

**MINUTES OF THE REGULAR MEETING
OF THE TOWN COUNCIL
TOWN OF CAROLINA BEACH**

November 15, 2005

The Town Council of the Town of Carolina Beach met in regular session on November 15, 2005 at 7:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor, Dennis Barbour; Mayor Pro Tem, Pat Eford; Councilman, Jack Lynch; Councilman Joel Macon; and Councilman, Gary Doetsch. Also present was Town Manager, Calvin R. Peck, Jr. and Town Clerk, Lynn N. Prusa.

Councilman Jack Lynch first asked for a moment of silence for the passing of Ed Barnes who passed away over the weekend. He then led everyone in the invocation and pledge of allegiance. Councilman Lynch stated there is a fundraiser for Mr. Barnes' family at Bank of America and stated anyone could drop a check off there if they would like to help. Immediately following, Mayor Barbour called the meeting to order.

ADOPT THE AGENDA

Mayor Barbour made a motion to adopt the agenda with the following changes:

Remove from the agenda Item #22 "Request for Extension of a Conditional Use Permit at 103 Charlotte Avenue for Plantation Building Corp." The Applicant requested that this item be removed from the agenda.

Rearrange Item #8 "Presentation of 2004/2005 Audit to Item #23(a)" as requested by the auditor.

Add to Consent Agenda Item #10(l) Set a Public Hearing Date for December 13, 2005 at 7:30 p.m. or soon thereafter to "Consider Amendments to Appendix A Zoning, Article 18 Non-Conforming Situations, Section 18.2 Non-Conforming Lots."

Add to Consent Agenda Item #10(m) "Adopt Resolution No. 05-854 Dedicating Veteran's Memorial Island at Carolina Beach Lake."

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(b) "Consider a Request for a Conditional Use Permit for 3 Duplexes Located at 301, 303, and 305 Carolina Beach Avenue South."

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(c) "Consider a Request for a Conditional Use Permit for a Triplex Located at 817 Canal Drive."

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(d) “Consider a Request for a Conditional Use Permit for a 4-Story 3-Unit Condominium Located at 1303 Canal Drive.”

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(e) “Consider a Request for a Conditional Use Permit for a 7-Unit Condominium Located at 408 and 410 Canal Drive.”

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(f) “Consider a Request to Rezone from R-1 (Residential) to HB (Hwy Business) Town Property Located at 1121 N. Lake Park Blvd.”

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(g) “Consider a Request to Rezone from R-3 (Single Family, Minimum Lot Size 12,000 sq. ft.) to R-1 (Single Family, Minimum Lot Size 5,000 sq. ft.) Property Located at 600, 602, 606, 610, 612, 614 Harper Avenue and 601, 605, 609, 615 Rocky Mount Avenue and 304 7th Street.”

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(h) “Consider an Amendment to Article 23, Definition of High Rise; Amend Article 12.2 Development Standards for Particular Uses, and Amend Article 3.9(b)6.”

Consider changing the public hearing date from the December 13, 2005 meeting to the January 10, 2006 meeting at 7:30 p.m. or soon thereafter for Item #10(i) “Consider an Amendment to Chapter 3 Animals and Fowl, Section 3.9 Dogs and Other Commonly Accepted Animals and Fowl on Public Rights-of-Way, Public Lands, Property and Beaches.”

Remove from the Agenda Packet a memo from finance director and insert the attached that includes additional amendments and/or transfers for Item #10(k) “Approve Budget Amendments and Transfers.”

Remove letter from Strand Capital Group dated October 26, 2005 and replace it with the attached letter dated November 10, 2005 for Item #21 “Request for Extension of a Conditional Use Permit at 107 S. Lake Park Blvd. for Park Place Development.”

Remove management letter and replace with attached item for Item #23(a) “Presentation of 2004/2005 Audit.”

Remove from the Agenda Item #14 “Request to Rezone from HB (Highway Business) & MB (Marina Business) to CBD (Central Business District) Located at 304, 306, 400, 400A, 402 N. Lake Park Blvd.” (Applicant requested Item be removed from the Agenda)

MOTION CARRIED UNANIMOUSLY.

RECOGNIZE CITIZEN OF THE QUARTER

Mayor Barbour asked that Leslie and Darlene Bright come forward. It was stated that they were out of town. Councilman Lynch made a motion to continue this item to the next regular Council meeting. **MOTION CARRIED UNANIMOUSLY.**

RECOGNIZE BOARD OF ADJUSTMENT MEMBER FOR YEARS OF SERVICE

Mayor Barbour stated it was a pleasure to recognize Nick Parker and awarded him a plaque for recognition of 20 years of dedicated public service as a member of the Town of Carolina Beach's Board of Adjustment. Mayor Barbour expressed his appreciation for Mr. Parker's service.

CONSIDER ADOPTING A PROCLAMATION RECOGNIZING NOVEMBER 14-18, 2005 AS NATIONAL HUNGER & HOMELESSNESS WEEK

Mayor Barbour motioned to approve Proclamation 05-853 (Exhibit 1). **MOTION CARRIED UNANIMOUSLY.**

INTRODUCE NEW TOWN EMPLOYEES

The following new employees with the Town of Carolina Beach were introduced to Council:

T. J. Nicholas
Utility Maintenance Worker
Waste Water Collection

Steve Harrell
Director of Planning and Development

Council welcomed them to the Town of Carolina Beach.

PUBLIC DISCUSSION

Nick Nolan, a resident of 301 South 8th Street, stated he wanted to speak on Item #23 under New Business and that he would need to hear the explanation of the item before he could address Council. Mayor Barbour stated that it is not a public hearing and that Mr. Nolan would need to address Council now. Mr. Nolan asked for an explanation of the item. Mayor Barbour stated the agenda has already been adopted and therefore he could not move it forward. Mr. Nolan stated that he was not going to speak then.

Lynne Denne, a resident of 100 North 7th Street, stated she did not want to address anything on the agenda but wanted to offer thanks and make some comments. Mayor Barbour stated this is for open public discussion. Ms. Denne stated that she wanted to recognize Joel Macon and thank him for helping during the flooding from Ophelia in October. She stated that Councilman Macon enlisted water and sewer personnel, as well as Council members, to provide a pump to prevent flooding of the homes in their neighborhood. She thanked Mr. Pagley and Councilman Macon for personally helping them with that situation.

Ms. Denne also stated she was troubled about a second issue. She stated the Planning and Zoning Board works very hard for us, spending countless hours reviewing plans, etc. She said the planning meetings take hours and hours just for one issue because they are going over it in detail and they really want to do what's right for the Town. She stated then the issue comes here and it gets a six minute quick synopsis. She stated they don't really have an opportunity to explain what their position was. She stated Council is not completely versed on what that was and Council makes decisions based on what Council thinks their interpretation is. She thinks we need to have a better meeting of the minds so that in the future we are all on the same page and we're not taking P&Z members' time that they graciously give us for granted.

Ms. Denne also thanked Council for their time and serving the Town. She stated everyone wants what is best for the Town but may not always agree on how to get there. She thanked them for having the courage to run and be elected officials and to do what so many are not willing to do.

Mayor Barbour stated something came up today that he would like to add his comments on. He asked that John Nelms come to the podium. Mayor Barbour stated that John works for the Town of Carolina Beach and has done so for 23 years. Mayor Barbour stated that John has been very instrumental in making the greenhouse on Dow Road a success for the Town. Mayor Barbour stated John could spend hours describing what we have accomplished in there by growing sea oats, plants, flowers, etc. for the Town of Carolina Beach. Mayor Barbour said that he received a letter from David Nash, Area Specialized Agent, Coastal Management, for NC State University recognizing John for his dedicated service both on and off the job when it comes especially to sea oats planting. Mayor Barbour stated that John has not only raises sea oats but also plants sea oats around town on his own time.

Mayor Barbour read the last paragraph of the letter stating, "John has also cooperated with me to conduct sea oats planning projects in conjunction with N.C. Aquarium at Ft. Fisher and the Ft. Fisher State Recreation Area. His participation helped more than 150 volunteers plant 30,000 sea oats seedlings seaward of the aquarium. The dunes that are building as a result of the sea oats will provide increased protection from storm overwash for the aquarium. I have enjoyed training the volunteers for the Town sea oats planning events and working with John and other Town staff members to make these events a success. The N.C. Cooperative Extension Service welcomes the opportunity to continue to work with the Town of Carolina Beach to conserve and protect the coastal dunes and dune vegetation here. Sincerely, David Nash." Mr. Nelms received a round of applause.

Mayor Barbour asked for a big round of applause for John and stated this letter is going into John's file for recognition for his service.

Councilman Lynch thanked Mayor Barbour and Councilman Gary Doetsch on behalf of Carolina Beach for the good service they have given to this Town for the last eight years and the way they have led this town forward. He stated when they came into office eight years ago, Carolina Beach was virtually broke and today they have over \$3 million in the bank undesignated for the benefit of the citizens. He is praying that the new council will protect that \$3 million and make it grow so that we can have a healthy and viable community. Carolina Beach's credit is excellent. He stated that when they came into office there were approximately 13 lawsuits. He stated that counsel advised him tonight that now there is only one possible lawsuit still pending. He thinks they have done a good job and thanked them personally and on behalf of Carolina Beach.

CONSENT AGENDA

Mayor Barbour made a motion to adopt the consent agenda as follows:

Approval of the Minutes:

Regular Meeting	September 27, 2005
Special Meeting/Workshop	September 29, 2005
Regular Meeting	October 11, 2005
Special Meeting/Workshop	October 27, 2005

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider a request for a Conditional se Permit for 3 duplexes located at 301, 303, and 305 Carolina Beach Avenue South.

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a triplex located at 817 Canal Drive.

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a 4-story 3-unit condominium located at 1303 Canal Drive.

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a 7-unit condominium located at 408 and 410 Canal Drive.

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider a request to rezone from R-1 (Residential) to HB (Hwy Business) town property located at 1121 N. Lake Park Blvd.

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider a request to rezone from R-3 (Single Family, Minimum Lot Size 12,000 sq. ft.) to R-1 (Single Family, Minimum Lot Size 5,000 sq. ft.) property located at 600, 602, 606, 610, 612, 614 Harper Avenue and 601, 605, 609, 615 Rocky Mount Avenue and 304 7th Street.

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider an amendment to Article 23, Definition of High Rise; amend Article 12.2 Development Standards for Particular Uses, and amend Article 3.9(b)6.

Set a public hearing date for January 10, 2006 at 7:30 p.m. or soon thereafter to consider an amendment to Chapter 3 Animals and Fowl, Section 3.9 Dogs and Other Commonly Accepted Animals and Fowl on Public Rights-of-Way, Public Lands, Property and Beaches.

Adopt Proclamation No. 05-851 (Exhibit 2) for adoption of a national incident management system.

Approve budget amendments and notification of budget transfers as follows:

Stormwater Study to be conducted by Engineering Services in the amount of \$98,500, increase Appropriated Fund Balance account 303990.00 in the amount of \$98,500 and increase expenditure account 309000.74-Stormwater Capital Projects over \$10,000.

Also, money was approved for the CEED Program for a flounder hatchery in the amount of \$2200, therefore need increase Appropriated Fund Balance account number 253900.00 in the amount of \$2200 and increase 255500.57-Marina Miscellaneous in the amount of \$2200.

Budget Amendment-Operations

The Finance Department received a request from the Operations Department for a budget amendment to conduct a Water Study Project in the amount of \$72,000, \$50,000 will be used to pay for the study and the balance of \$22,000 will be used to pay A.C. Shultes for test well holes. Money to come from fund balance account 303990.00 in the amount of \$72,000 and be placed into accounts as follows \$22,000 308120.45-Water Contract Services and \$50,000 into account 308120.46-Water Professional Services.

Amendment is in the amount of \$100,000 due to the increase in fuel costs, money to come from account 303990.00 and be placed into account 308130.31-Fuel.

Transfers-Fire Department

Request from the Fire Chief, Brian Roberts for **budget transfers** to cover negative balances in his accounts. The transfer request is to decrease account 105300.06-Group Insurance in the amount of \$3000 and increase account 105300.01-Holiday Pay and increase account 105300.03-Overtime in the amount of \$1500.

Transfer – Clerk Department

Request from the town clerk to transfer from account #104300.54 in the amount of \$1,572.63 to account #104300.45- Contract Services to cover transcription services to the end of this fiscal year.

Set a public hearing date for December 13, 2005 at 7:30 p.m. or soon thereafter to consider amendments to Appendix A Zoning, Article 18 Non-Conforming Situations, Section 18.2 Non-Conforming Lots.

Adopt Resolution No. 05-854 (Exhibit 3) dedicating Veteran's Memorial Island at Carolina Beach Lake.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING – REQUEST FOR A CONDITIONAL USE PERMIT FOR A COMMERCIAL/RESIDENTIAL MIXED USE LOCATED AT 401 MARINA STREET

Prior to speaking, Ed H. Parvin, Interim Planning and Development Director, was sworn in by the Town Clerk and began making the presentation.

BACKGROUND/HISTORY:

The applicant is proposing to construct (1) approximately 48,318 sq. ft. structure to include 24 residential units, restaurant, ship's store, sales office, fitness center, laundry and bath facilities, and a marina dry storage area (Mixed Use Development) at 401 Marina Street (Existing Oceana Marina site). The project is located in the Marina Business District MB-1 and is being proposed under mixed-use development. The applicant's proposed structure will exceed the 50' recommended height requirement. **The applicant has provided the one foot swap for setback for one foot of additional height over 50' to allow the structure to be 60'.** The parcels are located within the 100-year floodplain and will be required to have elevated living space and commercial space or commercial space on the ground floor may be flood proofed. The property is also located within a CAMA Area of Environmental Concern.

ANALYSIS:

Zoning

The property total square footage is 1.47 acres. Maximum lot coverage within the Marina Business District is 40%; the footprint of the structure is approximately 16,203 sq. ft or 25% lot coverage. The proposed structure will be 60 feet in height. Setbacks in the Marina Business District are 30' (front), 10' (side), and 10' (rear). The applicant's structure is setback 98' facing Marina Street; 30' from the property to the north; 130 feet from the west; and 30' from the east.

PARKING ANALYSIS:

110-seat restaurant requires 1 parking space/3 seats provided)*	= 37 spaces required (37 provided)
408 sq. ft. retail requires 1/200sq ft. provided)	= 02 spaces required (02 provided)
440 sq. ft office space requires 1/300 sq ft.	= 02 spaces required (02 provided)
24 residential units (3 bedrooms each)	= 60 spaces required (60 provided)
Marina staff requires 1/ 2 employees provided)	= 01 spaces required (01 provided)
74 wet slips (23 allocated to condominium owners) provided)	= 51 spaces required (51 provided)

TOTAL SPACES REQUIRED: = **153 SPACES** required by our ordinance

TOTAL SPACES PROVIDED: = **153 SPACES** (See attached Site Plan).

* The applicant is requesting to stack 12 valet parking spaces as a condition for approval. This condition must be formally approved by the Town Council. The applicant is requesting to utilize transient boat slips to offset 19 parking places for the restaurant or 47.5% of the restaurant parking. The data below describes sample language used to define the area needed for a transient boat slip.

The Planning and Zoning Commission heard this proposal at its October 13, 2005 regularly Scheduled Meeting. The Planning and Zoning Commission unanimously recommended denial due to the following reasons:

1. The side setback off of 403 Marina Street should be interpreted as part of the front setback
2. Insufficient parking for the project as presented
3. Insufficient fire access between Florida and Georgia Avenue

Front yard: Area between side lot lines across the front of a lot adjoining a street.

Side yard: Area extending from the rear line of the required front yard to the foremost lines of the rear yard. In absence of a clearly defined rear yard, as in the case of a through lot, any portion of the lot not designated as a front yard shall be a side yard.

Mr. Parvin stated that the above are definitions from Planning and Zoning. He said Staff's interpretation was that area that fronts the street is actually the front yard. Planning and Zoning disagreed and said this should be the front setback and it should come off the side yard at this point. Planning and Technical Review thought that was a side setback based on how a front and side yard are defined in our ordinance.

Mr. Parvin said the project, as presented to Planning and Zoning, had insufficient parking. He stated when it was presented it was dependent on an amendment which will be heard later tonight for reducing the parking requirement for wet slips. The project is no longer dependent on that parking. They are providing all the parking they need for the project by reducing the size of the restaurant and they took out a meeting room and replaced it with the dry storage area.

Mr. Parvin stated there was also concern about insufficient fire access between Florida and Georgia Avenue and the project has been reviewed by the Technical Review Committee, including the fire marshall, and has adequate fire access.

Mr. Parvin stated the applicant is present and would like to make a presentation, as well. Mr. Parvin asked if Council had any questions. There being no questions from Council, Mark Lowdermilk was sworn in prior to his presentation.

After being sworn in, Mr. Lowdermilk, of 5002 Romenent Road, Wilmington, NC stated he is with Cline Design Associates and that they represent the owner on this project. He stated he wanted to add a few things and show some visual representations of what they are proposing. He stated this site plan is oriented differently from what Mr. Parvin was showing. He stated he wanted to highlight how they are providing for parking on this project because it was such an issue at the P&Z meeting. On the lower site, side A, which is down right next to the building that they are proposing, they've got a total of 71 spaces and 53 of those would be for the condominiums, 12 are for the valet and those would be actually underneath the building, and then an additional 6 parking spaces for the restaurant. Mr. Lowdermilk showed site B which is just to the north of Marina Street which is landscaped and stated they have 63 spaces there with 51 being dedicated to the boat slips and marina. He stated there are actually 74 boat slips in the marina but 23 of those will be deeded to their condos, so an extra space won't be needed for those. Therefore, that requires 51. He stated they have 5 for the staff and 7 more for the condos. To get to the 153, that's the additional 19 transient boat slips that they're going to help to park the restaurant.

Mr. Lowdermilk showed a slide for the restaurant. He stated they have 18 valet and/or restaurant spaces, 19 transient boat slips, which gives them 37 spaces. He said they need 1 parking space for every 3 seats, so that gets them to 111 seats. He stated what they are proposing is 50% of their restaurant seats would be taken care of by boat parking. He knows that's a bit of a stretch but what they're saying is let's try to keep the boaters who are driving in the Waterway from going all the way up to Wilmington to eat at a decent restaurant. He wants to try to accommodate them here in Carolina Beach and keep that money here.

The next slide shown was a closer view of what's going to happen on the first floor. He stated they will have the restaurant on the left hand side overlooking the water with outdoor seating.

They will have a ship's store. The fitness center will only be used by residents of the condos or people who own boat slips in the marina, so there is no extra parking required for that. He stated they will have showers and toilet rooms for the marina itself and also storage for the marina. They will also be providing a 50 foot easement for the public beach access, as shown at the lower left corner. He said they were also adding 2 spaces – one would be handicapped and one regular space would be for public beach access. Those spaces aren't counted towards their condominium parking. They are also providing landscaping in that area.

A floor plan of the units was shown. The next slide shown was the proposed massing of the building – 60 feet tall from the grade. He doesn't believe that this is towering over anything else in that area and they believe it fits in nicely with the existing architecture of that area. The outdoor seating for the restaurant would be in the front corner on the ground floor and will be a nice place to eat. Then there are 24 units up above that with great views of the water.

Mr. Lowdermilk asked if there were any questions he could answer. Councilman Lynch asked where the transient boat slips are in relation to the restaurant. Mr. Lowdermilk stated they are on the existing fuel dock. He said there is an existing dock there for fueling and they are calling those transient. He said they are counting every 25 feet of the boat dock as a space for the restaurant for the transient. Councilman Lynch asked how many transient slips there would be. Mr. Lowdermilk replied there are 19.

Mayor Barbour stated that in the interest of time he and Council request that only those with competent testimony specific to the Conditional Use Permit being heard tonight be presented during public comment or public hearing. He asked them to please limit their time. He stated there are two sick Council people tonight so they need to move the meeting along and there is a long agenda.

There being no further questions from Council, Mayor Barbour made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

The Town Clerk asked Mayor Barbour if he wanted a three minute time limit and he replied yes.

Virginia Zablocki of 400 Virginia Avenue was sworn in to testify. Ms. Zablocki stated she is the President of the Homeowner's Association for Spinnaker Point. She said the proposed building appears to be four stories tall and that it will completely block out the view of the Intracoastal Waterway for one of their buildings at Spinnaker Point. She stated their buildings are only three stories. She stated she represents 72 homeowners there and that they would like to join their neighbors at the north end and request that this rezoning not be granted.

Sonya Bennet of 202 Virginia Avenue was sworn in to testify. Ms. Bennet thanked the Mayor and Council for the opportunity to speak. She said that her concern with this project is the traffic, as she has mentioned in P&Z meetings. She stated most people familiar with the area know how narrow Georgia Avenue is and there are a lot of active kids in the neighborhood and they are out in the daytime and at night. She stated there is a lot of traffic and they are very rude to pedestrians in that area. She is afraid that with the increase in traffic with a magnitude of this

nature that it would be dangerous to the children in their neighborhood. She is very concerned about traffic there.

Jack Horne of 630 St. Joseph Street was sworn in and thanked Mayor and Council for the opportunity to speak. Mr. Horne stated he runs a business but is an avid boater and he would like to speak for this motion. He said that obviously, being a boater, the only place they've got to go for a restaurant is in either Wrightsville Beach or Southport. With today's gas prices, he said it is pretty expensive traveling that far and it would be neat for the community of Carolina Beach to be able to have a place on the water that the boaters could actually enjoy, especially during holidays and on the weekends. He stated he can also speak for Safe Construction, the people planning on doing the building. He stated he lives at Carolina Bay and they built his home. He stated their sense of community, the projects they get a hold of – they take a lot of pride in. He thinks if anyone has been out and seen Carolina Bay lately that they could see that it has added a lot to the Carolina Beach community.

Jan Weissback of 118 Georgia Avenue was sworn in and stated she thinks Sonya Bennet was correct when she said the traffic is a real problem in their neighborhood. She said the streets are not wide enough for two vehicles to pass and now they're talking about 153 more vehicles on these roads. She asked where a pedestrian would walk, where does a child ride a bicycle, where do you wheel your baby carriage, where do you go when these cars are coming, and how do you get out of the way? She said they don't have sidewalks. She wanted to know if anyone had looked into the impact on the sewage. She said last time they worked on her water pipes they were there for three days because it was such a mess. She said they couldn't even figure out which direction the pipes were coming in and that they were a rusty mess and now we're going to add more. She said they would add a lot more and wanted to know if anyone has looked into the impact. She believes that is Planning and Zoning's job. She said Planning and Zoning unanimously told these gentlemen to come back with a detailed plan and she wanted to know why that step was being skipped. She stated he hasn't been back to Planning and Zoning. She wanted to know if they were just going to skip that and Council was going to vote on it? She said they're supposed to be the experts. She said she does see a plan with a drawing of the 19 transient boat slips at the gas dock. She wants to know what will happen when a 24 foot boat pulls up to get gas? What does he do to the 19 transient boats – just knock them out of the way? She stated this is not realistic and it is an insult to their intelligence and their integrity.

Lynne Denne of 100 North 7th Street was sworn in and stated she was at the Planning & Zoning meeting where this was unanimously turned down. She stated that she has one question about the easement on their road that is being given away in order to accommodate this plan. She stated that during the P&Z meeting there was a lot of discussion about this and the P&Z committee asked a lot of questions about this easement and were told that they couldn't disclose any of that by Mr. Parvin. She said at one point one of their P&Z members asked if it was a secret. She said tonight they are here without going back to P&Z when they unanimously turned them down and she thinks this speaks to what she spoke about in the very beginning about getting a short, quick synopsis when hours and hours and hours were spent. She said that meeting did not end until almost 1:00 in the morning and part of it was because of this. So, she would like to know what happened to the easement. There was concern about the houses that were on that end if the road was closed down and about fire. She realizes that has been

addressed as far as the marina goes, but she's concerned about the residents, as were the Planning & Zoning members. She thinks we owe P&Z members who spend their time the respect of honoring their request in denying this.

Nick Nolan of 301 South 8th Street was sworn in and said Lynn stole his question from him. He said at the October 13th meeting Commissioner Lancaster, in reviewing the plans, noted that the parking was on a city easement. When Mr. Parvin was questioned as to how that could be, it was explained that there was a contract between the city apparently giving the easement back to the landowner. Since then, they have been unable to find any information about what has transpired with this piece of property. He said the only people who have authority to make that kind of transaction is Council, so he wanted to know if they could get some kind of explanation of how that took place, if it took place.

Leroy Franks of 908 Canal Drive was sworn in. Mr. Franks said that he too was at the Planning and Zoning Committee where secret contracts were discussed. He said that when Mr. Parvin was asked if he had proof that Town Council has verified this, he had none. He said that was his question. Once more, it was unanimously turned down. Two additional comments is that easement will endanger existing houses by closing off a road and they will not be able to have fire access and the suggested number of parking places there is going to add to a super sensitive saltwater flooding area like crazy. Development brings more flooding and asked Council to please consider that.

D. A. Lewis of 604 Clarendon Avenue was sworn in and stated he would like to ask one question. The secret doing on this land and giving away the easement – he would like to know who gave it away? He asked if anyone could answer that – when it was done, who did it? He thinks they need to know.

Mayor Barbour stated they would have their attorney address that if that's all Mr. Lewis has to say. Councilman Lynch stated it is not a secret. Mr. Lewis stated it must be. Councilman Lynch said again that it is not. Councilman Macon said it must be because he doesn't even know anything about it.

There being no further public comment, Mayor Barbour made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Barbour asked if Ken Shanklin was present. Mr. Peck stated he had not seen Mr. Shanklin. Mayor Barbour asked him if he had a copy of the issue that addresses the easement. Mr. Peck stated that if that was the agreement that Mr. Shanklin and he had been working on for a couple of months now that he did not have a copy of that with him tonight. Mayor Barbour stated they were expecting an attorney to come and speak on the easement situation and the agreement. He requested that Council delay action on this issue until Attorney Shanklin arrives and ask that they move to the next item. Councilman Lynch asked Mr. Peck to call and verify that Mr. Shanklin was on his way.

Mayor Barbour made a motion to take a ten minute break. **MOTION CARRIED UNANIMOUSLY.**

Mayor Barbour called the meeting back to order and stated they would resume with Attorney Ken Shanklin. Mr. Shanklin was sworn in by the Town Clerk and began making his presentation. He stated he was requested several months ago by Al Clyburn, the Town Attorney, to investigate a matter concerning a deed that was to the Town from Suggs & Harrelson Construction Company, dated May 19, 1983, Book 1223, Page 275. He stated the question posed to him was what the status of this instrument to the Town. He said you have to go back and look at the deed itself. Mr. Shanklin stated that when you buy property, you can buy it in a number of different forms. You can buy a life estate, fee simple, absolute (which is all of it), determinable estate, or estate with conditions subsequent. You can have a number of different conditions on that deed. North Carolina law recognizes a number of different forms for these instruments. Quite often when developers or individuals convey property to the Town for no money, it has conditions upon it. Mr. Shanklin stated several years ago he represented Mr. Grathwal and other entities in conveying property (a gift) to New Hanover County for the sewer system. In all the deeds to the well sites they had rights of reverter. The deed that you have to the Town in 1983 was such a deed and it is a determinable estate with a right of reverter. What that means is you have certain conditions upon this deed. If those conditions were breached at any time, the property automatically reverted back to the grantor. It didn't matter whether it was the next day or 50 years or 75 years. It is like conveying property to a church. So long as you have church there and once you cease being a church, the property would revert back to the owner. Mr. Shanklin stated that generally that is because the property is generally given away with strings attached. He stated that in your case here, this particular instrument is such an estate. It is a determinable estate, which means it can terminate at some point in the future and one of the principal conditions of this was Item #2 – "Hereinafter the described real property shall at all times soon after be used Only as a site for drilling and maintenance of a fresh water well site." Only is capitalized and underscored, which makes it more emphatic. Mr. Shanklin stated it his understanding that sometime in the '90's, the Town started using it for other purposes, which violated the conditions of this deed. Mr. Shanklin stated that is his opinion.

Councilman Lynch asked if Mr. Shanklin could be more specific and stated when in the '90's? Mr. Shanklin stated 1994 through 1998 is when it begun. He stated 1994 was the only information that he has at this point. Mr. Shanklin said that with that occurring, the reverter occurs automatically. So, at that point it is their property. Under the case law of North Carolina, which is quite definitive on this point, it is not the Town's property right now. If it is used for something else other than a well site, whether that was accidentally done or intentionally done or whatever, the consequence is the same. The deed is in proper form for the aspect of a reverter. It is in the granting clause, which is the primary clause, which says "In consideration of \$10.00 and other valuable and good consideration, I hereby grant like acre to you." That's the granting clause. The next clause in the deed is the abendum clause, which also recites the reverter. So, the deed is proper in form under North Carolina law from the standpoint of whether it is a proper, determinable estate with a right of reverter and it is that.

So, with that conclusion reached, Mr. Shanklin stated he discussed the matter with the Town attorney and then started negotiating with Suggs & Harrelson's attorney to try and resolve the matter from a standpoint of trying to work out a deal so the Town would get something back from the property that it has arguably lost by reason of the use of the property for something else

other than a well site. An agreement was prepared and signed. It was discussed over some time period and signed last week. The deed provides that the Town shall execute a quitclaim deed with respect to any adverse interest it may have in the property and then in return for that the property owner, which would be Bobby Harrelson and Rex Stevens, would then execute a deed of easement conveying certain easements to the Town. There was proposition at the very beginning of this that the Town in its quitclaim deed could reserve those easements. Mr. Shanklin said you cannot reserve something that you do not own. So, if you don't own it, you cannot reserve it. Mr. Shanklin looked at the aspect of adverse possession and some other aspects of whether you could claim it against the true owner. He stated he is not sure when Suggs & Harrelson were informed as to the breach of the conditions in this deed. He said there is one prospect that you could be in adverse possession for 20 years, and you clearly haven't been that. The other aspect is whether you have color of title. Color of title is an instrument that purports to convey title but fails in some respect. Mr. Shanklin stated he couldn't find a case on that point as to whether you would have color of title, which would be 7 years adverse possession. He is not sure that the Town's possession has been adverse to the true owner. So, all things considered, the Board, as he understands it, agreed to enter into an agreement that is more in the nature of a settlement of a lawsuit, as opposed to granting a real property. As a part of that agreement, the Town agreed to sign a quitclaim deed. A quitclaim deed conveys whatever you have, if anything. You are not giving a warranty deed. In return for that, you get several easements.

“The Town shall retain a non-exclusive underground utility easement on the property to be located on a new survey of the property to be obtained by the parties, which easement shall be obtained by an expressed grant by the owner (which is Suggs & Harrelson) to the Town by separate instrument from the quitclaim deed.” The next numbered item is “The Town shall retain a non-exclusive water access easement along the existing 50' right-of-way of Myrtle Grove Sound for public use to be located on a new survey of the property to be obtained by the parties, which easement shall be granted by an expressed grant by owner to Town by separate instrument from the quitclaim deed.” Again, you couldn't reserve that in a quitclaim deed to Suggs & Harrelson, which would be Bobby Harrelson and Rex Stevens as partners of that entity at this point, because in Mr. Shanklin's opinion, you do not own it. Furthermore, Suggs & Harrelson have agreed to give a charitable gift to this town of \$1 million, which is a sizable amount of money. The Town is a charitable entity under Internal Revenue code. Mr. Shanklin stated he has used that device a number of times with the City of Wilmington and also with New Hanover County in gifting property to those entities like conservation easements, sewer systems, etc. He stated it benefits both the owner and the Town or in other cases, the County or City of Wilmington. Mr. Shanklin has recommended the agreement to the Town and he's given the Town a memorandum that sets forth his opinion that he stated tonight.

Mayor Barbour thinks Mr. Shanklin also informed the Town that this agreement was to avoid a lawsuit. Mr. Shanklin replied yes. He said when he first looked at this, he looked at it from the standpoint of litigation – a lawsuit which could last years and cost a lot of money. Mr. Shanklin said if you go through a lawsuit, it is intense. He said there are some factual problems in this case because of what happened in 1994 – who can testify to that? Who could testify to it in 1995, 1996, 1997 and so forth? If you go to the Court of Appeals or Supreme Court, you are spending a lot of money. In this instance, you have actually 3 benefits: the money and the two

easements. That is a business decision on the Town's part whether to accept this. If the deal falls through, you are back to square one, which again would be back to the lawsuit. The property is worth too much money to just let it go, in Mr. Shanklin's opinion.

Councilman Lynch stated he has read the deed and he agrees with Mr. Shanklin. He said the capitalization of Only is very clear to him. Mr. Shanklin said he doesn't know how you could make it more clear. Councilman Lynch thinks that the residents are much better off with \$1 million than they are with a lawsuit and possibly 0. Mr. Shanklin agreed. Mr. Shanklin stated if he had to choose sides – the Town's side or the other side – he would choose the other side because his chances of winning would be better by far. He stated that's how he measures things. He measures things of whether he can win or not win and he has been doing this 32 years. He said it is always better to take something that is quick, simple and beneficial. He asked if there were any further questions.

Mr. Peck stated he wanted to clarify that the charitable contribution precise amount is \$1,125,000.

Mayor Barbour stated they always seek legal advice when it comes to situations like this and try to avoid a lawsuit. He stated they came into this Council eight years ago with 13 lawsuits and they would like to leave with one. Councilman Doetsch stated they not only seek advice from counsel, they always, as a rule, follow their advice and it has been very beneficial for the Town. Mayor Barbour stated a question came up in the public hearing about the easement location as in relation to parking. Mayor Barbour said the acting Planning Director will address that. Councilman asked if they would need a motion for the \$1.125 million? Mayor Barbour said the agreement covers it. Councilman Lynch asked if he had authority to execute it and Mayor Barbour said yes. Councilman Lynch asked if he could make a motion as to where that money goes. Mayor Barbour said yes, but let's finish this first.

Mr. Parvin stated the actual easement was connecting Florida and Georgia Avenues on the property line. That was the access easement. There is a utility easement that's part of the deed that Mr. Shanklin was discussing, which is a 20' access easement in between the parking and the 24' area - between the parking areas. That goes from Florida to Georgia Avenue. So, it's just moved from the property line up to this area. The easement is still there. It's just a utility easement versus an access easement.

Referring to the slides, Mr. Peck asked if Mr. Parvin would go a little further to the west and show the access to the sound. Mr. Parvin showed the 50' public access easement that is also being maintained with the parking for the access easement.

Mayor Barbour asked if Council had any further questions. There being no further discussion, Councilman Doetsch made a motion to approve the Conditional Use Permit for a Commercial/Mixed Use Located at 401 Marina Street per the Required Findings 1-7, the General Conditions 1-4, the Technical Review Committee recommendations 1-16 and Staff recommendations 1-29:

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

- (1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;
- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;
- (4) Utilities, with reference to locations, availability, and compatibility;
- (5) Screening and buffering with reference to type, dimensions, and character;
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;

General conditions.

- (1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the C.U.P.;
- (2) That the use meets all required conditions and specifications;
- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (4) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Town Land Use Plan and Policies

Technical Review Committee Recommendations

1. Address access to fire connection (area between dumpster pad and stair tower would likely be best access point). Need a 12 inch water line between Florida and Georgia avenues. Knock will have to be provided on-site.
2. Speak with stormwater division about 50 ft. vegetated outfall and other issues. Address and note beach access and outfall needs on plans.
3. Plan for handling all stormwater on-site to meet CAMA regulations
4. Include a note on the plan
5. Ensure all plans meet flood zone requirements
6. Need CAMA line on North side.
7. Need to see ownership of parking and road inside Oceana and agreement with homeowners association that deals with the gate. Consider moving the gate to the north side of the parking lot.
8. Clearer breakdown of parking needed and how those spaces will be utilized.
9. Full 9X18 ft. paved parking spaces needed.
10. Consider using one-way 15' street. Include a traffic flow pattern on the plan. Any two way traffic shall have 24' separation.

11. Need landscaping plan (10ft. landscape buffer according to Article 8 “Type B” Buffer yard). 6ft fence required on all sides abutting residential development
12. Project must not exceed 60ft (Show height elevations on plans).
13. Loading space shall be 12X45 ft.
14. Floor plan for residential and seating plan for restaurant
15. Update narrative with all pertinent changes.
16. Narrative shall include restaurant and retail hours of operation. It should also address the sale of alcohol. Clearly show parking and CAMA access area. Describe in narrative the changes to this area.

Staff Recommendations:

1. The stormwater plan must be submitted prior to issuance of a building permit. The stormwater system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
2. Drainage plan must be submitted and approved prior to issuance of a building permit. The drainage system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
3. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of Building Permit.
4. Approval from the Division of Water Quality for a CAMA Permit.
5. Approval Letter from Division of Water Quality from the Public Water Supply Section for a construction authorization permit.
6. Grease trap will have to be approved by the Town of Carolina Beach prior to Certificate of Occupancy for restaurant use.
7. Seating for the restaurant use shall be limited to 120 seats.
8. Hours of operation and number of employees must be provided prior to issuance of Certificate of Occupancy.
9. Alcohol sales must not comprise more than 49% of total sales (based on ABC and tax records) in the restaurant.
10. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
11. Flood Certification must be presented prior to issuance of certificate of occupancy.
12. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
13. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.

14. Refuse collection agency that will be used must be included on final site plan. The refuse collection site must be enclosed on all four sides and remain closed and secured during inactivity.
15. All structures must be designed to meet NFPA approved Fire Sprinkler systems and meet minimum NC Fire Prevention Code. Approval letter must be submitted prior to Certificate of Occupancy.
16. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
17. A sign permit must be obtained for any new signs located on the property.
18. Maintenance of parking, streets, drainage systems, utilities, and other such facilities- All common facilities shall be maintained for their intended purpose as expressed in the approved final site plan. The method of providing for such maintenance shall be submitted prior to Certificate of Occupancy by one (1) or more of the following:
 - a. Public dedication to the Town, subject to the Town's formal acceptance of such facilities in its sole discretion.
 - b. Establishments of an association or nonprofit corporation of all individuals or corporations owning property within the mixed use development for the purpose of ensuring maintenance of common facilities.
 - c. Retention of ownership, control, and maintenance of common facilities by the developer or Home Owner's Association.
19. Certification shall be provided that all improvements, including but not limited to paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee prior to Certificate of Occupancy.
20. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
21. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire.
22. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission.
23. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.
24. A scaled site plan must be submitted prior to issuance of a building permit. All drawings shall be prepared at a scale of 1" equals 50' or larger showing the site and all land within 150' of the site.
25. The 562' pier constructed for transient boat slips and 32 proposed transient slips shall remain available to the public as transient slips for boaters utilizing the restaurant and marina facilities.
26. The fitness center shall be designated as for resident and boat slip owners only
27. All adjacent lots utilized for the marina project shall be combined before issuance of a Certificate of Occupancy.

28. Stacked parking shall be designated to a specific condominium by sign and pavement markings.
29. 60 spaces shall be marked as designated to condominiums

He stated the reason he is doing this is because this type of development is supported by the Land Use Plan. It provides additional recreation for both citizens and tourists and it also increases the tax base for the Town of Carolina Beach, which hopefully will keep the tax rate neutral in the future. For those reasons, he is making the motion. Mayor Barbour stated there is a motion on the floor to approve the Conditional Use Permit for a Commercial/Mixed Use Located at 401 Marina Street. Mayor Barbour asked for any further discussion.

Councilman Lynch asked Mr. Parvin if the changes in the restaurant seating are in the letter – the reduction in the seating, etc.? Mr. Parvin stated yes – that it is updated in Mr. Parvin’s memo. Councilman Lynch agreed with Councilman Doetsch. He stated he thinks that this is probably very controversial, otherwise everybody wouldn’t be here. He knows that in the Boater’s Guide, they recommend people stay away from Carolina Beach because there are no transient slips. He hopes when this project is done that it will be a real credit to the Town of Carolina Beach and certainly will be a focal point for boaters and people coming across the bridge to hopefully enjoy. He thinks it is a nice project. Mayor Barbour asked for any further discussion.

Councilman Macon stated the street was part of the Town’s property before and that it wasn’t a deeded street. He asked if he was correct in that? So, the street is not like a normal street – a deeded right-of-way? Mr. Peck said there is actually no street. It acts as a driveway. There was no deeded access between Georgia and Florida. Councilman Macon said that is what he’s saying – that it was part of the Town’s property before we lost it in the sense the attorney was talking about and we put a street on it. He asked if that was correct? He said that we had a valid point on these transient slips with the gas docks. He asked could they get that clarified as to how that’s going to work? He said if the spaces are full because you’ve got transient boats going to eat at the restaurant, then they’re just not selling any gas. Mr. Parvin stated a sizable transient slip will be defined by 10’ in width and 25’ in length and is what required and what they are providing. Councilman Doetsch said he thinks Councilman Macon’s question was would they prefer to cut themselves out of the gas sales as opposed to the transient rental fees? He said Dennis and he have fished tournaments around the East Coast and whenever they were fueling up after a tournament sometimes there’s 100 boats ahead of you sitting at a dock and you still get in there to fuel. He thinks it is something that the people who manage the property would have to determine. Councilman Macon said you just wait in line and if somebody moves out, you move in and get gas – kind of like waiting on a parking space. Councilman Doetsch said that’s the way it goes.

Mayor Barbour asked for any further discussion. There being no further discussion, Mayor Barbour called for a vote. **MOTION CARRIED 4-1.** (*Mayor Pro Tem Pat Efird voted no.*)

Councilman Lynch asked if he could now make a comment and motion on the money and Mayor Barbour said yes. Councilman Lynch made a motion to put the \$1.125 million into a designated account with 50% for the senior citizen and 50% for the library and request that the money not be spent without a public hearing. He said if that’s legal, he would like to do that and asked if it

was legal. Mr. Clyburn, Town Attorney, said yes. Councilman Doetsch asked do we want to designate that for specific uses or just for the complex itself and then determine at a later date ...? Councilman Lynch said one of our hopes was to build a new library and new senior center and he would like this to give credit and be sure that \$1.125 is set aside for those projects and not going into the general fund or be undesignated. Councilman Doetsch agreed with that 100%, but his question was do they want to designate specific groups receiving the money, as opposed to a center that provides a service to both senior citizens and the historical society, etc. By doing that, we're cutting some people out that may need it. Mayor Barbour said the motion might need to say that it be designated for a senior center/library complex. Councilman Lynch said the next council could then deal with it, but hopefully it would be for the benefit of those facilities and said he amends his motion. Councilman Macon doesn't think that we should be putting stipulations onto it. He said that is a lot of money and what that money needs to go for should be left up to the next Council. Councilman Lynch said they have spent a lot of time working on the senior center and library and here's \$1.125 million and he would feel better representing the citizens and that money at least being there for the improvement of those facilities where they are or for the relocation of those facilities based on what the new Mayor and Council want to do, as opposed to it going just into the undesignated fund balance. He thinks they need to benefit from that because that was the intention when the whole well issue came up, as opposed to just going into a pot. Councilman Doetsch has problems with the money going into a general fund because it can easily get gone and then you have nothing to show for it. He agrees with Councilman Lynch that it needs to go for the specific purpose that we initially intended it to go.

Mayor Barbour stated there is a motion on the floor to designate the funds donated by Harrelson & Suggs to a complex for the library and senior center. He asked for any further discussion.

MOTION CARRIED 4-1. *(Councilman Joel Macon voted no.)*

PUBLIC HEARING – REQUEST FOR A CONDITIONAL USE PERMIT FOR 2 TRIPLEXES LOCATED AT 204 & 206 WOODY HEWETT AVENUE

Mr. Ed Parvin was sworn in by the Town Clerk and began making the following presentation:

BACKGROUND:

The applicant proposes to construct two (2) 3-unit residential structure for a total of 6 units on (2) 50 X 125 tracts located at 204 & 206 Woody Hewett Ave in the T-1 Zoning District under Planned Unit Development. Planned Unit Development may be allowed as a conditional use in T-1 zoned properties. The purpose is intended to encourage innovation, flexibility of design, and better land use by allowing deviations from the standard requirements of the town's specific zoning districts. The applicant in this case is not requesting any deviation from the standard requirements.

ANALYSIS:

Maximum lot coverage is 40%, which includes footprint of the building, decks, and steps. The total square footage of both properties is 12,500 sq feet. The applicant's proposed total lot coverage equals 4,760 sq. ft. or 38% lot coverage. Density of units allowed under planned unit development in the T-1 district is 29 units per acre which would yield 8 units. The applicant's

structures will not exceed 50' in height. Setbacks in the T-1 district are 10' (side), 20' (front), and 10' (rear). The applicant is proposing a 20' front, 20' rear and, 10' side setback. The applicant is required to provide 15 parking spaces based on 2 per dwelling unit + *0.5 per bedroom over 2 (unobstructed). The applicant is providing 16 parking spaces (See Attached Site Plan). Landscaping will have to be provided on all boundaries of the property, sidewalks and curb & gutter will be required on all public right-of-ways. Planned Unit Developments require at least 25% open space. (See attached Site Plan). The site is in the A-9 Flood Zone (elevation 11ft) and is located within the CAMA AEC.

The Planning and Zoning Commission heard this proposal at its October 13, 2005 regularly Scheduled Meeting. The Planning and Zoning Commission unanimously recommends approval of the request subject to the required findings, TRC comments, staff conditions and the following three conditions.

1. This approval is based on a three bedroom triplex unit and not a four bedroom.
2. The applicant has stated that they will retain stormwater on site as much as possible
3. The applicant should check with TRC or Operations Department to verify whether or not the old drainage pipe that led from the lake to the marina crosses this property at the west end.

Mr. Parvin showed their site plan and stated they have access off Woody Hewett and parking under both buildings with landscaping on all sides. There are two existing structures on the site now. He asked if there were any questions from Council. Councilman Macon wanted to know what they were going to look like. Do they have a presentation? Mr. Parvin stated the applicant is here, but doesn't know if he has a rendering with him.

Shawn Burch, the applicant, of 210 White Avenue, was sworn in by the Town Clerk. Mayor Barbour asked Mr. Burch if he could describe what the project will look like. Mr. Burch stated it is going to be two triplexes. They're going to be normal looking triplexes that Sea Coast built in the past. Parking is going to be on the bottom, decks on front, decks on back, and your normal exterior features such as siding. Mayor Barbour asked if Mr. Burch has another project that he has done here that looks similar to that project? Mr. Burch states yes – that they have Clam Shell buildings going up right now on Clam Shell Lane. They also have 1204 Canal and a few more over on Carolina Beach Avenue as well. He said they are all very similar. Councilman Lynch asked if they would be similar to Clam Shell and Mr. Burch said yes. Councilman Lynch asked him if he had drawings or a sketch that he showed to P&Z? Mr. Burch said no – that he does not have a rendering.

Mayor Barbour asked if Council had any further questions. There being no further discussion from Council, Mayor Barbour made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Ward Manning of 1700 Tangle Briar was sworn in by the Town Clerk. Mr. Manning stated he really has no opinion of the project but the only thing he will warn the Council is that Lake View has moved the stormwater pipe, that is the pipe that drains the pond. He said he and Calvin were out the other day and they have established that the stormwater pipe crosses the road about right where the F on Fayetteville, pointing to the slide projection, is and comes right across probably

about midway of the project and then actually comes between two houses and actually crosses Park Place. He stated that in approving their project, it has something about re-routing the storm drain.

Councilman Lynch asked for a comment from the Town Manager. Mr. Peck said there certainly is a pipe that runs through there somewhere. Councilman Lynch asked if Mr. Peck thought Mr. Manning was fairly accurate in his description and Mr. Peck said he, well, could be – yes.

Mayor Barbour asked for any further discussion. There being none, Mayor Pro Tem Efirid motioned to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Barbour said that this presents a question that he doesn't think we can answer tonight as far as the impact on our drainage from the lake to the marina, which is a 48" line. Councilman Macon said we've got the clearest shot we've ever had for that pipe. For us to reroute it or recondition it where it sits, he would like to have an answer about exactly where it is. Mr. Peck said that one of the projects that engineering services is going to consider as part of the drainage study of the lake basin is location, quality of the pipe, if it can be rerouted, etc. He stated they should have that preliminary report back to us certainly before the January meeting and we will be in a better position at that point to make a recommendation to Council.

Mayor Barbour made a motion to request Item #12 be continued until the January meeting. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – REQUEST FOR A CONDITIONAL USE PERMIT FOR A TOWN HOME PLANNED UNIT DEVELOPMENT CONSISTING OF 10 UNITS LOCATED AT 923 BASIN ROAD

Mr. Ed Parvin, Interim Planning & Development Director, was sworn in by the Town Clerk and began making the presentation.

BACKGROUND:

The applicant proposes to construct one (1) 4-unit residential structure and one (1) 6-unit residential structure for a total of 10 (3) bedroom units on a tract located at 923 Basin Rd in the MB-1 Zoning District under Planned Unit Development. Planned Unit Development may be allowed as a conditional use in MB-1 zoned properties. The purpose is intended to encourage innovation, flexibility of design, and better land use by allowing deviations from the standard requirements of the town's specific zoning districts. The applicant in this case is not requesting any deviation from the standard requirements.

ANALYSIS:

Maximum lot coverage is 40%, which includes footprint of the building, decks, and steps. The total square footage of the property is 29,875 sq feet. The applicant's proposed total lot coverage equals 9,963 sq. ft. or 33% lot coverage. Maximum allowable density is not specified in the MB-1 District The applicant's structures will not exceed 50' in height. Setbacks in the T-1 district are 10' (side), 30' (front), and 10' (rear). The applicant meets all setbacks. The applicant

is required to provide 25 parking spaces based on 2 per dwelling unit + *0.5 per bedroom. The applicant is providing 25 parking spaces (See Attached Site Plan). Landscaping will have to be provided on all boundaries of the property. Planned Unit Developments require at least 25% open space. (See attached Site Plan). The site is in an A9 Flood Zone (elevation 11 ft). The applicant will handle as much stormwater on site as possible.

The Planning and Zoning Commission heard this proposal at its October 13, 2005 regularly Scheduled Meeting. The Planning and Zoning Commission unanimously recommends approval of the request subject to the required findings TRC comments and the staff conditions.

- a. The project shall maintain all stormwater on-site.

Mayor Barbour asked Council if they had any questions for Mr. Parvin. There being none, Mayor Barbour motioned to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Phillip Sharpe, a resident of 1131-A Military Cutoff Road, was sworn in by the Town Clerk. Mr. Sharpe stated he is the architect for the project and that this project was designed in full compliance with all of the requirements and recommendations from the Town. He said they have asked for no deviations from those requirements. He said the design has the buildings placed so that water views are maximized. They do have parking on the first floor. There are three floors above parking level. The aesthetics of the building are what he calls beach vernacular with clapboard siding, shingles, and a lot of porches on the north face of the building. The ground floor has a minimal amount of foyer space that is enclosed and the balance of it is open. He stated he would be happy to answer any questions. Councilman Macon asked if there were any pictures. Mr. Sharpe said they had submitted 22 copies of their elevations to the Town but he didn't bring any additional copies with him tonight. He asked Mr. Parvin if he had one. Mr. Parvin stated he has the site plan and Councilman Macon said he would like to see that. He thinks if they submit elevations that they should be part of our packet. Mr. Sharpe asked if Council received a site plan in their packet and the response was no. Mr. Sharpe asked if Council would like him to walk them through it? Council responded yes. Mr. Sharpe stated the property is somewhat L shaped. The entry road comes into the project with one 6-unit building and one 4-unit building. The property is actually subdivided. He showed the extent of the property for the multi—family development and said the property owner would retain the balance of the property for his personal residence. He said there will be a marina with public access and easement. Councilman Lynch asked how tall are the buildings? Mr. Sharpe said they are under 50'. He believes they are about 48'. There were no further questions from Council.

Randall Simon of 930 St. Joseph Street was sworn in by the Town Clerk. Mr. Simon stated he operates the business adjacent to the Taylors' property which is being discussed for development tonight. He represents Ms. Mona Faye Black who is the owner of that property and the operation of the marine facility located at that same address. He stated that they, as neighbors, are not against this project but they do have a very strong concern about the storm drain system. Being an adjacent property owner and operating a business at this time, they think there is a very serious problem with the drainage system, referring specifically to the silt coming out of the drainage system itself. That problem is major. He said they went from a minimum of 5 feet mean low water, which means you are supposed to have a minimum of 5 feet of deep water, to 0 feet – actual sand drying at the mean low tide. That encompassed 2 of the slips of the 24 slips

located at that marine operation. He wants to express the seriousness of the drainage and thinks it is dangerous to the marine environment. He has had marine engineers look at this and it is referred to as street sand along with silt coming through that pipe. He states they have been in litigation with the Town. He doesn't know if it is informal or formal litigation, but they have not reached any finalization to the negotiations. They are concerned with the project in that it spells out storm drain within the project that will be either approved or not approved this evening. That is the only aspect specifically that the property owner, Ms. Mona Faye Black, has a great interest in and she hopes Council will take that into consideration.

Marsha Taylor of 923 Basin Road was sworn in by the Town Clerk. Ms. Taylor stated she and Mrs. Black have spoken quite a bit about the drainage and they are going to try to contain all the stormwater runoff on site as much as possible and they do have a civil engineer that is trying to get this all together for them so they can do it on site. Therefore, she doesn't really feel there is going to be a problem with any fill in or problems with adjacent properties surrounding her. She doesn't want the property to fill in either. She has boats there also. Therefore, she wants to do everything she can to keep from letting any sand or silt, etc. from going into the canal from her property.

There being no further public discussion, Councilman Lynch made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Lynch motioned to approve the request for a Conditional Use Permit to construct ten residential units under PUD located at 923 Basin Road subject to required findings 1-7, general conditions 1-4, TRC conditions 1-11, staff recommendations 1-21 and P&Z recommendation 1:

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

- (1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;
- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;
- (4) Utilities, with reference to locations, availability, and compatibility;
- (3) Screening and buffering with reference to type, dimensions, and character;
- (4) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- (5) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- (7) Required yards, and other open space and preservation of existing trees and other attractive natural features of the land.

General conditions.

- (1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the C.U.P.;
- (2) That the use meets all required conditions and specifications;
- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (4) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Town Land Use Plan and Policies

Technical Review Committee Recommendations

1. Provide a fire hydrant at curve of Basin Rd.;
2. Utility plan showing water and sewer on the same easement
3. Agreement with the Town for a stormwater easement to get to the Black property. Possibly work a trade for this (stormwater utility fees?). Contact Steve Pagley for details 910 458 8291.
4. show finished topography in relation to sea level at 2 foot contour intervals
5. Include on the site plan the Flood zone and a note stating the property is in a CAMA AEC.
6. Percentage of open space and percentage covered by the building footprint including any associated decks and steps. Identify open space on the site plan.
7. Show adjacent property owners to the North
8. location and refuse disposal facilities and type.
9. show fence along the residential neighborhood plans
10. show 75 foot AEC line
11. Include a floor plan

STAFF RECOMMENDATIONS

Planned Unit Development proposals are allowed with the approval of a Conditional Use Permit in T-1 zoned properties. Staff recommends approval of the Conditional Use Permit subject to required findings above and the following conditions:

1. Drainage plan must be submitted and approved prior to issuance of a building permit, and signed and sealed by a licensed engineer verifying that the system is properly installed and functioning prior to issuance of a certificate of occupancy.
2. Approval for a CAMA Permit.
3. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
4. All structures shall be limited to 50' in height.

5. Final project must be designed to provide the required 25 parking spaces.
6. Dwelling must be constructed to meet minimum North Carolina fire code and must be approved by the Fire Marshall
7. Dwelling must be designed and constructed so that it will not impair any adequate supply of light and air to adjacent properties.
8. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
9. Landscaping must be provided on all borders of the property. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.
10. Refuse collection agency that will be used must be included on final site plan. The refuse collection site must be enclosed on all four sides and remain closed and secured during inactivity.
11. Maintenance of permanent open space, parking, streets, drainage systems, utilities, and other such facilities-
All common facilities shall be maintained for their intended purpose as expressed in the approved final site plan. The method of providing for such maintenance shall be submitted prior to Certificate of Occupancy by one (1) or more of the following:
 - a. Public dedication to the Town, subject to the Town's formal acceptance of such facilities in its sole discretion.
 - b. Establishments of an association or nonprofit corporation of all individuals or corporations owning property within the planned unit development for the purpose of ensuring maintenance of common facilities.
 - c. Retention of ownership, control, and maintenance of common facilities by the developer or Home Owner's Association.
12. Dedicated open space must always remain as open space and be maintained as provided in number 13 above.
13. Show all existing structures on site plan that are to be removed.
14. Certification shall be provided that all improvements, including but not limited to paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee prior to Certificate of Occupancy.
15. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
16. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire.
17. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission.
18. A driveway permit from the town will be required before issuance of a building permit.
19. Water meters must be relocated in the right-of-way and run lines to the units.
21. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.

22. A scaled site plan must be submitted prior to issuance of a building permit. All drawings shall be prepared at a scale of 1" equals 50' or larger showing the site and all land within 150' of the site.

Planning and Zoning Recommendation

- (1) The project shall maintain all stormwater on site.

Mayor Barbour commented that under staff recommendations, it does address a drainage plan must be submitted and approved prior to issuance of a building permit and signed and sealed by a licensed engineer verifying that the system is properly installed and functioning prior to issuance of a Certificate of Occupancy. Councilman Lynch said that should cover Ms. Black's concerns. There was no further discussion of Council. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – REQUEST TO REZONE FROM R-1B TO R-1 LOCATED AT 1501 CANAL DRIVE

Mr. Ed Parvin was sworn in by the Town Clerk and began making the presentation as follows:

BACKGROUND:

The applicant desires to rezone his property located at 1501 Canal Dr to R-1. Currently the lot is zoned R-1B which allows for Single-family and planned unit development with a density of 8.7 units per acre. The applicant is proposing to rezone the property to R-1 which would allow for more density at 15units/acre under a planned unit development and would allow for single-family and duplexes. Currently there is as single-family dwelling on the lot.

SURROUNDING LAND USES:

The property is located on the corner of Canal Dr and Florida Ave. Across the street on Florida Ave there to the south is a current duplex. Across the street to the east of Canal Dr there are currently single-family homes. Behind the lot is a vacant parcel and to the west of the lot is a single family dwelling.

STAFF POSITION:

Staff feels that the proposal is inconsistent with the ***1997 CAMA Land Use Plan***. The CAMA Land Use Plan emphasizes the north end as noted by the land classification map to continue as a single-family residential area.

STAFF RECOMMENDATIONS

Planning staff recommends the decision to rezone the property should be based on the following criteria:

1. Size of the tract:
2. Surrounding uses:
3. Compatibility with the Land Use Plan:
4. Consistency with contiguous zoning:
5. The impact of the zoning decision on the landowner, the immediate neighbors, and the surrounding community:
6. The relationship between the newly allowed uses and the previously allowed uses:

The Planning and Zoning Commission heard this proposal at its October 13, 2005 regularly scheduled meeting and unanimously recommended denial based on Condition #1 – the size of the tract, and Condition #3 – compatibility with the Land Use Plan.

Mr. Parvin asked if there were any questions. Councilman Macon stated he knew when this went before P&Z that there was some discussion about spot zoning and he wanted to know the answer. Mr. Parvin said the criteria they used and discussed at P&Z to determine whether it is spot zoning is the six conditions, the size of the tract, surrounding uses, compatibility with the land use plan, consistency contiguous to zoning, the impact of the zoning decision on the landowner, the immediate neighbors and the surrounding community and the relationship between the newly allowed uses and the previously allowed uses. Based on those, it was found that the size of the tract if it were to be rezoned should be not one parcel but the entire strip from Florida to the north end along Canal. It was inconsistent with the Land Use Plan. The Land Use Plan land classification map has that as a single family residential neighborhood. Councilman Macon asked Mr. Parvin that if the project owner had gotten four or five other landowners to apply for the same thing that P&Z would have been in favor of this because the entire line would have been rezoned? Mr. Parvin stated that would have taken out size of tract if it was the entire line, but it would still be inconsistent with the Land Use Plan so he doesn't know if they would be in favor of it. Councilman Macon asked yes or no – spot zoning if it's changed or not? Mr. Parvin said they would consider it spot zoning. Councilman Macon asked why? Mr. Parvin stated because it would not meet all the criteria.

Councilman Lynch said he has looked at this piece of property and they have duplexes all around it. He asked Mr. Parvin if he was saying it was inconsistent with the 1997 CAMA Land Use Plan? Mr. Parvin stated yes. He brought up another map showing a larger area. Mr. Parvin stated as this area is currently zoned R1-B, it is also zoned in the 1997 Land Use Plan as a single family residential neighborhood. If there was to be rezoning and not be spot zoning, it would need to consist of all the lots on Canal versus one lot being different from the existing lots on Canal. Councilman Lynch asked Mr. Parvin isn't it true that there are triplexes and duplexes right in the immediate neighborhood of this piece of property and at the end of Canal there are apartments or condominiums up at the end? Mr. Parvin stated there are apartments and condos in this area that were existing before the R1-B zoning area – before that 8.7 units per acre was in place. Councilman Lynch asked what happens if they are destroyed? Could they be rebuilt?

Mr. Parvin said if they are destroyed by natural causes then they can be rebuilt. Mayor Barbour asked if there were any further questions for Ed? Councilman Macon asked basically, spot zoning is illegal? Mr. Parvin said that's right.

Mayor Barbour made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Sonya Bennet asked Council to please follow the recommendations of the Planning & Zoning Commission. She stated they were put in place for a reason to help Council's job a little easier. She said that whole community there is single residential homes. She owns a lot at 200 Virginia Avenue and she owns a home on 202 Virginia Avenue. She said if you go and allow that one spot to be rezoned, that opens that up for her to be able to come before Council to rezone hers to build duplexes or condos and she has enough room there to do it.

Jan Weisback, a resident of 118 Georgia Avenue, said this issue was unanimously voted down by Planning & Zoning. She said it has met with considerable objection from the neighbors. She said it is spot zoning and it is illegal. She said it is not consistent with the Land Use Plan. This is zoning based on an individual's desire to raise the value of his property. She said the man stood here in front of Mayor and Council and Planning and Zoning and said he could not compete with the duplexes and triplexes when he tried to sell his house. That's the basis of his wanting to rezone. He wants more money. Ms. Weisback doesn't think that's a reason to rezone, aside from it being illegal.

D. A. Lewis of 604 Clarendon Blvd, stated that the zoning request before Council tonight for 1501 Canal Drive was unanimously turned down by P&Z. He asks that Council also turn down this request because this request is all about making a parcel of land more valuable to the owner for his gain – not the Town or neighborhood, as was brought up at P&Z. He said if Council grants this request, he thinks this Town will be flooded with similar requests for rezoning for gain such as was brought to P&Z on 11/10 with the request for rezoning a whole block. He said this trend must be stopped by Council or our zoning areas all over town are going to look like a patchwork quilt. It will not be in the interest of the Town, but in the interest of money. He said our zones have been defined over the years and should remain as they are and not be spot zoned for someone to gain financially. He said it is not consistent with the Land Plan, is illegal, and he doesn't believe Council can vote to approve it.

Leroy Franks, a resident of 908 Canal Drive, stated that once more this is a blatant misuse - spot zoning. He said the City is already facing one suit for spot zoning and asked how many more? Spot zoning is illegal. That case is scheduled for April the 10th of 2006. He would also suggest that it is just for one person's gain and not for the welfare of the community. He thinks it is a blatant violation of the Land Use Plan. He said he wanted the three gentlemen that all just ran for Council October 20th at the forum over at the Marriott to remember they said they would protect single family housing.

Dave Tilley, the applicant for this project, said that according to NC State law it is contiguous on two sides. He stated that there are 21 duplexes around and behind him and everywhere else. He said he is in compliance with the 2005 Land Use Plan. He said it is not spot zoning because he is

contiguous on two sides. He said that is State law and he and his attorney have looked it up. He said it is not considered spot zoning.

Jan Weisback of 118 Georgia Avenue stated she thought at the Planning & Zoning meeting someone pointed out that it's actually not contiguous because the zoning runs from the middle of Florida Avenue.

There being no further public discussion, Councilman Doetsch made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Doetsch made a motion to approve the request for rezoning – Ordinance No. 05-612 including staff recommendations. Mayor Barbour stated there is a motion to approve the request to rezone 1501 Canal Drive from R1-B to R1. Councilman Doetsch added that he would never sit here and vote to devalue anyone's property and if he can help anyone's property value to go up he would certainly do that everyday. He said if we're talking about this road in front of Mr. Tilley's house being not contiguous he thinks we're splitting hairs and to him, that's just not good common sense. Mayor Barbour asked for any further discussion. Councilman Lynch stated he would like to see the new Council and P&Z consider rezoning on Canal from this property up to the park. He thinks it makes sense to consider the lots on Canal being possibly looked at in the future. He stated that he's been up Canal a number of times and there is a duplex and single family and then the apartments or condos up at the end. He is in favor of rezoning this particular property. Councilman Macon said he doesn't have a problem with that whole strip either. He thinks it should be zoned duplex but he is interested in what the attorney has to say on spot zoning.

Al Clyburn, Town Attorney, stated spot zoning is not, in and of itself, illegal in North Carolina. He said if there is a reasonable basis for the rezoning request, you have the authority to grant the request. Councilman Lynch said when he sees four duplexes to the south, three to the east, and some to the west and north, it is pretty clear to him that Canal needs to be looked at by the next Council. Councilman Lynch asked if it is not illegal? Mr. Clyburn said as long as there is a reasonable basis for the request, Council decides whether the request is reasonable and Council decides whether the applicant has presented Council with a reasonable basis for the request. He said if Council finds that the applicant has, then that rezoning request would not be illegal.

Mayor Barbour asked for Mr. Clyburn's interpretation as to whether this request is considered spot zoning. Mr. Clyburn said it may fall within the definition of spot zoning given what he's heard, but again, even if it does, what Council has to decide is whether the request of the applicant is reasonable. He said it's not enough to say it's spot zoning and therefore it is illegal.

Mayor Barbour asked Mr. Ken Shanklin to give some insight on a situation like this as to whether it is considered spot zoning. Mr. Shanklin said spot zoning is not illegal, per se. He said it is more factored than anything else. In a conditional use case in Greensboro, the argument against conditional use rezoning districts was that it was spot zoning. The Supreme Court struck that down. Mr. Shanklin said he didn't hear everything that's going on because he has been in and out. He asked what the zoning is around it? Mr. Parvin stated it is R1 to the east and south and R-1B is what it is now and that's the zoning. Mr. Shanklin asked what the zoning is now?

The reply was R-1. A map of the property was shown. Mr. Shanklin looked at the map and the tract and stated it is not spot zoning.

Mayor Barbour stated there is a motion on the floor to approve a request to rezone from R-1B to R-1 located at 1501 Canal and adopt Ordinance No. 05-612 (Exhibit 4). **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – REQUEST FOR A ZONING TEXT AMENDMENT, ARTICLE 7 OFF STREET PARKING AND LOADING REQUIREMENTS, (d) OFF STREET PARKING SPACE SCHEDULE

Mr. Parvin stated that Planning & Zoning heard this zoning text amendment proposal at its October 13, 2005 regularly scheduled meeting and unanimously recommended denial. The proposal was to change the marina parking from 1 parking place per 1 wet boat storage space to 1 parking place per 3 wet boat storage spaces. Staff researched other coastal towns: Morehead has 1 for 2; Manteo has 1 for 2; Oak Island has 1 for 1; Nags Head has 1 for 1; Emerald Isle had 1 ½ for 1; Atlantic Beach has 1 for 1; Topsail Beach has 1 for 1; Wrightsville Beach has 1 for 1; and Wilmington has 1 for 3, as well. Mr. Parvin said Planning and Zoning recommended denial based on the fact that our current requirements are consistent with the majority of other coastal towns.

Mayor Barbour asked if Council had any questions for Mr. Parvin. Councilman Lynch asked if Wilmington is 1 for 3? Mr. Parvin replied yes.

Mayor Barbour motioned to open the public hearing. **MOTION CARRIED UNANIMOUSLY**

There being no public comment, Mayor Pro Tem Efirid made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no further discussion from Council, Mayor Barbour made a motion to approve the request for a zoning text amendment – Article 7 Off-Street Parking and Loading Requirements, Section D Off-Street Parking and Space Schedule by adopting Ordinance No. 05-613 (Exhibit 5). **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER AMENDING CHAPTER 12 PLANNING AND DEVELOPMENT, ARTICLE 4 FLOOD DAMAGE PREVENTION

Mr. Ed Parvin began making the presentation.

Mr. Parvin stated, as the NC Floodplain Mapping program progresses, more new Flood Insurance Rate Maps are becoming effective. Prior to these maps becoming effective, there is a six (6) month compliance period during which the affected communities must evaluate compliance of their current Flood Damage Prevention ordinances. Since there is new language required in association with using and adopting these new maps and also to comply with the NC

Flood Act of 2000, the North Carolina Division of Emergency Management has revised the NC Model Flood Damage Prevention ordinance. These model ordinances satisfy all current State and Federal minimum requirements for participation in the National Flood Insurance Program with regards to the adoption of required floodplain management regulations. Due to needed clarification of the older ordinance language over the years, the state model ordinance has been reorganized, simplified and expanded. A summary of the changes follows:

Mr. Parvin said that Attachment 1 in Council's package is the original memo to Planning and Zoning dated August 30th of the revisions. Mr. Parvin then went through those revisions as follows:

Page 8 DIVISION 2 DEFINITIONS

The elevation requirements such as meeting BFE + 2' freeboard is all now tied into a definition called Regulatory Flood Protection Elevation. This Regulatory Flood Protection Elevation term will determine how high one must protect the structure.

Reference level is also defined in the ordinance and represents the lowest point on the structure that must meet or exceed the Regulatory Flood Protection Elevation.

Councilman Macon asked if that's where the reference is at for the 2' freeboard – on page 8? Mr. Parvin said that's correct – on the Regulatory Flood Protection Elevation. Mr. Parvin said right now we have 2' freeboard and if it were modified – a removal of the 2' freeboard – he has its impact on our community rating system on the screen. Mr. Parvin said if it was removed we would lose 223 points, which would make us 1,593, so we would still be in the Class 7 category.

Page 12 Sec. 12-179(1-3)

Separates the requirements for floodplain development applications, permits and certification.

This section was basically just reorganized to help clarify the permitting process.

Page 14-16 Optional Language

Under "Permit Requirements" there is an option to adopt language that would require additional information on the Floodplain Development Permit.

The Planning and Zoning Commission recommended adding this language at its August 11, 2005 meeting.

Under "Certification Requirements" there is an option as to how many Elevation Certificates shall be required.

The final decision made by Planning and Zoning Commission is on the second page of Attachment 2 and they will have one required elevation certificate, a final as-built elevation certificate. And there's also a requirement for a reference level being required at foundation or piling inspection for the building inspector.

Councilman Macon said we're talking about a total of what? Mr. Parvin said on the initial you just have to have the reference level marked for the building inspector. There's no requirement for an elevation certificate as recommended by Planning and Zoning – a benchmark for inspection. Mr. Parvin said the only required elevation certificate would be at the final as-built stage.

Page 25 Sec. 12-183(10)

Prohibits solid waste disposal facilities, hazardous waste management facilities, salvage yards and chemical storage areas.

The Planning and Zoning Commission asked for clarification on this item before approval. Planning staff contacted Tammy Riddle with NC Emergency Response and her response follows:

“One of the main issues with liquid storage tanks is that they must be anchored to prevent flotation, collapse and lateral movements. These are considered structures under the NFIP by definition and therefore these tanks, including fuel tanks, must be protected to BFE or locally adopted freeboard. Since these are non-residential, elevation is not mandatory. The key is that they are protected according to the general standards section of your ordinance.”

Page 26 and 27 Sec. 12-184(3)

Instead of making special provisions for manufactured homes they will be held to the same standards of other development.

- a. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Division 2 of this ordinance.
- b. All foundation enclosures or skirting shall be in accordance with Sec 12-184(4).

Page 32

Any accessory structure over 150 feet will have to be elevated to meet the Regulatory Flood Protection Elevation. Previous requirements were for accessory structure with a value of \$3,000 or more had to be elevated.

Mr. Parvin stated that there's no value anymore. It's just based on the size. The new size is 150 square feet.

This is new mandatory language that can only be reviewed before adoption.

Page 33 Sec. 12-187

Requirements for riverine floodplains with BFE but without established floodways or nonencroachment areas.

The Town of Carolina Beach does not currently have areas that fall under this category, but the section was preserved to meet the requirements of the model ordinance.

Mr. Parvin said that's the last of the changes that were made to the ordinance. He just wanted to review the process for adopting it.

The actual appeal period was from May 05 until August 03, 2005. There were no appeals or protests filed by the Town or any citizens at Carolina Beach. New Hanover County and local municipalities are allotted a 6 month review period after all appeals and protests have been addressed by FEMA. The six month review period from FEMA was issued as soon as all appeals and protests had been addressed. After this time period (beginning October 03, 2005 and ending on April 03, 2006) all new building permits must meet the standards as defined by the new flood ordinance and flood maps. You must have an issued permit before the 6 month period ends. Depending on the intensity of the project the review could last from just a couple of days to several months.

If a building permit has been applied for, but has not been issued by the end review date set by FEMA then you will be required to meet the standards defined by the new maps and ordinance. The Town has been reviewing the new model flood ordinance required by the state since April 2005. The anticipated final review by the Planning and Zoning Commission took place on October 13, 2005.

Staff recommends the new flood ordinance and flood maps be adopted to go into effect at the end of the review period set by FEMA, which would be April 3, 2006. That is the last date we have to adopt them. Mr. Parvin said their recommendation would be to adopt them as presented to be implemented on that date. Mr. Parvin stated the packet also includes Coastal Flood Studies which the State provided to describe how the study was conducted to create the new flood maps. That's a four page attachment in Council's handout. Also included are Sample Flood Insurance Rates, which show how flood insurance will be affected at different freeboard levels.

Councilman Macon asked if it would officially go into effect April 3 of 2006 and is that what they are requesting? Mr. Parvin stated that is correct. Councilman Macon asked, isn't it already effect? Mr. Parvin stated he is requesting it be adopted tonight to be implemented on April 3rd. The existing 1986 flood maps and flood ordinance will be in effect until that date. Councilman Macon asked if you've applied for a permit prior to April 3 of 2006 but you haven't been issued that permit, then you.... Mr. Parvin said if it is still under review process as of April 3rd then you will have to meet the new flood maps. Councilman Lynch asked if you get your permit before April 3rd then you've got six months to start construction under the old conditions? Mr. Parvin stated that is correct – that you can still use the old flood maps.

Councilman Macon said the burning situation for him is this extra 2' of freeboard. He said he has discussed this the last two years and hasn't been able to get any action on it. If the extra 2' of freeboard doesn't result in any loss and discount – in other words, it doesn't change our rate class and he doesn't see us getting to a 6 any time soon unless there are some things in the works that he's not aware of. He said there's a whole list of things you can do to increase your credit points.

Councilman Doetsch added that right now he has a washer, dryer and water heater in the ground floor of his house. He said because of that 2' freeboard he has to put it on a platform, which makes it very inconvenient to work with. He agrees with Councilman Macon that if it doesn't get us anything, then let's do away with it.

Mr. Parvin stated these are sample insurance rates for the different freeboard levels and this is based on a \$100,000 structure and \$25,000 contents. Your insurance rates for a homeowner with no freeboard would be \$1,720 and with 2' freeboard it would be \$905. So, by going up that extra 2' you reduce your insurance rates by \$800 a year for a year. Councilman Macon said if he wants to go up 2' up, he can. Mr. Parvin said that's right. Councilman Macon said that's a choice that the homeowner makes. He doesn't want to make that choice for them. Mr. Parvin said you can still build the 2' freeboard without the requirement. Councilman Macon said most people are building on pylons anyway, so they're exceeding the 2' freeboard anyway. Mr. Parvin said that's right. Councilman Doetsch agreed the freeboard should be optional for the person building or buying a house.

There being no further discussion by Council, Mayor motioned to open the public hearing to consider amending Chapter 12 Planning and Development, Article 4 Flood Damage Prevention. **MOTION CARRIED UNANIMOUSLY.**

There being no public discussion, Councilman Doetsch made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Macon made a motion to adopt Ordinance No. 05-614 (Exhibit 6) amending the Chapter 12 Planning and Development Article 4 Flood Damage Prevention to be implemented on April 3, 2006 eliminating the mandatory 2' freeboard.

Mayor Barbour asked for any further discussions. Councilman Macon asked that on Carolina and Canal Drive, didn't the V zone cross? Mr. Parvin showed a map and identified the V Zone. He said the V zone before was just oceanfront properties and now it is oceanfront and also Myrtle Grove Sound side. Councilman Macon said his point is in the V zone you are required to meet the elevation to the bottom of the lowest supporting girder, whereas in the A zone it was the finished floor. So, the V zone has increased and you're already causing elevation height increase because you've got to build to the lowest supporting girder. So, that's another reason he thinks dropping the 2' freeboard is definitely something he would support. Mayor Barbour asked for any further discussion and repeated the motion on the floor.

MOTION CARRIED UNANIMOUSLY.

Councilman Macon asked if Mr. Parvin could email him the map and Mr. Parvin stated yes and it is on the website as well.

PUBLIC HEARING – CONSIDER AMENDING APPENDIX A 3.8-1 TABLE OF PERMISSIBLE USES

Mr. Parvin made the following presentation:

Planning staff is proposing this change to allow water-oriented businesses in the Central Business District and bring the Town's marina into conformity with existing regulations.

In the past, there were no concessions made for marinas and/or water-oriented businesses in the CBD since the area was not adjacent to Myrtle Grove Sound. After recent rezoning, a large portion of land zoned CBD is now adjacent to Myrtle Grove Sound. Staff would like to amend the Table of Permitted Uses to make current uses in the CBD, including the Town's marina, conforming.

The Planning and Zoning Commission heard this recommendation at its October 13, 2005 regularly scheduled meeting and unanimously recommended approval with a few changes.

Mr. Parvin went over the changes in the proposed ordinance as recommended by Planning and Zoning.

Mr. Parvin asked if there were any questions from Council. There being no questions from Council, Mayor Barbour motioned to open the public hearing to consider amending Appendix A 3.8-1 Table of Permissible Uses. **MOTION CARRIED UNANIMOUSLY.**

There being no public comment, Mayor Pro Tem Efird made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Lynch made a motion to approve Ordinance No. 05-615 (Exhibit 7) amending the zoning ordinance Article 3 Zoning District Regulation Section 3.8-A Table of Permissible Uses. Mayor Barbour said there is a motion on the floor to approve Ordinance 05-615 and asked for any further discussion. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER AMENDING CHAPTER 11, PARKS & RECREATION, SECTION 11-42, LIABILITY OF USES BY ADDING (c) SAFETY EQUIPMENT AT TOWN SKATE PARK

Mr. Ed Parvin made the following presentation:

Staff is proposing to add the following language into Chapter 11 Parks and Recreation to limit the liability of government entities for damage or injuries that arise out of a person's participation in certain hazardous recreational activities that occur in an area designated for certain hazardous recreational activities. The below language will satisfy the requirements for NC General Statutes Chapter 99E-23(b)(1).

Amend Chapter 11 Parks and Recreation

Sec. 11-42. Liability of users

(c) Safety equipment at town skate parks.

No person shall ride or use a skateboard, in-line skates or freestyle bicycle at any town owned or operated skate park unless that person is wearing a helmet, elbow pads and knee pads.

(Ord. No. O-2004-9, §1,2-3-04)

There being no questions from Council, Councilman Lynch motioned to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no public comment, Mayor Pro Tem Efird made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Pro Tem Efird made a motion to adopt proposed Ordinance No. 05-616 (Exhibit 8) with the change replacing the word “city” with “town.” **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER APPROVING A LAND EXCHANGE LOCATED ON CARL WINNER AVENUE AND THE SOUTHWEST CORNER OF THE TOWN MARINA PARKING LOT

Mr. Calvin R. Peck, Jr., Town Manager, stated that Council has heard and considered all of the process from start to today. He stated that this is part of the project enhancement program to make Carl Winner a double right westbound, leading from the marina onto U.S. Highway 421. In order to do that, this corner needs to be widened and another corner cut down. The proposal is to do a land exchange. The Town owns parcel 3, which is the Town parking lot with a little square that exists up there that the Town will exchange for two parcels. The first parcel is located on Carl Winner that comes down the sidewalk, the curve and then a sidewalk that runs all the way back. The third parcel is on the other side of the street – a triangle – in order to flatten that curb out. Approximately the same size property between the piece that the Town is going to exchange for the other two pieces of property. Mr. Peck said that Council has in front of them proposed Resolution 05-852, which approves the land exchange. In addition, it will give the owner of this property access across that land into his property in the event that the property is renovated, reconfigured, etc. Then the access will have to be 100’ from U.S. Highway 421 per DOT driveway regulations. Until that time they can continue to use this existing access, but it will be narrowed to 20’.

Councilman Doetsch said this exchange makes the entire traffic flow project in that area possible. If it doesn’t happen then the two right hand turn lanes are impossible to do without running up on a curb. Mr. Peck stated that is correct. He said we have to have this document – the Resolution and the exchange – in order to go to DOT and get the plans approved so that we can build those two right hand turns and then mill and reconfigure the whole road. Mr. Peck stated we have funding from DOT in order to do this work, but we cannot do it until we get all the documents straight.

Councilman Macon asked to excuse himself from this issue, as it is family property. Mayor Barbour made a motion to excuse Joel Macon from voting on this issue, as there is a conflict of interest. **MOTION CARRIED UNANIMOUSLY.**

Councilman Lynch made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no public comment, Mayor Pro Tem Efirid motioned to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Doetsch made a motion to adopt Resolution No. 05-852 (Exhibit 9), striking previously adopted Resolution 05-833. **MOTION CARRIED UNANIMOUSLY.**

NEW BUSINESS

REQUEST FOR EXTENSION OF A CONDITIONAL USE PERMIT AT 107 S. LAKE PARK BLVD. FOR PARK PLACE DEVELOPMENT

Mr. Ed Parvin stated that due to a pending lawsuit and market conditions beyond the applicant's control, they are requesting an additional extension through June 30, 2007 and they have a presentation.

Ward Manning, Developer of Park Place, stated he wanted to reintroduce Park Place to Council. He stated they had some issues with Park Place in the beginning and through this design and conception what they are trying to do tonight is give Council a summary of where they are, where they started from, and give Council a total timeline of what's taking place, why it is taking place and what their obstacles are. Mr. Manning stated they have met with the Town Manager on the parking issue, which was one of the conditions of their Conditional Use Permit. He stated the biggest thing for them was the 106 parking places. One of the main issues they had to do for the Town was to separate that totally from Park Place and actually construct a new structure over the Town's existing parking lot and give it to the Town. So, they'll be giving the Town their own parking deck without any of their amenity packages on top of it, without any insurance regulations – coinsurance with the Town and private insurance. They had a lot of issues going on with insuring it, seeing who was going to run the parking deck, and the Town's spaces versus their spaces. So, what they've done is gone back to the drawing board and they have totally redesigned the building. As it currently sits, their building can now support its own parking so they don't need the Town's parking lot at all. He said when they first came they were going to go into a private contract or lease agreement with the Town and increase the Town's parking, as well as use public property as private amenities. So, they have heard a lot of people in the community and there were issues and uproar about that. So, they decided to just redesign the building.

Mr. Manning asked Ken Shanklin to come up to go over the legal aspects of their timeline, what's happened, where they were, how they have been. He would also like to introduce the architect and provide a PowerPoint presentation.

Mr. Shanklin gave out a memorandum similar to what was provided last summer. Mr. Shanklin stated the lawsuit is still going on that was filed by Robert Myers. The Record on Appeal was finally finished today and sent to Mr. Myers' attorney. The Record on Appeal will be filed in the NC Court of Appeals by the end of the week. After that, they expect a decision from the Court of Appeals six to eight months or maybe a year. It depends on how quickly they can get to it.

It's their own schedule. He has very little control over it once it goes to the Court of Appeals. If the Court orders oral arguments, which means they would go to Raleigh to argue the case, at that point, that could be some time in the spring or summer. Then a decision could come from that in three or four months or longer. He just doesn't really know. So, they expect a Conditional Use Permit the way the ordinance is worded. The ordinance must be activated. You activate the Conditional Use Ordinance Permit by building. You have to go out and start some activity on the site. When you begin that activity you have to have your financing in place, you have to have your pre-sales done. It's a lot of work. What they are asking for is another year to be able to begin the construction on this site. If by chance the Court of Appeals rules earlier – i.e., four months – they could begin construction next spring or early summer. But at this point, they are looking at commencing construction sometime towards early fall of next year after they get through with all the appropriate design aspects, construction drawings. For those that are familiar with construction drawings – that is an intense process and very expensive process and engineering. So, once they get a permit, that begins the process. When there is a lawsuit hanging over your head, you really can't go out and borrow money because when you mention that to a lender, they close the door in your face. Mr. Shanklin stated he has been doing this 32 years and that is a common occurrence when you have any kind of lawsuit involving any kind of permit or process. He said you really can't command or dictate to a client to begin construction anyway because you don't want them to begin construction and stop if something is wrong with the permit and go back before this Board and other process. Mr. Shanklin stated he made a chronology – a timeline – all the way from beginning to the permit issuance in his memorandum to Council. They've been active in this process and pushing it hard and the document that's going to Court of Appeals today is about two inches thick, which shows there is a lot of activity there. They are asking for one more year. Council is authorized to do that under Section 14.12(b) of the Town's ordinance. Again, this is just a concept of activation of the Conditional Use Permit. After they have their building permit in hand, any CAMA permits that are applicable, stormwater, etc. – there's a lot of activity you must have before you can begin construction. Mr. Shanklin asked Council if they had any questions.

Councilman Lynch asked Mr. Shanklin if he thought a year is enough since he said the courts are very, very slow. Mr. Shanklin said yes. He said if they need more time, they can come back in 2007. He likes to get these in yearly increments. He said that's just the beginning and once they begin they'll be okay. However, the case may go to the Supreme Court, which is a possibility. One additional aspect that they ask tonight is a vesting aspect. The state law addresses vesting and what they would like to do in light of the lawsuit that's pending over their head is to have this Board tonight pass a vesting resolution that vests this project so that the vesting aspect will last five years. If they have to begin construction in a year or a year and a half from now, they want to be able to complete it within that time cycle. This is typical of rezoning requests in other jurisdictions. Mr. Shanklin stated his partner, Matt Nichols, will address that statute in more detail.

Matt Nichols handed out the statute being discussed – Section 160A-385.1 of the General Statutes and it talks about vested rights. He said there are a few ways to get vested rights in North Carolina – by common law, by building permit, and by site specific development plan which they contend they already have but they want to get that clarified. That is the purpose of their request. They don't have a building permit as a result of the litigation and it is not possible

to have a building permit where they are. They have expended a significant amount of money on the project so far and probably have vested rights at common law, but the statute does allow for a site specific development plan vested rights concept. The statute calls for a Conditional Use Permit being one of the ways to achieve that and they wanted to request that Council acknowledge that and deem that they do have that site specific development right under their Conditional Use Permit. Mr. Nichols stated if Council turns to page two of the handout, subsection 5 talks about a site specific development plan. It can be a Conditional or Special Use Permit or subdivision plat approval, a preliminary general plan. They feel they have met all the criteria here. One thing that allows them to do is essentially to build the project that the Town has approved and if there were a change in the zoning, it could be two years from now or whenever, it would allow them to build what the Town has already permitted and it also factors into the ability to get loans and financing on it also. So, that is the purpose of their request. The vested rights are under the statute for two years. The statutory provision at the bottom of page two says that the city or town can provide that the vesting can exceed two years, up to five years, depending on the type of project. The statute says that is permissible where warranted in light of all the relevant circumstances including but not limited to the size and phasing of the development, the level of investment, the need for the development, economic cycles, market conditions. They think that this is a unique project. It is a bigger project for Carolina Beach with a high level of complexity and investment in it. They think that it warrants the five years and the statute says that granting the extension beyond two years – this determination is made in the sound discretion of the city. They respectfully ask that Council extend that beyond two years to five years in light of the uniqueness of this project and where they are with the lawsuit and the development aspect of it. Mr. Nichols said he would be glad to answer any questions.

Councilman Lynch asked what is the request for the extension date? Mr. Shanklin said one would be for the extension of the Conditional Use Permit would be from June of 2006 to June 30, 2007 – that's one resolution. The other is simply a vesting concept of a site specific development plan under the statute plan. Those concepts are different. Councilman Lynch asked if there are two issues? The response was yes.

Mark Tims of Garvin Design Groups in Columbia, South Carolina addressed Council next. He stated they are working in association with Tims Architectural Group – his father's firm in Myrtle Beach. Mr. Tims stated that when they were brought to the project, they were given very strict parameters to work within and those parameters are set forth in the Conditional Use Permit – whether it be mixed amenities, number of units, parking requirements, setbacks – those were their given requirements and parameters they were given to work with. So, that has set the stage for what Council sees before it. The building itself is in the same footprint as the prior development. It still shows the two parking concept, the hotel and parking on the rear parcel and the public parking amenity in the front. However, in this case they really looked into a strategy to solve the concerns about a mixed ownership or mixed use of that shared public parking and really worked to find a way to make that independent two projects. He said they were able to do that. So, the two plans before Council are really just talking about what the ground floor amenities would be, which is 9,000 sq. ft. of the retail function, which will be something addressed to the street, the parking in the rear, as well as the next multiple levels of parking above it, to host the hotel function and those things associated with it on the rear side.

Mr. Tims said whereas the prior development had the pool amenities and the public infrastructure for the hotel on the rooftop of the public deck, they have incorporated those over to the hotel itself and now that acts as a transfer level in the sense of transition between the parking to the hotel itself. Mr. Tims said it serves two purposes. It's not just a pool amenities which offers great views to the city and great amenities to the hotel guests. It also serves as a transfer level that shifts the structural systems from the parking to the units above and allows them to be very efficient with both. They can be very efficient with the parking below – generate a structure that maximizes the number of cars down below for the hotel and that's how they were able to compress it and get it in there – but to the above it allows them to get the units in a much more sellable fashion for the marketplace. This level moving on up towards the top just shows the units. The top level is town homes which really offer a split level, almost penthouse type effect for the top level with great views. It is also shared with a public amenity of a restaurant – split restaurant on that same level. The next slide shows the view from the front street. That really allows them to do two things – to pull the front elevation that fronts that street back off of that street so instead of having an entire hotel height expressed along that street, it is now pushed back another 40+ feet so that you do not have that tall height expressed on that main street. The next slide shows how they are integrating the entire complex. You see the main public parking garage to the front integrated into the condominium complex along with the resort pool amenities that are shown at the split level, the restaurant shown to the left at the top, and the parking facility – they are integrated into one unit by design.

Councilman Lynch asked what the seating capacity of the restaurant is. Mr. Tims said it has been reduced from what it was before. Mr. Tims said they recognize that one of the most critical aspects of the project is how it addresses the street. With a project such as this and with the complexity of all the different functions that are taking place, that human scale is very important. Since they do have a floodplain, it is necessary to build the building up six feet. They have terraced that six feet back to the retail so that you have a highly landscaped buffer down to the sidewalk level. That would be a sloping terrace back of greenery around that so that you are not presented with basically a six foot wall along the sidewalk. That will extend the landscaping requirements along the street on into the building and up under the building up to the retail.

Mr. Manning stated they have given the Conditional Use Permit to the architect and asked him to go step by step. In the Conditional Use Permit they had 92 units and they still have 92 units. The building height was 166' and is still 166'. They had 9500 retail space and still have 9500. They still have the restaurant. They had 106 parking spaces, and now they have separated the Town's parking. Woody Hewett is between the condominium project and the proposed parking garage. Both can use this going in, which is better access to get the most spots. They have taken the private clubhouse and pool off of the Town's property. They don't have to enter into any leases now. There are no more leases involved. They're going to build this facility for the Town and donate it to the Town, including bath houses. They think they have improved Park Place and improved the City's value of their property.

Mr. Manning said the issue of the lease agreement with the Town will be eliminated. They also had some issues about who was going to insure it. The Town has insurance on their property now and they have insurance on their property now. He said there will have to be some commingling of the insurance policies. If someone did get hurt, who would be responsible for

this and that. He said they'll build it and the Town will maintain it and keep 100% of the revenues. There will be no intermingling of public and private funds. He thinks that was a big issue with the public in the beginning and they did not want the Town to give up any rights to their property.

Mr. Shanklin stated he wanted to emphasize that under Section 14.13(b) of the Code under Article 14 these changes are minor and not major and there's no need in going back through the entire process again because these are minor changes they are submitting. Minor changes which are not deemed as major changes by the Zoning Administrator in consultation with the Director of Planning may be authorized by the Zoning Administrator if required by engineering or other physical circumstances not foreseen at the time of approval.

There are actually three issues that we would like Council to look at. One is the extension of one year from what they have now – add a year to it. Second is the five year extension with the resolution on vested rights. Third is to recognize that it is a minor and not a major change on the Conditional Use Permit in that what they are doing actually doing better the Town's position and property.

Mayor Barbour said the first item of business was the request to extend the Conditional Use Permit for one year until June 30, 2007. Councilman Doetsch said that was pursuant to Section 14-12(b) of Article 14 of the Conditional Use Permit process. Mayor Barbour made a motion to extend the Conditional Use Permit until June 30, 2007 according to Section 14-12(b) of Article 14 of the Conditional Use Permit Approval Process for the Town of Carolina Beach. **MOTION CARRIED UNANIMOUSLY.**

Mayor Barbour stated the second item is the request for a resolution. Councilman Doetsch suggested giving this to the Clerk. Mayor Barbour said we can assign a number. Councilman Doetsch made a motion to approve the resolution extending the vested period to five years pursuant to Section 168-385.1(b) of the North Carolina General Statutes. Mayor Barbour asked the town attorney, Al Clyburn, if he had a copy of the resolution and he stated he did. Mayor Barbour asked him to read the resolution because there's a correction in the very bottom in that a resolution for the Town of Carolina Beach does not require a second. Mr. Clyburn stated he did see that. Councilman Doetsch asked if he could just strike that from his motion. Mr. Clyburn stated striking the words "and duly seconded by council member _____." Councilman Doetsch stated correct. Mayor Barbour said there is a motion to approve the resolution and asked the Town Clerk to assign a number to it. She stated she would assign a number. Mayor Barbour made a motion to approve the resolution as stated by Councilman Doetsch striking the requirement for a second from the town council. Mr. Clyburn said as Town Attorney he thinks he would be remiss if he didn't pose a question to Mr. Shanklin, who is representing the applicant on items 2 and 3 of what had been presented to Council. Mr. Clyburn said his concern is that as he looks at the agenda for tonight's meeting, what he sees on item 21 is a request for an extension of a Conditional Use Permit at 107 S. Lake Park Blvd. for Park Place development and he thinks that's what was taken up by Council as their first issue to be resolved. He is a little concerned that the requests 2 and 3 – requests for a resolution regarding vested rights and a request that this Council find these changes to be minor as opposed to major changes – don't appear on the agenda. He asked Mr. Shanklin to speak to that for him.

Mr. Shanklin stated he didn't set the agenda. He said it was his view after they went through the process with respect to the extension and the reasons for the extension – the first issue was the extension of the Conditional Use Permit – to give them an additional year to start the project. When they went through this in some detail, they thought that based upon the fact that they are out so far because of this lawsuit they needed to have the vesting issue resolved too because that had a lot to do with their financing and the ability to market the property and have people sign contracts. So, they go hand in hand and that's the reason they brought it forth. They think that the agenda item is probably broad enough to cover that. The minor change is really a matter for the Town Administrator as opposed to this Board, but they felt this Board should hear what they are trying to do firsthand.

Mr. Clyburn asked if he would have any higher level of comfort if the Town advertised your requests 2 and 3 to be taken up at a special meeting to be held on November 30th of 2005? Mr. Shanklin said that's okay with them. Mr. Clyburn is concerned about the advertising issue. Mr. Shanklin said he understands that, but the reason is because of the lawsuit. He said that if it wasn't for the lawsuit, they wouldn't even be here tonight. Mr. Clyburn said he understands.

Mayor Barbour asked Councilman Doetsch if he would like to amend his motion. Councilman Doetsch said he would like to strike it. Mayor Barbour thought the proper thing would be to continue it until a special meeting to be held November 30th. Councilman Doetsch agreed. Councilman Lynch said the last two – they never got to the third one. Mayor Barbour thinks they need to state them. Councilman Doetsch amended his motion to continue the five year extension on Section 160A-385.1(b) to the North Carolina General Statutes until a specially called meeting is held on November 30, 2005 and to consider the change of the Conditional Use Permit be addressed as a minor change. Mr. Clyburn said that was sufficient. Mayor Barbour said there is a motion on the floor and he will not state it, as it so long. **MOTION CARRIED UNANIMOUSLY.** Mayor Barbour stated the Town will have a resolution number attached to it.

REQUEST FOR EXTENSION OF A CONDITIONAL USE PERMIT AT THE INTERSECTION OF CARL WINNER AVENUE AND CANAL DRIVE AND A SECOND PARKING DECK LOCATED BETWEEN CAROLINA BEACH AVENUE N. AND CANAL DRIVE APPROXIMATELY 175' SOUTH OF DOLPHIN LANE FOR ARCADIA DEVELOPMENT

Mr. Ed Parvin made the presentation. Mr. Parvin said that because of unforeseeable events the delays encountered because of the Land Use Plan, amendments and now importantly, a petition filed with the state challenging their CAMA permit, Arcadia is requesting an additional one year extension making the Conditional Use Permit active through April 12, 2007. He stated the applicant is present to answer any questions.

Mayor Barbour asked if there were any questions for Mr. Parvin. Scott Patton also requested a chance to put a resolution for vested rights on the November 30 meeting. He would like to ask for that opportunity. Mayor Barbour said they have actually two items of business with one being to extend the Conditional Use Permit until April 12 and number two is to adopt a

resolution extending vested rights for five years. Mayor Barbour asked Council if they had any questions for Mr. Patton and there were none.

Councilman Lynch asked to be excused from voting because his wife has done very, very limited work for Arcadia. Mayor Barbour made a motion to excuse Councilman Lynch from voting on the extension of the Conditional Use Permit for Arcadia. **MOTION CARRIED UNANIMOUSLY.**

Councilman Macon also asked to be excused from this issue. Mr. Clyburn said they need a statement as to why and Mayor Barbour agreed. Councilman Macon said there's family property that's under consideration for development in conjunction with Arcadia. Mayor Barbour asked if it is directly related to this Conditional Use Permit. Councilman Macon replied no. Mr. Clyburn said the question is whether Councilman Macon would stand to derive a financial benefit from the particular project that is before the Council with respect to this request. Councilman Macon replied no. Mayor Barbour stated they couldn't excuse him from voting. Councilman Macon said that's fine and he was just making sure.

Mayor Barbour motioned to extend the Conditional Use Permit to April 12, 2007. **MOTION CARRIED UNANIMOUSLY.**

Mayor Barbour said item two they need to request a resolution. Mr. Clyburn said he has the same concern as he did with the other applicant – that does not appear to have been advertised. It doesn't appear to have been part of the agenda and he has a concern about that. Mayor Barbour said the second request should be advertised to be heard November 30, 2005. Mayor Barbour made a motion that they hold a public hearing for a resolution to extend for five years the vested rights for the Arcadia project Conditional Use Permit. Councilman Lynch said again he is going to excuse himself. **MOTION CARRIED UNANIMOUSLY.**

PRESENTATION OF THE 2004/2005 AUDIT REPORT

Mr. Clement Goodson, CPA, made the presentation. Mr. Goodson stated he wanted to briefly the report with Council for this past fiscal year for the Town's financial statements. He said this is as of June 30, 2005. There are several pages in the audit report this year and he won't dwell on many of those due to the late hour, but he did want to hit some of the highlights so Council will know where the Town is at this year. Mr. Goodson asked Council to turn to page 7, which is part of the management discussion analysis. He said it gives a good comparison from one year to the next of the Town's net assets for the year. He said in the last two columns contained current and other assets, which is basically cash and accounts receivable, grew about \$120,000 for the year from \$7.8 million up to \$7.9 million. The capital assets, which are fixed assets, property, plant equipment, water and sewer assets, etc., grew approximately \$1.1 million. The liabilities for the Town actually went down almost \$1 million for the year. Net assets of the Town actually increased almost \$2.1 million for the year. The advantage of the statement we currently have is that we can look at net assets where they used to focus mainly on fund balances. There are statements in there that do concern fund balances, but Mr. Goodson thinks these are more representative of what the Town has been able to accomplish this past year.

Again, the net assets did increase \$2.1 million, which is a significant increase over the \$26 million that we had last year up to the \$29 million we had this year, so Mr. Goodson said he would like to commend them for that.

Mr. Goodson asked Council to turn to page 8. He said you can see the income sources in comparison from one year to the next and stated our revenues actually decreased a little bit over last year, but we were able to increase our net assets. He said you can see in the governmental activities, we actually increased our net assets \$327,000 (in the first column). In the enterprise funds, which is the water and sewer fund and tourism fund, we increased assets \$1.8 million. Mr. Goodson said there are many other highlights that are addressed in pages 3 through 10 of the management discussion analysis and he would like for Council to review those when they have time. The statements beginning on page 13 through 22 are what they refer to as government wide financial statements. They have all the details just talked about there. Mr. Goodson said the increases for the year were very significant. He asked Council to turn to page 14, which is the statement of net assets. He said the breakdown there shows how each activity of the Town actually costs the Town to operate during the year. For example, general government in the fifth column shows that it actually cost the Town \$1.7 million to operate. Public safety was \$1.7 million, etc. Then you can see your sources of revenues or total cost of operating the Town was \$4,253,000. Total revenues were \$4,581,000 – again, for the governmental funds. Again, there was a \$327,000 increase in governmental funds. Business activities (water, sewer, storm drainage and tourism fund) had a significant increase of \$1.8 million \$40,000 in net assets for the year. Pages 23 through 30 are notes to financial statements and gives great detail of all assets and liabilities, and breaks down everything very clearly. Mr. Goodson said there are so many things he could talk about tonight but he knows we are pressed for time. He said the overall valuation for the property in the Town increased from \$711 million up to \$770 million during the year. The tax collection rate was 99.35% for the real and personal property. Motor vehicles was about 86.77%. Again, Mr. Goodson thinks that the Town has done a great job this year. He knows the Town Manager and the Town's Finance Officer have worked hard to do all the things and that council has contributed to that greatly. He appreciates the opportunity to work with them.

Mayor Barbour said it is interesting to note that the ad valorem tax, which is property tax, of all the costs of operating the town only brings in \$2.99 million. Mayor Barbour asked if the report contains the percentage of undesignated fund balance? Mr. Goodson said yes. It is on page 15. The undesignated fund balance as of June 30th was \$2.5 million and that actually represents about 47% of our next year's expenditures. You are required to have approximately 8%, so we're basically 40% over the state requirement.

Councilman Lynch said according to the notes he has, he thought the fund balance are \$2,971,386. Mr. Goodson said he's just talking about the unreserved amount. Mayor Barbour said this is as of the audit. Councilman Lynch said he takes several things away – the very nice unreserved fund balance, the total debt decreasing by almost \$1 million, the net assets increasing by \$2.1 million, the tax base increasing by \$40 million plus, and the tax collection rate of 99% plus. To the outgoing Mayor and outgoing Councilman Doetsch, Joel, Pat, Calvin, Dawn and staff, Councilman Lynch gives his thanks and said they did a great job. Councilman Doetsch

said Jack is part of the team, too. Councilman Lynch said he doesn't need any credit. He's already been to town.

ITEMS NOT ON THE AGENDA

Dawn Johnson, Finance Director, advised Council that they did receive the \$75,000 in grant money from DOT for the sidewalk. Mayor Barbour said he's seen the sidewalk going in from where we extended it north to the church now going all the way to the back of Food Lion and it's a big benefit.

Calvin R. Peck, Jr., Town Manager, said he has a number of items to present. Mr. Peck said that in conjunction with Arcadia's Conditional Use Permit, they are required to obtain a lease for the use of the Town property to operate the parking deck and retail structure. Mr. Peck presented a resolution authorizing a public hearing pursuant to N.C.G.S. §158-7.1, which talks about leasing Town property and it requires a Conditional Use Permit. There is a catch to it. There's a term sheet that talks about the terms of the lease that are proposed to be adopted – numbers of pages – and that will be available for the public to look at between now and November 30th in conjunction with the other two public hearings that have been called. He doesn't know what time Council planned on calling that – 5:00 p.m. or 7:00 p.m.? Mayor Barbour requested it be 7:00, as he is going to be in Washington on the 29th and he's not sure yet what time his flight will bring him back here on the 30th. Mr. Peck said if that's the case, he recommends that Council adopt this resolution authorizing a public hearing pursuant to N.C.G.S. §158-7.1 to consider a lease of public property, that public hearing to be held at 7:00 p.m. on the 30th of November. Mayor Barbour made that into the form of a motion and asked for any further discussion. Councilman Lynch excused himself. Mayor Barbour asked if they had to do this individually – on individual issues? Mayor Barbour made a motion to set the public hearing and pass the resolution according to General Statute 158-7.1 (Exhibit 10). **MOTION CARRIED UNANIMOUSLY.**

Mr. Peck said the second item is that we have received from FEMA a list of all the projects that they have accepted for Hurricane Ophelia. There are a lot of details but the bottom line is Hurricane Ophelia cost the Town \$279,597.20 in debris clearance, protective measures, road systems, public utility system, and some damage to public parks. All of those have been accepted by the State of North Carolina and FEMA as approved projects. We don't have reimbursement – not everything's been paid, not everything's been closed out – but we are well on our way to getting reimbursed for all of our expenses for Hurricane Ophelia. Mayor Barbour wanted to make a comment on that subject. He said we talked about undesignated fund balance and that's what undesignated fund balance allows us to do – to recover quickly from Ophelia we spent \$279,000 because FEMA is not automatic nor is it immediate. It gives us the opportunity to go to work quick to restore the town to normal and that's why we are interested in maintaining an undesignated fund balance well above the state requirement because the 8% required by the State probably would not have allowed us to do this recovery so quickly.

Mr. Peck said the third item is a request from the Lake View project. He gave Council a copy of that letter which he wanted to briefly summarize. He said Lake View project was required as

part of their Conditional Use Permit to do two infrastructure projects, the first being to move the stormwater (the same stormwater line leading from the lake to the marina that we discussed earlier) line off of private property and to put it within the public right-of-way. The second project is to put a 12" water line from Lake Park Boulevard to Hamlet in order to expand the capacity down there. It is required as part of the CUP as we have required any number of improvements to be made, whether they be curb and gutter, sidewalk, etc. In this case the developers of Lake View and J.R. Realty Corp, who is the managing partner, have requested that the \$98,000 to divert stormwater draining off the property, the \$58,000 for the 12" water line design and another \$40,000 or so to run that line outside of their specific project – that they get credit for \$139,475.00 of improvements towards their fees that they are going to have to pay, whether it be user fees, builder fees, stormwater fees, etc. This is a first time request. We have not had this type of request before. In fact, we have not considered this type of request in the past. It has been considered a cost of doing business. When you came for the project, you knew what was in the CUP. You knew that those infrastructure improvements were going to be required and there was no consideration given that they be somehow offset to some other fees. The developer would like to come up here and discuss that item with you, but there is no procedure for doing that and there is no precedent for doing that. Before he comes up to talk, Mr. Peck recommends that Council not consider this request.

Mr. Scott Chase came before Council to make a presentation. Mr. Chase said he will just highlight a few issues requested in the letter. He stated they did extend the water line that was past their project as approved. One of the issues with the stormwater line that's located on the property is that the stormwater line was in disrepair and they had to relocate the stormwater line. He said that gave them an additional cost to the line. The other request is part of the letter. The CAMA Land Use Plan amendments were being discussed and approved during this process and it set them back during that time period. He said during the time period if they already had the Land Use Plan amendments approved, they could have been on last fiscal year's permit fees or user fees. With the delays, they had to go on this year's fiscal year permit fees. So, they're asking with all these issues that are expressed in the letter that they get some kind of credit towards their user fees or building permit fees. If a decision can't be rendered tonight, they just ask that the consideration be given back to staff to work with them to maybe come up with a compromise. They feel this issues, especially with the extension of the Land Use Plan amendments, that they were given some costly delays and it did cost them a little bit, especially with the last year fiscal year fees and this year fiscal year fees.

Mayor Barbour said these requirements were part of the original CUP as enhancements to the Town's infrastructure. As with other projects, Council likes to have development help them improve infrastructure at the developer's cost. Therefore, Mayor Barbour recommended that they give this back to staff. Councilman Lynch agreed. He said they have all been set back tremendously with the Land Use Plan and all the lawsuits. He said he wouldn't feel good, with all due respect, to spend the taxpayers' money for this because he thinks that he's got some of the same issues on something that he's building, so he agrees with the Mayor's comments. Councilman Doetsch said it's fair to send it back to staff to look at it because we want people to come and invest in our town. So, if we can show a willingness to at least work on some of these issues he thinks that's a good thing. Councilman Lynch said he agrees with the Mayor's request. Mayor Barbour said we don't have to vote on it and it's a consensus.

Mr. Peck asked Council to clarify what it is that Council wants them to do. Mayor Barbour said it was their request to send it back to staff to work toward some type of compromise. Mayor Barbour said he's not saying that there's any room for compromise. Mr. Peck said then staff will consider it? Councilman Doetsch said he thinks when staff considers it maybe they can consider it from the standpoint of what can we do to help or benefit or to attract future development in Carolina Beach. So, maybe look at it from that aspect as opposed to just strictly a town protecting its own situation. Councilman Lynch said one way you might do it is look at the difference in the fees this year versus last year. Mr. Chase said that's what they're asking for – just the difference in the fees. Councilman Lynch said he's not suggesting that's what you ought to do – just send it back. Mr. Peck said he has plenty of guidance.

Mayor Barbour stated it was brought up earlier by Jack that Mayor Barbour would not be present for the December 13th meeting. He said he and his wife had already planned a trip for their business. Had things gone differently, they were going to ask that Council move the meeting back a week. He said he doesn't want to delay any progress for the town. Therefore, they will leave the Council meeting for the 13th, but they will be on a working-vacation trip on the 13th.

Mayor Barbour said another reason he asked for the special meeting be scheduled for the 30th is he's been asked by George Mason University to go to Washington and appear on a panel for CNN and CSPAN network about hurricane preparedness and what the government can do differently next year during hurricane season to prepare small communities as well as large cities and work with those areas when it comes to hurricane preparedness to save lives and property. He said they are flying him, all expenses paid and it won't cost the Town a penny for him to be on the panel. He doesn't have the ticket so he doesn't have the departure time from Washington on the 29th or the 30th and he's not sure of that.

Lynn Prusa, Town Clerk, asked Mayor Barbour to join her and all appointed staff and Council to stand for a moment. Ms. Prusa said on behalf of the Town employees and citizens of the Town she would like to present Mayor Barbour with his gavel and thank him for all the service given to the Town and employees. There was a round of applause for Mayor Barbour. Mayor Barbour stated it was a pleasure to serve the Town of Carolina Beach.

ADJOURNMENT

There being no further business, Mayor Barbour made a motion to adjourn.

MOTION CARRIED UNANIMOUSLY.

The meeting adjourned at 11:32 p.m.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____