

**TOWN OF CALABASH
BOARD OF COMMISSIONERS
REGULAR MEETING
Tuesday, January 13, 2009—6:00 p.m**

MINUTES

The Calabash Board of Commissioners held a Regular Monthly Meeting on Tuesday, January 13, 2009, 7:00 pm at Town Hall, 882 Persimmon Road, Calabash, NC.

MEMBERS PRESENT: Mayor Anthony Clemmons, Commissioner Forrest King, Commissioner Emily DiStasio, Commissioner Cecelia Herman, Commissioner John Melahn, and Commissioner William Dixon; all members were present.

STAFF PRESENT: Vincent Long, Town Administrator; Kelley Southward, Town Clerk; Mark Lewis, Town Attorney; and Stanley Dills, Building Inspector.

GUESTS PRESENT: There were approximately 30 guests in attendance including Jerry Pierce, Brunswick County Public Utilities Director; Ann Hardy, Brunswick County Finance Director; and Marty Lawing, Brunswick County Manager.

CALL TO ORDER/PLEDGE TO FLAG: Mayor Clemmons called the Meeting to order at 6:00 p.m and led everyone in the Pledge of Allegiance to the Flag; the Board took a roll call of members present (see above).

APPROVAL/ADJUSTMENT OF AGENDA:

1. Commissioner DiStasio asked to add “Town Clerk to have undisturbed time complete minutes” to New Business, Item # 7.
2. Commissioner Herman asked to remove Old Business, Item # 3 “Discussion of the recommendation made by the Planning & Zoning Board to amend §153.241 (L)(4) to allow temporary portable signs for businesses for special events and sales”. Commissioner Herman stated that she feels this item is a mute point until the UDO receives a vote.
3. Commissioner King asked to add “Authorize Town Administrator to correspond with Brunswick County and other entities regarding insurance rate increases” to New Business # 8.

Commissioner Melahn motioned to approve the agenda, as amended; seconded by Commissioner DiStasio and carried by way of a unanimous vote.

PUBLIC HEARINGS: *Commissioner King motioned to open the Public Hearings for the proposed State of Emergency Ordinance and the proposed Minimum Housing Ordinance. Commissioner Melahn seconded the motion to open the Public Hearings and the motion carried by way of a unanimous vote.*

1. Public Hearing for the consideration of the Town adopting a State of Emergency Ordinance to be included in Title IX of the Calabash Code of Ordinances; Chapter 99.

Speakers:

- Mr. Don Hege addressed the Board inquiring as to who would be responsible for enforcing the State of Emergency Ordinance if adopted by the Town. Mayor Clemmons explained that in a State of Emergency the Town coordinates with the Sheriff's Department, the Fire Department, and Town Code Enforcement Officials; these representatives would be determining if areas are safe and enforcing the State of Emergency Ordinance. Mr. Hege stated that he understands the Sheriff's Department and Fire Department enforcing this type of ordinance but has a problem with local Code Enforcement Officials; he feels they have too "long of an arm".

There were no other speakers forthcoming for Public Hearing # 1.

2. Public Hearing in consideration of the Town adopting the *2006 International Property Maintenance Code*, which would serve as the Town's minimum housing code; to be included in the Town's General Code of Ordinances. Before calling for any speakers, Mayor Clemmons asked Mr. Dills, Building Inspector/Code Enforcement, to give a brief overview of the *2006 International Property Maintenance Code*. Mr. Dills explained that all the Town is looking to do with the adoption of this 20-page code is set a minimum level of protection for renters (whether business or commercial) of a space. To that end, adoption of the code would also give adjoining property owners would have the assurance that neighboring properties would be maintained at a reasonable level.

Speakers:

- Mr. Michael Abushaker of the Gold & Silver Connection located at 9970 Beach Drive agreed that it is a small book but felt there is a lot of substance contained within it. He felt the code would give the Town too much power of personal property. He said if someone has a leak in a facet, even a garden hose, the Town would have the authority to take action to correct the leak. He said the code prohibits people from working on their car in their own garage. He referenced masonry joints and other seals and structure beams. Mr. Abushaker felt there is a lot of room for abuse in adopting the code as written. He agreed that the Town needs some kind of guidelines for minimum housing but not something as stringent as the *2006 Property Maintenance Code*. He urged the Board to read the proposed code carefully.
- Mr. Don Hege spoke at length in complete opposition with a passion to the *2006 Property Maintenance Code*. Mr. Hege said, as it is right now, the Town could use the document as a guide; it is not yet law. He felt Mr. Dills was wrong in stating that it is only 20 pages because it is nearly 40 pages in total (including the index). Mr. Hege said the only thing that matters in the whole document is that it gives local Code Enforcement the right to interpret violations anyway he sees fit. He was of the belief that adopting the code would give Town Code Enforcement Officials the right to enter any and all property in Town at anytime. Both Mr. Dills and the Town Attorney told Mr. Hege that this was incorrect; the Town must obtain a warrant to enter property unless invited. However, Mr. Hege continued to argue that the proposed code gave Town Code Enforcement Officials the right to enter property at anytime without a warrant. Mr. Hege continued to oppose the document throughout the remainder of the Public Hearing.

Mayor Clemmons informed everyone that the State is looking to adopt a minimum housing code that all counties and municipalities that do not have their own would be subject to. Mayor Clemmons also stated that the Town enforces all codes judiciously; the Town is not looking to nor has the time to be concerned with leaky faucets, rusty screens, or broken doorknobs. Commissioner DiStasio stated that the purpose of this code is to help renters who are living in poor conditions.

- Mr. Simon Allen of 1055 Pine Bur Circle addressed the Board. Mr. Allen said he was disgusted with the Town because he came to Town Hall yesterday seeking a copy of this document and the staff at Town Hall at that time did not know what he was talking about and were unable to produce a copy for him. The Town Clerk apologized and stated that Mr. Allen must have come to Town Hall when she was out of the office however, other employees should've known where to find the document as all Public Hearing documents reside in one place, which is covenant for public inspection.
- Chester Wojcik of Pine Bur Acres suggested the Town Attorney review the code and render his legal opinion on the document. He asked the Board to remember that elected and appointed officials and staff come and go but if adopted this code would remain and if it gives a lot of authority future personalities could abuse the intent of this Board adopting the document.
- Fletcher Frink of Calabash NAPA located at 1001 Beach Drive asked why the Town needs a more restrictive code. Mr. Dills explained that multiple chapters/sections of the current code contain some of what the *2006 International Property Maintenance Code* contains. Mr. Dills felt it would be easier, especially for the public, to view all the information in one place, in one small book. Mr. Dills asked the Town Attorney if at anytime, without probable cause does he (or any other official of the Town) have the right to walk into someone's home and inspect it. Mr. Lewis said, "absolutely not; it doesn't matter what this document says, no one can enter someone's home without probable cause." Mr. Frink noted that the *2006 International Property Maintenance Code* applies to all fifty states; Calabash is a coastal community and may not fall subject to some of the information contained in the code. Mr. Frink continued to ask questions of Mr. Dills and the Board; everyone got off the topic at hand for a moment. Commissioner Herman felt there was some confusion; this document is a minimum housing code not a building code. One reason the State is looking to implement a minimum housing code is to assist renters living in poor conditions. Currently, the Town has no authority under any circumstances to help people who may be with out heat or suitable plumbing etc. Mr. Frink stated that he is not necessarily concerned about Mr. Dills abusing the power given by this document but those who may fill his position in the future; its difficult to remove a law once adopted.
- Commissioner King stated that he wanted to go on record. He said that when this came up a couple months ago there was a problem with a couple rental homes in Town and we were in need of something to address these problems. He went onto say that this proposed minimum housing code, the *2006 International Property Maintenance Code* is much more involved than simply dealing with rental properties. The document would cover every structure within the Town. He says

the document gives a Code Enforcement Official who has shown a lack of good discretion the right to go and hit someone with fines and violations for a hole in a screen door, a stuck window, weather sealing every brick in a brick home, or repairing a car in one's own garage. The code would create another whole department for the Town because the Official has the right to deputize others and the document sets up its own board of appeals. Commissioner King stated that he feels this proposed code is well beyond anything the Town of Calabash needs. Commissioner DiStasio stated that she feels Commissioner King has read the document like a building code from the standpoint of a contractor. She reads it as a renter reading a minimum housing code for protection of rights.

- Mr. Mitch Meares of Calabash Acres asked why, instead of adopting this code, couldn't the Town Administrator notify property owners who rent homes that are in poor condition to fix matters at the rental property. Mayor Clemmons reminded everyone that this is a public hearing; nothing has been adopted yet.
- Mr. Jerry Prince of Calabash Acres addressed the Board. Mr. Prince said he feels that everyone else has the authority to tell him what to do with his land and that he has no authority over his own land anymore. Mr. Prince felt the code mimics a communist society. Mr. Prince said the Town has more important matters to be working on; Calabash needs police protection. He also stated that he has been requesting the Town install a street light for three years in front of his home and there has been no result; he feels the Town has done nothing for his neighborhood since they were annexed.

Commissioner DiStasio motioned to close the Public Hearings; seconded by Commissioner Melahn and carried by way of a unanimous vote.

PUBLIC COMMENTS: Mayor Clemmons noted that two people had signed up for Public Comments; both persons said they had addressed their matters during the Public Hearing. There were no other Public Comments forthcoming.

MAYOR'S COMMENTS: Mayor Clemmons referred to an article in the Brunswick Beacon regarding a letter submitted to the Town from Shallotte Partners stating that their multifamily project at the corner of Old Georgetown and Clariday Roads would not contain any Section 8/HUD housing; the article states that the letter was submitted at the request of the Town. Mayor Clemmons said the article indicates that Calabash does not want affordable housing. Mayor Clemmons said that this insinuation is incorrect and that as the Mayor of Calabash, Mayor Clemmons supports affordable housing within the Town. He went onto say that our firefighters, restaurant workers, and those employed by various retailers need affordable housing and their all welcomed to live in the Town in which they work. Mayor Clemmons said, "there is room at the inn for everyone in Calabash."

PRESENTATION OF THE 2007-2008 FISCAL AUDIT: Mr. Johnny Britt of S. Preston Douglas & Associates reviewed the 2007-2008 audit with the Board of Commissioners. Mr. Britt informed everyone that the audit has been presented and approved by the LGC. The audit shows that the Town was in excellent standing at the end of the 2007-2008 fiscal year because total liabilities were just over \$22,000 while assets were in excess of \$1.4 million (unrestricted). Mr. Britt also pointed out that the Calabash ABC Board (an subsidiary of the Town) is in good

financial standing. Mayor Clemmons asked how much the State requires a municipality to hold in reserve. Mr. Britt said that 8% is required but for coastal municipalities the State recommends 7-8 months of an operating budget be available in the fund balance; he showed that the Town of Calabash has approximately two years in reserve according to the data contained in the audit. 2007-2008 revenues exceeded expenditures by \$323,264.

APPROVAL OF MINUTES:

1. 12/02/2008 Agenda Workshop
2. 11/11/2008 Closed Session
3. 11/03/2008 Agenda Workshop
4. 10/14/2008 Closed Session
5. 10/07/2008 Agenda Workshop
6. 09/09/2008 Closed Session
7. 09/02/2008 Agenda Workshop
8. 08/14/2008 UDO Workshop
9. 08/12/08 Closed Session
10. 05/08/2008 Agenda Workshop
11. 03/19/2008 Budget Workshop

Mayor Clemmons read the list of minutes, one by one, asking if anyone had corrections/changes to any of the minutes; there was nothing forthcoming for any of the above listed minutes. *Commissioner Melahn motioned to approve the above listed (1-11) Minutes; Commissioner DiStasio seconded the motion and the motion carried by way of a unanimous vote.*

CORRESPONDANCE: Mayor Clemmons relayed that the Charlotte Regional Census Center is seeking qualified applicants to fill about 15,000 jobs throughout Kentucky, North Carolina, South Carolina, Tennessee and Virginia. For Calabash each citizen yields approximately \$600 in revenue for the Town. Interested persons can contact Town Hall for further information. The second item of correspondence that Mayor Clemmons mentioned was a letter from Brunswick County informing the Town that the Sewer Extension Project has already cost approximately \$700,000; the County seeks to be reimbursed for these incurred fees. Mayor Clemmons said this matter would be discussed in depth during Old Business. Mayor Clemmons also noted the Town is in receipt of a letter from Electronic Security Protection (E.S.P) located at 10252 Boundary Drive. The letter notes that the Town cleaned and repaired a portion of Boundary Drive approximately two years ago and requests to have the Town do the same again. There was a brief discussion by the Board who seem to recall that shortly after the Town cleaned/repared the dirt road two years ago it was discovered that the road was in fact a private road owned by Marsh Harbour/Ladane Williamson. Mayor Clemmons asked the Town Administrator to respond to the letter from E.S.P indicating that because the road is private, the Town has no jurisdiction in the matter.

TOWN ADMINISTRATOR'S REPORT: TA written Report is attached hereto and made a part of these minutes. Commissioner Herman noted that a streetlight update was included in Mr. Long's Report. She recognized that Calabash Acres was not scheduled to receive any new streetlights and asked how the assessment for streetlight needs are determined. Mr. Long explained that Mr. McCartney coordinates with Brunswick Electric for streetlights; the two have devised a plan for when certain areas are evaluated; Calabash Acres will be re-evaluated in the next assessment. Mr. Prince (who spoke during the Public Hearing) reiterated that his address is 1003 Durham Ave, in Calabash Acres, and he feels a streetlight is needed in this vicinity.

BUILDING INSPECTOR'S REPORT: BI written Report is attached hereto and made a part of these minutes.

COMMITTEE REPORTS:

1. **Calabash Fire Department:** Commissioner Herman read her written Fire Department Report, which is attached hereto and made a part of these minutes.
2. **Planning & Zoning:** The Clerk read the written P/Z Report, which is attached hereto and made a part of these minutes.
3. **Finance:** Commissioner King reported that the Town's CDs are making a little money for the Town. The current tax collection rate is approximately 95%. Mr. Long added that revenues are on target for the six-month mark of the fiscal year.
4. **Water/Wastewater:** Mayor Clemmons noted that this topic would be included during the question and answer period with County representatives during Old Business.
5. **Town & Merchant:** Commissioner King reported due to the holidays, the Town & Merchant Association has not met in the past month.
6. **Stormwater:** Mr. Long read the written report submitted by Mr. McCartney, which is attached hereto and made a part of these minutes.
7. **Long Range Planning:** Commissioner King reported that the LRP Committee met yesterday with WK Dickson who is seeking out additional grants that the Town may be eligible to apply for the Sewer Expansion Project. WK Dickson is also assisting the Town to create a Master Plan for Town properties. WK Dickson will also be starting a Road Condition Survey for the Town.

At this time, Mayor Clemmons called for a short (five minute) recess before moving onto Old Business.

OLD BUSINESS:

1. **Discussion of the Calabash Wastewater Expansion Project—special guests Ms. Ann Hardy, Brunswick County Finance Director and Mr. Jerry Pierce, Director of Brunswick County Public Utilities.** Prior to the Meeting, the Board of Commissioners had submitted a list of questions to Mr. Pierce and Ms. Hardy. The questions submitted prior to the Meeting and answers given during the Meeting were as follows:

Question 1: Now that the engineering is done and the approximate bill the Town is facing if we do not proceed is somewhere in the neighborhood of 800,000 dollars why can't the project bids go out asking for pricing on two options:

- a. The full original project and
- b. Just the Calabash East, Village Green, and Portions of Hunter's Trace

It is my understanding many of the reasons citizens are upset is that we can't really give them a "ballpark" guestimate of cost. Bids would go a long way to helping alleviate some fears. Accepting unacceptable (cost wise bids) is not a mandate but knowing some concrete numbers would help. Why can't the bids go out NOW.

Answer 1: Mr. Pierce said if the Town would like, the bid requests can be submitted so that the total project is bid and that the Calabash East/Village Green/Hunter's Trace portion is bid; bid

requests can be for #a or #b or both for both a & b. Mr. Pierce said the engineering plans are complete. Mr. Pierce said he would not recommend sending the project out for bids until all permits (from State agencies) are received. This is because permitting agencies generally have comments that need to be responded to which result in changes to the plans, which of course, could change bid amounts. Mr. Pierce recommends opening the bids once the Town has all permits are in-hand. Mr. Pierce said that all necessary permits have been applied for; they have received word that the DOT Permit has been approved and we await a response on the DENR Permits (2 permits), which should receive a response by the end of March. Mayor Clemmons asked if the Board could bid the project and after receiving all bids decide to cancel the project if it was determined that the total project cost would be more than the Town (and its citizens) could bare. Mr. Pierce said essentially, that would be a rejection of all bids, which could technically be done but he would not recommend it. Firms incur a lot of costs when preparing bids and rejecting all bids could leave a sore spot with firms who submitted bids if all were rejected which, could affect the Town's ability to receive reasonable bids in the future. It was Mr. Pierce's recommendation that the Town only bid the project if they have a true intension of awarding the bid.

Commissioner Herman referenced that the Federal Government may be enacting a stimulus package for infrastructure projects once President Elect Obama takes office, which, depending on what is included in the stimulus package, may affect the bids received; she believes the project should be bid as soon as possible. Mr. Pierce stated that there has been a lot of talk about the possible stimulus package Commissioner Herman is referring to. He has heard that the Federal Government will be looking for "shovel ready projects" and Mr. Pierce believes this project would qualify as "shovel ready" and the Town should wait to see if they would/could be eligible for any stimulus money. Mr. Long said he has been following this matter and now they may be looking for more transportation projects than infrastructure projects and Commissioner Herman's point is well taken that contractors may raise their bids if they know a project is eligible for any stimulus money.

Commissioner King asked what happens once bids are opened—do you have to award immediately? Mr. Pierce said we will have 30-60 days to award the bid, after that time, the contractor has the right to withdraw their bid. Typically, once the bid is advertised bidders will have 30-days to submit a bid; the bid window could be extended with proper notification no less than 7 days prior to bid closing. Ms. Hardy said it is important to remember that once the bids are received, contracts cannot be awarded until financing is in place. Financing will include approval from the Local Government Commission (LGC), who will not issue an approval until all permits are "in-hand". Typically LGC review takes 90 days. The financing process includes a lot of steps and will begin once the Town/County decide they are ready to bid the project. Securing financing may trigger some minor setbacks and additional costs; the bank may require a feasibility study and there may be bond council fees incurred. There will be a number of steps occurring simultaneously; financing, LGC review, and bidding. Also, keep in mind that change orders will affect the cost that was bid.

Question 2: Once bids are received will the Calabash Sewer Committee have input into which bidder received the contract? The Town needs to play a role in cost.

Answer 2: Both the County and the Town are required by State Statute to award the bid to the lowest, responsible, responsive bidder (State Purchasing Law). The Town will have the opportunity to see the bids.

Question 3: Am I correct in understanding that the individuals will pay for the infrastructure but it will belong to the County? And that Brunswick Public Utilities has no financial stake in this project except revenue from some 800 additional customers?

Answer3: Mr. Pierce said it is not correct to say that Brunswick County does not have any financial stake in the project. The wastewater that is collected in the system has to have somewhere to go and be treated; the County owns these facilities. Wastewater from Calabash will go to the Sea Trail plant; which the County recently spent \$1 million expanding. The County has also recently spent \$14 million improving the system that transports waste from the Sea Trail plant (which will include some waste from Calabash) to the West Brunswick plant; which was recently constructed at a cost of \$ 57 million. So, according to Mr. Pierce, Brunswick County has a significant financial stake in this project in transmission and treatment facilities. The normal Capital Recovery (\$3000) and Transmission (\$1000) fees charged by the County will be waived for Calabash customers who hook onto the system within the first year. Mayor Clemmons asked if the project were put on hold for an extended period, would the County waive these fees in the future. Mr. Pierce said a waiver of the fees is a decision made by the County Board of Commissioners and he cannot predict what a future Board would do.

Question 4: Some time back our previous Mayor signed a contract stating 3 years to pay for this (at times estimated 7 million dollar contract) and the County offered 3 payback options and terms on each assessment option; those being 1 year; 3 year or 10 year. This Board was asked to pick one for everyone. We voted for the 10-year option. I asked if the contract had been amended from the 3-year payback to the 10-year choice of this Board. I was informed that the County had not gotten back to us on our recommendation. Could you please advise if not, why- and could we still be held to the 3year payback. If you answer is no we will be granted 10 years, when will the contract be amended?

Answer 4: Mr. Pierce said to amend the payback time to 10 years (to amend the contract) would be a decision by the County Commissioners. The delay in moving forward with taking the matter to the County Board of Commissioners came when the Town requested the project be put on hold for 6 months to explore financing options (requested November 2008). Commissioner King said the payback term would influence his decision in moving forward or stopping the project—the payback term is vitally important. Mayor Clemmons said it is his opinion that 3-years is out of the question. Mr. Pierce asked if the Calabash Board of Commissioners would like to move this item to the County Board of Commissioners prior to the end of the 6-month delay. Commissioner Herman said she was surprised the matter had not already been before the County Board of Commissioners; the payback term is one of the most important factors in determining if the sewer project will move forward. It was the consensus of the Board to request the matter of the term for payback be forwarded to the County Board of Commissioners for action.

Question 5: If we were to decide not to go forward with this project at the end of the 6 month delay and we were to pay the expenditures for the engineering portion of the project as well as other monies currently expended, would the Town receive the fruits of those monies e.g. Engineering plans, permits etc.?

Answer 5: Mr. Pierce said once the County received payment, in full, from the Town for the cost of all the aforementioned those documents would be turned over to the Town. He noted that

some permits, for example, may have an expiration date of 6-months; these documents may not be turned over. Commissioner King asked what the shelf life is on engineering plans. Mr. Pierce said there is no concrete answer to that question. The thing that would make plans invaluable would be changes in infrastructure or even technology. He has seen some plans remain valid for one to two years but projects that involve public right of ways normally become invalid after 6-months or so, if they even last that long. He would not recommend holding on to engineering plans for two or three years without updating them.

Question 6: In either regard, if we move forward with the entire project or just a portion, does Brunswick County still intend to waive the \$4,000 tap-on fee and the \$4,000 Capital Recovery fee for those who hook up to the system within the first year?

Answer 6: If the Town moves forward with the original agreement, the County will honor the agreement and yes, the fees will be waived. If the project size or scope is changed significantly, the contract would have to be updated and the County Commissioners would determine if those fees would still be waived. It was noted at this time that if the scope of the project is reduced (for instance if Calabash Acres and Pine Bur Acres are removed from the project) then individual assessment costs would increase.

Question 7: Because the sewer system is a public benefit that will benefit generations to come, why does the amount have to be attached as a lien that will be collected if a homeowner or property owner sells their property? Rather, is there anyway the assessment can be set up so that future buyers continue to pay the assessment in the original payment plan installments?

Answer 7: Ms. Hardy said she consulted with the County Attorney's office on this question. It is the County's position that a lien stays with the land even if the property is sold. Most purchasers of property require all liens to be settled before transfer. Town Attorney, Mark Lewis, said in closing agreements, it is common that payment plans for liens of this nature are carried over to the purchaser. It was clarified that the assessment costs are placed on the property through the County Tax Office; the assessment cost IS NOT a part of the monthly utility bill.

Question 8: Is it feasible to build a collection system for just the "Calabash East" area and omit Calabash Acres and/or Pine Bur Acres?

Answer 8: Yes, Calabash Acres and Pine Bur Acres can be omitted from the project but it is important to remember that a smaller project will drive up the assessment costs.

Question 9: Should the Sewer Project ever become a reality, why does the County feel there is no need for an environmental impact study regarding this project having wetlands and the river rather than piggybacking on Sunset Beach environmental permit?

Answer 9: Mr. Pierce said this project is in no way piggybacking the Sunset Beach environmental permit. All permits required for this project are being applied for through the engineer, as they have been charged to do, completely separate and a part from Sunset Beach.

Question 10: Realizing the Town requested this project thru the County where is the County's justification for moving forward with the project without resident's support or input?

Answer 10: The County and the Town entered into a legally binding contract and the County has simply been working to fulfill the obligations of the contract.

Question 11: Explain why the County feels that the County or Town would be able to get any grants at this time without a critical health or environmental need?

Answer 11: The County believes that both the County and the Town qualifies for grants. The County Health Department has documented failing septic systems in the project area. A number of vacant lots in the subject area cannot be developed because they cannot support a septic system. The County and Town have submitted grants for the project; the Rural Center Grant was initially denied, both the County and Town are reapplying for this grant. Ms. Hardy said the County has received indication that the project is eligible for grant funding.

Mayor Clemmons noted that this concluded the questions submitted to Ms. Hardy and Mr. Pierce prior to the meeting and requested that the Town be permitted to ask some spontaneous questions. Mayor Clemmons asked what was the status of determining a method of assessment; there are three main methods of assessment the County uses along with endless combinations of the three methods. Mr. Pierce said the County has provided the Town with a spreadsheet showing the methods and several possible combinations of the three methods. Ultimately, it will be a decision made by the County Board of Commissioners; Mr. Pierce feels the County Commissioners would welcome input from the Town of the method of assessment.

Mr. Dills, Building Inspector/Code Enforcement Officer asked if there was a designed engineer's estimate for the project and, if so, is it still accurate. Mr. Pierce said there is a designed engineer's estimate for the project and the estimate has decreased due to the lowering of construction costs; the estimate was received approximately one month ago and has been forwarded to the Town. Mr. Dills asked if the sewer systems that head off in different directions have been sized for additional capacity. Mr. Pierce said they have been designed to serve the vacant single-family residential lots but have not been designed for a change in use of the property (i.e if the vacant lots that are currently zoned residential and anticipated for single-family are developed as multi-family). For large tracts of land the system was designed to serve three units per acre.

Commissioner DiStasio said if Calabash does not move forward with the project, where does the County anticipate getting customers from for the treatment plant recently built on HWY 211? Mr. Pierce said it's really related to capacity—other people would use the capacity and they would pay for their share of the capacity. Commissioner Herman asked how the Town and the County will be affected if the larger tracts of land in Town are developed as multi-family, which could yield more than 3 units an acre. Mr. Pierce said even for multi-family projects, once you take out the land necessary for easements/buffers/open space etc, 3-units per acre is typical and even if a project exceeds 3-units an acre that does not mean there would not be enough capacity. It was clarified for Commissioner Dixon that the assessment cost is different than any fees charged by the utility company. Commissioner DiStasio said it would be a lot easier for the people of Calabash if the assessment costs could be repaid over 30 years. Ms. Hardy said that under the State Statute (G.S 153A199) that the Town's assessments was approved for does not allow for more than 10 installments annually; billed annually with the tax bill and no more than 10 are permitted. There was a brief discussion about House Bill 1170, recently passed by

legislature. If the Town moves forward with just a portion of this project and at a later date an unsewered area came with a petition of 50% of the people who total 66% of total land valuation they maybe eligible for a 30-year assessment payback because of HB 1170.

Mayor Clemmons asked if there was any possibility of just putting in the infrastructure and the two main pump stations. Then, residents could hook-up at their leisure; those on low pressure would be responsible to purchase their own low-pressure pump. Mr. Pierce said a significant portion of the Calabash Project is gravity, which would really burden the few who need low-pressure pumps if they would have to purchase individually. To that end, if this is an option that the Town is interested in, it can be explored. Commissioner King noted that we are already approximately \$800,000 into this project and the County will want this money repaid to them from the Town as soon as possible. Mayor Clemmons pointed out that one of the grants applied for requires the Town to own a portion of the infrastructure. Mr. Pierce said with that the Town would technically own a designated portion and they would contract with the County for the maintenance of that portion for the year and then after one year the Town could sign over ownership to the County. If the Town attempts to take a loan out for the project they would have to retain ownership of the designated portion for the duration of the loan.

The Board thanked Ms. Hardy and Mr. Pierce for their time. Mayor Clemmons recognized Mr. Mitch Meares from the audience, who requested the Board address some sewer related questions. Mr. Meares referenced the Town Finance Report and noted that there is enough in the General Fund to repay the \$800,000 to the County. Mr. Meares asked to put the project on hold and build to the engineering plans at a later date. Mr. Meares said Mayor Clemmons was elected by the people to represent the people and requested he start doing so and then referenced the petitions opposing sewer submitted by Pine Bur Acres and Calabash Acres submitted to the Town. Mayor Clemmons said the Town is looking at an option that would remove those neighborhoods from the project.

OLD BUSINESS (continued):

2. **Action to approve the Rural Center updated Supplemental Grant Application and Authorizing Resolution; a grant application for the Sewer Expansion Project.** *Commissioner Herman motioned to approve the Rural Center Supplemental Grant Application and Authorizing Resolution; seconded by Commissioner King and carried by way of a unanimous vote.*
3. **Discussion/Action of Shallotte Partner' (proposed) Conditional Use Permit for the purpose of constructing a multifamily residential development in the R-8 zoning district on their 22.56-acre parcel identified in the Brunswick County Tax records as Tax ID# 2410000114 located at the corner of Old Georgetown & Clariday Roads (interior parcel).** Last month the Board of Commissioners approved a Conditional Use Permit for this project with a height of 45' stipulated as a condition. Another condition of the permit was that if any portion of the permit was found to be illegal or in violation of Calabash zoning codes the permit would be null and void and of no effect. Mr. Lewis said he has reviewed the plan and the permit and finds that the condition allowing 45' violates the R-8 Conditional Uses, Multifamily section of the Calabash Code of Ordinances; the 35' height limit included in this section applies to this project and PUD regulations do not apply. Mr. Lewis recommends that if the Town wants this project to be permitted to have 45-foot high structures the Town must first amend the current

zoning code to allow 45' in the applicable zoning district. Of course, an amendment to the zoning code would require a public hearing. There was a discussion that if the Board did amend the ordinance would Shallotte Partners have to resubmit their plan or could the amendment be made retroactive. Mayor Clemmons stated that an ordinance could not be changed for one person, firm, or corporation. Mayor Clemmons feels the R-6 and R-8 zoning districts should be amended to allow for 45' height. Commissioner DiStasio said the UDO is supposed to come for a vote next month and all zoning districts allow 45-feet. Mayor Clemmons said the Board couldn't hang their hat on the possibility of the UDO being adopted. Commissioner Herman recommended the Town move forward in adopting the UDO rather than continuing to piecemeal the current ordinance with more amendments. Discussion over the UDO continued for several minutes.

Returning to the matter at hand Commissioner Melahn said it would be unadvisable for the Board to award the Conditional Use Permit at 45-feet because it goes against the applicable zoning ordinance and the advise of the Town Attorney. Mr. Lewis said he is not trying to speak for the Board but it seems to him that because the CUP was approved at 45' upon legal review last month that the Board is not opposed to the height of 45' for this project. It would make sense that if the Board does find this project suitable at 45' feet, to amend the ordinance and then revisit consideration of the project after amending the current ordinance to 45'. Commissioner Melahn said the timeline for [possibly] adopting the UDO (which would allow 45') is shorter than starting the processes for amending the current ordinance. Commissioner King felt it would be wise to "start the ball rolling" for amending the current ordinance and, if in the mean time, the UDO is adopted all action regarding the amendment would cease.

Mayor Clemmons said a developer (Shallotte Partners) has become caught up in a situation that the Town should have already rectified. Mayor Clemmons said at this point, if the UDO is passed, the developer would have to resubmit the project under the UDO, unless the developer wants to move forward with 35'.

Mayor Clemmons felt the Board needed to take some official action. Commissioners Herman and DiStasio said no action was necessary because the CUP that was approved last month had a condition that stated if any portion of the CUP was to be found illegal then the entire CUP was void; so, the CUP is invalid as if it does not exist. Commissioner King still felt it was necessary to begin the amendment process of the current code incase the UDO does not pass in February.

Jim Myers of Shallotte Partners was afforded an opportunity to address the Board. Mr. Myers showed the artist rendering of what the apartment buildings would look like at 35' (flat roof) and 45' (pitched roof) and stated that last month, the Board voted unanimously for the 45' pitched roof with the condition that it "cut mustard" with the Town Attorney, which it did not, as pointed out previously. Mr. Myers said it would be several months before they even submit any building permit applications for structures; they have to put in roads and utility infrastructures first. He requested the Board of Commissioners approve the CUP at 35' and if, by the time he is ready to go vertical with the project the Town's ordinances have changed to allow 45' he request to amend the height condition at that time.

The Board asked Mr. Lewis if they could amend the CUP that was approved in December to stipulate that the maximum height allowed is 35'. Mr. Lewis said there was no problem in amending the CUP as to the height and, at the request of the applicant; the CUP could, if the Board so chooses, be amended in the future if the ordinance is changed. Mr. Anthony Feilback of the Thistle said this project has a whole different set of rules applied to it. He believes the project could be redesigned to stay within the 35' height requirement while still satisfying other requirements of the Town and needs of the developer.

Commissioner King submitted a motion to amend the current Code of Ordinances to allow 45-feet, 35' to the soffit and an extra 10-feet for roofing, in the R-6 and R-8 zoning districts. Commissioner King's motion did not receive a second and therefore died.

Commissioner Herman stated that it was the recommendation of the Planning & Zoning Board that this project follow all regulations of the zoning district. If it is time-relative and at the time that building permits are issued 45' is the regulation of the zoning district then the project is complying. Mr. Long feels that concept circumvents the public input process; it leaves things too open ended. Rather, the applicant should come back and request an amendment if the ordinances change.

Commissioner Melahn motioned to amend and approve the Conditional Use Permit for Shallotte Partners on the condition that item # 2 of the original CUP is amended to read that the height shall not exceed 35-feet, and that the project conforms to Town ordinances. Commissioner Herman seconded the motion and there was discussion. Commissioner DiStasio noted that the height limit of 35-feet must be included on the site plan, as stipulated in the Conditional Use Permit; Mr. Myers said the 35-feet would be stated on the site plan. Mr. Long pointed out the last sentence of item #2 on the original CUP could be eliminated because with a limit of 35' the last sentence no longer applies. Mr. Long also suggested that item #7 of the original CUP ("If any of the conditions affixed hereto or any part thereof shall be held invalid, illegal, or void then this permit shall be void and of no effect") be removed. Mr. Lewis said it did not matter if #7 remained in or was taken out; Commissioner Herman said to leave it in. Commissioner DiStasio inquired about item #8, which refers to access easements; it was pointed out that this is a simple condition of the permit and it will be up to staff to ensure that the condition is met prior to the issue of any permits. Mayor Clemmons asked if there was any further discussion; there was none forthcoming from the Board so, Mayor Clemmons called for a vote and the vote was as follows:

- *Commissioner Herman- "yeah"*
- *Commissioner Melahn- "yeah"*
- *Commissioner DiStasio- "yeah"*
- *Commissioner Dixon- "nay"*
- *Commissioner King- "nay"*

The motion to approve Shallotte Partners' Conditional Use Permit, as amended to include a maximum building height of 35-feet carried by a vote of three (3) to two (2).

NEW BUSINESS:

1. **Discussion/Action to approve the 2009-2010 Budget Calendar.** *Commissioner DiStasio motioned to approve the 2009-2010 Budget Calendar; seconded by Commissioner Melahn and carried by way of a unanimous vote.*
2. **Action to set a Special Board of Commissioners meeting to conduct a Workshop for Wednesday, January 28, 2009, 2pm at Town Hall, to discuss a Sheriff's Department sub-station in the Calabash/Carolina Shores area; Sheriff Ingram and Deputy Charlie Miller to attend.** *Commissioner Herman recommended inviting Carolina Shores Board of Commissioners and Town Administrator because this is intended to be a joint effort. Commissioner King said Carolina Shores has already had a meeting on this matter. Commissioner Herman said they have not had a meeting with the Sheriff's Department. Commissioner King said he realizes their meeting was not with the Sheriff's Department but they've discussed the matter among themselves where Calabash has not yet had the opportunity to do. Commissioner Herman made a motion to set the Special Meeting to conduct a workshop to discuss a Sheriff's Department substation and that the Town invites Sheriff Ingram, Deputy Miller, and Carolina Shores Mayor/Board of Commissioners/Town Administrator to attend; seconded by Commissioner DiStasio and a discussion ensued. Commissioner King said the Calabash Board of Commissioners need to discuss the matter amongst themselves prior to meeting with Carolina Shores; Commissioner Herman suggested the Calabash Board of Commissioners meet without the Sheriff's Department prior to January 28th. Commissioner King felt it was without purpose for the Board to meet without the Sheriff's Department because the Board needs them to answer questions. Mayor Clemmons agreed by stating that when we meet with Carolina Shores we have to have our "ducks in a row, we can't just go in with blanks". Mayor Clemmons called for a vote to the motion on the floor and the vote was as follows:*
 - *Commissioner Herman- "yeah"*
 - *Commissioner DiStasio- "yeah"*
 - *Commissioner King- "nay"*
 - *Commissioner Dixon- "nay"*
 - *Commissioner Melahn- "nay"*

The motion to invite Sheriff's Department representatives and Carolina Shores to a Workshop on January 28th failed by an opposing vote of three (3) to two (2).

Commissioner King motioned to hold a Workshop with Sheriff Ingram and Deputy Miller at 2pm on January 28, 2009, at Town Hall; seconded by Commissioner Melahn there was no further discussion and the vote was as follows:

- *Commissioner King- "yeah"*
- *Commissioner Dixon- "yeah"*
- *Commissioner Melahn- "yeah"*
- *Commissioner DiStasio- "nay"*
- *Commissioner Herman- "nay"*

The motion carried by a vote of three (3) to two (2).

3. **Discussion/Action to approve the DOT Memorandum of Agreement.** *Commissioner Melahn motioned to approve the DOT Memorandum of Agreement for the purpose of the Town to request release of certain secondary roads within the Town for the purpose of vegetative debris removal that may be necessary due to the result of a federally declared*

event; motion seconded by Commissioner DiStasio and carried by way of a unanimous vote.

4. **Action to approve the 2007-2008 Fiscal Year Audit.** *Commissioner Herman motioned to approve the 2007-2008 Audit; seconded by Commissioner Melahn and carried by way of a unanimous vote.*
5. **Discussion/Action to approve amendments to Article V, Section 7 (Travel Expenses & Reimbursement) of the Town of Calabash Personnel Policy to make it consistent with amendments made in December 2008 to the Town Policies section of the Code of Ordinances.** *Commissioner Melahn motioned to approve the amendments to Travel Expenses of the Personnel Policy; seconded by Commissioner Herman and carried by way of a unanimous vote.*
6. **Discussion of the Town legal services.** Mr. Lewis officially informed the Board that he and Mr. Ramos have dissolved their partnership. Mr. Ramos does not have a desire to retain the Town of Calabash as a client. Mr. Lewis said he would be happy to represent the Town but that it is a decision to be made by the Board of Commissioners. The Board discussed the need to have the Town Attorney present at all Regular Monthly Meetings held by the Board of Commissioners; Mr. Lewis said he would be able and willing to meet this need for the Town and if he were needed at a Special Meeting he would try to attend. The Board also relayed that in the past, legal opinions rendered by Mr. Ramos have not been satisfactory because he gave one-sentence answers that did not reference State, local, or case law. Mr. Lewis said he would be willing to furnish the Town with written legal opinions that would reference State, local, and/or case law; he hope the Board would not expect him to be able to reference statutes and case law off the cuff. Mr. Lewis said if the Town would like him to be the Town Attorney, he would work with the Town to form an agreement that would be beneficial to everyone. Mr. Lewis suggested a retainer estimate of \$750 per month, which would include his attendance for meetings, and then an hourly rate at \$175 (a \$75 discount from what he normally charges) for time spent after that. Mr. Lewis said if he is selected to be the Town Attorney that everyone would need to understand that he represents the Town and the Board; not any individuals—he will not take sides in individual disputes among Board members. Mr. Long asked if Mr. Lewis could come to Town Hall around 4pm on the night of a Meeting to get an update of agenda items from staff; Mr. Lewis agreed.
7. **Allow Town Clerk 1.5-2 hours after a Meeting to work on minutes undisturbed.** Commissioner DiStasio feels it is important for the Town Clerk to receive undisturbed time where she can close her blind and door the morning after the Regular Monthly Meeting to work on minutes so they can be completed as soon as possible. The Clerk was asked if this is practical. The Clerk said the morning after the Regular Meeting is hectic. The Board felt the Clerk could pick the time herself. Commissioner Herman felt the Board should have the minutes by Friday following the Tuesday meeting and the Town Administrator and other staff should afford the Clerk that time. The consensus of the Board was to allow the Clerk this time.
8. **Authorize the Town Administrator to contact Brunswick County regarding insurance increases.** Commissioner King noted that coastal counties are looking to receive nearly a 30% increase in homeowners insurance whereas interior counties are only looking at a 4% increase. The rationale behind the increase is shady. Everyone was in agreement for the Town Administrator to discuss this matter with Brunswick County.

CLOSED SESSION:

1. Discussion of property acquisition pursuant to G.S 143-318.11 (a)(5)
2. Discussion of legal matters pursuant to G.S 143-318.11 (a)(3)

Commissioner Herman motioned to go into closed session for the aforementioned matters; seconded by Commissioner Dixon and carried by a unanimous vote.

Upon returning from closed session, Commissioner Herman motioned to enter regular session; seconded by Commissioner Melahn and unanimously carried. No action was taken as a result of Closed Session.

BOARD & PUBLIC COMMENTS: None forthcoming.

ADJOURN: *Commissioner Melahn motioned to adjourn, seconded by Commissioner Dixon and unanimously carried.*

(seal)

Anthony Clemmons, Mayor

Attest:

Kelley Southward, Town Clerk