \$3,500 less than what was being paid for the old system before it was paid off.

Commissioner McElraft agreed too.

Mr. Rush asked for directions on the 1-cent. Commissioner Farmer would like to see it taken off permanently. Commissioner Messer could not go along with it being taken off permanently, but could go along with taking it off for one year since it is not going to be used by the town in that one year. Commissioner McElraft wanted one-year. Commissioner Eckhardt wanted it taken off permanently based on an extremely large kitty (Fund Balance) at the end of the project.

Commissioner Messer said it may or may not be large at the end. He had rather see the money stay there and at the end pay the bonds off a year early and give the people back to the money.

Mr. Rush said he would proceed with the Budget Ordinance saying 17.5 cents without a transfer to the Beach Nourishment Reserve Fund.

Commissioner Farmer asked that \$1,000 be put into the budget for the wiring for the computer for the board room and then use the Fire Department's computer for that purpose. Mr. Rush is planning to buy a laptop computer to use with this.

ORDINANCE AMENDING CHAPTER 19 – ZONING - TO MAKE COMPREHENSIVE AMENDMENTS TO THE DUNES AND VEGETATION ORDINANCE

The Dunes and Vegetation Ordinance Revision presented is the latest draft. It has been scheduled for a Public Hearing next Tuesday at the regular board meeting. Because of the length of next weeks Agenda and the interest in this item, Mr. Rush decided to go ahead and set up an opportunity for the board to discuss it and take some public comments on it. Mr. Rush went on to say it was significantly changed from the version that was viewed at the March meeting. Mr. Michael Harvey and Mr. Rush have worked on getting it as simple as they can.

Mr. Michael Harvey, from Benchmark clarified the changes on a Comparison of Existing Ordinance vs. June 10th 2003 proposed Ordinance that is attached at the end of these Minutes.

Setbacks were discussed and Mr. Harvey said this ordinance is the same as CAMA for the estuarine setback areas in regards to disturbance and removal of vegetation. Mr. Harvey said with this ordinance, you cannot disturb it. Every CAMA person he has talked to has said "Don't Touch It." Mr. Pat Patteson said you can cut it down but you can not disturb the roots.

The amendment requires a topographic map to be submitted with the D&V Permit. The existing ordinance only required it with new subdivisions and storm water purposes.

The comparison touched on Exemptions, Building site selection, Interior Dune Preservation, Residential Natural Area Requirement, Commercial Natural Area Requirement, Ocean Setback areas, Estuarine setback area (30 feet), When lot can be cleared, Topographic map required, Site staking, Tree removal on already developed properties and Penalties for violations.

Mr. Rush said this ordinance does not require you to have a building permit to get a dunes and vegetation permit. That language is in there only to make it crystal clear to a person that you still have to get a building permit when you build.

Commissioner Farmer asked Mr. Rush if he was saying you can clear lots without a building permit? Mr. Rush answered, "Yes." Commissioner Farmer said she wanted that changed and she wanted to make it clear that septic tanks are not put in without a building permit. Commissioner McElraft disagreed that it should be and she thinks the Planning Board must have had thought it should not be or they would have put it in.

Mr. Downing, Planning Board Member, informed those present that you now have to have a sketched plat or plot before you start your work on the septic tank. There was a change in NC Law back in January. That was not being done.

Mr. Patteson said when he goes to get a permit for the septic system, there is a block right on the permit where he has to sketch where the tank will be, give the size of the lot, where North and South is, where the streets are and where the water comes in.

Commissioner questioned how they are selling lots with septic permits on them already? The answer was you sketch a generic house, estimate the number of bedrooms and bathrooms, give approximate location and you are issued a septic permit good for five years whether the system is installed or not, the permit itself is good for five years.

Mr. Harvey continued with respect to tree removal, it has been broken down into three or four various sections dealing with the different activities that are going to be occurring on a lot and level of permit process review is required. They allow removal of trees that are a safety hazard, diseased, weakened by age etc. It is now totally in a different section. This is more user friendly.

With respect to Penalties for violations, some standards have actually been inserted into the ordinance specifically defining the duration you have to abate a Notice of Violation, recommended is the adoption of a minimum standard of trees that has to be planted. What the proposal recommends is that after the 60 day period of restoration, each day and each tree represents a \$500 civil violation. The ordinance also looks at the number of trees cut down as an individual independent violation. You cut 10 trees, you have 10 violations to the property. If within 60 days you do not correct the problem, it is 10 separate violations per day.

Mr. Harvey said the other major change in this proposal is a 35% natural area requirement, which can be accomplished in one of two ways. One option is for a

floating 35%, which is designated by the applicant to the DVPO to stake on the property wherever they can insure they can meet that requirement and they review during the construction process to make sure it is undisturbed. The second option is the encouragement of the fringe where you have mandatory buffer areas, 5 foot on the front and side and 10 foot on the rear and front that is to make the 35%. If the fringe does not make up the 35% you are required to demonstrate on the property where the left over is. That is a recommended adage for adoption. The town under this proposal encourages it.

When Mr. Harvey was finished with his presentation, Commissioner Farmer complimented he, the Town Manager and Planning Board for doing a great job in making it much more clearer. This chart showing what is going on now and what the proposed ordinance is going to say is also very helpful. There was an awful lot of misunderstanding about what was currently required under the town's ordinance.

Commissioner McElraft asked a question about the fine and if they have 60 days in which to restore then there is no fine but everyday after the 60th day, each day is \$500 and it is for each separate violation which means if you cut 20 trees, it will be \$500 for each individual tree each day.

Mayor Schools asked if Mr. Harvey thought a Judge would think \$500 per day per tree would be a reasonable fine on a \$200,000 lot? Mr. Harvey said the town code allows for several penalties anywhere in the range of \$500 per General Statutes. Mr. Harvey thinks this sends a clear message that the board regards this as a serious offense.

Commissioner McElraft asked if the restoration could be in another area or did it have to be in the same area where the trees were cut down? Mr. Harvey answered that ultimately, as an applicant, you are going to have to make a proposal to the DVPO that then makes the determination. One thing that is always done is try to give a little flexibility to the DVPO to work with an applicant, especially topographic issues but the important thing is you have to make the proposal and the DVPO has to approve it based on the confines and the specifics of this document.

Commissioner Farmer said she would hope there would not be a whole lot of flexibility there for someone who accidentally cut trees. Mr. Harvey said that was the reason for the 60 days. Try to give someone who cut accidentally time to replant.

Mr. Patteson said, under penalties and violations, he did not think the replacement of trees 10 feet tall and 2 inches in diameter is really what the Planning Board agreed to. The issue is why would he plant a 10 foot tree two inches in diameter when it is okay for him to cut anything under three inches?

Commissioner Farmer agreed Mr. Patteson had made a good point. They would have to be bigger than 3 inches.

Mr. Clint Routsen remarked about the phrase “stopping anything for marketing purposes.” As a homeowner you can do something. As a property owner, just because you are not living on the property, you can’t do it. Due process is what is required. The board cannot make that distinction.

Commissioner Farmer’s interest in the whole thing is that vegetation is very important to this island. If you are chopping it down to put in a house, the town understands that. If you are chopping it down just to chop it down, No. Mr. Routsen said there is a difference he is talking about; if you go through and get your Dunes and Vegetation Permit and you obtain that permit it will call for requirements, then you should be able to do the land disturbing activity that is permitted under that Ordinance. You can’t say, “Just because you don’t have a house you are not going to be able to do this.” Commissioner Farmer agreed with Mr. Routsen. She thought the issue is whether you can get a Dunes and Vegetation Permit if you are not actually building. If you are not coming up with a storm water management plan and if you are not coming up with a topo and all the stuff that is required for a building permit. Mr. Routsen implied he didn’t think the law would allow what is not due process. What Commissioner Farmer is saying is you are not treating everybody fairly. You are saying if you do one thing you are allowed to do things. If you want to do something else because of the way you are being treated. Commissioner Farmer disagreed. She thought what is being said to everyone is you can have a Dunes and Vegetation Permit “everyone” when you start to build. Mr. Routsen said they are not being treated the same. He gave an example that if he owns a vacant piece of property and he wants to cut down a tree on the lot. If he goes through the Dunes and Vegetation Permit and get the permit and he should be able to cut the tree. Commissioner Farmer replied what she would say is that if Mr. Routsen was not going to build on that lot, you could not get a Dunes and Vegetation Permit. You could get a permit to cut down that individual tree. Mr. Routsen asked if Commissioner Farmer was saying he was not allowed to do anything to the property if he does not build.

Commissioner Farmer said that what had been talked about in an earlier version where there was someone who said at one of the workshops that he wanted to store his boat on his property. That is perfectly reasonable. He had no house on it he just wanted to have a little place to park his boat and she thought they had talked about 500 square feet. She would support putting that in where if you had an undeveloped parcel of land and you want to clear off 500 feet to do as you choose or to do nothing

with. That again would apply to everyone.

Mr. Routsen mentioned that there were some things that are exempted anyway. As far as addressing clear cut, you agree with cutting smaller pieces off but he cannot cut down a tree on his property. Commissioner Farmer replied he could with a permit. Mr. Routsen said but she is saying he could not get a permit unless he was building. Commissioner Farmer said you cannot get a Dunes and Vegetation Permit. He could get a permit to cut down a tree. Commissioner Farmer interjected her understanding is there is a Dunes and Vegetation but there is also a permit to cut trees.

Mr. Rush confirmed that was correct but this ordinance does not prohibit you from getting a Dunes and Vegetation Permit if all you want to do is put in a septic tank or something else. Commissioner Farmer said Mr. Routsen was talking about her comment about she does not support septic tanks going on a lot unless someone is intending to build and the reason why she feels strongly about that is she thinks it behooves everyone to have an up to date septic equipment on the Island as we could possible get.

Mr. Rush said if the board wants to put that restriction in there and wants to let a person cut trees for his boat, then the appropriate language should be put in there.

Pat Patteson, Emerald Isle resident, asked about in the process of getting a permit you have to show where the house is going to go and percentages and all the necessary things you have to show to get the permit. Mr. Routsen disagreed. He does not feel you have to.

Mr. Harvey interjected that you are required to submit the following information for issuance of a permit under Section 19-334 Permit Required: A site plan indicating the proposed location of the principal and accessory structures on the lot and associated parking areas, septic system, driveways, storm water system, and any and all other structures or impervious surfaces that are intended for location on the property; The site plan shall be transposed on a topographic map of the property; The site plan shall indicate the proposed area to be reserved as natural area on the property; The site plan shall indicate the proposed use of fill on the property. That is what is covered under this Ordinance.

Mr. Patteson gave a scenario of in indeed you did that, you put the septic system in and cleared the lot and everything else and you sell the piece of property to someone and now they have a whole difference concept of what they want to do with that piece of property. Instead of building a 5 bedroom whatever, they want to go in and build just a little "school teacher house" which doesn't require a large septic system and also just the area that was left. The person is stuck with that and the community is stuck with cutting it down and it was not necessary to cut it down.

Mr. Routsen agreed. He said the issue is how do you carry the history of the 35%. The question really becomes is does the 35% remain in tact for the life of the property? Mr. Patteson said then it becomes an issue of buyer beware. Mr. Routsen disagreed and said it becomes a question of the history for the town because the town is enforcing the Ordinance. The town is establishing it. The question is how does the town want to have a history. Mr. Routsen gave an example of him buying a piece of property and he comes up and says "I bought this piece of property. Has anyone designated the

35%?" If the town says "I don't know", then he gets to do it and if they do know, the town has to provide the information as for what the history is.

Commissioner Farmer thought that is one reason why it is important that Dunes and Vegetation are going to people who are actually planning on building because the 35%, if you look at the Ordinance, really applies to new development. The town is not keeping a history. Mr. Routsen said the town is going to have to keep a history. Otherwise, if he designates the 35%, builds his house and two years from now decide he is going to cut it all down. Commissioner Farmer interjected "You are going to have to get a permit." Mr. Routsen continued he goes to get his permit and he says his natural area is his front yard. Commissioner Farmer indicated unless she is misunderstanding the Ordinance, the 35% natural area applies to new development. It is not applying to the already developed lots.

Mayor Schools asked if the lot is already developed you don't want them to be allowed to use up the original natural space? Commissioner Farmer said if you can

get a permit to cut down a tree, I do not see that the town is going to be capable of keeping tract of everybody's 35%.

Mr. Harvey said if Mr. Routsen came into the office tomorrow to get a permit he is designating where his 35% is. The permit is issued. Mr. Routsen, if he sold that lot, the other person is bound by that permit. On existing lots, what the Ordinance requires you to do is bring in site plans, if you want to cut down trees, you have to designate where your natural area is. Commissioner Farmer hated to say this but he is the fifth person who has owned this house and you have no clue where the natural area is. Mr. Harvey noted that if the town keeps the permit on file that is where it is. That is the only fair way to do it. Commissioner Farmer said it has to be any natural area. It does not necessarily have to be the 35%. Mr. Harvey responded that if there is a valid Dunes and Vegetation permit that was issued it would indicate the natural area. If you have an existing lot that was developed in the 1950's or 1960's where no Dunes and Vegetation permit was listed previously and you as a responsible owner come in to get a permit and cut down trees, you will have to designate for the DVPO where the 35% will be.

Commissioner Farmer responded that made her feel better because she thought the town was losing the 35%.

Mr. Harvey said it needs to be remembered that if a permit was never applied for then you are going to be setting your ground but unfortunately you would have to

accept that person would have to be pointed out. There is no way to correct it except as the situation comes up.

Commissioner Farmer asked if it needed to be specified in the Ordinance and Mr. Harvey said it was already specified. Mr. Routsen argued that nothing could be considered for lots that were prior this Ordinance amendment. He also said the town has to adopt a history file. It can't just say we are going to keep it for the required time and maybe we will keep it later on. The citizens have to be able to say if I buy a piece of property and I want to know where the natural area is, he could come to the town and find

out.

Mr. Harvey suggested Mr. Rush and Attorney Taylor talk about the issue of keeping history files.

Commissioner Eckhardt commented that they are concerned with the initial clearing because that is where the problems are. Once that goes beyond 1 ½ years you have more vegetation that you know what to do with. He asked if they were talking about something that maybe is not a problem?

Mr. Routsen agreed that you do have more vegetation after the clearing occurs in which case he would say why have the Dunes and Vegetation Ordinance to begin with. Commissioner Eckhardt said the problem seems to be on the front end with the initial cutting or subsequent cutting with additional development.

Mr. Routsen replied this ordinance is more intrusive. The board is saying the only problem is at the beginning. If it is only at the beginning, then limit the ordinance to just restrict at the beginning.

Commissioner Eckhardt interjected that it has been few and far between but there has been some extreme pruning of lots, not just trees.

Commissioner McElraft asked about someone leaving 68% vegetation and if they decide they want to take some trees down that they do not want all of a sudden, she asked are they allowed to do that. The answer was “Yes”.

Mr. Routsen also noted that under Exemptions , Section 19-335, talks about the normal maintenance of any lot or parcel including, but not limited to, lawn maintenance, the relocation and or replacement of shrubs, and the cutting and/or the removal of nuisance vegetation. It does not talk about the removal of shrubs. He could not remove a shrub but he could dig them up and move them somewhere else.

Mr. Harvey disagreed saying you could remove trees or plant life that has a caliber diameter of less than 3”.

Commissioner McElraft wanted to add the language “removal of shrubs” and Mr. Routsen agreed on this language. Commissioner Farmer asked if they wanted to add “relocation, removal and/or replacement” and said she has no problem with that.

Mr. Routsen asked where the board was going with respect of commercial property and Commissioner Farmer noted it has not changed. Mr. Rush commented he had mentioned in the cover letter that he is a comfortable having a methodology

for resident properties and another methodology for commercial property. He knows the Planning Board

wanted to keep it that way and Mr. Rush has no problem with it.

Commissioner Eckhardt mentioned talking to some of the developers, which Mr. Rush will do.

Mr. Patteson said they were dealing with commercial people and they understand this whole system and everything they are going about doing on commercial property better than a homeowner. The Planning Board felt it wasn't the same kind of issue of somebody not understanding how it needed to be done.

Commissioner Farmer had an ongoing problem with the 15% in B-3 but would recognize defeat.

Mr. Rush suggested a varying landscaping plan. If they cut down everything they would have a very intensive landscaping plan that includes trees being planted back on the property. He wants to provide something to make it easy for commercial developers so they will have a project that looks nice. It doesn't have to be 5, 10 or 15%, any goal you will have to treat differently. If it is 15% now and the waste water system takes up the whole 15%, you don't have anything (personal experience). Mr. Rush has been speculating as to what is real important is getting nice trees there on the site and some people have very nice landscaping. It may be better to let them clear everything and plant some nice trees on the lots.

Mr. Harvey, in discussing lots that have been previously disturbed but no building on them brought up by Commissioner Marks, said there might be a situation a septic system was installed with a permit and the town would have to come up with some definitions and parameters to define exactly what the town means.

Commissioner McElraft asked about the FEMA Flood Maps. There are some X Zoned property on the ocean front now. She does not know how many of them are

left but as of July they will become V zones. If this is enacted and they cannot disturb without a building permit in order to fill, that makes the lot much less valuable. They cannot get a view from some of the lots. Mr. Harvey said there is nothing in this Ordinance that forbids you from filling but you have to have a storm water plan. Commissioner McElraft said if they can not get a Dunes and Vegetation Permit until they get a Building Permit. Commissioner Farmer said she would not have any problem putting in an exception for those lots.

Mr. Harvey did not think there were going to be that many lots to deal with anyway.

Commissioner McElraft said it is not only on the ocean front. There are a lot of lots right now that are coming in, even in Spinnakers, they are coming into a flood zone. If those people cannot fill now then they have lost the value to their property. You can bring it into an AE Zone. What you can not do is bring it into a BE Zone already and you cannot use a constructional fill. Commissioner McElraft asked for clarification that this is ocean front and not second row. Mr. Harvey clarified it. Mr. Rush said it was on Oceanview Drive and maybe down to Heverly Drive and Daisywood that is being pushed from X Zone to V Zone. They are already high as it is because they were in a B Zone and an X from the first place. These are the lots that will be affected. Most of the ocean front on Oceanview are already developed

with structures on them. Mr. Rush does not think the change is affecting second row. He will check on it for the board.

Mr. Patteson said Mr. Rush had indicated that they could go ahead and fill that lot but the issue is to fill the lot you have to get a Dunes and Vegetation Permit and you have to be ready to build a house to do that. That is the way it is stipulated. Mr. Rush said he said you could fill lots in A Zone. Mr. Patteson replied it does not matter where they are, you said you could fill it. The issue is, according to the way it is stated and he is interpreting it, you cannot fill it unless you have a Dunes and Vegetation Permit and in order to get a Dunes and Vegetation Permit you have to have a topo and you will have to go through all the other things to do that.

Mr. Harvey replied that was correct but what has to be remembered is if only you submit a site plan showing where the structure would be, you could get a permit tomorrow to do everything you want to do. You are bound by that as you go on to the permit. Commissioner Farmer interjected, “Not with what she is proposing.”

Mr. Harvey reminded that they should remember what the ordinance says and what board is discussing. There is a distinct difference. What this ordinance says is you are applying for a permit, you have spent all the necessary information, you get

your permit and you get all of your stuff, if you don't put a house on it within 6 months to 1 year, this ordinance does not address that. What it stipulates to is that is the plan you have to adhere to when you apply to get your building permit.

Mr. Ed Dowling, member of the Planning Board, asked about the definitions as they are no more. It has been revamped and they have been totally taken out. The original guidelines from the board was to do the dunes, interior lots, addressing the dunes but there is nothing in this ordinance on dunes. Mr. Harvey brought Mr. Dowlings' attention to the definitions listed on the first page of the draft. Mr. Dowling said there was nothing about development of the lot. The reason this comes into play is that Spinnaker's is going into Phase IV and the board has already seen the plan and you know some of those lots have 100 foot frontage. Mr. Dowling does not see how they are going to meet the 35% requirement. Commissioner Farmer said they were going to meet it with wetland.

Mr. Dowling said there were going to be major problems coming into play with the inspection department with those lots. Commissioner Farmer said on the lettered wetlands, they have to have a 15 foot buffer so if they are not keeping the 15 foot buffer – that is one thing Commissioner Farmer had said to the Inspections Department – that she wanted them to be very careful about those. Mr. Dowling commented when they get into fill there was going to be a major problem. Commissioner McElraft said you couldn't have fill in that area. Mr. Harvey told Mr. Dowling they have design standards for the entire ordinance dealing with the amount of fill that can be added, dealing with alteration of interior dunes, basically mirroring not only existing language but that which was received from the Planning Board and Commissioners so you can be confident there is sufficient regulation and standards already established to address any alteration of structure of interior dunes.

Bill Reist, Woodcliff Drive, looked at enforcement and one of the things he sees is it talks about each violation of the ordinance shall incur a civil fine of \$500 but when you read all of the information about the other five items there, what is a violation? Mr. Harvey referred Mr. Reist to Enforcement, "Failure to comply with the requirements of the approved permit shall be considered a violation and shall be subject to the immediate issuance of a stop work order by the DVPO and to the other procedures and remedies of this which may apply. Mr. Harvey continued if they require getting approval for a permit in general, constitutes a violation of this ordinance.

Mr. Rush interjected that if you violate the ordinance you have to restore it to its pre-violation condition realizing that you can't replace a large tree, there is a standard in the ordinance that states the caliber of the trees that will be used to replace the ones removed. You have to replant those trees you took down and if you don't actually restore it, you will incur heavy penalties because the goal the town is trying to promote is "Let's fix the problem and then let's be heavy on fines."

Mr. Reist also noted that if you are talking about a violation being for each tree, it is not very clear. Mr. Harvey read that the removal of each tree and the failure to replace each tree on a given parcel of land shall be viewed as individual violations of these regulations.

Mr. Reist said if you put that violation right up front and the 60-day thing for the people to comply leaves people off the hook. You can go in there and cut down 20 big pines or oaks that are 2 feet in diameter and then you are allowed to go in and say okay now I am going to replace these trees with these little 2" or 3" trees. He asked if anyone knew how long it would take them to grow big? Mr. Rush replied he thinks Mr. Reist is right but under the current ordinance, if you cut down 20 trees, fine, we slap a heavy fine on you. The town may be getting their money back but there aren't any trees back there. Mr. Reist asked why the town could not do both. There is a fine for cutting the trees originally and then you have 60 days to replace it. It seemed to Mr. Reist that this is not going to stop anybody from cutting down big trees. To expect something bigger than a 2" or 3" tree is something else when you cut down 23 trees. Mr. Reist was looking at the instance on Sound Drive where a man went down there and cut down 23 trees. He has gone in there and put in a few little things that are about the size of Mr. Reist's fingers and the town is going to say now is what we are going to do is make you put in 2" trees instead but you can still cut down the 20 trees.

Mr. Reist said for each tree that is cut down you are going to be fined \$500. You are not going to stop people from cutting trees. Commissioner McElraft said there was not a judge that would give the town \$500 for a tree. Mr. Reist said that was a malfunction. Commissioner McElraft said it came from the Town Attorney. Commissioner Farmer interjected you can talk about dollar amount but Mr. Reist's point is that nobody is being penalized for actually cutting trees so there could possibly be an incentive for getting rid of all of those pines. Mr. Reist asked what about the guy who cut down 20 trees? Commissioner McElraft said he was fined. Mr. Rush said it was \$1,000.

Commissioner Farmer said that was an unusual case to the extent that the hostilities were something else. There is no doubt in her mind that a lot of that cutting was intentional. She would hate to be slapping someone with a huge fine who honestly didn't know.

Mr. Reist interjected what is being allowed is the builders and developers are going to cut 20 little stinking trees. Mr. Rush has just gone through building a house recently and he was the one who decided what trees were going to get cut down and not the builder. It is that individual homeowner, like himself, like everyone, who decide typically they are building a custom home, it is that average "Joe" guy who is making that decision to cut down that tree. If it were a commercial property, it would be a builder himself but Mr. Rush thinks it needs to be remembered that it is a person just like you and I making those decisions.

Commissioner Farmer she she wanted the guy who drives the bulldozer to be a little more careful also so you don't lose them in the first place.

Commissioner Eckhardt said he thought the board was beyond the ordinance at this point. Commissioner Farmer said Mr. Reist raised a reasonable question that the town is not penalizing anyone for the 60 days.

Commissioner Eckhardt input that a tree, 10-foot and 2" to 3" is not a small tree. It is not a cheap item. It is something that someone would stop and definitely consider. A sprout that you are talking about is something else. You are talking about a large tree and it would probably take a professional to do it.

Mr. Clint Routsen noted that developers do not go out and spend money cutting down trees because it costs them money to do that. They like the lots the way they are but they do want the lots to be presentable and cutting down trees just costs them money.

Commissioner Farmer asked to go through some specific items. Section 19-331 under Intent – she would like to see a sentence added to (2) after that sentence that says something about preserving vegetation to reduce storm water runoff and flooding. Section 19-334 Permit Required – in the storm water Ordinance, Commissioner Farmer believes 1,000 square feet of an addition is allowed before you have to do a storm water management plan. She would like to have an

exemption put in for smaller additions so that the town does not have people going through all of this stuff if someone is putting on a 10 x 20 room or enclosing a deck.

Mr. Harvey asked if she would want them to go through the permit process?

Commissioner Farmer answered, "No" she is not talking about that but she does not think it is necessary for small additions to be coming up with a topographical map and all the other stuff. She asked if it would be redevelopment or was she missing the point? Mr. Harvey replied he did not think she was missing the

point. It would be obviously re-development, disturbance of previously developed lots where additional development is planned. Mr. Harvey continued that a topographical is still required because of the dunes or impact of storm water on site. Commissioner Farmer said she feels it needs to be modified to be consistent with the storm water ordinance and the storm water ordinance is saying if you have an addition that is 1,000 feet, you do not have to come up with the whole plan and come up with where the water from that 1,000 square foot is going. She is not sure it would make a difference in vegetation.

Mr. Harvey commented that if it is an existing deck or addition, depending on the size of the addition, it could or could not make a difference. If you are going to build a fairly large house, you have the natural area already designated going up toward the house and turning out and that is where you want to put your addition, you would have to show where you are going to mitigate and put back the natural area. You would need it in there. He continued that if the board would like to see some language about exemptions or some of the ideas you were talking about something consistent with storm water, he did not think there would be a problem working it into the section.

Mr. Dowling mentioned the only place he could think about would be the septic tank area if they encroached in that area and if you did not have anything from the inspection department to do that. Mr. Patteson said that would have to go through the inspections department.

Mr. Harvey explained using a plain demographic, as this has come up, if you have designated in a certain patch of area that is designated on the previous permit and the proposed addition goes into that area, obviously you will need to know that to get a site plan. Where is the addition going? Is it going into the previously designated and defined as natural on the previous permit. That is the only concern

Mr. Harvey would have. The board is setting themselves up to run into a lot of the same problems being experienced now with the fourth and fifth generation owner that "Yes" would like to make some additional use of the property but the town needs to be consistent to preserve that area. Sorry, you are going to have to designate that square feet of natural area somewhere else. Show us where you can do that. Then issue the permit.

Commissioner Farmer scratched that idea. Mr. Routsen asked if he puts in a fence does he have to get a DVPO to get a permit? Commissioner Farmer answered "Yes" you do.

Mr. Harvey suggested going to the ordinance and trying to address that eventuality.

Commissioner Farmer went to Section 19-334 (2) and asked if someone comes in and wants to remove one or two trees, isn't someone going out to the site to see these trees? Why would it be necessary for someone to provide a sketch? Mr. Harvey replied the sketch is normally required for doing massive development or re-development. Commissioner Farmer asked if you wanted to say removal of three or more trees or five or more trees or pick your number but if you are getting one or two trees, she cannot see why you would make someone supply a sketch. Mr. Rush said it is just a guide for when the inspector get out in the field he knows where to look for the tree that is marked. If it is one tree in the front yard, obviously he is going to see it but if there is a stand of trees then he will need it.

Commissioner Eckhardt had rather not have a number of trees. If a number is put on it, it could be

this number this week, this number two weeks from now or this number three weeks and on down the line. Mr. Harvey reminded the board that in previous sections they are actually stipulating a site plan.

Commissioner Farmer continued with this one gets into the whole issue of clearing, of whether you can go in there and clear for marketing or not. She would like to see a new sentence that would allow for someone to clear for putting in a boat or whatever but if nothing is there, they cannot put it for marketing.

Mr. Harvey asked a question about if the town wants to allow, as an example, you can clear X square feet of area for use on a underdeveloped lot for any purpose.

Should not that purpose be consistent with the uses allowed on that property by the Zoning Ordinance? Commissioner Farmer's answer was "Yes." Mr. Harvey went on to say this does not allow you to encourage to make the parcel of property to be utilized for a purpose of use that is not consistent thereby allowing for some clearing to occur. Commissioner Farmer said as a homeowner she is allowed to park a boat on her property.

What Mr. Harvey was worried about was the board was allowing for some clearing of activities that are not consistent with the Zoning Ordinance. Commissioner Farmer noted she did not know that she would have a whole lot of difficulty with a person having his own boat.

Commissioner Farmer related to a lot on Coast Guard Road approximately 7 years ago and just totally removed all vegetation and had an RV parked there for a while periodically and that sort of thing she does not think the town wants. She would

like to see a limit of 500 square feet or whatever. Something that is not big enough to fit in a septic tank and field but something that is big enough to give somebody a couple of feet.

Mr. Harvey recommended 200 square feet or something like 300 or 400 because typical parking spaces are 10 x 20.

Commissioner McElraft said the way it is written right now it does not require you to put in a septic tank. Mr. Patteson said the ordinance requires a person to give the town a site plan designating everything, house, septic, everything, where the nature area is. A permit is issued and the natural area remains. You are held to what you initially did. When you get a building permit, this is your natural area. This is how your property is supposed to be cleared. You have deviated from this. That is what this ordinance does.

Mr. Rush felt there would be some opportunity to amend that some 3 years down the road. Mr. Harvey said that is up to the board's discretion.

Commissioner Farmer said that Mr. Patteson's point is well taken. She would like to see some sort of draft language either does not permit a septic tank to go in without a building permit and a storm water management plan, or does not permit clearing.

For the record, Commissioner McElraft said Mr. Patteson does not want that. Commissioner McElraft noted she would probably not vote for this ordinance because of that and another thing.

Mr. Harvey said that language could be developed but that would represent a substantial deviation from the existing language in the ordinance. Commissioner Farmer commented that is a sort of annoying because that was in the last draft that was voted on twice and only tabled at the last minute and that is why it was sent back to the Planning Board. Mr. Rush said it is the board's decision of whether or not they want to send it back to the Planning Board. Commissioner Farmer said the Planning Board already saw the original language and the original idea and she had just as soon send it back.

Commissioner McElraft asked if Commissioner Farmer is saying that you cannot clear for septic tanks or you cannot clear to get a permit? She is asking Mr. Harvey what the best way to go would be?

Commissioner Farmer input that you cannot clear for marketing and in fact you can only clear 500 square feet. You cannot put in a septic system. She does not know that you would need to say that. She continued that if you get a building permit it means you are going to build. Commissioner Farmer said you are going to have to pay some money because you are going to have to do a storm water management plan, you are going to have to do a site plan, a topographical plan. There are going to be some people who are going to say it is worth it to me to run around the ordinance by spending the money to play this game so I can get my septic tank in. The town is not going to be able to stop that.

Mr. Rush commented it needs to be analyzed and incorporated along with giving it some thought instead of trying to write it on the fly. Mr. Rush thought the intent expressed by Commissioner does not allow clearing for marketing purposes, don't let them put in septic tanks and he thinks if that is what the majority of the board wants them to look at, they will come up with some language and make sure it does not contradict something else somewhere else.

Commissioner McElraft said but you are not going to prevent that. If someone has the money, the developer has the money, he is going to go and clear it for marketing purposes and abate that building permit. Mr. Harvey answered "Sure". Commissioner McElraft clarified they are not preventing this with this ordinance.

Mr. Patteson mentioned they would prevent the mass majority, but for someone who owns a bunch of property, you will not stop him.

Commissioner Farmer and Commissioner McElraft discussed asking the Town Attorney how it could be stopped.

Commissioner Eckhardt said the reason they covered this by requiring a plot plan, by requiring all those other documents, how could the board ever keep someone from doing it. Commissioner Farmer said because they are going to have to go into more expense. They are going to have to do a storm water

management plan because that is what is required for a building permit. They are going to have to get a building permit. Commissioner Eckhardt asked “Aren’t we precluding someone when you are not going to stop them.” Commissioner Farmer noted you could not totally stop it but that is why she asked Mr. Patteson if it would stop a lot of it and his response was “Yes.” Commissioner Eckhardt asked why was the board trying to change it then? Commissioner Farmer clarified that Mr. Patteson was saying if you have an ordinance that says in it you can’t put in a septic system or you cannot clear the lot (however you wind putting the language) he is saying that that will stop a lot of the clearing ahead of time from putting in septic tanks. She continued that the

question is if it is important that the lots should not be stripped of most of their vegetation and left just like that. She has a Sahara Desert next to her.

Commissioner McElraft argued that they are not limited to having to leave 35%. Commissioner Farmer said the 35% is in the CAMA Setback on this lot so what is behind her is blowing sand on to her house and it is particularly threatened when she gets sandblasted during a hurricane. Commissioner McElraft asked if the owner took all of the trees out, Commissioner Farmer answered yes, she left her 35% and she could do that at anytime. Commissioner Farmer answered “With a building permit.” Commissioner McElraft answered “Yes.”

Commissioner Farmer said the issue is the town is requiring that the vegetation be kept on a lot until a building permit is gotten or requiring only 500 square feet being destroyed without a building permit – will that stop a lot of the clearing that is going on ahead of time where there are no plans to build at all, it is just to show the lot or it is to throw in a septic system because someone is concerned that the lot is wet and

it may not perk the next time, the rules may change or whatever. Mr. Patteson is saying it will stop a lot of it but it will not stop all of it because there will always be people who will be willing to spend the money on doing it, even an engineering plan, a topo, a storm water plan, etc. The average “Joe” would probably think twice before doing it.

Commissioner Eckhardt is now confused and he thinks they need to talk to somebody. He is not sure he sees a problem.

Language could be developed for the board to review at the request by Commissioner Farmer.

Commissioner Marks commented that there is no way some vegetation or trees will survive on an ocean front lot. Mr. Harvey said if you have a tree and you take it down, you have disturbed the area and you have to put the standard covering this issue back up. Commissioner Marks would go along with that position.

Commissioner Farmer went to Design Standards 19-336 (3) says removal of trees on previously developed lots where no redevelopment is planned. (a) the DVPO may approve the removal of any tree on any previously developed lot that: - a line that says it is replaced with another tree on the lot?

Mr. Harvey said if it is in the natural area, yes.

Commissioner Farmer continued asking in regarding to 19-334 (2) if there could be a new (a) in addition to the (a) that is already listed that says something like “the planting of additional vegetation in the natural area is permitted” because there was a lot of discussion about that with the Mini-Golf Course. Mr. Harvey answered “Sure”. Commissioner Marks implied she would go along with that.

Commissioner Farmer went on to Section 19-338 Special Restrictions on Oceanfront and Estuary Lots (b) the land use plan favors rip-rap over bulkhead. She asked Mr. Harvey to switch those so it says “rip-rap or bulkheads.

This ended the discussion from the board on the Dunes and Vegetation Ordinance Amendment.

Commissioner Eckhardt made a motion for adjournment. The board voted unanimously, 5-0 in favor. Motion Carried

The meeting was adjourned at 10:15 P.M.

Respectfully submitted,

Rhonda C. Ferebee
Town Clerk