



**TOWN OF HOLDEN BEACH  
BOARD OF COMMISSIONERS  
SPECIAL MEETING  
TUESDAY, APRIL 6, 2018 – 9:00 A.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Special Meeting on Tuesday, April 6, 2018 at 9:00 a.m. Present were Mayor J. Alan Holden; Mayor Pro Tem Mike Sullivan; Commissioners Pat Kwiatkowski, Joe Butler and John Fletcher; Town Manager David W. Hewett; Town Clerk Heather Finnell; Shoreline Protection and Recreation Manager Christy Ferguson; and Building Official Tim Evans. Town Attorney Noel Fox arrived at 9:30 a.m. Special Attorney Clark Wright arrived at 10:00 a.m. Fiscal Operations Clerks Mandy Lockner and Margaret Lancaster; Police Chief Wally Layne; and Public Works Director Chris Clemmons were present for the Budget Workshop portion of the meeting. Commissioner Peter Freer was unable to attend the meeting.

Mayor Holden called the meeting to order.

**DISCUSSION AND POSSIBLE ACTION FOR AUDIT COMMITTEE**

Commissioner Fletcher read his memo regarding proposed action for the Audit Committee (hereby incorporated into the minutes). Dolly Mitchell asked if the public could get a copy of the memo. Copies were provided. Commissioner Fletcher said his research shows that the LGC, the state statute and the School of Government recommend an internal review. He said the audit year ends June 30<sup>th</sup>. He said the internal control review should proceed the annual audit. Mayor Pro Tem Sullivan asked when the audit of the past fiscal year needs to be completed. Commissioner Fletcher replied by the last day of October. Town Manager Hewett said the Board should solicit now to make a selection on the external audit within the next month or so. He said the work for the external auditor takes from the end of June through October. He said to the matter of directly contracting with a separate firm, the LGC requires all auditing contracts to have a statement of work prepared and then be approved by the LGC, regardless of the type of audit. He said so the Audit chair contracting as the direct executive agent for an internal audit review is probably not appropriate. Mayor Holden said he thought the Board performed the hiring for services. The Board discussed that the Board needs to approve any recommendation. Commissioner Fletcher asked if the Board would want to add that the selection would be subject to confirmation by the Board. Mayor Pro Tem Sullivan replied yes. Town Manager Hewett said if that is what the Board desires to do the statement of work has to be approved by the LGC before the Board can select an internal auditor to come in and do a review. He said his interpretation is that the LGC does those types of reviews and the Town isn't allowed to. He added that Section 159.34 lays out the LGC's responsibilities for assessing internal control processes. Commissioner Fletcher said he understands that the legislation gives the LGC the authority to establish what the controls should be, but someone else should do the review. Mayor Holden said it sounds like the Board needs guidance from the Town Attorney. He is concerned whenever less than the whole Board is allowed to make a decision. He feels like everyone on the Board should be involved in something that important.

After discussion, Mayor Holden said the Board will suspend discussion on this until the attorney gets there. The Board agreed to move to the Budget Workshop.

## **BUDGET WORKSHOP**

Fiscal Operations Clerk Lockner said the purpose of the workshop is to explore revenue streams for the Town's 2018 – 2019 budget year and reviewed the budget schedule.

The General Fund - The Town receives state revenue distributions each year. The revenues are determined by the state and are based on North Carolina's current economic climate. We don't have the last quarter yet so the numbers on the spreadsheet are based on trend data from previous years. Town generated revenues include property taxes, building fees, recycling fees and rents and concessions. Fiscal Operations Clerk Lockner explained how property tax is calculated. The estimated revenue based on the current rate of \$0.22 is \$2.6 million. She also calculated the rate at two cents less per Mayor Pro Tem Sullivan's guidance. That amount is about \$2.4 million. Fiscal Operations Clerk Lancaster explained how new houses are taxed. Commissioner Fletcher asked if this amount increased from last year. Fiscal Operations Clerk Lockner replied yes, but she doesn't have the exact number. She added you may see different numbers later in the process because updated numbers might come out from the county. Building fees are moving upward based on trends throughout the county. Revenues in this department cannot exceed expenses. Fiscal Operations Clerk Lockner said there are approximately 350 residents using curbside recycling and the collected revenue to date is roughly \$19,656. Town Manager Hewett said he checked on the tax base, as of May 15, 2017 the tax base was estimated at \$1,208,799,139. Fiscal Operations Clerk Lockner said the recycling amounts may change based on what the Board considers on solid waste. We receive about \$100,000 from rents and concessions.

Fiscal Operations Clerk Lockner asked if the Board had any questions. A lot of the numbers are based on trend data so they will change. The Board agreed to allow questions from the audience. Vicki Myers asked why for ad valorem taxes, fiscal year 17-18 is the same as the proposed budget. Fiscal Operations Clerk Lockner replied we should receive the final number by the end of May. We don't anticipate it will vary too much from the current number.

Town Manager Hewett said the blue can home recycling is directly related to one of the Board's initiatives. That number could change based on the Board's decision on recycling efforts. Right now, we left it blank, but there is a lot of work that needs to be done before the program could permeate from its current structure. Commissioner Kwiatkowski said as she recalls there are several options on how the recycling program might morph. She reviewed the options which include leaving it status quo, island wide recycling with an opt out option and keeping it at voluntary signup, but increasing the pickup during the summer season. Town Manager Hewett stated that regarding recycling for the whole island one of the main concerns would be the contractual arrangement with the provider. They have raised concerns over fronting the cost of the cans. They would be stuck with the cans if people do not participate. For the revenue, what happens if the participation rate is not adequate and there is not enough funds to provide the service? What fund would the expenses hit? We just renewed the recycling subscriptions in January, if we change the schedule how would we administratively handle the billing? The different rates are listed in the Solid Waste Report. Commissioner Kwiatkowski asked if the provider indicated they wouldn't be able to manage recycling weekly during the season. Town Manager Hewett responded that he didn't get the impression that amending the schedule was a problem.

Water/ Sewer - Fiscal Operations Clerk Lockner said the revenues are generated from water and sewer billings and capital sewer charges. The revenues in the packet are expected to stay the same, but the way we bill and collect these fees may change based on House Bill 436. She reviewed the current water and sewer rate

structures. Commissioner Fletcher said he reviewed the study and it appears to him it is only about new construction, not about changing the existing water rates. Town Manager Hewett stated that is close. It is a changing use, not new construction. Most of the people that will be affected by it are new construction. We don't anticipate any change to the water or sewer bill or the annual assessment on the tax bill. We anticipate changing the rate structure that is directly associated with the line titled Share Payments. That line may become a new line titled Capacity Charges, Sewer. Town Manager Hewett said there are only about 100 lots left on the island that would be subject to that assessment. We also anticipate a line titled Capacity Charges, Water, which will be for new construction. Public Works Director Clemmons said the revenue would be set aside for future capacity improvements. Town Manager Hewett said the capacity charge is predicated on capital facilities that are in a plan or currently being expensed. The money has to be earmarked in a way of a capital reserve fund. We will need one capital reserve fund for water and one for sewer. The sewer lift station upgrade is not a qualified expense. Public Works Director Clemmons said the impact fee, the per bedroom fee, will go away. There was a penalty pay that went along with the share fee that will also go away. Town Manager Hewett said the lion share of the \$1.5 million decrease in revenues is represented by the sewer lift stations upgrade, which is an appropriation from the Water/ Sewer Fund. The engineer's expenses will be paid out of that. The \$84,000 that is showing as the projected revenue is an error; we haven't pulled the amount over for the lift station upgrade yet. The \$84,000 represents the equivalent of a maintenance and repair fund, acquisition for new meters. He said the approximately \$1.4 million for the upgrade will be taken from the accrued Water/ Sewer Fund Balance. It is being funded from the reserves.

BPART Fund - As of March, the estimated revenue is \$1.7 million. Fiscal Operations Clerk Lockner pointed out that the grant monies listed in the spreadsheet are all anticipated to be collected this fiscal year so they will not show next year. The Board has requested a capital reserve fund. The points made at the last budget workshop were to escrow capital funds until the Town's Special Obligation Bond is retired in fiscal year 2026/ 2027; monies will be accumulated for approximately nine years; and a transfer of \$3 million from the BPART Fund. Commissioner Butler asked what the balance of the Central Reach Project Bond is. Fiscal Operations Clerk Lockner said the debt service payment is in the expense side, but it was about \$1.4 million. Town Manager Hewett said he thinks the question is about the line that says Fund Balance Appropriated. That number will be \$3,123,000 because we will have to spend the money on the expense side to put it into a capital reserve fund. You don't appropriate directly from accrued reserves into a reserve fund. Fiscal Operations Clerk Lockner said the subsequent amounts for the capital reserve fund will be sourced from the General Fund pending fund balance reserves reaching 70%. Town Manager Hewett said he was sorry, he misspoke. He was adding the \$3 million to the current year, it would actually be \$3,030,000. Commissioner Fletcher asked about the line for FEMA Matthew. Town Manager Hewett said that line will go away. Shoreline Protection and Recreation Manager Ferguson added it looks like we will get to about \$3,025,000 in Category G. The \$174,000 is what we are waiting on. We feel like it will come in before the end of this budget year.

Canal Dredging – the Working Group met and decided to keep assessments the same for the next fiscal year. The current estimates are as of today. The grant monies are not showing. Shoreline Protection and Recreation Manager Ferguson added we received word yesterday that the Corps has denied us from using Disposal Areas 290 and 292 so we will need to create our own spoil area. This means when we meet with the group again, they may decide to change the amount they assess.

Town Manager Hewett pointed out that the FEMA Irene item will also go away in the BPART Fund.

Town Manager Hewett said Shoreline Protection and Recreation Manager Ferguson alluded to the fact that we will need to engage with the Corps on the use of the Town owned facilities for disposal of dredge materials. It will require some engineering and technical solutions. We will work on that at a staff level. The canal subdivision

dredging project is in a lot better shape over the course of the last 10 years with the help and facilitation of the volunteer working group inputting into the Master Plan for dredging. It has the potential of affecting twice as many homes as the Central Reach Project did.

Commissioner Fletcher said he spoke with the attorney and would like to wait until the evening before resuming the discussion regarding auditors.

The Board agreed to take a recess at 9:57 a.m. – 10:04 a.m.

## **REPORT AND DISCUSSION ON FINAL ENVIRONMENTAL IMPACT STATEMENT AND RELATED TERMINAL GROIN ISSUES**

Clark Wright, legal advisor to the Board with respect to beach protection and other environmental issues, provided the Board with a written report that is covered under confidential attorney/ client privilege information. He asked the Board not to distribute the report or speak about it with others. He also provided the Board with informational books.

Mr. Wright provided history on CAMA and terminal groins. He said one of the cornerstones of CAMA is the regulation of development activities within areas of environmental concern. One of those key areas is the oceanfront. He said in the past CAMA prohibited hardened structure development within the state's ocean beaches. He provided information on the recent Nies Case and legal rights to property. Mr. Wright talked about the permitting process and statutory/ case law requirements. He said the Town has expended close to \$650,000 over the past seven years in seeking a permit for a terminal groin. He said one of the significant reasons the Board retained him was because of concerns on if the Board wants to continue forward with the project. In 2011, there was terminal groin legislation which expressly amended a portion of the CAMA statute. The original statute had a financial responsibility requirement for local governments and other potential applicants. That provision was struck. Mr. Wright said an important point which he thinks is under recognized in the Final Environmental Impact Study (FEIS) is there is no way to conduct a traditional science study, with typical techniques, to prove or disprove the point. Instead, we need to look at the best available evidence and make a hypothesis about the extent of which an element of a shoreline protection plan is helping or hurting. When he served as Governor Jim Martin's special environmental advisor on offshore drilling, he met many of the state and nation's coastal processes experts. The vast majority of them expressed concerns over the potential impacts of hardened structures on soft shorelines that are so dynamic, if they accomplish the intended goal and if they cause other unattended adverse consequences. Mr. Wright said the Town would be a guinea pig if we go ahead and do this. He said you couldn't do them for 40 years, we would be part of a pilot program, collecting data and we do not know what the results would be. Existing hardened structures in North Carolina are the groin/ mini jetty that was constructed at Pea Island and the Fort Macon groin structure, which in various forms has been there since the 1970s. He said the difficulty with those examples is that it is coupled with extensive beach renourishment. Mr. Wright said both of those situations are good examples of the third variable, which is dredging efforts in the channel of those inlets. He said the east end of Holden Beach has experienced serious erosion problems, primarily during the oscillation of the channel where it is closer to the shoreline of Oak Island. He said vice versa also. He said recently the combination of some movement of the channel, combined with renourishment, combined with no direct hits from big storms, the east end is in pretty decent shape right now. He said the southern beaches are generally considered sand starved, with mostly hard bottoms so you have less there to soften the impact like in the northern half of the state. He talked about the various dredging efforts in North Carolina. He said it is expensive and not easy to transport large amounts of sand. Mr. Wright recommended having Rudy Rudolph, who heads up the Shoreline Program in Catatract County, speak to the Town regarding these matters. He said if he can sum up what he thinks he and Spencer Rogers would say it would be terminal

groins if properly designed and sighted can work to trap sand and potentially have minimal negative adverse environmental consequences; but as to whether it makes sense economically that is a whole other ball of wax.

Mr. Wright said the Record of Decision (ROD) could be issued by the Corps as early as April 17<sup>th</sup>, which lead to a concern he and the Board had in regards to whether or not the Board needed to ask for an extension of time in order to not be foreclosed from the full range of options when the Board meets again on April 17<sup>th</sup>. He said in regards to the Ocean Isle terminal groin permitting process, the FEIS was issued and it took nine and a half months for the Corps to publish the ROD. The ROD contains permits for Section 10, under the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. He discussed the acts and the significant legal consequences based on them. He said during his career he has come to know a number of the attorneys who work for the Southern Environmental Law Center (SELC). He talked about their background and said they have already initiated federal court litigation challenging the Corps' permitting decisions on the terminal groin for the east end of the Shallotte Inlet. He said the west end of Holden Beach is within the monitoring study area for that terminal groin. He said SELC fears the domino effect. He said if it is working, it is stealing sand that would be going somewhere else. Mr. Wright said with a groin, you try to make it porous enough where it doesn't steal all of the sand and low enough where in storm events sand can go over it and short enough where sand can still get around it, but still long enough and thick enough to capture sand and hold the fillet. He talked about the sand transport process. Mr. Wright said most engineers will admit that terminal groins will not stabilize an inlet that is migrating or help protect a channel from the need for dredging. He talked about dredging in the inlet.

Mr. Wright recommended the Board go into closed session to discuss the specifics in his letter. In the last 24 hours he has received strong letters of objection to the project from Professor Andy Coburn of the Shoreline Program in Western Carolina, Geoff Gisler, a senior attorney for SELC and a new entity which appears to be a collection of property owners.

Town Manager Hewett said Mr. Wright mentioned the groins at Fort Macon and Pea Island. He asked him to point out their proximity to the Port at Morehead City and also the Bonner Bridge and Oregon Inlet. Mr. Wright replied every inlet situation is unique. He said the reason the Beaufort Inlet has been deepened, widened and extended further out to sea is because the Morehead City Port is a significant commercial operation that has seen significant growth. Much of the sand that has been removed from the system did not get put on the beaches, but a lot of it did. He said there was extensive renourishment over the past decade or two. He said at Pea Island the history goes way back. He said that inlet wants to migrate south. He said the Lockwood Folly Inlet is an oscillating inlet and is not perceived from the available data to be marching towards the east end of the beach, other than the oscillations. He said the Oregon Inlet is much bigger and you have the Bonner Bridge that is a huge piece of infrastructure to protect. SELC sued over some of the proposals up there regarding the bridge and were successful in federal court on challenging the environmental documentation associated with one of the bridge proposals. He thinks they ended up working out a compromise. He said at Fort Macon you had protection of a state park resource as an issue. Mr. Wright said if you look at what the coastal scientists that are opposed to these hardened structures would say, they would point you to what was done to the lighthouse. They would say instead of hardening, you are better off retreating. He said that isn't so easy to say when it is your infrastructure. Town Manager Hewett said a point relating to navigation channels, in the Shallow Draft Inlet Permit that the Town currently holds it is noted that the authorized depth in the Lockwood Folly Inlet is 12' plus two. Either the Secretary of the Army or the Division Chief (he stands to be corrected on the source) has said that a decision was made in the 1960s not to dredge the Lockwood Folly Inlet at full depth and to maintain the inlet at eight feet, based on the type of equipment available to maintain it. This plays into the least cost method of disposal equation. Mr. Wright said it also plays into the amount of sand available and the frequency too. He thinks that because it is a shallow draft with that kind of equipment, it may be a lower priority to the Corps. He said no matter what decision is made, the need to coordinate and interact with fellow local governments, the

county and state to find ways to efficiently come up with money and coordinate shoreline protection is critical. He talked about the Bogue Banks 50-Year Master Renourishment Project. He said one of the big challenges Holden Beach faces is we are a small barrier island. It is harder for communities like Oak Island, Ocean Isle Beach and Holden Beach to coordinate because they need to deal with multiple inlets as part of any effort to coordinate. He reviewed information that can be found in the notebooks he handed out. He believes the economic analysis in the FEIS is not intended to be a substitute to the Town's economic analysis.

Commissioner Butler asked if Mr. Wright could comment on the ROD for Ocean Isle Beach where it pertains to Holden Beach's west end. Mr. Wright replied that he thinks Holden Beach participated on the project review team for that proposed terminal groin. The study requirements for that federal permit do include a nontrivial portion of the west end of Holden Beach. Town Manager Hewett explained how the Town was involved.

Mr. Wright reviewed the Table of Contents in his notebooks for some items of interest. He explained the importance of some of the documents.

### **EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(3), TO CONSULT WITH THE TOWN ATTORNEYS**

*Motion by Commissioner Fletcher to go into closed session at 11:33 a.m.; second by Commissioner Butler.*

Town Clerk Finnell read the reason for Executive Session.

*The motion passed by unanimous vote.*

### **OPEN SESSION**

Mayor Holden announced no action was taken.

*Motion by Commissioner Fletcher to go out of Executive Session at 1:02 p.m.; second by Commissioner Butler; approved by unanimous vote.*

Attorney Fox said the proposal from earlier regarding the Audit Committee is in accordance with the Fiscal Control Act. She said if the Audit Committee wants to take those actions they can, they just can't change the requirements under the act that are already in existence. She provided examples of those requirements. She said the Local Government Commission can also do that, but they are not requesting to.

Town Manager Hewett asked Attorney Fox to address the selection of the firm conducting the review would not be subject to BOC confirmation as it relates to acquiring the services of an additional audit firm. Attorney Fox said it is okay if the Board is going to direct the chair to direct the Town Clerk to do a request for qualifications so that the Audit Committee can make a recommendation to the Board for a selection. She said the Board will make the determination. Town Manager Hewett said he was interpreting that the chair of the Audit Committee was going to be securing the services directly for the special review accounting firm. Attorney Fox said that is a Board action. The chair can make the recommendation to the Board, but the Board would make the decision. Town Manager Hewett added complete with a pre-audit statement and an appropriation from the budget to cover the services. Attorney Fox said she is presupposing that the Audit Committee is meeting in accordance with the Open Meetings Law, taking an action making a recommendation to the Board for its consideration. She said she thinks the chair would be charged with communicating to the Board what the Audit Committee has decided. She said the Board would want to direct the Audit Committee to do a RFQ and then report to the Board

on who the proposals came from, then have the Board select somebody to perform a review of internal procedures that are currently being used in the Town for fiscal control. Town Manager Hewett said he wanted to be clear that the Audit Committee will do the work and bring it to the Board for award of a services contract. Commissioner Fletcher said he received an answer from the North Carolina State Treasurer. He read the answer from the State Treasurer that said the LGC does not conduct formal reviews for internal control or audits. They do oversee audit contracts. He said the Board does have the authority to contract with the existing audit firm or another qualified firm to conduct a review of internal controls. Mayor Pro Tem Sullivan asked if the Board wants to change the document so it conforms to the rules. He suggested the item be tabled until we get a document that accurately reflects what the Board will vote on and that the document will be given to the public. He said today the public had a different document from what the Board was discussing.

*Motion by Mayor Pro Tem Sullivan to table this until we have a document prepared that accurately reflects what we wish to do and which follows and complies with the law.*

Commissioner Fletcher said Town Manager Hewett pointed out that could be done in the Audit Committee meeting.

*The Board agreed to table it until the Audit Committee meeting and then add it to the agenda.*

Mr. Wright read a letter from Geoff Gisler. He unintentionally added notes to his letter and would like the Board to disregard them.

#### **ADJOURNMENT**

*Motion by Commissioner Kwiatkowski to adjourn at 1:12 p.m.; second by Commissioner Fletcher; approved by unanimous vote.*

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J. Alan Holden, Mayor

ATTEST:

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Heather Finnell, Town Clerk