



# 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

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## DARE COUNTY BOARD OF COMMISSIONERS MEETING

August 20, 2012 — 5:00 P.M.

Dare County Administration Building, Manteo, NC

**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, District 5

**Commissioners Absent:** None

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

**Public Comments:** Made by two (2) people — Rick Chance, Algie Campbell

**Presentations:** The Employee of the Month certificate was awarded to Debra Alexander, Dare County Detention Center  
One Dare County employee service pin was presented

### Actions:

Proclamation — Dare County Watermen's Weekend — **Approved**

Proclamation — Hunger Action Month — **Approved**

Annual Settlement and Charges to the Tax Collector — **Charged** the Tax Collector to collect the 2012 taxes

Dare County Long Term Recovery Plan — **Approved**

Hurricane Irene FEMA Elevation Project, Phase 1, Resolution — **Approved** and authorized Manager to sign documents that may be needed

Cottages at the Cape—Family Housing Complex Site Plan Review — **Approved** with a language revision (*See Minutes for details*)

Resolution Approving Installment Purchase Contract with the Public Facilities Corp. & Related Matters — **Adopted** (*See Minutes for details*)

Election to Participate in NC Attorney General Settlement and Release of Future Claims — **Approved**

Easement to Seashore Realty & Development Co., Inc. — **Approved**

Duck Water Tower AT&T Cell Lease Renewal — **Approved** for an initial five year period with 3 five year renewals

Grant from Dare County Tourism Board for Signage on Scenic Byway — **Approved**

Grant from NCDOT for Signage on Scenic Byway — **Approved**

Grant from National Park Service for Scenic Byway Purposes — **Approved** and the Board also approved a Capital Project Ordinance covering grants from the Tourism Board, NCDOT, and the National Park Service

Public Hearing — Noise Control Ordinance — **Conducted** a Public Hearing & no action was taken. (*See Minutes for details*)

Public Hearing — Electronic Gaming — **Conducted** a Public Hearing & **Adopted** regulations in a 4 to 3 vote (*See Minutes for details*)

Public Hearing — Financing and Refinancing of Projects — **Conducted** a Public Hearing

Consent Agenda — **Approved** 1. Minutes (07.16.12) 2. Budget Amendment — NCDACS Pesticide Container Recycling Program Grant 3. Emergency Medical Services (EMS) - Position Reclassification 4. Budget Amendment — Dare County Tourism Board Grant 5. Community Child Protection Team Annual Report 6. Road Request—Spin Drift Road, Salvo, NC 7. Public Works / Sanitation Contracts 8. Tax Collectors July 2012 Reports

### Board Appointments —

1. A.B.C. Board — **Reappointed** Bobby Owens

2. Dare County Center Advisory Board — **Reappointed** Flossie Tugwell, Betty Mann & **Appointed** Catherine McCabe & Fred Brumbach

3. Older Adult Services Advisory Council — **Appointed** Renate Macchirole & Julia Haywood (*See Minutes for details*)

4. Planning Board — **Appointed** Michael Barr

5. Roanoke Island Community Center Board — **Appointed** Dorothy Tillett

6. Upcoming Board Appointments for September and October 2012 were announced

Manager's/Attorney's Business — *Following is a brief synopsis of Manager/Attorney items, see the Minutes for more information —*

**Approved** a budget amendment for reimbursable expenses for the Sheriff's Office to provide security at the Democratic Convention

**Approved** a budget amendment correcting the amount charged Medicaid patients during EMS transports to and from physician offices

**Authorized** the Manager to accept the proposal from the engineer for the first phase of design for the Rodanthe Beach Access Park

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Chairman Warren Judge called the August 20, 2012 meeting of the Dare County Board of Commissioners to order at 5:06 p.m. He invited the Rev. Jody Moore from the Outer Banks Presbyterian Church, to share a prayer, and then he led the Pledge of Allegiance to the flag.

#### **ITEM 1 – PRESENTATION OF COUNTY SERVICE PINS**

- 1) Deputy Mark McKay received his 15-year pin from Sheriff Doug Doughtie.

#### **ITEM 2 – EMPLOYEE OF THE MONTH – AUGUST 2012**

Deborah Alexander, Detention Center Nurse, received the Employee of the Month certificate for August 2012 from Kathryn Bryan. Ms. Alexander was complimented for giving a high level of medical care and performing her mission with a great attitude.

#### **ITEM 3 – PUBLIC COMMENTS**

The County Manager outlined the procedure for making public comments. Two (2) people spoke –

- 1) Rick Chance, Manager of the Nags Head Food Lion, said one of their Associates was recently killed by a driver. He identified the need for additional bicycle and pedestrian safety education. He asked the Board for more enforcement, additional educational materials, and more resources to help prevent these types of tragedies in the future.
- 2) Algie Campbell said he and his neighbors on Buzzy Lane have been told by the State that they have 90 days to vacate their property. He said after the Board wrote a letter in 2006, we thought it was taken care of and people would be able to stay in their homes for the rest of their lives. He asked the Board for their support again to prevent this eviction from happening so they will not be put out on the street. Chairman Judge said he planned to address this issue during Commissioner's Business.

#### **ITEM 4 – PROCLAMATION – DARE COUNTY WATERMEN'S WEEKEND**

Lynne Foster and Sara Mirabilio presented information to the Board about Day at the Docks. Ms. Foster shared the exciting news that Day at the Docks has expanded from a one-day event to four full days of activities. She said the goal was to bring in more visitors, attract new ones, and get people to stay longer. She highlighted events on the Day at the Docks agenda including a new Seafood Throw Down. She noted that the annual Blessing of the Fleet is expected to be an especially emotional experience this year. She thanked all the sponsors of the event and announced the event's website [www.dayatthedocks.org](http://www.dayatthedocks.org). Sara Mirabilio explained how she has documented the event's growth and noted that people come from as far away as California. She outlined special attractions that are planned for this year and said people will have the opportunity to meet special guest speakers with remarkable stories to tell. Vice-Chairman Burrus congratulated Ms. Mirabilio on recently being awarded the Natural Resource Scientist of the Year Award. Chairman Judge commended Ms. Foster for the work she has done since 2004 to develop Day at the Docks.

#### **MOTION**

Commissioner Shea motioned to issue a Proclamation establishing September 13 to 16, 2012 as Dare County Watermen's Weekend.

Vice-Chairman Burrus and Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

#### **ITEM 5 – PROCLAMATION – HUNGER ACTION MONTH**

The County Manager read a Proclamation designating September 2012 as Hunger Action Month in Dare County. Liz Reasoner, Executive Director of the Food Bank of the Albemarle, expressed her gratitude to the Board of Commissioners for adopting the Proclamation on behalf of the area's hungry people.

#### **MOTION**

Commissioner Tillett and Commissioner Dutton motioned to issue a Proclamation designating September 2012 as Hunger Action Month in Dare County.

Vice-Chairman Burrus and Commissioner Shea seconded the motion.

VOTE: AYES unanimous

**ITEM 6 – ANNUAL SETTLEMENT AND CHARGES TO THE TAX COLLECTOR (Att. #1)**

Michelle Evans reviewed the settlement report for the 2011 tax year. She said the total real estate and personal levy was \$48,433,903.32 and explained that this amount includes all real estate, mobile homes, boats, rental personal property, and business personal. She said it also includes properties in bankruptcy, properties with unknown owners, and properties in conflict. Ms. Evans reported that by June 30, 2012, the total amount collected was \$48,054,332.27 with a collection rate of 99.21% on real estate and personal property taxes. She also shared details about the motor vehicle levy and its collection rate. She said that each year the Board is required by motion to charge the Tax Collector to begin tax collection on current taxes based on the budgeted valuation of \$17,184,796,035 and the gross levy of \$71,284,076.74. Ms. Evans said the order will cover the 2012 taxes for Dare County and the towns of Kill Devil Hills, Kitty Hawk, Manteo, Southern Shores, and Duck.

**MOTION**

Vice-Chairman Burrus and Commissioner Shea motioned to charge the Tax Collector to collect the 2012 taxes. Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 7 – DARE COUNTY LONG TERM RECOVERY PLAN (Att. #2)**

The County Manager explained that Jay Burrus, the Social Services Director, will be the management entity on staff to coordinate long term recovery. He explained that the proposed Long Term Recovery Plan includes hiring case managers to ensure that all impacted areas are covered and properly supervising them in their efforts. Mr. Outten said the long term recovery will be managed on a full time basis out of the Social Service Director's office. The organization, leadership, staffing, and planning outlined in the Long Term Recovery Plan were in response to things learned after Hurricane Irene to help all Dare County citizens fully recover from disasters.

**MOTION**

Commissioner Shea motioned to approve the Long Term Recovery Plan. Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 8 – HURRICANE IRENE – FEMA : HMGP ELEVATION PROJECT – PHASE 1 - RESOLUTION (Att. #3)**

The County Manager said money may be available through the FEMA elevation project to help people raise their homes to get them out of harm's way for flooding. He said it appears the County will be approved for about 17 residential properties that will be funded by FEMA. He explained that the County is waiting for the final word. Mr. Outten noted that the time frame for the project is three to five years to completion. He outlined a Resolution designating the County as the applicant's agent to get the paperwork submitted for funding. Jenny Gray Jones, the Project Manager, said the 17 properties represent the first group of homes with hopefully more being approved later by FEMA. She noted that since Hurricane Bonnie in 1999 there have been 42 successful projects completed. Commissioner Richard Johnson noted that the amount spent by FEMA on raising each house is extremely high. Ms. Jones said the average is about \$80,000 for most houses and can exceed \$100,000 to meet all the federal guidelines.

**MOTION**

Commissioner Shea motioned to adopt the Resolution for designation of applicant's agent. Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

In order to expedite the processing of any future paperwork for this project, Ms. Jones asked for authorization to have the County Manager sign any additional documents that may be needed.

**MOTION**

Vice-Chairman Burrus motioned to authorize the County Manager to sign any additional documents that may be needed for this project.

Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 9 – COTTAGES AT THE CAPE – FAMILY HOUSING COMPLEX SITE PLAN REVIEW**

The County Manager asked all potential witnesses in this matter to come to the podium to be sworn in by the Clerk to the Board prior to offering testimony. The following individuals were sworn: Donna Creef, Jim Pereira, Lee Pontes, and Mike Robinson. Afterward, Planning Director, Donna Creef said the applicant has done a great deal of work on the wastewater and storm water management plans. She identified one change in the draft Conditional Use Permit (CUP) that was discussed at the recent Planning Board meeting involving the installation of the water lines

and what the federal government may have previously installed. Ms. Creef said the Planning Board included a specific requirement of 500 gallons per minute. However, based on what the Fire Marshal has told her he would prefer not to have a specific gallon number in the CUP. She outlined the language change needed for Condition #13. Commissioner Shea clarified that the storm water improvements will have to be in compliance with State regulations and submitted to the Dare County Planning Department. Attorney Hood Ellis, on behalf of the applicant, said our plans are on the record and we have submitted affidavits from the storm water and the wastewater engineer. He asked Mike Robinson to say on the record that he, as a Professional Engineer, has reviewed the plans and they comply with State and County regulations. Mr. Robinson said as far as he is aware they comply.

**MOTION**

Vice-Chairman Burrus motioned to approve the site plan and Conditional Use Permit with a language revision for #13 to ensure adequate fire fighting capacity as reviewed by the Dare County Fire Marshal.

Commissioner Shea seconded the motion.

VOTE: AYES unanimous

**ITEM 10 – RESOLUTION APPROVING AN INSTALLMENT PURCHASE CONTRACT WITH THE DARE COUNTY PUBLIC FACILITIES CORPORATION AND RELATED MATTERS (Att. #4)**

As an introduction to Item #10, Finance Director, David Clawson, reported that staff has met with American Eurocopter (AEC) to agree on terms and conditions related to the purchase of a new helicopter. He explained that the 145 T2 is a new aircraft model that is moving into production very soon. He said that previously AEC quoted a price on a “green” aircraft without any required configuration changes. Mr. Clawson said the changed price includes dual pilot controls, additional backup electrical unit, a terrain awareness and avoidance system, a synthetic vision system, and most of the avionics package. As a result, he said the price quote increased from \$6,800,000 to \$7,794,800 and is good until September 7, 2012. He noted that the avionics package decreases from \$494,909 to \$247,956. Mr. Clawson said he recommends increasing the contingency amount from 5% to 7.5% on the project. He said these changes increase the total project amount, net of the estimated trade-in of the old helicopter by \$999,499 or from \$7,264,301 to \$8,263,800. Mr. Clawson also reviewed the estimated annual debt service. He asked the Board to readopt the Sole Source Resolution because of the change in price and date and to amend the Capital Project Ordinance that was previously adopted. For Item #10, the Bond Resolution, Mr. Clawson explained that it is a standard resolution done with every debt instrument. He reviewed the components of the Resolution and told the Board the Dare County Public Facilities Corporation met earlier today and adopted its Resolution and that the application is on the Local Government Commission’s agenda for September 11, 2012 and they have assigned a sale date of September 20, 2012. He reviewed numbers on the refunding and said approximately \$65,000 per year will be saved for fiscal years 2015 through 2029. Mr. Clawson asked the Board to readopt the Sole Source Resolution and amend the Capital Project Ordinance and adopt the Final Resolution for the bond financing.

**MOTION**

Commissioner Dutton motioned to readopt the Resolution for the purchase of the Emergency Medical Helicopter from American Eurocopter through Sole Source Purchase Resolution reflecting a changed amount and date of September 7, 2012 and approve amending the Capital Project Ordinance for 2013 CIP Projects.

Commissioner Shea seconded the motion.

VOTE: AYES unanimous

**MOTION**

Commissioner Shea motioned to adopt the final Resolution approving an installment purchase contract with the Dare County Public Facilities Corporation and all related matters.

Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 11 – ELECTION TO PARTICIPATE IN NC ATTORNEY GENERAL SETTLEMENT AND RELEASE OF FUTURE CLAIMS (Att. #5)**

David Clawson, Finance Director, outlined a class action lawsuit where the North Carolina Attorney General has reached a settlement with Wachovia Bank, which at the time this occurred was First Union National Bank. He said the Attorney General was one of 26 who participated in the settlement agreement in the amount of \$54.5 million. Mr. Clawson said Dare County’s share of the settlement is \$21,440.86 and relates to bidding practices and bid rigging for Municipal Bond Derivatives between January 1, 1998 and December 31, 2006. He added that the Dare County share relates to the March 1998 bidding of a guaranteed investment contract for debt service reserve fund for the series 1998 COPs, which financed the Social Service and Health buildings. Mr. Clawson explained that the County must elect to participate and execute a release of future claims related to this incident. In response to a

question from Vice-Chairman Burrus, Mr. Clawson said the amount of Dare County's settlement reflects what they estimate was lost in interest income from non-competitive bidding on the investment contract.

**MOTION**

Commissioner Shea motioned to authorize the County Manager to execute the Election to Participate in Settlement and the Release by Participating Counterparties.

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

**ITEM 12 – EASEMENT TO SEASHORE REALTY & DEVELOPMENT CO., INC (Att. #6)**

The County Manager reported that in February 2010 the Board of Education granted an easement to an adjoining property on Wingina Avenue. He said the recipient of the easement became aware that Dare County actually owned the property and leased it back to the School Board. He explained that the easement given by the School Board needs approval by Dare County.

**MOTION**

Commissioner Tillett motioned to approve the easement and authorized the County Manager or Chairman to sign it. Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

**ITEM 13 – DUCK WATER TOWER AT&T CELL LEASE RENEWAL (Att. #7)**

Mr. Outten explained that AT&T has requested renewal of their existing lease on the same terms, conditions and escalators that we had previously. He said AT&T has asked for 5 five-year renewal options, which would turn it into a 30-year lease. The Manager recommended that the County approve it with 3 five-year renewals providing 15 years of renewal options at the 3% annual escalators.

**MOTION**

Vice-Chairman Burrus motioned to approve the lease for an initial five-year period with 3 five-year renewals and authorize the County Manager to execute documents.

Commissioner Shea seconded the motion.

VOTE: AYES unanimous

**ITEM 14 – GRANT FROM DARE COUNTY TOURISM BOARD FOR SIGNAGE ON SCENIC BYWAY (Att. #8)**

The County Manager said the Dare County Tourism Board has awarded a grant to Dare County on behalf of the Outer Banks Scenic Byways in the amount of \$25,000 for way showing and visitor orientation signs. He said there are no matching funds required and it is a reimbursement grant.

**MOTION**

Commissioner Tillett motioned to approve the grant and authorize the County Manager to execute documents.

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

**ITEM 15 – GRANT FROM NCDOT FOR SIGNAGE ON SCENIC BYWAY (Att. #9)**

County Manager Outten said the NCDOT grant is for signage in the amount of \$201,120.00 that requires matching funds of \$50,280.00. He said there are two other entities involved, Carteret and Ocracoke. Mr. Outten said the Dare County match will be the \$25,000 from the Tourism Board, outlined in Agenda item #14. He noted that no tax dollars will be coming out of the General Fund. He explained that Carteret and Ocracoke must come up with the balance of the match and if they fail to do so, the project would be reduced in scope accordingly. He asked the Board to approve the grant with the match and authorize the Manager to reduce the scope of the project if needed.

**MOTION**

Vice-Chairman Burrus motioned to approve the grant and authorized changing the agency designation to Dare County and for the Manager to reduce the scope of the project if needed and execute documents.

Commissioner Dutton and Commissioner Shea seconded the motion.

VOTE: AYES unanimous

**ITEM 16 – GRANT FROM NATIONAL PARK SERVICE FOR SCENIC BYWAY PURPOSES (Att. #10)**

Mr. Outten said the \$15,000 grant for the Scenic Byway does not require matching funds. Finance Director, David Clawson, asked the Board to approve a Capital Project Ordinance covering grants from the Dare County Tourism Board, NCDOT, and the National Park Service as were outlined in Agenda items 14, 15, and 16.

## **MOTION**

Vice-Chairman Burrus motioned to approve the grant and authorized the Manager or Chairman to execute documents and approve the Capital Project Ordinance for the Outer Banks Scenic Byway Project.

Commissioner Tillett and Commissioner Shea seconded the motion.

VOTE: AYES unanimous

## **ITEM 17 – PUBLIC HEARING – NOISE CONTROL ORDINANCE**

At 5:42 p.m., the Dare County Board of Commissioners held a Public Hearing to receive input concerning the Noise Control Ordinance. County Manager Outten conducted the hearing and explained the procedure for making comments. The following people spoke:

- 1) Fred Sawyer, owner of the Froggy Dog Restaurant, said their deck gives people the opportunity to socialize, enjoy music, and have fun. He said his business may be responsible for a portion of the noise complaint calls. He added that it only happens on Friday nights and that the person who complains uses it as a tool of prejudice. Mr. Sawyer said we fight beach closings and now fight an ordinance that will close down business. He challenged the Board of Commissioner to be fair.
- 2) Ronnie Midgett said he lives in Waves across from REAL Watersports and that along with many visitors he goes to the Triple S event to listen to entertainment. He said the event draws over 500 people who would not otherwise come here, adding a lot to the economy. He said the noise ordinance will affect special events and things like weddings and family reunions. Mr. Midgett said a small minority of people are generating the complaints and asked the Board to look at the majority. He said we are already fighting the bridge and beach closures, and asked the Board not to add this noise ordinance.
- 3) Jeremy Adams identified himself as a Nags Head resident with the Central Committee of Outer Banks for Liberty and the Young Professional Republicans. He said we oppose the proposed noise ordinance and that it will cause negative economic impact. Mr. Adams said if the ordinance is, we will work to have it repealed.
- 4) Kevin Loerch, Hodad's Catering, said the noise ordinance will put his family and business in jeopardy. He said a loss was suffered during Hurricane Irene, and asked the Board not to inflict another disaster with this ordinance. Mr. Loerch said a Review Committee is needed to rewrite what has been proposed. He added that the ordinance, as it is, is not what is needed.
- 5) Matt Nuzzo said he is a Buxton resident and cofounder of REAL Watersports. He explained that kite boarding has done a lot for the community and that Hatteras Island is a renowned location for this worldwide sport. He reported that the Triple S event is a 7-day endeavor with activities during day and music featured at night. He added that huge demographics turnout for this event. Mr. Nuzzo asked that the noise ordinance take into consideration special events, like Triple S.
- 6) Scott Leggat read into the record a letter from the Chamber of Commerce. He said he also wanted to point out that unincorporated areas are different from the municipalities that have a defined residential district. Mr. Leggat said the County has a mix that makes it more difficult. He asked the Board to get more input on this matter and not try to do it in the middle of a busy season.
- 7) Trip Foreman, co-founder of REAL Watersports said his business employs 75 people. He presented to the Board a document he called "Noise Ordinance 4.0" to provide solutions that will work. He said the quiet hours outlined in the 4.0 ordinance are what is needed rather than confusing decibel levels. Mr. Foreman said quiet hours should be promoted to make it public knowledge that after 11:00 p.m., regulations go into effect. He asked the Board to focus on quiet hours and not decibel levels.
- 8) Steve Nelson from the Inn on Pamlico Sound showed a decibel meter and reported that measurements were recorded during the Public Hearing. He reported the results and said the levels obtained during the meeting prove that a sound based ordinance is not appropriate. He said a new ordinance is needed. He told the Board he does not believe they are anti-business, however, the noise ordinance as proposed

would have unintended consequences on businesses. He asked the Board to invest more time to study this issue and not move quickly as we approach the close of the season.

- 9) Anthony Fletcher said he represented Midgett Realty, Teach's Lair, Hatteras Landing Marina, and the Affairs at Austin Creek. He said all of these businesses are potentially impacted by the proposed ordinance and that an exception is needed for charter boats and other marine related businesses. He added that a 24-hour exemption is needed for noise associated with working waterfronts. He said visitor demographics are changing and more people are looking for evening entertainment and family activities. Mr. Fletcher said that visiting guests need to be able to celebrate major events including birthdays, anniversary, reunions, and weddings. He asked the Board to craft an ordinance that supports reasonable use of outdoor music and family entertainment.
- 10) Joe Southern from Ocean Atlantic Event Rentals in Kill Devil Hills said he is a Board Member of the Outer Banks Wedding Association. He said he concurred with comments said tonight that the proposed ordinance is not written in the best way. He reported that weddings bring in a ton of tax revenue. Mr. Southern said the average wedding involves 50 to 200 people. He added that these people need a place to stay, eat, and shop. He said wedding related business has accounted for growth in the local economy and broadening of the job base.
- 11) Chad Miller said he works for Ocean Atlantic Event Rentals and the proposed noise ordinance is way off the boundaries for businesses. He said weddings involve 50 to 250 guests with 10,000 clients per year that come to Hatteras for weddings. He added that these people use a variety of businesses while here. He asked the Board to please look at this issue in-depth and rewrite the ordinance over the winter, not now. Mr. Miller said this is our livelihood and if the draft ordinance goes into place, the noise associated with a wedding would be too loud.
- 12) Bonnie Burrus Williams said she and her husband Charles have had to reinvent themselves due to business competition. She explained that in the process she has become a marriage minister due to the exploding wedding business on Hatteras Island. She said change is constant and Hatteras Island is an island of survivors who adapt and strive. Ms. Williams said our demographics are changing and the people are already challenged to the limit. Ms. Williams said we need help from County leaders to prepare new regulations that are favorable to business growth and jobs.
- 13) Kate Pullen from Pullen Photography said she was speaking as President of the Outer Banks Wedding Association. She said the Association represents over 280 local businesses that employ 4,000 people or 12% of working population. She said the proposed noise ordinance is a direct threat to our livelihood and future. She added that a reasonable ordinance is needed, but the County's proposed draft ordinance is not right. Instead, she called for support of the 4.0 plan that was presented by Trip Foreman. Ms. Pullen cited statistics related to the economic impact of destination weddings and said the Wedding Association could not survive with the draft noise ordinance. She said if a negative experience related to the noise ordinance were to be posted on social media, there would be no more weddings and all would be lost.
- 14) Tami Thompson said her family's business had to be reinvented into the spa industry and that Koru Village and Beach Klub was having a positive influence on area young people. She described her efforts as an advocate for young people to enhance their lives with culture, education, and skills. She outlined the intense work being done to bring children's programming to the venue including Teen Night on Wednesday evenings. She described it as the most positive thing in a long while and said it is classy and clean and that there have been no incidents of adverse behavior. She called on the Board to act on the ideas submitted tonight by the people and she presented handwritten letters from teens.
- 15) Roland Mulder, owner of Captain Rolo's, said the proposed ordinance is ridiculous. He asked how enforcement decisions will be made and what criteria will be used? He said it is unconstitutional and discriminatory that the ordinance will mainly be enforced around establishments that provide entertainment as opposed to a rental property where someone may sit on the deck and listen to a personal iPad. He added that 90% of the effects from the proposed ordinance will be felt in Hatteras

and not other portions of unincorporated Dare County. Mr. Mulder said the people have suffered enough at the hands of the Federal Government and why should the County be making it more difficult for its own residents to make a living. He called for a more reasonable and fair solution.

- 16) Jack Quidley asked that the Board look at the impact the proposed ordinance will have on the people. He said there should not be exemptions for one and not another. He asked if the Board was going to shut down a church that makes too much noise. He called upon the Board to be fair and take the time to look further at this issue.
- 17) James Fletcher asked for an exemption for the entire commercial fishing industry. He said whatever ordinance is passed must exempt commercial fishing. He added that he has seen well-intended ordinances be turned around and used later in an adverse way.
- 18) Tatum Clements, Assistant Director of Operations at Koru Village, described her work with brides planning destination weddings. She said that today she received an email from a couple asking if they can put a hold on their plans for 2013, in order to see what happens at tonight's Public Hearing on the noise ordinance. Ms. Clements said word of this is spreading quickly and today's email is proof that we will lose wedding business if this ordinance passes. She said we need an ordinance that is fair to visitors, residents and businesses.
- 19) Grace Souter, Director of Operations at Koru Village, said the noise ordinance needs to protect everyone. She said businesses are looking for ways to promote tourism and that quiet hours are a good idea. She added that by implementing a 24-hour ordinance, you will make it affect anything that someone thinks is too loud. Ms. Souter called on the Board to base their decision on what is best for everyone, not just one side.
- 20) Tracy Morris thanked everyone who came tonight. He said the proposed ordinance puts businesses in jeopardy and he is against it. He said he gets asked a lot by people where they can go for entertainment. He explained that the proposed noise ordinance will reduce the available options. Mr. Morris told the Board he hopes they do not pass this ordinance tonight and called them to instead consider something that takes into account the needs of everyone.
- 21) Joe Thompson from Koru Village assured his employees that they will have a job even if the proposed ordinance is passed and causes an end to the wedding business. He asked what is driving the complaints. He said it must be the few that complain rather than participate in things. He informed the Board that he recently called someone who complained about a band before the group had even started performing. He asked the Board to step back and reevaluate this. He also asked that the wedding and tourism service industries be exempted in the ordinance's final form and offered to participate in discussions.
- 22) Gary Dowdy, Frisco Mini Golf and Go-Karts, said the proposed noise ordinance would put him out of business. He expressed hope that the Board will take into account the severity of the impact it would have on business.
- 23) Ryan White, business owner and musician, said nothing is gained by this noise ordinance. He said he is a member of Outer Banks for Liberty and the Outer Banks Young Republicans and had spoken to many in these groups who agree that this proposed ordinance is a bad idea. Mr. White said it is bad for business and should be shelved.
- 24) Bruce Jones, a D.J., said being recently engaged he was planning his wedding to be at the Koru Beach Klub. However, he said when the noise ordinance came up he and his fiancée put the idea on hold. He called on the Board to take into consideration what the people have said during the Public Hearing.
- 25) Michael Midgett said he wanted to speak out against the proposed noise ordinance. He said it will negatively affect our economy.

- 26) Barry Wells said 90% of his income is from his D.J. activity. He told the Board the proposed ordinance would kill his livelihood. He said our beaches have been taken away, do not take away our businesses.
- 27) Billy Mosely said he was a Dare County property owner, surfer, and general contractor. He said he trusted that the Board would make smart choices when considering this noise ordinance.

Chairman Judge closed the hearing at 6:51 p.m.

***Recess: 6:52 p.m. – 7:16 p.m.***

The Chairman thanked everyone who participated in the public hearing. He explained the history of the proposed ordinance. He said that although a public hearing was not required, the Board wanted one to hear what people had to say. He added that an ordinance has been in effect for 30 or 40 years and no specific action is required tonight except for conducting the public hearing. Chairman Judge said we understand the position of the people who spoke tonight and noted that this is a countywide issue for all of unincorporated Dare County. It said it may be appropriate for all 7 members to tour the County and monitor sound levels at various events to help make an informed decision. Vice-Chairman Burrus recommended tabling the issue for the time being. He asked the County Manager to look at the Noise 4.0 document that was proposed tonight by the people and get back to the Board. He added that the commercial fleet in Wanchese should be able to operate. Mr. Burrus said we have work to do and need to get more information. He reminded everyone that the existing noise ordinance is very subjective and allows law enforcement to shut down events that do not comply. Commissioner Richard Johnson suggested bringing the issue back to the Board in October. He said the County is not trying to put people out of business and wants to be fair to people, including those who need to get up early in the morning to go fishing. He noted that the Sheriff's Office needs an ordinance that is not totally subjective. He urged people to look at the existing ordinance in order to understand what is in effect at the present time. Commissioner Tillet said she would like to go on the record saying that she supports businesses and does not want the proposed ordinance to hurt them. She recommended not making a decision tonight in order to have time to digest what was said during the public hearing. Commissioner Dutton remarked that the entire Board is business friendly. He acknowledged that the proposed ordinance needs tweaking and assured those who came to the public hearing that the Board will be looking out for them. Commissioner Mike Johnson said it would not be wise to rush into this ordinance. He called for the Board to do something that will benefit everyone and noted that it may take some time to accomplish it. He added that we do not need wedding and event cancellations. Commissioner Shea thanked everyone for coming to the public hearing and expressing their views. He assured the people that the Board does not want a knee jerk reaction and will digest what was presented tonight and do something that is good for everyone. The County Manager said no motion was needed tonight and he will make changes based on what was said tonight and report back to the Board. Commissioner Richard Johnson said he suggested bringing it back in October in order to accommodate those who are holding off their wedding bookings to see the status of this ordinance. He said if we delay action too long, it could hurt people's plans. Chairman Judge noted that similar to when a tax is enacted, the effective date could be a year in the future, perhaps January 2014. He said this would give people time to adapt and time for the Chamber of Commerce and the Visitor's Bureau to publicize details of the ordinance so people could make plans. Manager Outten said the ordinance will be brought back to the Board when the revisions are ready. No action was taken on the proposed noise ordinance. The County Manager was instructed to review and consider input from public comments in preparing revisions to the draft noise ordinance, which will be presented to the Board at a future date when the revisions are ready.

#### **ITEM 18 – PUBLIC HEARING – ELECTRONIC GAMING OPERATIONS (Att. #11)**

At 7:40 p.m., the Dare County Board of Commissioners held a Public Hearing to Receive input concerning Electronic Gaming Operations. County Manager Outten conducted the hearing and explained the procedure for making comments. The following people spoke:

- 1) Gary Dowdy Jr., owner of Frisco Mini-Golf and Go-Karts and the Pot of Gold internet café, told the Board he was not playing beat the clock getting his business opened. He explained that his lease was signed June 4<sup>th</sup>, and equipment was ordered on June 5<sup>th</sup>. He offered copies of his lease and other documents. He said if regulations are passed as proposed he is out of business at the Pot of Gold. He added that his machines at the Mini-Golf and Go-Karts would have a much smaller impact. Mr.

Dowdy said he is in business to make money and started this project when it was legal to do so. He added that he thought about ways to make it more acceptable to the County and was not trying to do anything against the County. He said he should be able to operate, and continue to operate, because the laws permitted it when he bought his equipment. Mr. Dowdy reported that since opening on July 4<sup>th</sup>, there has not been a single incident of noise, parking problem or any legal issues.

- 2) Jeremy D. Adams spoke representing the Outer Banks for Liberty and the Outer Banks Young Professional Republicans. He said the State has an education lottery. He explained that he does not participate in it and views the lottery as a tax for people who do not know how to do math. He said he believes gambling is not a very good idea, however, the principles of liberty demand that everyone has the ability to do with their property and their money as they please, as long as they do not take liberties away from anyone else. Mr. Adams recited a portion of the NC constitution and said any right the government has comes only from the power that people have, and that all rights belong to the people. He told the Board it should be very liberal in allowing gambling operations from private citizens who run businesses.
- 3) Michael Midgett said Mr. Adams said a lot of the same things that he believes. He said everyone deserves to pursue that they want to do. He added that if North Carolina can have a lottery, the citizens should have the right to do so.

Chairman Judge closed the hearing at 7:46 p.m.

In response to a question raised by Commissioner Shea about grandfathering, there was considerable discussion of the issue. The County Manager said the activity can be regulated and it would apply to whoever is there based upon how it was written. The Chairman suggested that the regulations should be considered first and then the Board could look at any existing businesses that may not be conforming. Commissioner Richard Johnson said it is unfair for there to be only two machines for an entire site, such as a strip mall. He said it should be two per business. Commissioner Mike Johnson reminded the Board that the County was trying to develop something that would comply with the court's ruling, while not making this activity a welcome business in Dare County. He said this looks like something that would happen in Myrtle Beach and we should only allow the least amount that will keep the County out of court. There was extensive discussion on the issue of limiting the number of electronic gaming machines in a business location or a business site. The Planning Director said the proposed ordinance would shut down places with a large number of machines operating as a stand-alone electronic gaming business. The Board discussed at length how much time should be allowed for businesses to become compliant with the regulations. Commissioner Mike Johnson said that he had a conversation with Mr. Dowdy and has a problem shutting down a business without the owner being able to recoup his investment. The merits of 12 months compared to 24 months were explored at length by the Board.

**MOTION:**

Vice-Chairman Burrus motioned that the draft regulations on electronic gaming operations be accepted as is with a revision in the first sentence of item #7 on the staff report summary to reflect that any existing business that may have gaming machines will have 24 months from the date of adoption to be approved and become compliant with the regulations, and that the last sentence of #7 be dropped.

Commissioner Shea seconded the motion.

VOTE: AYES (4) Chairman Judge, Vice-Chairman Burrus, Commissioner Jack Shea, Commissioner Mike Johnson.

NOES (3) Commissioner Virginia Tillett, Commissioner Richard Johnson, Commissioner Max Dutton.

During discussion on the motion, Commissioner Tillett said she prefers that the ordinance allow two (2) machines per business, instead of limiting it to two per business site. Commissioner Richard Johnson said it seems unfair that the first business operator in a shopping mall gets a chance to have a machine and others do not. Commissioner Shea said that the County should not encourage a proliferation of these machines and that is why he seconded the motion. Commissioner Dutton noted that the Planning Department has done a great job preparing the ordinance, but it is not right to hold someone back from creating business.

**CALL FOR THE QUESTION**

Commissioner Mike Johnson called the item to question, which would end discussion.

VOTE: AYES unanimous

## **MOTION**

Commissioner Shea motioned that the proposed regulations for electronic gaming operations as drafted by the Dare County staff and recommended for adoption by the Dare County Planning Board based upon a review of the 2009 Dare County Land Use Plan are consistent with the policies of the 2009 Dare County Land Use Plan and other officially adopted plans of Dare County and is in the public interest of Dare County by providing for regulation of electronic gaming operations in unincorporated Dare County to comply with recent court rulings and to address the impacts associated with these land uses. Policy LUC#1 identifies the importance of the County's coastal village heritage and continuing efforts to preserve that heritage with appropriate land use guidelines and regulations. The adoption of these regulations provides for the orderly location of electronic gaming operations throughout unincorporated dare County in certain commercial zoning districts and in the unzoned areas by establishing appropriate standards and regulations to address their impacts on surrounding land uses and neighborhoods. Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

## **ITEM 19 – PUBLIC HEARING – FINANCING AND REFINACING OF PROJECTS (Att. #12)**

At 8:13 p.m., the Dare County Board of Commissioners held a Public Hearing to receive input concerning the Financing and Refinancing of Projects. County Manager Outten conducted the hearing and explained the procedure for making comments. No one in the meeting room responded. Chairman Judge closed the hearing at 8:14p.m. Finance Director, David Clawson explained that discussion and action on the financing and refinancing of projects would occur as part of Agenda item #10.

## **ITEM 20 – CONSENT AGENDA (Att. #13)**

### **MOTION**

Commissioner Shea motioned to approve the Consent Agenda:

- 1) Approval of Minutes (07.16.12)
- 2) Budget Amendment – NCDACS Pesticide Container Recycling Program Grant
- 3) Emergency Medical Services (EMS) – Position Reclassification
- 4) Budget Amendment – Dare County Tourism Board Grant
- 5) Community Child Protection Team Annual Report
- 6) Road Request – Spin Drift Road, Salvo, NC
- 7) Public Works / Sanitation Contracts
- 8) Tax Collectors July 2012 Reports

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

## **ITEM 21 – BOARD APPOINTMENTS**

- 1) A.B.C. Board

Commissioner Dutton and Commissioner Shea motioned to reappoint Bobby Owens.

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

- 2) Dare County Center Advisory Board

Commissioner Tillett motioned to reappoint Flossie Tugwell and Betty Mann & appoint Catherine McCabe and Fred Brumbach.

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

- 3) Older Adult Services Advisory Council

Commissioner Tillett motioned to appoint Renate Macchirole to the seat last held by Lynn Thomason, South Beach area & appoint Julia Haywood to the seat last held by Henry Haywood, Adult Services Representative.

VOTE: AYES unanimous

4) Planning Board

Commissioner Mike Johnson motioned to appoint Michael Barr.  
Vice-Chairman Burrus seconded the motion.  
VOTE: AYES unanimous

5) Roanoke Island Community Center Board

Commissioner Tillett motioned to appoint Dorothy Tillett.  
Vice-Chairman Burrus seconded the motion.  
VOTE: AYES unanimous

6) Upcoming Board Appointments for September and October 2012

The County Manager said there are no upcoming appointments for September. He announced the Older Adult Services Advisory Council and the Parks and Recreation Advisory Council for October.

**ITEM 22 – COMMISSIONERS’ BUSINESS**

Commissioner Max Dutton

- He expressed his appreciation for Service Pin recipient Mark McKay.
- Congratulations were extended to Employee of the Month, Debbie Alexander

Commissioner Virginia Tillett

- Acknowledged Allen Burrus’ brother who was recently featured on the front page of the newspaper.
- She reported on workshops she attended at the NCACC annual conference in Raleigh. She described a session on hurricane preparedness led by Norma Houston who cited Dare County as a shining star who did things correctly.
- Commissioner Tillett presented quarterly visitation reports that have been done on the area nursing homes. She asked the Commissioners to visit these facilities and see what our citizens are getting. She provided the Clerk with copies of the reports for distribution to the Board.

Vice-Chairman Allen Burrus

- He thanked the employees who were honored for service pins and Employee of the Month.
- Expressed his concern about the Buzzy Lane situation.
- Thanked all those who volunteer their services for various County activities.
- Complimented the Dare County Tax Collector for doing an excellent job.
- Vice-Chairman Burrus said changes to the noise ordinance should exempt Fire Departments and Civic Centers from any special permit process because the events they host raise needed money for charity.
- He expressed appreciation to the other members of the Board of Commissioners for the time they put into their community service. He also thanked their families.

Commissioner Jack Shea

- The service pin recipient, Mark McKay was thanked for the work he does.
- Deborah Alexander, the Employee of the Month was congratulated

Commissioner Richard Johnson

- Explained that community and athletic events are exempt in the proposed noise ordinance.
- Asked the County Manager to request that the State to do something about water in the ditches near the Manteo Head Start Center.
- He said it is unfair to give the people on Buzzy Lane 90 days notice to leave their homes. He asked that the County Manager be given the authority to write a letter now on behalf of the people on Buzzy Lane.

Commissioner Mike Johnson

- Expressed his interest in taking whatever time it takes to do something about the situation on Buzzy Lane

### Chairman Warren Judge

- He reported on a Roanoke Island Commission meeting he attended and explained that this group is involved in Buzzy Lane because it is under the State Department of Cultural Resources. He said they take the rental income from Buzzy Lane and put it into the Roanoke Island Commission. The Chairman said at their July 27<sup>th</sup> Board Meeting, Secretary Carlisle was in attendance when he asked that they allow people on Buzzy Lane to connect to the County water system. He said they denied granting an easement for the County to run a water line to their homes. Mr. Judge described this as “Black Eye Number One” for the State of North Carolina. He explained that the people on Buzzy Lane own their homes, but rent lots from the State. He said the homes are substantial and would take a major effort to move. He said the State is giving the people 90 days notice of eviction. Mr. Judge said when this issue came up in 2006 a letter was written and one should be done now. He said it is an outrage and explained that promises were made that these people could stay in their homes. The Chairman said he talked with Senator Stan White who has spoken with Secretary Carlisle. Mr. Judge said he sent the Secretary photographs of the house and urged the Board of Commissioners to make this a real issue in the public’s eye of what the State is doing to these people. He said if the Board approves, pressure will be put on the situation. By consensus, the Board agreed. Commissioner Mike Johnson said the Board should not back down or compromise on this issue.
- Chairman Judge addressed the issue raised by the Food Lion Manager who spoke during Public Comments. He said although considerable progress has been made, it will take years to build appropriate pathways. He said we need a countywide attempt to educate drivers, cyclists, and pedestrians using resources that NCDOT already has. Mr. Judge said a point person is needed to coordinate the educational effort. He asked the County Manager to talk with sources in Raleigh to see if reflective gear should be required. He recommended that people cross at the crosswalks and NCDOT needs to add more crosswalks. Commissioner Shea noted that he has frequently seen bicyclists wearing dark clothing at night and riding the wrong way on the road without lights or reflectors. Vice-Chairman Burrus said those who hire people should be involved in the educational process and be cautious about turning staff out late at night in the dark. Chairman Judge said he brought up this issue to help prevent tragedies. He noted that he was not responding specifically to the recent tragedy, but was speaking in general terms. Commissioner Tillett said this is something that needs to be considered.

### **MANAGER’S/ATTORNEY’S BUSINESS**

- 1) County Manager, Robert Outten informed the Board that the North Carolina Association of County Commissioners (NCACC) has set September 17, 2012 as their goals deadline. He asked Board Members to send any goals they want to submit before the deadline to the Clerk for forwarding to NCACC.
- 2) Mr. Outten explained that the Community Care Clinic has lost a grant and is having difficulty paying rent at their current facility. They have asked if they can use rent-free space at County property in Nags Head when CSI moves out of the building and have the County cover the cost of utilities. The Manager said their request is for the red brick building that now houses the Probation Office, which would then move to general office space in one of the other buildings. He explained that the area now used by Probation has needed exam rooms with plumbing that could be better utilized by the Clinic. This would prevent renovations to create exam rooms. The Manager said he did not have a problem with the request if the Board was willing to provide rent-free space with utilities. He added that the County is doing that now, so it would not be anything different for the budget. By consensus, the Board agreed for the Manager to move in that direction and bring back something more formal later.
- 3) The County Manager reported that the Dare County Sheriff’s Office and others have been asked to send Deputies to the Democratic National Convention in Charlotte to provide security. The cost is approximately \$44,000 for which the County will be reimbursed. He said a Budget Amendment is needed to cover the expenses and reimbursed revenue. Mr. Outten asked the Board for authorization to sign the Budget Amendment. **(Att. #14)**

### **MOTION**

Commissioner Mike Johnson motioned to authorize the County Manager to sign the Budget Amendment. Commissioner Dutton seconded the motion.

VOTE: AYES unanimous

- 4) Mr. Outten explained that the new billing company has discovered that when EMS transports a Medicaid patient to and from a physician's office, the County has billed for both trips. He said Medicaid will only pay for one way. He presented a Budget Amendment that corrects the process and sets the Medicaid trip charge at \$79.85 which is the proper amount under Medicaid guidelines. (Att. #15)

**MOTION**

Commissioner Shea motioned to approve the Budget Amendment and authorize the County Manager and Chairman to sign.

Vice-Chairman Burrus seconded the motion.

VOTE: AYES unanimous

- 5) The County Manager said the Rodanthe Beach Access Park is moving forward and the Engineer's proposal for the first range of services for preliminary design has been received. He said the amount is \$3,450 and asked for authorization to proceed.

**MOTION**

Vice-Chairman Burrus motioned to authorize the County Manager to accept the proposal from the Engineer for the first phase of design of the Rodanthe Beach Access Park.

Commissioner Shear seconded the motion.

VOTE: AYES unanimous

AT 9:29 P.M. THE DARE COUNTY BOARD OF COMMISSIONERS ADJOURNED UNTIL 9:00 A.M. ON TUESDAY, SEPTEMBER 4, 2012.



Respectfully submitted,

By: \_\_\_\_\_

Gary Gross, Clerk to the Board

APPROVED:

By: \_\_\_\_\_

Warren C. Judge, Chairman  
Dare County Board of Commissioners