



**TOWN OF CALABASH  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
Tuesday, October 11, 2011—6:00 pm**

**AGENDA**

**CALL TO ORDER:** Mayor Clemmons

**PLEDGE TO FLAG:**

**ROLL CALL:**

**APPROVAL/ADJUSTMENT OF AGENDA:**

**MINUTES:**

1. September 13, 2011-regular meeting

**MAYOR'S COMMENTS:**

**PUBLIC COMMENTS:**

**CORRESPONDENCE:**

**TOWN ADMINISTRATOR'S REPORT:**

**BUILDING INSPECTOR'S REPORT:**

**COMMITTEE REPORTS:**

1. Planning & Zoning—Commissioner Knight
2. Finance—Commissioner King
3. Town & Merchant—Commissioner King
4. Calabash Community Services—Commissioner Knight

**OLD BUSINESS:**

1. **Discussion/Action** to open bids that were received for resurfacing a portion of Deer Path in Saltaire Village and award bid to the lowest, responsive, responsible bidder.

**NEW BUSINESS:**

1. **Discussion/Action** to consider approval of major subdivision of 8 lots at Kingfish Bay Development preliminary/final plat of eight lots associated with existing townhomes.
2. **Discussion/Action** to consider revising the General Code of Ordinances, Chapter 111, Appendix A; regarding privilege license fees pertaining to Sweepstakes and Telephone Promotional Sweepstakes
3. **Discussion/Action** to consider tax releases of three properties approved by Brunswick County total value released for the 3 properties was \$85,890 (total release amount \$68.31)
4. **Discussion/Action** to consider directing the Town Administrator to conduct a feasibility study and cost to obtain deeded right of way to increase Lake Drive's ROW to 60'. (Commissioner Melahn)
5. **Discussion/Action** to schedule a special Board of Commissioners meeting to award the bid for phase 1 of the construction of the picnic shelter at the Calabash Community Park—consider Tuesday, October 25, 2011 at Town Hall at a time agreeable to the Board.
6. **Discussion** to consider removing more pine trees at the Calabash Community Park and replace with more suitable trees that require less maintenance and upkeep. (Commissioner Nance)

**CLOSED SESSION:** pursuant to G.S 143-318.11(a)(6) regarding personnel—annual evaluation.

**PUBLIC COMMENTS:** (limited to a maximum of 2 minutes per speaker)

**BOARD COMMENTS:**

**ADJOURN:**

**TOWN OF CALABASH  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
Tuesday, October 11, 2011 – 6:00 p.m.**

**MINUTES**

The Calabash Board of Commissioners held a Regular Meeting on Tuesday, October 11, 2011, 6:00 p.m. at Town Hall, 882 Persimmon Road, Calabash, NC.

**MEMBERS PRESENT:** Mayor Anthony Clemmons, Commissioner John Melahn, Commissioner Forrest King and Commissioner Jody Nance.

**MEMBERS ABSENT:** Commissioner Mary Knight.

**STAFF PRESENT:** Town Administrator Chuck Nance, Town Clerk Kelley Southward and Town Attorney Mark Lewis.

**GUESTS PRESENT:** The audience was comprised of approximately fifteen individuals.

**CALL TO ORDER/PLEDGE TO THE FLAG/ROLL CALL:** Mayor Clemmons called the meeting to order at 6:00 p.m. and led the congregation in the Pledge of Allegiance to the Flag. Roll call was taken with attendance reflected above.

**APPROVAL/ADJUSTMENT OF AGENDA:** Commissioner Nance, referring to item #2 under New Business, suggested that as a commissioner was absent, the discussion on that item be tabled until all Board members were present. Following discussion it was agreed to table the item until the November meeting but that should be done when the Board reaches that point of the agenda. *Commissioner Nance motioned to approve the agenda as written; seconded by Commissioner Melahn and unanimously carried.*

**MINUTES:**

1. September 13, 2011 – Regular Meeting

*Commissioner Melahn motioned to approve the September 13, 2011 minutes as written; seconded by Commissioner Nance and unanimously approved.*

**MAYOR'S COMMENTS:**

The Mayor touched upon the advent of the holiday season with its tree lighting and parade celebration.

**TOWN ADMINISTRATOR'S REPORT:**

In addition to his written comments (a copy of which is hereto attached to these minutes), Mr. Nance added that bids that had been solicited for the park/picnic structure would be reviewed during the October 20, 2011 Long Range Planning Committee meeting. Recommendations would then be forwarded to the Board of Commissioners.

**BUILDING INSPECTOR'S REPORT:**

A copy of the report is hereto attached to these minutes.

**PUBLIC COMMENTS:**

Mr. Charles Walton, 1404 Village Green, noted that there were rosebushes along Beach Drive in the area where the Kingfish Bay sales trailer had been located, that were blocking the way. He stated that something needed to be done.

Ms. Daria Buccilli, 1128 River Drive in Calabash Acres, stated that there was an odor coming from grinder pumps in Calabash Acres and several people had complained to her. The Mayor stated that the Town Administrator would follow up with the appropriate county official and meet on site with a

county representative. Another resident, Mr. Sanders, noted that there was a different kind of vent that could be used and that you can't vent within ten feet of a window. Commissioner Nance suggested that residents with such an issue call the county as well.

### **COMMITTEE REPORTS:**

1. **Planning and Zoning Board:** Given Commissioner Knight's absence, the Mayor noted that a copy of the verbatim minutes from their last meeting had been included in the Board members packets.
2. **Finance:** Commissioner King provided a revenue update of all funds totalling \$1,446,556.74. Mr. Nance noted that currently Town revenue was in line.
3. **Merchant Association:** No report per Commissioner King. Commissioner Nance stated that the Merchant's Association would be holding a meeting on October 13<sup>th</sup> at Turtle Crossing Cupcake.
4. **Community Service:** The Mayor reported on holiday event planning.

### **OLD BUSINESS:**

1. **Discussion/Action** to open bids that were received for resurfacing a portion of Deer Path in Saltaire Village and award bid to the lowest, responsive, responsible bidder.

The Mayor stated that two bids had been received for the resurfacing of a portion of Deer Path; Anderson Construction and LM McLamb Construction. Ms. Southward made copies for Board members to review for compliance with the bid specifications. Board members certified that both bids met the scope of work. The bids were as follows: Anderson Construction in the amount of \$25,109.50 and LM McLamb Construction in the amount of \$30,550.50. The Board compared the bids to the scope of work for the project and noted that both companies met the requirements of the scope with the exception that Anderson did not include a start/finish date. The low bid was submitted by Anderson Construction. Following discussion, *Commissioner Melahn motioned to award the bid for the Deer Path resurfacing to Anderson Construction.* Commissioner Nance then asked if representative of Anderson Construction, Mr. Jack Haynes, who was present in the audience, could come forward and provide start and end dates. Mr. Haynes stated that he could start in approximately two weeks with the work being completed in two to three days. *Commissioner Nance seconded the motion which was unanimously carried.* Mr. Nance will notify the Saltaire Village Property Owners Association that the work will be done.

### **NEW BUSINESS:**

1. **Discussion/Action** to consider approval of major subdivision of eight lots at Kingfish Bay Development preliminary/final plat of eight lots associated with existing townhouses.

The Mayor stated that the request for approval of the major subdivision of eight lots was Phase 1 buildings 4 and 5. He noted that the Planning and Zoning Board (PZB) had recommended approval. He stated that research data was included in their packets. Also the verbatim minutes of the PZB were in their packets so Board members could read how the PZB had arrived at their decision. The Mayor opened the floor to discussion.

Commissioner Melahn stated that staff and the PZB did an excellent, in-depth job of researching the issue and he agreed with the finding that the subdivision should proceed. It had always been his understanding that the units were townhouses.

Commissioner King stated that it was not as though they approached the Town to do this but this was something the town was forcing them to do. He noted that while his experience was more limited than others, he did not recall any conversation regarding subdividing the property. He stated it was not their intent to take this action in the beginning. For as many times as the plan was reviewed by the town, he stated that the Town should be ashamed for missing that. It was never intended to be subdivided and the Town, in order to save some face, should be able to figure out some way to not make them subdivide. He noted that he had read some state law and he understood the difference between a townhouse and a condominium. He stated that there had to be something in between. He noted that in the bank's efforts to subdivide the property, would probably hurt the sale. He stated that was in favor of the Town figuring out some way to give them a Certificate of Occupancy (CO) as they don't have any intent of selling any of the units. He stated that the Town could figure out a way to grant a CO so someone could move into one of the units to keep vandals from causing more damage. He noted that he was against the subdivision.

Commissioner Nance stated that after reviewing all related minutes and material, as well as taking into consideration staff research and feedback from residents, he agreed with the recommendation made by the majority of PZB members. He stated that he agreed with moving forward with the subdivision.

Mr. Nance stated that he did not have anything else to add other than what was included in their packets. He noted that one of the developers was present in the audience to answer any questions.

The Mayor stated that it was not unusual for a developer to attend meetings and answer questions. Called upon by the Mayor, Mr. Joe Cebina stated that he would answer any questions. He then introduced himself, stating that he was affiliated with GS Carolina Developers, a business very similar to Wakefield Development and provided a brief overview. They were hired by the owner, PNC Bank/Real Property Holdings, to manage the property. He noted that he was aware of the concern about the subdivision. He noted that there might be a misunderstanding about what approval of the subdivision would and would not allow. His understanding was that with a Conditional Use Permit (CUP), even with a subdivision, the property would still be subject to the terms of the CUP – which controlled the entire 70 acre project. He noted that all they were trying to do was to find a way to get a CO on the 8 existing units that were built to the code for townhomes. He stated that he hoped there was confidence in the original CUP and the HOA to protect the 70 acres as per the plan, so that the subdivision action could move forward. He then noted he would address any questions and concerns.

Commissioner King asked if the developer had other properties that had units or a series of units that had more than three units, on a single floor with an entrance at the ground similar to the way the Kingfish townhouses were built. Mr. Cebina asked if Commissioner King was looking for a definition of condominium. Commissioner King stated that he had read a number of definitions and several said that the simple definition was a unit that opened at the ground, had open space in the front and rear and was not deeded.

Mr. Cebina noted that he would defer to an attorney for a true definition but in his experience he noted that you can make anything a condominium so long as it meets the building codes for a condo. He stated that the challenge in this situation was that the existing buildings could be called condos except that the interior did not allow such a designation per the building code as they lacked the appropriate fire protection. He noted that the developer did not want to go through this process, but just to record them and move on. Given the current economic climate, taking this type of action was not uncommon.

He noted that this was more of an administrative formality to make it legal but that the action did not allow for the conditions in the CUP to be violated. He noted that the HOA and the CUP were in place to ensure that the project was not fragmented.

Commissioner Nance asked Mr. Cebina that if the Board approved the action would the process help or hinder the developer in the long run. Mr. Cebina stated that the owner's intent in getting a CO was to address vandalism. The good news was that over the weekend there was an arrest made but the bad news was that there was a lot of damage. The bank wants to secure the units. The second goal is to make the units more sellable. As a bank entity is the owner, there are regulations that do not allow banks to act as developers. The bank's goal is to preserve the value of the asset and make it saleable so it can move forward more easily via a third party. He clarified that Board approval of the subdivision action would help.

Commissioner Melahn asked if approval would help get the units occupied. Mr. Cebina noted that the intent was to get one unit occupied to secure the site and deter vandalism.

Commissioner King stated that it helps in that the only option recommended by staff is either subdivide or retrofit with sprinklers and the option to subdivide is the easier of the two.

Following Mr. Cebina's comments regarding the function of condo and townhome HOA's, Commissioner King asked if the townhome HOA was responsible for the maintenance of the exterior of the building. Mr. Cebina stated if the Town required that, it could be accommodated.

Mr. Lewis asked if the height of the buildings was an issue. The Mayor noted that it was not. He noted that the main difference between a condo and a townhome HOA is that the condo HOA has to have hazard insurance on the entire place whereas with townhomes, owners have individual insurance. He noted that if the subdivision is not approved, he thought the bank would have to demolish the existing buildings. Mr. Cebina stated that it was demolition or significant retrofit.

Commissioner King stated that he wanted to know what the response was from the question Ms. Cecelia Herman posed to the NC Department of Insurance in Raleigh. The question related to sprinklers in condos and townhomes. He thought that there was some leeway in the building code in some places and he was wondering if this was another example where the Town was choosing to take the stricter road than show a little leeway.

Mr. Cebina stated that requirements for sprinkler systems has been a significant challenge for many builders and municipalities all over the state as to why they have to be in certain buildings and not in others. And he said that is why building inspections exist to protect the public and because what they say is law.

Mr. Cebina noted that due to the original expensive cost of the land, Wakefield was forced to pack as many units as possible on the land as possible. The land is not worth its origin purchase price. In a separate matter, he noted that he would be happy to cut down the rosebushes that were mentioned earlier and he would take care of any other issues associated with the parcel.

The Mayor stated that it was time to call for a motion. Commissioner Nance stated that he had a prepared motion if it was appropriate. Before Commissioner Nance could make his motion the Mayor injected a comment. He stated that if the motion is approved there were two conditions that had to be

met before moving forward. *Commissioner Nance motioned to approve the preliminary/final plat presented by Real Property Holdings, Brunswick County, NC, LLC, shown as buildings 4 and 5 in Phase 1A of the Kingfish Bay Development subject to the following conditions: (1) that a bond or surety is provided for any unfinished infrastructure; and (2) that a set of "as built plans" and/or certification that all finished infrastructure has been approved. The motion was seconded by Commissioner Melahn.* The Mayor called for any discussion. Commissioner King asked that if Real Property Holdings was not selling any units at this time, why was a bond required? Mr. Nance stated that according to #14 of the CUP a bond had to be secured prior to the recordation of any lots. *A vote was taken with Commissioners Nance and Melahn voting for the motion and Commissioner King voting against the motion. The motion to approve the subdivision carried by a vote of two (2) to one (1).*

At 6:55 p.m. the Mayor called for a brief recess. At 7:05 the Mayor resumed the meeting.

2. **Discussion/Action** to consider revising the General Code of Ordinances, Chapter 111, Appendix A; regarding privilege license fees pertaining to Sweepstakes and Telephone Promotional Sweepstakes.

*Commissioner Nance motioned to table discussion to such time that all Board members were present, such as the November Regular Meeting and seconded by Commissioner Melahn.* Discussion continued with Commissioner King commenting that there is a court case pending in Lumberton. According to the state statute all fees are to be fair and equitable. He suggested that the decision to raise the fees be put off until the next Board is seated as they are the ones to live with the decision for the next four years. *A vote was then taken; the motion to table carried unanimously.*

3. **Discussion/Action** to consider tax releases of three properties approved by Brunswick County; total value released for the three properties was \$85,890 (total release amount \$68.31).

*Commissioner Nance motioned to approve the tax release of the three properties; seconded by Commissioner Melahn and unanimously carried.*

4. **Discussion/Action** to consider directing the Town Administrator to conduct a feasibility study and cost to obtain deeded right of way to increase the Lake Drive ROW to 60'.

Commissioner Melahn stated that Lake Drive, according to the county's GIS, has a twenty foot right-of-way and ten feet is paved; on one portion of the road. The benefits of increasing the right-of-way are greater access to the area by emergency vehicles and enhanced access could translate into future development and future development would mean increased revenue for the Town. Ms. Southward stated that the twenty foot ROW did not extend along all of Lake Drive. Commissioner Melahn stated that the portion that runs north/south is a 20 foot ROW and the east/west portion is shown as a 50 foot ROW. He asked Mr. Nance to conduct a feasibility study to determine the cost of obtaining easements in order to increase the ROW to 60 feet. He noted that it was easier to take such action now prior to any development. *Commissioner Melahn motioned to request that the Town Administrator conduct a feasibility study to obtain the deeded ROW to increase the Lake Drive ROW to 60 feet and report back to the Board of Commissioners, seconded by Commissioner Nance and unanimously carried.*

5. **Discussion/Action** to schedule a special Board of Commissioners meeting to award the bid for Phase 1 of the construction of the picnic shelter at the Calabash Community Park – consider Tuesday, October 25, 2011 at Town Hall at a time agreeable to the Board.

Following discussion, *Commissioner Nance motioned to schedule a special meeting to award the bid for Phase 1 of the construction of the picnic shelter at the Calabash Community Park on Tuesday, October 25, 2011 at Town Hall at 6:00 p.m., seconded by Commissioner Melahn and unanimously carried.*

6. **Discussion** to consider removing more pine trees at the Calabash Community Park and replace with more suitable trees that require less maintenance and upkeep.

Commissioner Nance suggested that before any construction starts on the site, that Board members consider removing an estimated thirty pine trees as the trees, if left standing, will require maintenance with falling dead branches and pine needles. He suggested that once the trees and stumps were removed they be replaced with trees that will require less maintenance and less hazardous. Commissioner Melahn stated that his concern was that property was originally purchased as the site of a new Town Hall, if it was needed, and he was reluctant to spend money on something until it was known exactly what was going to occur on the property. Commissioner Nance stated that the park was what would occur there and that his suggestion was food for thought as cleaning up after the trees will be harder once the construction begins. Commissioner Nance suggested more information on the cost of removal and the replacement of trees be obtained. The Mayor asked that input be gathered from the Long Range Planning Committee and the Community Service Committee. Mr. Nance noted that as PARTF grant funds were being used to build the park, it must remain a park for twenty-five years.

**CLOSED SESSION:**

1. Pursuant to G.S. 143-318.11(a)(6) regarding personnel-annual evaluation.

*Commissioner Nance motioned to enter into Closed Session, seconded by Commissioner Melahn and unanimously carried.*

Upon returning to Sanborn Hall, *Commissioner Nance motioned to return to Regular Session, seconded by Commissioner Melahn and unanimously carried.*

**ACTION AS A RESULT OF CLOSED SESSION:**

*Commissioner Nance motioned to give James Morgan a 2.5% salary increase, effective on his anniversary date, seconded by Commissioner Melahn and unanimously carried.*

**PUBLIC COMMENTS:**

Ms. Cecelia Herman, 403 Deer Path, reiterated her objection to the Board's action to approve the Kingfish Bay subdivision. She noted that the subdivision reduces the amount of common space between the buildings. This reduction in common space is a change from the original map that was approved in 2006. Any deviation renders the CUP void. The plan called for condos and townhouse style condos. She noted that another municipality had condo style townhouses that were built in 2006, she thought, without sprinklers and she thought the Kingfish Bay condos were also built in 2006. She agreed with Commissioner King and opined that the Board erred.

**BOARD COMMENTS:** None were forthcoming.

**ADJOURN:** *Commissioner Melahn motioned to adjourn at 7:40 p.m., seconded by Commissioner Nance and unanimously carried.*

(SEAL)

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Anthony Clemmons, Mayor

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Kelley Southward, Town Clerk