

CURRITUCK COUNTY
NORTH CAROLINA
May 16, 2011

The Board of Commissioners met at 6:00 p.m. to discuss the Historic Jarvisburg Colored School.

The Board of Commissioners met at 7:00 p.m. for its regularly scheduled meeting at the Historic Courthouse in the Commissioners Meeting Room with the following members present: Chairman Aydlett, Commissioners O'Neal, Gilbert, Martin, Etheridge and Rorer.

Invocation and Pledge of Allegiance

Reverend Steve Castle, Moyock United Methodist Church, was present to give the invocation.

Approval of Agenda

Commissioner O'Neal moved to delete Item 11, appointment to Farmland Preservation Board. Commissioner Martin seconded the motion. Motion carried.

- Item 2 Public Comment
Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.

- Item 3 Kathleen Foremen to present the Governor's award for Outstanding Volunteer to Virginia Sikes

- Item 4 Presentation by Jim Harrison, Recovery Innovation ECBH

- Item 5 **Public Hearing and Action:** PB 10-03 Swan Beach Corolla: Request to rezone 37.36 acres from Outer Banks Limited Access Residential (RO2) to Conditional District-General Business (CD-GB). The property is located in Swan Beach, Tax Map 101 and 101A, Parcels A,B,C,D,1A,M1 and M2, Fruitville Township.

- Item 6 **Consideration of Recommendation of Award for Maple Commerce Park Wastewater Treatment Plant**

- Item 7 **Consideration of Ordinance** amending Section 3-87 of the Code of Ordinances to make unlawful the feeding of stray animals on any property

- Item 8 **Consideration of Ordinance** amending Section 1-8 of Code of Ordinances providing that penalty for violation of certain sections of Chapter 10 shall be Civil Penalty only.

- Item 9 **Appointments to Game Board**

- Item 10 **Appointment to JCPC Board to replace Donald Cooper**

- Item 11 **Appointments to Agricultural Advisory Board (Tabled)**

- Item 12 **Consent Agenda:**
 - 1. Proclamation for County Employee Health and Fitness Day
 - 2. Resolution Designating Agent for Currituck County for Tornados on 4/16/2011
 - 3. Resolution Opposing "Game Fish Status"
 - 4. Budget Amendments
 - 5. Approval of May 2, 2011, Minutes

Item 13 Commissioner's Report

Item 14 County Manager's Report

Adjourn

Public Comment

Please limit comments to items not appearing on the regular agenda, please limit comments to 3 minutes.

Chairman Aydlett opened the public comment period.

Debra Tabor, Moyock, requested the Board to move forward on building the new animal shelter.

Rachel Younts, requested the use of the Sound Park for events for non-profits.

There being no further comments, the Public Comment period was closed.

Kathleen Foreman to present the Governor's award for Outstanding Volunteer to Virginia Sikes

Kathleen Foreman, County Coordinator for Volunteer Service, on behalf of Governor Perdue, presented the Outstanding Service to Virginia Sikes for her significant contributions in 2011. Ms. Sikes was also awarded the Medallion Award from Governor Perdue.

The Board congratulated Ms. Sikes for her outstanding achievements.

Presentation by Jim Harrison, Recovery Innovation ECBH

Jim Harrison, Coordinator for Outreach Wellness, stated that this is a community-based recovery education and peer support program. The program is staffed by a team of trained Peer Support Specialists who are in recovery from their own mental health or addiction challenges. This program provides a safe and welcoming setting of wellness and independence enriched by contribution.

Mr. Harrison thanked the Board for their continued support.

Public Hearing and Action: PB 10-03 Swan Beach Corolla: Request to rezone 37.36 acres from Outer Banks Limited Access Residential (R02) to Conditional District-General Business (CD-GB). The property is located in Swan Beach, Tax Map 101 and 101A, Parcels A,B,C,D,1A,M1 and M2, Fruitville Township.

Chairman Aydlett opened the public hearing.

Ben Woody, Planning Director, reviewed the request for rezoning.

**CASE ANALYSIS FOR THE
BOARD OF COMMISSIONERS
MEETING DATE: May 16, 2011
PB 10-03 Swan Beach Corolla, LLC**

ITEM: PB 10-03 Swan Beach Corolla, LLC request to rezone 37.36* acres from RO2 to CD-GB.
* Narrative acreage is 37.57. Applications and GIS acreage is 37.36

LOCATION: Swan Beach, Corolla

OWNERSHIP/TAX ID:

Owner	Parcel ID	Acreage
Till Morning, LLC	101A000000B0001	2.98
Charles S. & Nancy Friedman	101A000000M20001	2.92
Second Star, LLC	101A000000A0001	2.96
Swan Beach Corolla, LLC	101A000000C0001	28.5
	101A000000D0001	
	0101000001A0000	
	101A000000M10001	

APPLICANT: Swan Beach Corolla, LLC
408 Dundaff Street, Apt. 110
Norfolk, VA 23501
757-718-8600

CURRENT ZONING: Outer Banks Limited Access Residential (RO2)

PROPOSED ZONING: Conditional District-General Business (CD-GB)

SURROUNDING PROPERTY:

	Land Use	Zoning
NORTH:	Currituck National Wildlife Refuge	RO2
SOUTH:	Residential	RO2
EAST:	Atlantic Ocean	
WEST:	Residential/Marshland	RO2

LAND USE PLAN CLASSIFICATION:

The 2006 Land Use Plan classifies this site as **Limited Service** within the **Carova Sub-Area**.

The Limited Service Area classification is to provide for primarily residential development at low densities. Base development density should be 1 unit per acre but could be increased to 1.5 units per acre through overlay zoning depending on whether service facilities are in

place or planned as well as the potential impact on the surrounding community. With respect to nonresidential uses, it is essential that the existing community character be preserved. Design criteria should be established to ensure that commercial development protects and preserves the existing community in scale, architectural style, materials, landscaping, and site design. Businesses designed to serve the tourist industry such as small gift shops or agri-tourism related uses should not be prohibited provided the character and intensity of the use is in keeping with the character of the surrounding area.

The policy emphasis of the Carova Sub-Area identified in the Land Use Plan is to allow for very low to medium density residential development without infrastructure or service investments that could stimulate growth and development. Only services that protect health, safety, and welfare (i.e. law enforcement, fire, and rescue) will be authorized. Commercial and other convenience services shall not be allowed.

The Carova subarea is designated by the federal government as a COBRA (Coastal Barriers Resource Act) area, meaning no structure in this area is eligible for federally subsidized flood insurance and no federal money may be spent in this area that would stimulate development.

In addition, the following Land Use Plan policies are also relevant to this request:

POLICY CD1: NEIGHBORHOOD SERVING COMMERCIAL DISTRICTS should be encouraged to locate where a collector or secondary street intersects with a street of equal or greater size. Appropriately designed, small-scale businesses may also be near other neighborhood serving facilities such as schools and parks.

POLICY OB6: Concerning the OFF-ROAD AREAS OF THE OUTER BANKS, Currituck County shall not permit or encourage the provision of growth-inducing facilities and services to these areas, including for example, commercial services, centralized sewage treatment and hard surface roads.

POLICY OB7: VEHICULAR ACCESS TO THE NORTH BEACHES (off-road area) shall not compromise the environmental integrity of wildlife refuges, the estuarine research reserve, other ecologically sensitive areas, or habitat for wild horses. Structures or other man-made improvements not specifically serving the public interest shall not be permitted to block vehicular access along the beach.

CURRENT LAND USE: Residential/Undeveloped

PROPOSED LAND USE: Hotel (cottage suites) for short and extended stay occupancy including accessory uses to support the lodging units (wellness center, indoor/outdoor pools, boardwalk), and neighborhood village business (office, service, retail, recreational, entertainment, institutional, and government).

PROPOSED DENSITY: The planned hotel density is projected at 7.82 hotel lodging units per acre. Each lodging unit will consist of one bedroom.

ZONING HISTORY: The Swan Beach subdivision plan was recorded September 1969 and identified several lots as business areas. The applicant contends that all parcels identified on the recorded plat as business areas are currently zoned business.

The Official Zoning Map with amendments through December 4, 1973 illustrates the property as RA-20 (Residential-Agricultural) zoning district. In 1975 the Currituck County Board of Commissioners zoned the off-road area for residential uses only (R-20). The 1989 Official Zoning Map identified the property as Outer Banks Limited Access Residential (RO2). The official zoning map currently identifies this property as Outer Banks Limited Access Residential (RO2).

In 2004, Swan Beach Corolla, LLC (PB04-22) submitted a request to rezone 18.88 acres from Outer Banks Limited Access Residential (RO2) to General Business (GB). The Planning Board recommended denial of the request on April 13, 2004 and the item was not acted on by the Board of Commissioners. Also in 2004, the applicant requested to rezone 25.77 acres from Outer Banks Limited Access

Residential (R02) to Off Road Historic Village Commercial Overlay District (PB 04-72). The Planning Board recommended denial of the rezoning on April 12, 2005. On November 17, 2008 the item was removed from the Board of Commissioners agenda. Also, on November 17, 2008 the Board of Commissioners denied a text amendment request to create an Off-Road Historic Village Commercial Overlay District (PB 04-71).

PUBLIC SERVICES AND UTILITIES:

The Carova Volunteer Fire Department provides fire protection for this area. Individual wells and on-site septic is proposed for the development.

TRANSPORTATION:

The site is accessible by four-wheel drive vehicle from the foreshore or beach strand.

FLOOD ZONE:

This site is located in a special flood hazard area and coastal high hazard area. The development is designated by the federal government as a COBRA (Coastal Barriers Resource Act) area, meaning no structure in this area is eligible for federally subsidized flood insurance and no federal money may be spent in this area that would stimulate development.

WETLANDS:

The wetland inventory maps do not identify wetlands on the property.

SOILS:

The Currituck County Soils map indicates the property contains primarily marginal soils for on-site septic systems.

PROPOSED

ZONING CONDITIONS:

On May 6, 2011, the applicant modified the proposed zoning conditions that will apply to this property:

1. Proposed Uses

- a. Inn/lodging units with a maximum lodging density of 294 units/bedrooms and accessory uses to include a wellness center, indoor/outdoor pool, and boardwalk.
- b. Neighborhood village commercial of 19,200 square feet of first floor space to include office, service, retail, recreational, and entertainment.
- c. Two acres to be rented to the existing illegal businesses

located in the four-wheel drive area.

2. Proposed Zoning Conditions
 - a. Wastewater shall be provided per county policy.
 - b. Stormwater to be managed using LID/Best Management practice techniques.
 - c. Parking areas shall not be paved.
3. The following uses are removed from the request:
 - a. Helipad
 - b. Fishing pier

COMMUNITY MEETING:

A community meeting was held on February 2, 2010. After multiple requests by staff a complete report was not provided prior to the Planning Board meeting. Bissell Professional Group provided community meeting notes at the Planning Board meeting.

STAFF RECOMMENDATION:

Staff recommends denial of the request to establish 37.36* acres from "Outer Banks Limited Access Residential (R02) to Conditional District General Business (CD-GB)"

The following points support the denial of this request as presented.

1. The proposed request is not consistent with the Carova Sub-Area Policy Emphasis and is not in keeping with the density requirements and community character emphasis of the Limited Service designation of the 2006 Land Use Plan.
2. The proposed uses and development plan does not promote compatibility between the subject property and surrounding area. The proposed inn and neighborhood commercial development is adjacent to the Currituck National Wildlife Refuge and within the Swan Beach residential subdivision. (LUP Policy CD5).
3. The intensity of the proposed uses and development plan will encourage commercial services in the off-road area. (LUP Policy OB6, Limited Service designation)

Outstanding Staff Concerns: The conditional zoning process provides an opportunity for an applicant to propose use limitations or development conditions that ensure development proposals are consistent with the policies set forth in adopted plans. Staff is concerned with the following issues not addressed in the application or development plan.

1. There appears to be a slight discrepancy in the calculated acreage of the request. The property acreages identified on the applications do not match the narrative.
2. Vehicular access in this remote area of the county is often affected by uncontrollable environmental conditions such as tides, shifting sands, high water table, localized flooding, lack of maintenance, and ocean over wash. In addition, encouraging an increase of daily and weekly visitors who expect public services could contribute to an inability to provide adequate public services in this remote area of the county. (LUP Policy PP2).
3. The property is located in a COBRA (Coastal Barriers Resource Act) area or otherwise protected areas as identified by the federal government. The COBRA prohibits the sale of NFIP flood insurance for structures built within the protected area, and federal money may not be spent in this area that would stimulate development. A majority of the development is located within a VE (coastal high hazard area) flood zone. All construction within the coastal high hazard area as shown on the Flood Insurance Rate Maps shall be constructed to V-zone construction standards.
4. The property is located in an area of the county identified by NC Division of Coastal Management with significant erosion rates of between 6.5 - 7.5 feet per year. The property south of the proposed development is identified as one of

the highest erosion rates in the county (8.5 feet per year).

5. All structures should be constructed in a manner so as to blend in with the character of the area taking into consideration height, size, exterior materials, windows, doors, and other related exterior features. All applications should be accompanied by building elevations of proposed structures and a lighting plan.
6. Staff requests further clarification on the extended stay units within the inn and the existing dwelling units including items such as intended ownership, management, and how the units will meet the UDO definition of Hotels and Motels. *Staff commentary: The units will not be sold and will remain under single ownership. A management company will oversee the entire resort.*
7. The northern property line is adjacent to the Currituck National Wildlife Refuge, natural heritage area. A report that identifies the environmental impacts of the proposed development to the natural plants and animals inventoried and catalogued by the NCDENR Natural Heritage Program shall be provided. Specific areas identified with significant habitat should be preserved and protected, and environmental impacts shall be reduced by adequate buffers and vegetation. No land disturbing activities shall occur within the buffer, and existing vegetation shall be preserved within the buffer. A plan and report shall be provided with the site plan submittal that adequately buffers and protects the environmentally sensitive areas.
8. Michael J. Hoff, Refuge Manager for the Currituck National Wildlife Refuge, reviewed the proposed plans and provided concerns for the proposed project on February 16, 2010. The concerns are as follows:

- i. A helicopter landing pad is approximately 250 feet from the boundary of the refuge. Federal law regarding aircraft usage around refuges discourages operation that may result in the harassment of wildlife. While the 250 foot buffer may be sufficient for landing the helicopter, approaches to the pad could be over the refuge at levels lower than recommended by the Federal Aviation Administration.
- ii. The proposal places a new road immediately adjacent to approximately 2,500 linear feet of refuge. Currently, vehicular trespass on the refuge behind the frontal dune is minimal due to the impassable nature of these front line dunes. Creating an access route to the secondary dunes would provide direct access to a dune system with no natural barrier. Vehicular trespass on the sensitive, and in some cases, rare ecotypes of the refuge would likely increase and cause irreparable harm to the refuge habitat types.
- iii. Currently, the hydrologic flow of subsurface water is not well understood. Special care should be taken during the design phase of this project to ensure adequate septic systems to protect refuge subsurface resources.
- iv. Many of our trust resources rely on the shallow wetland basins found on the refuge as a source for fresh water. Special care should be taken during the well field design phase of this project to ensure a subsurface cone of depression does not form that may ultimately drain these surface wetlands. Loss of these wetlands would negatively impact the

refuges plant and animal communities.

PLANNING BOARD

RECOMMENDATION: The Planning Board recommended **denial** with staff recommendations and LUP Policies, OB6, CD5, ES8, ES7, and ES6 to rezone 37.36 acres from Outer Banks Limited Access Residential (R02) to Conditional District- General Business (CD-GB).

PLANNING BOARD DISCUSSION (2-9-10)

Mr. Plumlee stated they are asking for conditional zoning meaning they would be required to follow the conditions set by the county. Mr. Plumlee stated his client has been paying taxes on this property since 1969 as a business parcel. What his client is proposing to build is a private beach resort for weekly rentals and special events. It would include a chapel, fire and rescue station, wellness center and commercial for neighborhood services. At the south end there would be a fishing pier. Mr. Plumlee addressed staff recommendations for denial.

- The proposed request is not consistent with the Carova Sub-area Policy: *What they are proposing is an old beach village style development and clearly these plans can be tailored by the county. They will be very small structures, 900 to 1200 sq. ft. They are looking into the potential of shuttle service for people using the resort.*
- The proposed uses and development plan does not promote compatibility between the subject property: *Having smaller structures is going to be a better development.*
- The intensity of the proposed uses and development plan will encourage commercial services in the off-road area: *The pier will be at the southern end of the property and the Inn will be at the northern end. The Inn will not encourage adjoining commercial structures because of shuttling people in. The fishing pier is to encourage fishing. Mr. Plumlee stated to consider these two items separately, the Inn and the pier. His client is mostly focused on the resort.*
- Vehicular access: *Mr. Plumlee stated he hopes they have addressed this with the shuttle services and they would have to buy their own private insurance.*

Mr. Bissell provided an overview of the project, addressed the community meeting comments, and examples of the building styles.

Ms. Taylor asked where in Corolla are the cars are going to be parked.

Mr. Bissell stated the developer has a special use permit for a remote parking site.

Mr. Wright asked how vehicles or emergency vehicles will pass under the pier when the water comes up and the height of the pier will decrease as it gets closer to the dune line.

Mr. Bissell stated this will have to be addressed in the design.

The Board was concerned with more traffic being routed from the beach to the local roads.

Mr. West asked for clarification on the Inn and individual cottages.

Mr. Bissell stated it is an Inn in multiple structures. Two buildings will have 8000 sq. ft. on each floor with 12 units per floor. It will be operated under single management. Mr. Bissell stated each unit will have their own individual septic system.

Ms. Wilson stated that Mr. Plumlee stated that Mr. Friedman is doing this for the community. She lives in the community and from the community meeting that was held the community is not asking for this. Ms. Wilson stated that architecturally it is nice but it is still a commercial development. Ms. Wilson stated it is setting a precedent because other properties that are currently zoned residential could put in a request for conditional rezoning for commercial.

Mr. Clark asked if the beach would be open in front of the development so the public to drive down the beach.

Mr. Bissell stated yes.

Ms. White stated she is a resident of Swan Beach and the president of the Swan Beach Property Association. The members of the Swan Beach Property Association are against the conditional rezoning request and are in agreement with staff recommendations for denial. Ms. White stated this request will lead to incompatible and disruptive activity and will be detrimental to the general welfare, safety, health and well-being of their community. The community is not requesting any of the services in this proposal. The Swan Beach Property Association is asking that the board deny this request.

Ms. Lanucci stated she is property owner in Swan Beach and is against the rezoning request because it is a drastic change in the landscape of Swan Beach.

Ms. Daniels stated she hopes the board will deny this request and leave it like it is. It has worked in the past and hopefully will work in the future.

Mr. Albrecht stated he is against the rezoning request because of the lack of an adequate infrastructure, septic systems, and not in harmony with residential nature of the community.

Mr. Cherry stated he is the former president of the Swan Beach Property Association. Mr. Cherry stated he lives in a house that had been moved and if the pier was built this would eliminate the ability to do this. Mr. Cherry stated this project is not in harmony with the residential nature of the community and asking that the board deny the request.

Mr. Lampy asked the board to deny this request.

Mr. Plumlee stated what is popular is not always right and what is unpopular is not always wrong. They do believe this project would reduce impacts compared to the results of residential developments at this location. The pier is not the main part of the project. This development will not decrease the value of

adjoining properties. This is a lower impact plan. If it is the concern to lessen impacts then you would adopt this plan, if it is the issue of controlling what is happening at all times around you then you would reject it, it is as simple as that.

Ms. Wilson stated she has a letter from the North Swan Beach Property Owners Association, a statement from the C.O.A.S.T. environmental group and the Corolla Wild Horse Fund in opposition to this rezoning request.

PLANNING BOARD ACTION

Ms. Wilson recommended denial with staff recommendations and LUP Policies, OB6, CD5, ES8, ES7, and ES6 to rezone 37.36 acres from Outer Banks Limited Access Residential (RO2) to Conditional District- General Business (CD-GB). Ms. Taylor seconded the motion. Motion carried unanimously.

John Morrison, Attorney, for applicant, introduced Mr. Florez, Residential Designer, to review the development concept.

Mr. Morrison, stated that the applicant was going to build residential lodging which is a much safer concept. He reviewed the Staff analysis and stated that this was a political decision to be made by the Board.

Commissioner Rorer questioned if there was a market in the area for this project.

Lars Simonsen, Attorney for Swan Beach Property Owners Association, stated that his clients are opposed to the rezoning request for many reasons. The applicant's proposal would be to change the zoning for only this specific property to "commercial," thereby allowing development of the property in a manner that is inconsistent with the surrounding area, and both prohibited by an incompatibility with the current zoning. They are also asking the county to do illegal spot zoning.

Mr. Simonsen, asked for the people in attendance to stand up if they oppose this rezoning. Majority in attendance stood up against the request.

Sarah McClellan, 4th grade student, requested the Board to save the wild horse habitat.

Elizabeth White, Swan Beach, presented an historical review from her father of the area and opposes the request.

Debra Ianucci, Swan Beach, opposes the request.

Mike Long, Ocean Pearl, opposes the request.

Jane Overstreet, Swan Beach, commented on the impact on the neighborhood and opposes the request.

Lynne Wilson, commented on the eco system and the challenge it poses for the area. She opposes the request.

J.P. Peron, Volunteer Fire Department, commented on the funding and that there is not a paid fire service for the area and opposes the request.

Kim Hadrava, Swan Beach Property Owners Association, opposes the request.

Herbert Curry, Senior Consultant, Washington DC, reviewed the cost to provide services, the negative impacts and this project was not a long term benefit.

Kelly Peters, Knotts Island, opposes the rezoning.

Karen McCalpin, Wild Horse Foundation, commented on the State Horse and protecting the wild horses and opposes the request.

John Howland, opposes the request.

Lillie Daniels, Wanchese, opposes the request.

Janet Rose, commended the Planning staff and Mr. Woody for their work and opposes the request.

Kim Kenyon, opposes the request.

John Morrison, Attorney for applicant, stated that he does not agree that this would be spot zoning.

Commissioner O'Neal stated they requested a work session on commercial use before addressing this request.

Commissioner Rorer, stated that the Board needed a comprehensive plan for business in this area.

Letters opposing request from North Carolina Coastal Federation, US Department of the Interior Fish & Wildlife Service.

There being no further comments, Chairman Aydlett closed the public hearing.

Chairman Aydlett moved to deny the conditional rezoning due to its inconsistency with the 2006 Land Use Plan and that the request is not reasonable and not in the public interest and does not promote orderly growth and development. Commissioner Rorer seconded the motion. Motion carried and was unanimous.

Consideration of Recommendation of Award for Maple Commerce Park Wastewater Treatment Plant

Commissioner O'Neal, moved to award bid to Hatchel Concrete, in the amount of \$1,940,862.20. Commissioner Martin seconded the motion. Motion carried.

Consideration of Ordinance amending Section 3-87 of the Code of Ordinances to make unlawful the feeding of stray animals on any property.

Commissioner Rorer moved to table. Commissioner Martin seconded the motion. Motion carried.

Consideration of Ordinance amending Section 1-8 of Code of Ordinances providing that penalty for violation of certain sections of Chapter 10 shall be Civil Penalty only.

Commissioner O'Neal moved to approve. Commissioner Etheridge seconded the motion. Motion carried.

AN ORDINANCE OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS AMENDING CHAPTER 1, SECTION 1-8 OF THE CURRITUCK COUNTY CODE OF ORDINANCES TO PROVIDE FOR GENERAL PENALTIES FOR CODE VIOLATIONS AND TO MAKE OTHER CORRECTIVE AND CONSISTANCY CHANGES

WHEREAS, pursuant to N.C. Gen. Stat. §153A-123 a county may provide for fines and penalties for violation of its ordinances and may by ordinance provide that violation of a county ordinance subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of a debt; and

WHEREAS, it is necessary and advisable to provide that the penalty for certain county ordinance violations subject the offender only to civil penalties.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for the County of Currituck as follows:

Part I. **Section 1-8. General penalty; continuing violation** of the Currituck County Code of Ordinances is rewritten to read as follows:

Sec. 1-8. General penalty; continuing violations.

(a) Wherever in this Code or in any ordinance of the county any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or an infraction or a misdemeanor, where no specific penalty is provided therefor the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not more than \$500.00 or by imprisonment for not more than 30 days for each separate violation; provided, that no fine shall exceed \$50.00 unless the ordinance expressly states that the maximum fine is greater than \$50.00. Each day any violation of this Code or any ordinance shall continue shall constitute a separate offense, unless otherwise specified.

(b) In addition to any criminal penalty set out in this section, violations of this Code shall subject the offender to a civil penalty upon the issuance of a citation for such violation as hereinafter provided. The civil penalty, if not paid to the county finance officer within 15 days of the issuance of a citation, may be recovered by the county in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code, such civil penalties shall be no more than \$500.00 for each violation, and each day any single violation continues shall be a separate violation.

Violations of the following provisions of this Code shall, except for the civil remedies provided in subsections (c), (d) and (e) of this section, subject the offender only to a civil penalty:

(1) Chapter 10, sections 57, 58, 59, 60, 61, 62, 63, and 108;

(2) Chapter 12, section 62.

(c) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other county ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the county for equitable relief that there is an adequate remedy at law.

(d) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other county ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the county may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(e) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:

- (1) Buildings or other structures on the property be closed, demolished or removed;
- (2) Fixtures, furniture or other movable property be removed from buildings on the property;
- (3) Grass and weeds be cut;
- (4) Improvements or repairs be made; or
- (5) Any other action be taken that is necessary to bring the property into compliance with this Code or such ordinance.

If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the county may execute the order of abatement. The county shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed

by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(f) The provisions of this Code and any other ~~town~~ county ordinances may be enforced by one all or a combination of the remedies authorized and prescribed by this section; except that any provision the violation of which incurs a civil penalty shall not be enforced by criminal penalties.

(g) Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other ~~town~~ county ordinance shall be a separate and distinct offense.

(h) A violation of this Code, the penalty for which is a civil penalty, shall be enforced as provided in subsections (i), (j), and (k) of this section.

(i) Upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, the county shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the date of the violation and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty. The initial issuance of a warning citation upon a violator as provided above shall not be required for the immediate imposition of civil penalties for a determination of a violation of any of the following provisions:

- (1) Chapter 3, Section 3-36;
- (2) Chapter 9, Section 9-4, Section 9-7, Section 9-33;
- (3) Chapter 10, Section 10-57, 10-58, Section 10-59, Section 10-60, Section 10-61, Section 10-62~~(b)~~, ~~Section 10-62(e)~~, Section 10-63~~(e)~~, Section 10-64, Section 10-104 and Section 10-108;
- (4) Chapter 12, Section 12-62;

(j) Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the appropriate official of the ~~town~~ county and either served directly on the violator or his duly designated agent, or registered agent if a corporation, in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the ~~town~~ county, or obtained from the violator at the time of the issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to ~~appear before the town treasurer, located in the town hall,~~ within 15 days of the date of the citation, ~~or alternatively to pay the citation by mail.~~ The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated. Within a 12-month period, any repeat violation for which a notice of violation, warning citation, or civil citation has been issued shall be considered a continuation of the original violation.

(k) If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the county may institute a civil action in the nature of debt in the appropriate division of the state general court of justice for the collection of the civil penalty.

PART II. Section 10-54. Violation of division. of the Currituck County Code of Ordinances is stricken in its entirety as follows:

~~Sec. 10-54. Violation of division.~~

~~Whoever violates any provision of this division shall, upon conviction, be punished by a fine of not more than \$500.00 or by imprisonment for not more than 30 days for each separate violation.~~

Appointments to Game Board

Commissioner Etheridge moved to appoint Clay Cartwright, Commissioner O'Neal re-appointed Jimmy Markert and Commissioner Martin appointed Chandler Sawyer. Members were appointed by acclamation.

Appointment to JCPC Board to replace Donald Cooper

Tabled

Appointments to Agricultural Advisory Board

Tabled

Consent Agenda:

1. Proclamation for County Employee Health and Fitness Day
2. Resolution Designating Agent for Currituck County for Tornados on 4/16/2011
3. Resolution Opposing "Game Fish Status"
4. Budget Amendments
5. Approval of May 2, 2011, Minutes

Commissioner O'Neal moved to approve. Commissioner Martin seconded the motion. Motion carried.

Currituck County Employee Health and Fitness Day

Proclamation

WHEREAS, Currituck County Government is concerned about the health of its employees; and

WHEREAS, May 20, 2011, is designated Currituck County Employee Health and Fitness Day; and

WHEREAS, heart disease and cancer are the two leading causes of death in Currituck and are largely affected by what we eat and how physically active we are; and

WHEREAS, employers with highly effective health and productivity management programs have cost increases that are: 5 times lower for sick leave; 4.5 times lower for long-term disability; 4 times lower for short-term disability; and 3.5 times lower for general health care coverage.

WHEREAS, regular physical activity has curative and protective health benefits and can improve the quality of life for everyone; and

WHEREAS, a healthier populace means long-term cost savings for our county government; and

WHEREAS, County government shall encourage more physical activity opportunities for their employees; and

WHEREAS, County employees are becoming more aware of the need to eat smart and move more to improve their quality of life and reduce health care costs; and

WHEREAS, more fitness and nutrition educational programs shall be offered to county employees that support and encourage physical activity, healthy eating and worksite wellness;

NOW, THEREFORE, the Currituck Board of Commissioners hereby proclaims May 20, 2011, as Currituck County Employee Health & Fitness Day.

**RESOLUTION
OPPOSING “GAME FISH STATUS”**

WHEREAS, the Fisheries Reform Act (FRA) recognizes that commercial fishermen perform an essential function by providing wholesome food for the citizens of the State while struggling to earn a living in an industry whose resources are managed by both State and Federal agencies and whose labor accounts for revenue, jobs, and a significant tax base; and

WHEREAS, designating “Game Fish Status” for Red Drum, Striped Bass, Spotted Sea Trout and other fish species will deprive consumers in North Carolina and across the nation of access to fresh locally harvested seafood; and

WHEREAS, allocating 100% of the resource to less than 3% of the population of our state and to specific user groups would be a travesty of fairness, a violation of the FRA, and devastating to the economies of coastal communities; and

WHEREAS, degrading a resource to “Game Fish Status Only” has never enhanced the resource, and will threaten coastal communities with the loss of jobs and access for all citizens; and

WHEREAS, North Carolina as a recognized leading producer of seafood has one of the most diverse fisheries in the United States and should be allowed to continue harvesting wild caught fish species in order to bring to market a wonderfully fresh, sustainably managed, revenue producing, protein resource for all its citizens.

NOW, THEREFORE, BE IT RESOLVED that the Currituck County Board of Commissioners requests the North Carolina General Assembly oppose “Game Fish

Status” and honor the Fisheries Reform Act by continuing to make all fish species available for the benefit and enjoyment of all North Carolina citizens.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10797-534000	Wellness Program	\$ 1,720	
10797-514000	Travel		\$ 300
10330-448600	FIT Communities Grant		\$ 1,420
		\$ 1,720	\$ 1,720

Explanation: *FIT Communities Grant (10797)* - To record increase in grant funding.

Net Budget Effect: Operating Fund (10) - Increased by \$1,420.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10796-545000	Contracted services	\$ 1,190	
10796-532000	Supplies		\$ 1,190
		\$ 1,190	\$ 1,190

Explanation: *Rural Center (10796)* - Transfer funds for concrete walk-way at the Rural Center.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
10795-590000	Capital Outlay	\$ 3,000	
10795-513000	Utilities - Schools		\$ 1,000
10795-516000	Repairs & Maintenance - Schools		\$ 1,000
10795-526000	Advertising		\$ 1,000
		\$ 3,000	\$ 3,000

Explanation: *Parks & Recreation (10795)* - Transfer funds for a sign at Sound Park.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit		Credit	
		Decrease Revenue or Increase Expense		Increase Revenue or Decrease Expense	
10441-545000	Contracted Services	\$	4,480		
10441-590000	Capital Outlay			\$	4,480
		<u>\$ 4,480</u>		<u>\$ 4,480</u>	

Explanation: *Information Technology Services (10441)* - To transfer funds for installation, configuration, migration and training for the Exchange server.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit		Credit	
		Decrease Revenue or Increase Expense		Increase Revenue or Decrease Expense	
10660-516200	Vehicle Maintenance	\$	300		
10660-514500	Training & Education	\$	4		
10660-526000	Advertising			\$	300
10660-514800	Fees Paid to Officials			\$	4
		<u>\$ 304</u>		<u>\$ 304</u>	

Explanation: *Planning (10660)* - Transfer funds for emergency repair to Planning Jeep brakes and training.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit		Credit	
		Decrease Revenue or Increase Expense		Increase Revenue or Decrease Expense	
18609-545000	Contracted Services	\$	480		
18330-449900	Miscellaneous Grants			\$	480
		<u>\$ 480</u>		<u>\$ 480</u>	

Explanation: *Hog Bridge Ditch Watershed Improvement District (18609)* - Increase

<u>Account Number</u>	<u>Account Description</u>	or	
		<u>Increase Expense</u>	<u>Decrease Expense</u>
10450-514000	Travel		\$ 450
10450-514500	Training & Education	\$ 450	
		<u>\$ 450</u>	<u>\$ -</u>

Explanation: *Tax (10450)* - Transfer for continuing education required by NC Dept of Revenue to be completed by June 30.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit		Credit	
		Decrease Revenue or Increase Expense		Increase Revenue or Decrease Expense	
10752-590443	Technology > \$1,000 - Spec Adopt	\$ 4,500			
10752-532003	Supplies - Special Adoption			\$ 4,500	
		<u>\$ 4,500</u>		<u>\$ 4,500</u>	

Explanation: *Public Assistance (10752)* - Transfer funds to purchase 2 computers for special adoption assistance.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit		Credit	
		Decrease Revenue or Increase Expense		Increase Revenue or Decrease Expense	
10530-513000	Utilities	\$ 450			
10530-511000	Postage/Telephone	\$ 3,250			
10530-553000	Dues and Subscriptions	\$ 200			
10530-503500	Temporary Services	\$ 5,000			
10530-532000	Supplies	\$ 1,250			
10530-533900	Ambulance Supplies	\$ 2,400			
10530-516200	Vehicle Maintenance	\$ 2,000			
10530-531000	Gas, Oil, etc.	\$ 20,000			
10530-557100	Software License Fee	\$ 1,000			
10530-506000	Insurance Expense			\$ 21,000	
10530-545000	Contracted Services			\$ 11,500	
10530-511010	Data Transmission			\$ 850	

10530-514800	Fees Paid to Officials	\$	1,000
10530-516000	Repairs and Maintenance	\$	1,200
		<u>\$</u>	<u>35,550</u>
		<u>\$</u>	<u>35,550</u>

Explanation: *Emergency Medical Services (10530)* - Transfer funds for operations for the remainder of this fiscal year.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit		Credit	
		Decrease Revenue or Increase Expense		Increase Revenue or Decrease Expense	
10511-513000	Utilities	\$	5,000		
10511-547000	Meals			\$	5,000
10510-532001	Canine Supplies	\$	1,500		
10510-506000	Insurance Expense			\$	1,500
		<u>\$</u>	<u>6,500</u>	<u>\$</u>	<u>6,500</u>

Explanation: *Sheriff (10510); Jail (10511)* - Transfer for operations for the remainder of this fiscal year.

Net Budget Effect: Operating Fund (10) - No change.

<u>Account Number</u>	<u>Account Description</u>	Debit		Credit	
		Decrease Revenue or Increase Expense		Increase Revenue or Decrease Expense	
10460-511000	Telephone & Postage	\$	400		
10460-513000	Utilities	\$	6,500		
10460-532000	Supplies	\$	3,000		
10460-561000	Professional Services			\$	9,900
10490-532003	Supplies	\$	700		
10490-516000	Repairs & Maintenance			\$	700
63838-545900	Tire Disposal	\$	15,000		
63838-571500	Recycling			\$	15,000

<u>\$</u>	<u>25,600</u>	<u>\$</u>	<u>25,600</u>
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Explanation: *Public Works (10460); Court Facilities (10490); Solid Waste (63838)* - Transfer for operations for the remainder of this fiscal year.

Net Budget Effect: Operating Fund (10) - No change.
Solid Waste Fund (63) - No change.

Commissioner's Report

Commissioner Martin requested the county look at funding for Animal Shelter for the 1st year.

Commissioner O'Neal stated that we should get a conceptual plan for Shelter.

Commissioner Etheridge commented on the commitment with the ALAL and work on the cost and size of shelter. He also attended the Rural Farm Center's event over the weekend.

Chairman Aydlett commented on the Project Emmanuel Project at the Knotts Island Ruritan. He also read a letter from Senator Hagan supporting the COA project.

County Manager's Report

Dan Scanlon, County Manager, stated that the County EMS would have a safety demonstration at the high school during prom week on the hazards of drinking and driving.

Adjourn

There being no further business, the meeting adjourned.