



**TOWN OF CALABASH
BOARD OF COMMISSIONERS
REGULAR MEETING
Tuesday, September 13, 2011—6:00 pm**

AGENDA

CALL TO ORDER: Mayor Clemmons

PLEDGE TO FLAG:

ROLL CALL:

APPROVAL/ADJUSTMENT OF AGENDA:

PUBLIC HEARINGS:

1. Amendment to Article 10 of the UDO regarding Telephone Promotional Sweepstakes—add language to limit the number of machines to four per retail space.
2. Amendment to Article 18 of the UDO regarding A-frame signs—suggest requiring a no-fee permit and revise current language.
3. Amendment to Article 18 of the UDO regarding Banners—amend the current language and increase the number of times allowed per year from 2 to 4.

MINUTES:

1. August 9, 2011-regular meeting (open session)
2. August 9, 2011-regular meeting (closed session)
3. July 12, 2011-regular meeting (closed session)

PRESENTATION: S. Preston Douglas & Associates to present the 2010-2011 Fiscal Year Audit

BOARD ACTION: To consider approving the 2010-2011 Fiscal Year Audit.

MAYOR'S COMMENTS:

PUBLIC COMMENTS:

CORRESPONDENCE:

1. An interested citizen suggests that upon opening a public hearing detailed information regarding the public hearing matter is presented to the audience (i.e read the proposed ordinance amendment) and that Board members and staff speak into their microphones during public meetings so that they can be heard by the audience.
2. Information regarding new Powell Bill disbursement changes
3. Free Dump Week at County Landfill September 12-17, 2011

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
5. Emergency Management—Chuck Nance

OLD BUSINESS:

1. **Discussion/Action** to consider approving the proposed amendments to Article 10 of the UDO pertaining to Telephone Promotional Sweepstakes.
2. **Discussion/Action** to consider approving the proposed amendment to Article 18 of the UDO regarding A-frame signs.
3. **Discussion/Action** to consider approving the proposed amendment to Article 18 of the UDO regarding banners.
4. **Discussion/Action** to consider approving the scope of work for resurfacing a portion of Deer Path in Saltaire Village and direct the Town Administrator to obtain bids to be opened in October.

NEW BUSINESS:

1. **Discussion/Action** to consider utilizing the maintenance building site as a convenient drop-off site for electronics for citizens; Town Services to take electronics to the County landfill to be properly disposed of when there is a truckload.
2. **Discussion/Action** to consider approving staff recommendation of fines and penalties to be applied to the clearing violation at Devaun Park.
3. **Discussion/Action** regarding Yes Port NC's request for support of educating all North Carolinians on the Proposed NCIT Project and NCIT Feasibility Study that were placed on hold. If the Board is in support they may adopt a resolution of support; they may elect to be "for", "against", or "neutral".

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

BOARD COMMENTS:

ADJOURN:

**TOWN OF CALABASH
BOARD OF COMMISSIONERS
REGULAR MEETING
Tuesday, September 13, 2011 – 6:00 p.m.**

MINUTES

The Calabash Board of Commissioners held a Regular Meeting on Tuesday, September 13, 2011, 6:00 p.m. at Town Hall, 882 Persimmon Road, Calabash, NC.

MEMBERS PRESENT: Mayor Anthony Clemmons, Commissioner Mary Knight, Commissioner John Melahn and Commissioner Jody Nance.

MEMBERS ABSENT: Commissioner Forrest King.

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

GUESTS PRESENT: The audience was comprised of approximately twelve guests.

CALL TO ORDER/PLEDGE/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 Melahn motioned to approve the agenda as presented, seconded by Commissioner Nance and unanimously carried.*

PUBLIC HEARINGS:

1. Amendment to Article 10 of the UDO regarding Telephone Promotional Sweepstakes-add language to limit the number of machines to four per retail space.
2. Amendment to Article 18 of the UDO regarding A-Frame signs-suggest requiring a no fee permit and revise current language.
3. Amendment to Article 18 of the UDO regarding Banners-amend the current language and increase the number of times allowed per year from two to four.

Commissioner Knight motioned to open the Public Hearings, seconded by Commissioner Melahn and unanimously carried.

Ms. Cecelia Herman stated that the number of telephone promotional sweepstake machines needed to be limited. She stated that A-Frame signs should be permitted and the Town should keep track of which businesses have A-Frame signs so as to have better control over them. She supported the recommended changes to the UDO.

The Mayor asked the Town Clerk to provide an overview of the three Public Hearing items. She noted that telephone promotional sweepstake businesses have to have a retail space and that there was currently no limit on the number of machines. Language in the proposed amendment included limiting the number of machines to four per retail space (which is the amount noted in the old zoning code prior to the adoption of the UDO). The second item included slight revisions to the existing A-Frame sign ordinance. One revision was to move the section from its current location under “no permit required” to the section that requires such signage to acquire a permit with no fee, allowing the Town to keep track of the signs. Revisions to the language concerning banners included allowing one banner at any given time, increase the number of banners permitted per calendar year from two to four for thirty days at intervals or consecutively and that vertical swooper flags would be considered banners.

There being no further comments, *Commissioner Nance motioned to close the Public Hearings, seconded by Commissioner Melahn and unanimously carried.*

MINUTES:

1. August 9, 2011-Regular Meeting (open session)
2. August 9, 2011-Regular Meeting (closed session)
3. July 12, 2011-Regular Meeting (closed session)

Commissioner Melahn motioned to approve the three sets of minutes as presented, seconded by Commissioner Knight and unanimously carried.

PRESENTATION: 2010-2011 Fiscal Year Audit by S. Preston Douglas and Associates
Mr. Johnny Britt presented the audit and reviewed the data contained in the report. Upon the conclusion of the report, the Mayor thanked Mr. Britt for his report.

BOARD ACTION: *Commissioner Melahn motioned to approve the 2010-2011 Fiscal Year Audit, seconded by Commissioner Knight and unanimously carried.*

MAYOR'S COMMENTS: The Mayor deferred his comments until the Community Service Committee Report and deferred comments regarding Emergency Management to Mr. Nance.

PUBLIC COMMENTS:

Mr. Al Byers, River Drive, commented on the location of the recycling containers and the difficulty in accessing the containers. He stated that people need to be encouraged, not discouraged to recycle. He went to say that he was confused about the sewer assessment fees. He stated that he had received conflicting information from a Town Hall staff person. He noted that his neighbors were also confused. The Mayor told Mr. Byers that he would meet with at Town Hall on Wednesday to address his concerns and answer his questions.

Ms. Cecelia Herman expressed her appreciation to Town Service staff and all employees for their response to Hurricane Irene.

Mr. Vaughn Stanaland noted that his comments were connected to the New Business agenda item concerning fines and penalties to be levied against Devaun Park for lot clearing. He noted that sole responsibility lies with Stanaland Stewart Company; no individual property owners were culpable. The area in question is planned for multiple family development. He stated that the issue is the application of the Unified Development Ordinance (UDO). He opined that staff cannot enforce their recommendation based on the wording of the UDO. He stated it needed to be "tweaked" in order to be helpful. He stated that they thought trees in an area that was slated for development could be removed. He asked how staff could measure trees that were already cut to confirm that their height was four feet high. He asked that the Board of Commissioners table the New Business item until such time as the UDO can be reviewed for possible revision. He did not think that Devaun Park should be the UDO's first litmus test. They are being good stewards of the land.

CORRESPONDENCE:

Copies of correspondence related to a citizen request, new Powell Bill disbursement changes and September dates for the free county landfill dump week is hereto attached to these minutes.

TOWN ADMINISTRATOR'S REPORT:

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

BUILDING INSPECTOR'S REPORT:

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

COMMITTEE REPORTS:

1. **Planning and Zoning Board:** Commissioner Knight stated that there was no September meeting.
2. **Community Service Committee:** Commissioner Knight stated that during informal meetings members had been discussing ways to increase the sale of bricks and how to showcase the sold bricks at the park. Bricks could be sold at the November car show. Both Commissioner Knight and the Mayor expressed appreciation for the \$2000 donation by the Calabash Elks in support of the children's playground and a brick commemorating the donation will be installed around the park's flagpole.
3. **Emergency Management:** Mr. Nance provided details regarding preparation for Hurricane Irene as well as efforts after the storm. There was only minor damage. The Mayor commended everyone involved. Commissioner Knight especially thanked Mr. and Mrs. Karl Bennett for their involvement and expertise as well as those individuals who volunteered to assist after the storm event.

Following a brief ten minute recess, the Mayor called the meeting back to order at 7:10 p.m.

OLD BUSINESS:

1. **Discussion/Action** to consider improving the proposed amendments to Article 10 of the UDO pertaining to Telephone Promotional Sweepstakes.

Commissioner Melahn motioned to approve the proposed amendment to Article 10, Table of Uses, Note 2, (F) of the UDO that would add language to limit the number of machines to four per retail space and three other conditions and that said amendment be effective immediately. Commissioner Knight seconded the motion. The Mayor opened the floor for discussion. As there was no further discussion, the Mayor called for a vote. The motion was unanimously carried. A copy of the amendment is hereto attached to these minutes.

2. **Discussion/Action** to consider approving the proposed amendment to Article 18 of the UDO regarding A-Frame signs.

Commissioner Melahn motioned to approve the amendment to Article 18 of the UDO regarding A-Frame signs and seconded by Commissioner Knight. As there was no further discussion, the Mayor called for a vote. The motion was unanimously carried. A copy of the amendment is hereto attached to these minutes.

3. **Discussion/Action** to consider approving the proposed amendment to Article 18 of the UDO regarding banners.

Commissioner Nance motioned to approve the proposed amendment to Article 18, Section 18-8 of the UDO regarding banners and seconded by Commissioner Knight. Following a brief discussion, the Mayor called for a vote. The motion was unanimously carried. A copy of the amendment is hereto attached to these minutes.

4. **Discussion/Action** to consider approving the scope of work for resurfacing a portion of Deer Path in Saltaire Village and direct the Town Administrator to obtain bids to be opened at the October Regular Meeting.

Commissioner Nance motioned to approve the scope for the resurfacing of a portion of Deer Path and to direct the Town Administrator to obtain bids to be opened at the October Regular Meeting and seconded by Commissioner Melahn. The Mayor asked if everyone, including the Town Administrator, felt that the scope of work was comprehensive. As it was agreed that the scope was complete, the Mayor called for vote. The motion was unanimously carried.

NEW BUSINESS:

1. **Discussion/Action** to consider utilizing the maintenance building site as a convenient drop-off site for electronics for citizens; once a truck-full of electronic items is accumulated, Town Services to take electronics to the county landfill to be properly recycled.

Commissioner Melahn motioned the approve as a service for residents, effective immediately, the use of the maintenance building site for residents to drop off electronic items for recycling and seconded by Commissioner Knight. Commissioner Nance noted that now that it was illegal to put electronic items in the landfill, having this service will help residents save time and money from having to drive to the county's site in Bolivia. Following discussion, the Mayor called for a vote. The motion was unanimously carried.

2. **Discussion/Action** to consider approving staff recommendation of fines and penalties to be applied to the tree clearing violation at Devaun Park.

The Mayor stated that he had been involved in the development of Devaun Park for years. He was impressed from the very beginning with the concept. The trees were beautiful and great measures had been taken to save trees. He saw plans change in favor of saving a tree. He was chagrined when it was reported that several acres had been clear cut without a permit. Approximately two hundred trees had been cut and this was hard to believe. He learned that a development permit or a tree plan had not been submitted. He later learned that some stumps had been covered with dirt. Town staff had not been able to discern the number of trees that met the UDO standards (because trees are to be measured at 4.5 feet above ground level) and that the UDO did not contain information for what should occur after cutting occurs. Had the developer met on site with a staff person to mark the trees that they wanted to cut and those to save before taking action, would have been a better plan. The town was not given the opportunity to meet with anyone to insure that the ordinance was followed as it was intended.

Commissioner Melahn stated that the UDO needed to be followed or altered if need be. *The next comments he made were put in the form of a motion. The motion directed town hall staff to propose an amendment to the UDO that includes situations such as the one being discussed and, if the amendment is approved, make the provisions, if appropriate and if applicable to the current situation, retroactive to January 1, 2011.*

The Mayor reminded Commissioner Melahn that they were still discussing the situation and it was not time for a motion as everyone had yet to have their say.

Commissioner Nance stated that staff was well qualified to have surveyed the situation and he did not see how something of this magnitude could be overlooked and the action taken was done in violation of the ordinance. He stated that he agreed with Commissioner Melahn and that action should be expedited promptly and legally. Commissioner Melahn stated that if action were to be taken that evening the only recourse would be to follow the ordinance which stipulates a fine of \$50,000. Commissioner Nance asked Mr. Lewis for guidance; was the Town justified using staff recommendation as the basis to take action.

Mr. Lewis stated that if the Town of Calabash was going to enforce the ordinance then it should enforce the ordinance as it is written. It would be enforced by imposing a fine and if the fine was unpaid to file a civil lawsuit. In the course of such litigation there would be issues. One of those issues would be the number of trees cut and the number of trees cut in violation of the ordinance (which would be town's burden to prove). A compromise could be worked out where a fine is imposed and/or trees removed are replanted. He noted that he understood the staff recommendation that trees be replanted as it benefits residents of Devaun Park and the town. The paying of a fine alone is not beneficial to residents. He noted that he agreed with Commissioner Melham's suggestion to amend the UDO, look into re-planting the trees and to try to negotiate with Mr. Stewart and Mr. Stanaland prior to filing a lawsuit.

Commissioner Knight stated that she was totally disappointed that people were buying into a dream that was destroyed. She noted that time and effort had been expended to devise the UDO and she believed that it should be enforced as written. She also agreed with Commissioner Melahn that an amendment be made to the UDO to address the situation. Commissioner Melahn reiterated that an amendment could be retroactive to January 1, 2011, encompassing the Devaun Park situation.

Commissioner Nance suggested that the motion Commissioner Melahn had mentioned earlier include language that when a violation such as the one at Devaun Park occurs, the town has the authority to negotiate the penalty.

The Mayor reiterated that it was premature to raise a motion as discussion was continuing. The Mayor noted that the Town had a responsibility to Devaun Park residents and citizens who expressed a concern as to what had occurred with the trees. He stated that he thought the town was on dangerous grounds tailoring an ordinance after the fact. Commissioners Melahn and Knight both stated that the town needed to abide by its own rules or not have any rules.

The Mayor asked if the Board couldn't waive any of the fees. Mr. Lewis suggested that if the town wished to enforce its ordinance as written, the ordinance that was in affect at the time when the violation occurred was the ordinance to be followed. The ordinance cannot be changed after the fact to say that this is the penalty for something that happened in the past. He stated that what town staff had suggested, re-planting in lieu of a fine, he thought was reasonable and made sense and could be considered if a rewrite of the UDO was undertaken. As far as the current situation was concerned if the town wishes to enforce its ordinance, Mr. Lewis reiterated that either a fine be imposed and if the fine was not paid, the town would take its case to court. Negotiation to reach a reasonable solution can always be included. His legal suggestion was that the Board enforce the town's ordinance, impose a fine and authorize him to negotiate a settlement with Stanaland-Stewart so as to avoid a lawsuit. He stated that in the course of imposing a fine and going to court, negotiations to settle would be occurring and part of the fine owed could be waived. Commissioner Knight asked if the local school

board administration be involved in the discussion. Mr. Lewis noted that school boards were not a part of every criminal state action and that involving the school administration would not be appropriate.

Town administrator Nance stated that, having reviewed the situation, his opinion was that the town should enforce its ordinance and that a retroactive change was not appropriate. Commissioner Melahn reiterated his opinion that the ordinance in place needed to be abided by.

Commissioner Melahn made a motion directing town staff to amend, for consideration by the Board of Commissioners, the ordinance so that it is more appropriate to the situation and possibly be retroactive to January 1, 2011. Discussion continued with Commissioner Knight asking Commissioner Melahn for more details about a similar action having been taken in the past. Commissioner Melahn said the town approved retroactive changes in 2010 regarding the Town Center Apartments. Ms. Southward stated that in the instance involving the Town Center apartments, the fee schedule had been retroactively changed. That was not an ordinance amendment. As there was no second to the motion, the Mayor stated that the motion had died.

Commissioner Nance motioned that the ordinance as written be enforced and authorize the town attorney to start whatever proceedings necessary to adjudicate this matter; whether that be the payment of a fine or negotiations in order to achieve closure on the matter. Commissioner Melahn seconded the motion. The Mayor opened the floor for discussion on the new motion. Commissioner Knight stated that she agreed with the motion and her problem was that she did not see that the residents who had been injured by the tree removal would become whole again by simply fining the developer. Commissioner Nance stated that his motion, authorizing the town attorney to proceed by whatever means necessary to rectify the situation, would address concerns of Devaun Park residents. The Mayor stated that Devaun Park residents would benefit more from the replanting of trees. Commissioner Melahn agreed with the re-planting but reiterated that the ordinance was still not being altered. The Mayor stated that there was a time and place for an ordinance change. Commissioner Nance noted that there was a motion and it had been seconded. Upon a question posed by Mr. Lewis, it was clarified for him that the violation included one hundred trees with the penalty \$500 per tree making the total fine \$50,000. With the discussion having concluded, the Mayor asked for a vote on the motion on the table. *A vote was taken and the motion was unanimously carried.*

3. **Discussion/Action** regarding Yes Port NC's request for support of educating all North Carolinians on the Proposed NCIT Project and NCIT Feasibility Study that were placed on hold. If the Board is in support they may adopt a resolution of support; they may elect to be "for", "against", or "neutral".

Ms. Southward stated that the issue was related to educating residents of NC on the proposed NCIT (international port in Southport) Project that was placed on hold indefinitely and the NCIT Feasibility Study which was not conducted. She stated that she had spoken with Commissioner Knight about getting Mr. Don Eggert from the Cape Fear Council of Government to provide more information about the port. She suggested that discussion be tabled until such time as more information was available. *Commissioner Knight motioned to table the item; seconded by Commissioner Nance and unanimously carried.*

PUBLIC COMMENTS:

Ms. Cecelia Herman reminded the Board that the Natural Resource Protection Ordinance was put in place in 2006 to stop clear cutting without a permit. She noted that she was pleased to see that the Board was enforcing the ordinance.

Ms. Emily DiStasio stated that the ordinance needed to be enforced, that changing an ordinance should be taken up at another time and that talking about changing an ordinance retroactively should not be done.

Mr. Scott Stewart noted that he was a fifty percent member of the Stanaland-Stewart Company. Devaun Park has been a designed development of 142 acres since 1997. His role in Stanaland-Stewart involves architectural landscaping, civil engineering, design development, construction and financing. The last remaining track that was left to be developed was Phase 5, approximately 14.5 acres. This was the area that was clear cut. He noted that the Stewardship award he received from the town was given to him as an individual, not as part of Stanaland-Stewart Company. He stated that he had no knowledge of the tree cutting activity and had no part in the tree removal. He agreed with the recommendations of town staff.

BOARD COMMENTS: None.

ADJOURN: *Commissioner Nance motioned to adjourn; seconded by Commissioner Knight and unanimously carried.*

(SEAL)

Anthony Clemmons, Mayor

ATTEST:

Kelley Southward, Town Clerk