



## **Town of Beaufort, NC**

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### **Board of Commissioners Regular Meeting 6:00 PM Monday, September 12, 2022 Train Depot, 614 Broad Street Beaufort, NC 28516**

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#### **Call to Order**

Mayor Harker called the meeting to order at 6:00 p.m.

#### **Pledge of Allegiance**

Mayor Harker invited all to join in reciting the Pledge of Allegiance.

#### **Roll Call**

Elizabeth Lewis, Town Clerk, called the roll.

#### **PRESENT:**

Mayor Harker  
Mayor Pro Tem Hagle  
Commissioner Oliver  
Commissioner Cooper  
Commissioner Terwilliger  
Commissioner Hollinshed

#### **Agenda Approval**

Commissioner Hagle made a motion to approve the agenda as presented.

The motion carried unanimously.

#### **Public Comment**

Logan Louis, 900 Cedar Street in Beaufort, discussed and shared several quotes from a recent editorial published by Carteret County News-Times regarding Beaufort's future land use plan. Mr. Louis noted the amazing participation from Town residents in the development of the proposed CAMA Land Use Plan, while expressing frustration with the referenced article. He spoke on the Non-Intensification Zone (NIZ), clarifying the meaning of key words such as "should" and "shall", suggesting the NIZ does not prohibit

development. He offered his understanding of the plan, stating it was not a Land Development Ordinance. He suggested development of the land use plan clearly reflects Beaufort's demographics and full impact on its economic future.

John Flowers, 321 Orange Street in Beaufort, shared his frustration regarding the Compass Hotel and buffering around his property. He referenced a previous staff report that indicated the developers would complete the buffering requirements first but noted the fence around his property was still not up. He requested a possible letter be sent, or some other type of action be taken to ensure the developer comply with the buffering conditions.

Kathleen Schurdevin, 119 Sherwood in Beaufort, spoke on the proposed CAMA Land Use Plan and her long-term residency in Beaufort. She shared her past job knowledge as a landscape architect, experience in the planning section of an engineering firm, and a department of transportation employee. She explained she was not unrealistic about development and had been involved in numerous development projects and environmental assessments over the years. She suggested there were distortions and falsities regarding the Non-Intensification Zone (NIZ); noting there were not a set of rules, regulations, or ordinances in the plan, rather than a framework for decision making in the sensitive development zones.

## **Presentations**

### **1. Beaufort Police Department- Awards/SRO Introductions**

Paul Burdette, Police Chief, shared several officers from the Beaufort Police Department recently responded to and saved two people actively choking. He presented a Life Saving Award to the following employees: Officer Michael Dennis; Sergeant Shephard Newman; Officer Jared Meyer.

Chief Burdette also introduced the department's School Resource Officers and let them each say a few words. It was noted that Officer Meyer will be stationed at Beaufort Elementary School, Officer Ferreira at Beaufort Middle School, and Officer Bullock at Tiller School.

### **2. Dredging Update- Kyle Garner**

Kyle Garner, Planning & Inspections Director, provided an update on recent dredging activities. He explained each year, the Town sets aside funds for dredging Bulkhead Channel, which is completed by the Army Corps. He noted the cost of each dredging cycle depends on the amount of cubic yards of sand to be moved, estimated by the Army Corps. He discussed budgeting practices amongst the Town and other entities, suggesting the cost of future projects could rise, as more areas need to be dredged.

## **Items of Consent**

1. Minutes- July 14th & August 8th
2. Budget Amendment- 1809 Live Oak Street Water and Sewer Main Extensions
3. FY 2023 Budget Amendment #4

Commissioner Hagle made a motion to approve the Items of Consent.

The motion carried unanimously.

## **Items for Discussion and Consideration**

### **1. Comprehensive and CAMA Land Use Plan**

Mayor Harker introduced Rachel Love-Adrick, District Planner with the Division of Coastal Management. She shared Ms. Love-Adrick was present to answer any questions the Board might need further clarification on regarding the CAMA Land Use Plan.

Ms. Love-Adrick explained that she reviewed land use plans for consistency with the Coastal Resource Commission's rules; once the plans are approved, the CAMA Land Use Plan is assessed for consistency with CAMA permits. She noted while reviewing a CAMA permit, she would look at the future land use maps and policies. She discussed enforceable policies, described as definitive and regulatory, explaining how they would be used to deny or approve a permit.

Commissioner Terwilliger discussed his concern regarding the plan having three separate documents combined into one. He classified those sections as: Beaufort General Land Use Plan, Beaufort CAMA Land Use Plan, and Beaufort Resiliency Plan. He shared that the proposed document had so much information, he was concerned about how the Division of Coastal Management would use it. He also brought attention to terms like, "should" and questioned whether it would be enforceable.

Ms. Love-Adrick noted the Coastal Resource Commission has planning goals/guidelines that have to be incorporated in the plan. She explained she would analyze the section on policies, review the future land use map, and the future land use map classifications as a basis for the permit approval process. She explained the policies would have their own section and be applied to areas such as Public Access, Land Use Compatibility, Infrastructure Carrying Capacity, Natural Hazard Areas, and Water Quality. She provided an example of some terms she considered regulatory, such as "shall", "required", "prohibited", which could be interpreted as enforceable. She shared that some agencies had separate plans, noting that requires separate reviews of each of the plans. She shared she was seeing more comprehensive plans lately, meaning everything together as one document.

Commissioner Terwilliger suggested the combined plan should be very clear as to which section addresses specific concerns.

Ms. Love-Adrick explained part of the plan review for 7B for the Land Use Plan rules, is a matrix; the consultant goes through the matrix and identifies where each requirement is being met, from a CAMA standpoint.

Commissioner Hollinshed asked Ms. Love-Adrick, if she was given CAMA a plan for review and part of it was a vision, but it could be considered a reality, how would the applicant be held accountable.

Ms. Love-Adrick explained it depends on what the policy states; suggesting that zoning and ordinances are what drives development in a local community.

Commissioner Hollinshed asked how the budget statements throughout the document were handled by CAMA.

Ms. Love-Adrick explained CAMA sets standards and review capacity; the local government portion of the planning falls on the Board, as far as funding is concerned.

Commissioner Hagle shared that he also struggled with the comprehensive portion of the plan being together with the CAMA portion. He questioned what specifically CAMA dealt with.

Ms. Love-Adrick explained it would be environmental; what effects the water, not just beginning at the shoreline. She reiterated the five main policies that were required in the plan.

Commissioner Oliver asked if somewhere in the plan it was stated, new development would not be allowed to install bulkheads, would that be something Ms. Love-Adrick would enforce.

Ms. Love-Adrick asked if new development was defined in the plan and explained that is where the definitive and regulatory statement needs to be clear; the definition of new development could vary from community to community.

Commissioner Oliver asked, assuming new development was clearly defined and the plan stated new development would not be allowed to install bulkheads, would that be enforced by CAMA.

Ms. Love-Adrick said she would prefer it say bulkheads are prohibited, but would not be allowed is pretty definitive.

Commissioner Oliver asked if CAMA had a codification system or if they largely interpreted decision based off each separate document.

Ms. Love-Adrick explained each community's plan was different, depending on their policies. As far as being codified, she explained that was referenced in the Coastal Area Management Act and in the 7B Rules, noting a permit cannot be granted if it is inconsistent with the Land Use Plan.

Commissioner Terwilliger read the following comments into the record:

*I want to thank everyone who has worked on this Plan to date. The efforts of Town staff, the consultants, Stewart Engineering, and the citizens of Beaufort are evident throughout the document. The work that has been put forth on this Plan will pay dividends now and into the future if we work together.*

*Although I believe that the document is a solid start to an updated Plan, I believe that there are some critical items that need to be addressed before we can move forward with approval and submission.*

*The first item revolves around the fact that the document is really 3 separate documents, which have been combined into one. They are the Beaufort General Land Use Plan, Beaufort CAMA Land Use Plan, and Beaufort Resiliency Plan.*

*The fact that the Plans are combined is permissible by NC Statutes. The challenge as I see it is that there is no clear delineation/identification of which parts of the document speak to which Plan. I believe this needs to be clarified, so the document clearly shows which sections address which Plans and therefore, clearly identifies what we want CAMA to use/consider during their permitting process.*

*The next area of concern is the lack of mitigation details/specifics in the Plan. When a Plan to address issues that may come to realization over the next 75 years or so is developed, it should be a flexible Plan that looks at interim steps which could be taken, along with potentially more drastic steps that may be required later. This Plan mentions mitigation approximately 80 plus times within the document. Unfortunately, it does not provide any specifics around potential mitigation steps or their use/timing within the document. Whether or not we ever get to the point where we must implement the Non-Intensification Zone (NIZ) or a similar approach, these mitigation steps should be implemented in the near term to protect against flooding events occurring today. They are complimentary to the NIZ proposal.*

*The next section of the document that could use some additional thought and changes is the Non-Intensification Zone section. I am not against the NIZ proposal. I believe that through a deterioration of environmental conditions, we may be forced to reevaluate how we implement and support public utilities within Beaufort. I do not believe we are there today. Refinement of this concept should continue to ensure that we minimize the impact on existing landowners and the growth options for Beaufort.*

*I would recommend the following steps to accomplish the following: Incorporate the use of mitigation techniques within the definition of the NIZ; Establish a methodology for the periodic reevaluation of the environmental changes taking place and update the LUP accordingly (Recommended review every 3-5 years); Modify the wording on the NIZ definition to state that, "it is included for the purposes of future study and consideration".*

*As I said previously, mitigation options should be defined and be required as we move forward in the immediate future. They will complement the efforts of the NIZ if we move in that direction in the future. We should leave the concept of the NIZ in the document. We should review and modify the language to ensure that CAMA and other agencies understand that this a potential future option for Beaufort.*

*Another gap in the document is how it specifically does not incorporate the issues associated with stormwater runoff into the discussion. Although there are a few sections where it is mentioned, there is no effort to significantly address it. Stormwater issues are responsible for a significant amount of flooding in downtown Beaufort. Much of this flooding is not due to environmental issues but to the poor management of our stormwater infrastructure over the last 20 plus years.*

*There are other issues that need to be addressed in the document also to ensure that the document provides a comprehensive, fair assessment of what Beaufort needs to do going forward. These Plan(s) are important to the Town of Beaufort. We should demand that we take the time to do the best possible job on them we can collectively do. Anything less, would be a detriment to the Town. We have the time to expand upon and enhance what has been done to date.*

*I have identified numerous problems with spelling, typos, incomplete sentences, etc; which I have documented and should be fixed. I also believe that the document needs to be a living document. There needs to be a mechanism implemented where we can track revisions accurately and know what version we are referencing at any given point.*

Commissioner Cooper noted that it took a lot of work to compose the current draft CAMA Land Use Plan, suggesting a review of the plan every 3-5 years would be too often. He shared that he believed the proposed Plan was solid and thought they should vote on it and move on, rather than continuing to debate the topic.

Commissioner Oliver read the following comments into the record:

*Now that I heard Public Comments and Commissioner questions have been addressed, I am prepared to provide my suggestions concerning the Plan. I am extremely sensitive to our environment. To be fully transparent with this Board and our community, I and my family have supported award winning land conservation and environmental sanctity for generations. Likewise, I have developed property that far exceeded the requirements of land plans for 45 years.*

*To answer the questions that I should recuse myself, I or no related party or entity have property available for further development in Beaufort. My vote will be 100% in the best interests of Beaufort. My recommendation concerning the Non-Intensification Zone (NIZ) is actually more far-reaching than the draft.*

*I am in favor of updating the Comprehensive and CAMA Land Use Plan, however, I suggest two improvements to the June 9<sup>th</sup> Draft:*

- 1. Despite the words “mitigate” or “mitigation” being used 87 times in the Plan, there are limited mitigation methods in either the NIZ or the Resiliency Sections. I want there to be absolute clarity in this “guidance” document that mitigations precluding the effects of flooding, stormwater and rising tide be required for construction and reconstruction in the NIZ. Mitigation methods should include at least the following:*

- Sea Walls and Bulkheads and other shoreline hardening*
- LOMR’s*
- Sealed utilities*
- Floodproofing*
- Privately installed utilities*
- Freeboards*
- Other elevations*
- Bio-retention*
- Clustering*
- Conservation by easement or otherwise*
- Buffers*
- On-site stormwater collection*
- Urban waterfront redevelopment CAMA exemptions*

*There are numerous parcels where flooding and/or sea level rise have been mitigated allowing safe, prudent use of their parcels, such as: SECU, Taco Bell, 34N Building, McDonalds, The Duncan House, and the house immediately west of the Train Depot.*

- 2. There are no distinctions made between the effects of sea level rise and storm water. “Storm water” is mentioned 1 time, “rainwater” 0 times while “sea level rise” is mentioned 129 times and “flood” 437 times. I suggest Stewart include hydrology recommendations similar to those authored by hydrologist Michael Ellison of W.K. Dickson & Company, Inc.*

*I have the utmost respect for the countless hours contributed, but this Board must ensure the Plan is balanced between environmental, economic and property right issues even if it means performing a paragraph-by-paragraph review. We need to be extremely careful in our review to avoid any misuse of the Plan by special interests through lobbying or legal challenges. We need a clear understanding of which portions and by whom the Plan will be used. What does “guide” mean for the Town?*

*Does it mean utilities will not be publicly installed? Or publicly maintained? Or not allowed to be privately installed or maintained? Will mitigation allow Town and/or CAMA approvals and re-approvals?*

*The June 9, 2022, Draft, despite being couched as “guidance”, could be interpreted in a manner that would restrict property right of Beaufort’s citizens per the Town Attorney who wrote: “I do not think one can ever say with certainty that the NIZ restrictions...will never apply to existing structures”. Have we heard from those in the NIZ who will be affected? I don’t think that we*

*have. As an aside, I do not believe it is government's role to protect the financial security of its residents, as noted on Page 191.*

*On the other hand, Legal Counsel confirmed that our current plan is considered "reasonably updated" and that we need not adopt this Plan immediately to meet 160D State compliant. Mayor Newton advised in writing on September 1, 2022, that it is "Far better to get this right, than to go fast". I am not in favor of "my way or the highway" and hope others feel the same way. The NIZ represents a significant portion of the land acreage in Beaufort and deserves special attention. I'll also point out, that without reasonable mitigation the Plan will also have other unintended consequences, such as accelerating the gentrification of Beaufort due to exponential increases in land prices and taxes, and making any goal of mixed-income housing impossible.*

*Other items that have been touched upon by other commissioners: we need to integrate the Plan more than it has been to date; a maintenance/revision plan with an emphasis on environmental changes is needed at least each three years; we need to incorporate all prior reports and studies in Chapter 3 and elsewhere in the Plan, specially the 2006 Wooten Stormwater Plan and its revisions.*

*Madam Mayor, I am prepared to make a motion submitting the Plan when these discussions are complete.*

Mayor Harker what the pleasure of the Board was; the Board wished to hear Commissioner Oliver's motion.

Commissioner Oliver stated, I make a motion that the Town Manager instruct Stewart to amend the Plan to 1) add a list of acceptable mitigation methods that preclude the effects of flooding, stormwater and rising tide and be required for all construction and reconstruction in a NIZ; 2) Add hydrology recommendations similar to those authored by hydrologist Michael Ellison of W.K. Dickson & Company, Inc. and; 3) Provide attention to the other items and Errata reported by the Commissioners and Staff tonight.

Commissioner Hagle suggested that mitigation was going to have to come through Town ordinances.

Commissioner Oliver said personally he believed providing a guidance document without including mitigation is false guidance. He suggested if you are in a flood plain, which is what the NIZ is, you have to mitigate before getting a permit.

Arey Grady, Town Attorney, explained that the Town has a Flood Plain Mitigation Ordinance that basically implements the federal and state requirements for construction in the flood plains, and there are certain requirements. He shared he did not believe the current ordinance included all the mitigation items that Commissioner Oliver mentioned.

Commissioner Terwilliger shared his thoughts on finalizing the document. He noted it was a very important document and there was no rush to submitting it; he emphasized the importance of addressing the typos and other items previously mentioned.

Commissioner Hagle asked Commissioner Oliver if he would consider amending or removing the hydraulic information from his motion.

Commissioner Oliver said he would prefer not to, as he thought it was a fundamental issue.

Commissioner Cooper suggested the document had a life of its own; the typos should be fixed, and other areas of concern should be looked at again, even if it takes a little longer to complete.

Mr. Clark informed the Board it was his understanding that Stewart had fulfilled their contract with the Town, and any additional funds associated with the project would require a budget amendment.

Mayor Harker reminded the Board there was a motion on the floor, made by Commissioner Oliver, and called for a vote.

The motion carried unanimously.

## 2. Conflict of Interest Policies

Barbara Cooper, Human Resources Manager, clarified a few questions from a previous meeting regarding employees and firearms. She confirmed the weapons section had not changed and firearms were not prohibited on Town property. She explained the conflict of interest policies included in their meeting packets were simply updates to the current employee conduct section, and they were written by the Town Attorney.

Commissioner Terwilliger questioned a situation where an employee has a conflict, and if they are required to report it to their supervisor.

Ms. Cooper confirmed they were.

Commissioner Hagle made a motion to approve the presented Conflict of Interest Policies.

The motion carried unanimously.

## 3. Sewer Allocation Request- 506 Island Drive., Beaufort NC (Deerfield Shores Subdivision)

Greg Meshaw, Town Engineer, explained Reta Hutchins requested that 120 gallons per day (gpd) of sewer capacity be allocated to 506 Island Drive in Deerfield Shores subdivision for a two-bedroom home that is nearing completion. He gave background on the request and the Deerfield Shores subdivision.

Commissioner Terwilliger expressed concerns about sewer capacity at Deerfield Shores, asking if it was limited.

Mr. Meshaw confirmed there was capacity for this house as well as others. He explained the homeowner would pay tap fee, system development fees, and double sewer rates.

Commissioner Hollinshed noted the homeowner had a rather large lot, and asked Mr. Meshaw if there were any restrictions in place to ensure they did not increase the size of the dwelling.

Mr. Meshaw explained it would be hard to regulate, as building permits are issued by the County in that area.

Commissioner Hagle suggested the Town be in contact with the County regarding construction at Deerfield Shores.

Commissioner Oliver asked if the application referenced a certain number of gallons of flow; so if something additional did occur, the Town could refer to the original paperwork which only approves two bathrooms.

Mr. Meshaw confirmed the application noted the specific request of 120 GPD.

Commissioner Hagle made a motion to approve the request as presented.

The motion carried unanimously.

4. Grant Funding Assistance Resolution- Local Assistance for Stormwater Infrastructure Investment

Mr. Meshaw shared the North Carolina Department of Environmental Quality will award approximately \$82 million in American Rescue Plan Act funding for stormwater projects from the newly created Local Assistance for Stormwater Infrastructure Investments program (LASII); of the \$82 million, \$57.4 million will be available for construction and \$24.6 million for planning grants that will improve or create infrastructure for controlling stormwater quantity and quality. He explained that given the recent creation of the LASII funding source, staff is recommending that the Board of Commissions consider adopting a resolution that authorizes a funding request for two potential efforts as follows:

- Performance of an Inventory, Assessment and Planning Study that targets the Meeting Street flooding issue with a goal of determining alternatives if any, for mitigating the frequency and degree of flooding.
- A Stormwater Construction Project to include the installation of four stormwater treatment systems as an addition to the USDA-funded project. These proposed treatment units are designed to remove pollutants such as oil, grease, and sediment, nutrients, pathological bacteria and heavy metals from the first 1-1/2" rain from a storm event. These units are not currently incorporated into the USDA funded Stormwater Improvements Project as there are insufficient funds for their inclusion.

Mr. Meshaw noted that for both the Planning Grant (Meeting Street study) and the construction of the four Stormwater Treatment systems, the possible funding available is in the form of a 100% grant. The funding being requested for the Planning Grant is \$400,000, while the Construction Grant funding request is estimated to be \$4,362,170. Under the LASII program, the grant limit per application for Planning Grants is \$400,000 and \$5,000,000 for Stormwater Construction Grants.

Commissioner Terwilliger asked if applying for the grant would impact the legal obligations of the Town regarding the flooding issues on Meeting Street.

Mr. Grady indicated he did not believe applying for the grant would make the Town liable for performing the suggested work.

Commissioner Hollinshed asked what the study included.

Mr. Meshaw explained there would most likely be a hydrology study, as well as other analyses and a final report with recommendations.

Commissioner Cooper asked for clarification on water quantity and specific testing to be done.

Commissioner Oliver asked for additional clarity on the hydrology studies.

Mr. Meshaw explained they would delineate the watershed and do calculations on how much water comes from the area.

Commissioner Oliver suggested notifying the Palmetto Plantation HOA of the grant and have them on board with any future strategies or recommendations to mitigate the flooding issue.

Mr. Meshaw noted he did not see a problem with involving the neighbors but wanted it to be clear, that the results of the study did not obligate the Town to financially alleviate the problems at hand.

Commissioner Hagle suggested if there were any extra funds available, it would be advantageous to look at other areas of the Mercer Development regarding drainage issues.

Commissioner Hagle made a motion to approve the grant funding request.

The motion carried unanimously.

## **Public Hearing**

### 1. Walking Permit- Hungry Town Tours

Commissioner Hollinshed made a motion to open the floor for a Public Hearing.

The motion carried unanimously.

David Cartier, applicant of the Hungry Town Tours, provided a background on his business and explained the request was a renewal for a Walking Permit, as provided in the meeting packet.

Mayor Harker asked if there was anyone in the public that wished to comment on the walking permit application.

There was none.

Commissioner Hollinshed made a motion to close the Public Hearing.

The motion carried unanimously.

Commissioner Hollinshed made a motion to approve the Walking Permit request, submitting by hungry Town Tours.

The motion carried unanimously.

## **Manager Report**

Mr. Clark shared highlights happening within several departments. A full report can be viewed at: <https://www.beaufortnc.org/boardofcommissioners/page/managers-report>

## **Mayor/Commissioner Comments**

Commissioner Terwilliger had no comments.

Commissioner Hollinshed recognized the first responders who were able to save several lives. She noted music in the park has been successful so far and encouraged others to attend on Thursday evenings.

Commissioner Cooper thanked Town staff for continued work, specifically concerning a property on Cedar Street that required extra attention. He also commended the Police Officers who were recognized for their life saving efforts.

Commissioner Hagle thanked Mr. Garner for the dredging update. He also commended the SRO's and the Police Officer's involved in the life saving events. He shared appreciation to those vital in the composition of the CAMA Land Use Plan. He also noted the hard work from staff on continued efforts to improve infrastructure.

Commissioner Oliver praised Town leadership, specially within the Planning Department. He commended the Police Department and their efforts in saving several folks. He expressed his desire for the community to come together regarding the CAMA Land Use Plan.

Mayor Harker noted the anniversary of Hurricane Florence and urged people to be prepared during hurricane season. She commented the Town's law enforcement on saving lives and being good role models daily. She noted the importance of small businesses in the area. She commended Town staff and the work they strive to complete.

### **Closed Session**

1. Pursuant to NCGS 143-318.11 (a) (3)

Commissioner Hagle made a motion to go into closed session, pursuant to NCGS 143-318.11 (a) (3).

The motion carried unanimously.

### **Adjourn**

Commissioner Hagle made a motion to adjourn the meeting at 9:10 p.m.

The motion carried unanimously.

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Sharon Harker, Mayor

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Elizabeth Lewis, Town Clerk