



**TOWN OF HOLDEN BEACH  
BOARD OF COMMISSIONERS  
PUBLIC HEARING/REGULAR MEETING  
TUESDAY, MAY 18, 2021 – 5:00 P.M.**

The Board of Commissioners of the Town of Holden Beach, North Carolina met for a Public Hearing/Regular Meeting on Tuesday, May 18, 2021 at 5:00 p.m. in the Town Hall Public Assembly. Present were Mayor J. Alan Holden; Mayor Pro Tem Gerald Brown; Commissioners Brian Murdock, Mike Sullivan, Pat Kwiatkowski and Rick Smith; Town Manager David W. Hewett; Town Clerk Heather Finnell; Inspections Director Tim Evans; Assistant Town Manager Christy Ferguson; Police Chief Jeremy Dixon; Public Works Director Chris Clemmons; and Town Attorney Katie Madon.

**PUBLIC HEARING: DRAFT SYSTEM DEVELOPMENT FEES (SDF) REPORT**

Mihayla Coopersmith from Raftelis said the fees are one-time fees that new customers pay to buy into the system under the premise that growth helps to pay for growth. They calculated the fees in accordance with the NC legislation. The fees in the report are the maximum allowable that the Town can adopt. The fees are calculated per bedroom and would scale up from there, depending on how many bedrooms there are. There was a question about using the combined approach for the water system, as opposed to the buy-in approach for the sewer system. For the sewer system, there is no capital projects planned for growth. For the water system, the Town has the water tower. It was included because if the Town didn't need to serve new customers, it wouldn't need a new water tower. She said if the water tower was removed, it would only be about \$90 difference. Commissioner Sullivan asked if the proposed water fees increase would have an effect on the calculation. Ms. Coopersmith answered that is separate and not related to the fees. This fee is for new development. Mayor Holden asked the difference if this was passed versus now. Ms. Coopersmith replied that they calculated the fee in its pure form. It is up to the Town to determine how to implement and track who has already paid. Public Works Director Clemmons asked about the fee if you had a three-bedroom home, tore it down and built a six-bedroom home. Town Manager Hewett explained that it is a function of how the Town wants to set the fees and to consider what may have been credited before.

Elaine Jordan said she is still confused about the water tower and the method used for the water fee because the buy-in method was used for the sewer and the combined for water. Her understanding is that the water tower has not been approved. She asked if the buy-in method would be the appropriate way to determine the water fee if the water tower wasn't used. Ms. Jordan said her understanding is that tonight the Board would only approve the report. There is no action to be taken about the fee. Town Manager Hewett said the Board will not approve the report tonight, it may consider it after 24 hours. Ms. Jordan hopes there will be a lot of conversation before adopting the fees. Ms. Coopersmith explained according to HB 436, they are allowed to include five to ten years out of planned capital

spending, whether it was approved or not, as long as the Town has it approved in its plan. The Town is planning to build the tower and they wouldn't without the need to serve new customers. Due to that it is included in the calculation. The Board sets the fees. What Raftelis calculates is what the maximum allowable fee is. In this case, including the tower was appropriate. If it wasn't included, it would be the buy-in approach and the fee would be \$90 less.

Mayor Holden closed the public hearing at 5:13 p.m.

## **REGULAR MEETING**

Mayor Holden called the meeting to order and asked for a moment of silence.

## **PLEDGE OF ALLEGIANCE**

## **AGENDA APPROVAL**

Town Manager Hewett said there is a \$6,000 sedimentation characterization grant that is required as one of the conditions of our beach nourishment permit. He would like to add it as 11a. Since item 13, the Isaias amendment is related to the application to special bond financing, he requested that the order of items 13 and 12 be flipped.

*Motion by Mayor Pro Tem Brown to approve the agenda as amended; second by Commissioner Murdock; approved by unanimous vote.*

## **APPROVAL OF MINUTES**

*Motion by Mayor Pro Tem Brown to approve the minutes of the Special Meeting and Regular Meeting of April 20, 2021; second by Commissioner Smith; approved by unanimous vote.*

## **PUBLIC COMMENTS ON AGENDA/GENERAL ITEMS**

Two comments were submitted. They are in front of the Board, online and in the back of the room. Nobody signed up to speak in person.

## **DISCUSSION AND POSSIBLE ACTION ON THE DRAFT SYSTEM DEVELOPMENT FEES REPORT**

Town Clerk Finnell said the public hearing was just held, so the next step would be to consider adoption of the report. Town Manager Hewett added staff recommended the report be placed on the June agenda, but due to several moving parts of this and its potential impact on adopting prior to having a recommended rate fee structure in place, he would recommend the Board consider it in June with an October 1<sup>st</sup> effective date. There are three items that may not directly impact it, but they are peripheral issues. One is the county water contract that the Board needs to entertain in the July timeframe. Two is the county wholesale water increase. It is not directly related, but it is a peripheral interest to the issue. Three is the American Recovery Act guidance. We still are not clear how the funds can be used. We need some time to develop a recommended fee schedule that is an underlayment to that report. If the report is approved tonight, it would have the effect of making the existing sewer fee obsolete

because the maximum that can be assessed according to this report is less than what the current fee charges. Other options would be to push the report out past the June agenda or not approve the report.

*Motion by Commissioner Sullivan that we put this on the agenda for June to discuss and possibly approve; second by Commissioner Kwiatkowski; approved by unanimous vote.*

## **POLICE REPORT – CHIEF DIXON**

- No pets on the strand starts May 20<sup>th</sup> from 9:00 a.m. – 5:00 p.m. During the hours allowed, they must be on a leash.
- We are getting into the summer so remember any golf cart on the road is a motor vehicle. You need to have your license to operate them and remember to follow all laws, including wearing seatbelts and children must be in child restraints.
- Beach equipment must be removed daily.
- Hurricane season officially starts June 1<sup>st</sup>. Every year for the last six years we have had a named storm before June 1<sup>st</sup>. Now is the time to make a plan. Make sure you have your decals attached to the windshield properly.

Commissioner Murdock said he gets a ton of concerns about golf carts. He encouraged the Police Department to put a little more effort into enforcement. He thinks people should be able to have them, but we need to keep people safe. Chief Dixon agreed and said they are making it a priority this year. They are hearing the community's concern. They will spend time trying to educate people. He asked people to spread the word that they are a motor vehicle and they need to follow the same laws.

## **DISCUSSION AND POSSIBLE SELECTION OF MEMBERS FOR THE PARKING COMMITTEE**

The Board voted by ballot. The votes were tallied. There was a tie between Page Dyer, Dina Hamad-Smitherman and Rick Paarfus. The Board decided to select all three members. The votes were as follows: Mayor Pro Tem Brown and Commissioner Murdock – Page Dyer, Dina Hamad-Smitherman, Commissioner Sullivan – Tracy Thomas and Rick Paarfus, Commissioner Kwiatkowski – Suzannah Tucker and Rick Paarfus and Commissioner Smith – Michael Gilbert and Larry Naron.

## **DISCUSSION AND POSSIBLE ACTION ON ORDINANCE 21-10, AN ORDINANCE AMENDING THE HOLDEN BEACH CODE OF ORDINANCES TO COMPLY WITH REQUIREMENTS OF CHAPTER 160D OF THE NORTH CAROLINA GENERAL STATUTES**

Inspections Director Evans said that state legislators decided they wanted to make a more uniform situation for developers and others across the state, so they came up with 160D. 160D consolidates city and county statutes for development regulations. While the law does not make major policy changes or shifts in the scope of authority granted to local governments, it does provide many clarifying amendments and consensus reforms that will need to be incorporated into local development regulations. He explained how staff completed the process and then sent the changes to the attorney for review. The changes were presented to the Planning & Zoning Board, who approved a consistency statement on the changes. He said the Board needs to set a public hearing.

Commissioner Sullivan said the Board passed the new trash ordinance last month. This ordinance still has the old language. Inspections Evans explained that when this is approved and is codified the other changes will show up in the ordinance book. He did add the new items for land usage. Commissioner Kwiatkowski said there are other sections like the executive secretary that aren't updated. She said there are two references to nonconforming lots on page 227. Inspections Director Evans explained the difference.

Mayor Holden suggested holding the public hearing at the meeting on June 15<sup>th</sup> at the beginning.

*Motion by Commissioner Sullivan to set a public hearing prior to the regularly scheduled meeting in June; second by Commissioner Murdock; approved by unanimous vote.*

## **DISCUSSION AND POSSIBLE SELECTION OF ENGINEERING FIRM FOR ENGINEERING DESIGN AND CONSTRUCTION MANAGEMENT SERVICES OF THE VACUUM SEWER SYSTEM STATION #2 UPGRADE**

Public Works Director Clemmons explained the Town solicited Statements of Qualifications for the planning, design, permitting, bidding and construction services related to the improvements of lift station 2. We received one response from Green Engineering. Per general statute, firms should be selected based on being qualified to provide services on the basis of demonstrated competence. Green Engineering was the engineer on the last two upgrades and staff recommends we go with them again. This is based on qualifications, not price. After they are approved, we go into negotiations on the contract. He doesn't have any complaints on Mr. Green's previous work. Public Works Director Clemmons said there is a tight schedule and reviewed it.

*Motion by Commissioner Kwiatkowski that we approve Green Engineering for our engineer in charge of the construction of lift station 2; second by Commissioner Sullivan; approved by unanimous vote.*

## **SEDIMENTATION GRANT**

Assistant Town Manager Ferguson said the Division of Coastal Management (DCM) recently added a native beach and large sediment sampling criteria to its beach nourishment regulations. We received an estimate from our engineer that the cost would be \$6,000 and then applied for a grant through DCM. It is no match for the Town. The grant of \$6,000 needs to be recognized with a budget amendment.

*Motion by Commissioner Kwiatkowski to approve Budget Amendment 21-12 (An Ordinance Amending Ordinance 20-10, the Revenues and Appropriations Ordinance for Fiscal Year 2020 - 2021, Amendment No. 13); second by Commissioner Smith; approved by unanimous vote.*

## **DISCUSSION AND POSSIBLE APPROVAL OF ORDINANCE 21-11, AN ORDINANCE AMENDING ORDINANCE 20-10, THE REVENUES AND APPROPRIATIONS ORDINANCE FOR FISCAL YEAR 2020 – 2021 (AMENDMENT NO. 12)**

Assistant Town Manager Ferguson said we received approval for our project worksheets for Isaias. The amendment in the amount of \$3,838,038 recognizes FEMA Cat G grant funds. The storm caused a loss

of approximately 67,438 cubic yards of sand, 320,000 dune plants and 24,000 feet of sand fence. The funds will be housed in Fund 70, the special project for FEMA that was set up last month.

*Motion by Commissioner Kwiatkowski to approval Budget Amendment 21-11, An Ordinance Amending Ordinance 20-10, the Revenues and Appropriations Ordinance for Fiscal Year 2020 – 2021 (Amendment No. 12); second by Commissioner Smith; approved by unanimous vote.*

## **DISCUSSION AND POSSIBLE APPROVAL OF RESOLUTION 21-09, RESOLUTION DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF THE TOWN'S SPECIAL OBLIGATION BOND AND CERTAIN RELATED MATTERS**

Assistant Town Manager Ferguson explained this resolution was prepared by our bond attorney firm, Parker Poe Adams and Bernstein and is necessary to direct application to the Local Government Commission (LGC) for approval of a special obligation bond and requesting LGC approval of the Town's special obligation bond and certain related matters. The FEMA reimbursement grant for storm damage repair for Florence, Michael, Dorian and Isaias is administered to the Town on a reimbursement basis. We will need to secure bridge loan financing. This is part of the process to do that. This financing effort necessitates LGC approval.

*Motion by Commissioner Murdock to approve Resolution 21-09 (Directing Application to the LGC for Approval of a Special Obligation Bond, Requesting LGC Approval of a Special Obligation Bond and Certain Related Matters; second by Mayor Pro Tem Brown; approved by unanimous vote.*

## **DISCUSSION AND POSSIBLE ACTION ON POST DISASTER FEMA DEBRIS PICKUP IN GATED COMMUNITIES**

Commissioner Kwiatkowski reminded everyone that last year after the hurricane and flooding, there was reimbursed debris pickup. There was discussion on pickup of debris on the west end, even though it is a gated community. The Board decided to do it, but it couldn't be FEMA reimbursed based on the rules at that time. At that time, the Board said they would explore how you might get FEMA reimbursement so that before the next hurricane we would have an idea if it would be possible for reimbursement for gated communities. Commissioner Kwiatkowski said Town Manager Hewett and Assistant Town Manager Ferguson contacted the appropriate people to see what instructions they had about pickups in gated communities. They sent the same sort of information that we had found last year. It doesn't give a lot of guidance on what has been successful. It does layout that if you are going to try to petition for FEMA reimbursement, you need to have certain agreements already signed with the gated communities. You are also supposed to be able to provide information on why it would be in the public health interest of the whole community or the economic interests for the debris to be picked up. Commissioner Kwiatkowski would like to explore getting the agreements in place with the gated communities. She reviewed what FEMA accepts. Commissioner Smith asked if the Town must pay first before getting reimbursement. Commissioner Kwiatkowski said FEMA gives guidance that when in doubt you should ask before you pick it up. Commissioner Sullivan said just to be clear this is to get the documentation, but it does not authorize that the Town will have the debris removed. He said in the information it says the Town needs to agree to indemnify the federal government. He asked if our insurance carrier will indemnify the federal government if we assume this responsibility. Town Manager Hewett is not sure.

*Motion by Commissioner Kwiatkowski that the Town explore getting the appropriate legal contracts in place with the gated communities, contingent on the town manager finding whether or not there is an issue with indemnification; second by Commissioner Sullivan; approved by unanimous vote.*

**DISCUSSION AND POSSIBLE ACTION ON WHAT COMPRISES A CITIZEN COMPLAINT BASED ON HOLDEN BEACH CODE OF ORDINANCES CHAPTER 50 (SOLID WASTE), 72 (PARKING REGULATIONS), 92 (NUISANCES), 94 (BEACH REGULATIONS) AND SECTIONS 95.05 (STREET RIGHTS-OF-WAY), 157.081 (VISABILITY AT INTERSECTIONS) AND 130.30 – 130.31 (LITTERING PROVISIONS)**

Commissioner Kwiatkowski stated she had a number of people inquire how to report complaints. She found out there is a formal method you follow to make a complaint on an ordinance that would have an enforcement action. She would like clarification on the process for reporting different types of complaints. She said she thinks citizens need to understand the process to follow. Commissioner Smith would also like to know the correct avenue for residents to take to file a complaint. Public Works Director Clemmons said in the past we had people fill out a written complaint then the appropriate department would look at it. He also has received emails from people. There is an official form. Public Works Director Clemmons explained he looks at complaints from email and written complaints. Town Manager Hewett added that is the department head's discretion to do that. Inspections Director Evans said he received two complaints over the weekend. He provided information on the complaints. They consider all complaints to be acted on. They do request that people fill out a complaint form on some of the complaints they receive because of the type they are. If a complaint comes in, his department acts on it. They use the rules in place that govern them to determine what they can or cannot do at residents' houses. Not all complaints require action. They also take action on violations they see while out in the field. Commissioner Sullivan summarized that we are servicing the community without the need to come in and fill out a written report, but there are occasions where a written report is requested. Even without a written report, all complaints are investigated to some degree and the proper action is taken after the investigation. Inspections Director Evans provided an example of when a form is needed. Town Manager Hewett confirmed complaints should be sent to Town Clerk Finnell if you don't know where to send them.

**DISCUSSION AND POSSIBLE SCHEDULING OF A DATE TO HOLD A PUBLIC HEARING ON THE PROPOSED BUDGET FOR FISCAL YEAR 2020 - 2021**

The Board came to a consensus to hold the public hearing June 4<sup>th</sup> at 5:00 p.m.

**TOWN MANAGER'S REPORT**

- Application for special obligation bond financing with the Local Government Commission - we have our CAMA permit in hand, along with our Department of Water Resources. The solicitation for dredgers is on the street. There will be a pre-bid conference next Thursday. There is a new requirement for CAMA, an increased turbidity monitoring requirement. We are making progress. Can expect same actions from the Board to start falling into place over the next couple of months with our anticipated construction date being this winter or next winter, depending on how the bids come in.

## MAYOR'S COMMENTS

- Congressman McIntyre's mother passed away. He asked to send a card or something from the commissioners to acknowledge that.
- Asked for an update on concerts. Assistant Town Manager Ferguson explained with the governor's executive order, concerts will start next Sunday. Gary Lowder and Smokin Hot is the first concert. We are back to business as normal.

## BOARD OF COMMISSIONERS' COMMENTS

### Mayor Pro Tem Brown

- Asked Town Manager Hewett if there was a regulation on street setbacks from the previous Board. He is seeing properties being blocked on both sides of the road. Town Manager Hewett replied yes. Mayor Pro Tem Brown said when a person buys a lot, they know where their property lines are. We need to do something. Looks at the roads and is seeing 6 X 6's put out besides the asphalt. It is like they are barricading the side of the road. Will have it put on the next meeting to vote to do away with it. Thinks it has gotten out of hand. Need to keep the right-of-way open for the Police, the maintenance department and everything else. That is why it is there. We need to do something to remedy this. He understands wanting to take care of your property. It is very detrimental to the island. Wants it on the next agenda to see if we can do something to help this situation. Went down Marlin Street today, couldn't turn or back onto the road. Would like to see the Board address it.

### Commissioner Smith

- Golf carts – is concerned for the safety of people operating them and the safety of the carts. Doesn't propose that the Town be responsible for inspections, however, thinks there needs to be a fee charged to the people who bring them on the island and a document that says they have safety approved the vehicle for operation on Holden Beach. In other words, charge them and give them the liability for having equipment on the island. To operate them on the island they could have something similar to a Holden Beach permit. He suggested a monetary charge, a yearly charge. Attorney Madon said we can discuss that when we have a better idea of what we are trying to do. Commissioner Smith said the fees are to help the Police Department, who is using their time chasing the golf cart issues. Also, making sure the people bringing them over verify they are meeting safety standards. Had issues with golf carts personally. They are dangerous when operated on the streets.

### Commissioner Murdock

- Thanked Governor Cooper for opening the place back up. Thanked people for coming. We have empty seats, would like to see them full. Good to see people here.
- Appreciate staff's hard work.

Commissioner Sullivan

- Echoed what Commissioner Murdock said. It has been over a year since we had real input in the meetings and comments. Think we all benefit from having that type of dialogue and input. Glad to see people. There is a lot more room here.
- Last time we did the developmental fees there was a problem because there was no comment until they were voted in place. If you have a concern, an idea or objection, don't wait until we vote. Bring it to our attention and give him the benefit of your concerns and objections before he votes.

Commissioner Kwiatkowski

- Like everyone else is glad to see people here.
- Memorial Day is coming. Have a happy, healthy and prosperous season.

Mayor Holden asked about the normal public comment period at the end of the meeting. Town Clerk Finnell explained both were provided for at the beginning of this meeting. We will go back to the original way next month. The Board provided an opportunity for the audience to speak. Nobody spoke.

**EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(5), TO INSTRUCT THE STAFF OR AGENT CONCERNING THE NEGOTIATION OF THE PRICE AND TERMS OF A CONTRACT CONCERNING THE ACQUISITION OF REAL PROPERTY AND NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(3), TO CONSULT WITH THE ATTORNEY**

Town Clerk Finnell read the reason for Executive Session.

*Motion by Mayor Pro Tem Brown to go into Executive Session at 6:19 p.m.; second by Commissioner Smith; approved by unanimous vote.*

**OPEN SESSION**

*Motion at 7:52 p.m. by Commissioner Kwiatkowski to recess and reconvene Thursday (May 20, 2021) at 10:30 a.m.; second by Mayor Pro Tem Brown; approved by unanimous vote.*

**RECONVENE – THURSDAY, MAY 20, 2021, 10:30 A.M.**

Mayor Holden called the reconvened meeting to order. Mayor J. Alan Holden; Mayor Pro Tem Gerald Brown; Commissioners Brian Murdock, Mike Sullivan, Pat Kwiatkowski and Rick Smith; Town Manager David W. Hewett; Town Clerk Heather Finnell; Assistant Town Manager Christy Ferguson; and Town Attorney Rick Green were in attendance.

**EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(5), TO INSTRUCT THE STAFF OR AGENT CONCERNING THE NEGOTIATION OF THE PRICE AND TERMS OF A CONTRACT CONCERNING THE ACQUISITION OF REAL PROPERTY**

*Motion by Commissioner Smith to go into Executive Session at 10:35 a.m.; second by Commissioner Murdock; approved by unanimous vote.*

**OPEN SESSION**

At 11:09 a.m., the Board recessed the meeting until May 21, 2021 at 3:30 p.m.

**RECONVENE – THURSDAY, MAY 21, 2021, 3:30 P.M.**

Mayor Holden called the reconvened meeting to order. Mayor J. Alan Holden; Mayor Pro Tem Gerald Brown; Commissioners Brian Murdock, Mike Sullivan, Pat Kwiatkowski and Rick Smith; Town Manager David W. Hewett; Town Clerk Heather Finnell; and Assistant Town Manager Christy Ferguson were in attendance.

**EXECUTIVE SESSION PURSUANT TO NORTH CAROLINA GENERAL STATUTE 143-318.11(A)(5), TO INSTRUCT THE STAFF OR AGENT CONCERNING THE NEGOTIATION OF THE PRICE AND TERMS OF A CONTRACT CONCERNING THE ACQUISITION OF REAL PROPERTY**

*Motion by Mayor Pro Tem Brown to go into Executive Session at 3:31 p.m.; second by Commissioner Smith; approved by unanimous vote.*

**OPEN SESSION**

No action was taken.

**ADJOURNMENT**

*Motion by Mayor Pro Tem Brown to adjourn at 3:51 p.m.; second by Commissioner Murdock; approved by unanimous vote.*

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J. Alan Holden, Mayor

ATTEST:

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Heather Finnell, Town Clerk