



# COUNTY OF DARE, NORTH CAROLINA

District 1: Roanoke Island & Mainland; Dist 2: Nags Head, Colington, Kill Devil Hills; Dist. 3: Kitty Hawk, Southern Shores, Duck; Dist. 4: Chicamacomico, Avon, Buxton, Frisco, Hatteras; Dist. 5: At Large

## THE DARE COUNTY BOARD OF COMMISSIONERS MEETING

June 20, 2011 — 5:00 P.M.

Dare County Administration Building  
PO Box 1000, Manteo, North Carolina 27954

### **Commissioners Present:**

Chairman Warren Judge, District 3; Vice-Chairman Allen Burrus, District 4; Virginia Tillett, District 1; Richard Johnson, District 1; Max Dutton, District 2; Mike Johnson, District 2; Jack Shea, Dist. 5

### **Commissioners Absent:** None

**Others Present:** County Manager/Attorney Bobby Outten; Public Information Officer, Dorothy Toolan; Finance Director, Dave Clawson; Clerk to the Board, Gary Gross

**Public Comments:** Five (5) people made public comments — Jim Bek, Barbara Conway, Ken Pagurek, Niels Moore, Marc Jorrens

### **Presentations:**

North Carolina Division of Forest Resources — gave an update on the Pains Bay Fire in Mainland Dare County

### **Actions:**

NCDOT Secondary Roads Improvement Program — Board motion to concur with the Secondary Roads Program — **Approved**

Outer Banks Community Development Corporation — CDBG Grant for Bowsertown Landing — **Approved**

Kitty Hawk Dog Park — Application and Rules for use of Park — **Modified during the meeting and Approved**

Proposal to Allow the Operation of Golf Carts in Buxton — **Item was tabled until September 19, 2011**

Request for Hearing — Text Amendments, Dare County Schools Alternative Energy Projects — **Public Hearing Scheduled 5:30pm, July 18**

Gina Booth — Conditional Use Permit Application for Home Occupation — **Approved**

Sondra Dodson — Conditional Use Permit application for a Home Occupation — **Approved with a Limit of Four (4) "For-Hire" Vehicles**

Eric Morrison — Conditional Use Permit for Landscaping Business — **Approved, as amended**

Changes Required for State Treasurer's Other Post-Employment Benefits (OPEB) Trust Fund — **Resolution Adopted**

Town of Manteo — Grant Application to make an addition to the Skate Park on Uppowoc Avenue — **Approved**

Consent Agenda — **Approved**

1. Approval of Minutes (06.06.11)
2. CenturyLink Maintenance Contract Renewal
3. New Position — Domestic Violence Advocate/Office Support Specialist (Sheriff's Office)

### Board Appointments

1. College of the Albemarle — Board of Trustees — **Appointed Commissioner Jack Shea**

LAND OF BEGINNINGS

COMMISSIONERS OFFICE— PO Box 1000, MANTEO, NC 27954 • 252.475.5700 • DARENC.COM

Chairman Warren Judge called the June 20, 2011 meeting of the Dare County Board of Commissioners to order at 5:00 p.m. He then invited the Rev. Nick Hodsdon from the United Church of Christ, to share a prayer, and led the Pledge of Allegiance to the flag. Chairman Judge recognized and welcomed the former Nags Head Mayor, Bob Muller.

### **ITEM 1 – PUBLIC COMMENTS**

Five (5) people made public comments opposing the Conditional Use Permit for a Home Occupation at 108 Prince Charles Court in the Colington Harbour Subdivision, scheduled as agenda Item 8.

- 1) Jim Beck, 206 Rhodoms Drive, asked that the Conditional Use Permit for 108 Prince Charles Court be denied for four (4) reasons. 1) It is not in keeping with residential zoning. 2) It weakens property values in all areas zoned R-4. 3) The problem worsens as the business grows. 4) It weakens the County's position in future R-4 zoning applications. He presented a written summary of his remarks.
- 2) Barbara Conway, 205 Rhodoms Drive, said the Conditional Use Permit applicant for 108 Prince Charles Court constitutes a commercial use with the parking of seven (7) vehicles. She asked that conditions and safeguards be imposed and that there should be a limit of no more than two (2) vehicles. She also asked that employees/drivers not be allowed to come into Colington Harbour to pick-up vehicles.
- 3) Ken Pagurek, President of the Colington Harbour Association, presented a petition with 71 signatures opposing the granting of a Conditional Use Permit to operate a limousine service in an R-4 zoned community, which includes parking and storage of more than two (2) business vehicles. The petition supported the position of the Colington Harbour Association Board of Directors on this issue.
- 4) Niels Moore, President of Cape Management, which represents the Colington Harbour Association, said his company works with homeowner associations to assure that all residents are treated fairly. He said six (6) years ago the Coleman family conditional use permit was limited to two (2) vehicles and asked that this precedent be applied for this and all future applications for Colington Harbour for consistency.
- 5) Marc Jorrens, 116 Prince Charles Court, said up to eleven (11) vehicles have been counted at one time on the property at 108 Prince Charles Court. He asked if the Board would want it in their neighborhood, and questioned what if the vehicles were cement trucks. He reported that inexpensive commercial parking is available elsewhere on the Outer Banks, and called for a limit of two (2) vehicles if the permit is granted.

### **PRESENTATION – NORTH CAROLINA DIVISION OF FOREST RESOURCES**

Chairman Judge asked Roger Miller, Public Information Officer for the North Carolina Division of Forest Resources to present an update on the Pains Bay Fire and thanked all those involved in fighting the wildfire for their service. Mr. Miller acknowledged Forest Service staff Ed Christopher and Rob Schackelford for their efforts. Mr. Miller reported the latest fire size as 45,294 acres, which is now 89% contained. He said 219 personnel have been assigned to the fire using 61 high volume lift pumps, 2 helicopters and other equipment. Mr. Miller explained that daily updates are provided to the news media. He expressed hope that over the next couple of days the fire might be classified as 100% contained. He added that 6 to 8 inches of rainfall is needed to help extinguish the fire. In the meanwhile, he reported, smoke will continue to be a big issue. Commissioner Dutton expressed thanks for what has been done about the fire. Commissioner Tillett thanked the Division for coming to the update meetings scheduled for the public throughout Dare County. Commissioner Shea also expressed his gratitude along with Commissioner Richard Johnson. Mr. Miller said the Division wants to coordinate closely with local agencies and reported it has been excellent working with Dare County government.

### **ITEM 2 – NORTH CAROLINA DEPARTMENT OF TRANSPORTATION – SECONDARY ROADS IMPROVEMENT PROGRAM (Att. 1)**

Jerry Jennings, Division Engineer, North Carolina Department of Transportation (NCDOT) outlined the Department's Secondary Roads Improvement Program in Dare County. He said the original purpose of the program, in the late 1980's, was to pave unpaved roads. Now that the majority of roads have been paved, the

program is moving from a paving process, to a program to strengthen and improve roads. Mr. Jennings reported \$192,834 has been allocated for the Dare County Secondary Roads Program for Fiscal Year 2011-2012. He said there are two (2) remaining paving projects. One project involves Dean Avenue and an alternate one for Seabreeze Court. He outlined an improvement project for Russell Twiford Road, which needs \$65,000 in work to strengthen it. He identified three (3) alternate improvement projects for Lullaby Lane, Timber Trail, and Live Oak. Mr. Jennings explained that \$27,838 has been reserved for contingencies. Vice-Chairman Burrus asked about the status of NC Highway 12 going into Hatteras Village. Mr. Jennings said it was under contract with completion scheduled for November 2011; however, work would begin on that project after Labor Day. Vice-Chairman Burrus thanked the Department for all they do throughout Dare County trying to find solutions. Commissioner Mike Johnson asked about the status of Colington Road and the sharp curve at the church. Mr. Jennings reported a feasibility study done years ago identified 37 million to improve the roadway with significant right of way costs. He said the Department has chipped away at incremental improvements while trying to acquire right of way to move the sharp curve. He added that this project is programmed into the Department's seven-year plan. County Manager Outten asked about a stop light at the entrance to the Dare County government complex in Manteo. Mr. Jennings said it would involve tremendous cost; however, they are willing to discuss what it would take to move forward. Commissioner Tillett asked about Lindbergh Berry Road. Mr. Jennings explained it can be added to the State system if they are able to get right of way. He added that attempts have been made to acquire right of way, but resistance has been encountered with some property owners. He suggested that neighbors talking with neighbors might be effective in persuading those reluctant to give right of way. Chairman Judge asked the Department to provide a list of property owners involved on that road to Commissioner Tillett. The Chairman informed Mr. Jennings that a group seeking a multi-use path on Colington Road is becoming active in the community and expressed his thanks to the NC Department of Transportation.

#### **MOTION**

Vice-Chairman Burrus motioned to concur with the NCDOT Secondary Roads Improvement Program as presented by Jerry Jennings.

Commissioner Shea seconded the motion.

VOTE: AYES unanimous

#### **ITEM 3 – CDBG GRANT – BOWSERTOWN LANDING (Att. 2)**

Bob Muller, on behalf of the Outer Banks Community Development Corporation (CDC), asked for permission to apply for a \$250,000 grant for the Bowsertown Landing affordable housing project to provide infrastructure such as streets, water access and septic. Mr. Muller said the grant represents no cost to the County. Chairman Judge complimented the great presentation of the project in the booklet. Commissioner Richard Johnson asked if the needs assessment, which is based on information from 2008 and 2009, is still valid today considering the current housing market and availability of cheaper housing. Mr. Muller explained this project is a unique opportunity in the market with very little new construction in the \$140,000 to \$160,000 price range, and added they do not build if it is not pre-sold. In response to Commissioner Richard Johnson's question about sewage treatment and infrastructure for the project, Mr. Muller said each phase of development would have its own freestanding wastewater treatment plant. Commissioner Shea asked whether the multi-family units would have fire stop walls. Mr. Muller explained they would be built to meet State code.

#### **MOTION**

Commissioner Dutton motioned to authorize the Outer Banks Community Development Corporation to make application for the \$250,000 grant.

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

#### **ITEM 4 – KITTY HAWK DOG PARK (Att. 3)**

Public Services Director, Tim White, said the Kitty Hawk Dog Park will soon be open and the rules are intended to inform the public about important guidelines for operation of the first dog park in Dare County. County Manager Outten identified one new issue associated with dog park involving the County's dangerous dog rule and proposed that it be waived within the dog park as an exception to the rule. Commissioner Richard Johnson asked about liability if we waive the rule and a bad dog goes into the park. Mr. Outten explained that the current dangerous dog rule would be a severe penalty as a no-fault rule that involves both dogs that may be involved in a fight.

Commissioner Shea asked about liability for injury, as well as for a related illness, that could occur inside the dog

park, for example, exposure to rabies for someone bitten while trying to control their dog. Mr. Outten reported the County would have sovereign immunity defenses available in addition to insurance coverage and the precautions now being taken upfront. Commissioner Richard Johnson said a dog should be banned from the park if it bites. Mr. Outten suggested adding a provision for behavior so if a dog exhibits violent behavior or injures another, staff would have the right to remove it. Commissioner Dutton recommended that all the necessary rules be posted. The County Manager said there will be appropriate signage and people must also read and sign the application form before using the dog park. Commissioner Tillett asked why children under the age of eight (8) are not permitted even with a parent. Mr. White explained this is because younger children have been found to cause stress for dogs by running loudly, and small children are at eye level for many of the dogs.

**MOTION**

Vice-Chairman Burrus motioned to approve the rules and application for use of the Kitty Hawk Dog Park with a waiver of the Dangerous Dog Rule inside the fence and addition of language giving staff the ability to remove dogs exhibiting violent behavior.

Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 5 – PROPOSAL TO ALLOW THE OPERATION OF GOLF CARTS IN BUXTON**

Donna Creef, Planning Director, explained that a request has been made by Randall Jordan of Buxton to allow the operation of golf carts in Buxton, east of and including Geo Gaskins Road where the speed limit is 35 miles per hour or less. Vice-Chairman Burrus requested the item be tabled and brought up at the September 19, 2011 meeting. He reported receiving many phone calls about the matter and wanted time to look into citizen questions that have been raised. He noted that some who called him may have been inadvertently cut off due to a cell phone technical problem and assured everyone that he did not hang-up on any caller.

**MOTION**

Vice-Chairman Burrus motioned to table this item until September 19, 2011.

Commissioner Shea, Commissioner Tillett, and Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 6 – REQUEST FOR HEARING – TEXT AMENDMENTS FOR DARE COUNTY SCHOOLS**

Planning Director, Donna Creef, reported that staff has prepared proposed text amendments as directed at the last meeting. She said the language drafted would provide for alternative energy projects for all school property in unincorporated Dare County. She said the Planning Board thought height of 100 ft would be better than 80 feet for the project planned for Buxton. She said if the draft is acceptable, a public hearing could be scheduled. Commissioner Shea asked whether flickering would be an issue at this height. Ms. Creef reported that research indicates that with adequate setbacks, flickering is not a significant issue at this height.

**MOTION**

Commissioner Tillett motioned to schedule a public hearing on the proposed text amendments for the Dare County Schools Alternative Energy Projects at 5:30 p.m. on July 18, 2011.

Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 7 – GINA BOOTH – CONDITIONAL USE PERMIT APPLICATION FOR HOME OCCUPATION**

Donna Creef, Planning Director, said the applicant would like to have massage therapy clients come to her residence at 129 Dolphin Drive on Roanoke Island. She said a home occupation does not permit non-resident employees and that the business not take up more than 25% of the structure. Ms. Creef stated that the applicant is the only one doing massage therapy and the draft Conditional Use Permit (CUP) includes proposed hours of operation with scheduling done so there is a 30-minute break between clients to prevent an overflow of cars. Ms. Creef said the Planning Board unanimously supported the permit. In response to Commissioner Shea's question about parking indicated on the survey, Ms. Creef said the applicant meets the minimum residential parking standard.

**MOTION**

Vice-Chairman Burrus motioned to approve the Conditional Use Permit for Home Occupation.

Commissioner Tillett seconded the motion.

VOTE: AYES unanimous

#### **ITEM 8 – SONDRA DODSON – CONDITIONAL USE PERMIT FOR A HOME OCCUPATION**

Planning Director, Donna Creef, explained that this item was referenced by several people during the public comment period. She said the applicant, Sondra Dodson, operates a limousine service from her home on Prince Charles Court in Colington. She reported that Ms. Dodson has submitted an application for a Conditional Use Permit (CUP) in response to notices received from the Colington Harbour Association. The Planning Director referenced a previous letter, for a different application by the Coleman family, which was prepared by the County Attorney addressing home occupations and the review standards that may be used. She explained that non-resident employees cannot go to the Dodson home to pick up vehicles. Vice-Chairman Burrus asked for clarification on the number of vehicles that would be permitted. County Manager Outten reported that the Board can determine a limit as was done in the Coleman case outlined in the previous letter. He added that while the Board may put conditions on the home occupation, the applicant must still deal with the Homeowners Association. Commissioner Shea said unlike vehicles that may be parked for residents, family, and guests; there should be a limit on the number of commercial vehicles permitted. Commissioner Richard Johnson said he is an advocate of home businesses as a practical way for people to start an enterprise. He added that there needs to be a limit on the number of commercial vehicles permitted, however, allowing only two (2) would be unfair. County Manager Outten clarified that any limit number adopted by the Board for this application would be specific to this situation, and would not prevent something different being done for future cases. The applicant, Sondra Dodson, explained that her home based business permits her to be with her children and she cannot afford a storefront for the business, which only operates four (4) months out of the year. She reported that one of her vehicles is used for activities associated with the OBX Warriors football team, and not the limousine business. Ms. Dodson said she feels harassed and singled-out in the neighborhood. She said property values are down everywhere and any decline in subdivision values has nothing to do with her business. In response to photos presented to the Board, the applicant said her vehicles are not out at the same time and explained that on Friday and Saturday they get equipment washed and ready for weekend limousine clients and the new photo was taken while rearranging vehicles. Commissioner Mike Johnson said the applicant lives nearby his property and he has not experienced a problem with it. He said many in the subdivision operate home businesses and we need to encourage neighbors to trust one another and hoped a consensus might be found to work out a solution for everyone.

#### **MOTION**

Vice-Chairman Burrus motioned to approve Conditional Use Permit No. 3-2011 for Sondra Dodson d/b/a Beach Limousine for a Home Occupation at 108 Prince Charles Court in Colington, NC with a limit of four (4) "For-Hire" vehicles.

Commissioner Shea seconded the motion.

VOTE: AYES unanimous

#### **RECESS 7:37 P.M. – 8:01 P.M.**

#### **ITEM 9 – ERIC MORRISON – CONDITIONAL USE PERMIT FOR LANDSCAPING BUSINESS**

Donna Creef, Planning Director, outlined a Conditional Use Permit (CUP) application submitted by Mr. Eric Morrison to operate a landscaping business in Colington on property leased from Leonard Smith at 1504 Colington Road, zoned VC-2 Village Commercial. She explained that landscaping businesses are conditional uses in VC-2. Ms. Creef said she had received complaints from Colington Pointe LLC, which adjoins the applicant's property. She said she met with Mr. Smith and Mr. Morrison in March and advised them of the need to apply for approval as a landscaping business and remove some of the vehicles on the property that were not consistent with VC-2 regulations. She reported that the applicant has since cleaned up the property. Ms. Creef stated that VC2 requires fencing of equipment areas, but does not specify the type or extent of fencing. She said the Planning Board has recommended a 6-foot high wooden, stockade style fence be put along the property line that adjoins the residential uses, but would not extend into the wetlands at the rear of the tract. Ms. Creef reported the applicant contends that fencing is not required and should be grandfathered because of the historical use of the property. She added that upon advice from the County Manager/Attorney, she directed the applicant to obtain a CUP as required by the ordinance. Ms. Creef outlined that backhoes and other heavy equipment are not permitted. Mr. Morrison commented on photographs that were presented and explained that a backhoe is needed for his business. He added that there are other backhoes in the area and his is not visible from Colington Road. He said it could cost \$5,000 to install fencing and he would suffer a financial loss if the property was later sold by the owner. Commissioner Richard Johnson asked why a wooden fence was required instead of planting trees, which would look better, and

could easily be done since the applicant is in the landscaping business. County Manager Outten explained that in order for grandfathering to exist, the use must be legal to begin with. He said in this case, we have a use that has not been legal under the ordinance, and therefore the applicant needs to comply.

**MOTION**

Commissioner Shea motioned to adopt the Conditional Use Permit, as amended, and with the removal of the 90 days outlined in the draft CUP.

Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 10 – CHANGES REQUIRED FOR STATE TREASURER’S OPEB FUND (Att. 4)**

Dave Clawson, Finance Director, said in September 2008 the Board entered into agreements with the State Treasurer to participate in a trust for retiree health benefits. He reported that the Local Government Commission has determined that the trust must exist at the local level rather than at the State. He said Parker Poe Adams & Bernstein, Dare County’s bond counsel, has been engaged to draft a Resolution for the Board to adopt establishing the local irrevocable trust and a trust fund agreement for the irrevocable trust. Mr. Clawson said the Trustees will be Bobby Outten, County Manager; David Clawson, Finance Director; and Elizabeth Reilly, Human Resources Director with each Trustee being designated as the person holding each of these positions. He said upon Board approval, the Trustees will execute the attached Deposit Agreement using the existing investment structure and the balance of the existing state trust will serve as the initial contribution to the local trust, which, as of May 31, is \$603,885. Commissioner Shea asked what decisions can be made by the Trustees. Mr. Clawson reported they will administer the trust in accordance with County policy. County Manager Outten explained that previously our money was put into a State administered trust and invested for us. He added that now we will have some say, within narrow conservative choices, in managing the fund.

**MOTION**

Commissioner Tillett motioned to adopt a resolution authorizing an Other Post-Employment Benefits (OPEB) Trust Fund and Related Trust Agreement; appointing the County Manager, Finance Director, and Human Resources Director as Trustees; and a contribution to OPEB Trust Fund.

Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 11 – TOWN OF MANTEO – GRANT APPLICATION (Att. 5)**

County Manager Outten reported that the Town of Manteo seeks permission to apply for a grant from the Tony Hawk Foundation for an addition to the skate park near the College of the Albemarle (COA). If approved, the Town would apply for the funding, supply the match, and make the improvements to the skate park. There would be no financial or in-kind obligation on behalf of Dare County. Commissioner Richard Johnson inquired as to whether COA had been contacted about the expansion plan. Erin Trebisacci, Manteo Town Planner, said she intends to contact COA, but wanted to present it first to the Board of Commissioners.

**MOTION**

Commissioner Shea motioned to authorize the Town of Manteo to apply for a grant from the Tony Hawk Foundation to make an addition to the skate park.

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

**ITEM 12 – CONSENT AGENDA (Att. 6)**

**MOTION**

Commissioner Shea motioned to approve the Consent Agenda:

- 1) Approval of Minutes (06.06.11)
- 2) CenturyLink Maintenance Contract Renewal
- 3) New Position – Domestic Violence Advocate/Office Support Specialist (Sheriff’s Office)

Vice-Chairman Burrus and Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 13 – BOARD APPOINTMENT**

1) College of the Albemarle – Board of Trustees

Vice-Chairman Burrus motioned to appoint Commissioner Jack Shea.

Commissioner Tillett seconded the motion.

VOTE: AYES unanimous

**ITEM 14 – COMMISSIONERS' BUSINESS**

Commissioner Mike Johnson – None

Commissioner Max Dutton – None

Vice-Chairman Allen Burrus – None

Commissioner Jack Shea – None

Commissioner Richard Johnson – None

Commissioner Virginia Tillett

- Asked the County Manager what color the water tower on Bowsertown Road will be painted and whether it will include the Dare County logo. Mr. Outten said he would find out and let her know.

Chairman Warren Judge – None

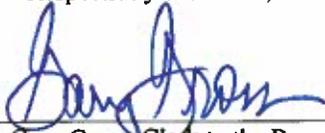
**MANAGER'S/ATTORNEY'S BUSINESS**

County Manager/Attorney Outten – None

AT 8:53 P.M. THE DARE COUNTY BOARD OF COMMISSIONERS ADJOURNED UNTIL 5:00 P.M. ON JULY 18, 2011.



Respectfully submitted,

By:   
Gary Gross, Clerk to the Board

APPROVED:

By:   
Warren C. Judge, Chairman  
Dare County Board of Commissioners