



# County of Dare

P.O. Box 1000 | Manteo, NC 27954

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## MINUTES

### DARE COUNTY BOARD OF COMMISSIONERS MEETING

Dare County Administration Building, Manteo, NC

**5:00 p.m., May 20, 2019**

Commissioners present: Chairman Robert Woodard, Vice Chairman Wally Overman  
Rob Ross, Steve House, Jim Tobin, Danny Couch, Ervin Bateman

Commissioners absent: None

Others present: County Manager/Attorney, Robert Outten  
Deputy County Manager/Finance Director, David Clawson  
Public Information Officer, Dorothy Hester  
Clerk to the Board, Cheryl Anby and retiring Clerk Gary Lee Gross

A full and complete account of the entire Board of Commissioners meeting is archived on a video that is available for viewing on the Dare County website [www.darenc.com](http://www.darenc.com).

At 5:02 p.m., Chairman Woodard called to order the regularly scheduled meeting with appropriate prior public notice having been given. He invited Rev. Keith Dey from Emmanuel Lutheran Church to share a prayer, and then he led the Pledge of Allegiance to the flag. Cheryl Anby was introduced as the new Clerk to the Board who was attending the meeting along with soon to be retiring Clerk Gary Lee Gross.

Note – some agenda items were handled out of sequential order to accommodate the time specific Public Hearing scheduled for 5:30 p.m. During the meeting, several agenda items involved public comment and each speaker's position has been summarized. Attempts have been made to accurately reflect the spelling of each name as spoken at the podium or based on the legibility of the sign-in sheet.

#### **ITEM 1 – OPENING REMARKS – CHAIRMAN'S UPDATE**

Following is a brief outline of the items mentioned by Chairman Woodard during his opening remarks, which can be viewed in their entirety in a video on the Dare County website –

- Reported on a recent Mayors Roundtable event where the Chairman, along with Nags Head Mayor Ben Cahoon and other regional Mayors, met with Secretary Regan from the NC Department of Environmental Quality in opposition of offshore drilling. Chairman Woodard emphasized that he supports energy independence for the United States, but strongly feels there are better ways to achieve this than drilling off our valuable coastline.
- Commented on the annual meeting of the Cape Hatteras Electric Cooperative and expressed gratitude for the great work they do.

- Announced that he will be participating in the group known as “Outer Banks Forever” that has been formed to partner and support the National Parks of the Outer Banks.

## **ITEM 2 – PUBLIC COMMENTS**

At 5:13 p.m., the Manager outlined the procedure for making public comments in Manteo and via the video link to the Fessenden Center Annex in Buxton. Following is a summary of all citizen remarks, which can be viewed in their entirety in a video on the County website –

*The following comments were made in Manteo –*

1. Stephen Piper spoke against the proposed oyster lease noting that it is inherently unsafe with other preexisting recreational uses and displayed a video.
2. Trisha Midgett echoed the remarks of Mr. Piper and added that she loves commercial fishing, but just not so close to the shoreline.
3. Michael Milter explained that he works as a Realtor on Hatteras Island and stated that he is opposed to oyster farming in the location that is proposed.
4. Ashley King reminded that people travel here for kiteboarding and other recreational activities. She said an oyster lease so close to the shoreline would cause harm.
5. Courtney Shearer added her voice in opposition of the proposed oyster lease that was described off the Hatteras Island shoreline.
6. Jeff Malarney, on behalf of the Wind Over Waves development, spoke against the oyster lease noting that it could set a precedent and impact other important shorelines.
7. Dan Johnson, who said he holds a commercial fishing license & supports oyster farms, voiced opposition to this particular site based on conflict with an established use.
8. Trip Forman, described in detail the dangers associated with an oyster lease being so close to the area that is heavily used by kiteboarders and other recreational users.
9. John Robbins, an owner of property in Wind Over Waves, outlined the location of the proposed oyster lease and advised that it needs to be further off the shoreline.
10. Tom Aoratice advised that oyster farming is good, but not in the location proposed. He agreed that this issue raises a dangerous precedent as others have said.
11. Johnnie Robbins described the importance of the recreational water corridor along the shoreline and said aquaculture is good, but not in the location that is proposed.
12. Ryan Gentry, the applicant for the oyster lease, provided details explaining why his proposed oyster operation will not deter, interfere, or conflict with recreational users.
13. Crouse Gray, as attorney for Wind Over Waves, advised that the best solution is simply to move the lease to a site where there is no recreational conflict.
14. Breynn Bailey asked the Board to take into consideration that construction for the Jug Handle Bridge has already had an impact on watersport activities.

*There were no comments made in Buxton –*

The County Manager closed Public Comments at 5:58 p.m.

Chairman Woodard explained that following the last Board meeting the County contacted the Division of Marine Fisheries based upon receiving additional information about the proposed oyster lease. He then invited Commissioners to address the issue - - -

Commissioner House provided background information about the resolution that was taken to the public meeting held by the Division of Marine Fisheries (DMF). He said after the Board took action, fuzziness developed concerning this issue and reported on talks that he and others then had with the applicant, Mr. Gentry. Commissioner House noted that the Board of Commissioners has no authority over shell fish leases since it is a responsibility of the State. Commissioner Tobin recommended keeping the original resolution in place that was adopted by the Board and noted that other oyster sites are available that will not cause interference. Commissioner Ross & Vice Chairman Overman voiced agreement with Commissioner Tobin. Commissioner Bateman explained that he walked the area and talked with DMF and supports the resolution noting that 100 feet is too close to a shoreline and maybe it should be further. Commissioner Couch said his heart is with the local people although what Mr. Gentry said resonates with him favoring pulling the resolution. Vice Chairman Overman reported on his visit to the region where he observed firsthand the extent of recreational use of the area. He said there is a need for all users to peacefully coexist. Commissioner Tobin noted that the State of North Carolina has conflicting statutes and there is a need for the Legislature to get statutes written so that DMF and CAMA agree on setbacks.

Chairman Woodard agreed that the need to have legislators address this as outlined in the resolution that was adopted by the Board. He said because the proposed oyster lease is too close to the shoreline and incompatible with preexisting recreational use, he recommended that the Board stand by the resolution that was adopted at the previous meeting.

**RECESS: 6:21 p.m. – 6:32 p.m.**

**ITEM 3 – PROCLAMATION – OLDER AMERICANS MONTH**

Commissioner Ross presented a proclamation from the Albemarle Commission Area Agency on Aging declaring May as Older Americans Month. The proclamation encourages older adults and their communities to connect with friends, family, and services that support participation and to engage in activities promoting learning, health, and personal enrichment.

**MOTION**

Vice Chairman Overman motioned to issue the proclamation as presented.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

**ITEM 4 – RESOLUTION REQUESTING 2 ROANOKE ISLAND MULTI-USE PATHS (Att. #1)**

Erin Rexin, on behalf of the Roanoke Island Trails Program, asked the Board to adopt a resolution asking the Albemarle Regional Planning Organization (RPO) to include in its future planning the construction of two (2) multi-use paths on Roanoke Island. She described the

need for a multi-use path on Highway 345 from Highway 64 to the village of Wanchese, and cited the need for a pathway on Airport Road from Highway 64 to the Aquarium.

**MOTION**

Commissioner House motioned to approve the resolution as presented.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

**ITEM 5 – CRMP INC. – REQUEST TO AMEND CONDITIONAL USE PERMIT 3-2014**

This agenda item was handled as a quasi-judicial proceeding. Prior to offering testimony, each speaker was duly sworn by the Clerk. At 6:52 p.m., the Board invited people to speak on this issue. The Manager outlined the procedure for making sworn testimony in Manteo and via the video link to the Fessenden Center Annex in Buxton.

Prior to public testimony, Planning Director Donna Creef outlined a request from CRMP Inc. to amend their Conditional Use Permit (CUP) to extend the hours of operation at their concrete plant in the Village of Waves. She explained that CRMP seeks to extend their hours of operation from the previously approved Monday through Friday from 8:00 a.m. to 5:00 p.m. to the proposed hours of 3:00 a.m. to 5:00 p.m. for any three days Monday to Friday. She reported that 13 people spoke against the request at the Planning Board, which voted to recommend denial of the extended hours of operation.

Representatives of the applicant (CRMP) were given the opportunity to speak followed by members of the community who spoke in opposition of extending the hours. There were no time limits imposed on any speaker, and each side was allowed to present audiovisual information including powerpoint presentations and videos.

Following is a summary of extensive remarks that were made over the course of 2.4 hours (144 minutes), which can all be viewed in their entirety in a video on the County website –

*The following sworn comments were made in Manteo –*

1. Starkey Sharp, as the Attorney for the applicant, outlined the case for extending the hours noting that there are important issues related to the delivery of concrete for the bridge such as time, temperature, humidity, and wind. He introduced Mr. Holmes, the project engineer with Flatiron and asked him to brief the Board in detail.
2. Ted “Ed” Holmes, a Professional Engineer, gave a comprehensive PowerPoint presentation covering the issues identified by Mr. Sharp. During and following his presentation Mr. Holmes answered extensive questions from Commissioners. In responding to Commissioner questions, Mr. Holmes made the following key points –
  - There was no place onsite in the current easement for a portable batch plant.
  - The issue is the longer geographical distance to the applicant’s Nags Head plant.
  - Although concrete can be put “to sleep”, its future cannot then be predicted.
  - The availability of local expertise to use technology such as liquid nitrogen.
  - We are striving for optimal conditions. Later in the morning is problematic.
  - The bridge will be notably better if concrete is delivered in early morning hours.
  - Getting Fish & Wildlife permission for an alternate site would be time consuming.

3. Thomas Sawyer, on behalf of the applicant, addressed Commissioner questions about the source of concrete that was used for construction of the Richard Etheridge Bridge.
4. Pablo Hernandez, an engineer with NCDOT, was asked to address questions about NCDOT's concrete specifications for bridge projects. He said it is the responsibility of contractors to take into account variabilities, such as weather and wind speed. He added that concrete delivered at specification will result in a bridge having the useful life for which it is engineered.
5. Jonathan Smith, an Industrial Hygienist, provided testimony and additional PowerPoint slides about a baseline community noise exposure assessment that Terracon was asked to perform at the concrete plant in Waves, NC. He gave a detailed report about decibel measurements that were taken and showed a map of where they were obtained. He reported that the decibel levels, the highest of which was 66.5, are about the same as normal conversation and not hazardous. Mr. Smith answered Commissioner questions about when readings were taken and whether the sound level generated by multiple trucks was determined and what the impact would be.

At this point in the proceeding, Attorney Starkey Sharp emphasized that his client (CRMP) can work with the conditions that have been imposed by the Board and they will deliver concrete so that the bridge can and will be built, however, it will be a better bridge if early morning hours are allowed. Mr. Sharp added that his client is willing to listen and discuss different locations and hours and expressed a willingness to look at other alternatives.

Next, the following citizens spoke, all of whom were sworn, and opposed extending hours –

6. Anne Vroman warned of the negative impact that noise at 3:00 a.m. would have on tourism. She said this would result in unfavorable reviews on social media, which would result in economic loss. She said the applicant needs to deal with the hours that have been established. Ms. Vroman said 3:00 a.m. hours would be detrimental to her health and questioned whether the noise measurements were taken above the height of the wall, which is where her bedroom is located.
7. Natalie McIntosh outlined in detail the large number of local workers, most of whom work at multiple jobs involving all hours of the day and night, that would be negatively impacted by 3:00 a.m. hours. She said the successful completion of the bridge is not dependent on these hours.
8. Donna Peele gave a detailed description of her involvement with properties that provide workforce housing for the many people who staff a variety of local businesses. She asked the Board to deny the amendment because the original CUP in 2014 adequately provided for all the bridges under consideration for Hatteras Island.
9. Jason Forrest cited in detail the importance of tourism, which generates more than \$1.1 billion annually, supports at least 13,000 local jobs, and generates over \$102 million in state and local tax revenue. He displayed a video that included footage of the concrete plant in operation & warned of the disastrous impact of 3:00 a.m. hours.

10. Susan Yan spoke on behalf of property owners who live behind the concrete plant, many of whom, like her, moved to Hatteras Island for its beauty. She also spoke on behalf of non-resident property owners and warned of the impact that earlier hours, which could go on for over a year, might have on tourism. Ms. Yan cited the need for employees and children to get sleep. She asked the Board to deny the amendment and recommended that other options such as liquid nitrogen be used.
11. John Robbins said the applicant should have pursued other location options some time ago. He reported that in San Diego they use liquid nitrogen with concrete and this technology was available before the applicant bid on the bridge project. Mr. Robbins noted that Trip Forman and the tourism related businesses he operates have been good stewards of Hatteras Island and have changed things for the better. He urged the Board not to extend the hours of operation for the concrete plant.
12. Thomas Koqut, on behalf of employees in the area, said the extended hours would have an adverse change on many families. He informed the Board that there are many times when the applicant operates the concrete plant before the approved 8:00 a.m. start time that is already in place. He asked what happens if they start work early and end later than authorized, who do we call?
13. Shondra Rutledge said she wanted to echo the comments that were previously made in opposition of extended hours. She described where she lives and explained that, if approved, this will hurt her financially and emotionally.
14. Trip Forman, a co-founder of REAL Watersports, Watermen's Retreat and Watermen's Bar & Grill, gave a detailed report on how the extended hours would harm those who live near the concrete plant or come to the area from all over the world for their vacation. He explained how this would disrupt people's sleep patterns, which would contribute to poor work performance by employees and raise serious safety concerns. Mr. Forman gave his perspective on the distance involved with transporting concrete from Nags Head, which he said results in a maximum of 12 additional minutes of travel time compared to the south end of the big bridge. He also presented a letter from Matt Nuzzo opposing the request for early hours.

*The following sworn comments were made in Buxton –*

15. Caroline Gray urged the Board to stay with the existing 8:00 a.m. to 5:00 p.m. hours by describing her involvement with a local campground and small rental house. She said the request for 3:00 a.m. hours is outrageous and challenged the claims made by the applicant that the noise generated by the operation compares to normal conversation.

The County Manager closed the testimony period at 9:16 p.m.

Following testimony from the applicant and citizens, remarks were made by Commissioners –

Commissioner Tobin cited the need to find common ground and said he understood the position of the applicant, NCDOT, and the impact on the tourism industry. Commissioner Ross said he was leaning toward not extending the hours, but is open to ideas for a creative solution. Commissioner House recalled that it was a hurdle getting the original CUP approved and the contractors knew the operating parameters when they submitted their bids. Vice Chairman Overman said that based on where the concrete plant is located he is against extended hours, but is willing to look at other alternatives. Commissioner Bateman agreed that he is not in favor of extended hours, but is open minded on another location. Commissioner Couch noted that the local residents have spoken loud and clear and he is not in favor of extending the original CUP. Chairman Woodard reminded that it was a difficult process back in 2014 to allow the 8:00 a.m. to 5:00 p.m. hours and although he wants the best possible product for building the bridge, he cannot support the request for 3:00 a.m. hours. He voiced hope that some common ground can be found, but cautioned that even at an optional site, 3:00 a.m. operating hours may not be warranted.

**MOTION**

Vice Chairman Overman motioned to deny the request to amend CUP 3-2014 to allow the hours of operation of 3:00 a.m. to 5:00 p.m. on any three days Monday to Friday as recommended by the Planning Board on April 8, 2019.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

**RECESS: 9:26 p.m. – 9:41 p.m.**

**ITEM 6 – PRESENTATION OF THE MANAGER'S 2020 BUDGET**

Mr. Outten presented the 2020 Manager's recommended budget that included a General Fund of \$108,729,619 with the total of all funds being \$168,817,454. The County Manager gave a detailed PowerPoint presentation that included long term capital planning and details on the Capital Investment Fund. He also addressed economic development including the Board's partnership with the Chamber of Commerce and the Board's ongoing commitment to beach nourishment and workforce housing. Mr. Outten summarized budget provisions for education and outlined revenue projections. He explained that the budget maintains the current level of County services with no property tax rate changes.

**MOTION**

Commissioner Couch motioned to set a Public Hearing for 10:00 a.m., June 3, 2019 and instruct the Clerk to publish the notice.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

Following the presentation of the budget, the Manager outlined a budget change list request from the Elections Board regarding Elections Board member compensation, which he said could be accommodated with approval by the Board of Commissioners.

**MOTION**

Vice Chairman Overman motioned to approve the change list item pertaining to Election Board compensation as outlined by the County Manager.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

**ITEM 7 – CLOSED SESSION**

Chairman Woodard asked for a Closed Session pursuant to NCGS 143-318.11(a)(3) to consult with an attorney employed or retained by the County in order to preserve the attorney-client privilege; and NCGS 143-318.11(a)(5) concerning the position to be taken by or on behalf of the County in negotiating the price and other material terms of a contract or proposed contract, for the acquisition of real property by purchase, option, exchange, or lease in the matter of the parcel adjoining the Buxton Transfer Station; and to approve the minutes of the last Closed Session.

**MOTION**

Commissioner House motioned to go into Closed Session pursuant to the provisions of the North Carolina General Statutes cited by the County Manager.

Commissioner Ross seconded the motion.

VOTE: AYES unanimous

At 10:25 p.m., Commissioners exited the room to meet in Closed Session. They reconvened at 10:59 p.m. and Mr. Outten reported that during the Closed Session the Board approved previous Closed Session Minutes, consulted with the County Attorney, discussed a real estate matter involving a parcel adjoining the Buxton Transfer Station, and took no action.

**ITEM 8 – CONTRACT FOR DARE COUNTY DREDGE VESSEL**

Mr. Outten summarized work that has been done preparing documents pertaining to a dredge vessel for Dare County. After the Manager's explanation, the following motion was made –

**MOTION**

Commissioner House motioned to approve the documents for the dredge vessel and authorize the County Manager to make changes as necessitated during discussions with the State regarding the State contract.

Commissioner Tobin and Vice Chairman Overman seconded the motion.

VOTE: AYES unanimous

In order to accommodate the time specific Public Hearing on the request to fill a ditch, Chairman Woodard asked for a motion to move Item #9 in the agenda sequence.

**MOTION**

Vice Chairman Overman motioned to approve moving the Public Hearing as requested.

Commissioner House seconded the motion.

VOTE: AYES unanimous

**ITEM 9 – PUBLIC HEARING – TIMOTHY JENNETTE REQUEST TO FILL DITCH**

At 6:32 p.m., the Board held a Public Hearing to receive input concerning this agenda item. The Manager outlined the procedure for making public comments in Manteo and via the video link to the Fessenden Center Annex in Buxton. Following is a summary of all citizen remarks, which can be viewed in their entirety in a video on the County website –

*There were no comments made in Manteo –*

*The following comments were made in Buxton –*

1. Bob Barris explained the location of his property and said he has seen the culvert that people claim is not there. He said he was against filling in the ditch and cautioned that there could be unintended consequences.
2. Eddie Williams spoke against filling in the ditch. He told the Board this request has nothing to do with a right of way. Mr. Williams informed Commissioners that he is very opposed to this.

The County Manager closed the Public Hearing at 6:36 p.m. Mr. Outten explained that NCDOT has notified the County that they are looking into this matter and suggested that the Board postpone any action until NCDOT can do further research. By consensus, the Board agreed and instructed the Planning Director to bring this back at the second meeting in June.

### **ITEM 10 – CONSENT AGENDA**

The Manager announced the items as they were visually displayed in the meeting room.

#### **MOTION**

Commissioner Ross motioned to approve the Consent Agenda:

- 1) Approval of Minutes (05.07.19) **(Att. #2)**
- 2) Budget Amendment of Emergency Management Performance Grant Revenue Increase
- 3) Avon Property Owners Association Fireworks Display 2019
- 4) Budget Amendment for Disaster Recovery Fund
- 5) Budget Amendment – Non-Departmental
- 6) Sheriff – Budget Amendment
- 7) Tax Collector's Report

Commissioner House seconded the motion.

VOTE: AYES unanimous

### **ITEM 11 – COMMISSIONERS' BUSINESS & MANAGER'S/ATTORNEY'S BUSINESS**

Commissioners and the County Manager frequently make extensive remarks, which can be viewed in their entirety in a video on the Dare County website. Following is a brief summary outline of the items mentioned by Commissioners during this segment –

#### **Commissioner Couch**

- Expressed support for the medical services provided to the community by Gail Covington at the Hatteras Medical Center.
- Said he has been approached by people throughout the County concerning naming the bridge under construction in Rodanthe in honor of Stocky Midgett. Chairman Woodard voiced interest in getting input from the public at the appropriate time and in accordance with NCDOT's naming procedures. It was the consensus of the Board that a naming request is premature at this time.

Commissioner Tobin

- Explained that there may be a need to replace Jed Dixon on the Oregon Inlet Task Force. He noted that Russ King, Manager of the Oregon Inlet Marina, has expressed interest in serving and he will bring it up with the Task Force. Chairman Woodard said he is initially uncomfortable with this concept and would need to think further about it.

Commissioner Ross

- Announced that the budget for the Albemarle Commission, for approximately \$7 million, is expected to be approved in June.
- Reported that tomorrow there will be a luncheon for Interfaith Community Outreach.
- Gave an update on the new Dare County Animal Shelter noting that the design drawings will soon be going out for bids.

Vice Chairman Overman

- Reported on a meeting with Leza Wainwright, CEO of Trillium, about a proposed North Carolina Medicaid transformation that would create new Managed Care programs and described its possible impact on Dare County. The Vice Chairman presented a resolution, which was read by the County Manager.

**MOTION (Att. #3)**

Vice Chairman Overman motioned to adopt the resolution as presented.

Commissioner Ross seconded the motion.

VOTE: AYES unanimous

Commissioner Bateman – no additional comments

Commissioner House

- Reported that Dare County EMS and the College of the Albemarle are doing a conference that started today for which he gave a welcome to the sold-out event that has attracted a statewide group of attendees.
- Noted that in addition to this week being EMS Week and National Nurses Week, it is important to also remember that May 15 is National Peace Officers Memorial Day. Commissioner House then reverently remembered the following local peace officers - - -
  - Kill Devil Hills Assistant Chief Nelson Avery Tillett
  - Nags Head Sgt. Dolan Earl Murray
  - Kill Devil Hills Patrolman Erskin Nelson Scarborough, Jr.
  - Southern Shores Patrolman Francis Duon Hemilright
- Gave a detailed history of Memorial Day and urged everyone to remember that the holiday is about more than just picnics, it is a special time to honor our fallen soldiers.
- Showcased the Pet of the Week video and urged everyone to consider animal adoption.

**MANAGER'S/ATTORNEY'S BUSINESS - None**

At the conclusion of the meeting, Chairman Woodard asked for a motion to adjourn.

**MOTION**

Commissioner House motioned to adjourn the meeting.

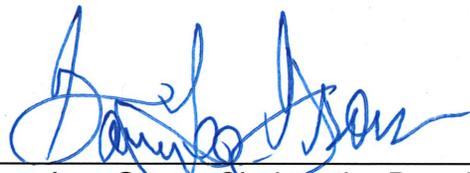
Vice Chairman Overman and Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

At 11:24 p.m., the Board of Commissioners adjourned until 9:00 a.m., June 3, 2019.



Respectfully submitted,

By:   
Gary Lee Gross, Clerk to the Board

APPROVED:

By:   
Robert Woodard, Chairman  
Dare County Board of Commissioners

Note: copies of attachments (Att.), ordinances, resolutions, contracts, presentations, and supporting material considered by the Board of Commissioners at this meeting are on file in the office of the Clerk to the Board.