



TOWN COUNCIL MINUTES

REGULAR MEETING

APRIL 15, 2014

The Kure Beach Town Council held their regular Council meeting on Tuesday, April 15, 2014 at 6:30 p.m. Attorney Canoutas was in attendance and there was a quorum of Council present.

COUNCIL MEMBERS PRESENT

| | |
|---------------|-------------------|
| Mayor | Dean Lambeth |
| Mayor Pro Tem | Craig Bloszinsky |
| Commissioner | Emilie Swearingen |
| Commissioner | David Heglar |
| Commissioner | Steve Pagley |

STAFF PRESENT

Building Inspector – John Batson
Finance Officer – Arlen Copenhaver
Town Clerk – Nancy Avery
Deputy Town Clerk – Nancy Hewitt

CALL TO ORDER AND WELCOME

Mayor Lambeth called the meeting to order at 6:30 p.m. Pastor Keck from Kure Memorial Lutheran Church delivered the invocation. Mayor Lambeth led everyone in the Pledge of Allegiance.

APPROVAL OF CONSENT AGENDA ITEMS

1. Accept Debbie Gonsalves' resignation from the Parks and Recreation Advisory Board
2. Appoint Mike Jones as a regular member of the Parks and Recreation Advisory Board
3. Approve the revised Mission Statement for the Community Center Committee
4. Approve Budget Amendment 14-07 to increase the budget for Federal Asset Forfeiture expenditures in the amount of \$25,000
5. YTD Finance Report
6. Police Department Report – March 2014
7. Fire Department Report – March 2014
8. Approve Meeting Minutes:
 - March 18, 2014 regular meeting

MOTION – Commissioner Heglar made the motion to approve the Consent Agenda items, as presented.

SECOND – Commissioner Pagley

VOTE – Unanimous

Said budget amendment is herein incorporated as part of these minutes.



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ADOPTION OF THE AGENDA

Mayor Lambeth asked that Mike Jones' presentation for the Disc Golf Association be removed from the agenda, as he is unable to attend the meeting. Under Planning and Zoning Commission, he added Item C as "Party House;" under New Business, he added Item 2 as "Sand Moving;" and under New Business he added Item 3 as "Storm Reduction Project." He also moved the Closed Session to be held directly after Persons to Address Council.

MOTION – Commissioner Heglar made the motion to adopt the agenda, as amended.

SECOND – Commissioner Swearingen

VOTE – Unanimous

DISCUSSION AND CONSIDERATION OF PERSONS TO ADDRESS COUNCIL

1. Rick Knott, 1326 Saint Joseph Street, Carolina Beach

Mr. Knott, Director of the Cape Fear Disabled Sportsman's Tournament held by the Got-Em-On Live Bait Club, thanked Council for their continued support of the annual tournament.

2. Joanne Durham, 902 Pelican Court, Kure Beach

Ms. Durham said she supports the resolution against seismic testing. She said, since the time of the last Council meeting when this subject was discussed, hundreds of people have expressed opposition to it. She said Council can't stop seismic testing by approving the resolution, but they can officially express the will of the people of Kure Beach to not support the testing.

3. Brady Bradshaw, 4934 Wrightsville Avenue, Wilmington

Mr. Bradshaw, Founder of Eco Friendly Action, thanked Council for bringing forward the resolution in opposition of seismic testing. He quoted the NC State Ethics Commission's policy on ethics, commenting that Commissioner Pagley is a salesman for a consolidated pipe supplier which supplies materials to the oil and gas industry. Mr. Bradshaw said he feels it would be a conflict of interest for Commissioner Pagley to vote on the resolution and urged him to abstain from voting. He said he hopes that Council, regardless of their personal beliefs, will listen to the voice of the people of Kure Beach and approve the resolution against seismic testing.

4. Charlie Allo, 954 South Fort Fisher Boulevard, Kure Beach

Mr. Allo said he would like Council to establish an Ad Hoc committee to study traffic flow within the Town to give recommendation to Council on how to improve it.

Commissioner Heglar asked Mr. Allo what motivated him to suggest a traffic committee.

Mr. Allo explained that, south of E Street, it is difficult to get out onto Fort Fisher Boulevard late mornings during the in-season, especially on weekends. He said it's manageable for emergency personnel to travel south, but if they need to quickly transport someone north to the hospital, the



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traffic could impede them. He said he doesn't need an answer from Council right now, but asked them to consider his request.

CLOSED SESSION

Motion to go into closed session, per N.C.G.S. 143-318.11(a) (3), for consultation with the attorney on:

- a legal matter
- to consider and give instructions concerning a judicial action titled Integrity Builders versus Town of Kure Beach

MOTION – At 6:44 p.m., Commissioner Heglar made the motion to go into closed session to consult with the attorney on legal matters, including a judicial action titled Integrity Builders versus Town of Kure Beach.

SECOND – Commissioner Swearingen

VOTE – Unanimous

RETURN TO OPEN SESSION

MOTION – At 7:16 p.m., Commissioner Heglar made the motion to return to open session.

SECOND – Commissioner Swearingen

VOTE – Unanimous

Commissioner Heglar announced that, at the end of the meeting, a Press Release will be posted on the door at Town Hall.

MOTION – Commissioner Heglar made the motion to approve the settlement agreement and mutual release for the lawsuit Integrity Builders, LLC, vs. Town of Kure Beach, NC, Case No. 12CVS973.

SECOND – Commissioner Pagley

VOTE – Unanimous

MOTION – Commissioner Heglar made the motion to authorize the Finance Officer to remit payment of \$160,000 in relation to the lawsuit.

SECOND – Commissioner Pagley

VOTE – Unanimous

MOTION – Commissioner Heglar made the motion to approve Budget Amendment 14-06, transferring \$160,000 from the Water/Sewer Fund to the General Fund for the settlement payment.

SECOND – Mayor Pro Tem Bloszinsky

VOTE – Unanimous



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Said budget amendment is herein incorporated as part of these minutes.

Commissioner Heglar said that Council gave advice to the Town Attorney regarding a second legal matter that was discussed during closed session.

DISCUSSION AND CONSIDERATION OF COMMITTEE BUSINESS

1. Board of Adjustment

- a. Reappoint Harry Humphries to another three year term

MOTION – Commissioner Heglar made the motion to reappoint Harry Humphries to another three year term on the Board of Adjustment.

SECOND – Commissioner Pagley

VOTE – Unanimous

2. Planning & Zoning Commission

- a. Consideration of proposed, amended Code of Ordinance Section 19-378 Illumination.

Mr. Galbraith, Chairperson of the Planning and Zoning Commission, said the commission brought revised ordinance to Council two months ago, at which time Council asked them to add additional language. After discussing the requested changes with the Building Inspector, and doing further research, the commission added the language to the proposed, amended ordinance.

Commissioner Heglar said he would rather the commission only be allowed to review submitted illumination plans, not approve or deny them. He said it should be Council's job to make the final decision. He asked that they change the wording from "until approved" to "until reviewed."

Building Inspector Batson said he didn't like the proposed, amended ordinance, originally, which is the main reason there were no guidelines as to something like that. He said, since then, the changes were approved at the last meeting, and he also agrees with the change being requested by Commissioner Heglar.

Commissioner Heglar asked if any businesses in the Town would be out of compliance with the revised proposed ordinance, to which Mr. Galbraith responded that Jack Mackerel's would be out of compliance because of the string lighting on its upper deck.

Mr. Galbraith said that they don't want to bother anyone who already has existing lighting; the Town could work with the businesses on that. He said communities are realizing there are problems with LED and other exposed lights, so they're putting this type of language in their ordinances.



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MOTION – Commissioner Swearingen made the motion to approve the revision to the proposed amended ordinance, as recommended by Commissioner Heglar.

The motion to revise and approve the proposed Code of Ordinance, Section 19-378 Illumination, died for lack of a second.

Mr. Galbraith asked for direction from Council on how to proceed.

Commissioner Heglar said he didn't have any direction to give. He said he has been outspoken about property owners being able to do what they want with their property and doesn't think a rule should be written if no one has a problem with those businesses that are out of compliance.

Mayor Pro Tem Bloszinsky said he doesn't want to be overly restrictive over a string of lights.

Mr. Galbraith strongly recommended having a grandfather clause for existing business lighting, if Council was concerned about that issue, rather than having no ordinance at all to address it.

Mayor Pro Tem Bloszinsky asked if there was any other way to deal with this type of nuisance lighting, to which Mr. Galbraith responded there wasn't; not without the proposed amendment to the illumination ordinance.

Mayor Lambeth said he doesn't want private citizens or businesses restricted on this.

- b. Rental homes and their impact on parking and traffic; potential introduction of rental home certificates, as utilized in other states

Mr. Galbraith said, at the last commission meeting, they discussed how to manage rental houses that have numerous cars parked on the property. He said that, in Louisiana, rental house owners are required to have a rental home certificate. He said that the building inspector goes in and inspects the property for safety issues at a cost of \$500 for the initial inspection and \$100 every year after that; and after the rental property is approved, the owner gets a certificate to be able to rent the property, with limitations. He asked if Council wanted the commission to study this further for use in Kure Beach.

Commissioner Heglar asked him how violations would be reported, to which Mr. Galbraith replied that violations would be reported to the Building Inspector via a complaint from a neighbor, or anyone suspicious of a violation.

Mayor Lambeth said that there is a rental property on North Fort Fisher Boulevard that had 80 people in it at one time and 27 cars parked in the private lot across the street. (Note: This was to be Item C under this section of the agenda)



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Mr. Galbraith said this process would try to eliminate that from occurring.

COUNCIL CONSENSUS – Council directed the Planning and Zoning Commission to look further into how to manage privately-owned rental properties in Kure Beach and bring back their recommendations to Council.

Mr. Galbraith said that, when the K Avenue Mixed-Use District ordinance was approved, there was some confusion about an illumination component in it. He reminded Council that there are no business-only establishments allowed in the mixed-use district and that all properties have to have a residential component. He suggested that, even though Council doesn't want a restriction on nuisance/LED lighting in the commercial district, they may want it for the mixed-use district.

Commissioner Heglar said that the current code seems to take care of the illumination issue.

Mr. Galbraith said it takes care of lights shining directly onto neighboring buildings, but it doesn't take care of lighting that would be used to outline or cover a building in LED lights. He said, due to the special situation, Council may want more elaboration in the code regarding lighting in that district.

Mayor Pro Tem Bloszinsky said the subject warranted further discussion because he would not want that type of lighting right next to his home.

Chairperson Galbraith said he would come back to Council at their May meeting to propose an illumination ordinance just for the K Avenue Mixed-Use district.

Council proceeded to commend and thank Mr. Galbraith and the Planning and Zoning Commission for their hard work.

DISCUSSION AND CONSIDERATION OF DEPARTMENT HEAD BUSINESS

1. Administration and Finance

a. Approve Budget Amendment 14-08 in the amount of \$35,000

Finance Officer Copenhaver explained the reason for the budget amendment and asked for Council's approval.

MOTION – Commissioner Heglar made the motion to approve Budget Amendment 14-08 for the amount of \$35,000, to increase the FY 2014 budget for Powell Bill related expenditures to pave the street and sidewalks for the downtown improvement project.

SECOND – Mayor Pro Tem Bloszinsky

VOTE – Unanimous



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Said budget amendment is herein incorporated as part of these minutes.

b. Approve Budget Amendment 14-09 in the amount of \$5,000
Finance Officer Copenhagen explained the reason for the budget amendment and asked for Council's approval.

MOTION – Commissioner Pagley made the motion to approve Budget Amendment 14-09, to take funds from Ad Valorem Taxes to fix unexpected repairs to the concrete floor in the bay area of the Fire Department, in the amount of \$5,000.

SECOND – Commissioner Swearingen

VOTE – Unanimous

Said budget amendment is herein incorporated as part of these minutes.

2. Public Works Department

Mayor Pro Tem Bloszinsky asked the Town Clerk to forward him a copy of the engineering study done for the Sea Watch dune infiltration system.

DISCUSSION AND CONSIDERATION OF OLD BUSINESS

1. Update on pool at 910 North Fort Fisher Boulevard

Mayor Lambeth said that the last drawing he looked at for the proposed pool wasn't to scale. He said that he and Mayor Pro Tem Bloszinsky are apprehensive about giving the homeowner permission to put in the pool, and he will talk to the attorney and bring Council an update at the May Council meeting

DISCUSSION AND CONSIDERATION OF NEW BUSINESS

1. Adoption of Resolution 14-04, Opposition to Seismic Testing

MOTION – Commissioner Swearingen made the motion to approve Resolution 14-04, opposing Seismic Testing, as written.

SECOND – Commissioner Heglar

VOTE – Adoption of Resolution 14-04, opposing seismic testing, was voted down three to two, as follows: Commissioner Heglar and Swearingen FOR, and Mayor Lambeth, Mayor Pro Tem Bloszinsky and Commissioner Pagley AGAINST.

Commissioner Heglar took issue with the request made during Persons to Address Council about Commissioner Pagley needing to abstain from voting on the issue of seismic testing due to a conflict of interest. He said that, although Commissioner Pagley sells parts to an industry, it's not the same as working for the industry. He said that Commissioner Pagley's business is in water,



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selling to sewer systems and other things; it's not in oil He said that it's disheartening that people take a position and decide to make it an ethics issue because they don't like the opinion of another. He said that commissioners are supposed to vote their opinions and their jobs, and they can't pull out of voting just because people make it unpopular for them to do so. He said the NC State Ethics Commission makes it very clear what constitutes ethics for an elected official in a vote. He said last month he stated Council shouldn't be voting on this, and he still feels the same way; but since Council brought it up for another vote, Kure Beach will be in the news again for yet another "stupid thing."

Mayor Pro Tem Bloszinsky said that, at the end of the last meeting when this issue was discussed, it was explained by Commissioner Heglar that we should not be involved in things where we cannot impact the outcome. He said it was said that people should write their own, personal, letters to their representatives in Congress.

Commissioner Swearingen said that, when Council was voting on whether or not to have the triathlon with Set Up Events, she explained that her son worked for the company and so she abstained from voting due to what she thought was a conflict of interest. She said that, when voting on the architect for the park, Mayor Lambeth abstained from voting because he owned a pool company which wasn't even a direct financial interest. She said that Mr. Bradshaw brought up the fact that the company for which Commissioner Pagley is a salesman that sells materials to the oil and gas industry. She proceeded to ask the Town Attorney what the difference was in the previous two instances compared to Commissioner Pagley's instance.

Town Attorney Canoutas replied that she would have to be talking about a specific company and show that Commissioner Pagley has a specific interest in that company.

Commissioner Swearingen said that it's on Commissioner Pagley's company website that they sell materials to oil and gas industries, which shows a direct relationship. She said she doesn't know who pays his salary, but she doesn't get paid from Set Up Events and the Mayor doesn't get paid from the park architects; but they both abstained from voting.

Town Attorney Canoutas said that he doesn't see a conflict of interest, and the Town also doesn't have any jurisdiction on seismic testing, to start with; it's a Federal Government issue.

Commissioner Swearingen said that the Federal Government is giving towns a time to speak out on this subject, and Kure Beach is 1 out of 2,000 towns from Maine to Florida, that has been asked to have its say. She said that because our people are speaking out against seismic testing, it's already been proven by Oceana that there are seven additional towns that have passed the resolution against seismic testing, with others coming behind them. She said that Council



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members shouldn't be representing their personal views or what their employers want, but they should represent what the people in Kure Beach want.

2. Sand Moving

Building Inspector Batson said that, at the budget work session held last week, Council approved having a beach bulldozer push sand to the 600-1000 block of North Fort Fisher Boulevard to fix the dunes. He said that the contract has been reviewed with changes from the Town Attorney and the project should start sometime this week to be completed by the end of next week.

3. Storm Reduction Project

Mayor Pro Tem Bloszinsky said that Council needs to decide which scenario of beach renourishment they want. He reviewed the four scenarios being proposed by the Corps of Engineers (USACE), as follows: 1) As Scheduled – Carolina Beach (CB) and Kure Beach (KB) don't get renourishment until 2016, with CB getting \$6.6 Million from ROT and nothing from the Feds; 2) Veneer – only CB gets a veneer in Fall 2014, and then CB and KB get renourishment in 2016; 3) CSDR Fall 2014 – CB and KB get renourishment in 2014 and again in 2017; and 4) WRRDA – CB and KB get renourishment in 2016, with CB receiving no money from the ROT and \$5.2 Million from the Feds. He explained that, in Scenario Three, if the County only matches State funds with Room Occupancy Tax (ROT), which is their current practice, then CB would need to pay the difference of \$1.136 Million and KB would need to pay the difference of \$1.284 Million. After reviewing everything, he recommended going to the County with CB Council to ask them for the full funding of ROT proposed by USACE. He said it would be a benefit if the towns use the funds given to them this year and then, starting in 2017, a three-year renourishment rotation would resume.

Mayor Lambeth said CB Council is still trying to decide from which scenario to choose. He said that CB Mayor Pro Tem Pierce and Commissioner Shuttleworth were upset that he would not support spending \$1.2 Million that KB doesn't have until the County approves the use of ROT funds. He suggested Council sit tight until CB makes their decision.

Commissioner Swearingen said that the County won't even discuss the use of ROT until they've heard from CB.

Mayor Lambeth said that CB Council needs to meet first and then Council can follow their lead.

Commissioner Heglar said that Council needs to be ready to follow CB's decision quickly, because the County needs the pressure to make a fast decision on the use of ROT funds in order to meet the decision deadline that the Corps of Engineers set for the towns.

BUDGET AMENDMENT

FISCAL YEAR ENDING JUNE 30, 2014

AMENDMENT DATE: 04/15/2014

Budget Amendment No.: 14-06

DESCRIPTION/PURPOSE OF AMENDMENT

This budget amendment is to authorize a transfer of \$160,000 from the Water/Sewer Fund to the General Fund to provide funds for the Ocean Front Park litigation settlement. During FY 2014, the Water/Sewer Fund has received an unbudgeted refund of \$399,736 from Carolina Beach for overpayment of treatment facility charges. This amendment would be transferring 40% of this refund to the General Fund. In accordance with G.S. 159-13(b)(14), funds may be transferred from an enterprise fund (Water/Sewer Fund) to another fund (General Fund) if the total of all other appropriations in the enterprise fund equal or exceed the amount that will be required during the fiscal year to meet operating expenses, capital outlay and debt service on outstanding enterprise fund notes. These requirements are met therefore permitting the transfer.

ACCOUNTS AFFECTED

| <u>Account No.</u> | <u>Account Name</u> | <u>Debit</u> | <u>Credit</u> |
|--------------------|-------------------------------|--------------|---------------|
| 30-999-00-00 | Transfers Out | \$160,000 | |
| 30-335-00-01 | Misc. Refund – Carolina Beach | | \$160,000 |
| 10-470-04-02 | Settlements/Court Cases | \$160,000 | |
| 10-315-00-00 | Transfers In | | \$160,000 |

NOTE: (a) Budget Officer may transfer between line item expenditures without limitation and without a report being required up to \$10,000 at any one time. (b) The Budget Officer may transfer amounts within departments and of the same fund and reported as part of the financial statements. He/She shall make an official report immediately to Council on such transfers. (c) The Budget Officer may not transfer amounts between funds without prior Council action.

Requested By: Arlen Copenhaver, Finance/Budget Officer

Date: 04/15/14

Approved By: Arlen Copenhaver, Finance/Budget Officer

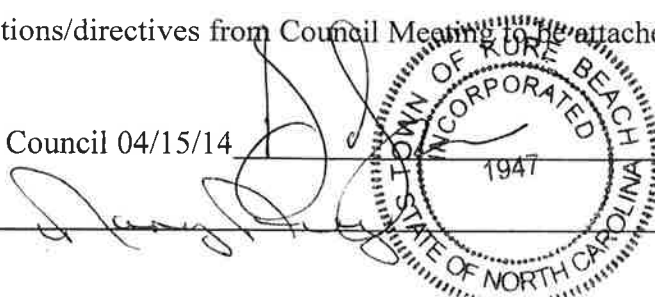
Date: 04/15/14

(Copies of actions/directives from Council Meetings to be attached, if required as per NOTE above).

Approved by Council 04/15/14

Dean Lambeth, Mayor

ATTEST:



Nancy Avery, Town Clerk

BUDGET AMENDMENT
FISCAL YEAR ENDING JUNE 30, 2014
AMENDMENT DATE: 04/15/2014

Budget Amendment No.: 14-07

DESCRIPTION/PURPOSE OF AMENDMENT

The Police Chief is estimating that an additional \$25,000 of Federal Asset Forfeiture funds will be used during the remainder of fiscal year 2014. The use of Federal Asset Forfeiture funds is restricted to Police-related expenditures that are outside of the normal Police annual operating budget. The current plan is to use the additional funds for training and equipment.

ACCOUNTS AFFECTED

| <u>Account No.</u> | <u>Account Name</u> | <u>Debit</u> | <u>Credit</u> |
|--------------------|---------------------------------------|--------------|---------------|
| 12-510-57-00 | Fed Asset Forfeiture Fund Expenses | \$20,000 | |
| 12-510-74-00 | Capital – Fed Asset Forfeiture Funds | \$5,000 | |
| 12-310-00-00 | Appropriate Fed Asset Forf. Fund Bal. | | \$25,000 |

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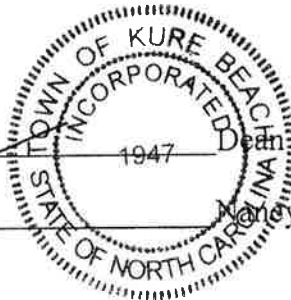
Requested By: Dennis Cooper, Police Chief Date: 04/15/14

Approved By: Arlen Copenhaver, Finance/Budget Officer Date: 04/15/14

(Copies of actions/directives from Council Meeting to be attached, if required as per NOTE above).

Approved by Council 04/15/14 _____ Dean Lambeth, Mayor

ATTEST: Nancy Avery _____ Nancy Avery, Town Clerk



BUDGET AMENDMENT

FISCAL YEAR ENDING JUNE 30, 2014

AMENDMENT DATE: 04/15/2014

Budget Amendment No.: 14-08

DESCRIPTION/PURPOSE OF AMENDMENT

This budget amendment is to increase the FY 2014 budget for Powell Bill related expenditures. Expenses relating to street paving and sidewalks in the downtown area, as well as street re-striping have or will be incurred. The additional \$35,000 should cover these expenses and any other street related expenses through the end of FY 2014.

ACCOUNTS AFFECTED

| <u>Account No.</u> | <u>Account Name</u> | <u>Debit</u> | <u>Credit</u> |
|--------------------|---------------------------------|--------------|---------------|
| 11-570-00-00 | Powell Fund Expenditures | \$35,000 | |
| 11-343-00-00 | NC Powell Bill Allocation | | \$4,689 |
| 11-310-00-01 | Appropriate Powell Fund Balance | | \$30,311 |

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Requested By: Sonny Beeker, Public Works Director Date: 04/15/14

Approved By: Arlen Copenhaver, Finance/Budget Officer Date: 04/15/14

(Copies of actions/directives from Council Meeting to be attached, if required as per NOTE above)



Approved by Council 04/15/14

Dean Lambeth, Mayor

Nancy Avery, Town Clerk

BUDGET AMENDMENT

FISCAL YEAR ENDING JUNE 30, 2014

AMENDMENT DATE: 04/15/2014

Budget Amendment No.: 14-09

DESCRIPTION/PURPOSE OF AMENDMENT

Unexpected repairs to the concrete floor in the bay area of the Fire Department are required. Repairs to the floor are necessary to prevent any further damage. Ad Valorem tax revenue received in excess of the budget is being used to increase the Fire Department's maintenance budget.

ACCOUNTS AFFECTED

| <u>Account No.</u> | <u>Account Name</u> | <u>Debit</u> | <u>Credit</u> |
|--------------------|--------------------------|--------------|---------------|
| 10-530-15-00 | Maintenance of Building | \$5,000 | |
| 10-301-00-00 | Ad Valorem Tax - Current | | \$5,000 |

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Requested By: Harold Heglar, Fire Chief

Date: 04/15/14

Approved By: Arlen Copenhaver, Finance/Budget Officer

Date: 04/15/14

(Copies of actions/directives from Council Meeting to be attached, if required as per NOTE above).

Approved by Council 04/15/14

ATTEST:

[Handwritten signature]



[Handwritten signature] Lambeth, Mayor

[Handwritten signature] Avery, Town Clerk



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MOTION – Commissioner Heglar made the motion for the Town Clerk to draft a resolution for approval, when Carolina Beach is ready to take action, stating that, contingent on the ROT funding a larger portion of renourishment, Council supports the scenario to do a Fall 2014 renourishment.

SECOND – Commissioner Pagley

VOTE – Unanimous

ADJOURNMENT

MOTION – Commissioner Heglar made the motion to adjourn.

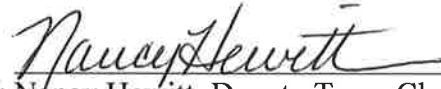
SECOND – Commissioner Swearingen

VOTE – Unanimous

The meeting adjourned at 8:07 p.m.



Dean Lambeth, Mayor



ATTEST: Nancy Hewitt, Deputy Town Clerk

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting. Persons wishing to hear the recording of this meeting may request to do so by contacting the Town Clerk.