

# Town of North Topsail Beach

Fred J. Burns, Mayor  
Richard Macartney, Mayor Pro Tem  
Aldermen:  
Don Harte  
Joann M. McDermon  
Richard Peters  
Walter Yurek



Stuart Turille  
Town Manager

Carin Z. Faulkner, MPA  
Asst. Town Manager/Town Clerk

*Nature's Tranquil Beauty*

**Board of Aldermen  
Regular Meeting  
ACTION ITEMS AND NOTES  
Wednesday, November 1, 2017  
6:30 P.M.**

Alderman Don Harte was not present.

- I. Call to Order Mayor Fred Burns
- II. Invocation Mayor Fred Burns
- III. Pledge of Allegiance
- IV. Approval of Agenda – Mayor Pro Tem Macartney moved that the Board approve the agenda with the following change: Move the Attorney's Report to after the first Open Forum. Alderman McDermon seconded the motion. The motion passed unanimously.
- V. Open Forum – 3 minute limit
- VI. Attorney's Report – See Attorney's Report on Page 3 of this Document.
- VII. Public Hearings/Presentations:
  - A. Presentation – Marsy's Law – Justin Rice, Field Director, Marsy's Law for North Carolina (Request to Adopt Resolution 2017-38 – Resolution Supporting HB 551/SB 595 Marsy's Law.) **Discussion & Possible Action** Mr. Matthew Head gave a presentation on behalf of Mr. Rice who could not attend (presentation will be attached to the draft minutes of this meeting). Mr. Head took questions from the Board. Alderman Peters moved that the Board adopt resolution 2017-38. Alderman McDermon seconded the motion. The motion failed with MPTMacartney and Yurek voting against and Mayor Burns breaking the tie with a vote against adopting the resolution.
  - B. Presentation – CAMA Land Use Plan Survey Results – Deborah Hill, Planning Director Ms. Hill gave a presentation and took questions from the Board (presentation will be attached to the draft minutes of this meeting). No action was taken.
  - C. Presentation – Update on FEMA Phase 5 Repair – Chris Gibson, TI Coastal Mr. Gibson gave a presentation and took questions from the Board (presentation is in the Board packet here: <https://www.dropbox.com/s/btanxtw32e58ieu/00%20BOA%202017%2011%2001%20FULL%20PACKET.pdf?dl=0>) and will be attached to the draft minutes of this meeting. No action was taken.

VIII. Manager's Report

- IX. Assistant Town Manager's Report
- X. Consent Agenda: (Any item may be removed for separate discussion or scheduled at the next regular business meeting) **Action Item**  
 Alderman Peters made a motion to approve the Consent Agenda as presented.  
 Alderman Yurek seconded the motion. The motion passed unanimously.
- A. Approval of Minutes –October 4, 2017 & October 19, 2017
  - B. Department Head Reports
    - 1. Finance Department – Supplemental Report RE: Internal Control Policy
    - 2. Fire Department
    - 3. Inspections Department
    - 4. Planning Department
    - 5. Police Department – Supplemental Report RE: Intern Program
  - C. Committee Reports
    - 1. Planning Board
    - 2. Board of Adjustment
    - 3. TISPC (Topsail Island Shoreline Protection Commission)
    - 4. ONWASA (Onslow Water and Sewer Authority)
  - D. Request to Approve Tax Refunds
  - E. Request to Adopt Resolution 2017-38 – Resolution Authorizing the Closure of an Idle Investment Account with Finistar (Renumbered because previous draft ordinance did not pass)
  - F. Request to Adopt Resolution 2017-39 – A Resolution Authorizing the Disposition of Municipal Records in Accordance with the North Carolina Municipal Records Retention and Disposition Schedule (Renumbered)
- XI. Old Business
- A. Request to Adopt Ordinance 2017-11 - An Ordinance Amending Town Code Section 10-21 – Regulating Activities Near Sandbag Revetments and Geotextile Tubes (Edes) **Discussion & Possible Action**  
 Mr. Edes and Ms. Faulkner introduced this item. There was discussion and the Town Attorney suggested some changes to the ordinance as presented. MPT Macartney moved that the Board adopt Ordinance 2017-11 with the following recommended changes. Alderman Peters seconded the motion. The motion passed unanimously (adopted ordinance here: <https://www.dropbox.com/sh/b41150256nhujj/AAAZ5g5AiE1iG80Yasypqkt2a?dl=0>)
- MPT Macartney made a motion to suspend the rules. Alderman McDermon seconded the motion. The motion passed unanimously.
- Attorney Edes recommended that the Board add "Request to Extend Payment Due Date on Revetment Assessment" to Old Business. Alderman McDermon moved that the Board add this item to the agenda as recommended. MPT Macartney seconded the motion. The motion passed unanimously.

- B. Request to Extend Payment Due Date on Revetment Assessment  
(Edes) Discussion & Possible Action ITEM ADDED DURING MEETING  
Mr. Edes introduced this item. Mayor Pro Tem Macartney moved that the Board extend the due date to December 1, 2017. Alderman McDermon seconded the motion. The motion passed unanimously.

XII. New Business

- A. Request to Consider Offer to Purchase 520 New River Inlet Road (Hill) Discussion & Possible Action ITEM MOVED TO CLOSED SESSION DURING MEETING

XIII. Open Forum – 3 minute limit

~~XIV. Attorney's Report~~ ITEM MOVED DURING MEETING

XV. Mayor's Report

XVI. Aldermen's Report

- XVII. Closed Session per N.C.G.S. 143-318.11 Closed Sessions (3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged AND (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease. No action was taken in Closed Session.

XVIII. Adjournment Meeting adjourned at 9:01.

### Attorney's Report

**Attorney Brian Edes:** Mr. Mayor and Board of Aldermen, as you know, well you may not know Mr. Mayor, but as the Board members who have been in closed sessions know, we reached a tentative resolution on the north end lawsuit, I say tentative because there are a lot of moving parts and there are still some more signatures to obtain, but for all intents and purposes the lawsuit has been resolved.

I will give you the boiler plate points of the lawsuit. The plaintiffs are going to pay the Town \$450,000 to which the Town is going to add \$200,000 to, to go towards a revetment enhancement project that is going to entail hiring a 3<sup>rd</sup> party engineer to come in and do a scope of work to enhance the revetment until such time as we can get a hardened structure out there. The \$450,000 will also constitute satisfaction of the plaintiff's portion of the assessment for both the revetment and the revetment extension which constitutes a 45.3% reduction from the original assessment. In

order to bring this to a total conclusion one of the terms of the settlement is to obtain releases from the non-litigants at the north end and they, too, upon signing the release, will likewise get the 45.3% reduction in their assessment. We have been successful in obtaining all but one of those signatures on those releases. The remaining person that has not signed has indicated that he will sign, so if and when that occurs that will consummate that portion of the settlement and that will bring complete conclusion as to the Phase One project and the revetment project as far as any potential legal claims which I think is significant because as the Board is aware and as the public may also be aware not all of the north end homeowners who were subject to the assessment were part of the lawsuit. Now since they will likewise be getting this 45.3% reduction in exchange for release they will not bring a suit against the Town for the same thing the existing plaintiffs brought a suit against the Town in the future.

The \$200,000 that the Town is putting toward this project was budgeted last fiscal year but we held off. Our thought process, we can discuss this now, was "we don't know what is going to happen with the lawsuit", so we did not want to put that \$200,000 that was budgeted last year toward revetment maintenance if the court were to require us to do something different. We didn't want to waste that money. Now *that* money is coming into play in conjunction with the \$450,000.

The other minor terms of the agreement with the plaintiffs are that, if the law will allow us, we will put an additional crossover out there. We have been trying to do that anyway. I don't know what the status of that is, Stuart (Town Manager), but that is largely dictated by the Division of Coastal Management / CAMA, and one of the terms was that the Town continue in its efforts to pursue a hardened structure at the north end. From the Town's perspective we were doing that anyway, but that is part of this agreement.

So in a nutshell that is the agreement with the plaintiffs, as far as the revetment enhancement project, there will be a committee set up of those litigants that will work with the Town as to the pay apps and things like that, but we are not going to superimpose our judgment over the engineer's judgment, it will be just more of a role of advice. We also were successful in negotiating down the contract balance of the the sandbag revetment contractor. We saved roughly \$100,000 in principal and

given the timeframe that has elapsed since they have billed us which we have not paid we also saved roughly \$200,000 in interest on that. So those are the boilerplate terms of the settlement and if the Board has any questions of me I will do my best to answer them. I will just remind you that there are still a couple of loose ends that will need to be tied up, but in essence we have an agreement.

**Alderman Peters:** Brian, what is our net loss on this lawsuit?

**Attorney Edes:** Well if by loss you mean what it has cost the Town? I will tell you that between legal fees, expert fees, and costs, we are in the ballpark of, I will round it up to \$100,000. That is just not legal fees, I want to make that clear. On the revetment assessment the 45.3% discount equals \$651,234.84. On the revetment extension assessment 45.3% discount that is a reduction of \$53,678.13.

**Alderman Peters:** And does that represent a diminished amount from the assessment?

**Attorney Edes:** That would be a diminished amount from the assessed amount, yes sir.

**Alderman Peters:** Keeping in mind that the assessed amount \$1.25 million.

**Attorney Edes:** \$1.437 million actually.

**Alderman Peters:** So we're actually getting somewhat less, well, you are saying well originally it would appear that we are getting about a third of that gross amount is that correct?

**Attorney Edes:** No sir, you are getting 54.7.

**Alderman Peters:** 54.7 out of \$1.4 million?

**Attorney Edes:** Yes sir.

**Alderman Peters:** How do you compute that, you have gone through those numbers.

**Attorney Edes:** Because the numbers I gave you are 45.3% less of the whole. I took the original assessed amount for the revetment itself times 43.5% and that is the number I gave you for that. And on the extension I did the same thing and that is the number you for that.

**Alderman Peters:** And that number was how much?

**Attorney Edes:** For the assessment on the revetment itself the 45.3% discount was \$651,234.84. I have the number for the extension assessment if you would like that.

**Alderman Peters:** And again you said that \$100,000 was legal fees.

**Attorney Edes:** Not just legal fees, we had, again this is not signed, well it's signed but not completely over yet, we did have some consultants and I do not want to get into the details of those consultants until the dismissal has been filed, but it is legal fees, costs associated with the litigation beyond legal fees and costs of third party consultants that we brought in to assist us in the defense of the case.

**Mayor Burns:** Any other questions for Brian?

**Alderman Peters:** And the full \$450,000 is committed to improvements of the revetment?

**Attorney Edes:** Yes sir.

**Alderman Peters:** Did you compute that in as income? How did you compute that?

**Attorney Edes:** Well I mean that is money that the Town is getting from the plaintiffs and part of the settlement is that it will be the satisfaction of their portion of the assessment. To answer your question, I haven't computed it as income, I'm not doing a balance sheet on that, I consider it, not I, but the settlement is that that's a satisfaction of their assessment.

**Alderman Peters:** So it's in and out in effect.

**Attorney Edes:** I'm sorry sir?

**Alderman Peters:** So it is in effect in and out, we have to extend it for repair.

**Attorney Edes:** It is clearly earmarked, yes sir, it is clearly earmarked. It is not disposable income. It is earmarked for a specific purpose.

**Alderman Peters:** So it is a substantial hit to the Town.

**Attorney Edes:** I would not advise the settlement if I did not think it was in the Town's best interest.

**Alderman Peters:** Well I would like to state that I voted against the settlement. For anyone who wants to know. I do not consider it such a great deal myself. Basically going back, we saved the residents in that area their homes and in effect they are paying a very nominal amount for expenditures of \$1.4 million or \$2.9 million overall so I don't actually consider that very good.

**Attorney Edes:** Well I certainly agree that the Town's efforts on both projects was to protect that property and those houses are still there today because of the Town's efforts, I certainly agree with that sir.

**Alderman Peters:** Thank you Brian.

**Attorney Edes:** Thank you Mr. Peters.