

RELEASED AND SPREAD UPON THE MINUTES FEBRUARY 12, 2019

APPROVED AND SEALED AT THE MARCH 13, 2018 COUNCIL MEETING

CLOSED SESSION MINUTES  
MOREHEAD CITY TOWN COUNCIL

FRIDAY, December 29, 2017

Councilman Taylor moved to enter into CLOSED SESSION in the Conference Room of the Municipal Building, 202 South 8<sup>th</sup> Street, Morehead City, N.C., during a Special Meeting of the Council held on Friday, December 29, 2017, as per NCGS 143.318.11(a)(3) to consult with Town Attorney. Councilman Ballou seconded, and the motion carried unanimously (5-0).

COUNCIL PRESENT: Mayor Gerald A. Jones, Jr.; Councilmen George W. Ballou and William F. Taylor; and Councilwomen Keri V. McCann and Diane C. Warrender. Councilman Harvey N. Walker, Jr. participated via teleconference call.

STAFF PRESENT: City Attorney Derek Taylor, Interim City Manager Ralph Clark, Finance Director Jewel Lasater and City Clerk Cathy Campbell.

In addressing information recently learned regarding an appeal submitted in regard to impact fees, City Attorney Derek Taylor provided the following timeline:

|                   |   |
|-------------------|---|
| October, 2013     | Quality Homes sues Carthage for impact fee refund + interest + attorney fees  |
| October 17, 2014  | Trial Court enters summary judgement vs Quality Homes – Carthage wins   |
| November 10, 2014 | Quality Built files appeal to Court of Appeals  |
| August 4, 2015    | Appeal to Court of Appeals affirms Trial Court Summary Judgement; unpublished opinion says no refunds (CA #1)   |
| September, 2015   | Quality Homes appeals to the Supreme Court  |
| August 19, 2016   | Carthage Decision from NC Supreme Court (SC #1) <ul style="list-style-type: none"><li>- Unlawful collection of impact fees</li><li>- Send to Court of Appeals for determination of estoppel, statute of limitations, and attorney fees issues</li></ul>                       |
| December 30, 2016 | Court of Appeals Decision (CA #2) <ul style="list-style-type: none"><li>- No estoppel</li><li>- Ten Year Statute of Limitations</li><li>- Send to trial court to determine “abuse of discretion” attorney fees</li></ul>  |
| February 3, 2017  | Carthage files appeal with Supreme Court  |
| May 5, 2017       | Supreme Court Agrees to hear the appeal from the Court of Appeals decision <ul style="list-style-type: none"><li>- June 21, 2017 Carthage Brief Filed</li><li>- August 7, 2017 Quality Built Homes Brief Filed</li><li>- August 24, 2017 Carthage Reply Brief Filed</li></ul> |
| July 20, 2017     | Legislature passes law saying Statute of Limitations is and has been 3 years  |
| November 9, 2017  | Town Council discusses options to settle the current threatened law suits and possible refunds beyond that (3 years per legislature or 10 years per courts so far?)   |
| December 11, 2017 | Town Council holds meeting and announces refunds with 3 year lookback   |
| December 15, 2017 | “LINC’ed In” Article by League of Municipalities caused Manager to contact the League to discuss the Carthage Appeal wherein he was informed that Carthage will argue the statute of limitations is 3 years or <u>less</u> (1, 2, 3 years or estopped)                        |
| January 9, 2018   | Supreme Court Scheduled to hear appeal (3 <sup>rd</sup> matter to be heard that day).   |

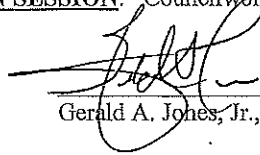
August, 2018

Probable month to expect a written decision, but not a definite timeframe, date could be before or after.

Town Attorney Derek Taylor recommended that Town Council suspend payment of any impact fee refunds until the Supreme Court makes a final decision in the Quality Homes v Town of Carthage regarding the applicable statute of limitations, when the statute of limitations would begin to run, and whether or not those that paid the fees were estopped from requesting repayment. Such suspension was described as necessary to assure that only fees legally required to be paid be disbursed from public utility funds.

Mr. Taylor further clarified that prior payments made for settlement of pending litigation were appropriate and they do not compel the Town to make further settlements prior to the Supreme Court's decision. Such further litigation demands and potential settlements should be addressed on a case by case basis.

Councilman Taylor moved to return to OPEN SESSION. Councilwoman Warrender seconded and the motion carried unanimously (5-0)



Gerald A. Jones, Jr., Mayor

Attest:

  
Cathy Campbell, City Clerk

