



**TOWN OF HOLDEN BEACH
BOARD OF COMMISSIONERS
SPECIAL MEETING
TUESDAY, OCTOBER 29, 2019 – 10:00 A.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina for a Special Meeting on Tuesday, October 29, 2019 at 10:00 a.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem John Fletcher; Commissioners Mike Sullivan, Pat Kwiatkowski, Joe Butler and Peter Freer; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; Inspections Director Tim Evans; and Town Attorneys Grady Richardson and Jennifer Carpenter.

Mayor Holden called the meeting to order.

EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(3) – TOWN ATTORNEY REPORT WITH RESPECT TO ALLEGATIONS OF FRAUD AND PROFESSIONAL MISCONDUCT BY THE TOWN'S AUDITOR, RIVES AND ASSOCIATES, LLP, RAISED BY MAYOR HOLDEN AT THE OCTOBER 15, 2019 REGULAR MEETING OF THE BOC AND IN SUBSEQUENT PUBLIC STATEMENTS (THE FRAUD ALLEGATIONS) AND DISCUSSION AND POSSIBLE ACTION WITH RESPECT TO PUBLIC RELEASE OF TOWN ATTORNEY REPORT AND RELATED MATERIALS

Commissioner Freer said the meeting was called at the request of the attorney and said usually the clerk reads the reason for Executive Session. Attorney Richardson stated he didn't call the meeting; he is aware of the meeting being scheduled and was asked to be here. He and Attorney Carpenter are prepared to discuss matters involving the closed session meeting agenda.

Mayor Holden asked if the request of the meeting meets the Board's way of operating. He said we have two commissioners that have called the meeting with the attorneys. He asked if it is required that a majority of the Board approve the activity of having the attorneys be at the meeting. Commissioner Freer responded the attorneys were hired at the last meeting. He and Commissioner Butler called the meeting and the notice went out before 10:00 a.m. on Friday. Mayor Holden said it is a minority that took the action and he would like it confirmed that the Board is in order to do what they are about to do. Commissioner Freer replied he believes they are in order, only two commissioners or the mayor pro tem is required to call a meeting and it is his understanding that they can request the attorneys to be at the meeting anytime. Commissioner Butler added he sees no difference in the way the Board operated before pertaining to special meetings. Commissioner Sullivan said this is eerily similar to what happened when Clark Wright was retained as the attorney. Without any conference among the Board members, Mr. Wright was assigned duties and responsibilities to do research. He stated he sent a letter out complaining about that and this is the same thing. It is one of things he wanted to talk about with the attorneys; how they receives their assignments, whether it should be a majority and if he and

Commissioner Kwiatkowski should be involved or receive a copy of the letter so they knew it was going to happen. Commissioner Sullivan said it may be permissible and legal, but it is not right and it is what happens all of the time. Attorney Richardson explained that if three of the Board got together to call a meeting, it would have been a violation of the open meetings law. He had two commissioners that asked for a special meeting. It could have been done in open session or closed session or a combination of the two. He said he is not going to give legal advice that he thinks should be privileged in a closed session out in an open session. He will do it if the Board wants him to reveal attorney client privilege, but he believes there is a need given the letter at the end of the last meeting concerning the auditor.

Motion by Commissioner Butler that the Board go into executive session at 10:07 a.m.; second by Commissioner Freer. Commissioner Butler clarified it was for the purposes of consulting with the attorney. The motion passed by unanimous vote.

OPEN SESSION

Motion by Mayor Pro Tem Fletcher to go into Open Session at 11:53 a.m.; second by Commissioner Butler; approved by unanimous vote.

Motion by Commissioner Freer to approve the agenda; second by Commissioner Butler; approved by unanimous vote.

Attorney Richardson said he is not going to talk about his legal advice and recommendations that he and Attorney Carpenter provided to the Board in closed session. He will give a summary of their firm's efforts relating to agenda items 2a and 2b without revealing attorney client privilege. He stated at the last meeting Mayor Holden disclosed an anonymous letter he received concerning the Town's auditors, Rives and Associates. His firm reviewed the allegations in the letter. Everyone in our country is entitled to due process. He stated there has been no finding that we have come across of any guilt or fraud by Rives and Associates by PCTEL or otherwise. They have found there are three civil lawsuits, two of which were from years ago, around 2012. The two previous were settled out of court. He can best sum those up from public records as partner disputes. The terms of the settlement are confidential. One lawsuit, which they refer to as the Pott's case is pending in NC Business Court. It is a civil case and it is on for trial in December. At that point in time whatever the judge or jury returns as the verdict on the claims that are pending for trial will be the verdict. It will be a civil verdict. Attorney Richardson said of the lawsuits he mentioned, none of those involved Jay Sharpe that they can see. Mr. Sharpe is the auditor in charge of the Town's audit efforts. Mr. Sharpe sent him a letter confirming he is the lead partner in the audit and no other partners of Rives and Associates are involved in the Town's audit engagement. He said as they have also verified, it lets it be known that there has been no civil judgements that Rives and Associates is the recipient of. There is no criminal judgements or convictions that they have come across with Rives and Associates. They also looked at the North Carolina Board of CPA Examiners; there has been no punishment or disciplinary proceedings or finding of any wrongdoing or deficiencies against Rives and Associates as he reports to the Board today. In looking at Rives and Associates they do a lot of work for other municipalities, boards, etc. Attorney Richardson said the attorney for Rives and Associates, Frederick Sharpless, sent a letter on October 25th addressing the three lawsuits and confirming what they had independently confirmed, two were settled and one is still pending.

Commissioner Freer said Attorney Richardson referenced several documents and he is assuming he will make those documents available to the Town to make public. Attorney Richardson stated the only documents he referred to are an email from Mr. Sharpe on October 25th to his office that has four bullet points and a letter from Mr. Sharpless on the same day, in a more general fashion, summarizing and limiting his letter to the three lawsuits. He again reviewed the lawsuits. Attorney Richardson explained that he is not making anything available on his own; those two documents are public record.

Motion by Commissioner Freer that the Board makes available those reference documents on their website and publish them on the Town's website.

Attorney Richardson said if there is any information from his office to the Board it is his legal advice that it should be preserved under attorney client privilege. Commissioner Freer said it is the email from Mr. Sharpe and the letter from Mr. Sharpless, the attorney for Rives that he is referencing and that it be made available through the Town's website immediately. Attorney Richardson explained that whether it is posted to the website or not, anyone can make a public record request and the Town would be required by law to release both of them. He said it does not make any difference to him if the Board wants to post it or not.

The motion was seconded by Commissioner Butler.

Commissioner Kwiatkowski inquired why the Board can't just let it be part of the minutes of the meeting. It would be part of the next meeting package, so it would be on the website. Mayor Pro Tem Fletcher said there is a lot of interest in it. Since it is available as public information, he agrees it should be released as soon as possible.

The motion passed by unanimous vote.

PUBLIC COMMENT WITH RESPECT TO SPECIAL MEETING AGENDA ITEMS

John Witten stated what happened here is the mayor took out a hit on our auditor. He asked why he waved around an unverified, anonymous letter. He said surely everyone could all agree that shouldn't have happened. He said the allegation that our auditor had been convicted of criminal fraud is serious. If it was true, the Board had an obligation to look at it. He said on the other hand it could have been made up. He said that is defamation made by the mayor in a public meeting, based on an anonymous letter that he didn't spend any time verifying the contents of the letter. Mr. Witten said it took him five minutes to go online and determine there was no criminal conviction for fraud. He asked what the purpose was that was so important to tarnish the reputation of Mr. Sharpe. He said his company has used this accounting firm. He talked about his experiences with his company. He expressed his concerns with the effects of the letter being read. He said there is someone in this room who knows who wrote the letter and that person who wrote the letter set out to destroy the reputation of a reputable company. He said there is only two reasons, they either have something to hide in the financial statements of the Town of Holden Beach or they want to win the election. Mr. Witten reached his time limit.

Motion by Commissioner Freer to extend the time.

Commissioner Kwiatkowski said the policies and procedures are that you request it at the beginning of your speech. Town Clerk Finnell read from the Rules of Procedures, each speaker will be allotted three minutes to comment during the designated public comment period or periods at any meeting, unless the speaker requests the time limit is extended, to no more than six minutes, on the sign-up sheet and the extension is acceptable to the majority of the Board. She explained there is not a sign-up sheet for special meetings.

Motion by Commissioner Freer to waive the rule; second by Mayor Pro Tem Fletcher.

Attorney Richardson said based on what was read into the record, there is no sign-up sheet. He believes Mr. Witten should have asked for additional time if he thought he would run over the three minutes. He believes the Board has discretion on whether or not to grant the extension.

Mayor Holden asked if the Board agreed to the extension. The Board agreed. Commissioner Sullivan said he is in favor of it. He has always taken the position that the Board should receive as much input as possible, but it is kind of funny that the same commissioner that closed down a commissioner at the last meeting is the one that is advocating for this. Commissioner Sullivan is in favor of allowing Mr. Witten to talk, but everyone should have that right at every meeting.

Mr. Witten said the mayor should have contacted Attorney Richardson. He said it is time we stop this stuff and start being more worried about how the Town is being run and the finances of the Town. He said we need to stop playing the rules to shut people up and do the right things.

Commissioner Sullivan stated the people who come to the meetings regularly know who the parties are who shut down conversation and comment. He said we know who the parties are who call special meetings hoping that few people show up. He is happy that there are a number of people in this audience. He said whether the mayor was right or wrong is one thing, but if you look at the letter our commissioners wrote and said what the mayor did is libelous, there was a much easier way to do it. He said the reason they chose to do it this way was because of the election. Commissioner Sullivan said they find it more important to be elected than to do what is right for this Town. This is the third time since he has been sitting on this Board where Commissioner Freer and Mayor Pro Tem Fletcher have taken positions to protect their own point of view that was detrimental to this Town. He stated when the Board was arguing about Ocean Isle and doing their groin, He said Mayor Pro Tem Fletcher said he didn't have the time to listen to our expert; he didn't think it was necessary, he already made up his mind. Commissioner Sullivan stated Mayor Pro Tem Fletcher said that the expert that we have used for years on the beach and who we had just given an award of \$40,000 to establish a study that we are entitled to the sand from Lockwood Folly wasn't an expert. He said today we have them sending a letter saying the Town acted in a libelous fashion. Commissioner Sullivan said in the same ways that the mayor should have contacted the attorney, they should have contacted the attorney to find out the best way to do it. We would have accomplished the same goals. Commissioner Sullivan said that is how he feels about this and so many other things that have gone on over the past two years.

DISCUSSION AND DETERMINATION WITH RESPECT TO THE CREDIBILITY OF AND/ OR POSSIBLE FURTHER ACTION REQUIRED WITH RESPECT TO THE FRAUD ALLEGATIONS

Commissioner Butler stated he was about ready to say he had no further comments regarding agenda item 4, but he said thank you Commissioner Sullivan because he is now obligated to speak as one of those commissioners. He said the letter of September 26, 2019 immediately raised a red flag for him regarding how it was presented to the Board at the end of the meeting on October 15th. He wondered if it was factual and if the Town conducted any investigations pertaining to the allegations outlined in the anonymous letter. He said there are a number of concerns on how this whole matter was handled, however his immediate concern is the current audit that is nearing finalization. He asked what happens if the allegations in the letter are correct. He also felt that part of his fiduciary responsibility as a commissioner was to solicit professional guidance from the attorney on how to proceed. He asked if as a result of how the anonymous letter was handled by the mayor the Town is exposed to various risk factors, to include the possibility of liability, damaging the reputation of a professional accounting firm, credibility and if there are any concerns on proceeding to submit the audit findings to the State Treasurer's Office by October 31st. He said the law firm representing Rives and Associates has issued a letter repudiating the allegations in the anonymous letter. He said this letter should be part of the public record; he thinks they decided it would be entered onto the website. Commissioner Butler stated there is a concern that was previously stated pertaining to damaging the integrity and reputation of Rives and Associates in public, which could result in possible legal action against the Town.

Commissioner Freer stated he wants to make sure the Town is memorializing the information the attorney was given that there is no credible reason or evidence that was presented in the anonymous letter that support the allegations that are in the anonymous letter. Attorney Richardson said we are not going to get into his legal advice and thoughts and impressions in public. If the Board wants to do it from this point on, he is on the record as telling the Board not to do it. He didn't say there was no credible anything. He reviewed his points he gave already. Rives and Associates, Jay Sharpe, Leon Rives and anyone else associated with the firm, just like everyone else is entitled to due process in this country. You are innocent until proven guilty in the criminal process. In a civil context you have to prove your damages and prove your claims and that has not been done yet as to Rives as of today. They are on trial for the third lawsuit in business court and there has been no determination of liability in that case. There has been no finding of guilt or fraud by PCTEL or otherwise in any of the lawsuits or anything else he has been able to ascertain in the public records while researching this since the letter became known. He has already mentioned about Jay Sharpe and does not have anything else to say about Mr. Sharpe. He is not involved or mentioned as a party in the three lawsuits, neither the two that were settled nor the current one pending. Mr. Sharpe is the lead auditor, if not the sole auditor for the Town's auditing business. He has also said the book of business for Rives and Associates is quite large across a wide array of municipalities and schools. Attorney Richardson said he also said that there is no record of discipline or other sanctionable conduct or findings of wrongdoing by Rives and Associates regulatory body, which is the NC State Board of CPA Examiners as of this morning. He said he is not going to get into credibility; he is telling the Board factually what they have been able to find.

Motion by Commissioner Freer that they want that information that was just presented to be on the website and not just the minutes of the meeting.

Attorney Richardson said there was a motion a few minutes ago that was going to publish Mr. Sharpless' legal letter of October 25th and Mr. Sharpe's email of October 25th with the bullet points defending himself, his firm and his firm's reputation. He, thanks to the hard work of Attorney Carpenter, has verified the information he reported to the Board and what he just reported here. Beyond that he doesn't have anything further to add or comment on and doing so would be waiving attorney client privilege which he does not want to do. He is asking the Board not to do it. Commissioner Freer said he is asking that the information just given in public is memorialized now rather than waiting for the minutes. Attorney Richardson said you have the email and the letter and asked what other information he would like memorialized that would not be documented in the audio or the minutes.

Commissioner Freer withdrew his motion.

DISCUSSION AND POSSIBLE ACTION DIRECTING THE AUDIT COMMITTEE (OR A SUBCOMMITTEE OF THE AUDIT COMMITTEE) TO: (I) REVIEW THE SOURCES OF THE FRAUD ALLEGATIONS AND REPORT TO THE BOC; (II) RECOMMEND ANY APPROPRIATE SANCTIONS; AND (III) RECOMMEND REMEDIAL POLICIES OR PROCEDURES WITH RESPECT TO OBSTRUCTION, INTERFERENCE OR NON-COOPERATION IN CONNECTION WITH AUDITS, INVESTIGATIONS OR REVIEWS OF THE TOWN'S FINANCIAL AFFAIRS

Commissioner Freer stated this all came up because it is an audit issue. The original intent was to direct the Audit Committee to create a subcommittee to look into the sources, policies and procedures and investigations or reviews of the Town's financial affairs, but he thinks the Board should broaden that and look at their rules. He added to find out how this happened, how an anonymous letter became public and update their rules and conduct to make sure that never happens again. Commissioner Kwiatkowski said she could second that and the Board could do that at the next meeting; put it on the next agenda and work on that to get the language into the rules and procedures.

Mayor Holden asked if that was a motion and a second. Commissioners Freer and Kwiatkowski confirmed it was.

Commissioner Sullivan inquired if they were going to withdraw it at this time and put it on the agenda so the Board can look at the current rules and procedures to determine what to do. Commissioner Butler wants to make sure there is a procedure in place that spells this out so nobody can do this again.

Commissioner Freer said he will withdraw his motion if they have a directive that the Board will review how the letter became public; how it was used and how they can change their rules to make sure it never happens again. Commissioner Sullivan asked for clarification that the item would be placed on the November agenda. Commissioner Freer agreed. Mayor Holden inquired if the motion is to make agenda item 5 a duplicated item for the next meeting. Commissioner Freer agreed. Commissioner Kwiatkowski said she was looking at putting item 5(iii) on the agenda.

Commissioner Freer wants items (i), (ii), (iii) and not using the Audit Committee or directing them to create an audit subcommittee. He said the Board would look at those items.

The motion passed by unanimous vote.

ADJOURNMENT

Motion by Mayor Pro Tem Fletcher to adjourn at 12:29 p.m.; second by Commissioner Sullivan; approved by unanimous vote.

J. Alan Holden, Mayor

ATTEST:

Heather Finnell, Town Clerk