



# TOWN COUNCIL MINUTES

## REGULAR MEETING

February 21, 2017

The Kure Beach Town Council held their regular meeting on Tuesday, February 21, 2017 at 6:30 p.m. The Town Attorney was present and there was a quorum of council members.

### COUNCIL MEMBERS PRESENT

Mayor Emilie Swearingen  
Mayor Pro Tem (MPT) Craig Bloszinsky  
Commissioner David Heglar  
Commissioner Joseph Whitley  
Commissioner Jim Dugan

### STAFF PRESENT

Finance Officer – Arlen Copenhaver  
Town Clerk – Nancy Avery  
Deputy Clerk – Nancy Hewitt

### CALL TO ORDER

Mayor Swearingen called the meeting to order at 6:30 p.m., and Pastor Cathy Chester from the Carolina Coast Vineyard Church delivered the invocation and led everyone in the Pledge of Allegiance.

### APPROVAL OF CONSENT AGENDA ITEMS

1. Renew John Ellen's appointment as the town's representative on the MPO Citizens Advisory Committee
2. Approve Budget Amendment 17-03 to increase the Storm Water Fund budget for grant writer fees
3. Approve Budget Amendment 17-04 to increase the Lifeguard budget for the proceeds received (\$8,092) from the sale of surplus ATVs
4. Adopt Resolution R17-04 to permit the use of absentee ballots in municipal elections per N.C.G.S. 163-302
5. Board of Adjustment – 2016 Annual Report
6. Fire Department Report – January 2017
7. Building Inspections Report – January 2017
8. YTD Finance Report
9. Meeting Minutes:
  - January 17, 2017 regular meeting
  - January 24, 2017 council retreat

MOTION – Commissioner Heglar moved to approve the Consent Agenda Items, as presented.

SECOND – Commissioner Dugan

VOTE – Unanimous



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Said budget amendments are herein incorporated as part of these minutes.

### ADOPTION OF THE AGENDA

Mayor Swearingen asked to add Easement Conveyance under Department Head Business, Administration and Recreation.

MOTION – Commissioner Heglar moved to approve the meeting agenda with the change requested by Mayor Swearingen.

SECOND – Commissioner Whitley

VOTE – Unanimous

### DISCUSSION AND CONSIDERATION OF PERSONS TO ADDRESS COUNCIL

1. David Sack – 720 N. Fort Fisher Blvd & member of the Community Center Committee  
Mr. Sack said a discussion took place during the committee's last meeting about how the town looked. He said the Community Center was recently, nicely landscaped and the committee members take responsibility to maintain it. He presented council with photos of overgrown shrubbery and weeds at the town's Dow Road and Fort Fisher Boulevard entrances and stated that the disheveled landscape makes the town look like its poor, which doesn't represent the town favorably. He pointed out the overgrown landscape and broken storm fencing along the boardwalk, as well. He said he would like to see the town's landscaping be taken care of more like the community center or Carolina Beach's landscaping.

Mayor Swearingen said that Carolina Beach hires a landscaper to maintain its landscaping and Kure Beach doesn't have that kind of money to hire a landscaper; and she added that Public Works doesn't have time to maintain it with all of their regular responsibilities, as well as trying to get the storm water system and water system fixed after last year's heavy rains and Hurricane Matthew.

Mr. Sack said the entrances to the town aren't huge areas and should be able to be fixed up and maintained by the town.

MPT Bloszinsky said there needs to be a community beautification process.

Commissioner Heglar said that he understands Mr. Sack's concerns but, for every person who says the town's money should be spent on better landscaping, there is another person who says the town's money shouldn't be spent on it. He said he will ask the public works director to put town landscaping in his next budget and council can decide if it's affordable at that time.

### DISCUSSION AND CONSIDERATION OF COMMITTEE BUSINESS

1. Non-town Committee update from appointees
  - a. Cape Fear Council of Governments (COG)



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- Commissioner Dugan, member, said the town sometimes uses COG to assist when it can't get help from the state. He said that he and Commissioner Whitley will be attending COG's annual dinner at the end of March.
- b. Cape Fear Disability Commission
  - As the town's representative, Deborah McKenna, was not in attendance, the mayor asked the clerk to contact her to find out if the commission is still active and if she is still involved with it.
  - MPT Bloszinsky asked the clerk to get the minutes from their last meeting to give to council.

Mayor Swearingen pointed out that the official name of the MPO is the Wilmington Urban Area Metropolitan Planning Organization.

- c. MPO Bicycle and Pedestrian Committee (Allen Oliver)
  - Allen Oliver, representative, stated the committee meets monthly, and he gave a slide presentation that reviewed the committee's responsibilities. He reviewed their 2017 work plan, a map of the island showing the project areas suggested for Kure Beach. He said they want to try to use crash data for the last three years to help with plan bicycle and pedestrian safety.
  - Mayor Swearingen said the DOT did a speed study of Dow Road that has been passed along to the police chief, if Mr. Oliver would like to see it.
- d. MPO Board of Directors
  - Mayor Swearingen, member, said the board consists of mayors and other officials who meet monthly. She said they are beginning to look at the 2045 MPO Transportation Plan which is a federally funded mandate to update the 2040 plan. She explained the MPO's responsibilities, goals and modes of transportation that are represented in the plan. She said the MPO sets aside certain transportation grant funds that Kure Beach can apply for at any time.
- e. MPO Citizen Advisory Committee
  - Mayor Swearingen said John Ellen, representative, is currently out of the country on a trip, but council has renewed his seat on the committee for another year. She said this committee discusses much of the same things the MPO board discusses, but looks for citizen input.
- f. MPO Technical Coordinating Committee
  - Town Clerk Avery, member, said that her committee is a sub-committee of the MPO board and meets monthly. She reviewed their responsibilities and goals, stating there are currently five projects on which they are working; four in Wilmington and one in Leland.
- g. Tourism Development Authority (TDA)
  - Mayor Swearingen, member, said the TDA meets monthly and Anne Brodsky is also a representative for Kure Beach. She said the board decides how the money received through Room Occupancy Tax (ROT) is to be spent. She said the state legislature is trying



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to figure out how to collect ROT from entities like B&B's and from people who rent out their properties on a short-term basis.

### h. Wilmington Ports, Waterway and Beach Commission

- MPT Bloszinsky, representative, said the commission meets every month. He said federal senate teams, county commissioners, engineers, retired members of the Corps of Engineers, and representatives from all beach communities attend. He said the main focus is protection of the beaches and the permitting and funding required to protect them.

## 2. Miscellaneous Committees

Mayor Swearingen updated everyone on other committees of which she is a member, stating they are always looking for people on this side of the county to participate on them.

### a. New Hanover County Library Advisory Board, appointed by the NHC Board of Commissioners

- She said the Myrtle Grove Library will close in about two years and a new library will be built directly behind Fulton Station measuring about 16,000 square feet and costing about \$5.5 million.
- She said that participation at the Pleasure Island Library since it moved to the shopping center at the bridge has increased by 20 percent. She said the library system will be looking for a permanent location other than the shopping center in about two years, once the one at Myrtle Grove closes.

### b. WAVE Connect Advisory Committee, appointed by the MPO Board

- She said this committee provides federal grants to local entities who serve the elderly and people with disabilities. She said they worked on two grants this year, the main one being for the Senior Resource Center to provide curb-to-curb service for elders who need transportation to services they cannot get to on their own.

### c. WAVE Transit Short Range Planning Committee, appointed by Albert Eby, Executive Director of WAVE Transit

- She said WAVE Transit is required to put a five-year plan together outlining how to better serve the community to become more efficient. She said they selected a consultant last Friday to help them put together the plan which will include information derived from community input.

## DISCUSSION AND CONSIDERATION OF DEPARTMENT HEAD BUSINESS

### 1. Administration and Recreation

#### a. Review of beach access improvements and possible grant application

Town Clerk Avery reviewed the beach access parking, signage and crossover improvement projects SLABPP has either completed or recommended. She said one of the projects was for N Avenue's travel lane to be narrowed to 10-feet, to make it one way from Atlantic Avenue and to add five parking spaces.



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Mayor Swearingen asked if the fire department had been consulted about narrowing the travel lane and making it one way.

Town Clerk Avery said she doesn't think they discussed this with the fire department, but the SLABPP Committee hasn't been able to get a quorum to have a meeting since October.

Commissioner Heglar asked the town clerk to forward this recommendation to the fire department since that is where one of the emergency accesses is located, north of the pier.

Town Clerk Avery reviewed the grants the town received for some of the beach accesses. She asked council if they would like to have more of the parking lots paved, stating that Director Beeker thinks they will be easier to maintain if they are paved. She asked council if they wanted to proceed with any of SLABPP's recommendations so she can apply for a CAMA grant, since they are due by March 31<sup>st</sup>.

Mayor Swearingen said council shouldn't take on anything big until after the Town Facilities Improvement project is completed.

MPT Bloszinsky said it should be a goal to eventually pave and mark all of the access parking lots, but they can wait until after the town's bigger projects are completed.

CONSENSUS – After all council members weighed-in, they agreed to not proceed with applying for a CAMA beach access grant at this time.

Town Clerk Avery explained that the town applied for a Clean Water Management Trust Fund Planning Grant on February 2<sup>nd</sup> to pay for a feasibility study to see if there is space in town to put another storm water infiltration system. She said NC State University has said, if there isn't room under the dunes, it could be put under a beach access parking lot, but it would have to be paved over to protect it. She said she will know later this year the grant has been awarded. She said the planning grant budget is \$36,740 with a \$4,348 match from the town; part cash and part in-kind.

Commissioner Dugan said Kure Beach is one of the top two towns in the state for having so many outfalls on its beach, next to the Outer Banks.

Town Clerk Avery said this is not going to replace the outfalls, but it will treat the storm water and may cut down a little on the amount that goes through the outfalls.

### b. Town Facility Improvement project

Consideration of RFQs for architectural services received and selection of a firm to submit a contract for approval



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Town Clerk Avery said the only firm to submit an RFQ for the Town Facilities Expansion project was Oakley Collier Architects PA, so she asked them to send her their contract. She said council can consider awarding the contract now or at their March meeting, but they should stipulate it is dependent on the review and approval of the contract by Commissioner Dugan, Inspector Batson, Attorney Canoutas and her, or someone else that council wants to appoint.

**MOTION** – Commissioner Heglar moved to approve awarding the Town Facilities Improvement project to Oakley Collier Architects PA, pending the review and approval of the contract by Commissioner Dugan, Inspector Batson, Attorney Canoutas and Town Clerk Avery who will meet together to review it.

**SECOND** – Commissioner Whitley

**VOTE** – Unanimous

Mayor Swearingen said she would like to attend all of the meetings pertaining to the project. She said the town needs to hire a project manager to oversee the project since there are a lot of things the architect isn't responsible for. She said Inspector Batson doesn't want to be the project manager because he doesn't feel qualified to be one, nor does he have the time to be it. She said she'd like anyone who is interested in being the project manager to come to the March meeting.

Commissioner Heglar said we should have a project manager, but we shouldn't just invite anyone. He said the architect should recommend someone who is appropriately trained and who has worked on this type of project before, not just any kind of project.

Mayor Swearingen said that council should be able to make recommendation to the architects who they'd like to hire as a project manager.

Commissioner Whitley commented that a separate project manager will be an added expense.

Mayor Swearingen said the contract says that Oakley Collier Architects will come to the job site a maximum of once every two weeks.

Town Clerk Avery said that the contract says Oakley Collier Architects they will assist the town and, as you read the contract regarding the bidding process, it says assisting means that they will prepare the plans and the specs.

Commissioner Dugan said that, in their headings, they say they give that type of service as project manager but, in the fine print, there is no definition of what a project manager is and what services they offer.

Mayor Swearingen said that she doesn't think Oakley Collier Architects should be the project manager. She said, under "additional services" on their contract, they indicate specifically a lot of





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things they don't do; but if we want them to do those things, they'll do it at an added cost. She said the contracts states they don't evaluate the qualifications of the bidding contractors as well as many other things that a project manager should do.

Town Clerk Avery said suggested holding off on approving the contract and hiring a project manager, first, to handle negotiations with the architectural firm.

Mayor Swearingen said they need to talk to the architects about it first, not hire a project manager, and she said there is no reason why we can't go ahead and approve the contract. She said the project manager works with the contractors and they won't even be hired until August.

Town Clerk Avery asked if council didn't want the project manager to manage the architect.

Mayor Swearingen said they project manager doesn't manage the architect, but he/she manages the contractors and works with the architects. She said it's not like the Ocean Front Park where council or staff is going to tell them what to do; this will be one person to manage construction and work with the architects.

Commissioner Heglar explained the architect was contracted to draw up the plans and then we need to hire a project manager to implement those designs with the construction contractor. He said, in between the architects hiring the contractors is when the project manager should be hired, so he/she is involved with the hiring and supervising of the construction contractor. He said the architects can start the bidding process but, soon after that, council needs to select the project manager, in conjunction with the architectural firm, so he/she is in place when they start talking to the contractor. He agreed that it is okay to approve the contract with the architectural firm, now, but warned everyone not to think that they're going to change the contract for the architectural firm to do the project manager's job because that's not what they signed up for.

Commissioner Dugan said he agrees that it's not a job for staff to manage the project. He said, having the architectural firm as project manager, even though they offer the services, isn't a good idea because there will be divided loyalties.

Town Clerk Avery reviewed the timeline of the project with council stating, once the architectural contract is awarded, it will be at least four months before we go out for bids, then it will be another two months before a construction contractor is awarded the job at which time the financing part begins. She said Mr. Oakley told her he thinks the project can be finished in twelve months instead of two years.

### c. Easement Conveyance

Town Clerk Avery explained that two property owners granted easements to the town a few years ago to allow their properties to be accessed to fix storm water issues. She said those issues have been



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addressed, and she asked council to adopt Resolution R17-05 to approve conveying the easements back to the property owners.

Commissioner Heglar added that this was in conjunction with the storm water work done for the Beachwalk properties.

MOTION – Commissioner Heglar moved to adopt Resolution R17-05, to remove the town’s easements granted to the town on two properties, and convey them back to the property owners.

SECOND – MPT Bloszinsky

VOTE – Unanimous

Said resolution is herein incorporated as part of these minutes.

### d. Pump Station #1

Town Clerk Avery said there was a pre-construction meeting held at Town Hall last week for the Pump Station #1 project and about eight firms showed up. She said sealed bids will be opened at Town Hall on February 28<sup>th</sup>, and then the mayor needs to call a special meeting of council sometime during the first week in March to award the contract.

## 2. Finance

- a. Adoption of Resolution R17-01, Notice of Intent to Finance a portion of the Kure Beach Pump Station #1 project, not to exceed \$475,000, and Adoption of Resolution R17-03 a Declaration of Official Intent to Reimburse expenditures for the same project

Finance Officer Copenhaver said about 70 percent of the Pump Station #1 project is going to be financed, so he needs council to approve Resolution R17-01 which he will give to the Local Government Commission (LGC). He said Resolution 17-03 is just a formality in case we need to expend money up front and then reimburse the town from the loan proceeds. He said it keeps the loan tax exempt from whoever we borrow the money from.

Commissioner Heglar explained that the pump station is at the end of its life and replacing it has been on public works’ five-year plan; it’s the perfect time to do it.

MOTION – Commissioner Heglar moved to support the project and adopt Resolution R17-01, Notice of Intent to Finance a portion of the Town of Kure Beach Pump Station #1 project, not to exceed \$475,000, and to adopt Resolution R17-03, Declaration of Official Intent to Reimburse expenditures relating to the project.

SECOND – Commissioner Dugan

VOTE – Unanimous

Said resolutions are herein incorporated as part of these minutes.





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- b. Authorization to Finance Officer to issue a Request for Proposal to financial lenders for the pump station project

MOTION – Commissioner Heglar moved to authorize the finance officer to issue a Request for Proposal to financial lenders for the Kure Beach Pump Station #1 project.

SECOND – MPT Bloszinsky

VOTE – Unanimous

Finance Officer Copenhaver said he will issue it tomorrow.

3. Vote to schedule a public hearing regarding the Notice of Intent to Finance new pump station during the week of March (6-10)

MOTION – Commissioner Heglar moved to schedule a public hearing to be held at Town Hall on Friday, March 10, 2017 at 6:00 p.m., for the purpose of receiving public comments on the Notice of Intent to Finance a new pump station for the town.

SECOND – Commissioner Whitley

VOTE – Unanimous

Finance Officer Copenhaver told council the letter from the state came confirming that the town should get a little over \$18K in reimbursement for debris removal due to Hurricane Matthew.

## 4. Police Department

Mayor Swearingen announced a public safety day to be held at the Fort Fisher Air Force Recreation Area on March 25<sup>th</sup>, in conjunction with Carolina Beach police and the sheriff's department. She said it will be a good time to bring the kids and grandkids.

## DISCUSSION AND CONSIDERATION OF OLD BUSINESS

### 1. Kure Beach/Carolina Beach Water & Sewer Authority Update

Commissioner Heglar said he and Commissioner Dugan attend an annual meeting with Carolina Beach representatives to set the rates for the upcoming year for the sewer plant in Carolina Beach. He said the rates are based on the previous year's audit results from Carolina Beach. He said that Kure Beach uses about 25 percent of their facility, but sewage has decreased because we're maximizing the town's plant. He said Carolina Beach should have noticed that they've been getting less load from Kure Beach, which is good for our town, and our rates are very good.

## DISCUSSION AND CONSIDERATION OF NEW BUSINESS

### 1. MOTSU (Sunny Point) Land Use Study

Mayor Swearingen said she and MPT Bloszinsky attended a meeting with the Department of Defense (DOD). She said the DOD works with counties and municipalities that are adjacent to military facilities to do a Land Use Study that will lead to a Land Use Plan. She said they need to know by



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March 1<sup>st</sup> if Kure Beach is on board with the study, and council will work with the DOD to say what we need to do to protect our people and property. She said they are talking more about blast zones when it comes to Kure Beach.

MPT Bloszinsky said the DOD realizes that the country needs MOTSU for the safety of our country and that they make demands on us that will probably need to be sustained, and the DOD is coming to the table with some funding to help us in areas of hardship created by the things we have to do for MOTSU.

2. Resolution R17-02, to Support the Development of a Joint Land Use Study for MOTSU and Surrounding Local Governments

MOTION – MPT Bloszinsky moved to adopt Resolution R17-02, to support the development of a Joint Land Use Study with Sunny Point and the Department of Defense, and the Council of Governments will take the lead position with in-kind or cash for our portion of the requirement and the communities that we support.

SECOND – Commissioner Heglar

VOTE – Unanimous

Said resolution is herein incorporated as part of these minutes.

3. Online Travel Companies and Room Occupancy Tax (ROT)

Attorney Canoutas apologized for not giving council a heads up about his request, but certain online travel companies have agreed with the county to report and remit ROT to the hotels used in their travel packages. He said that Kure Beach doesn't have any hotels of the type used by these companies, but agreeing to this would be a "good neighbor" gesture. He asked council for permission to allow him to enter into the resolution with the entities listed in the agreement.

MOTION – Commissioner Heglar moved to approve a Resolution Agreement, entered into by and between a list (spelled out in the agreement) of Online Travel Companies (OTCs), and New Hanover County and its cities and towns. The OTCs agree to report and remit occupancy tax payments to the retailers of travel accommodations used by the OTCs, to be further remitted to the county.

SECOND – Commissioner Whitley

VOTE – APPROVED FOUR TO ONE, as follows: Mayor Swearingen and Commissioners Heglar, Whitley and Dugan FOR; and MPT Bloszinsky AGAINST.

Said resolution agreement is herein incorporated as part of these minutes.

## MAYOR UPDATES

1. NCBIWA's Local Governments Meeting agenda items

BUDGET AMENDMENT

FISCAL YEAR ENDING JUNE 30, 2017

AMENDMENT DATE: 01/31/2017

Budget Amendment No.: 17-03

DESCRIPTION/PURPOSE OF AMENDMENT

The assistance of a grant writer was obtained to prepare an application for a dune storm water infiltration systems planning grant. The application is being submitted to the Clean Water Management Trust Fund. The fees for the grant writer total approximately \$1,932. This Budget Amendment provides for the grant writer fees with the offsetting revenue source being Storm Water Building Fees earned in excess of the budget.

ACCOUNTS AFFECTED

<u>Account No.</u>	<u>Account Name</u>	<u>Debit</u>	<u>Credit</u>
32-610-40-00	Storm Water Professional Fees	\$1,932	
32-379-00-01	Storm Water Building Fees		\$1,932

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: Nancy Avery, Town Clerk Date: 01/31/17

Approved By: Arlen Copenhaver, Finance/Budget Officer Date: 01/31/17

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

Approved by Council 02/21/17 Emilie Swearingen Emilie Swearingen, Mayor

ATTEST Nancy Avery Nancy Avery, Town Clerk



BUDGET AMENDMENT

FISCAL YEAR ENDING JUNE 30, 2017

AMENDMENT DATE: 02/09/2017

Budget Amendment No.: 17-04

DESCRIPTION/PURPOSE OF AMENDMENT

Ocean Rescue/Lifeguards sold three ATVs for \$8,092. The ATVs had been declared surplus equipment on January 13, 2017. This budget amendment is to increase the Lifeguards Capital Outlay budget and adjust the Minor Equipment Purchases budget for the proceeds received and for the purchase of replacement equipment.

ACCOUNTS AFFECTED

<u>Account No.</u>	<u>Account Name</u>	<u>Debit</u>	<u>Credit</u>
10-531-74-00	Capital Outlay	\$9,500	
10-531-73-00	Minor Equipment Purchases		\$1,408
10-381-00-00	Sale of Surplus Property		\$8,092

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: Ed Kennedy, Assistant Fire Chief

Date: 02/09/17

Approved By: Arlen Copenhaver, Finance/Budget Officer

Date: 02/09/17

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



Approved by Council 02/21/17

*Emilie Swearingen*

Emilie Swearingen, Mayor

*Nancy Avery*

Nancy Avery, Town Clerk



## TOWN COUNCIL TOWN OF KURE BEACH, NC

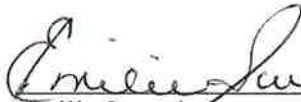
### RESOLUTION R17-04

#### A RESOLUTION TO PERMIT THE USE OF ABSENTEE BALLOTS IN MUNICIPAL ELECTIONS

**WHEREAS**, the Kure Beach Town Council desires that its citizens be allowed to have the privilege to vote by Absentee Ballot in the municipal elections, including Primary Elections, General Elections and Referendum, conducted by the New Hanover County Board of Elections in the Town of Kure Beach;

**NOW, THEREFORE BE IT RESOLVED** that, in accordance with N.C.G.S. §163-302, the Kure Beach Town Council desires that its citizens be allowed to cast an Absentee Ballot in the municipal elections, and that a copy of this resolution be filed with the State Board of Elections and the New Hanover County Board of Elections as is by law provided, and that the resolution shall remain effective for all future elections unless repealed by the Kure Beach Town Council no later than 60 days before an election.

Adopted by the Kure Beach Town Council this 21<sup>st</sup> of February, 2017.

  
Emilie Swearingen  
Mayor



  
Nancy Hewitt, CMC, NCCMC  
Deputy Clerk





KURE BEACH TOWN COUNCIL  
TOWN OF KURE BEACH, NC

**R**ESOLUTION R17-05

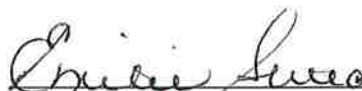
**A RESOLUTION TO APPROVE THE CONVEYANCE OF  
EASEMENTS BACK TO THE GRANTORS**

**WHEREAS**, the Town of Kure Beach, NC, acquired certain Easements from RICHARD E. MORTON, JR., recorded in Book 5088, Pages 956-959, and from FRIDERIKE T. KATSODAS and wife, PAULINE J. KATSODAS, recorded in Book 5088, Pages 952-955 in the Register of Deeds of New Hanover County, NC; and,

**WHEREAS**, the Easements were given for the purpose of controlling the flow of storm water which now no longer exists.

**NOW, THEREFORE BE IT RESOLVED** that the Town of Kure Beach, NC, hereby approves the conveyance of the Easements back to the Grantors, listed above.

Adopted by the Kure Beach Town Council this 21<sup>st</sup> day of February, 2017.

  
Emilie Swearingen, Mayor



  
Attest: Nancy Avery, Town Clerk



TOWN COUNCIL  
TOWN OF KURE BEACH, NC

**R**ESOLUTION R17-01

AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT NOT TO EXCEED \$475,000 AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20

**WHEREAS**, the Town of Kure Beach, North Carolina desires to finance a capital project not to exceed \$475,000 for replacing the sewage pumps, electrical controls and emergency standby generator for the Town of Kure Beach Pump Station #1 to better serve the needs of the Town's population and improve the operation of the sewer system; and

**WHEREAS**, The Town of Kure Beach desires to finance the capital project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

**WHEREAS**, findings of fact by the Kure Beach Town Council must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151, prior to approval of the proposed contract;

**NOW, THEREFORE, BE IT RESOLVED THAT** the Town Council for the Town of Kure Beach, North Carolina, meeting in regular session on the 21st day of February, 2017, makes the following findings of fact:

1. The proposed contract is necessary to provide for continued efficient operation of the Town's sewer system.
2. The proposed contract is preferable to a bond issue for the same purpose because installment loan financing is much less expensive than a bond issuance. There is no need for a bond attorney and other bond issuance expenses. Additionally, the timetable works better with financing rather than bond issuance.
3. The cost of financing under the proposed contract is less than the cost of issuing general obligation bonds.
4. The sums to fall due under the contract are adequate and not excessive for the proposed purpose. The Town determined estimated costs by soliciting costs from various vendors/contractors and all fell within a close range of each other.
5. The Town of Kure Beach's debt management procedures and policies are good because the Town has managed and paid debt in the past in a sound manner and plans to continue this practice.
6. The Town is not requesting a tax increase for the proposed contract.
7. The Town of Kure Beach is not in default in any of its debt service obligations.



TOWN COUNCIL  
TOWN OF KURE BEACH, NC


*R*ESOLUTION R17-01

8. The attorney for the Town of Kure Beach has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.
9. The probable net revenues of the project to be financed will be sufficient to meet the sums to fall due under the proposed contract.

***ALSO, BE IT FURTHER RESOLVED THAT*** the Mayor of the Town of Kure Beach is hereby authorized to act on behalf of the Town of Kure Beach in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.

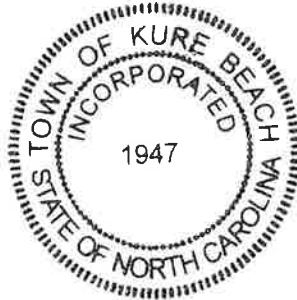
This resolution is effective upon its adoption this 21st day of February, 2017.

The motion to adopt this resolution was made by *Commissioner David Heglar*, seconded by *Commissioner Jim Degan*, and passed by a vote of *5 to 0*.

  
Emilie Swearingen, Mayor

ATTEST:

  
Nancy Hewitt, Deputy Town Clerk



This is to certify that this is a true and accurate copy of Resolution R17-01, adopted by the Kure Beach Town Council of the Town of Kure Beach, North Carolina on the 21<sup>st</sup> day of February, 2017.

  
Nancy Avery, Town Clerk



## TOWN COUNCIL TOWN OF KURE BEACH, NC

### R ESOLUTION R17-03

#### DECLARATION OF OFFICIAL INTENT TO REIMBURSE

This declaration (the "Declaration") is made pursuant to the requirements of the United States Treasury Regulations Section 1.150-2 and is intended to constitute a Declaration of Official Intent to Reimburse under such Treasury Regulations Section.

The undersigned is authorized to declare the official intent of Town of Kure Beach, North Carolina (the "Issuer") with respect to the matters contained herein.

1. **Expenditures to be Incurred.** The Issuer anticipates incurring expenditures (the "Expenditures") for replacing the sewage pumps, electrical controls and emergency standby generator for the Town of Kure Beach Pump Station #1 (the "Project").

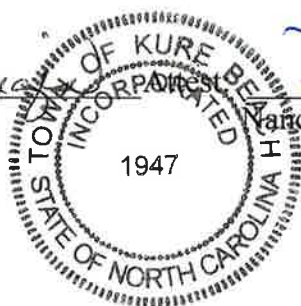
2. **Plan of Finance.** The Issuer intends to finance the costs of the Project with the proceeds of debt to be issued by the Issuer (the "Borrowing"), the interest on which is to be excluded from gross income for Federal income tax purposes.


3. **Maximum Principal Amount of Debt to be Issued.** The maximum principal amount of the Borrowing to be incurred by the Issuer to finance the Project is \$475,000.

4. **Declaration of Official Intent to Reimburse.** The Issuer hereby declares its official intent to reimburse itself with the proceeds of the Borrowing for any of the Expenditures incurred by it prior to the issuance of the Borrowing.

Adopted this 21st day of February, 2017.

By:   
Emilie Swearingen, Mayor



  
Nancy Avery, Town Clerk



KURE BEACH TOWN COUNCIL  
TOWN OF KURE BEACH, NC

**R**ESOLUTION R17-02

**A RESOLUTION SUPPORTING THE DEVELOPMENT OF A JOINT  
LAND USE STUDY (JLUS) FOR THE MILITARY OCEAN TERMINAL  
SUNNY POINT (MOTSU) AND SURROUNDING LOCAL GOVERNMENTS**

**WHEREAS**, the Town of Kure Beach recognizes that the continued operation of MOTSU is important to the economy of the area and region; and that its future operational capacity as an important asset for our nation's defense that should be protected; and

**WHEREAS**, MOTSU is interested in participating in a JLUS to coordinate future planning efforts of its operations with surrounding local governments; and

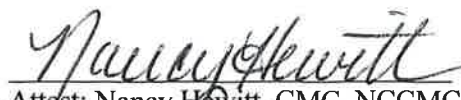
**WHEREAS**, the Town of Kure Beach recognizes that participation in and development of a JLUS will preserve and enhance the health, safety and general welfare of the residents of the community and surrounding areas by improving communication between MOTSU and surrounding local governments, and by developing recommendations for coordinating compatible land uses in area.

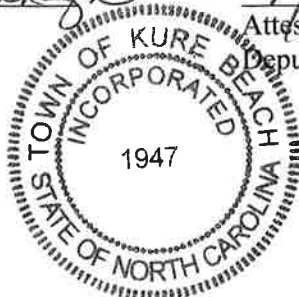
**NOW, THEREFORE BE IT RESOLVED** by the Kure Beach Town Council of the Town of Kure Beach that:

1. The Kure Beach Town Council agrees to participate in the development of a JLUS for MOTSU and the surrounding local governments.
2. The Kure Beach Town Council agrees to appoint a representative(s) to the JLUS policy committee.
3. The Kure Beach Town Council agrees to consider funding their local matching shares of the cost of the JLUS, either in cash or in-kind or a combination thereof, once determined by the policy committee.
4. The Kure Beach Town Council commits to a good faith effort to implement any recommendations included in the JLUS.
5. The Kure Beach Town Council supports the appointment of the Cape Fear Council of Governments as the sponsoring entity for the JLUS.

Adopted by the Kure Beach Town Council this 21<sup>st</sup> day of February, 2017.

  
Emilie Swearingen  
Mayor

  
Attest: Nancy Hewitt, CMC, NCCMC  
Deputy Clerk





## **RESOLUTION AGREEMENT**

This Resolution Agreement (“Agreement”) is entered into by and between Orbitz, LLC, Trip Network, Inc., TVL LP (f/k/a Travelocity.com LP), Expedia, Inc. (including its subsidiary, Travelscape LLC), Hotels.com L.P., Hotwire, Inc., and Egencia LLC (individually “OTC” and collectively “OTCs”), and the County of New Hanover, the City of Wilmington, Carolina Beach, Kure Beach, and Wrightsville Beach (collectively “the Taxing Jurisdictions”).

WHEREAS, the OTCs contend that amendments to N.C. Gen. Stat. §§ 105-164.4(a)(3), 153A-155(c), and 160A-215(c) enacted by Session Law 2010-31, § 31.6 and the amendments to N.C. Gen. Stat. §§ 105-164.4(a)(3) and 105-164.4F enacted by Session Law 2014-3, § 8.1(a) and (b) (collectively “the Amendments”) are unconstitutional under the United States Constitution and the North Carolina Constitution and in violation of the federal Internet Tax Freedom Act, as amended;

WHEREAS, the Taxing Jurisdictions contend that the Amendments are lawful and that the Taxing Jurisdictions have the right to collect occupancy taxes under the terms of the Amendments;

WHEREAS, the parties desire to resolve their dispute without litigation;

WHEREAS, the parties further desire to resolve all past potential occupancy tax liability of the OTCs since January 1, 2011 to the Taxing Jurisdictions and to adopt a mutually agreeable reporting and remittance methodology on a prospective basis; and

WHEREAS, the parties desire to enter into this Agreement to accomplish the above.

**NOW IT IS HEREBY DETERMINED AND AGREED:**

1. Each of the OTCs agrees to make the following payments to the Taxing Jurisdictions:
  - a. For occupancy of accommodations commencing January 1, 2014 through June 30, 2016 which were facilitated by any OTC pursuant to reservations made on or after January 1, 2014 and which are subject to occupancy tax levied by one or more of the Taxing Jurisdictions, each OTC will pay to the Taxing Jurisdictions, on or before April 1, 2017, the amounts specified on Exhibit A, attached hereto.
  - b. For occupancy of accommodations commencing July 1, 2016 through March 31, 2017 which were or are facilitated by any OTC pursuant to reservations made on or after January 1, 2014 and which are subject to occupancy tax levied by one or more of the Taxing Jurisdictions, each OTC will pay to each such Taxing Jurisdiction, on or before May 1, 2017, the Taxing Jurisdiction’s occupancy tax on the gross receipts

derived from such rentals, as defined in N.C. Gen. Stat. § 105-164.4F(b), less any amounts of occupancy tax sent by the OTC to retailers for such rentals.

2. For occupancy of accommodations commencing on or after April 1, 2017 which are subject to occupancy tax levied by one or more of the Taxing Jurisdictions, each OTC will remit to New Hanover County, on behalf of itself and the other Taxing Jurisdictions occupancy tax on the gross receipts derived from such rentals, as defined in N.C. Gen. Stat. § 105-164.4F(b) when returns for such taxes are due. Each OTC will report and remit all such occupancy tax through one of the following methods, at the option of each OTC:
  - (i) **Accommodation Retailer Remit:** All of the occupancy tax will be reported and remitted to the retailers of the accommodations in accordance with N.C. Gen. Stat. §§ 105-164.4(a)(3), 105-164.4F(c), 153A-155(c), and applicable county and municipal ordinances.
  - (ii) **Partial Direct Remit:** All occupancy tax will be partially reported and remitted to the retailers of the accommodations for further remittance to New Hanover County and partially reported and remitted directly to New Hanover County. Specifically, the portion of the occupancy tax not reported and remitted to the retailers of the accommodations in accordance with N.C. Gen. Stat. §§ 105-164.4(a)(3), 105-164.4F(c), 153A-155(c), and applicable county and municipal ordinances must be reported and remitted directly by the OTC to New Hanover County.
  - (iii) **Full Direct Remit:** All occupancy tax not reported and remitted to the retailers of the accommodations in accordance with N.C. Gen. Stat. §§ 105-164.4(a)(3), 105-164.4F(c), 153A-155(c), and applicable county ordinances must be reported and remitted directly by the OTC to New Hanover County.
  - (iv) Each OTC will give advance notice to New Hanover County of its selected option.
  - (v) If registering for occupancy tax purposes or paying occupancy tax, each OTC will do so by May 20, 2017.
3. This Agreement will resolve the OTCs' dispute with the Taxing Jurisdictions regarding the Amendments and all potential occupancy tax liability to the Taxing Jurisdictions for occupancy of accommodations facilitated by any OTC commencing prior to July 1, 2016.
4. To the extent permitted by law and consistent with and in accordance with the provisions of N.C. Gen. Stat. § 132 *et seq.*, the Taxing Jurisdictions acknowledge that this Agreement is a settlement pursuant to N.C. Gen. Stat. § 132-1.3 which contains Tax Information, as defined in N.C. Gen. Stat. § 105-259(a)(2), and its provisions are therefore subject to the disclosure prohibitions of N.C. Gen. Stat. § 105-259(b)(5d), N.C. Gen. Stat. § 132-1.1(b), N.C. Gen. Stat. § 153A-148.1, and N.C. Gen. Stat. § 160A-208.1.
5. Registering for occupancy tax purposes or payment of occupancy tax does not constitute a concession that the OTCs are engaging in business within any locality in

North Carolina or a concession that the OTCs are subject to any other tax or license in North Carolina.

6. The Taxing Jurisdictions will not issue any assessments to any OTC for occupancy tax for occupancy of accommodations facilitated by any OTC commencing prior to July 1, 2016.
7. The OTCs agree that the Taxing Jurisdictions have the authority and jurisdiction to audit for purposes of the Taxing Jurisdictions' occupancy tax due under paragraphs 1(b) and 2 of this Agreement. Upon request, each OTC will provide to the Taxing Jurisdictions data and documents, or reasonable access to records, for audit purposes.
8. The parties acknowledge that each side takes a different view of the facts and law related to the matters encompassed by this Agreement. The parties agree that this Agreement is based on the parties' desire to compromise their disputes and is not an indication that either side has expressed agreement with the other side's view of the facts or law. This Agreement does not constitute a concession, agreement or admission by any of the parties as to the correctness or applicability of any legal or factual contention by any other party.
9. The parties agree that the Agreement is for the benefit of, and an agreement expressly between, the parties hereto. This Agreement may only be amended by written agreement by all parties hereto. Any such amendment shall be attached hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
10. This Agreement shall be governed by the laws of North Carolina. Each party has cooperated in the drafting and preparation of this Agreement, and it shall be construed according to the plain meaning of its language and not for or against any party.
11. By signing this Agreement, all parties certify that they have read and agreed to all the terms hereof and that they have authority to enter into this Agreement.
12. This Agreement (including each of the rights and obligations set forth herein) shall be binding upon, and inure to the benefit of, the respective present or former, successor, direct or indirect family members, parents, subsidiaries, affiliates, agents, representatives, officials, insurers, employees, officers, directors and shareholders of the undersigned parties. Additionally, any reference in this Agreement to any of the parties shall be a reference to the present or former, successor, direct or indirect, family members, parents, subsidiaries, affiliates, agents, legal representatives, insurers, employees, officers, directors, and shareholders of those entities.
13. Each of the Taxing Jurisdictions and each OTC acknowledge that they: (a) have consulted with legal counsel about the Agreement; (b) they are entering into the Agreement voluntarily and with an understanding that, except as provided in paragraph 1(a) of this Agreement, the Taxing Jurisdictions are releasing all claims for occupancy Tax against the OTCs for occupancy of accommodations commencing prior to July 1, 2016; (c) they have the authority to enter into this Agreement; (d) no other persons or

entities have or have had any interest in any claims that are now being released; and (e) they have not sold, transferred, or assigned their claims to any other person or entity prior to entering into this Agreement.

14. This Agreement is governmental in nature, for the benefit of the public, and is not intended to be for private profit or gain. No Party intends to waive its sovereign immunity by reason of this Agreement.

**ORBITZ, LLC**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**TRIP NETWORK, INC.**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**TVL LP (f/k/a TRAVELOCITY.COM, LP)**

**By: General Partner, Travelocity.com LLC**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EXPEDIA, INC.**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**TRAVELSCAPE LLC**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**HOTELS.COM L.P.**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_



**Date:** \_\_\_\_\_

**HOTWIRE, INC.**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EGENCIA LLC**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**NEW HANOVER COUNTY**

**By:** \_\_\_\_\_

**Print name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**CITY OF WILMINTON**

**By:** \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TOWN OF CAROLINA BEACH**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

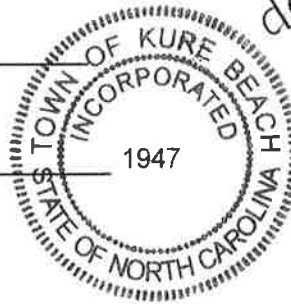
**TOWN OF KURE BEACH**

By: Emilie Swearingen

Print name: Emilie Swearingen

Title: Mayor

Date: 2/21/17



*ANDY CANOUTAS  
had his own copy  
& signed here to  
deliver to the  
County.*

**TOWN OF WRIGHTSVILLE BEACH**

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_



# TOWN COUNCIL MINUTES

## REGULAR MEETING

February 21, 2017

Mayor Swearingen asked council to approve her travel to Raleigh for an NCBIWA breakfast on March 9<sup>th</sup> at a total estimated cost of \$325, which includes hotel accommodations on March 8<sup>th</sup>. She also asked council to approve her travel to Raleigh for Town Hall Day on March 29<sup>th</sup> at a total estimated cost of \$232.

MOTION – Commissioner Heglar moved to approve the following travel by Mayor Swearingen. 1) travel to NCBIWA Legislative Breakfast in Raleigh on 3/9/17 at an estimated cost of \$325; and 2) travel to Town Hall Day in Raleigh on 3/29/17 at an estimated cost of \$232; both to be expended from council's Travel and Training budget.

SECOND – MPT Bloszinsky

VOTE – Unanimous

## 2. Town Mission Statement

Mayor Swearingen showed council the mission statements for New Hanover County (NHC) and for the NHC Library system. She said they are both brief and succinct. She said she would like to talk to the finance officer about putting together a mission statement for the town during the budget planning session so that council has something by the end of June.

## COMMISSIONER ITEMS

MPT Bloszinsky said they met with the town's committee chairpersons to talk about the need for volunteers. He said that a table will be put out during the 70<sup>th</sup> Anniversary Celebration to try and recruit volunteers for the committees.

Mayor Swearingen gave information on the dates of the celebration and activities planned. She said that she might challenge her council members to a game of disc golf on Saturday.


## ADJOURNMENT


MOTION – Commissioner Heglar moved to adjourn.

SECOND – Commissioner Dugan

VOTE – Unanimous

The meeting adjourned at 8:20 p.m.

  
Emilie Swearingen, Mayor

  
ATTEST: Nancy Hewitt, CMC, NCCMC  
Deputy Clerk

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting.

