

**TOWN OF CALABASH
BOARD OF COMMISSIONERS
REGULAR MEETING
Tuesday, February 9, 2010—6:00 pm**

MINUTES

The Calabash Board of Commissioners held a Regular Monthly Meeting on Tuesday, February 9, 2010, 6pm at Town Hall, 882 Persimmon Road, Calabash, NC.

MEMBERS PRESENT: Mayor Anthony Clemmons, Commissioner Mary Knight, Commissioner John Melahn, Commissioner Forrest King, Commissioner Joseph Nance, and Commissioner William Dixon; all members were present.

STAFF PRESENT: Hiram J. Marziano II, Town Administrator; Kelley Southward, Town Clerk; and Mark Lewis, Town Attorney.

GUESTS PRESENT: There were approximately 15 guests in the audience.

CALL TO ORDER/PLEDGE/ROLL CALL: Mayor Clemmons called the meeting to order at 6:00 pm and led the Pledge of Allegiance to the Flag. Roll call of the Board and staff was taken; attendance is reflected above.

APPROVE/ADJUST AGENDA: Commissioner Melahn asked to “flip-flop” items four and five of Old Business (place #5 before #4). Mr. Lewis requested that Board add “update on legal matters” to Closed Session, pursuant to G.S 143-318.11(a)(3). *Commissioner Melahn motioned to approve the agenda, as amended, seconded by Commissioner Nance and unanimously carried.*

PUBLIC HEARINGS: *Commissioner King motioned to open the Public Hearings, seconded by Commissioner Melahn and carried by a unanimous vote.*

1. Proposed amendment to §153.053, which would reduce the number of ETJ member seats on the Planning and Zoning Board from two to one (Ordinance Amendment #2010-01.01). Mr. Mack Sanders of Calabash Acres asked why it was necessary to reduce the ETJ membership on the Planning & Zoning Board. The Board explained that ETJ membership (and regular town membership) of the Board should be proportionate to the size of the ETJ. The annexation that became effective July 1, 2009 significantly reduced the size of the Town’s ETJ, therefore membership on the PZB should be reduced.
2. Proposed amendment to §153.140-Central Business-add Commercial Vending Units as a conditional use (Ordinance Amendment #2009-12.01). Mr. Rector Sisk asked what a commercial vending unit is; the definition contained in the ordinance amendment was read for the audience. It was noted that commercial vending units are for large, unmanned machines that offer a service or product for money but do not include smaller vending units such as snack & soda machines or newspaper boxes.
3. Proposed amendment to §153141-Highway Commercial-add Commercial Vending Units as a permitted use (Ordinance Amendment #2009-12.02). There were no comments regarding the proposed amendment.

4. Proposed amendment to §155.03-Natural Resource Protection, Tree Protection; change circumference to caliber and clarify that the intent of the ordinance is for undeveloped property (Ordinance Amendment #2010-01.02). Town Attorney, Mark Lewis, suggested that the Town use diameter rather than circumference as a means to measure the size of trees; the Board noted that they would further discuss this matter during Old Business.
5. Proposed amendment to §155.05-Natural Resource Protection, Definitions; amend definitions to include caliber (Ordinance Amendment #2010-01.03). There were no comments regarding the proposed amendment.

Commissioner Melahn motioned to close the public hearings, seconded by Commissioner Knight and unanimously carried.

CONSENT AGENDA:

1. Approve minutes of January 12, 2010; Regular Meeting
 2. Approve minutes of February 1, 2010; Budget Workshop
- Commissioner King pointed out that the term “movie festival” in the minutes of February 1st should be changed to “moo doo festival”. *To that end, Commissioner Melahn motioned to approve the Consent Agenda, seconded by Commissioner King and unanimously carried.*

MAYOR’S COMMENTS: Mayor Clemmons thanked the UDO Ad-Hoc Review Committee, which was charged to give clarification of change recommendations made by the Ordinance Review Committee as they pertain to the UDO; Mayor Clemmons noted that the Ad-Hoc Committee is done and therefore [automatically] dissolved. Mayor Clemmons recognized Ms. Laura Lewis of the Brunswick Beacon for winning a spelling bee back in September.

PUBLIC COMMENTS: none forthcoming

CORRESPONDENCE: none

TOWN ADMINISTRATOR’S REPORT: written report attached hereto and made part of these minutes. Mr. Marziano noted that the PARTF Grant application regarding the proposed Calabash Community Park has been submitted; the Town should know the outcome of the application in May or June. He further noted that the Town has received the new voyager gas cards from GoGas, that James Morgan Jr. has began receiving the shots and training necessary to move forward as an Animal Control Officer, and that last week Mr. Marziano attended a Manager’s Conference in Durham.

BUILDING INSPECTOR’S REPORT: written report attached hereto and made part of these minutes. Commissioner King requested that the schedule for fire inspections be posted on the Town’s website and that each commissioner receive a copy of the schedule. Mention of the website prompted Mayor Clemmons to point out that the website is maintained by Commissioner Melahn and at one point the Board discussed compensation for such; he requested staff to look into compensation for Commissioner Melahn’s time/service dedicated to the maintenance of the website.

COMMITTEE REPORTS:

1. Fire Department: Commissioner Nance’s written report is attached hereto and made a part of these minutes. In addition to highlighting portions of his written report,

Commissioner Nance noted that Fire Chief Randy Bork held an informative meeting for the public on January 19th, 6pm, to let the public know how the Calabash Fire Department operates and what they are responsible for. He thanked Chief Bork for this meeting and if Chief Bork ever hosts another meeting of the like, Commissioner Nance would encourage the public to attend.

2. Planning & Zoning: Commissioner Knight read her written report, which is attached hereto and made a part of these minutes. Additionally, a written report regarding the January 18th meeting of the Board of Adjustment is attached hereto and made part of these minutes.
3. Finance: Commissioner King reported that 98% of the budgeted amount of taxes has been collected; 91% of the total amount billed has been collected. Commissioner King relayed the highlights of the Calabash Finance Report for the Month Ending January 31, 2010, which is attached hereto and made part of these minutes.
4. Water/Wastewater: Mayor Clemmons noted that it has been a challenge for the contractor that is installing the County sewer extension to keep things “clean and neat” with all the rain that we’ve been having but they are doing their best. Soon the contractor will be pulling out of Calabash Acres and moving into Pine Bur Acres to install gravity lines. Gravity line installation continues on Beach Drive as well as construction of the pumpstations (Beach Drive and Wilson Ave). He further reported that some problems occurred when boring under Beach Drive near Beach Drive Diner; the matters have been corrected.
5. Town & Merchant: Commissioner King reported that it’s a slow time of year for the Merchant’s Association. However, they are tentatively planning a get together on April 5th and plans for the 2nd Annual 4th of July Celebration are underway.
6. Stormwater: Mr. Marziano noted that with the abundance of rain the water table is very high; many drainage ditches are full. The Town has met with an engineer who is reviewing the stormwater problems in Hidden Valley and on Riverview Drive.
7. Long Range Planning: the next Regular Meeting will be held Thursday, February 18th at 4:00pm. On January 21st the LRP hosted a public informational meeting regarding the proposed Calabash Community Park. Commissioner Nance asked if he could legally attend the LRP meeting so long as he doesn’t participate; because two commissioners are on the LRP his presence would constitute a quorum. Town Attorney, Mr. Lewis, said so long as Commissioner Nance sat in the audience and did not actively participate in the meeting he could attend.

OLD BUSINESS:

1. Discussion/Action of the proposed amendment to §153.053-Planning & Zoning Board Membership-reduction of ETJ membership seats on the Planning & Zoning Board (Ordinance Amendment #2010-01.01). *Commissioner Melahn motioned to amend Ordinance #2010-01.01 to include the General Statute reference 160A-362 and approve the amendment to §153.053, which reduces the number of ETJ membership seats on the Planning & Zoning Board. Commissioner Knight seconded the motion and there was discussion.* Commissioner King asked how many seats are currently on the Planning & Zoning Board. The Town Clerk relayed that there are seven seats available on the Board; currently there are only five seated members all of whom are in-town members; the Town has been unsuccessful in filing the vacant ETJ members since the annexation that became effective July 1, 2009. Commissioner King further felt that while changes were being made to this Section, the Board should consider adding that, in addition to

the reasons already stated, Planning Board members could be removed for misconduct. Mr. Lewis said the Board of Commissioners could add this language if they so desired. *Commissioner Melahn moved to amend his original motion to include that language should be added to paragraph (A) that members could be removed for misconduct and approve Ordinance Amendment #2010-01.01, as fully amended; seconded by Commissioner Nance and there was further discussion.* Commissioner King felt the language in the last sentence of paragraph (B) was worded incorrectly; the Town Attorney felt the language was correct and should not be changed because in fact, the Town does need to request from the County Board of Commissioners the removal of an ETJ member. However, Mr. Lewis did note a typo in the paragraph (repeated words) and he suggested that in the third sentence the words “in this position” be inserted between “vacancy” and “occurs”; the Board agreed to correct the typo and add “in this position”. *Mayor Clemmons called for a vote and the motion to approve the proposed amendment to §153.052, as amended, carried by way of a unanimous vote.*

2. Discussion/Action of the proposed amendment to §153.140 Central Business-add Commercial Vending Units as a conditional use (Ordinance Amendment #2009-12.02). Mayor Clemmons asked that this item be discussed before voting and solicited a motion to that affect. *Commissioner Nance motioned to have discussion of item #2 prior to an action motion, seconded by Commissioner Melahn and carried by a unanimous vote.* Commissioner King was concerned that newspaper boxes could fall subject to this ordinance, which is not the intent. Commissioner Dixon asked if produce stands fall under the proposed ordinance; Mr. Marziano said that they would not because this ordinance is only for unmanned machines. Commissioner King felt language should be added to the proposed ordinance to protect/exempt people who want to have newspaper boxes. The last portion of paragraph (a) was amended; the phrase “small vending machines such as” was added between “location of” and “retail soda”. A gentleman from the audience was acknowledged and permitted to comment; he said that he was of the opinion that small vending machines such as soda and newspaper machines are addressed elsewhere in the current Code. *Commissioner Melahn moved that the ordinance amending §153.140 regarding commercial vending units in the Central Business District be approved as amended above, seconded by Commissioner King and carried by a unanimous vote.*
3. Discussion/Action of the proposed amendment to §153.141 Highway Commercial add Commercial Vending Units as a permitted use (Ordinance Amendment #2009-12.02). Mayor Clemmons placed the matter on the table for discussion. It was pointed out that unlike the Central Business District these machines would be a permitted use by right in the Highway Commercial District. Mr. Lewis suggested that the “exempted” language in both §153.141 and §153.140 (discussed in item #2 above) read as follows: “; this definition does not limit the location of retail soda and snack vending machines, newspaper boxes and other small vending machines normally associated with a business;”. *Commissioner Nance motioned to approve the amendment to §153.141 regarding vending machines in the Highway Commercial district, as amended-suggested by the Town Attorney, seconded by Commissioner Knight and carried by a unanimous vote.*

Mayor Clemmons solicited a motion for the Board to reconsider the action taken in Old Business #2 regarding an amendment to §153.140-Commercial Vending Units as a conditional use in the Central Business District; Commissioner Melahn submitted a motion to that effect, which was seconded by Commissioner Knight and unanimously carried. Commissioner King motioned to revise the language in the last portion of paragraph (a) to read as follows: “; this definition does not limit the location of retail soda and snack vending machines, newspaper boxes and other small vending machines normally associated with a business;” and approve, as amended; seconded by Commissioner Dixon and carried by way of a unanimous vote.

4. Discussion/Action of the proposed amendment to §155.05-Natural Resource Protection, Definitions-add circumference (O.A #2010-01.03). The Planning & Zoning Board has recommended that the standard of measurement for trees be based on “caliber”; Commissioner Melahn said he believes it is supposed to be “caliper”; an arborist in the audience was consulted and agreed that it should be “caliper”. Commissioner Melahn felt that the Town should use diameter; diameter at breast height (DBH) is a forestry industry standard. Commissioner Melahn said nurseries normally use caliper measurements. Commissioner Melahn suggested the Town review the City of Wilmington’s tree ordinance. Mr. Sanders, in the audience, was recognized; he felt that diameter would be the simplest method for the Town to use. *Commissioner King motioned to table items 4 & 5 of Old Business, seconded by Commissioner Melahn and unanimously carried.*
5. Discussion/Action of the proposed amendment to §155.03-Natural Resource Protection, Tree Protection-change circumference to caliber and clarify ordinance intention (O.A# 2010-01.02). Tabled in item #4 above.
6. Discussion/Action of the proposed amendment to the Calabash Personnel Policy regarding employees departing Town Hall within 15-minutes of adjournment of any after-hours meetings. *Motion to approve the amendment to Section I Workweek, add C of Article V Conditions of Employment to the Calabash Personnel Policy, seconded by Commissioner Dixon.* The Town Clerk pointed out that the Town Attorney has provided suggestions for some revisions to the proposed amendment, which reads as follows: “It is the policy of the Town of Calabash that all town employees must vacate the premises of town hall within fifteen (15) minutes after the conclusion of any after-hours meeting concerning town business. The only exception to this policy would be an emergency or if urgent work needs to be completed and the Town Administrator and/or Board of Commissioners assents to deviation from this policy.” *Commissioner Nance withdrew his original motion, and likewise, Commissioner Dixon rescinded his second. Commissioner Nance then motioned to approve the amendment to the Personnel Policy as suggested by the Town Attorney, seconded by Commissioner Dixon and unanimously carried.*
7. Discussion/Action to schedule a public hearing for a proposed amendment to §153.241 Signs. *Commissioner Melahn motioned to schedule a public hearing for Tuesday, March 9, 2010, 6:00 pm at Town Hall for the proposed ordinance amendment to §153.241 Signs (L) Temporary Signs—include a provision for A-frame signs under certain conditions, seconded by Commissioner King and there was discussion.*

Commissioner Nance asked if it was appropriate to add in the motion that action could be taken at the same meeting; Commissioner King said the Board has held to the unwritten policy that an item for public hearing will be placed on the agenda for action but removed or tabled if there are significant comments made at the public hearing that the Board needs to consider. Mayor Clemmons noted that the Board has a copy of the ordinance regarding A-frame signs, as recommended by the Planning & Zoning Board (PZB). He felt that if the Board of Commissioners wanted to make any changes to what has been proposed by the PZB they should be made now before the public hearing is scheduled. To that end, Commissioner King said he was not prepared to schedule the public hearing this evening. *Commissioner Melahn rescinded his motion to schedule the public hearing for March 9th; Commissioner King rescinded his second. Commissioner King motioned to table the matter of scheduling a public hearing for the amendment to §153.241 Signs, seconded by Commissioner Melahn and carried by a unanimous vote.*

NEW BUSINESS:

1. Discussion/Action—receive report from the Tax Collector on taxes collected to date for 2009 and charge the Tax Collector to advertise delinquent taxes in April. *Commissioner King motioned to approve the Tax Collector’s report for collected 2009 taxes and direct the Tax Collector to advertise delinquent taxes in April 2009.*
2. Discussion/Action to authorize release of taxes (five properties). The Tax Collector has discovered 5 accounts that are ineligible to collect, they are as follows: Brunswick County Finance—Parcel 2550000306 for \$31.95 (government is tax exempt); David B. Stanaland—Parcel 2550000303 for \$382.73-this parcel is actually in Sunset Beach ETJ and was erroneously entered with the annexation that became effective July 1, 2009; Coral Resort Wear for \$15.71-this business has not been in Town for several years; SNC Inc DBA Giovanni Pizza \$17.57-this business has not been in Town for several years; and Alley Oop Surf Shop for \$5.65—years 2004-2008 this is a discovery for personal property found by the County but should have been sent to Sunset Beach as the business was located only in SSB for these years. *Commissioner King motioned to release the five tax accounts, seconded by Commissioner Knight and unanimously carried.*
3. Discussion/Action to consider major subdivision of Tax ID #2550002824 in Devaun Park; divide 5.75-acre tract into three parcels. It was noted that this “major” subdivision only falls under the “major” rules because of its size. There are no new roads, right-of-ways, or utilities. Mayor Clemmons said the Town should look into creating an ordinance for “division of property”. Commissioner Nance asked what the Planning & Zoning Board recommended for this matter; staff relayed that the PZB recommended approval of the major subdivision and they expressed no concerns regarding the request. *Commissioner Nance motioned to approve the major subdivision of Tax ID #2550002824, a 5.75-acre tract in Devaun Park.*
4. Discussion/Action to consider appointing Mr. Bobby Lucas to the Board of Adjustment as an alternate member (Commissioner King). *Commissioner King motioned to appoint Bobby Lucas of 1114 Charlotte Avenue, as an in-town alternate member of the Board of Adjustment (to fill a vacant alternate two-year term that expires April 9, 2011) seconded by Commissioner Nance and there was discussion. Commissioners King, Nance, and Dixon all spoke highly of Mr. Lucas. Mayor Clemmons called for a vote and the motion*

to appoint Mr. Lucas as an alternate member of the Board of Adjustment carried by a unanimous vote.

CLOSED SESSION:

Commissioner Melahn moved that the Board enter Closed Session pursuant to G.S 143-318.11 (a)(6)-Personnel Matters (discussion of employee performance and employee evaluations) and G.S 143-318.11(a)(3)-discussion of legal matters with the Town Attorney; Commissioner Knight seconded the motion to enter Closed Session, which carried unanimously. The Board retired to the Town Administrator's office for Closed Session.

Upon returning to Sanborn Hall, Commissioner Melahn moved for the Board to enter Regular Session, seconded by Commissioner Nance and unanimously carried.

ACTION AS A RESULT OF CLOSED SESSION:

- 1. Commissioner Dixon motioned to give William Silvers a 2.5% pay increase effective on his anniversary date, seconded by Commissioner Knight and unanimously carried.*

BOARD COMMENTS: Mayor Clemmons pointed out that as of February 16th, Mr. Marziano's probationary period would be complete.

ADJOURN: *At 10:03 pm Commissioner Nance moved to adjourn, seconded by Commissioner Dixon and unanimously carried.*

(SEAL)

Anthony Clemmons, Mayor

Attest:

Kelley Southward, Town Clerk