

MINUTES

The Town of Manteo Board of Commissioners held their Regular session in the Manteo Town Hall meeting room February 6th, 2002.

The following members were present: Mayor Lee Tugwell
Commissioner Curtis Creech
Commissioner Dellerva Collins (late)
Commissioner David Farrow
Commissioner Edward Etheridge
Commissioner Stuart Wescott
Commissioner H.A. Creef, Jr.

The following member(s) were absent: None

Also present at the meeting were: Town Manager-Kermit Skinner, Jr.
Asst. Town Mgr./Planner Shannon Twiddy
Town Clerk-Becky Breiholz
Finance Officer-Sally DeFosse
Town Attorney-Dan Merrell
Police Chief-F. T. D'Ambra

Mayor Tugwell called the Regular meeting to order at 7:30 p.m. followed by a moment of silent meditation and the Pledge of Allegiance.

SUBJECT: To amend the Consent agenda. Town Manager would like to add a closed session for personnel matter NCGS 143.318.11 (a) 6. and Commissioner Creech would like to add a closed session for acquisition of real property NCGS 143.318.5

SUBJECT: ADOPTION OF AGENDA AS PRESENTED OR AMENDED

MOTION: Commissioner Creech seconded by Commissioner Farrow to approve the agenda as amended was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Creech, Wescott, and Creef. Noes: None. Absent: Collins

SUBJECT: APPROVAL OF MINUTES- Regular Meeting January 2, 2002

MOTION: Commissioner Creech seconded by Commissioner Farrow to approve the minutes was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: Collins

SUBJECT: APPROVAL OF MINUTES- Workshop Session January 16, 2002

MOTION: Commissioner Creech seconded by Commissioner Farrow to approve the minutes was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

PUBLIC COMMENTS

Jennifer Frost-Manteo business owner. She would like to see the specifications of water tower, she also suggested the Board have their meetings televised.

Betty Mann-Cemetery Board and resident is disturbed about the plans to put a water tower on the property that is for cemetery expansion and doesn't know if it is worth her time to continue on the cemetery board if this is approved.

Angel Khoury-Mother Vineyard and Downtown Manteo - Read a resolution passed by previous board for the preservation of the cemetery as was designated a historic site. She is opposed to the placing of a water tower there. She also read a letter from Meredith Midgett who is also opposed to the water tower being placed on the cemetery property.

Paula Midgett-John Borden Street does not want a water tower on cemetery property.

Terri McDowell-Agona Street-researched the minutes from 1988 to 1991 and according to those minutes it has always been the intent for that property to be used for cemetery expansion.

Melodie Leckie-Sir Walter Raleigh-opposed to a water tank on proposed cemetery.

Mrs. Tucker-Eleanor Dare does not want water tank on proposed cemetery.

Mr. Basnight-adjacent property owner in favor of a cemetery.

Commissioner Collins arrives at 7:38 p.m.

SUBJECT: Reports by Leo Green, Green Engineering –Mr. Green stated to achieve the most benefit from proposed improvements, both water quality improvements and residual pressure enhancements, it is imperative that the tank and distribution grid improvements be centrally located, and a site of sufficient size to accommodate construction equipment and material lay-down be selected for the orderly erection of the elevated tank. The undeveloped site chosen on Lord Essex, at the cemetery, meets all requirements for this installation. Its proximity to the 12-inch grid on Devon Street along with the high ground elevation of the area are two other prime considerations for this site selection. This location is also an alternative to the school site located on Wingina Avenue. The school site was identified in the original application for project financing, Dare County Board of Education had first given permission to use the Elementary site for the placement of the water tank but rescinded that offer several weeks later. Mr. Green also stated that there is not a lot of interaction with the Fire Department but they should be aware of the low conditions from the fire hydrants of the distribution grids of the Town. Mr. Green also stated that the fire rating is impacted by the size of mains and the quantity of flows that can be generated from these mains and hydrants and that the fire insurance

rates are affected by this. An application to state was made to improve the water quality to take the old lines out of the grid and to replace lines large enough that would provide adequate fire flow and give the capability of good water throughout the system. that they are center in the system not on the ends. Mr. Green described the water tank as a single sphere and detailed plans are on file here that have been approved by the state. He stated that the \$588,000 grant and loan commitment could be lost if the Town does not move ahead with the project. Mayor Tugwell allowed the public ask Mr. Green questions and a lengthy discussion took place with members from the audience and commissioners asking questions. Mr. Jack Wilson stated on where the placement of the tank is not needed for water quality, just replacement of the lines is needed to improve water quality. Discussion took place on the additional cost for lines if the tank is placed elsewhere. Other locations were discussed behind the fire department, the high school, and possibly going back to the school board for use of the elementary. Commissioner Collins opposes using the cemetery and suggested it be placed where old sewer plant is on Bowsertown Road. Other suggestions were of making a trade with Malcolm Fearing for property next to the fire station for the post office property. Commissioner Creef stated it was bought for cemetery purposes and would like to see the tank somewhere else besides the cemetery. Commissioner Wescott summed it up to the audience that we are trying to replace all the water lines in town and in order for the Town to obtain a grant we also had to have a water tank as part of the grant funding and it does not make sense to replace water lines downtown and place the water tank away from where the replacement lines are going to be.

MOTION: Commissioner Farrow seconded by Commissioner Creef to not approve placing the proposed water tank on cemetery property on Lord Essex Street was approved by the following vote: Ayes: Commissioner Farrow, Creef, Wescott, Etheridge, Collins and Creech. Noes: None. Absent: None.

RECESS

SUBJECT: Nominations and recommendations for vacancies on the Board of Adjustment. Two regular terms expired Nancy Peele and Christine Walker. There are two appointments for three year terms. Commissioner Wescott tried to reach Ms. Peele to see if she had an interest in being reappointed but was unable to reach her. Mayor Tugwell opened the floor for nominations. Commissioner Etheridge nominated Melodie Leckie and Mayor Tugwell commented Jack Gregory expressed an interest in serving on this board.

MOTION: by Commissioner Wescott seconded by Commissioner Collins to close the nominations was approved by the following vote: Ayes: Commissioner Farrow, Creef, Wescott, Etheridge, Collins and Creech. Noes: None. Absent: None.

MOTION: by Commissioner Wescott seconded by Commissioner Creech to appoint Jack Gregory and Melodie Leckie to Board of Adjustment was approved by the following vote: Ayes: Commissioner Farrow, Creef, Wescott, Etheridge, Collins and Creech. Noes: None. Absent: None.

Mayor Tugwell moved the Planner's agenda ahead of the Finance Officer agenda.

PLANNER'S AGENDA

SUBJECT: Discussion and consideration of amendment to Sailfish Point site plan- Pirates Cove would like to change the original floor plan that had smaller decks to another model that has wider decking. In an effort to allow the change in proposed buildings a recombination of the lots will be required to make each lot slightly wider. The changes are minimal and no adverse effects are anticipated. Staff recommends approval.

MOTION: Commissioner Creech seconded by Commissioner Wescott to approve the amendment to Pirates Cove Sailfish Point site plan was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

FINANCE OFFICER AGENDA

SUBJECT: Budget Amendment #11-Mid Year adjustments & Planning Department Travel & Training. Increase Governing Body travel and training by \$1500, increase Planning Board stipends by \$150, increase Planning travel and training by \$2,500, increases/decreases to Workers Compensation all departments and increase Governor's Crime Commission LLEBG Grant proceeds and expenditure to actual award amounts.

MOTION: Commissioner Wescott seconded by Commissioner Etheridge to approve Budget Amendment #11 was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

SUBJECT: Request for authorization to spend funds. Ms DeFosse commented that in the 2001-2002 budget, \$6,500 was appropriated under Public Buildings, Capital Out-lay Equipment. These funds were earmarked to purchase a new computer network server for the Town Hall. The Town was awarded a technology grant which paid for this so the \$6500 was frozen so a budget amendment won't be needed. Ms.DeFosse is requesting authorization to spend an amount not to exceed \$1,500 from the Public Buildings, Capital Outlay-Equipment line item for the purchase of a desktop computer, which would be placed in the Town Hall meeting room for the purpose of operating the minute recording software. Currently Shannon's laptop computer is being used to operate this software and must be moved back and forth for every meeting and causes the computer to be reconfigured each time. Purchasing of a computer would allow for the minute recording software to be permanently set up and ready to operate.

MOTION: Commissioner Wescott seconded by Commissioner Etheridge to authorize the spending for a computer not to exceed \$1500.00 was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Wescott, and Creef. Noes: Commissioner Creech. Absent: None

OLD BUSINESS

SUBJECT: Budget Amendment #10 Cemetery Fence . This item was presented at the workshop session and Commissioner Farrow asked that it be placed on the agenda for the February regular meeting. This item was removed from the agenda since the cemetery board is looking into other options for a fence.

SUBJECT: Updates on Re-codification of Ordinance Book; restoration of minute books and Town Hall plaque. Town Clerk Becky Breiholz informed the Board of the progress of several projects. The re-codification of the ordinance book is done and the new ones arrived at the Town Hall on Monday, and they have been handed out to the Board of Commissioners. The restoration of one minute book was presented to the Board for the inspection and the Town Hall plaque has been ordered from Clifton and Clifton,

NEW BUSINESS

COMMISSIONER'S AGENDA

SUBJECT: Discussion and consideration of resolution asking the state to help fund the location of underground utilities. Commissioner Creech stated he and Bobby Owens have been working on asking the state to help pay for the placing of utilities underground on the north side of the courthouse

MOTION: Commissioner Creech seconded by Commissioner Collins to support Resolution 2002-03 was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

SUBJECT: Appointments to the Police Advisory Board, Board of Education designees: Jeff Witt and Angela Gard. At the request of Chief D'Ambra Commissioner Creech would like to submit these names be added Police Advisory Board, Commissioner Creech also commented that he will furnish the Board with the Police Advisory Board minutes at the next workshop. Chief D'Ambra commented that Judge Barnes has also expressed an interest in serving on this Board.

SUBJECT: School of Design Report Commissioner Creech-the estimation given to them was a shopping list and the Board is welcome to pick from some of those items and we don't have to do everything that was suggested in their letter. Commissioner Creech suggested that they formalize the plans at the joint workshop with the planning board. Staff was directed to prepare RFP's and staff hopes to have a list and report at the mid month workshop.

SUBJECT: Report on Senior Citizen Center and discussion and consideration of a new Resolution. (Commissioner Collins) This had been previously approved as Resolution 2002-01 and had the words Community Center. Ms. Collins stated after talking with others she was advised that there are funds available for a senior citizen center more so than a community center and it was suggested that the wording be

changed to state only Senior Citizens Community Center. Ms. Collins stated if approved she would present it to the Dare County Board of Commissioners in March.

MOTION: Commissioner Collins seconded by Commissioner Creech to approve the amended Resolution 2002-02 as amended was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

TOWN MANAGER'S AGENDA

SUBJECT: Town Manager reports including Department Head reports. Town Manager Kermit Skinner's report and department head reports will be made a part of these minutes. The RFP's for the Marshes Light House have been received and they will be given to the Board at their workshop as a possible action item.

TOWN ATTORNEY AGENDA

SUBJECT: Town Attorney report on sale of Boat Ditch property. Mr. Merrell has been out of town last week and Ms. McCown who represents the buyer is out of town this week, and after he talks with Ms. McCown he will have something to report at the February workshop session. Commissioner Farrow commented "this contract has gone on long enough, seven months and the buyer has tried to negotiate the property with other people for a better deal." Commissioner Farrow stated that on October 22nd "he tried to get the DOT to trade this piece of land that he was planning on buying for 1115 feet of bulk heading, which the Board had received a letter from the NCDOT and they turned him down because he did not own the property, it belonged to the Town." Commissioner Farrow stated "I feel this has gone on long enough and I would like to make a motion to declare this contract null and void as of today." Commissioner Etheridge seconded the motion. Commissioner Creech asked if this could be done and Dan Merrell commented "that unless you have time of the essence in the contract which there was no time of the essence in this contract the only way for a party – an individual cannot unilaterally void a contract, the law says that, the laws of this State say that you have to have a reasonable period of time to close." Commissioner Farrow-"Seven months" Dan Merrell-"I believe Mr. Dixon's position is going to be of course I don't represent Mr. Dixon but I hear that Mr. Dixon's position is going to be that he is negotiating with the NCDOT as to where their easement was on this property and that is why he is saying there has been a delay and we have been ready to close." Commissioner Creech commented that this item was discussed at the budget workshop, "I called Mr. Dixon and he told me as of two days ago that he has sent our Town Attorney a demand letter demanding that we close but I don't know if that is true." Mayor Tugwell commented that making a motion to publicly breach a contract is a dangerous way to go. Commissioner Farrow commented this should have been settled a long time ago, that Mr. Merrell should have settled this a long time ago. Dan Merrell-"I can't force the buyer to close" "Commissioner Farrow can't you put a deadline or something". Mr. Merrell stated-"a reasonable time is what a judge and jury says is a reasonable time, and the judge and the jury will look at all the circumstances and determine whether or not there has been a reasonable period of time." Mr. Merrell "I

have been in touch with Mr. Dixon's attorney on a number of occasions and it seems like every time they have another reason or excuse. "I have not received a letter demanding the Town close." Commissioner Farrow-"My motion still stands." Commissioner Farrow was asked if would consider sending a demand letter and his response was "I'm not considering sending him anything." Commissioner Creech stated he thought we agreed to send him a demand letter at the workshop, Commissioner Farrow "I don't recall it." Commissioner Farrow's opinion is that it is null and void because he did it by waiting so long and he also commented that he may make a motion that property should be appraised before we sell it. Mayor Tugwell stated that Commissioner Farrow's motion is a unilateral breach of contract. Commissioner Farrow asked how is it a unilateral breach "you said if someone this is not someone this is Manteo and this is a board." Mayor Tugwell commented that "you are basically asking us to take a vote to breach a contract that we have entered into, have earnest money, which could likely lead us to litigation, would you consider amending your motion to allow for a reasonable period of a week to close." Commissioner Farrow stated that he thinks this position could be defended because it has taken so long. Mr. Merrell stated he thought "you could defend the position better if you put them on notice that they have to close by a certain period of time or you would deem it-I think that would be a better position to have when you go before the judge than for you to just say we declare the contract null and void." Commissioner Farrow commented that "there are six board members, a town manager and an attorney and this has been allowed to go on too long." "For seven months." Commissioner Farrow stated he would change his motion to allow for a week. Commissioner Creech commented "so your motion will state to give him a seven day demand letter requesting closing." Commissioner Farrow commented "Exactly." Commissioner Farrow commented that "the Town Attorney can word it how he pleases but a week to settle this contract or the contract is null and void." Mayor Tugwell stated that Commissioner Farrow is amending his motion to change it to a week if he does not sign in a week he will be considered in default of the time limits of the contract. Commissioner Creech asked "when does his time start?" Commissioner Creech stated he would think from his receiving of the letter. Commissioner Farrow also stated that it should be sent certified mail and from the time the it is signed. Commissioner Collins stated "I'll second that motion." Mayor Tugwell stated we already have a second and Commissioner Etheridge commented "I seconded the first motion not this one." Discussion took place on amending the motion and Mayor Tugwell asked the Town Clerk Becky Breiholz what the rule book stated, she commented that a second would be needed on the amended motion, Mayor Tugwell asked what happened to his original motion, she commented that the Board should vote on the amended motion and then go back and vote on the original motion." Mayor Tugwell stated the original motion was withdrawn; Dan Merrell read from the Suggested rules and procedures the Board uses and stated "the motion may be withdrawn by the introducer at any time before it is amended or before the presiding officer puts the motion to vote." Mayor Tugwell asked Commissioner Farrow "you are withdrawing the original motion and making a new motion." Commissioner Farrow then commented that he was not withdrawing his original motion and as far as he was concerned it was over. Commissioner Etheridge commented that he can't believe any judge or jury in Dare County that would find the town guilty of anything if anything they would probably find him guilty for making the town wait for

seven months, holding up that property that we could have gotten rid of and had the money in the bank drawing interest and we haven't received a cent. Commissioner Creech commented that "we are getting ready to cancel a real estate deal without giving the person ample warning and he has no idea this was going to happen and that sending him a letter is not only the smart legal thing to do but the right thing to do." Mayor Tugwell commented that the agenda item was a report from the attorney not for consideration of rescinding the contract. Discussion on what was a reasonable time and Commissioner Etheridge asked Mr. Merrell if there was any time limit on the contract, and Mr. Merrell commented that it indicates that the closing and transfer of title will take place ten days after it settles. "The deed states that the Board approved the sale on 18th of July, deed prepared on 30th of July and at that time told Mr. Dixon we were ready to close and Mr. Dixon stated he was not ready because he was negotiating with the state with regard to the state easement across that property and how much of the states easement was on this property and that is where it was left until December 20th where Linda McCown contacted Mr. Merrell and he forwarded a copy of the deed and told her we had been ready to close since July 30th."

MOTION: Commissioner Farrow seconded by Commissioner Etheridge to Void the contract with Mr. Dixon for the sale of the boat ditch property was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creef. Noes: Commissioner Wescott, and Creech. Absent: None.

MOTION: Commissioner Wescott seconded by Commissioner Creech to enter into closed session NCGS 143.318.5 purchase of real property was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

MOTION: Commissioner Creech seconded by Commissioner Collins to exit closed was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None.

No Action taken-by board policy closed session minutes are sealed. Commissioner Creech withdrew his closed session agenda item NCGS 143.318.5 acquisition of real property

MOTION: Commissioner Etheridge seconded by Commissioner Creech to enter into closed NCGS 143.318.11 (a) 6 personnel matter was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None.

MOTION: Commissioner Creech seconded by Commissioner Collins to exit closed session was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

No Action taken-by board policy closed session minutes are sealed

MOTION: Commissioner Etheridge seconded by Commissioner Creech to enter into closed NCGS 143-318.10 (e) to approve minutes for NCGS 143.318.11 (a) 6 personnel matter was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None.

Approval of Sealed Closed Session minutes January 16, 2002.

MOTION: Commissioner Creech seconded by Commissioner Etheridge to exit closed was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

MOTION: Commissioner Creech seconded by Commissioner Etheridge to approve the minutes of January 16, 2002 closed session sealed minutes was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None

MOTION: Commissioner Creech seconded by Commissioner Etheridge to adjourn at 11:00 p.m. was approved by the following vote: Ayes: Commissioners Farrow, Etheridge, Collins, Creech, Wescott, and Creef. Noes: None. Absent: None.

This the 6th day of February 2002.