

**MINUTES OF THE SPECIAL MEETING/WORKSHOP
OF THE TOWN COUNCIL
TOWN OF CAROLINA BEACH**

December 12, 2005

The Town Council of the Town of Carolina Beach met in special workshop session of December 12, 2005 at 5:00 p.m., or soon thereafter in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Pro Tem, Pat Efird; Councilman, Joel Macon; Councilman, Gary Doetsch and Councilman Jack Lynch. Mayor Dennis Barbour was absent. Also present were: Town Manager, Calvin R. Peck, Jr., and Town Clerk, Lynn N. Prusa.

Mayor Pro Tem Pat Efird called the meeting to order.

THE TOWN OF CAROLINA BEACH PROPOSES TO LEASE LAND, OWNED BY THE TOWN, FOR AN ECONOMIC DEVELOPMENT PROJECT PURSUANT TO NORTH CAROLINA GENERAL STATUTE SECTION 158-7.1. THE TOWN COUNCIL INTENDS, SUBJECT TO PUBLIC COMMENT AT THE PUBLIC HEARING FOR WHICH NOTICE IS HEREBY GIVEN, TO APPROVE THE LEASE OF LAND LOCATED AT 218, 222 AND 224 CANAL DRIVE (TOWN'S FISHERMAN PARKING LOT). SUBJECT TO THE COVENANTS, CONDITIONS, AND RESTRICTIONS IMPOSED BY THE TOWN, THE VALUE OF THE LEASED LAND IS ESTIMATED TO BE \$311,720. THE PURPOSE OF THE LEASE IS TO ALLOW THE CONSTRUCTION OF A RETAIL AND PARKING STRUCTURE BY A DEVELOPER. IN CONSIDERATION FOR THE LEASE, THE DEVELOPER WILL PROVIDE AT LEAST 138 PARKING SPACES IN THE PARKING DECK PORTION OF THE STRUCTURE FOR THE TOWN'S USE, ALLOW THE TOWN TO MANAGE THE PARKING DECK AND SHARE IN ANY REVENUES GENERATED BY THE PARKING DECK, AND CONVEY THE PARKING DECK TO THE TOWN AT THE END OF THE LEASE TERM, SUBJECT TO THE TERMS AND CONDITIONS OF THE LEASE. THE TOWN COUNCIL BELIEVES THIS PROJECT WILL STIMULATE AND STABILIZE THE LOCAL ECONOMY AND RESULT IN THE CREATION OF A SUBSTANTIAL NUMBER OF NEW, PERMANENT JOBS IN THE TOWN

Councilman Lynch requests to be excused because of a possible conflict of interest. Mayor Pro Tem made a motion to excuse Councilman Lynch from voting on the Arcadius Group project. **MOTION CARRIED UNANIMOUSLY.**

Attorney Ken Shanklin was requested by the general counsel to assist him in respect to the Arcadius Group lease. All the changes have not been reviewed nor approved by the Arcadius Group. The role tonight is to review and approve the general terms and

continue to review and make final changes based on these terms. Mr. Shanklin began to go through the proposed lease agreement between the Town of Carolina Beach and the Arcadius Group, LLC. Mr. Shanklin stated the Town is not required to comply with the sections of 160A. Under normal circumstances when the Town's property is going to be sold, you will be under 160A where there are a number of requirements. This proposed lease agreement is being considered under the authority of 158-7.1. This body decides what is public purpose and a judge would look to see if the town followed the correct procedure. Mr. Shanklin reviewed with Council sections of the proposed lease. Councilman Doetsch asked the town attorney if he is okay with what has been presented tonight and Mr. Al Clyburn replied yes. Mr. Shanklin added he would like the right to fine tune the agreement if it is approved.

Mayor Pro Tem Efird asked the tenant if he would like to speak. Mr. James Norment, who spoke on the tenant's behalf, said they were going to have to deal with the business side of the lease and in many ways they are going to have to accept or reject the lease as it is tonight in its material terms. Mr. Norment talked about the overall lease structure and the reason for doing the lease, which is to increase the economic vitality and health of Carolina Beach. This is not a new process, a new lease, a new idea, it is something that has been in the works for over a year, which has benefited from input from the town's staff and attorney and also given us the opportunity to hash out all the details that have been seen tonight. The economic development is probably the most important part here. This is going to be a part of a project which will bring literally hundreds of millions of dollars in ten years to the town through construction, retail work, and tourism, and it will be done responsibly. Councilman Doetsch asked Mr. Norment if the lease agreement is accepted tonight as presented is he okay with this. He replied that he is not sure if they are okay. They have to look at it. However, if this lease is approved that is the lease they will be stuck with and they will have to take it or leave it. Mr. Scott Patton asked for a five minute recess to go over the changes to the proposed lease with the attorney. The Council let the Arcadius Group meet with the attorneys while the public hearing occurred.

Mayor Pro Tem Efird stated this is a public hearing and requested that each speaker limit their remarks to three minutes so everyone has a chance to speak on this issue. Lynne Denne, 100 N. 7th Street, asked why are we in such a hurry to get this through tonight. Why can't this be heard by the next Council who were just like this Council, elected by a forum. I just don't understand. It's obvious that they have been to the 11th hour. They haven't met with their own people and have to go meet in another room. You haven't had the opportunity to fine tune any of this but yet you want the people out here to accept whatever decision. There are loopholes and there are questions, I just don't understand why we are in such a hurry to push this through. We have another Town Council and two of you are going to be on that Town Council. You were voted in, you are competent people, and I don't understand why we are trying to railroad this through on the backs of the people out here. It's just not fair, it's immoral, it's unethical, it's just not courteous and I beseech you to let the next Town Council take this up and not just push this through without more consideration.

Gena Benton, 711 Columbia Avenue, said that with all due respect to you folks, Pat, Joel, Gary, this was a rush job tonight. I do not know how you can vote on something that you yourselves have not had a chance to look at. It's one thing to go by what the attorneys say. Yes we hope we have an attorney looking out for our best interest in the town but you three are going to make this decision and I do not understand how you can make such an important decision without yourselves looking at this document and that really bothers me. You do have new council members coming in tomorrow. In the election, people did speak. Give these folks a chance to look at this document too. They might not be here for 99 years but they are going to be here for a few more.

Bob Myers, Carolina Beach Avenue South, prepared his remarks and will present a copy and asked Council to present them as a numbered exhibit (Exhibit 1). First, let me say, that this special meeting was announced at the last regular Council meeting to be on November 30th. Changing this date violates Statute 160A-71 paragraph 3, let me read it as follows: during the regular meeting or any duly called special meeting that Council may call or schedule a special meeting provided that the motion or resolution calling or scheduling any such special meeting shall specify the time, place, and purpose or purposes of such meeting and shall be adopted during the open session. So you do not have a legal meeting in my opinion. By the way, that was not part of Friday's legal request for a temporary restraining order. Despite Mr. Shanklin's opinion about Statute 158-7.1, I like to differ with him because that was a 1925 law passed to promote local economic development. There is nothing in that law that could exempt being subject to future law and the paragraph 160A 272 does not exempt it. I'm only going to read two sentences from that statute. The first sentence I have chose to read is property may be rented or leased only pursuant to a resolution of the Council authorizing the execution of the lease or rental agreement adopted at a regular Council meeting upon ten days of public notice. The second sentence I want to read is leases for terms of more than ten years shall be treated as a sale of property and may be executed by following any of the procedures authorized for such a sale. I will enter this as an exhibit.

Nick Nolan, 301 S. 8th Street, wanted to speak first in a little bit of embarrassment for a town employee, Mr. Shanklin, who came up and identified himself as such and then confessed to an abject failure of his job. This lease should have been negotiated in November. It should have been available to the public prior to November 30th. For him to stand in front of us and tell us how hard he worked over the weekend to get something done that should have been done three months ago I would think in a private sector his employment would be measured in minutes. What I would like to comment on is the notice of this meeting as it pertains to this lease. I believe that this notice is incomplete, inaccurate, and that the subject is not properly before you. The advertised value of the property is mentioned in this document as \$311,720. We are unable to find out how that was determined and we would like to know that. As far as we can tell what was done was three tax bills were obtained. They were added up, but they weren't added up correctly, and that was posted as the value of the property. Because it is not added up correctly, you have not properly advertised the value of the property so that is a fault of the document. You relied on 158-7.1 and that requires that you cannot sell this property for less than the value placed on it and the number you have posted is less than the value

of the property. There will be a speaker after me who is going to speak to the real value of this property. The next error in this is that the notice has to furnish the consideration that the city is getting for this lease. What the notice says is that you are getting 138 parking spaces, that is inaccurate. We are not getting 138; we are getting 65 or so. The lease says there are 69 spaces and we are only getting half that many so the lease does not properly advertise. Ms. Chairman I would ask that the rest of my comments be entered as an exhibit into the record along with the tax statements (Exhibit 2).

Rich Laier, 106 Tennessee Avenue, is speaking to the real value of this property, that is, the fair market value. I have three comps that I would like to enter into evidence (Exhibit 3). The first is 107 Charlotte. It is a 5,000 square foot property. It sold for \$450,000 in July. This is a 15,000 square foot property and again they are valuing it at \$311,000. The next comp is 217 N. Carolina Beach Avenue. It sold for \$2.4 million. It was .53 acres. That comes out to over \$103 a foot and that was sold in August of this year. Also sold in August of this year was 711 N. Lake Park. It was 9,600 square feet against this property which is 15,000 square feet. It sold for \$750,000, which is \$78 a foot. The first one I told you about, 107 Charlotte, that's \$90 a foot. The average of these three is \$90 a foot. You apply that average to this 15,000 square foot property. It's worth \$1.35 million not \$311,000. Basically it is 23% of the value. The spaces they are adding, last year the same number of spaces, generated \$20,000. They are basically giving us \$20,000 a year, which is a cap rate of 1.5% return. You can get 3% in a money market. If you sold this for its fair market value and got just 6% return, you would be getting \$81,000 a year. To me this is absurd. Some of you are real estate experts and if your buyer's attorney came and said to you I have a contract here you can't read it all just sign it and we are going to add some things later. Is that what you would do? You are basically the stewards for this town.

D.A. Lewis, 604 Clarendon Blvd., said he would first like to read the law dictionary's definition of a lease. He said that a lease gives an exclusive possession of the premises against all the world including the owner. Also the lease gives the right of exclusive position for all purposes not prohibited by its terms. He said as you can see a lease is a powerful instrument. If all of the thinkable conditions occur over the term of this lease for 99 years is not put in the conditions of lease it can be at a later date and create a mess for future Councils to have to straighten out. Mr. Lewis said that he opposes this lease, and that no copy was available of the lease for the public to look at before today. He said that Council is being asked to vote on something that is an incomplete lease and he doesn't know how you can do it – no way. He said this meeting tonight is a special called meeting by the present Council as noted in the notices of meetings and in his opinion it is not legal to conduct this business in any meeting but a regular Council meeting. He stated that under these circumstances this issue should be passed on to the incoming Council for a lease. He said that Mr. Shanklin says that he has been working on it over a year, but you can't wait one more night – that's insane. He said that a lease agreement does not constitute an emergency that would call for a special meeting of Council and he views this meeting tonight as highly irregular especially since this special Council meeting is being held tonight before a regular scheduled Council meeting and the reason that he believes this is the statute states that the lease agreement to be held at a

regular Council meeting is to prevent this sort of thing that will happen tonight – namely lame duck action.

Next to speak was Leroy Franks, 908 Canal Drive. Mr. Franks said that he opposes this lease in that it violates G.S. 158-7.1, in that true fair market value of this land has not been established and the probable average hourly wage to be paid for by workers of the business to be located at the property to be conveyed has not been publicly established for public input in a timely manner for this meeting tonight under G.S. 158-7.1 paragraph d2 paragraph #1 Violation. He said violation under G.S. 158.7 in that the covenants conditions, restrictions have not been published or made available for public review in a timely manner for input in this public hearing tonight. Also he said it violates G.S. 160A-272.1 in that anything over a ten year lease shall be treated as the sale of property. It also violates the same thing in that the Council has not established true value market of the lots. It violates G.S. 162-72 in that the Council has not established that this land will not be needed by the city for the term of this lease. He said this lot is used everyday by fishermen at our marina and the town's growth for term of this lease. He said that it also states 160-272.1 says that this cannot be voted on at a special meeting otherwise you're violating the law and you can expect legal action (Exhibit 4).

Before going any further, Councilman Doetsch made a motion that we open the public hearing and that all of the testimony that has been given until now be considered part of the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mark Campbell of 105 Palm Breeze Drive, said that the last time that he addressed this Council was right after the Arcadius presentation that was about two hours long. He said that during the presentation they said that they were giving the community what it wants and what it needs and he asked the question – how do you know that and when did you survey the community and how do you know what they want? He said he feels that the election gave us a good opportunity to see how the community felt about that and the community said, I think, that we don't want high rise condos - we want a three-story limit and we want to go with the planning board. He thinks that the people that are for these have legitimate reasons and others have personal gain and just making money off of this deal. He thinks we need to preserve this community and he thinks there is no hurry tonight and decisions in a democracy are not made overnight. He said that democracy takes time and you have got to hear all of the ideas and all sides of an issue. The best tested ideas are the ability of it to succeed in the market place of ideas and if you are going to rush through this thing and railroad it through, he doesn't think it is going to get a fair hearing. He feels that you owe that to the community, and as your last thing do the right thing, and if you don't shame on you.

Bill Clark of 233 Florida Avenue said he just wanted to remind Council that you don't have to act on this tonight. You have every right to defer it to the January meeting. He said that 2 of the 3 of you are going to be here in January and that will give you some time to look at this complicated issue that a lot of people don't understand. He said, I just want to remind you of your right that you can put it off until the next regular meeting in January.

Bob Shoemaker, 508 Carolina Beach Avenue North, said he believes there has been enough testimony that you should take a minute because the town attorney was out of the room, but I believe that it has been testified to that this meeting is not a valid meeting based on the testimony that has been given by others you are not authorized to make a decision and he asked Council to ask that of the town attorney and get a ruling and not deliberate this any further if it is not a valid meeting.

The next speaker, Alan Gilbert of 601 Atlanta Avenue said that one thing we have to understand is we're talking about a lease that's spans our lifetime and our children's lifetime. That's a long time and if the span of the construction of that lease was only two weeks I think that pales in the length of time we are talking about. So we are putting two lifetimes in the span of two weeks to consider. I think if we all reflect back when the conditional use permit was issued for this project that was over a year and a half ago. Part of that conditional use permit said there will be a lease. So there's been over a year that this lease could have been being worked through. You could have been an hour a day for 365 days and probably could have come up with a really great lease. So I think we are doing a disservice to our community by not considering the real value, the market value of the property. It states it in 158-7.1 that the consideration for the conveyance may not be less than the value so determined and it talks about fair market value. So what I would ask is let's give everybody here a chance to read the completed lease, let's give everyone a chance to review 158-7.1 to make sure that's the general statute that applies to what we are trying to do here. The other thing is that it's not about high rises or high rise parking decks, it's about a lease that's going to be representing our community for 99 years. So let's give it more than two weeks. I will tell you I will be fair when this is brought in front of me.

Charles Mullen, Harper Avenue, has been here since 1971 and he said that. It looks like what we are effecting to do here tonight or sometime in the future is to give these people property that would generate less income for us than we are getting now. We should be able to guarantee a certain amount of income without paying insurance, utilities, and they are getting all the benefits and we're just kind of shaking in the wind. Maybe we will get some money next month may be we won't. I think we should be guaranteed an income every month if these guys want to use our land that's worth over \$1 million. Let's be very careful in how we decide the use of our property without proper return for its benefits.

Councilman Doetsch made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Doetsch asked the town's attorney if the meeting is legal. Mr. Clyburn stated that on November 15th when Council called for this special meeting, NCGS 168-7.1 (North Carolina General Statutes) the section of our statutes that governs regular and special meetings specifically provides that during any regular meeting, the Council may call or schedule a special meeting. That is what the Council did on the November 15, 2005 regular meeting—it called for the special meeting. The original special meeting that was scheduled had to be rescheduled because of the problem with the notice that

appeared in the paper but the special meeting that was called on November 15, 2005 that's been called in accordance with the state's statute, and it has been noticed in accordance with the state's statute. I don't see any legal problem with holding this special meeting this evening.

Councilman Doetsch said he has heard comparisons with other properties on the beach but he doesn't put a lot of trust in comparisons on the fair market value. He stated he has heard about the income we may lose because we are going to have a parking deck but what you are failing to realize is the addition of the complex itself which is going to have an added tax base and added sales tax. It is not just the parking deck that is being talked about; it's the complex itself. If it was a parking deck, I would tend to agree with a lot of you. However when you add the complex itself in and the additions to the base and sales tax that will be generated from that, then it is a good deal. On the other hand, I heard people complain about how come it has taken so long for these people to come to us with this lease agreement. As you well know, quite a few of you guys were probably responsible for the delays that have gone on in this project. So a lot of these people have been fighting those delays and haven't had a chance to work on this. I have listened to everything tonight and had I heard something new it may have changed my mind but in this case it hasn't. Councilman Doetsch made a motion to approve the lease for the parking to Arcadia.

Mr. Clyburn stated the attorneys have completed their review and wanted to know if Council would like to hear from Mr. Shanklin as to any changes that were made. The town attorney remarked that there were no substantive changes; however, they were prepared to show the final draft.

Councilman Joel Macon stated he understands the statute that the attorney read about Council can call a special meeting but 160A-272 does say that property may be rented or leased only pursuant to a resolution of Council authorizing execution of a lease rental agreement adopted at a regular Council meeting. He questioned if the attorney was taking all of this language into consideration when giving his answer. Mr. Clyburn stated the procedure requirements are under 158-7.1. That statute doesn't contain the same requirements or the same procedures as 160A-272. The procedural requirements for consideration of this lease under 158 have been met. Councilman Doetsch asked in layman's terms is it okay and the answer by Mr. Clyburn was yes. Councilman Macon asked for a five minute break, which was taken.

After the break, Councilman Doetsch made a motion to withdraw his motion until the attorneys have a chance to speak. Mr. Shanklin said the tenant has accepted 99% of what was changed and then went over the changes. Councilman Doetsch stated he has not heard any substantive changes to the lease agreement so he will remake his motion to approve the lease agreement covered in the public hearing. The town attorney suggested that the motion that Councilman Doetsch wants to make is a motion to adopt Resolution No.05-856. Councilman Doetsch amended his motion to adopt Resolution No.05-856. Mayor Pro Tem Efird voted no. Councilman Macon stated he has a problem with the lease. He asked the town attorney by voting for the resolution what does that obligate us

to. Mr. Clyburn answered that voting for the resolution authorizes Mayor Pro Tem Efird to execute the lease as presented to the Town Council. He further stated if there are any problems with the lease you want to discuss, this is the time to do that. Councilman Macon said he has two problems. First, he agrees that the value that was advertised is misleading at best. He also has a problem that D.A. had a copy of it before he did and that he got it as he sat down tonight. Town Manager, Calvin Peck, told Councilman Macon that they were e-mailed out to the list and it included Council at the same time, and that D.A. just opened his early he guesses. Councilman Macon voted no on the resolution. **MOTION WAS DENIED.**

Councilman Macon takes issue with the market value as advertised and he takes issue with the fact that he just got it and he feels uncomfortable making any decision on it without time to review it. Mayor Pro Tem Efird said she had an issue with the fact that they only saw this tonight for the first time and the changes had been made and that is the reason she did not vote for it.

The town attorney said for the record Mayor Barbour was not excused from voting and his vote is therefore a yes vote to the motion. It's a 2-2 vote and the motion fails.

HOLD A PUBLIC HEARING TO CONSIDER ADOPTING A RESOLUTION ESTABLISHING THAT THE CONDITIONAL USE PERMIT FOR PARK PLACE DEVELOPMENT LOCATED AT 107 SOUTH LAKE PARK BLVD. CONSTITUTES A "SITE SPECIFIC DEVELOPMENT PLAN" WITH "VESTED RIGHTS" FOR FIVE YEARS

The attorney for the applicant for Park Place asked for five minute recess and Mayor Pro Tem Efird agreed.

Mayor Pro Tem Efird called the meeting back to order. Matt Nichols, along with Mr. Shanklin, represents the applicant and developers of the Park Place project. Mr. Nichols stated the last time they were before Council it was for two things. One was for their vested rights issue and the other for minor modifications for the site plan.

Councilman Macon asked Mr. Nichols if he could interrupt him for a minute. In reference to the hearing concerning the proposed lease agreement with Arcadia, Councilman Macon said it has been commented that he made that vote because he is running for reelection. He said he will publicly announce as of this moment that he is not running for reelection. He will retire after his last two years, and he would like to go out the record with that.

Mr. Nichols stated he is backing up, there were two issues one was the vested rights concept and the other was the modifications to the conditional use permit which has been approved by the town. He said for the record that they will deal with the new Council, Mayor Elect Clark's administration on any changes to their conditional use permit. They are acting in good faith, as a gesture to the new mayor and the new administration. Any

changes they have to their approved plan will be before Mayor Elect Clark and the new members of Council and sitting members of Council that remain on Council. There have been articles in the paper and there have been misconceptions about what they are trying to do. The articles that Mr. Nichols has read in the paper have been misleading regarding vested rights. They are here tonight to clarify that they have vested rights, which gives added assurance to them that they will be able to build what the town has approved. Their conditional use permit should have been stamped with the notation that they have their statutory vested right. They are asking the town to allow them a five year extension but hoping they don't have to use the five years. Mayor Pro Tem Efird stated they have already made modifications one time and was this approved by Planning and Zoning. Mr. Nichols said there haven't been any modifications since the original approval in August 2004. Councilman Doetsch asked if this has been approved by Planning and Zoning and Mr. Nichols nodded yes. Councilman Jack Lynch clarified that they aren't asking Council to make a decision on any modifications but are asking them for a stamp that they have their two years and asking for three additional years. Mr. Nichols stated yes and they hope to start construction as soon as possible. They could be in the Supreme Court two years from now although he hoped not. As soon as the law suit is resolved and they get their building permit, they would like to start construction on the project. Mayor Pro Tem said you have two years and then asked if they could not do it with one extra year. She said five years seems to be a long time. Mr. Nichols said they are asking for five years but if Council sees it fit to do less than five years they will appreciate that.

Mayor Pro Tem Efird made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.** As earlier this evening, a three minute limit was given to each speaker.

Bob Myers, Carolina Beach Avenue South, was the first to speak. He thought he heard a little double talk by hearing Mr. Nichols say we have vested rights but we want to get vested rights. Mr. Meyers said he has stated his position already on this and presented a letter he sent to Mr. Harrell, Planning Director, Mr. Peck, the Town Manager, and Mr. Clyburn, the Town Attorney. He read parts of what was in that letter. He went back and referred to the same statutes that were presented at the November 15th meeting. He read only a couple sentences because of the three minute limit. The sentence he wanted to focus on first is the one that reads what constitutes a site specific development plan under this section that would trigger a vested rights shall be finally determined by the city pursuant to an ordinance, and he stated that he is not sure that exists, and the document that triggers such vesting shall be so identified at the time of its approval. Secondly, I had a gentlemen do a research on the town ordinances and there was only one mention that he could come up with vested rights and it includes a statement that says such sites specific development plan may convey certain vested rights to the applicant project upon approval. The conditional use permit has already been approved. That is what triggers the granting of vested rights so it's too late to go back and do that according to these ordinances. I believe at the reading of this conditional use permit I discovered that there was one year of vested rights that were granted at the issuance of that conditional use permit and that year has expired. I believe it is not appropriate to grant additional rights as there would need to be a town ordinance at this juncture to do so. I would like to

submit these comments along with my previous letter to be labeled as a numbered exhibit (Exhibit 5).

Nick Nolan stated he was a little confused. On July 23, 2004, the applicant made an application to construct a 92 unit, 13 story, residential structure over 9500 square feet of retail space with a restaurant use on the top floor and ancillary parking deck over the existing Town of Carolina Beach parking lot and clubhouse and swimming pool on the top floor of the parking deck. On August 10, 2004, the Council granted a conditional use permit for that project. Are you voting tonight to grant extended vested interests for that project? Councilman Lynch answered that was his understanding and Mayor Pro Tem Efirid said yes. Mr. Nolan continued that at the November meeting the developer made a presentation to the city and has been quoted extensively in the newspaper that he has changed that project and he is not building that project anymore. Councilman Lynch said the attorney stated that they will deal with the new Mayor and the new Council. Mr. Nolan asked why we would give him extended rights for a project he is not going to build. Councilman Lynch stated that you don't know he is not going to build that; he certainly has that right to build. Mr. Nolan said he has the right to build it. He further said that he stated to you that he wasn't going to build and he was quoted in the newspaper.

Leroy Franks said the validity of Park Place is questionable to begin with. The original CUP when issued was not a truthful document based on the facts that the Town Council concludes that all general and specific conditions precedent to issuance to a conditional use permit had been satisfied on August 10, 2004. At the time of the issuance of the original CUP this CUP would be in violation of general statute 113A-111 and our Land Use Plan and all general conditions and specific conditions were not met. Case in point sentence 4 in facts and findings as Park Place conditional use permit states: the project as proposed complies with the provisions of the Zoning Ordinance as in general conformity with the Land Use Plan and policies. This is not so as the CUP was in violation of our Land Use Plan and evidence by the Land Use Plan being changed at a later date. The attorney representing Park Place at the last meeting stated untruthfully that the changes to the plan were minor but the November 16, 2005 issue of the Island Gazette quotes the developer Ward Manning as stating this project has been totally redesigned. He also stated as reported by the Gazette that we have gone back to the drawing board and we have totally redesigned the building, and as it currently sits, our building can support its own parking. These facts indicate that these changes are major and the existing CUP should be rescinded and new plans should be resubmitted to the Planning and Zoning Commission (Exhibit 6).

Next to speak was D. A. Lewis, 604 Columbia Avenue. Mr. Lewis said the lawsuit has not been settled. The law suit has not been deemed that it is free of this or it would have been thrown out of court. If you vote tonight to do anything about this thing ahead of this lawsuit, the rights of the man that has the lawsuit is going to be violated. I don't think you should vote on anything like that.

Rich Lair, 106 Tennessee, said he read the letter that the developer sent asking for the extension of the vested rights. He mentioned the lawsuit and he also mentioned that conditions now were not right to build. I am worried for the beach for the same reason he is. We have so many units on the market with today's sales. We have a three year supply and that doesn't include what people are going to be pouring on the market in the spring. On the other hand, I believe Carolina Beach needs a developer like the Strand Group and I know I am going to get killed for this. But they are the real deal. They can deliver but just not this plan. They've got a parking lot on this plan that will have the same problems. It didn't meet the state statutes when it was given to them. There is no way out of this one. It has to go up for bid. It's worth over \$30,000 it is a lease over ten years, so they have a flawed plan. I am all for the city working with them to do a new plan because they are the real deal and I would rather that happen then flip it to somebody who is not the real deal. Councilman Lynch said that his comments about Strand are on target. He said he worked with them when he was in the hotel business and they are a first class group.

John Verderber, 304 Seafarer Drive, said it appears to him that there is a conflict of interest with Ken Shanklin and his law firm representing the town on one issue and the developers on another issue. Is this a conflict of interest and has there been a certificate of conflict of interest signed by Ken Shanklin or his law firm?

Tim Riley, 5 Texas Avenue, said the concern he has about this is pretty serious as far as the financial with all here and making a commitment by the town for a five year period. He thinks it is one thing to stamp the two years because it was approved but to go beyond that it needs to be reviewed annually. I can just say that any financial institution of any kind of integrity would do that. I can also say that we need to review financial information on the developer and make sure that this is a strong developer in order for us to tie up something for that long. I don't know that we have done that and I think we need to do that. I think we would be rushing into something. If they put money into this project and show they can do it, then the town is going to back them. But if they don't do it right and by that I mean they don't negotiate with the people they need to negotiate with and if they don't show what they need to show in that two year period then the town has every right not to be held hostage for five years and that is what is a concern to me. I think we need to take our time with this thing and I think we need to not grant five years at this point. There are other developers out there. Councilman Lynch added that unless the environment in the central business district changes there won't be many developers here in the future in his opinion. Mr. Riley said he thinks there will and Mr. Lynch said that he hopes he is right

Lynn Denne, 100 N. 7th Street, wanted to echo what Mr. Riley just said. She also had one question. If they are so willing to work with the incoming Council and there isn't a problem there, then she doesn't understand why we are pushing at this hour for vested rights. She also made an observation that she thinks we need to have a little more faith in our incumbants that are coming and we owe them a little more courtesy. The people who were elected the last time were given that kind of courtesy and the same number of people voted in this election that voted in the last. They were dignified in their loss if

they lost and also in their win. I think we should handle this election in the same way. I think it is insulting to do otherwise.

Next to speak was Tommy Redman from 600 Carolina Beach Avenue, North who also owns some property down 400 South adjacent to this project. He wanted to reiterate what Mr. Riley and Ms. Denne said. He believes as they do and he also believes that there is no rush to approve this. I think the five years is excessive but I think it should be left to the incumbent Council.

Mark Haines, 1313 Canal Drive, said he appreciates everyone coming out and looking them in the eye and voting whether we agree with it or not. But there is one of you who didn't and I wanted to know why his vote should count at all. Councilman Doetsch said you mean the Mayor, and Mr. Haines replied yes. Councilman Doetsch explained that whenever you do not come to a Council meeting for whatever reason and you are not excused by the Council then your vote is automatically determined to be a yes vote. Mr. Clyburn added that whenever a member who is not present, if he or she has not been excused, then that member is consider to have voted yes on whatever issue is before the Council. That is by state statute. Councilman Doetsch said that the Mayor did not ask to be excused.

Genie Lancaster, 104 S. 6th Street, said she has been in Carolina Beach since 1990 and is a realtor. She said she has a vested interest because she owns a very large piece of property. It disturbs her desperately to hear what has gone on tonight. I think if we have attorneys that the town is paying I don't see why we don't let the attorneys hash out the differences which they did. I feel deeply for this beach some of our family has wanted us to move off of it and we have not and we have had property here since 1940. I just think that number one as people say yes there are things wrong here, there are things wrong there, whatever reasons things have happened they have happened. I think that we in our dignity as people have talked about should respect each other. They should not boo the Council. The Council until they leave is the Council. I think the people who have repeatedly gotten up have been the same people over and over and I would just like to say that I feel that what was done to Arcadius was wrong and what is trying to be done to Park Place is very wrong. I would like to see the Council vote positive for Park Place and to at least do something that is positive tonight.

The next speaker, Alan Gilbert, 601 Atlanta, is curious on the position of the town attorney and the planning director with position to vested rights in our ordinance if there is an absence of references to vested rights in the ordinance then I certainly would support codification into our ordinance but referencing back to a general statute without a vehicle to apply in our ordinance will leave us open to other things. I think I am excited that the Strand group is willing to work with the new administration and I look forward to seeing whatever the plans might be and look forward to working with that. But I think we have to codify vested rights before we just start doling them out as per the general statute if we don't have a way to do it within our ordinances.

Bob Shoemaker, 508 Carolina Beach Avenue North, said he wasn't going to speak since he stood up before and there were references to the same people getting up so I thought I had to. But I'm getting a little bit confused. I have no qualms with the Park Place project personally but right now from the discussion I don't know if there is an approved plan of any kind. What are we going to give any additional rights to if there is no defined plan to work with. Is there one? Councilman Lynch stated yes they got a conditional use permit August 10, 2004. Mr. Shoemaker said but I understand that's been scrapped and they have generated a new design. Their attorneys say no. Councilman Doetsch remarked that they also said if they did make a change it would be taken up with the new Council.

Mr. Riley asked if our town attorney is involved in this project. The attorney said that the answer to that question is no.

Sherrie Pridgen who lives in Country Club Place in Wilmington is a realtor with Coldwell Banker who represents Park Place. She mentioned that she might be able to clarify the redesign in the building that you are hearing about. The redesign is to the balconies. Instead of the balconies being directly north or south facing they are angled. There will still be the 92 units inside the building. There is still the same space. I think when you are talking about a change in design I think those are some of the things they are talking about. It's not the whole building being redesigned 100%.

Ms. McKnight, 400 Virginia Avenue, wanted to ask Council to put the stamp of approval for the two year vested rights as stated here with that 2004 plan and then let's see what happens. She asked can they come up shortly before the two years are up and ask again to be vested or if they are putting a new plan in between there or something that they can again asked to be vested again. Mayor Pro Tem Efirm asked the town attorney if they could come back again and the answer was yes.

Carl Evan, 415 N. 4th Street, said if we vote on it tonight and get the full five years why should we take more time of the Council in the future. Let's vote tonight and get the five years.

Mayor Pro Tem made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mr. Clyburn, the town attorney, made his presentation. He first addressed Mr. Riley's concern. He said the conditional use permit, that section of our ordinance, and the statute 160A-385.1 that creates statutory vested rights both of those vehicles have a way to continue to review the progress of a project. There is way for the Council to determine whether the conditional use permit should remain in effect. There is a way under both the statute and our ordinance to continue to monitor a project from start to finish and for the Council to determine whether the conditional use permit should remain in effect. I heard that concern from a couple of people. The section of our ordinance that regulates conditional use permits and the statute gives the Council the right if they believe that the conditions that were associated with granting the conditional use permit are not continuing to be met they have the right to withdraw that conditional use permit. There is

some tension between government regulation and ownership of property. Our constitution gives our legislature and gives each local board at both the county level and at the municipal level the right to regulate the development of property. The constitution also gives people the right to enjoy the ownership of their property with due process of law. As Mr. Nichols said for centuries we have had this concept of common law vested rights. Property owners have always had common law vested rights and the theory there is that once a property owner has made a substantial investment based on decisions that have been by local governing boards that they have the right to finish those projects. Mr. Clyburn's legal opinion is Council has the authority to extend vested rights for five years from date of approval if they choose to do so. The five years would begin to run from the day the conditional use permit was issued, which was August 10, 2004. Their vested rights would be recognized until August 10, 2009. Councilman Doetsch made a motion to extend the five years to Park Place for site specific vested rights by adopting a resolution recognizing vested rights under 160A-385.1 to extend for a period of five years from the date of approval to Park Place for site specific vested rights (Exhibit 7).

MOTION CARRIED UNANIMOUSLY.

HOLD A PUBLIC HEARING TO CONSIDER ADOPTING A RESOLUTION ESTABLISHING THAT THE CONDITIONAL USE PERMIT FOR THE ARCADIA GROUP DEVELOPMENT LOCATED AT 3 PELICAN LANE, 218, 222, 224, 237, 239, CANAL DR AND 234, 236, 300, 309, 310 CAROLINA BEACH AVE N. CONSTITUTES A "SITE SPECIFIC DEVELOPMENT PLAN" WITH "VESTED RIGHTS" FOR FIVE YEARS

This item has been withdrawn by the applicant.

CONSIDER A REQUEST FOR CONDITIONAL USE PERMIT FOR 2 TRIPLEXES AT 204 AND 206 WOODY HEWETT (PUBLIC HEARING WAS HELD 11/15/05)

Mr. Ed Parvin, from the Planning Department, said the Planning and Zoning Commission heard this proposal at its October 13, 2005 regularly scheduled meeting. They unanimously recommended the approval of the request subject to required finding, TRC comments, staff conditions and three additional conditions. This conditional use permit was presented at the November Town Council meeting. There were concerns about the stormwater line placement, which was condition 3 by planning and zoning. Staff added condition 23 on the memo concerning the 48" stormwater line must relocate to the right of way at Fayetteville and Wood Hewitt by the applicant. Mr. Peck said he spoke with the applicant and they understand, agree, and will comply with that condition. Mayor Pro Tem Efird made a motion that they grant the conditional use permit for the two triplexes at 204 and 206 Woody Hewett Avenue subject to the following:

REQUIRE 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

The Technical Review Committee reviewed this proposal at its September 26, 2005 scheduled meeting. The TRC recommended the project to be submitted to the Planning and Zoning Commission if the following comment are addressed:

1. 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 15 parking spaces.
6. Sidewalks must be installed on all public right-of-ways of at least 5' in width and be ADA compliance.
7. Dwelling must be constructed to meet minimum North Carolina fire code and must be approved by the Fire Marshall
8. Dwelling must be designed and constructed so that it will not impair any adequate supply of light and air to adjacent properties.
9. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
10. 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.
11. 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.
12. 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.
13. Dedicated open space must always remain as open space and be maintained as provided in number 13 above.
14. Show all existing structures on site plan that are to be removed.
15. 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.
16. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
17. 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.

18. 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.
19. A driveway permit from the town will be required before issuance of a building permit.
20. 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.
23. The 48" stormwater line must be relocated to the right-of-way on Fayetteville and Woody Hewitt by the applicant

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 check 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.

MOTION CARRIED UNANIMOUSLY.

Mr. Peck stated that Council requested that staff take a look at the infrastructure costs for Lake View reimbursement of those costs. He read a memo sent to him from Steven Harrell, Planning Director, dated November 28, 2005 regarding a meeting with the Manning Group. The recommendation of staff is no relief to be granted.

Mayor Pro Tem Efird made a motion to adjourn. **MOTION CARRIED UNANIMOUSLY.**

ADJOURNMENT

The meeting adjourned approximately 8:19 p.m.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

APPROVED: _____