

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

February 14, 2006

The Town Council of the Town of Carolina Beach met in regular session on February 14, 2006 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, Bill Clark; Mayor Pro Tem, Alan Gilbert; Councilwoman, Pat Eford; Councilman, Jerry Johnson; and Councilman, Joel Macon. Also present was Interim Town Manager, Robert Nicholl and Town Clerk, Lynn N. Prusa.

Mayor Clark opened by stating that they have been here a little over a month. We're still in the learning process and we have made a mistake or two along the way. I apologize for using the town letterhead. We're learning and know we are working on behalf of the people of Carolina Beach.

Mayor Clark called the meeting to order.

***INVOCATION BY REVEREND PAUL CHRIST, KURE BEACH MEMORIAL
LUTHERAN CHURCH***

Reverend Christ was not in attendance so Mayor Clark asked for a volunteer for the prayer. Tom Campbell led everyone in the invocation.

PLEDGE OF ALLEGIANCE

After the invocation, Mayor Clark led everyone in reciting the pledge of allegiance.

ADOPT THE AGENDA

Mayor Clark recommended deleting Item #12(g) from the consent agenda. This item was to set a public hearing date to consider a request to rezone all HB (Highway Business) located between Carolina Beach Lake and Carolina Sands Subdivision to MX (Mixed Use).

He also asked to delete Item #12(h) set a public hearing date to consider a request to amend Article 18 Non-Conforming Situations and Article 23.3 Definitions. Councilman Johnson said he would like to make a request. He said that Planning and Zoning is holding a special meeting this Thursday night to address this situation. He thinks it needs Council's attention as soon as possible and requested Council to hold a special meeting on March 2, 2006 at 6:30 p.m. and Council agreed.

Also deleted was Item #23 a public hearing to request rezoning 908 S. Lake Park Blvd. from HB to MX. Mr. Steven Harrell, Director of Planning, said they were going to request there be no public hearing because it is encompassed in the rezoning item under the consent agenda.

Recommend tabling Item #26 concerning appointments to the Parks and Recreation Committee. They have another opening on the Parks and Recreation Advisory Committee and the director asked that all of the appointment be done at the same time. Ted Lashley, Director of Parks and Recreation, said all appointments would be ready by the March meeting.

Councilman Johnson made a motion to adopt the agenda with the changes that were recommended. **MOTION CARRIED UNANIMOUSLY.**

PRESENTATION BY BOBBY MCCONVILLE, CHAIRMAN OF FREEMAN PARK AD-HOC COMMITTEE CONCERNING PHASE II

Mr. McConville began his presentation by passing around the new parking sticker so everyone could see it. He stated Phase I is completed. One of the topics of Phase II was the addition of police officers on the North End. In the January meetings that were held, it was felt there was enough money in the overall North End Fund to provide for two additional police officers. The committee requested that Council consider hiring two new police officers from the North End Fund and not the General Fund. He said this would not be a budget item. It was felt that it was in the town's best interest to initiate the process now because it would probably take a couple of months to have the officers trained and ready to go when they are needed in April.

He said, concerning the new parking stickers, Central Parking has received positive feedback. The new sticker was developed by Jason Sutton. The merchants are very happy about them because before there was an application, a brochure, and the stickers. Mr. McConville stated it now encompasses the application, the sticker, and all the information that was on the brochure. Next year they will consider reflective stickers, so when the police come out they can hit it with a flashlight and see it.

He said the committee meetings are open to the public and are held on the third Thursday of the month. Next Thursday's meeting is a mandatory meeting for all volunteers who are on the committee. It will be a time to decide if they want to continue on the committee or want to release their seat, so it is possible there might be some open seats for next Council meeting.

Another topic is to consider bathrooms on trailers instead of using port-o-johns. They are actually set up like real lavatories with stalls and a self-contained sewer system. Pricing is an issue but it is felt that the benefit is mobility, they are more sanitary, and the town might be able to use them at other functions during the off season. Instead of having port-o-johns, the town could have nice, dressed-up, clean, self-contained trailers.

Towing services was the next topic. There has always been an issue with cars getting stuck on the North End. We don't really have cars being stuck anymore but four wheel drives break down, don't engage, or they still just get stuck. There isn't price gauging out there and this may be a question for the town attorney. The committee was wondering if Council wants to think about contracting with a single towing agency to call. It might need to go out for bids but it is something the committee is going to discuss. They are not sure if it is ethical or not to actually have the town collect part of the fee to go back to the fund as well. Committee members want to make sure people are not getting ripped off and it flows.

Another issue is shelter for park staff. That subject will continue to be discussed.

Another item that has been thought about is the vendors who go out there - people selling pizzas, souvenirs, ice and maybe expanding it to umbrellas. There are a lot of things going on out there and the committee is not sure whether the town needs to get involved in issuing permits, privilege licenses, etc.

The last issue relates to the shelter and parking access. The committee is going to start discussing some of the eminent domain issues. Members want to think about maybe having the town look into taking part of the Breaker's parking lot to expand the entry way. They are not looking to take it and give it to somebody else to build on it, but if there is a way to widen the entry way, it would create more access and also provide shelter for the people who are out there. It could be more of a check point.

Any other issues that develop during the course of the season will continue to be discussed and the committee will try to provide some kind of role in leading Council to a decision.

Mayor Pro Tem Gilbert explained that Freeman Park is an Enterprise Fund that is within the Tourism Fund. When statements are made about police officers and money, he is not sure if it is appropriate for Ms. Johnson, Director of Finance, to mention how these monies are apportioned and where these monies are. There are a lot of people looking at those monies. During budget time, Mayor Pro Tem Gilbert said he has come to understand there are no monies basically, the monies are spent. Ms. Johnson said the Tourism Fund encompasses beach maintenance, which Freeman Park falls under the Beach Maintenance Department. It encompasses the marina, parking lots, and lifeguards, so all the monies for this current fiscal year are appropriated. There are no extra monies to go in and appropriate for additional police officers, restrooms or things like that. It is something that can be considered in the upcoming budget.

Mr. McConville said they have seen the funds that have come in but they have not seen the break down as to exactly where the funds go. He stated when the ad-hoc committee was created, one of the focuses was whatever monies were generated by the North End was suppose to redispense back into the North End. He would find it concerning to think those monies have been appropriated to a parking lot, a marina or anything else. At the last meeting when the committee saw the monies, they felt it was a consensus that there was enough to bring in two more police officers. He said he felt it incumbent on the town to see where the money went and make sure it didn't go to anything else but the North End. The committee feels that it is important. Safety out there is a number one issue. The police need to have bodies everywhere. He stated he knows money is always

an issue. He doesn't believe in his heart the ad-hoc committee is advising that money should be taken elsewhere. Mayor Pro Tem Gilbert said this is why he asked Ms. Johnson to comment. The reality is the Council who created the budget we are talking about, which we didn't create, and the Council who created the ad-hoc committee, and establishing the fees on the North End, created that budget and the way those monies are apportioned within that is what needs to be talked about. He said it is an excellent idea of having Freeman Park as a stand alone. They need to talk about it in the budget to make sure those monies aren't given out to other things.

Mayor Clark asked the Interim Town Manager, Robert Nicholl, and the Police Chief, William Younginer, to look at the budget and work force to see if security can be increased at Freeman Park and to report back next month.

Mayor Clark asked the Operations Department to look into the bathroom trailer idea.

He asked the police chief to also look into the towing services.

Mr. McConville again mentioned privilege licenses or permits, which are issues the committee is going to talk about. They will do the research on what they can figure out and find out and present it back to Council.

Mayor Clark commented concerning the issue on the towing is that the committee wants people to be able to call somebody and get a price and not have the price jump up and down. This has been a problem.

WATER DISTRIBUTION UPDATE BY BRIAN COX, PE, ENGINEERING SERVICES

Mayor Clark stated in January they had adopted some goals for the Council and water distribution was number two as a goal for Council for this year.

Brian Cox stated they were asked to do a water study for the Town of Carolina Beach. As part of that study, they were mapping the water system in the town and putting together a water system model that shows the distribution of the water system and where there may be lower flows where lines may need to be increased. Recently they have been asked to look at some different scenarios which mainly focus on the North End fire flows. They have put together several different scenarios and compared those to the existing system.

Using the overhead projector, Mr. Cox began explaining Scenario 14. Scenario 14 shows on the left side the base scenario of the water system. When they took their numbers, they flowed the hydrants at twelve o'clock midnight so they had the lowest demand with the water tanks full and no well pumps on. This way they could get a good system model. From that information, they were able to generate the base scenario. He was able to show the different fire hydrants, their locations and the flows. With this information, they ran several different scenarios. At least 14 have been run on the system looking at changing line sizes and different locations to try and transport the flow of water into these areas to provide a higher flow at each of these fire hydrants that are located in the North End. In Scenario 14, it can be seen the lighter color blue represents a 12 inch water main

and the lighter color green represents an 8 inch water main. What can be found from Maryland to Virginia to Sea Oats is a 12 inch water main they looked at in this scenario and also south of Canal Drive at Harper, tying into Lake Park with a 12 inch water main and also installing an 8 inch water main that connects Canal and Carolina Beach Avenue North with an 8 inch main at Seagull and at Sandpiper. As shown in the chart that is above the legend at the five selected fire hydrants, you can see in gallons per minute the flows of the base and with the change in the water main sizes the gallons per minute in Scenario 14. It shows to the right of that the increase in fire flow at each of those hydrants. The fire chief wants about 3500 gallons per minute to fight the fires. He will have this flow delivered to him in this scenario by running off of two separate fire hydrants, which is not uncommon. The flow will be delivered to him from the north end and from the south end with the 12 inch mains.

Mr. Cox provided three different scenarios. The base scenario, which is where we are today, the intermediate scenario, which is what we are working towards now, and a future scenario, which is what the town is planning to do in the future. Right now the town has currently permitted a 12 inch main on Clamshell, which connects Canal Drive and Carolina Beach Avenue North. They have also planned and permitted the 12 inch main on Harper. Those two pieces are already coming together. Mr. Cox believes the 8 inch main on Seagull is also in the works. They are currently working on doing the design work for the 12 inch main on Maryland to Sea Oats. The flows seen in the Intermediate Scenario-14 is something that will be a reality very soon. The Future Scenario provides a 12 inch main from Harper all the way to Seagull, coming from the south. From the north, the 12 inch main from Maryland to Virginia to Sea Oats all the way down to Scotch Bonnet. It provides connections between Canal Drive and Carolina Beach Avenue North from the south to the north end. Any streets that do not have these connections will be connected. You can see with the five selected fire hydrants the base where we are standing at today, the existing flow on the left and what the future flows will be from the Scenario-10-B. It shows the gain that you will see at each of those fire hydrants from this scenario. Mr. Cox said it's in our opinion, that the best scenario, for right now and the town is currently working on Scenario 14.

Mayor Pro Tem Gilbert asked Mr. Cox if there is a model that you ran on a 12 inch line down the whole loop, where you actually got 3600 gallons? Mr. Cox answered they did not. Their goal was initially to gain a flow from two fire hydrants that would give them the 3500 gallons. He continued by stating that the future scenario was their best case scenario with what they have to work with now. That was getting the 12 inch line connected to Seagull which from that point there is an 8 inch line currently and then the 12 inch line coming from the north to Scotch Bonnet, making that loop. Mayor Pro Tem Gilbert asked about the red lines and if they are 8 or 6 inch lines. Mr. Cox said the red lines represent proposed 6 inch water mains to connect Canal Drive to Carolina Beach Avenue North. They are not existing lines now. Mayor Pro Tem Gilbert asked if any of the red lines in Scenario 14 exist. Mr. Cox explained that on the future scenario, what is shown as a darker red lines are existing mains. Mayor Pro Tem Gilbert said the existing mains are what he is talking about, the dark red lines and he asked what size is that? Mr. Cox wanted to know which street. Mayor Pro Tem Gilbert asked how big are the existing lines on Canal Drive? Mr. Cox said the existing line on Canal Drive is an 8 inch main from Pelican to Florida and Carolina Beach Avenue North is a 6 inch main from Harper Avenue to Seagull. It is an 8 inch line from Seagull to Scotch Bonnet and a 6 inch line from Scotch Bonnet all the way to Salt Marsh. Mayor Pro Tem Gilbert asked

Mr. Cox if he could help him understand how he was going to pull the total gallons. For example, if you're at number 44 and you have 1500 gallons of water there, where are you going to pull the second hydrant to get your combination of the 3600 gallons of water or around that? Mr. Cox said at number 44 the flow on Scenario 14 is 1900 gallons of water per minute. If you went to number 43 the flow is 1900 gallons of water per minute. The gallons of water are above 3500 with those two combined. Mayor Pro Tem Gilbert wanted to know how that would work. Brian Roberts, the Fire Chief, said under the old ISO rules and the new Department of Insurance rules, they are allowed to pull from two separate fire hydrants as long as they are within 600 feet of the fire. They use 5 inch supply lines, so they would pull a 5 inch supply line from Canal Drive and a 5 inch supply line from Carolina Beach Avenue North, so you will have two separate pumpers. With this scenario, the end result is 3700 gallons of available fire flow versus what they have now. Mayor Pro Tem Gilbert asked under an ISO situation, when they are evaluating your flow, this would do well? Mr. Roberts answered yes and explained that when they evaluated them they were allowed to pull from both hydrants on Canal. It would be almost impossible, with as flat as we are, to get 3500 gallons out of one hydrant, so they allow this.

Mr. Cox added when they pulled their numbers for the base scenario, they did it at a full tank with no well pumps on and that is how they basically ran each of the scenarios. With this system in place, he is showing that they have this gallon per minute flow. Also, and this was done during the Astor Hotel fire, the Fire Chief worked with the public utilities department in turning on well pumps and making sure the supply was there. That will boost the pressure on the lines and give more flow. Councilman Macon asked if this is the worse case scenario. Mr. Cox agreed.

Mayor Clark asked the Fire Chief if he is satisfied that he has the firefighting capabilities now on the North End and with the improvements we are looking for hopefully this year. Chief Roberts said they started the study initially in May. The engineering firm was brought on soon after that. In the meetings with Mr. Cox, Mr. Steve Pagley, Director of Operations, and himself, he knows there is some funding already there. He is excited to know they have some money, some permits in hand, and they can go ahead and get started. So the answer is yes, he feels comfortable in the direction they are going. Mayor Clark said he thinks it would be good for the public to know with the first tests they found some problem hydrants. That allowed them to zero in on that area and they found some partially closed valves that were causing a lot of the problems where they had the low flows. Chief Roberts said they have been working on this. They know they have a DOI inspection coming up within the next year or two and a large part of the grading process is the water system. They have been working on it and with the results with the water model this will help them greatly. Mayor Clark said that it still shows we have some work to do. We still have the crossovers to make and we have the 12 inch main on the North End to do. Councilman Macon said, as far as he's concerned, Scenario 14 is the way to go.

Mayor Clark asked Mr. Pagley if they have a plan for each of these steps. Mr. Pagley said two of them have been designed, one is permitted and one is in permitting. The other scenario needs to be designed. He wanted to know if he could get Council's permission to have the engineer finish doing the 12 inch main on the North End on Maryland and the other two crosses at Seagull and Sandpiper. If they did, he could apply for the permits for him to install it. Most likely the installation will be done in house.

Mayor Pro Tem Gilbert wanted to know if there was a dollar amount for the design. Mr. Pagley said when he talked to Mr. Cox last Thursday he estimated \$212,000 to do the North End. That was with contractor forces. If they used the town's forces, they might be able to come in under that. Mayor Clark said that is not the design that is the total project. Mr. Pagley answered that would be the total project. The crossovers are around \$22,174 each to go from Canal Drive to Carolina Beach Avenue North.

Mayor Pro Tem Gilbert said they had a conversation about the Capital Improvement Fund for updating the water meters and Mr. Pagley wasn't comfortable with where the water meter technology was so they were considering realigning those funds for this. He asked Mr. Pagley if he is still talking about that. Mr. Pagley said yes, he was. He said it will probably be in the next budget Council meeting, the budget amendment to realign those funds to the water distribution and out of radio read meters. He said it is appropriated in this year's budget. Councilman Macon made a motion to direct the design on the 12 inch main and the crossovers and move forward with Scenario 14. **MOTION CARRIED UNANIMOUSLY.**

REQUEST BY KURT BARTLEY ON BEHALF OF THE GOT-EM-ON KING MACKEREL TOURNAMENT

Mr. Kurt Bartley asked Council to please allow them to use the parking lot on Canal Drive for the tournament that is scheduled for July 6-10, 2006. This year they are doing the King Mackerel Tournament and also hope to do a Blue Water Tournament. This includes tuna and blue water fish. They are looking to get king mackerel fisherman and also other fishermen into our area. The committee is asking Council to allow them to use the parking lot beside the Scotchman on Canal Drive. It has been the best spot they have had. It is open to the public. This is one of the huge tourism draws they have at the beach each year. Councilman Johnson said the memorandum states July 6-8, 2006. Mr. Bartley said those are the dates the actual tournament will be held. They usually need a day to break down and move the trailers out. By July 10th, the parking lot should be open. Mayor Pro Tem Gilbert asked if they need any assistance from the town staff or personnel where Council would have to set aside any overtime or safety and security. Mr. Bartley said he didn't think so. He said usually they are able to handle it. He said Mr. Pagley has been helpful in the past. It is a fundraiser for the Fire Department so a lot of the volunteers do a lot of the work. Councilwoman Efirm made the motion to allow Got-Em-On to use the public parking lot on Canal Drive and Carl Winner as requested. Councilman Johnson seconded the motion. **MOTION CARRIED UNANIMOUSLY.**

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Clark said Council was to recognize Gary Stream from the Police Department. He said Mr. Stream came by his office today and told him he had a family emergency. He apologized for not being able to attend tonight. Mayor Clark said Mr. Stream has five years of service with the town.

INTRODUCE NEW EMPLOYEES

William Younginer, Police Chief, said we have Victor Lauber, a new policeman. He has lived in the area for 11-12 months and comes to us from Rochester, New York. He came here looking for a police job. We are proud to have him here at Carolina Beach. Everyone applauded our new police officer.

Mr. Pagley introduced Joseph Lonergan and Anthony Young, who was unable to attend due to sickness. He also introduced Brian Stanberry, our new Storm Water Superintendent. He has been with the town for five years and has worked for the Storm Water Department for three years. He attended North Carolina State University and has some background in soil and erosion control. Everyone applauded Mr. Stanberry. Mayor Clark said he received a call yesterday from a citizen saying we need more employees like Brian. He did some storm water repair in his area and he wanted to thank Brian for that.

PRESENTATION OF EMPLOYER SUPPORT OF THE GUARD AND RESERVE “ABOVE AND BEYOND” AWARD TO THE TOWN OF CAROLINA BEACH

Mayor Clark asked Ed Parvin, Senior Planner, and Robert Nicholl, Interim Town Manager, to come forward. Mayor Clark said last month he went to a military type awards ceremony in Concord, North Carolina. He said there were 64 employers there honoring the employees. The ceremony was for employers who go above and beyond to support the troops. Six hundred applications were submitted and 64 were selected. The Town of Carolina Beach, through Ed Parvin's recommendation, was selected as one of the employers. Mr. Parvin said he did a narrative for the original award that was presented to the town last summer called The Patriot Certificate. He submitted that award based on his situation. He started with the town in a part-time position. After two months, he was recalled to duty for approximately eight months. The town had no obligation to bring him back but they did hold the position for him. Mr. Parvin was grateful for this. He submitted for the award for the town as his employer. Based on the Patriot Award, there are some employers who are considered to be above and beyond. The Town of Carolina Beach was one of those employers who were considered for this award. Mr. Parvin said he appreciated the Mayor going to receive the award for the town and thanked him for the support. Mayor Clark said it was a heart warming ceremony and there were a lot of big and small companies that participated. The bottom line was they were supporting the troops and a lot of them said it was the right thing to do. Mayor Clark thanked Mr. Parvin. He also wanted to give credit where it was due. This was not credit to the Mayor. It was credit to the Town Manager who was there at the time, Mr. Calvin Peck. The Mayor said that if you see Calvin, he is responsible for supporting the troops through Ed. Everyone applauded. Mr. Nicholl said they will be sure it is properly displayed in Town Hall.

PUBLIC DISCUSSION

Mayor Clark said the first name is Ann Bowman and he reminded everyone to keep their comments to five minutes.

Ms. Bowman began by saying she owns property at 923 Coastwalk Lane and also Coastwalk Real Estate. She said she wanted to address something Council may have just handled. However because of the importance of this, she would like to continue. She presented some prepared comments that she handed out and read aloud (*Exhibit 1*). After she read the letter, she informed Council that one of the five loans failed today. She appreciated hearing that Council is going to hold a special meeting on Thursday, March 2nd to consider this matter.

The next speaker was Allison Rankin addressing the topic of crime/police support. She is concerned about the crime in her neighborhood. Her house has been robbed twice in the last 14 months and her car was broken into four weeks ago. She is concerned about the level of protection and the level of awareness in our communities. She urged Council to put in their new budget money for additional police officers. She also urged Ms. Quattlebaum to apply for some of the police grants that are available. She would like to see some foot patrols, bicycle patrols, and an organized effort on behalf of the city workers and community people for a neighborhood watch. She said it is a terrible feeling to be violated this way and it is terrible for a ten year old girl, like her daughter, to have to come home to this. Councilwoman Efirid asked Ms. Rankin where she lived and she replied 7 North 8th Street, which is between Dow Road and Cape Fear Boulevard.

James Norment was the next to speak. He is the attorney who represents Arcadius Development. He worked with the town for several months last year and appeared before the Town Council last December to represent the Arcadius Developers and their ground lease. Tonight he returns to let Council know Arcadius still wants to work with the town in implementing its development plans. He said the town regulates development through its ordinances and staff. Tonight he asks them to focus on the town's role as the engine behind economic development, not necessarily as the regulator. To do this, it takes a willingness to look at issues from a new perspective in order to achieve responsible economic growth that is good for the entire community. He asked them to do that when it comes time to allowing Arcadius to build a retail and parking structure where it is now a plain parking lot. Many towns, cities, and counties across the state participate in a public/private venture. This is where a private company agrees to make a substantial investment in a community in return for the opportunity to lease, not get for free, or to work out some kind of relationship with the local government for some local government property. Economic incentives and economic initiatives certainly are nothing new. In this time of tight budgets, it's important to keep an open mind and consider any opportunities that might help in economic revitalization of the town. In December, many people were legitimately and validly concerned the town Council did not have enough time to review the lease. He stated he is here tonight to tell Council they will work to make sure every Council member is familiar with the lease, knows what is going on, and nothing is rushed. They are not expecting this to take place over the next few weeks, maybe not even the next couple of months, but they want to work with Council as best they can. Mr. Norment also said it is important that a contract between the town and Arcadius be clear and understood as possible. He believes once they are familiar with the lease terms, been provided with whatever safeguards and conditions they can work out,

Council will come to see how the lease is an important part of the community and can help ensure the town's economic future. He thinks together they can make a lease that is a significant investment in the community through retail businesses and parking opportunities that are all necessary for increased positive growth. He's not talking about unrestrained growth. He appreciated Mayor Pro Tem Gilbert's comments during the December hearing that he would take a fair look at anything that came up in the future related to the lease. That is all they are asking for tonight and over the course of any negotiations that take place between Arcadius, himself, the excellent town staff, Mr. Clyburn, or Mr. Nicholl. Arcadius is not going to get bogged down in rehashing the terms of the old lease. Instead they are going to do whatever it takes to cooperate, educate, negotiate with Council for a future at Carolina Beach that reflects not only Arcadius' valid economic interests but Council's convictions and that benefits the community. He said they believe the December lease was a good document and it would have benefited the town; but having said that, they also believe that Council's cooperation and input can change it, revise it, rework it but overall can probably turn it into something that's even better.

Finally, they are here tonight because they want to make this a public process. They are committed to working with Council in any appropriate way, especially working with them in public and with the staff transparently. He stated during the March meeting, they may want to discuss how to proceed with Arcadius. He knows there was some procedural issue this afternoon. In the meantime, they propose a public workshop, not a hearing or anything formal, but a workshop where they can sit down with staff, Council, and the public to discuss the terms of any potential agreement and the legal rationale for why this is a good idea.

Leroy Franks, 908 Canal Drive, spoke on the topic of public safety. He began by saying the town has issued 51 conditional use permits. Out of the 51 conditional use permits submitted in the last two years, 51 have been approved. He continued by saying Article 14.9 states four conditions need to be met before a conditional use permit is issued. The number one condition is the proposed project will not endanger public safety or health. He said at the last town Council meeting, the fire chief stated they could not save a single family home or duplex with only 750 gallons of water on the North End. He did state he believes in sprinkler systems. Mr. Franks said he would like to remind Council it takes 1500 gpm's to blow a sprinkler system. He said this is not in consideration of the six and ten pack condominiums built in the 1980's that did not require a sprinkler system. He said, perhaps a note of interest is the Astor Hotel did have a sprinkler system but it did not save the hotel. He said the past administration had knowledge of these conditions for years but refused to address the problem. His recommendation is to declare a moratorium on construction on the North End until the problem is resolved.

Randy Simon was the next to speak. He asked Mayor Clark to direct him. He said they were supposed to be on the agenda and he signed in since he did not see them on the agenda. Mayor Clark said they were open to public comments so for him to go ahead and speak. He said they have not been contacted and stand with open door. He continued they had a meeting with the Mayor about four weeks ago after a Planning and Zoning meeting. They discussed the specifics. They were led to believe something was going to be done. He was very disappointed they, he and Ms. Black, have not been contacted by anyone. There is no communication and that is very disappointing to him because he knows it is needed in a community like ours. It embarrasses him to speak tonight

because he is all for Carolina Beach and for the administration. He brought pictures to show again to demonstrate how serious the problem is. He approached Council with the pictures. Mayor Pro Tem Gilbert asked Mr. Simon if he knew where the tide was when these pictures were taken. Mr. Simon answered the picture of the boat being soft to ground is at low tide. The pictures showing the contrast where there is suppose to be water was taken at medium to high tide. He wanted to demonstrate with a picture how serious the problem is. They have a 30 inch drainage pipe and they are not talking about a little bit of sand and silt. They are talking about wheel barrels, truck loads, which of course were demonstrated through the last dredging that was conducted in the Fall of 2004. The picture of the boat being aground where there should be five feet of water at mean low tide indicates one aspect of the truck loads he is talking about. The other part is they had to find a place to put the dredging material, which was put on the Taylor property next door. He is basing his determination of truck loads of soil coming through the pipe, mud, silt, using those as the basis of his saying truck loads. He is trying to emphasize how serious this problem is. It has been ongoing now for two years in March. They have seen where the town has made an effort, or a beginning, when the town dug up the junction boxes at the entrance to Black's Marina. Of course, they found the pipes had fallen down from the junction box. He talked to the workers as they worked. They said there was no mortar put on the pipes to hold them in place when they were put in by the contractor the town paid for. The pictures he has shown also were effective on June 16, 2004. Pictures of mud coming through the 30 inch pipe which were taken by town employees from the storm drain department and they gave him the pictures. He continued there is no question storm drain has known about this. Mr. Simon said he met with Mr. Pagley in the summer of 2005 and he stated to him he thought it was taken care of in 2004. Of course, nothing was done at that period of time. At least a little bit was done in the last 48 hours. He said he was suppose to be on the agenda and he mentioned that in the beginning and he would like to have Council respond back to him in some shape or form.

Mayor Clark said he would request for Council to complete the public discussion and then they will address this issue. Mayor Pro Tem Gilbert said they did make a commitment that hopefully they would have some kind of answers or dialogue.

Shep Oliver was the next person who signed up to speak. He wanted to address Item #20 on the agenda. However, since there is a public discussion for Item #20, he will wait until that time to speak.

David Ward signed up to speak but decided to decline.

Mayor Clark said he met with Mr. Simon and Ms. Black one month ago. He was planning to work on this issue and started working on it. He received a call from the lawyer two days later saying there was a law suit involved and was asked not to discuss the issue. Tonight our lawyer said let's get this issue solved; let's get it in the open and work on the issue. Mayor Clark asked Councilwoman Efird if she had some ideas she wanted to discuss. Councilwoman Efird said she spoke with Mr. Pagley several times and talked with him again tonight. She thinks he has some ideas.

Mr. Pagley said he too found out tonight there are no legal issues involved with the situation. He has been talking to Councilwoman Efird over the last week and a half and Councilman Macon a couple of times regarding the situation. In light of the new

information, he promised Councilwoman Efirm tonight he would start moving forward in solving this problem. Starting tomorrow morning, he will keep her informed since she knows Ms. Black personally. He will make sure they come up with an answer to the problem before the next Council meeting or let Council know how far along he is in resolving the problem. Right now, Mr. Pagley knows Mr. Stanbury bought silk sacs, which is DOT's answer to capturing sand and debris in storm drains right now. They hold the bag and when the street sweeper goes by, he cleans the bags out. In some of the pictures, it can be seen they were installed. They will do a pipeline inspection. They may need to build a retention system somewhere along the pipe system before it dumps into the marina with a four-bay to capture the sand. Clean water will run through the Riprap into a one inch pipe unless there are heavy rain events then it will go up two feet and dump into the grate and go out in large volumes. If they can build a system like that, somewhere near the sight, he thinks they can start solving some of the problems. Mayor Clark asked Mr. Pagley if they were going to need engineering to build another catch basin. His reply was no. They just need to find a sight and then size the sight to see if they can put a big enough pond there. There isn't a lot of land left anywhere on the island. If it is a smaller pond then needed, they will have to make sure it is cleaned instead of once a year, maybe twice a year.

Mayor Pro Tem Gilbert asked if we know where the material/sand is coming from? Is it coming from a specific location or as it empties out is it causing some erosion somewhere or is it something that has to be investigated? Mr. Pagley said it needs to be investigated. He said during the middle of the year, there was a budget amendment and they bought a new sweeper. They have been using the sweeper almost everyday which has a storm drain box cleaning attachment. The person who operates the sweeper lifts the grates off and cleans the boxes out. It is a large system that collects and goes through that system. He knows what is being built in Jubilee Park is 100% retention. Their system shouldn't involve the existing system. Mayor Pro Tem Gilbert said this was dredged in 2004 and wanted to know if it has filled back in or is it filling back in. Mr. Simon replied it is filling back in. The socks, Mr. Pagley referred to, are high and dry and no water is flowing through them right now. The socks are above the water. The only time the socks will come into play is when there is a rainstorm. He has addressed two of the open grate areas where water flows from the street into them. Mr. Simon said he counted at least six to seven within sight of the two that were fixed that haven't been touched. One of the ones he referred to within 100 yards of where the socks are is a major cave in through the Jubilee Project. Mr. Simon said he is not an engineer but he can see a cave in and the dirt went somewhere and it is within three feet of an open culvert of the new storm drain system. He had people take pictures of these and it is still there. It was there this afternoon. He continued to say Ms. Black has done everything she can possibly do. She has employed a license marine engineer who is seated with her this evening. She has brought into play and paid for people who build catch basins because nothing has been communicated in two years. Right now Ms. Black's out of pocket expense is \$16,000 and the clock is still ticking. The professional people are going to require subsidies for doing their research in engineering. He said he is getting the impression, at least tonight, they are going to reach some common ground. He said regarding another retention pond, it takes up a lot of land which is very valuable. Ms. Black received \$1 for the entire easement and she even paid for the pipe of the original 30 inch storm drain line that has been added into how many hundreds of percent from the original which includes Jubilee Park going to Lake Park Boulevard to the retention pond behind the Microtel Motel. He doesn't know where all the open culverts are on Lake Park Boulevard and where they

flow. He hasn't seen the dimensions. He said maybe Mr. Pagley can mention that part. They are getting so much sand even though, as Mr. Pagley stated, the socks were put in place a week ago, after two years, and they are above the water flow. Mayor Pro Tem Gilbert asked how long ago the socks were put in. Mr. Pagley answered said about a week ago. He continued they are there to capture the sand that runs off the road. If there are holes in the pipe, they aren't going to capture that. He said they sit inside the invert of the catch basin. They capture all the run off. Mr. Simon said this is the mud coming through the pipe that the storm drain people took pictures of on June 16 and 17, 2004. He continued by stating that it clearly shows the mud flowing through in the picture, ironically taken by the town's people and they gave them to him. He said he has other pictures that will support all of that. Mayor Pro Tem Gilbert asked if the pictures were taken by town staff. Mr. Simon replied yes, Charlotte Buckley and Danny who are no longer employees of storm drain he has been told. He said they are the two people who actually came down and made a verbal statement. This was during the water main on Lake Park Boulevard. Mayor Pro Tem Gilbert asked that was when this was happening. He said he met with them three months prior and there were major problems. He said they came down and took the pictures and said we've got them now. He said he asked them who we got. He said they replied the people who broke the pipe. He said DOT was doing work and had contractors. The bottom line is March will be two years and we just got two socks in the last week which are both above the water level, which will help if it rains when the water flows 24-7. Mayor Pro Tem Gilbert said his perception is two years ago the incident was investigated and it was probably investigated by the people who broke the line and there were some insurance issues and other things. He thinks somebody saw the results of the investigation and said it's not our fault and we are going to let it sit. He continued that he can't speak to why it sat for that long. He said he spoke with the investigator and the man was so confident the sand did not come from there although that is just one opinion of course for the insurance company or whoever he worked for. Mayor Pro Tem Gilbert would like to see some kind of investigation because there is a picture of some muddy water coming out and it came from somewhere. If it is continuing to fill in there, he feels they have to figure it out and get the work done. Councilman Macon agreed they need to fix the problem.

Mayor Clark said they need to entertain a motion to have the operations department proceed to investigate, repair, and put in a catch basin and/or pond as needed. If they need engineering help to design the catch basin, then go forward with that. They need to check the problem with the piping and go ahead and proceed with it. Councilwoman Efird said she talked with Harry Dail. Mr. Dail looked at it and told Councilwoman Efird he would get in touch with her. Mr. Simon said he would like something to be taken into consideration. He does not want any more of Ms. Black's land taken. He feels Ms. Black has already done enough as far as \$1 for the easement and she would like to protect the property she still has in the marina area. The motion is the Operations Department should proceed to work with the Black's to get this problem resolved. Mayor Pro Tem Gilbert said he feels it needs to be investigated. He wants to see an investigation, identify where the sand is coming from and put the corrections in place without intruding on their easement anymore. It's coming from somewhere and it probably isn't coming from their land. He asked Ms. Black if that what she understands. He said that you don't want someone to come in and dig up your land and put a catch basin in there if the sand is still going to come in and fill up that catch basin. Mr. Simon said that from the engineers he has been able to talk to that Ms. Black has employed, Mr. Simon said a catch basin is definitely needed. He feels Ms. Black has done her share like draining the property

already, which has many catch basins within her property. Mayor Pro Tem Gilbert said he wanted to make sure it was on the record that he and the others understood what Mr. Simon was saying. Mr. Simon said this is a serious problem not only for Ms. Black's marina but for our waterway, which is being filled in. His and Ms. Black's concern is not only for the marina but with the environment and everything else. Mayor Clark restated this motion to have the operations department proceed with what is necessary to make the repairs and the investigation and work with the Black's to resolve this issue. Mayor Pro Tem Gilbert seconded the motion. **MOTION CARRIED UNANIMOUSLY.**

CONSENT AGENDA

Mayor Clark read the consent agenda.

Approval of the Minutes

Special Meeting/Workshop	January 7, 2006
Regular Meeting	January 10, 2006
Special Meeting	January 31, 2006

Consider request for budget amendments and transfers:

Police-Transfer

The Police Department is requesting that \$5000 be transferred from account 105100.45-Contract Services into account 105100.08-Uniforms to cover expenses through 6/30/06.

Executive-Transfer

Due to the resignation of the former Town Manager, there were costs associated with 401K that were not budgeted within the current years' budget; therefore, a transfer is needed to cover these additional costs. The request is to transfer \$1058.09 from account 104200.45-Contract Services into account 104200.10-401K.

WWT-Transfer

The WWT Department is in need of additional monies in three accounts in order to complete the current fiscal year, account 308100.16-Maintenance of Equipment needs \$8000, \$5000 money is being transferred from account 308100.45-Contract Services and the remaining \$3000 is coming from account 308100.03-Overtime, account 308100.33-Supplies needs \$1000, this money is also being transferred from account 308100.03-Overtime.

Operations-Amendment

The Operations Department is requesting a budget amendment for additional telephone and postage costs. The request is for \$30,000 to be appropriated from general fund unappropriated fund balance and that \$30,000 be appropriated from

water/sewer unappropriated fund balance to go into accounts 105800.11-Environmental Telephone/Postage and 308120.11-Water Telephone/Postage. It seems as if there were not enough monies appropriated in the current year's budget to account for the expenses for the entire year.

P&R-Amendment

The Parks and Recreation Director, Ted Lashley, is requesting that \$30,000 be appropriated from general fund unappropriated fund balance into his account 106200.74-Capital Projects for an increase in costs related to the NCDOT Grant TEA 21 Trail from Snows Cut to Harper Avenue. The original cost for the project was \$74,357 with DOT paying \$49,357 and the Town paying \$25,000, however, the costs have risen since this agreement was reached causing the project to now cost \$104,357.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a text amendment to Section 22.7 Prohibition of Certain Testimony, under Article 22 Zoning Ordinance Text and Map Amendments.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a request for a conditional use permit for a planned unit development consisting of seven two-unit buildings located at 500 Spencer Farlow Drive.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a request for a conditional use permit for a triplex at 1303 Canal Drive.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a request for a conditional use permit for a triplex located at 613 Carolina Beach Avenue North.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a request to amend Article 14.8 Action by Town Council.

At this time, the Town Clerk asked for a motion concerning Consent Agenda Item 12(h) that was previously pulled from this evening's agenda concerning Article 18 Non-Conforming Situations and Article 23.3 Definitions. A motion was made by Councilman Johnson to hold a special meeting on March 2, 2006 at 6:30 p.m. to resolve the issue of non-conforming situations. **MOTION CARRIED UNANIMOUSLY.**

Mr. Steve Harrell, Director of Planning and Development, asked if he could comment about the reason for having the hearing on March 2, 2006 in terms of timing, which Mayor Clark agreed. Mr. Harrell said people were concerned about doing this quickly. There is a statutory requirement under North Carolina statutes that there has to be at least ten days notice before a public hearing can be held. As soon as they could get it in a newspaper and meet the ten day requirement was March 2, 2006, otherwise they would have tried to do it quicker.

At this point, the Mayor continued to go over the consent agenda.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a request to amend Article 8.9 Design Specification Standards.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a request to amend Article 7 Off-Street Parking & Loading Requirements.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider a request to amend Article 3.3 Every Lot Shall Have Access to a Street.

Adopt Resolution No. 06-861 supporting improvement to Zeke's Island basin area at Federal Point - Terminus of US 421 South (*Exhibit 2*).

At this point, Councilman Johnson asked if item (m) and (n) is something that was being asked for tonight. He said it doesn't say it is for March. Mayor Pro Tem Gilbert said Kure Beach is adopting this resolution this week. The county is getting ready to request these funds so the intention was to actually adopt this resolution at this meeting. Ms. Prusa explained that if they approve the Consent Agenda, Council will be adopting that resolution and they will also be approving under Item 12(n) the lease agreement with the State Employees' Credit Union.

Approve the lease agreement for a 2-year renewal option with the State Employees Credit Union for the ATM location at 1121 N. Lake Park Blvd.

Set a public hearing date for March 14, 2006 at 7:30 p.m. or soon thereafter to consider approving a ground lease agreement with Arcadia Group, LLC for property located at the intersection of Carl Winner Street and Canal Drive.

Councilwoman Efird made a motion to approve the Consent Agenda. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – REQUEST FOR PUBLIC INPUT CONCERNING BUDGET FY 2006/2007

Before this began, the Town Clerk addressed Mayor Clark. She said the Katie B. Hines Senior Center sent a letter requesting consideration of \$4000 for fiscal year 2006/2007 and there is a letter before him. The letter was added to the packet this evening. Mayor Clark said they will take that to their budget workshop.

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

Tom Campbell of 304 Bay Court had some comments concerning the proposed budget for 2006/2007. He presented four guidelines for Council to take into consideration as they consider the budget: 1) Do not raise water and sewer rates in order to pay for infrastructure and improvements. Instead find a way to stimulate smart growth which will expand the tax base to pay for these improvements. Better yet find another developer similar to Arcadius who is willing to pay for some of these improvements; 2) Plan to adjust our local property tax rate so that we can remain revenue neutral when the evaluations are introduced in 2007. Please do not use higher property value as an excuse

just to raise the property taxes; 3) Make every effort to maintain our town's undesignated fund balance at its current level. We need a high undesignated fund balance to allow our town to continue to operate during a natural disaster if we should be hit by a hurricane like Katrina; 4) Do not divert the \$1,125,000 that has been set aside for the senior center and the library. It is Mr. Campbell's opinion that using these funds for any other purpose is to devalue senior citizens and also to send a negative message to those citizens in our town who use the library on a daily basis. He continued by stating that as our elective officials, we look to you to find a way to raise funds to cover the needed water and sewer improvements without causing Carolina Beach to be a more expensive place to live. We look to you our Town Council to develop a plan for smart growth that will expand our tax base to pay for these needed improvements in our infrastructure rather than passing these costs onto us in terms of higher property values. In conclusion it is my sincere hope that at the end of your term, you will be able to say that you were a member of a town council that did not increase water and sewer rates, that did not increase property taxes, that did not lower the designated fund balance and that did not betray the public trust by diverting funds from one project in order to simply pay for another project. He thanked Council for their consideration. Councilman Johnson asked Mr. Campbell if he would like to submit that to the clerk for the record, which he replied yes.

Next to speak was Leroy Franks, 908 Canal Drive. He began by saying as a senior citizen he would like to say the infrastructure on the beach needs to be redone. He said that the previous administration promised it to us. It was semi-delivered and never done. Now we're faced with real problems. The fire department can't put a fire out at his house should his house catch on fire. With the wind blowing like it does on the North End, the fire could jump and burn down Councilman Macon's condo next door. With only 15 feet apart between these structures, a good wind storm and a hot fire could potentially burn the entire North End.

Lonnie Lashley, 102 Florida Avenue, spoke about lifeguards. He said that he never heard anyone speak about lifeguards except Mayor Pro Tem Gilbert and Ms. Johnson. He stated we need lifeguards at the North End and suggested Council to consider this when working on the next budget. Mr. Lashley would like to see the Recreation Center have a satellite location on the Boardwalk. There are vacant buildings and Council may be able to negotiate with an owner at one of those buildings to take a tax break and give the town space rent free for June, July, and August. The Recreation Center could have something at the beach for our tourists as well as our own kids. We could have a pool table, ping pong, chess, checkers, etc. Again, having it at the beach which will bring tourists, which is something we need to do. Mr. Lashley's third suggestion was hire an individual who will be a coordinator for business recruitment and marketing of the beach. He thinks it is very important to get tourism here, greater than what we have had in the past. It's a little dead down at the boardwalk he said. Another item is the skate park. He thinks we need to find an area for that for our children. Councilman Macon said we have an area. Mr. Lashley said then we need to put it up and let the kids use it. It would be great for the kids. Mr. Lashley's last suggestion was to have a builder's youth fee. Any builder who builds on this island should contribute to a fund which can be taken care of by the Rec and Parks Committee and suggest things to Council and what we can use those funds for. Councilman Macon said we always want to throw it on the back of the builder's although he doesn't know whether that would be legal or not. The fee ends up being passed on to the buyers of the property. Mr. Lashley commented that the buyers of the properties will

bring kids in. Councilman Macon asked him, when you bought your house did you bring children with you? Mr. Lashely's response was, no.

The next speaker was Jim Rees who lives at 610 Atlanta. He wanted to thank the Town Council for supporting the skate park. He thinks it is a great thing for the community, the residents as well as for visitors. It is a great asset to advertise that we have a skate park here to get people to come here. When Mr. Rees had a skate park here in the early '90's several people told him he came here specifically because we had a skate park. Their teenage kid could go to the skate park, teenage boy usually at that time, he wasn't going to just hang around on the beach. I think it is really important this skate park be built and be built quickly. I would like to ask the town perhaps to commit to a little extra money now that it has been two years since the initial budget. I know construction costs have gone up a lot in that time. I don't know what percentage. It might even be 50%. Since the park didn't get built when we were talking about getting it built, I would like to ask a little extra leeway on that. In finishing, he thanked Council for their commitment to the skate park. I know everyone wants the skate park and just try to get it done as soon as possible. Let's find a place for it. If we need to allot a little more money let's do that. Councilman Macon asked, what do we need to allot more money for specifically? Mr. Rees said for increased construction costs. Councilman Macon asked, do you want to expand it or change something? If you want to expand that's fine. I think what we had based on the budget was minimal, absolute minimum. Councilman Macon said he is dedicated to that, that's not a problem. I don't have a problem with where it's going. I don't think we need to cave into a few people that may not like it. It doesn't matter where you put it, somebody is not going to like it where it's going. I'm all for it. Mr. Rees, asked are you talking about putting it on the original site and Councilman Macon's response was absolutely. He continued, you are never going to get permission to put it anywhere else.

Mayor Pro Tem Gilbert said to Ted Lashley, Director of Parks and Recreation, that he talked about putting basketball courts where the volleyball courts are now. He wanted to know if there is any difference between a basketball court going in there and a skate park. They are both concrete. Mr. Lashley said regarding the size they didn't think it would be big enough. Mayor Pro Tem Gilbert wanted to know who didn't think it would be big enough. Mr. Lashley said that he looked at it and he didn't think it would be as big as what they could do at the present location. Mayor Pro Tem Gilbert asked Mr. Rees what his feeling was on housing a reasonable size skate park on the volleyball courts next to the tennis courts. Do you think you can do it there? Mr. Rees said that you might be able to have a little more than what is over here. It would just be a matter of changing the design concept, which he doesn't think is a problem. He's not sure of the constraints where the volleyball courts are located. Mayor Pro Tem Gilbert said he knows what the discussion was when this was a hot item because the residents had an issue with where it was going, so there was going to be some alternative sights looked into. He said to Mr. Rees, with you designing it and looking at those alternative sights maybe we can have the best of both worlds. If the volleyball courts will contain it, it was in the budget, and we look at our construction costs, then the skate park could go there and there are probably alternatives for basketball courts. He continued, if we had to pay another \$30,000 because we've sat on top of this for whatever reason, then he thinks we should go ahead and get this done. Mr. Lashley said you have to realize anything we do at Chappel Park you've got to think about Sunny Point. Mayor Pro Tem Gilbert asked if anyone has spoken to them within the last year and Mr. Lashley said not about a skate park. Mayor

Pro Tem Gilbert said he thinks we need to make it an initiative and proceed. He continued there are some Council members who have relationships there and we can get them involved. Councilman Macon said they don't like structures. Mayor Pro Tem Gilbert said this is concrete and it is relatively low on the design so we need to start the ball somewhere. By not approaching those folks over there or creating a relationship, then we are undermining what we are doing and we will be another year behind. Mr. Rees said as a resident he would like to see something happen as oppose to trying to put it over here where the residents have already objected. Councilman Macon asked are we going to move the basketball courts over here now and are they going to object to that?

Mayor Clark said let's get back on our budget requests. He asked if anyone else would like to speak on the budget and no one did. Mayor Clark said our interim town manager has been working on the budget since he arrived. He has adopted a calendar for the budget and asked Mr. Nicholl to review it with the audience. He said they budget workshop will be open to the public.

Mr. Nicholl said tonight they are having the public hearing with citizens. This afternoon through February 16th he will meet with department heads to prepare for the budget retreat. March 2nd will be the budget retreat and Chris May from the Council of Governments will be there. March 28th through March 30th, the department line item budgets will be presented to him. On Tuesday, April 25th, there will be a Council budget workshop to review the proposed budget. May 9th there will be a Council meeting budget public hearing and the manager will present an overview of the budget. On June 13th, there will be a Council meeting public hearing to consider adoption of the budget. June 30th is the deadline to have a balanced budget presented and adopted. The new fiscal year begins July 1st.

Councilwoman Efirm made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Macon asked if staff was going to check on a proposal for Sunny Point and he was told yes.

PUBLIC HEARING – REQUEST FOR A CONDITIONAL USE PERMIT AT 610 CAROLINA BEACH AVENUE SOUTH FOR A QUADRUPLEX

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

After Mr. Harrell was sworn in by the Town Clerk he began by saying the first item under the public hearing that deals with the Planning Department is a request for a Conditional Use Permit at 610 Carolina Beach Avenue.

BACKGROUND

The applicant is proposing a four-unit, three story sprinklered condominium building. These are two, two bedroom units and two, four bedroom units. The property is 6,250 square feet (0.14 acres). Currently the property is vacant; there is no building on it.

ANALYSIS

Mr. Harrell presented to Council overheads identifying different aspects of the property. The zoning is T-1. It allows the maximum lot coverage of 40%. The structure coverage is 40%. It meets the set back requirements of 20 feet front, 10 feet side and 10 foot back.

PARKING

It meets the required parking of 10 spaces.

LANDSCAPING

It meets required Type A landscaping.

STORMWATER

Stormwater runoff will be controlled onsite by grading site to prevent runoff and by creating four (4) foot wide gravel troughs continuous on each side of the building for roof drainage. Two (2) downspouts to French drains on each side of the gravel troughs and concrete areas sloped to trench drains also piped to the gravel troughs.

REQUIRED FINDINGS

The property is recommended to Town Council subject to all required findings, TRC review comments and staff conditions 1 through 20 which are located in their packet.

Mr. Harrell said he would like to point out they have received the grading schedule and the proposed construction schedule. The grading schedule is proposed for April 1st. Mr. Maynard is there to answer any questions about his project.

Mayor Clark said number 17 on the staff conditions it says 65 parking spaces. Mr. Harrell answered that is a typing error, so Mayor Clark said it should be ten. Mr. Harrell agreed.

Mr. Harrell said it was a unanimous recommendation of staff and the Planning Commission for approval. Mayor Pro Tem Gilbert asked if floor plans were presented. Mr. Harrell answered there was not a floor plan in their packet but they did receive a floor plan through TRC and the staff. He continued there are no bedrooms of the concern Council had in the past; there are no game rooms or libraries proposed. Councilman Macon said that isn't something they have approval on anyway but he has requested in the past he would like to see what the building is going to look like. Mr. Harrell said he does have it here tonight if Councilman Macon would like to see it. Councilman Johnson asked if Planning and Zoning saw elevations. Mr. Harrell answered yes they saw the packet and apologized for it not being stapled to the C-1 Site. Mayor Pro Tem Gilbert said it was very difficult for him to make any approval or comment to the items that they need to without seeing an entire packet. Mayor Pro Tem Gilbert asked Mr. Maynard if this is consistent with the ones that have come through before. Ms. Prusa said Mr. Maynard needs to be sworn in. Mayor Clark asked if there were any more questions for Mr. Harrell. Councilman Johnson asked if it is possible to put an elevation up on the

screen. Mr. Harrell said they do not have an elevation for the screen. Councilman Macon explained, it's not that we control what it looks like or we control what the bedrooms are and what they call them because we don't, that's not what we're approving but I would like to see what it looks like. Mr. Harrell said that he understands.

Mr. Maynard was sworn in by the Town Clerk. He began by saying he would be happy to answer any questions. He said this is the third identical building they will be building on Carolina Beach Avenue South between the lake and the ocean. It is identical in every respect to the other two which were unanimously approved in the past. He was sorry they don't have a frontage and side elevation of the building for them. They weren't asked to bring one tonight and he apologized for that. He said their architect is here if there are questions he can't answer. Mayor Clark asked if the height was the same as the others? Mr. Maynard said the height is identical as the others - slightly less than 50 feet. Mayor Pro Tem Gilbert said he wanted to make sure it was similar to the other ones because he was familiar with his other projects and he knows they went through and they have done really well with those. That was his only concern because he didn't see any elevations or drawings, so he wanted to make sure they were still dealing with the same product. Again, Mr. Maynard stated they were identical in plan. In fact, the plan that has been submitted for permitting has those three addresses on the cover sheet, so they are identical.

Councilwoman Efirm made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson made a motion to approve the Conditional Use Permit for 610 Carolina Beach Avenue South with the required findings 1-7, General Conditions 1-4, Technical Review Committee Recommendations 1-4, and Staff Recommendations 1-19 with a correction on #16 to read 10 parking spaces as follows:

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

TRC REVIEW

The Technical Review Committee reviewed this proposal at its December 19, 2005 scheduled meeting the TRC recommendations for the project were:

- Planning: 1) project completion schedule/grading start
2) names of adjoining owners and uses; all land 150' from the site
3) exact location of flood plain, floodway & floodway fringe areas determined
By FEMA
4) landscaping to meet Type A requirements

STAFF RECOMMENDATIONS:

The applicant has addressed numbers 3 & 4 of the comments from Planning above. Staff recommends approval of the Conditional Use Permit subject to required findings above and the following conditions:

1. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
2. The structure shall be limited to 50' in height. A sealed set of plans from an engineer must accompany the building permit showing that the structure does not exceed 50'.
3. Flood certification must be presented prior to issuance of certificate of occupancy.
4. Maintenance of permanent open space, parking, streets, sidewalks, drainage systems, utilities, and other such facilities:
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.
5. 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.
6. Prior to issuance of a building permit, an engineered stormwater plan must be submitted and approved. The stormwater system shall be installed according to approved plans and a letter signed and sealed by a licensed engineer shall be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy or payment of stormwater management contribution satisfactory to the Town.

7. Curb and gutter around the perimeter of the property and a drainage plan 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.
8. Indicate on plan refuse collection and agency to be used. Refuse collection site must be enclosed on all four sides. Site must be closed and secured during inactivity.
9. Building must be constructed to meet minimum North Carolina fire code. Additionally sprinkler system will be required to be installed. Final approval of code and sprinkler system shall be by the Fire Marshall
10. 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.
11. 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.
12. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.
13. 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.
14. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of Building Permit.
15. Approval Letter from Division of Water Quality from the Public Water Supply Section for a construction authorization permit.
16. Final project must be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. Final project must be designed to provide the required 10 parking spaces.
17. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
18. 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.
19. Sidewalks curb and gutter shall be installed in accordance with Article 8 of the zoning ordinance and be ADA compliant.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING – REQUEST FOR A MODIFICATION OF A CONDITIONAL USE PERMIT AT 1000 N. LAKE PARK BLVD. (JUBILEE)

Jeremy Hardison was sworn in by the Town Clerk and began making the following presentation:

BACKGROUND/HISTORY:

The applicant is requesting a modification to the original planned unit development that was approved by Town Council on February 8, 2005. The site is 6.59 acre tract of land located at 1000 N. Lake Park Blvd in the Highway Business zoning district. The applicant was approved for 114 residential units and 10 commercial units (attached is the original memo to Town Council).

ANALYSIS:

Staff has reviewed the following changes and determined there are major modifications as defined by **Article 14.12 Modifications to approved plans**. Jeremy Hardison, Zoning Administrator, presented to Council the analysis as also outlined in the staff memorandum of January 5, 2006 as follows:

Overview of Changes	Town Council Approved Plan	Requested Modifications	Modification under 14.2
Open Space	101, 783 sf	77,915 sf	A reduction in approved open space
Internal circulation design	Has changed Fire Marshall has approved the change		Change in internal circulation design
Bedroom Count	288	300	Increase in density of units
Gated Community	none	2 gates (1) off of Saint Joseph and (1) behind the commercial building	Changes are impacted by Article 14.2 of the Carolina Beach Zoning Ordinance
Parking	402 total with 2 additional loading spaces (397 required)	346 total with 2 additional loading spaces (335 required) + 11 pool	
Change in number of buildings; building placement; and location of the stormwater pond	11 buildings	10 buildings	
Units	114	110	
Traffic control devices	none	Turing lane added off of Lake Park Blvd., Traffic separation stem, turn-around	

Planning and Zoning heard this proposal at its January 12, 2006 meeting and unanimously recommended approval.

Mr. Hardison stated the approved conditions before Council in the grant order still must be met with the modifications.

Councilman Johnson asked Mr. Hardison in reference to the parking he just went through, there are 346 parking spaces and on the plan there are 271 parking spaces which includes the 75 commercial parking spaces. In the attachment, there is a letter dated December 13, 2005 where the applicant is showing 260 parking spaces under the modification. Mr. Hardison said he believes that is for the residential use. Councilman Johnson stated that is what he is questioning. In the letter, the applicant is showing 260 parking spaces but yet on the plan it is showing 271 parking spaces. He asked, is the 271 parking spaces correct on the plan? Mr. Hardison replied that's correct because in his narrative, he did not calculate for the pool parking. Eleven parking spaces were required for the pool. Councilman Johnson said he wanted to point out he was looking at a narrative where the storm water pond did increase in size to handle the storm water, as far as the retention, which he believes Mr. Hardison did mention.

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

After being sworn in Mr. Scott Chase who represents the firm JR Realty said with him is Mr. John Johnson, who is the Director of Operations and one of the partners in the project. Also with him was Rob Balland and Jeremy Polara, who are the engineers involved with WK Dickson. They are all there tonight to entertain any questions Council has at this time.

Mr. Chase wanted to clarify that they are decreasing density by four units. As Mr. Johnson reiterated with the storm water pond, they actually increased the size of the pond to recapture some of the difference with the decreasing of the space as well.

Mayor Pro Tem Gilbert said for clarification they are reducing density but increasing the bedrooms by 12. Mr. Chase said the number of units went down by four but they did increase the bedroom count. Mayor Pro Tem Gilbert said its impact on services is actually greater. Mr. Chase responded it is actually the same. They had 114 units and it is basically the same. Mayor Pro Tem Gilbert said they went from 288 bedrooms to 300 bedrooms. He said it looked like they are increasing the number of people who will live there so it increases the impact on services. They went from 11 buildings to 10 buildings. They have 12 more bedrooms, four less units and 56 less parking spaces because of the change in the Zoning Ordinance. Regarding the former conditional use permit, they are being held to all of that and he wanted to know if it said parking in that. Mr. Chase said they are making a request for modification and it includes the parking count as well. Mayor Pro Tem Gilbert stated they are using the new zoning rule when they are doing that which Mr. Chase replied, yes that's correct. Mr. Chase continued that technically they are decreasing density but Mayor Pro Tem Gilbert did make a valid point about the bedroom count but it is decreasing density.

Mayor Clark said the DOT forced some of these changes. Mr. Chase said absolutely. The 100 foot stem that is showing on the new plan was a requirement from DOT and the right turn lane as well. Councilman Johnson asked if that is a turn in lane only. Mr. Chase replied that is a right turn and there will be a left turn on the other side of the stem that is

heading north. There is one way to the right and one to the left and then right in only. He continued they do have an access from St. Joseph Street to capture the traffic coming in on the back side. Councilman Johnson said he was curious about the gates. He wanted to know if they were by a code or swipe card. He said TRC made some recommendations for what the gates need to be and they were fine with the specs that were necessary per the town. He said they also took into consideration for stacking of vehicles on both the east end and west end of the project. Councilman Johnson asked Chief Roberts if they crash the gates during a fire. Chief Roberts replied Mr. Chase is looking at gates that can operate with the touch of a siren so they will actually open with the proper tone that would be adapted to their truck. The other method is to punch in a code and go in.

Mr. Leroy Franks of 908 Canal Drive was sworn in by the Town Clerk. He stated it was just explained this was a major change in their plans. He thought it was customary and procedures of the Town of Carolina Beach if there is a major change then they have to apply for a new conditional use permit. It goes in front of Planning and Zoning again for approval and then back to Town Council. The second question he would like to address and approach Mr. Chase with is who is Mr. West. Mayor Pro Tem Gilbert said to Mr. Franks he thought it did go to Planning and Zoning. Mr. Hardison replied, January 12th. Mayor Pro Tem Gilbert said this went through the whole process. There is a new application by JR Realty. There is no person's name. Mr. Franks said there is no Mr. West. Mayor Pro Tem Gilbert continued owner name and address says Jubilee Park, Carolina Beach. Mr. Franks said the deed is addressed to Mr. West. Mayor Pro Tem Gilbert said it did look like it went through the process.

Next Mr. Rees of 610 Atlanta was sworn in by the Town Clerk. He said he wanted to ask a couple of questions. His first question was since this is a major modification, are they essentially given a new conditional use permit. Councilman Johnson answered it went back through Planning and Zoning to review the conditional use permit for the major modification. As a resident, Mr. Rees doesn't like the fact that it seems as though the bedroom count goes up and they are saying the density goes down. He knows that's a technicality and he thinks it is time people step up and say that is a technicality and let's not put up with it anymore. Regarding the gated community, Mr. Rees said he likes that fact.

The Town Clerk swore in Jan Wisebeck, 118 Georgia Avenue. She wanted to know if they put gates in the residential portion of this development what town services are they entitled to as far as maintaining the roads since there is no public access to it by the tax payers who don't live there. Mr. Harrell said they are not public streets so there will not be any expense in terms of maintenance. It is within a private development. Ms. Wisebeck asked if it will be maintained by a homeowners' association, which Mr. Harrell replied, yes, that's correct. He continued by stating that in order for it to be something the town would take care of, they would have to be dedicated to the town, they would have to be standards for our streets, etc., and none of that is proposed at all. It would be the homeowners association.

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

Councilman Johnson said he sees problems in some point in time if they don't start getting these applications and permits that are legible enough to read who is signing. The majority that came before Planning and Zoning you can't read who has applied. He requests in the

future that on these application forms there is a legible signature so they will know who it is. They may not be here but if there is anything down the road that somebody has to go look back, they would know who it was who actually signed for it.

Mayor Pro Tem Gilbert said he agrees with Councilman Johnson there is no clarity of who is applying. It says name of applicant and it is a realty corporation. For owner name and address it says Jubilee Park at Carolina Beach LLC. He guesses that is who owns the property. It says minor conditional use permit \$350, minor change modification to CUP. There is no clarity here on what is coming forward. He said when he was in the Navy, they put up fences not to keep them in but to keep other people out. Obviously they want to keep people out. It is concerning that this is on one of the gateways into our community and we have to gate it. He is also concerned that they have 12 more bedrooms and 56 less parking spaces. No matter what has been done with the buildings there are more bedrooms and less parking. He said since there are gates up, then people will be fighting within the gates for wherever parking there is.

Councilman Johnson said he had a question for the Planning Department. Since it was a major modification, why was it not a major conditional use permit cost? Mr. Harrell said he could not answer that tonight. The charge is made up front and he would have to look into that. He said he is sure this is a minor thing but he thinks it is something that needs to be looked at as far as the charge that was applied.

Councilman Macon said he doesn't like the gate either. He can understand the reason to try and control the parking. He doesn't like it but he understands it. Councilman Johnson said the plus side of the gated community, especially on St. Joseph, is people will not rush out onto the street. They are going to have to slow down and come to a complete stop to get through the gate. Mayor Clark said with the problems with the run off in that area it has to be a major plus with the larger run off pond.

Councilman Johnson asked if they are making smaller bedrooms and Mr. Chase said they are smaller units. Councilman Macon asked if there are more units. Councilman Johnson said fewer units but more bedrooms. Mayor Pro Tem Gilbert said they probably took some of their two bedrooms and turned them into three bedrooms. Councilman Macon said he doesn't see that as a density increase. Councilman Macon said it doesn't necessarily mean you are going to fill every bedroom with two or three kids.

Councilman Macon made a motion to approve the conditional use permit for Jubilee Park sighting the required finds 1-7, the general conditions 1-4, and the staff recommendations. Councilman Johnson said to Councilman Macon he would like to add one condition to that. He requested the Planning and Zoning Department to check on this application regarding the charge for the conditional use permit since it was a major modification. Mr. Harrell said yes, he said he would do that. Councilman Macon said he would add that to his motion. The conditions are as follows:

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

STAFF RECOMMENDATIONS:

TRC Reviewed the plan December 19, 2005 and the following were discussed:

Fire:

Show fire hydrants
Remove/redesign traffic islands around pond
Remove turnaround

Operations:

Need new calculations on stormwater pond
Need to show utility plan.

Fire Marshall has reviewed the plan and is OK with the traffic islands and turnaround.

MOTION CARRIED UNANIMOUSLY.

Mayor Clark made a motion for a 10 minute break. **MOTION CARRIED UNANIMOUSLY.**

The meeting resumed with Mayor Clark recognizing Mr. Harrell for a comment. Mr. Harrell said during the break, he had a conversation with Mr. Parvin and Mr. Chase and they looked at the conditional use permit. Basically what happened, he was reminded and recalls, Mr. Chase did ask Mr. Parvin and himself about the fact that the application does not say major modification permit it says major conditional use permit and minor conditional use permit. The major conditional use permit for the original Jubilee was paid of the \$800. They made an interpretation and Mr. Harrell approved it that these were major modifications to a major modification use permit and it wasn't described that way in

the application. That is why they charged the \$350. It was a modification to the major conditional use permit. If the interpretation should be that major modifications and major conditional use permits are one and the same, then they will charge the \$800 from this point forward.

Mayor Pro Tem Gilbert said a conditional use permit freezes the zoning and everything for the period it was issued and they are given vested rights at that snapshot. If someone is coming back for an application, modification or not, and you are using new zoning, that is a new conditional use permit. Either you use the zoning and the snapshot that you were given vested rights on or you are coming back and asking for new vested rights for certain things. So to Mayor Pro Tem Gilbert, they have applied for a major conditional use permit. Mr. Harrell said their interpretation obviously is not something Council is comfortable with so they will make sure they will apply it as a major use permit when it comes back.

Councilman Macon said his interpretation of what was proposed was fairly minor. It didn't change the project that much. His question is, are we going to base the fee on the person who decides to make a decision as far as whether this is a minor change or a major change? Mayor Pro Tem Gilbert said it isn't the fee he has a problem with; the problem he has is you have vested rights for the conditional use permit and that freezes the zoning. That is the window you have. If zoning changes in your detriment, you are not going to embrace it but if it changes in your benefit you can't go both ways. You can't decide which zoning you want to use. So to him, they have gone back and they put in a new conditional use permit. He thinks they need to be clear about this because they don't want people coming back for modifications and going to a different well to draw on from zoning. He thinks it is a precedent they need to discuss. Mayor Pro Tem Gilbert said that he doesn't care about the fee, except as a taxpayer. If we are spending \$800 worth of time and money to address it and we are only billing him \$350 then certainly I have a concern with that. Mr. Harrell said that was part of their thought process. They weren't spending the same amount of time in the second review because they had already done a major review of the project. They were just looking at the changes that were occurring. Councilman Macon said he likes that thought process but he understands what Mayor Pro Tem Gilbert is saying. He said they wouldn't come and apply for a change that was to their detriment. Mayor Pro Tem Gilbert said they just need to be clear. That was his main point. Are we giving him another two years of vested rights? Is it starting the clock over again or is it just a modification? When they went back to the zoning well and got a benefit from it, then to me we are talking about a whole different thing. Mr. Harrell said he agrees with that.

PUBLIC HEARING – CONSIDER AN AMENDMENT TO CHAPTER 3 ANIMALS AND FOWL, SECTION 3.9

The Parks and Recreation Director, Ted Lashley, presented this item. Mr. Lashley said this is request from the department and committee to amend Section 3.9 Dogs and Other Commonly Accepted Animals and Fowl on Public Right-of-Way; Public Lands, Property and Beaches. Ted said that the way the current ordinance is set-up, if you have a dog on a leash and a means to clean-up we don't have any way to keep you off of the ball fields, and animal waste has become a major problem at Chapel Park, McDonald Park and even around the lake. He said that they feel it has become a health hazard. He went on to say

that they are not anti-dog and they are going to provide a place for the dogs and the pet owners to unleash their dogs and let them run.

He then presented the following proposed language for Council's consideration:

Dogs and pets are prohibited from entering any park building (i.e., restrooms, concession stands and score towers.) Dogs and pets are prohibited within one hundred feet (100) of any concession or vending areas. Dogs and pets are prohibited from any established athletic field or court (i.e., baseball fields, football/soccer fields, tennis courts, basketball courts). Dogs and pets are prohibited within fifty feet (50) of any children's playground. Dogs and pets are prohibited from any mass gathering, identified as any planned event of two hundred (200) or more people.

He said they reviewed the rules and regulations of New Hanover County, Wrightsville Beach and Wilmington and everyone has gone to a standard to include this. He reemphasized that they are not trying to keep the dogs out of the parks but they are trying to keep the parks clean and keep the kids away from anything that is unsanitary.

A motion was made by Mayor Clark to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no public comment, a motion was made by Councilman Macon to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Macon said that he doesn't have a dog but he does have kids and he doesn't have a problem with people walking dogs in the park as long as the ordinance is enforced. He doesn't support the proposed ordinance and if the other Council members decide to do this he suggested that they put something in it to allow dogs for handicap folks.

Mayor Pro Tem Gilbert asked who is going to enforce the ordinance? Someone responded that it would be the code enforcement officer and the police department. Mayor Pro Tem Gilbert said that they do not use the playground at the lake anymore because of the interaction with all of the dog excrement. He asked, if you can't be within 50', how are you going to walk around the lake with your dog? Councilwoman Efird asked if the intent was to take dogs away from the lake? Mr. Lashley said the main thing in doing this is to keep dogs off of the athletic fields. He said there is no way to keep people away from the lake. He feels that signage is the answer and to use common sense. Councilman Macon said if you want to make an exception to include the lake you may want to do that within the ordinance instead of leaving it up to common sense or an officer's interpretation. Mayor Pro Tem Gilbert agreed and suggested that the language "within 50' of any children's playground except on designated walking paths" be inserted in the proposed ordinance.

A motion was made by Mayor Pro Tem Gilbert to adopt Ordinance No. 06-623 with the amended language "except on designated walking paths." (*Exhibit 3*) **MOTION CARRIED** (Councilman Macon voted no.)

Councilman Macon stated that we didn't include anything for handicap animals. Mr. Lashley said they are exempt by law.

PUBLIC HEARING – CONSIDER A REQUEST TO REZONE 1121 N. LAKE PARK BLVD. FROM R-1 TO HB

The Town Planner, Ed Parvin, opened by stating that the Town of Carolina Beach Planning Department is proposing to create a consistent zoning classification for the Carolina Beach Town Hall complex site. The western 2.2 acre portion of the Town Hall complex is zoned R-1 where the majority of the 7 acre site is HB. Surrounding the complex is: Old Mariner's Village in the R-1 zoning district (south); the state park in the conservation zone (west); Town Hall complex in HB (east); additional HB zoned properties (north).

Planning Staff requested that the Planning and Zoning Commission recommend to Town Council, the area be rezoned from R-1 to Highway Business on the premise that it is consistent with the six criteria as listed below:

1. Size of the tract:

The western portion of the Town Hall complex to be rezoned is approximately 95,868 square feet. Size is not relevant to the rezoning, but the fact that the complex is in two zoning districts and designated for public service usage.

2. Surrounding uses:

Surrounding uses consist of Highway Business, R-1, and Conservation.

3. Compatibility with the Land Use Plan:

In the 1997 Land Use Plan the Town Hall complex and recreation center are described in the "U.S 421 Commercial Area." Despite this, on the Land Classification Map the western portion was overlooked and designated as main residential.

4. Consistency with contiguous zoning:

The majority of the Town Hall complex is already zoned HB (approx. 69%). This rezoning would create contiguous zoning throughout the complex.

5. The impact of the zoning decision on the landowner, the immediate neighbors, and the surrounding community:

The Town will eventually expand the utilization of the Town Hall complex to include the portion zoned R-1. Making the complex entirely HB will allow the Town to explore all appropriate uses for the remainder of this site.

6. The relationship between the newly allowed uses and the previously allowed uses:

Some uses that are permitted in HB but not R-1 include but are not limited to: Auditoriums; Clubs and grounds for games or sports; not for a commercial gain; community buildings; exhibition building; laboratory for testing and research; museums; offices, public, private, or civic; schools, public; public building.

Planning and Zoning heard this proposal at its November 10, 2005 regularly scheduled meeting and unanimously recommended approval.

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

There being no public comment, a motion was made by Councilwoman Efird to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

A motion was made by Councilwoman Efird to rezone 1121 N. Lake Park Blvd. from R-1 to HB by adopting proposed Ordinance No. 06-620. (*Exhibit 4*)

Before voting, Mayor Pro Tem Gilbert commented that in the spirit of why this was requested was because of the inconsistency when they were trying to put a skateboard park there when it was R-1 and he wanted this to be as transparent as it could as to why this was initiated and what stimulated it.

Mayor Clark called for a vote. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – REQUEST TO AMEND APPENDIX A ZONING ORDINANCE, ARTICLE 23 DEFINITION OF “HIGH RISE”

The Town Planner, Ed Parvin, said this has been to Planning and Zoning a couple of times and to you once before to review the language and it went back to P&Z to review NC Building Code and information that we originally didn't present that was in the 1997 Land Use Plan. After second review, P&Z didn't change the definition and it still reads: “a high rise is a multi-story building over five stories (they did strike the word “and”) or fifty feet”.

Mayor Pro Tem Gilbert asked, if you own a building over 5 stories and it is designated as a high rise is there any insurance impact on you or any firefighting or anything that stigmatizes your building? Mr. Parvin said he cannot answer that question. He was curious that once you label that building would there be any impact. Mr. Parvin said as far as the ordinance the only thing that would be there is a requirement to sprinkle the building. As far as having the label there shouldn't be a problem.

A motion was made by Mayor Clark to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

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

Councilman Macon commented that he doesn't normally think of a five-story building as a high rise. Mayor Pro Tem Gilbert said that he was kind of surprised that in Charlotte, Chapel Hill, Charleston and Greenville, they consider a 5-story building a high rise, so they found some language somewhere to support it.

Councilman Johnson made a motion to adopt proposed Ordinance No. 06-621 (*Exhibit ____*).

Councilman Macon asked for some discussion first. He asked the town planner if what he is saying is that this went to P&Z and this is the recommended language. Mr. Parvin said this is what has been brought forth.

Mayor Clark called for a vote. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER A REQUEST TO AMEND APPENDIX A ZONING, ARTICLE 12 DEVELOPMENT STANDARDS FOR PARTICULAR USES

Mr. Parvin said they made some changes to this memo because the first memo that was sent forward was a little unclear because of some wording that was added at Planning and Zoning and we didn't catch it. He explained that this change came about as a result of the new flood maps. The multi-family and mixed use development now requires in the Central Business District, the commercial aspect on the ground floor, and after April 3rd the Boardwalk area will be in a V-Zone so this language changes it from the ground floor to the first habitable floor.

He referred Council to the second page that shows the verbiage that was recently changed by planning staff and the only changes, as broken down to #1 and #2:

This type of use, when allowed under a Conditional Use Permit, shall have:

1. The commercial use on the ~~ground~~ **first habitable** floor of the structure facing the public right-of-way or other public space, with the residential use ~~or commercial use on the remaining upper level floors.~~ **or**

He referred Council to #2 and said this was an option that was in the original language but it got a little confusing. We kept the intent but we reworded it because it was a little unclear and that was the reason for that change. It reads as follows:

2. In properties not impacted by the flood zone the residential use may be allowed to the rear of the ground floor commercial space ~~The architecture of the structure must be compatible with the surrounding architecture of the area in which it is located. For example, a mixed use commercial residential structure in the NB district should be compatible with a residential style of architecture or better.~~

Mayor Pro Tem Gilbert made a comment with respect to mixed use commercial residential, and he referred Mr. Parvin to the last part noted on the bottom that "the architecture of the structure must be compatible with the surrounding architecture of the area in which it is located. For example, a mixed use commercial residential structure in

the NB district should be compatible with a residential style of architecture or better.” Mayor Pro Tem Gilbert said he understands the spirit but his concern is, are you taking language that he can understand and can apply but are inserting a zoning table to explain what this means or what you can enforce – such as language about height, structures, roof lines, etc. Mr. Parvin said we took that sentence out because we don’t have any architectural standards. Mr. Harrell said he believes the question is, did we replace it with something else and he said the answer is, no we did not. Mayor Pro Tem Gilbert said we have had discussions about appearance commissions, architectural review, etc. and he asked what do we have if you are in a residential neighborhood and you have 25’ buildings and somebody wants to put in a 50’ building right next to it and he feels there are certain things that apply such as certain heights. He asked are we taking this out because we don’t want to have any type of architectural review? Mr. Parvin said we are taking it out right now because we don’t have any architectural review standards and so Planning and Zoning thought we should take it out until we do have some standards and when that does happen it makes sense to add it back. Mayor Pro Tem Gilbert asked if the architectural review is in process? Mr. Harrell said we are in the process of looking at all of the zoning ordinances as far as text change, etc., but we don’t have anything to present to you tonight. Mayor Pro Tem Gilbert said that he understands the statement and the spirit of it but he is not comfortable with taking it out. Councilman Macon said what if the architecture in your neighborhood is ugly but somebody is building something that looks good. He said you can handcuff yourself to something. He explained that he was in a neighborhood the other day that was 1960’s bungalows and right next door you had newer housing that looked better but if you put in architectural standards that has to match that neighborhood then you are limiting yourself to the 1960’s bungalows that look like crap. He said that what killed him during the election is the white elephant on Cape Fear Blvd. that takes up half of a block and then the owner also built a log cabin right behind it that he lives in with smart growth building signs in the yard. He asked, how is that smart growth? Mayor Pro Tem Gilbert said at least he had the setbacks. Councilman Macon asked how does it match the neighborhood?

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

Mr. Jim Rees of 610 Atlanta Avenue, said that he lieu of some of these things in terms of harmony and character he feels there should be some stricter height regulations and things that can regulate the building without doing architectural standards, like saying that you have to do this or that. He stated he has been working on some things himself. Councilman Macon said that once again not everybody thinks that a skateboard park in their backyard is a good thing to have. So, if you start getting into dictating what people can do ... Mr. Rees said that also as a resident he has a right not to have something built next to him that is out of place. Councilman Macon said that people have rights. Mr. Rees said that property rights work both ways and Councilman Macon agreed. Mr. Rees said that just because he has a skateboard ramp doesn’t matter in this case. Mayor Pro Tem Gilbert said that he lives across the street and he doesn’t feel that it devalues his property. He said that we don’t live in the wild west where we have acres of property and we live on small lots and if you go down to 3rd and Fayetteville and take a look you can see what stands out. He thinks there is not consistency in the architecture end of it. He went on to say that he has the right to live in a 1950’s house that is no more than 20’ tall and his neighbor has the right to build on their lot but if they build something that is 50’ tall then it just doesn’t flow. He feels that if you talk about roof trusses, you should

build in aesthetic lines and things into your building code, that is what he is talking about and maybe not color and shape, but when you actually look at it you can say that it fits in with the theme or continuity of the town. Mr. Rees said in the residential area you can build 50' high in R-3 next to one story and that isn't in the spirit of the single family neighborhood. He feels that 50' is a little excessive and he thinks a height limit and roof pitch limit above a certain height should be considered. Councilman Johnson said we have a minimum roof pitch and minimum eave projection right now. Mr. Rees said but the 6 on 12 is only for a single family. Councilman Macon asked if that was for modular. Mr. Parvin said it is for the residential zone. Mr. Rees said he is saying that might be a way to limit height by still allowing an extra floor but limit from doing a flat roof 50' high. Councilman Johnson said that gets back to somebody needs to make the application to the planning department in a particular zone if you are looking for a height reduction but as it stands right now those are the height restrictions in that particular zone. He feels that he has to defend this because we spent a lot of time on this and it isn't perfect but we felt like it was the best thing. Mr. Rees said that he feels like in lieu of character of harmony that a building has to fit into the area in which it is being built, if we take that language out then there is nothing to preclude someone from building a 50' high building. Councilman Johnson said that it is easier said than done, and he felt that Councilman Macon made a valid point because it is something that we looked at. He said you can get yourself trapped into areas such as in the Wilmington Beach area where you may have 4 mobile homes and somebody wants to come in and build a single family home that is only 35' high, and you have to look at it and if it fits in with the four mobile homes and those mobile home owners may ... Mr. Rees said and you are getting rid of that language the character and harmony. Councilman Johnson said that he didn't know we were getting rid of it and Mr. Rees said it is coming up at your next meeting. He asked, isn't that what the second part of this is about. Councilman Macon said he believes what we are doing is taking this out because there is nothing to back it up. Mr. Rees said if you take out things like that and coming up is more than height limits will help to promote harmony and character within the area. Councilman Macon said then that white elephant on Cape Fear Blvd. should have never been built and neither should that log cabin and Mr. Rees agreed. Mr. Rees said on the corner of 3rd and Hamlet he does believe that is a 6 on 12, and there is a duplex on Woody Hewett between Atlanta and Fayetteville and that is a flat roof building so he knows the 6 on 12 hasn't been enforced. Councilman Macon said that is in T-1, and he added that he has seen million dollar homes with flat roofs with pools on top that acts as a cooling system so what he is trying to say is when you start requiring architectural standards you handcuff yourself to what America is all about. Mr. Rees said but what is the alternative when people steal an extra story or two with a flat roof. Mayor Pro Tem Gilbert said – pushing the limits or finding holes in the zoning. Mr. Rees agreed. Mayor Pro Tem Gilbert said to help him understand this – the architecture of the structure must be compatible with the surrounding architecture of the area in which it is based or located. He understands that and he doesn't understand why we are striking it when we are talking about V Zone and why don't we talk about getting things in place before we start striking language that he understands and can help develop policy for and help administrate. He doesn't see why we are taking this out when we are talking about changing the Zoning Ordinance and making it updated to the flood map. He feels that someone is taking liberty on this and let's take liberty when we have zoning in place to actually fix it.

The next to speak was Dan Wilcox of 614 Monroe Avenue. He said the issue regarding harmony and character is a completely separate issue and he is sure you will have all the

information that you will need for that recommendation. He said that this language, as Councilman Johnson said, was looked into very carefully and it was decided that we don't have any architectural standards and if we don't have any architectural standards then we don't have any guidelines. He added that anything short of having guidelines for enforcing architectural requirements is nothing but subjective, and we don't have a body to make those decisions. He said there were a lot of reasons why this language was struck. The language may be clear but he doesn't know how it is enforceable. The goal was to eliminate unenforceable language. He said it is subjective, arbitrary and there are no standards by which to judge what is architecturally standard. Mayor Pro Tem Gilbert asked how did it get here? Mr. Wilcox said there are a lot of things that are in our ordinances that we are in the process of cleaning up and every time we clean something up we find 5 more things. He said that typically they come from other ordinances and sometimes they get taken out of context. He said unfortunately we have something in our ordinance now that we refer to as harmony and character that is one of the four conditions that we use and it came from Chapel Hill and they stopped using that language in 1986; however when they did use that language they had an architectural standard and that language was tied to that standard. Our town took that language and used that standard that was intended to be tied to an architectural standard. He said we have found that there is no way to enforce this because there are no standards. The staff and P&Z would be glad to entertain appearance standards and we have done it several times but we have run into many more pitfall than benefits. He said this is just one more thing that confuses people when people see that we don't have an architectural standard but we have the requirement. Mayor Pro Tem Gilbert asked, so at one time we had an architectural review committee? Mr. Wilcox said only for the central business district and that isn't currently in effect, and this addresses other districts. Mayor Pro Tem Gilbert said that his position is that he is looking at a memorandum about flood zones and some wordsmithing was done in here out of context and he would like to see discussions with appearance commissions so when you drive down that street your neighbors aren't calling you asking what did you do. Mr. Wilcox said the reason why it was struck is because it isn't enforceable. He said if you are going to make change to text to look at all of the text and make sure that it reads as best it can read. Mayor Pro Tem Gilbert said he would like to see some discussion in the near future about appearance. He asked Mr. Harrell to look at 3rd and Fayetteville. Mr. Harrell said that he understands that he wants them to look at these things. Mr. Harrell explained that this is the language that was approved for Council's consideration at a September 2005 P&Z meeting and that is why it is coming forward in the form that it is now. Mayor Pro Tem Gilbert said so we have a conditional use process and that gives us the ability to look at a case by case and he can look at these things and make a decision and he understands harmony, but he doesn't want to discuss anymore about not being able to enforce. He said we are changing things but not putting anything in place to cover the holes that people are going to take advantage of. Mr. Wilcox said with all due respect the conditional use permit allows for certain requirements to be placed on projects as long as those are not inconsistent with the intent or the spirit of the ordinance. Mayor Pro Tem Gilbert added, and the Land Use Plan. Mr. Wilcox went on by stating so if you want to suggest that an appearance standard can be applied to a project just because it is under a conditional use permit you may want to take a look at that. If you apply an appearance standard to a conditional use project and the ordinance clearly doesn't have an appearance standard and therefore the intent is not to have it then you would be making a recommendation that would be inconsistent with the intent of the ordinance. Mayor Pro Tem Gilbert said with respect to not having a master plan we have to default back to the Land Use Plan because that is the only thing that

people have had input on. Mr. Wilcox said that unfortunately the Land Use Plan is not an enforceable document and the ordinance is.

Mr. Leroy Franks of 908 Canal Drive, said that he agrees with Jim Rees and Alan and his one comment is that the more empty spaces and language that you remove leaves another loophole for the developer to take advantage of our town and our goodwill.

A motion was made by Mayor Clark to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Pro Tem Gilbert said the memo is about flooding and the changes are outside the scope of what the memo was presented for. Councilman Johnson said that he disagrees because he served on that board and as Mr. Wilcox said we have spent a lot of time with this and the staff has spent a lot of time with this. He agrees with Mr. Wilcox that it has never been enforceable and it doesn't apply, we don't have appearance standards and we don't have an architectural review board. He believes that it won't come in place for a long time. He made a motion to accept the proposed Ordinance No. 06-622 (*Exhibit 5*). He said that it was unanimously recommended by the Planning and Zoning Commission, that he was a part of. Councilman Johnson clarified this motion includes the changes with the new mixed use/commercial section which has item #1 and item #2 per Ed Parvin's memorandum.

Mayor Clark said there is a motion on the floor and he asked if there is anymore discussion. He commented that he agrees and understands the language here but enforcing the language is a bigger picture. Mayor Pro Tem Gilbert said that it may be a pie in the sky but what you are telling me is you don't want an architectural review or any kind of appearance in this town. Councilman Johnson said that he believes that he has misinterpreted that and they all wish for a lot of things and we can stand up here and pass all kinds of ordinances but if you can't enforce it there is no need for them to be on the books.

MOTION CARRIED. (Mayor Pro Tem Gilbert voted no).

PUBLIC HEARING - CONSIDER AN AMENDMENT TO CHAPTER 9 MOTOR VEHICLES & TRAFFIC, ARTICLE VI SCHEDULES, SCHEDULE A SPEED LIMITS TO REDUCE THE SPEED LIMIT ON SPENCER FARLOW DRIVE

Chief William Younginer, Police Department, said this is an issue that was brought to the Police Advisory Council. They have been working on this for three months. He said they did a study on Spencer Farlow Drive about the speed. They looked at a little over 900 cars. Although no excessive speed was observed, this survey started in December, so they didn't get a good survey of what traffic would be. The big concern in the area was about the big boat traffic too. There has been a lot of building in that area, so there is a lot more foot traffic in the area and there is more residential area at both ends of it. People came to the Police Advisory Council to slow the traffic down from 35 mph to 25 mph. It is a town street so it can be adopted in the ordinances. There are some people there tonight who want to speak about this issue and they have been faithfully coming to the Police Advisory Council. The Police Advisory Council did recommend lowering the speed limit. He said the speed limit wasn't really excessive, it was around 35 mph and sometimes it was a little

under. Although there were a lot of cars, they didn't get a lot of boat traffic and that is what they really wanted to look at. There are some people wanting to talk about boat traffic in there. Chief Younginer said the problem is if you are going 35 mph and we give you a little bit of leeway before we write you a ticket and you pass a large boat, you're in trouble on Spencer Farlow.

Councilwoman Efirid made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Steve Stanton, 527 Spencer Farlow Drive, was the first to speak. He said he was there to encourage Council to reduce the speed limit to 25 mph. He and his wife have owned 527 Spencer Farlow Drive for about five years. Since they have owned it, there has not been another single family house built on Spencer Farlow Drive. What has occurred though is waterfront condos has added another phase, Harbor Point has maxed out, Paradise Cove has completed its condo units and there are any number of duplexes that are being built, have been built and are planning to be built. All of this has increased the volume of traffic on Spencer Farlow Drive. Additionally, the Chief talked about the boat ramp. North Carolina Wildlife has done a nice job of enhancing the lot at the launch over the past fall. They have increased the capacity and that means more boaters. Often on the weekends when the lot becomes full, all of the boaters don't know that. They head down Spencer Farlow Drive with boat sizes ranging from 14 to 30 feet single to triaxle trailers. They get down there and find that the 10:59:16 is too long. They turn around and race to the state park or if they do make it into the launch, everybody seems to be in a hurry to get to the ramp. When they get back at the end of the day, a lot of sun, maybe some drinking, they are all in a big hurry to get out of the ramp. Spencer Farlow Drive is only a half mile long. The road hasn't changed but the volume of traffic has definitely increased. Mr. Stanton encourages Council to at least approve a reduction on the speed limit on Spencer Farlow Drive.

He also said they need additional signage. Currently there are only two signs. One sign is posted at Annie and the other sign is adjacent to his mailbox, which indicates 35 mph. Someone entering from Bridge Barrier doesn't know the speed limit until they get almost halfway down Spencer Farlow Drive. Additionally, when someone pulls out of Annie if they don't notice the 35 mph sign adjacent to Annie, they will never see another 35 mph speed limit sign until they get off of it. He is requesting if they reduce the speed limit to put another sign at Bridge Barrier and another sign headed west somewhere above Whelk, where Whelk intersects Spencer Farlow Drive, so there will be two signs in both directions. This would make traffic aware of the speed limit.

Next to speak was Shep Oliver of 1508 Drill Shell Lane, which is off of Spencer Farlow Drive. He has lived on the island for seven years and the first four and a half years he lived on Spencer Farlow Drive. He has really seen the traffic increase in seven years. He said one problem on Spencer Farlow Drive is it is not a straight road. If you go down Spencer Farlow Drive, there is a curve and it goes down a hill. When they were trying to pull out a drill shell and people were doing 35 mph coming out of the condos or with a boat behind them, sometimes you look left then right or right then left and they are right on top of you as you come out. Several times he has had to stop. He feels they need the 25 mph speed limit. There are kids down there now with all the multi-family dwellings and the traffic has increased ten fold maybe more in seven years, so they are asking Council to be proactive and try to slow it down. Maybe it will make people think a little more. There hasn't been

an accident that Mr. Oliver knows of and they certainly don't want one, especially with the kids and the walking path. There are bicyclers there and kids walking. He is asking Council to reduce the speed limit.

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

Councilwoman Efird made a motion adopt Ordinance 06-624 in reducing the speed limit on Spencer Farlow Drive from 35 mph to 25 mph. Councilman Johnson said he would like to direct the Operations Department to look into the additional signage as requested (Exhibit __). **MOTION CARRIED UNANIMOUSLY.**

Mayor Clark said they tabled the following items:

PUBLIC HEARING - REQUEST FOR A CONDITIONAL USE PERMIT AT 500 SPENCER FARLOW DRIVE FOR A PLANNED UNIT DEVELOPMENT (TABLE TO MARCH 14, 2006)

PUBLIC HEARING - REQUEST FOR A CONDITIONAL USE PERMIT AT 1303 CANAL DRIVE FOR 3-UNIT CONDO (TABLE TO MARCH 14, 2006)

PUBLIC HEARING - REQUEST TO REZONE 908 S. LAKE PARK BLVD. FROM HB TO MX (TABLE TO MARCH 14, 2006)

REQUEST FOR A CONDITIONAL USE PERMIT FOR A TRIPLEX LOCATED AT 817 CANAL DRIVE (PUBLIC HEARING HELD 1/10/06)

Mr. Harrell said the public hearing has been held on this. A major presentation was made at the January 10, 2006 meeting. They are coming back tonight for making recommendations on the next two items. This was after looking at the fire protection issue.

Mr. Parvin said both projects, this item and the next item on the agenda, are the same as presented in January. It was tabled based on waiting for the presentation from the engineer they heard at the beginning of tonight's meeting. Mayor Pro Tem Gilbert asked if the triplex will be sprinkled and Mr. Parvin replied yes. Mayor Clark asked if staff was recommending approving this. Mr. Parvin stated staff recommends approval with all the 23 conditions. The applicant is there tonight if there are any questions. Mayor Clark asked if Planning and Zoning recommend the project. Mr. Parvin answered Planning and Zoning recommend denial based on the 1 ¼ multiplier. He referred to the December 29, 2005 memorandum. He said there are some strikes on the first page. After the applicant moved the bulkhead, he changed from 7,090 square feet to 7,351 square feet, which gives him enough upland area to have his three units. The basis for denial for Planning and Zoning is no longer there. Mayor Pro Tem Gilbert wanted to know if Planning and Zoning voted on this and Mr. Parvin replied yes. Mayor Pro Tem Gilbert asked if this went back to Planning and Zoning to get their endorsement because originally they voted and turned it down because of the bulkhead. Mr. Parvin answered no. Mayor Pro Tem Gilbert said if they pass this it was basically turned down by Planning and Zoning. Mr. Parvin said approval or denial goes forward to Town Council. They could table it but their

recommendation was denial based on the 1 ¼ multiplier, which the applicant now meets. Councilman Macon said Planning and Zoning was looking at something that has now changed because the bulkhead was removed. Mayor Pro Tem Gilbert wanted to know if it goes back to Planning and Zoning to let them approve it. Mr. Parvin said it goes to Town Council for approval.

Councilman Johnson said he has the same question as he had before. The property, when it first came before Planning and Zoning when Councilman Johnson was on that committee, was originally 7,090 square feet. When it was represented to Planning and Zoning then there was a question about the 1.25 multiplier, although they are passed that. But at the time it was presented to Planning and Zoning and the drawings they had was with the new existing bulkhead. Now the 1.25 multiplier has been dropped and they are saying the square footage has increased because of the bulkhead, yet the bulkhead was presented to the committee back then at 7,090. He is confused about that. Mr. Parvin said the applicant is there and he could probably clarify this better than he can as to how the bulkhead was moved.

Mr. Robert Collins, the applicant, said at the Planning and Zoning meeting the bulkhead had not been redone. The calculations had not at that point been resurveyed. After the CAMA permit and after the new bulkhead was put in within the CAMA permit, the new survey comes up to the new footage amount. Councilman Johnson asked if there is a certified survey that shows that and Mr. Collins replied yes. The next question Councilman Johnson had was for Mr. Parvin. He said on the front setback off of Canal Drive in that district, they require 20 feet, yet the applicant has a front setback of 10 feet. The rear setback requirement for that area is 10 feet and the applicant has a 30 foot setback. Councilman Johnson wanted to know why they can't get the 20 foot setback off of Canal Drive. Mr. Parvin answered the 30 foot is a state requirement from the Division of Coastal Management. The 10 foot is an allowance in our ordinance for all those lots on Myrtle Grove Sound that have lost land due to erosion. Whether it is permitted by right single family-duplex or conditional use permit, they are allowed to have a 50% reduction in their front yard setback by our ordinance. Councilman Johnson continued by asking is the new bulkhead line to the new building line going to be 30 feet? Mr. Parvin said yes, that's right. Councilman Macon commented this is a CAMA Minor Permit requirement undisturbed 30 feet.

Mayor Clark asked Mr. Dan Wilcox, Chairman of the Planning and Zoning Commission, to come to the podium. Mayor Clark said he has trouble approving something when Planning and Zoning denies a permit. He asked Mr. Wilcox what is feeling is about this. Mr. Wilcox said he can't speak for the rest of the members but Councilman Johnson was right. There were two things they were looking at. The major one was there was concern about the setbacks and that has been addressed. The only other major stopping point Mr. Wilcox remembers they were under their square footage. Where the bulkhead was shown on the presentation to them, it fell just below their density requirements. Again, he said he can only speak for himself, he would have voted differently had they met the requirements because that meant they would have met all of the requirements and he would have had no reason to deny. Mayor Pro Tem Gilbert asked didn't Mr. Lank Lancaster, the Planning Commissioner, have some extensive discussion about the erosion. Mr. Wilcox answered there was a fair amount of discussion about the erosion. He thinks it is a problematic issue because no one can determine how much erosion there was and the ordinance doesn't say it has to be two inches or it has to be a foot, nobody can determine if that happened

between 1959 and 1979. There is no stake in the ground out there where you can measure and say it didn't recede. As a practical matter, all the properties up on that basin that haven't been bulkheaded have continued to deteriorate and have continued to recede. He thinks logically speaking it stands to reason it did lose some area. Mr. Lancaster seemed to think it was minimal. Councilman Johnson said it only came into play because at that time the applicant was asking for a 1.25 multiplier to meet the requirements of being able to do three units. Now per the staff, they have a certified survey once the new bulkhead has been put in. It shows they have the minimum or a little above the minimum requirement of square footage to meet the three units requirement. Mr. Wilcox said there was some discussion among the board about making a trade off recommendation. The applicant was under his square footage; so if he would create a greater setback, they would give him a consideration. He opted not to do that, which he had the right to do. Therefore, the members denied on that 1.25 multiplier since it didn't meet the standard and now it does.

Mayor Pro Tem Gilbert asked Mr. Wilcox is his gut feeling if it went back it would get approved. He replied that is his gut feeling. He doesn't see a condition where they would be able to deny.

Councilman Macon made a motion to approve the conditional use permit citing the 4 general conditions, the 7 required findings and the staff recommendations 1-23. Councilman Johnson said and to add for clarification to item #15 where it says the building will meet minimum fire code that our chief has stated it will be a sprinkled building. Councilman Macon agreed. Councilman Macon also had a question about the portion that reads "show curb, gutter, and sidewalks", and he asked Mr. Parvin if this is because it is three units and it is going to click into that. Mr. Parvin's reply was, yes. Councilman Johnson said until we get rid of that language the fire chief is recommending that the building be sprinkled. The following are the citations:

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

The Technical Review Committee reviewed this proposal at its July 21, 2005 scheduled meeting. The TRC recommended the project to be submitted to the Planning and Zoning Commission if the following comments are addressed:

1. Show curb, gutter, and sidewalks.

STAFF RECOMMENDATIONS: The applicant has addressed comments from Planning, Operations (Stormwater), Fire, and Inspections. A 3-unit dwelling is allowed under Planned Unit Development with the approval of a Conditional Use Permit in R-1 zoned properties. Staff recommends approval of the Conditional Use Permit subject to required findings and TRC comments above and the following conditions:

1. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
2. CAMA Minor Permit must be secured prior to Issuance of Building Permit.
3. The structure shall be limited to 50' in height. A sealed set of plans from an engineer must accompany the building permit showing that the structure does not exceed 50'.
4. Flood certification must be presented prior to issuance of certificate of occupancy.
5. Final project must be designed to provide the required 9 parking spaces.
6. Final site plan must include cross-section of paving detail.
7. Dwelling must be designed and constructed so that it will not impair any adequate supply of light and air to adjacent properties.
8. 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.
9. 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.
10. 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.

11. Prior to issuance of a building permit, an engineered stormwater plan must be submitted and approved. The stormwater system shall be installed according to approved plans and a letter signed and sealed by a licensed engineer shall be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy or payment of stormwater management contribution satisfactory to the Town.
12. Show all existing structures on site plan that are to be removed.
13. Drainage plan 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.
14. Indicate on plan refuse collection and agency to be used. Refuse collection site must be enclosed on all four sides. Site must be closed and secured during inactivity.
15. Dwelling must be sprinkled as required by the fire chief and constructed to meet minimum North Carolina fire code and must be approved by the fire marshall.
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. Water meters must be relocated in the right-of-way and run lines to each unit.
19. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.
20. 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.
21. Provide and label on the site plan at least 25% open space
22. Sidewalks curb and gutter shall be installed in accordance with Article 8 of the zoning ordinance and be ADA compliant.
23. 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.

MOTION CARRIED UNANIMOUSLY.

The Town Clerk asked Council if before moving on to Item #25, could they go back to Item #21 and Item # 22. She said there needs to be two separate motions to table these items to March 14, 2006.

Mayor Pro Tem Gilbert made a motion to table the request for a conditional use permit at 500 Spencer Farlow Drive for a planned unit development until March 14, 2006.

MOTION CARRIED UNANIMOUSLY.

Councilman Johnson made a motion to table the request for a conditional use permit at 1303 Canal Drive for 3-unit condo until March 14, 2006. **MOTION CARRIED UNANIMOUSLY.**

REQUEST FOR A CONDITIONAL USE PERMIT FOR AN 11-UNIT CONDOMINIUM LOCATED AT 406, 408 & 410 CANAL DRIVE (PUBLIC HEARING HELD 1/10/06)

The town planner said the actual Conditional Use Permit has not changed as far as staff conditions.

The Operations Director, Steve Pagley, requested as part of the condition of approval that the developer pay for the 8" water line to be installed on Seagull that comes to about \$22,000 along with the user fees. Mayor Pro Tem Gilbert asked how much more is a 12"? Mr. Pagley said that we don't need a 12" on the cross streets. Councilman Macon asked how the developer feels about \$22,000 worth of water line. The developer stated that he isn't in favor of it. He explained that this is the first time that they have heard of the water study and so they have no rebuttal against the 8" water line and he guarantees that they will. They would like to understand the purpose of why they are being required for that. Mayor Pro Tem Gilbert asked if he would like for them to table it, and the developer said no to go ahead and approve it based on the recommendation. Mayor Clark asked him if he was aware of the flow problems on the north-end and this is one of the solutions to help us out. Mayor Pro Tem Gilbert asked him if anyone called and told him how much it would be. The developer said they called to get something on the water study and they were told that the study would be presented tonight and they didn't get anything on the 8" line and this is the first time that they have heard of it. Councilman Johnson said under the fire conditions by TRC, there was a request for an extension of the 12" line from Arcadius at Dolphin and that needs to be completed before the project began. He said the 8" line will be less than the 12" line is going to be running down Canal Drive. The developer said that he agrees but they have a study that shows they can sprinkle their structure with the water supply that there is right now. They have it quoted and he has a copy of the proposal with him.

The fire chief said they have been looking at the project since October and they have had conversations with this developer and they did talk about the 12" extension. He said the water extension issue is not new but they did just now got a price on it. He wanted to make this clear. The developer said the fire chief is correct, that it was mentioned and he apologized. He said it is up to Council's discretion whether the project needs that requirement and he questions why their project would need the 8" if they can get the project approved base on the ordinances now and if they can sprinkle it.

Councilman Macon asked if the \$22,000 is based on our crew doing the work. Mr. Pagley said that is Gene's price and we are going to keep it in house and extend it so that it doesn't move him into a major.

The developer asked if this will need to be put in place before they start the structure and Mr. Pagley said that he would request that it be put in place before he gets the certificate of occupancy. Mayor Pro Tem Gilbert said, then all utilities required by TRC and staff

recommendations shall be completed prior to the issuance of the building permit, would go away, and on top of that he has to pay for the installation of the 8". Mr. Pagley said he is requesting that this be made part of the condition of the building permit. Mr. Pagley said they have held him up for a month waiting for the study so while he is doing the work there we could start installing the water line.

Mayor Pro Tem Gilbert said he will not be making the motion on this because he has a problem with general condition #4. He said if this gets approved that he agrees with the size of the building, the load on the structure, and he would like to follow staff's recommendations on item 1 and if someone wants to put in there to change it from building permit to c.o. He also agrees that #2 should be that the \$22,000 be absorbed by the contractor to install the 8" water line because of the size of the structure.

Mr. Pagley explained that the only reason that he recommended giving him some leeway is because even though it was done in the study, Brian would still have to do the engineering and submit the application and we would have to get the CAMA Permit since we are doing the water line. Mayor Pro Tem Gilbert said, so you are saving him some time by doing this.

The developer said that he understands the recommendation and he would like to proceed forward with Steve and Brian's recommendation. He said they still have to meet with TRC before being issued some building permits before the 8" line is totally in place.

A motion was made by Councilman Johnson to approve the conditional use permit for an 11 unit condominium at 406, 408 & 410 Canal Drive, subject to meeting all 7 Required Findings; all 4 General Conditions; all 19 TRC comments except for deleting under the TRC Fire condition #4 that reads: "If possible, extend 12 inch line from Arcadius, which stops at Dolphin. This needs to be part of the project and must be completed before construction begins", and deleting under the TRC Operations condition #5 the second sentence that reads: "12" lines will be required from the existing property to Harper Avenue"; all 26 staff conditions, and the Planning and Zoning Commission condition #1, to include the following condition to be number #2: "An 8" line to be installed at Seagull to connect Canal Drive to Carolina Beach Avenue North has to be installed before a certificate of occupancy is issued." The conditions are as follows:

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

- (6) 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;
- (7) 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;
- (8) Refuse and service area, with particular reference to the items in (1) and (2) above;
- (9) Utilities, with reference to locations, availability, and compatibility;

- (10) Screening and buffering with reference to type, dimensions, and character;
- (8) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- (9) 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;
- (5) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (6) 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 November 21, 2005 scheduled meeting. The TRC recommended the project to be submitted to the Planning and Zoning Commission with the following comment:

Fire:

- 1. Need sprinkler and stand pipe system.
- 2. Make sure the hydraulics work.
- 3. Need to improve gallons per minute flow. Now has 1,150 gallon/minute fire load. State needs 3,500 gallon/minute fire load. If the engineer cannot guarantee this, loops may be needed from CBAN. Need 12 inch connections from CBAN.
- 4. ~~If possible, extend 12 inch line from Arcadius, which stops at Dolphin. This needs to be part of the project and must be completed before construction begins.~~

Operations:

- 5. Check with operations concerning utility extensions to improve fire load. ~~12" lines will be required from the existing property to Harper Avenue.~~
- 6. Get a stormwater plan and make sure it holds 100% of stormwater on site.

Planning:

- 7. Pool has to meet commercial requirements.
- 8. Need floor plans
- 9. Proposed wooden fence must be 6 foot fence with 80% opacity
- 10. Vicinity map needs to be to scale
- 11. Need a metes and bounds description
- 12. Include the size of the footprint in narrative
- 13. Include total parking spaces in narrative.
- 14. Ask for a waiver from landscape ordinance for parking places in landscape buffer (7&22)
- 15. Clearly note dimensions of the lot
- 16. Include the percent of open space on the narrative and site plan
- 17. Note on site plan that project is in a CAMA area of environmental concern
- 18. *Written Application.* The written application shall include:

- (1) Project description parking spaces(total number,size, amount obstructed), % of open space (ask for a variance in the front buffer yard to allow for parking). Six foot fence with 80% opacity.
 - (2) Written statements relative to project's impacts on existing infrastructure (including capacity of streets, schools, and utilities) and on the natural environment of the site and adjoining lands.
- (19) *Site plan drawing(s)*. show the site and all land within 150' of the site.
- (1) The names of adjoining recorded subdivisions, and owner(s) and use of adjoining property.
 - (2) Existing topography and proposed finished topography in relation to mean sea level with a maximum of two (2) foot contour intervals.
 - (3) Location and dimensions of all existing structures and improvements adjacent to and on the site, including but not limited to:
 - a. Sanitary sewer systems
 - b. Water mains
 - c. Storm drainage systems including natural and man made.
 - (4) Location and delineation of all existing natural features and environmentally sensitive areas adjacent to and on the site, including but not limited to: CAMA Areas of Environmental Concern (AEC's), , Ocean Hazard Area AEC
 - (5) Location of all proposed structures and improvements, typical details, including but not limited to:
 - a. All proposed streets and alleys and the boundaries of all other areas intended to be dedicated to public use
 - b. Principal and accessory buildings and structures to include:
 3. Number of dwelling units
 6. Entrances and exits of the proposed buildings (need a floor plan)
 - c. d. Sanitary sewer systems with appropriate details
 - d. Water mains with appropriate details
 - e. Recreation areas and open space areas with type(s) of improvements including the location, dimensions and details of common areas and facilities such as community buildings or swimming pools if applicable.
 - e. Plans for collecting and disposing of storm water entering and collected on the site. The design of these systems must meet the specifications of Article V, Section 12-211 to 233 of the Town Code of Ordinances.
 - f. Location and refuse disposal facilities and type.
 - (6) Proposed grading schedule, including time of the year when grading will be in progress.
 - (7) All dimensions, both linear and angular, for locating boundaries of the site, lots, streets, alleys, easements, required setback lines, and monument locations.

STAFF RECOMMENDATIONS:

The proposal as presented has not received any negative comments from Stormwater and Operations, Fire and Inspection. Multi-family development is allowed with the approval of a Conditional Use Permit for T-1 zoned properties.

Staff recommends the following conditions if the proposal is to be recommended for approval:

12. 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.
13. 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.
14. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of Building Permit.
15. Approval from the Division of Water Quality for a CAMA Permit.
16. Approval Letter from Division of Water Quality from the Public Water Supply Section for a construction authorization permit.
17. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
18. Flood Certification must be presented prior to issuance of certificate of occupancy.
19. The structure shall be limited to 50' in height. A sealed set of plans from an engineer must accompany the building permit showing that the structure does not exceed 50'. Prior to Certificate of Occupancy, an architect or engineer must certify structure does not exceed 50 feet in height
20. Final project must be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. Final project must be designed to provide the required 22 parking spaces.
21. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
22. 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.
23. Refuse collection agency that will be used must be included on final site plan.
24. 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.
25. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
26. A sign permit must be obtained for any new signs located on the property.
27. 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 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.
28. 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.**
 29. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
 30. 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.
 31. 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 Article 14 of the zoning ordinance.
 32. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.
 33. Water meters must be relocated in the right-of-way and run 11 lines to the units.
 34. 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.
 35. All lots utilized for the project shall be combined before issuance of a Certificate of Occupancy.
 36. Existing pool shall be upgraded to commercial code requirements
 37. Sidewalks curb and gutter shall be installed in accordance with Article 8 of the zoning ordinance and be ADA compliant.

Also condition #1 as recommended by the Planning and Zoning Commission at its December 08, 2005 regularly scheduled meeting, and the additional condition #2 as approved by the Town Council:

1. All utilities required by TRC and staff recommendations shall be completed prior to the issuance of a building permit.
2. An 8" line to be installed at Seagull to connect Canal Drive to Carolina Beach Avenue North has to be installed before a certificate of occupancy is issued.

Mayor Pro Tem Gilbert said that he would like to make a comment about item #4 of the General Conditions. He said that based on his interpretation of this condition he feels that he cannot vote on this.

Mayor Clark called for a vote. Councilman Macon said he feels that he would have to vote for it if there wasn't enough votes, and he was under the impression that the developer was totally in agreement of paying for the \$22,000 but if he's not then he'll have to The developer then stated that he is in agreement. **MOTION CARRIED.** (Mayor Pro Tem Gilbert voted no.)

APPOINTMENTS TO THE PARKS AND RECREATION ADVISORY COMMITTEE

A motion was made by Mayor Clark to continue this to the March 14, 2006 regular meeting per Parks and Recreation. ***MOTION CARRIED UNANIMOUSLY.***

CONSIDER APPROVING A REQUEST TO VEND ON THE PUBLIC BEACH

The Zoning Administrator, Jeremy Hardison, said the applicant is Duke Hagestrom, LLC, and he is requesting to vend on the public property and the criteria per the ordinance is to go before Council. He said the criteria that has been used in the past for vending is not in the ordinance and it is not something that you have to use or the applicant is required to do unless the Council sees fit. He said that he is proposing primarily frozen lemonade, water, etc. and no prepared food. He also said that a picture of the cart has been provided to Council.

Mayor Clark asked, do we allow 3 vendors? Mr. Hardison said that in the past Council has used that but it isn't written in the ordinance. Councilwoman Efird said this happened in 1998 (referring to the criteria). Mr. Nicholl said it happened when he was here back in 1998 and at time we allowed 3 vendors.

Councilwoman Efird asked him if he will be on the beach or where the walkways are located? Mr. Hagestrom said he will be on the beach. He said the cart plugs in overnight and keeps everything frozen for the next day.

Mr. Hagestrom said he will be selling ice cream, lemonade and water. He said that we do have challenging beaches for vending so he doesn't anticipate going very far and they will probably be concentrating on the areas where they will be providing the most value to our guests at the beach.

Councilman Johnson asked if he will be staying just within the CBD? Mr. Hagestrom said they have a business there and they will use the accessways from the Boardwalk area. There was some discussion about the location of the vending services within the CBD and the concern that the merchants will have about vending. Mr. Hagestrom said that he feels they are a little different in that they already have an established business and they do pay overhead such as water, sewer, etc. and have made a sizeable investment.

Council also expressed their concern about the type of push cart that he will be using on the beach. Mr. Hagestrom said that he plans to put bigger wheels on it. Mayor Pro Tem Gilbert suggested that if he hasn't already bought the cart that he consider buying one with wide wheels on it.

Mayor Clark also asked about modifying the walkover where it drops off and crosses over the sand and if it would need to be modified.

Mayor Pro Tem Gilbert asked if he would be ringing a bell. Mr. Hagestrom said he wasn't planning on starting off ringing a bell. Mayor Pro Tem Gilbert is concerned about people enjoying the beach quietly and they may not enjoy hearing a bell ringing.

Mr. Hagestrom said that beside it being a great business venture they feel that it will be a great service for people on the beach.

Councilman Johnson said if he makes a motion it will be to approve the request by Wheel Fun Rental to vend on the public beach as presented only within the CBD area of the beach.

Councilman Macon said so if I want an ice cream one block out of the CBD then I can't get one and he disagrees with that. Mayor Pro Tem Gilbert said if you are within the CBD then you can go up to Frank's or Mint's Ice Cream but there is no access for vending outside the CBD and he feels that CBD or not we should leave it open because the market is going to dictate where he ends up anyway.

Councilman Johnson withdrew his motion.

A motion was made by Mayor Pro Tem Gilbert to approve the vending license for Duke Innovative Services, LLC with the condition that it not be a motorized cart and no active bell or whistle that's on it. Councilman Macon said in the past they have pulled a cart behind with a little four wheeler and you may want to say a four cycle and not a two cycle so you don't have the smoke. Mayor Pro Tem Gilbert said he would first like to see him do it with a cart you can push on the beach and if not he can come back and say that he cannot do it without a cart and would like to have an ATV or something. **MOTION CARRIED.** (Councilman Johnson voted no.)

CONSIDER GRANT APPROVAL FOR PUBLIC BEACH AND COASTAL WATERFRONT FUNDS FOR 2006/2007 AND ASSOCIATED FUNDING

Mr. Pagley said he met with Council at the workshop and told them they he would be ready to present the resolution for the grant where he is trying to apply for monies for the public beach access. The good part about it is the money he is asking for is the total cost of the project \$160,000. They do not have to try to set aside any money because it is already there to use as the matching funds. He gave Council the latest revision to the resolution. If they are for the resolution, then he needs to have the Mayor and the Town Clerk sign it and put it in the mail tomorrow. Then they will see if the town is qualified to participate.

Councilman Johnson said he knows this is for the cross over access. He wants to know under this same grant could Mr. Pagley apply for access to the sound waterway where the town has their dead end streets where they have talked about building little piers out there with gazebos for access by the public to fish or crab. Mr. Pagley said he looked at that but he thought it would be best if he kept it the way he did. Councilman Johnson asked if he would do it in two separate forms. Mr. Pagley said maybe next year because there has to be more matching funds and he didn't want to burden Council.

Councilwoman Efird made a motion to adopt Resolution No. 06-862 (*Exhibit ____*).

MOTION CARRIED UNANIMOUSLY.

CONSIDER ADOPTING A REVISED RESOLUTION SPONSORING THE CAROLINA BEACH LAKE DREDGING PROJECT

Mr. Pagley said the town is still in the running for the grant for the Carolina Beach Lake Dredging Project. However, they came back to him and had asked him to change it to the Carolina Beach Lake Water Management Program instead of dredging project. Some of the new words under item 1 are: "Carolina Beach Lake Water Management Project in the amount of \$1,156,500.00, or 66 and 2/3 percent of the project construction cost, whichever is the lesser amount." They asked him to change to that wordage from the old resolution. He was also asked to add: "The Carolina Beach Town Council assumes full obligation for payment of the balance of project costs." In the old item, they had a specified amount of \$578,000. Mayor Pro Tem Gilbert asked if \$578,000 is budgeted somewhere. Mr. Pagley said it is in the Stormwater budget under CIP for matching funds for next year if it gets approved.

Mayor Pro Tem Gilbert made a motion to adopt the revised proposed Resolution No. 06-863 (*Exhibit ____*). **MOTION CARRIED UNANIMOUSLY.**

ITEMS NOT ON THE AGENDA

Mr. Pagley said he understands part of Council's goals is to improve the lighting on the Boardwalk and the lighting on the bridge. Mr. Pagley and other members of staff met with a representative from Progress Energy, David Munn. They are going to look at getting out of the lighting business, especially on the Boardwalk and the lake area and replace the old lights. They are also looking at putting the cobra lights on the other side of the bridge to match the cobra lights on this side of the bridge. Mr. Pagley is requesting Council to make him the contact person so he can sign the form and they can get started on the DOT portion of the lighting project for the north side of the bridge.

Councilwoman Efird said after you get that, work on the top of the bridge like she has been asking for 20 years. He said if he can get this passed, he will work on the bridge. Councilwoman Efird made a motion to give Mr. Pagley authority to negotiate with Progress Energy and to sign forms so he can get started with the lighting project on the north side of the bridge. **MOTION CARRIED UNANIMOUSLY.**

Mr. Pagley's last request was to be given authority to sign his annual report for the residuals and land application program for 2005. He has to send his letters to DENHR. If he gets permission to do that, he will sign those and send them tomorrow. Mayor Pro Tem Gilbert asked if the manager or someone else will read the letters. Mr. Nicholl answered they are pretty standard and he doesn't have a problem with that. Councilman Macon made a motion for Mr. Pagley to sign the letters to DENHR. **MOTION CARRIED UNANIMOUSLY.**

Sarah Archibald, Human Resources Officer, said as of today Mayor and Council has put forth their ratings for the town manager position. She would like to get a consensus on the top five or six candidates as well as options for interview dates so she can go forward

tomorrow and get things scheduled for Council. She said she didn't know if they needed closed session time to review candidates. Councilman Macon said he is fine with what everybody picked. Mayor Clark said they have six candidates now. Mrs. Archibald explained that what she did in terms of developing the list of six candidates with a short list for interviews was for the 11 candidates put forth to Council each candidate who received three of five votes she put them forward to the short list of candidates. That produced six candidates for the short list for interviews. Mayor Pro Tem Gilbert asked are those the six you e-mailed us and Ms. Archibald said that was correct. Mayor Clark said what you are asking for is dates we will be available and she replied yes. The decision was to interview the six town manager candidates on March 3rd beginning at 9:30 a.m. with one hour for each candidate.

Mayor Clark asked the Operations Department to form a task group to review the current stormwater fee structure. The group members will be Steve Pagley, Brian Stanberry, Anne Bowman and Dan Wilcox. He would like them to report their findings to the town manager for review with Council. Mayor Clark said we are not saying to cut the fees down they just need to be equitable and understandable. After some discussion, it was decided to have three people in the task group: Anne Bowman, Dan Wilcox, and get a lay person who can try to bring it down to earth. This way it will be assumed not everyone knows what they are speaking about. The Town Clerk reminded the operations director that any time they have a meeting they need to let her know several days in advance so she can send a notice out. Mr. Pagley said they will probably make it a standing meeting once a week until they are done.

Mayor Clark said this Thursday and Friday Mr. Harrell, Councilman Johnson and himself will be attending the annual Coastal Community Winter Meeting in Sunset Beach.

He also said the Ports, Waterway and Beach Commission met on January 13, 2006 and they adopted a Coastal Crisis Rules of Engagement. Basically it says they are not happy with the federal government not giving any beach renourishment money. On February 26-28, 2006, eight members of the committee are going to Washington for the North Carolina Water Resources Congress. Meetings have been set up with senators and representatives. Also approved in that meeting was a contract with Marlow and Company to lobby Washington for New Hanover County Federal Beach Projects. The main focus is on Carolina Beach and Kure Beach funding for fiscal year 2007. This meets one of the goals for Council that they addressed in their action plan.

Councilwoman Efird wanted to know if all of the Council members received the notice that the senior citizens wanted them to judge the chili cook-off on February 25th at 7:00 pm. at the Senior Center Mayor Clark said what they asked this year is for Council and spouses to serve the chili.

ADJOURNMENT

Councilwoman Efird made a motion to adjourn. **MOTION CARRIED UNANIMOUSLY.**

The meeting adjourned at 12:15 a.m.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____