

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

*April 11, 2006*

The Town Council of the Town of Carolina Beach met in regular session on April 11, 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 Efird; Councilman, Jerry Johnson; and Councilman Joel Macon. Also present was Interim Town Manager, Robert Nicholl and Town Clerk, Lynn N. Prusa.

Mayor Clark called the meeting to order.

***INVOCATION BY CAROLYN CREECH WITH CAROLINA BEACH FIRST  
BAPTIST CHURCH***

Pastor Creech 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 stated Harry Dail has asked to delete from the agenda Item #7, Presentation by Engineering Services Concerning Proposed Capital Improvement Plan for Water/Sewer.

Mayor Clark said Item #26(A) has been added to the agenda. This is to consider an amendment to the Flood Damage Prevention Ordinance (Ordinance No. 05-614), Sec. 12-171 Basis for Establishing the Areas of Special Flood Hazard.

He also mentioned that inserts were provided for Item #8 (Presentation by Attorneys and Review of Concerning Request to Enter Ground Lease Agreement with Arcadia Group, LLC for Property Located at the Intersection of Carl Winner Street and Canal Drive), Item #15 (Consider an Amendment to Article 7 Off-Street Parking & Loading Requirements, Section 7.2(f) Surfacing of Off-Street Loading Space), and Item #16 (Consider an Amendment to Article 8.9 Design Specifications Standards).

The operations director has requested that the following items be added to the agenda:

- (1) Consider Approving a Lease Agreement for a Cellular Antenna
- (2) Consider Agreement with Progress Energy for Outdoor Street Lighting
- (3) Presentation Concerning Black's Marina Drainage and Request for Funding

Councilwoman Efird made a motion to adopt the agenda with the deletion and additions as stated by Mayor Clark. **MOTION CARRIED UNANIMOUSLY.**

### ***RECOGNITION OF CAROLINA BEACH ELEMENTARY SCHOOL POSTER CONTEST WINNERS***

Ms. Valita Quattlebaum, Public Information Officer, said in response to our poster contest she is very pleased to announce the entire fourth grade at Carolina Beach Elementary School responded. Council voted and there are three winners. The winners are: Ms. Savannah Trefftz, Ms. Tatianna Lanza, and Ms. Alexia Kahler.

Mayor Clark asked the children and their parents to please come up front. He said this is a big deal. He was at Carolina Beach Elementary School last week speaking to all of the fourth graders. There were 78 posters and it was hard judging the creativeness of the fourth graders. He said it was good to be a part of this, and he appreciated the help from the committee and Ms. Quattlebaum. Mayor Clark introduced Ms. Amy Hemphill, the fourth grade teacher who spearheaded this effort. Ms. Holland and Ms. Henderson were the other fourth grade teachers plus the aids and assistants who helped them were also a big part of the program. Mayor Clark gave each winner a basket of prizes. Included in the baskets were gift certificates donated by Antonio's Pizza, McDonald's, Generations, Britt's Donuts, Island Kite, Wheel of Fun, JM Enterprises donated various things, and a donation by SheAnn Dolls. Mayor Clark said this is one part of a seven step program. He briefly told how this got started in January and at that time a committee was formed and in turn they generated the contest. He explained that Dr. Cottrell with the Carolina Beach Animal Hospital is going to use the poster design and make a flyer which will be sent home with all the children to help their parents take care of their dogs. Another part of the program is going to be the dog park which will open next Thursday. He said that we are trying to get people better educated on how to take care of dog waste.

Another recognition Mayor Clark announced dates back to the Great Earthquake of California, April 18, 1906, when Gertrude Elizabeth Hare was born. She lives here on the beach and turns 100 years old next week. She was going to come tonight but she said that she just doesn't get out too much at night. Mayor Clark said that Juanita Winner sent to him a message about her today and it says that Gertrude is one of the most engaging, interesting, and kind people that you have ever known. She is an interesting and amazing citizen. Next Tuesday, we are going to have a birthday party for Gertrude.

***INTRODUCE NEW EMPLOYEES***

Mr. Pagley stated that the Operations Department's new General Maintenance Worker, Mr. Anthony Young, was unable to attend.

***PRESENTATION BY ATTORNEYS AND REVIEW CONCERNING REQUEST TO ENTER A GROUND LEASE AGREEMENT WITH ARCADIA GROUP, LLC FOR PROPERTY LOCATED AT THE INTERSECTION OF WINNER STREET AND CANAL DRIVE (PUBLIC HEARING TO BE HELD ON MAY 9, 2006 AT 7:30 P.M.)***

Mr. James Norment, the attorney for Arcadia Group LLC, said they have a lease term sheet which all Council Members have a copy. This is the beginning point for a proposed lease of the town's ground which is currently a parking lot. Assuming all permits were approved, this would allow Arcadius to build a parking and retail structure on that spot. It is not a sale of the land; it is a lease. Last year there was a version of this lease submitted to Council that was in process all the way to the last minute. Arcadius decided this was probably not the best way to enter into a lease with the town and we needed to start fresh. This term sheet is the fresh start.

The landlord will be the Town of Carolina Beach and the tenant will be Arcadius Development LLC which is a related entity to Arcadia Group.

The property is about one-half an acre of land, which is currently holding 69 public surface parking spaces.

The tenant, Arcadius Development, will pay to construct the retail and parking structure at its own cost and expense in cooperation with the town on how it looks and the design. The structure is expected to be an eight story building. It will contain approximately 483 parking spaces plus 14,000 square feet of retail space on the first floor. The improvements will be owned by the tenant that is the structure itself. At the end of the lease, they would donate that to the town.

The type of lease is a triple net/bond ground lease; a typical commercial lease. The tenant, Arcadius Group, will pay for taxes, insurance, maintenance, and all other tenant costs.

The term of the lease is 99 years.

The basic rent is negotiable. We have not presented you with any particular rent. We understand if everything works out as we hope it will, everyone will make some money and rent will be part of that. We have left that blank for future discussion.

The tenant will have additional obligations to get all the permits that are required to reserve a certain number of parking spaces. We suggest 138, which is a substantial portion of the total that would be for public or town's use to do with as the town would want. The tenant

would be charged with operating, managing, and maintaining the parking structure. If the maintenance wasn't being kept up properly, the landlord could require it to be done better.

Another way to make money is parking fees, which is yet to be determined what that number will be or whether you would have any fees.

The lease will provide for a five year abatement on the parking structure of ad valorem taxes. The land will continue to be owned by the town and it has no taxes associated with it.

If the tenant is unable to get the proper permits for building the structure, we will need to cancel the lease from the town's side or the tenant's side. We propose we use standard commercial lease provisions which you will see under the heading: Other Lease Provisions.

Under North Carolina General Statutes, because you are a public entity, you have certain obligations to the public in entering into a lease. We are willing to do everything the law requires to make sure the public's interests as represented by you are protected. That includes making sure proper notice is given when a lease is finalized, the public is involved in any kind of workshops we have to determine the terms of the lease, and the economic impact data is there so this will allow the town to engage in what would otherwise be a private enterprise. You would essentially be the landlord of a private business. In order to do that, there are certain economic reasons you have to show. They are not difficult to show and the statutes give you a great deal of latitude in doing so. It is a very important part of this.

This concluded Mr. Norment's presentation.

Mayor Clark asked Mr. Harrell, Planning Director, is retail space allowed on the first floor and is that in the V zone? Mr. Harrell said it will be an elevated first floor in the V zone. Mr. Norment said it will comply with all CAMA and FEMA requirements.

Councilman Johnson said, in your statement you said the tenant Arcadius would pay all the maintenance costs, expenses, etc; but yet in the lease, or the lease I was given, under Section 8 for costs and expenses, it says shared expenses, which says maintenance costs, insurance premiums, taxes would be shared and he asked, which way is it? Mr. Norment explained that the long lease, it looks like a real lease, is the old lease. In that sense, I am not proposing we be tied to it in any way. It was proposed back in December that we share the costs, and if that is not how we want to proceed now then that is not how we will proceed. Councilman Johnson said the lease he has been reviewing was sent January 24th. Is that not the lease we should be looking at? Mr. Norment said that is the basic lease document we started with in December, but as I told you last month at the Town Council meeting, that lease is the old lease. Anything in there you think can be improved or needs to change, we will be willing to improve it or change it. That is not the final lease. Councilman Johnson said I guess I got misled because I thought we were reviewing and discussing the proposed final lease. I spent a lot of time on this and nobody told me this was not going to be the lease. Mr. Norment said let me assure you that your time was not

wasted. That lease has lots of provisions in it that will carry forward. It has lots of provisions you may not agree with. It is certainly worth your time to take a look at it and see what we can do to improve it. That is where the term sheet comes into play. This is designed to be an improvement on the original lease.

Mayor Pro Tem Gilbert clarified, the January 24th draft is considered a working document. He said that he thought this was being reviewed by the town attorney for any deficiencies or recommendations. Mr. Norment said this is a working document.

Councilman Johnson said, in the term sheet, the town has a reserve of 138 spaces to be on the second and third floor. Is the ground considered the first floor? Mr. Harrell said the first floor is an elevated floor. Mr. Norment said we don't have any structural diagrams because they haven't been done yet. Councilman Johnson asked, so they are considering the first floor to be the first elevated floor? Mr. Norment and Mr. Harrell replied yes.

Mayor Pro Tem Gilbert said I don't have any specific questions about the lease, but I do have a question about Item I. It says the Town Council and the Finance Director has reviewed the economic development data and projections related to the parking project and related condominium project, including but not limited to studies and other pertinent information provided by the tenant, the town's staff review of the parking project and condominium project and an economic feasibility study conducted by the consulting firm by the Consulting Firm of Hughes, Pittman and Gupton which collectively provided information related to developmental opportunities, job creation, appropriate investment levels and construction costs. He said that the only thing that he has seen with respect to Item I is something dated August 2004, a feasibility study that has a couple tables in it and everything seems to be dated and referenced to some population data. Is there anything else we should have been provided with respect to Item I to help us understand this feasibility? Mr. Norment said the economic impact project on the town is a very important part of the government's obligation in entering into the lease. We are updating the 2004 study from our side. I'm not knowledgeable what the town's management and the town leadership did last year. I believe you have a different Council and manager. Mayor Pro Tem Gilbert said the only thing you are going to be responsible for with respect to the Arcadius Group is the 2004 projection? Mr. Norment said I don't know if that is the only thing we are going to be responsible for and they would be willing to do whatever we need to do to get you the data you need. Mayor Pro Tem Gilbert responded since it is referenced in the lease it might be helpful. Mr. Norment stated in other transactions similar to this economic data would include the wages that would be earned by people either employed at the facility or employed because the facility is there. Economic data and impact would include taxes generated because of the facility, either property or sales taxes. That is the kind of thing I'm sure the previous administration was looking at.

Mayor Pro Tem Gilbert said he had a concern regarding Item E on page 5. It says the tenant shall have received an abatement of the Town of Carolina Beach ad valorem taxes for a period of five years. In accordance with the Town of Carolina Beach downtown revitalization incentive ordinance in such abatement is to begin no later than the date in which the parking structure is completed for such tax purposes. The issue I have with this

is when this downtown revitalization incentive ordinance was passed, I think in 2001, at that time this area that this project is planned on going into was not the central business district. It was in fact the actual Arcadius Group who requested that the central business district move. Somebody could argue that it was to their best interest to move the zoning into that area so they could defer the taxes. He said this is just something from a citizen's prospective that someone may want to make a note about. When the zoning was changed at their request, it looks a little self-serving they are getting a revitalization incentive that didn't include that area.

Councilman Johnson asked if there are going to be any shared expenses and what the expense is going to be for the town. Mr. Norment said he hesitates to answer because he doesn't know if there is anyway to give a concrete number. First of all, we haven't determined whether the town will share in any expenses; and if they do share, what percentage would that be. I'm not sure how much it is going to cost to operate this facility without knowing the engineering that goes into it and the future of the town how much money it might generate based on taxes and parking fees. I would certainly have to know before you would agree to do anything related to cost sharing.

Also in this draft, Councilman Johnson said in 8.3, there is a section in there about condominium property and it reads: that in the event that a portion of the premises shall become condominium property. How could that be possible if the town owns the property? Mr. Norment said that's related to the residential section that is next to the parking deck. It's the hotel and condos that are going to be next door. Some of the spaces in the parking deck that are part of the Arcadius portion of the spaces will be promised to the use of people who own the condos so they can be assured they will have at least one spot in the parking deck. Mayor Pro Tem Gilbert said he thinks there is something in here that actually states you can build on top of this parking deck and that may speak to that. There is some language in here that allows you to go higher which could be condominium space. Mr. Scott Patton said that's exactly what Mr. Norment just stated in reference to the parking. Specifically under Arcadius the use permit will require to have the parking. If we enter into the ground lease, we have to have that parking memorialized so that for some reason the lease was broken or the town took it over the parking would be dedicated to the project. Councilman Macon asked if the parking space itself would become part of the deed? Mr. Norment said not in this case, the deed would not include a physical, real property parking space. It would be a promise of a space.

Mr. Patton commented about the tax abatement. He said we are not real concerned about the tax abatement. That is open for discussion within this ground lease. I do want to point out that the property where the purposed town parking lot is on was central business district before the rezoning took place. He also said he would like to point out for the record that the rezoning took place from the town and not from the Arcadia Group. The applicant for the rezoning was the Town of Carolina Beach. Within the land use plan from 1997 it had this area designated as CBD; it had never been officially rezoned by the Town Council. That is all memorialized within the Land Use Plan itself and you can see clearly before this rezoning took place that this was the central business district. Councilman Macon commented this is a very petty concern if you ask me.

Mayor Clark commented to Mr. Clyburn and Mr. Shanklin that they have been working pretty hard in interpreting this lease. He said that they received the term sheet today and asked Mr. Clyburn and Mr. Shanklin if they had it, and they said yes.

Councilman Johnson said in reference to the the lease draft dated January 24th versus the term sheet, he asked which one are we actually looking at when we act upon this? Mr. Norment replied that it would be the term sheet. Councilman Johnson asked about things like liability and so forth, how is this being covered because I don't see that in the term sheet? Mr. Norment said it is not in the term sheet. The term sheet is an abbreviated summary of what would be in the final lease. We would like to work with the town administration and the town attorney to create a more complex, wordy, legalistic lease. The term sheet obviously is not a legal document but it's our good faith effort to continue the process. Obviously we have to do a lot of work behind the scenes before we get to the point when there is a final lease.

Mayor Clark said a lot of work needs to be done so the public would understand it. There is a lot of discrepancy in the two. Mr. Norment said if I were to present anything it would be the term sheet. That is the more recent document.

Councilman Johnson stated one of the things we need to see is what the costs are going to be for the town if the parking deck is built and what the revenue is going to be and if that is going to be a shared revenue and shared costs. Otherwise I don't see how you can make a true judgment.

Mayor Pro Tem Gilbert said he shares in some confusion. He thought Mr. Shanklin and Mr. Clyburn were going to review the January 24th draft lease for any discrepancies and tonight present some recommendations so we can vote on this next month, because it is on the agenda. I thought they were going to get the bugs and kinks out and let's vote. I thought that is why we hired Mr. Shanklin to come in at this point. If we just have an outline then it seems like we are starting at square one again and going to some future date. Mr. Shanklin said his first experience with Arcadius was basically the middle of November of last year. Three weeks we drafted, redrafted, drafted. I have two banker boxes and here is a summary of the Delta view which is an electronic comparison between the first version I had and the one we brought here that night. There were over 879 changes we had to our document. I am not going to repeat that experience again. These things need to be resolved in workshops; they need to be well thought out. You need to understand the economics. I didn't understand the economics because I wasn't involved when the economics were discussed in this room. What I got was a ten page term sheet and lengthy document and told to work it out very quickly. That is what I did. I have seen ninety-nine year leases in operation. These things can work and they can work well; it just needs to be well thought out. I don't make decisions. I just implement; I'm a technician.

Mr. Clyburn said to Mayor Pro Tem Gilbert in response to his question, remembering the experience we went through last time, you were here, you witnessed it, you watched as changes were being made it seemed as the lease was being presented to the Council. That

is not an experience anybody I hope would want to repeat. The thought this time around is we do have a draft and let's work from this draft. This as I think Mr. Norment accurately said should be a starting point not an ending point. Mr. Shanklin makes a good point when he says we really need an opportunity to spend some time with the Council in a workshop. We need to know what is important to this Council. This Council may say there is not a lease that can be prepared that would satisfy our concerns. This Council may say here is what we would like to see. Because we have the open meetings law, we can only do that in open. We can't meet for breakfast somewhere and talk about the lease; we have to do this in the open. It would be helpful if we could arrange for a workshop where this is the only issue we are taking up so Mr. Shanklin and I have enough time to hear from you and you have enough time to hear from us on what you like about the lease, what you don't like about the lease, what you want to see in the lease, what you don't want to see in the lease. To have us to try to do that on an agenda that has as many items as this agenda does is not productive. I think what we have been able to do tonight is say here is our starting point now where do we go from here.

Councilman Macon said we have three new Council Members and I thought you would take the document and make the changes you thought you might want. It might be a good idea to do the workshop. Mr. Clyburn said we do need an opportunity to work with Council on what Council wants to see in the lease. That really should be the next step.

Mayor Clark asked Councilwoman Efird if she thought there should be a workshop. She agreed and said we have to do it before the May 9th meeting. Councilman Johnson said if we can. If not, we will have to change it to the June meeting. Mayor Clark said he wasn't sure they could do it before May 9th so the public can understand it also. Mr. Clyburn's recommendation was if May 9th was going to be a problem then push the date back. It was clarified that the workshop is not a public hearing but the public is invited to attend.

Mayor Clark asked to move on to the next item.

***PUBLIC DISCUSSION – (Five minute time limit per person.)***

Mr. Rich Lehrer wanted to address valuation. He said that if he is to believe the Island Gazette, not too long ago a 50 x100 square foot property on Lake Park sold for 1.2 million dollars. This property is three times the square footage. It has views of the harbor and views of the ocean so it should be worth three times that amount. Valuation of this property ought to be \$3.6 million dollars if we are looking at that as a comp. If you sold that property for \$3.6 million dollars, you would have \$3.6 million dollars which at this point would not be too hard to get 6% interest which would be over \$200,000 a year. So you have your principal sum of \$3.6 million dollars plus you would be getting a residual of at least \$200,000 a year. I expect interest rates to be moving up. I would think any lease would have to bring commensurately that kind of a value. With the CUP, you really can't examine the applicant's finances. When the city is going to do a long term lease, which can be constituted as a sale, or a sale well they get to examine this person. Anybody in real estate knows before you sell a property, you get a prequalification letter. I am sure that

anybody going for this lease would bring some kind of a letter from the bank and I would hope the bank would look into something as expensive as this, almost like a forensic accountant. The way this lease was delivered before, it was the day before the new Council was to take over. Somehow this was rammed through. I really question how the city hires Mr. Shanklin to do this. Mr. Shanklin is representing another developer in a very similar aspect, where they also need a city parking lot. Without this city parking lot, their vested CUP is worthless. Why in the world are the taxpayers' dollars going to pay Mr. Shanklin for doing something that could set a precedent for his own client. I see a conflict of interest. I'm thinking that maybe all of this should be reimbursed by the developers who actually get the benefit of this. They are the ones who get the gain, not the city. I don't know who the city was at this time. The city is paying for this. With those three outgoing council members, an outgoing city manager, some developers, and Mr. Shanklin, they benefited from this. The city, the people who elected the new Council did not benefit from this.

The next to speak was Shirley Franks of 908 Canal Drive. Mrs. Franks said that Planning and Zoning voted no on the Arcadia Project. Six hundred residents signed a petition that stated no to the Arcadia Project. The people said no to the massive high rise on the election held November 2005. The old Town Council voted no on this lease agreement December 12, 2005. It is obvious the Arcadia Group does not understand no means no. The public knows that no means no. Does the Council?

Leroy Franks, 908 Canal Drive, said in reference to the proposed lease agreement I have several questions. Why is this presentation being heard for the second time? Council voted this lease down on December 12, 2005. How much extra money will the taxpayer have to pay for unnecessary presentations, public hearings, and workshop meetings? Who on Town Council authorized Mr. Clyburn to hire Mr. Shanklin and what is that cost to the taxpayer? The intention of Article 158 is to promote economic development but Council never held any documented studies or meetings on this subject as required by law. The lease submitted by the Arcadia Group does not establish any value for the public parking deck. What is the value of this property? What is the value? How much will it cost the taxpayer to share the liability, casualty, blanket, and flood insurance since the taxpayer does not have to cover insurance expense on the existing parking lot? After almost three years in the planning stage, no one can say how many parking spaces will be on each level. There are no limits set on the number of parking levels that could be added after this deck is constructed. Why should title to improvements be given to the Arcadia Group? This will create a cloud on our good deed. Why should the Arcadia Group be given the authority to manage public parking spaces? This lease is a joke. The recent elections prove the majority of residents do not approve of the Arcadia Project and the underhanded method of giving developers public property. A 99 year lease is dumb now and will be dumber in 99 years. Can the Arcadia structures survive 99 years? I don't think so.

D.A. Lewis said, first let me bring up that the issue of a land lease for Arcadius was settled on December 12, 2005. I object to this issue being heard by Council again. My understanding is this issue is to be voted on at the May meeting of Council to either grant or deny a lease agreement being brought for the second time in the last five months

between Arcadius and the Town of Carolina Beach. As most of you know, the Council that voted to deny a lease was the same Council that had been supporting the Arcadius Project from the start. How many times does our Council have to vote to tell the Arcadius attorney and developers they will get no lease before they get the picture that no lease means no lease and they need to make other arrangements for their parking. We have been told we would double our parking with this lease. If we own the land now and there is a parking lot and a parking deck is built and we end up with double our parking by controlling two floors. If you have to split your profit with the developer for the next six floors, you end up making the same money you were making before the lease for no charge of our land which was given for a 99 year period. Plus you have lost the full use of this valuable town asset for 99 years. This would be a give-away of public property without any compensation for a period of 99 years. A 99 year lease to private enterprise for their profit and not ours is ludicrous to say the least. Arcadius can deal without this parking lot. They just cannot achieve the density for more profit that they seek. No one in this room, including our elective officials, have the ability to see what our needs may be for this land for the next five years, much less 99 years. Let me read how a law dictionary describes a lease: A lease gives exclusive possession of the premises against all the world including the owner. Let me read that one more time: A lease gives exclusive possession of the premises against all the world including the owner. We are the owner. A lease gives the right of exclusive possession for all purposes not prohibited by its term. As you can see, a lease is a powerful instrument. If all the thinkable conditions occur over the 99 year term of this lease were not put in the lease, it will at a later date create a mess for future attorneys. I oppose the lease of lot 218, 222, 224 Carl Winner and Canal Drive, the town's Fisherman Parking Lot owned by the citizens. I oppose this lease for any years much less 99 years. With the growth the town is having, this land with all the options at the town's disposal makes this a valuable parcel of land to keep free of any sale or lease. This lot is used everyday by tourists, fisherman, and boat captains. The town's growth has resulted in this past Council buying other property for parking. Now they want to give away this parking lot. A lease agreement or sale of any of our parking should not be done. There have been two different lease agreements that have come up here and both of them is right at 57 pages long and the attorneys for Arcadius do not have a final proposal to be put here now.

The next speaker Dick Engels, 414 Hamlet Avenue, said I spent a career doing population research although I am not doing that now. It does get in the blood and every once in a while it tends to raise questions. Probably the biggest one I have seen lately was just watching the building that is being done in town. It's impressive and I tried to square that with what I thought might be going on with the population issue both in terms of the size of the population and some of the composition. I put some data together and in a little blurb that I will give to you and you can read it at your leisure. I wanted to mention a couple of things tonight because there were some surprises. The biggest one of course was just looking at the change in the number of structures and units we are building and comparing that to population. I got some data on building permits from the planning department. It looks like from the year 2000 to 2004 about 500 units were built. The population per household around the country is around 2 to 2.5 so you expect some increase of around 1000 or so. I got to the point of finding some population estimates from the census bureau for the same period and was surprised that there estimates only show a change of 87 people

for the same period. Something is out of sync. Usually what accounts for that are either some significant changes in population per household or some very large vacancy rates in the new structures being built. Another surprise that kind of relates to the population per household is it looks like households in Carolina Beach are being reduced in size a good bit. For the measures we have in 1990 to 2000, we have a population per household that is lower than the US in the first place. It has reduced by 10% during that time period. We are a city with very small household size and it looks like it is going down. That is a fairly significant finding to have a reduction of 10% in ten years. Another factor that is even a larger issue, it's huge, is the changes in age structure in the city. The medium age is a very robust figure. It takes a lot of change in the age structure to change at all. During that same time period, 1990 to 2000, the average age for the medium age for Carolina Beach changed by six years. That's a very extreme change for a town to go through. Another finding from the data the planners gave me relates to the mix of units that are being built. The series starts around 2002 and goes to 2005 for these data. In 2002, we had about 30% of the units being built as a multi family structures or duplexes. Every year during that period, that increased to the point where in 2005 85% of the units being built are multi family and duplex units. We are not building things that are designed for old Ozzie and Harriet types of families. Mr. Engles time limit ended so Mayor Clark asked him to give the Town Clerk the papers with his phone number and she will copy it for Council so they can look over the research. Mayor Pro Tem Gilbert said he was reading the economic study that was given to them by Arcadius and they used Chamber numbers from 1990 to 2004 which show 40%. If you move up to 2000 and 2004 and use the Chamber numbers, we are at a deficit population. If you use what the census numbers are, our growth was only 1.7%. I think you are right on tract with what I was looking at on the economic end. It shows population wise we are not increasing. Building wise we are building but we do not have the community. That was the unraveling of a number of Florida communities where they lost population and had these buildings. It mirrors at exactly what we have been looking at. Mr. Engles said Wrightsville Beach is in the same situation except they are one step further along.

Mayor Clark said Gina Mecca and Martin Strickland signed up to speak about 613 Carolina Beach Avenue North. He said we are going to have a public hearing on that and he asked them to wait and be a part of that public hearing. They both agreed to wait for the public hearing.

Alfred Oilrolo was the next person to speak. Mayor Clark said he saw him but he stepped out.

Mayor Clark asked Randy Simon if he would like to speak now or wait until Mr. Harrell made his presentation. Mr. Simon said he would wait.

Mr. Oilrolo returned to the Council Room; however, his topic was scheduled as a public hearing for later in the evening, so he decided to wait.

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

**CONSENT AGENDA**

Mayor Clark read the consent agenda.

Approval of the Minutes

Budget Retreat            March 2, 2006  
Special Meeting            March 2, 2006  
Regular Meeting            March 14, 2006

Consider request for the following budget amendments and transfers:

**Budget Transfers and Amendments  
As of 4/4/06**

<b>From Account</b>	<b>Amount</b>	<b>To Account</b>	<b>Amount</b>
105800.18	58.36	105800.25	58.36
105800.02	18,740.00	105800.06	18,740.00
105800.02	3275.00	104930.06	3275.00
308100.03	294.49	308000.03	294.49
308000.37	747.53	308000.45	747.53
308100.03	41.00	308000.53	41.00
308100.03	0.15	308000.74	0.15
308100.03	0.02	308000.85	0.02
308110.13	18.45	308110.15	18.45
308110.32	2200.00	308110.33	2200.00
309000.02	5971.00	309000.03	5971.00
308100.03	1,000.00	308100.33	1,000.00
308100.03	600.00	308100.16	600.00
308110.02	15,000.00	308110.55	15,000.00
308110.60	2,500.00	308110.55	2,500.00
308110.32	2,300.00	308110.16	2,300.00
308120.02	10,000.00	308120.55	10,000.00
308120.32	10,000.00	308120.55	10,000.00
308120.46	6,000.00	308120.55	6,000.00
308110.02	20,000.00	308120.20	20,000.00
308120.02	10,000.00	308120.20	10,000.00
255500.10	2,400.00	256300.01	2,400.00
256300.06	1,000.00	256300.01	1,000.00
256300.06	3,000.00	256300.03	3,000.00
104400.05	500.00	104400.06	500.00
104400.07	100.00	104400.06	100.00
104400.12	50.00	104400.06	50.00

104400.14	1,800.00	104400.46	1,800.00
104400.12	5,045.00	104400.46	5,045.00
104400.16	1,153.00	104400.46	1,153.00
104400.51	1,700.00	104400.46	1,700.00
104400.16	1,000.00	104400.46	1,000.00
104400.40	7,000.00	104400.46	7,000.00
104400.16	600.00	104400.46	600.00

Set a public hearing date for May 9, 2006 at 7:30 p.m. or soon thereafter to consider a request for a conditional use permit for a mixed use development located at 313 Canal Drive.

Set a public hearing date for May 9, 2006 at 7:30 p.m. or soon thereafter to consider a request for a modification to a conditional use permit at 15 Carolina Beach Avenue North.

Set a public hearing date for May 9, 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 May 9, 2006 at 7:30 p.m. or soon thereafter to consider an amendment to Article 11 Sign and Handbill Regulations.

Set a public hearing date for May 9, 2006 at 7:30 p.m. or soon thereafter to consider a request to rezone highway business (HB) area located between Carolina Beach Lake and Carolina Sands subdivision to allow for a residential development.

Set a public hearing date for May 9, 2006 at 7:30 p.m. or soon thereafter to request to enter a Ground Lease Agreement with Arcadia Group, LLC for property located at the intersection of Carl Winner Street and Canal Drive.

Set a public hearing date for May 9, 2006 at 7:30 p.m. or soon thereafter to request to amend Chapter 10 Offenses, Article II Weeds, Junk, Etc.; Section 10-23 Notice to Abate.

Set a public hearing date for May 9, 2006 at 7:30 p.m. or soon thereafter to request to amend Chapter 4 Building & Building Regulations, Section 4.21.2 Appearance Standards (Roof Pitch).

Councilwoman Efird made a motion to adopt the Consent Agenda. Councilman Johnson asked Councilwoman Efird to amend her motion to include the correction of a typographical error in the minutes which he will discuss with the town clerk. Councilwoman Efird agreed to this amendment. **MOTION CARRIED UNANIMOUSLY.**

***REQUEST FOR A CONDITIONAL USE PERMIT AT 500 SPENCER FARLOW DRIVE FOR A PLANNED UNIT DEVELOPMENT***

Mr. Ed Parvin, Senior Planner, was sworn in by the Town Clerk and presented the following staff report:

**BACKGROUND/HISTORY:**

The applicant is proposing to construct (7) four bedroom duplexes each having approximately 2,110 sq. ft. of living space at 500 Spencer Farlow Drive (currently undeveloped).

**ANALYSIS:**

*Zoning*

The property total square footage is 54,014 square feet or 1.24 acres. Density of units allowed in R-1 is 15 units per acre or 18.6 units for this project (applicant proposed 14 units). R-1 zoned properties allow for a maximum lot coverage of 40% which includes the footprint of the buildings, decks and steps. The footprints of the structures are 2,734 sq. ft. (4 buildings on north) and 2,544 sq. ft. (3 buildings to the south) for a total of 18,568 or 34% lot coverage. The applicant's proposed structures will be roughly 43 feet, not exceeding the 50' height requirement. Setbacks in the R-1 District are 20' (front), 10' (rear), and 7.5' (side) with 12.5' required on corner lots. The applicant proposes a 21' setback off of Spencer Farlow Drive; the side on Jacobs Lane is 12.5 and 8.5' from the property to the rear this includes a 1.5' cantilever over the rear setback, The applicant is asking for a waiver from the 10 Type B buffer yard in the rear.

*Parking*

There are fourteen (14) four (4) bedroom units which require 3 unobstructed spaces per unit. The applicant has provided the 42 required unobstructed parking spaces.

*Landscaping*

A total of 38% open space is being provided. The applicant is providing a 10' "Type B" landscape buffer on all sides of the site to include a 6' wood fence with 80% opacity along the eastern side of the property.

*Infrastructure*

The applicant plans to retain all stormwater on-site utilizing infiltration pipes that surround the buildings (see site plan). Water will be extended from Jacobs Lane and looped back to Spencer Farlow Drive.

The Planning and Zoning Commission heard this proposal at its February 9, 2006 regularly scheduled meeting and unanimously recommended approval of the request subject to the required findings TRC comments and staff conditions.

Mr. Parvin presented an aerial view of the site and many different angles of the area.

Mayor Clark asked Mr. Parvin if staff recommended approval of this. Mr. Parvin said they recommend approval with the conditions listed.

Mayor Clark said the cantilevering side has the waterway behind it. Mr. Parvin stated the cantilevering is facing the Army Corps property that is on Snow's Cut.

Mayor Pro Tem Gilbert asked about sidewalks. Mr. Parvin said sidewalks will be installed according to the site plan you have.

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

There being no public comments, Mayor Clark made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson noted for the record one typographical error (referring to the planning memo dated March 31, 2006). It states that the Planning and Zoning Commission heard this on February 9, 2005 not 2006.

Councilman Johnson made a motion to approve the project as presented for the location 500 Spencer Farlow Drive subject to meeting Required Findings 1-7, General Conditions 1-4, the TRC Committee Conditions 1-17, the Fire Condition, the Stormwater Conditions, and Staff Recommendations 1-26 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

***Technical Review Committee Conditions:***

1. The boundary of the property by metes and bounds description.
2. Project description, including the total, bedrooms, square feet, total and usable floor area, parking spaces, , amount of recreation and open space, type of recreation facilities to be provided
3. A vicinity map drawn at a scale of 1"=2000' with north point indicated. One map at 1"=800' is can
4. Project completion schedule/development phases.
5. Written statements relative to project's impacts on existing infrastructure and on the natural environment of the site and adjoining lands. What is the existing infrastructure and how will it change?
6. All drawings shall be prepared at a scale of 1"=50' or larger, showing the site and all land within 150' of the site.
7. The names of adjoining recorded subdivisions, and owner(s) and use of adjoining property.
8. Location and dimensions of all existing structures and improvements adjacent to and on the site, including but not limited to:
  - a. Sidewalks, streets, alleys, and easements
  - b. Buildings and structures
  - c. Driveways, entrances, exits, parking areas, and loading spaces
  - d. Sanitary sewer systems
  - e. Water mains and fire hydrants
  - f. Gas, electric, telecable, and telephone systems
  - g. Recreation areas
  - h. Storm drainage systems including natural and man made.
9. 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:
    1. Distance between buildings and structures to scale
    2. Number of stories
    3. Number of dwelling units
    4. Height of all buildings and structures
    5. Finished floor elevation(s)
    6. Entrances and exits of the proposed buildings
  - c. parking areas, including number of spaces
  - d. Sanitary sewer systems with appropriate details
  - e. fire hydrants with appropriate details
  - g. Landscaping and buffering plan prepared in accordance with the requirements of Article 8 of this chapter.
  - h. All sidewalks, walkways, bicycle paths and areas for public use.
  - i. 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.
  - j. Location, size, and specifications of all signs and advertising features with cross-sections.
  - k. Exterior lighting locations with area of illumination illustrated as well as the type of fixtures and shielding to be used.
  - l. 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.
  - m. Location and refuse disposal facilities and type.
10. Proposed grading schedule, including time of the year when grading will be in progress.
11. Need subdivison as well as PUD. Need preliminary plat.
12. Label open space
13. Label parking space dimensions
14. Label building dimensions (A-F)

15. Include floor plans and renderings Letter from Progress Energy stating have capacity to serve properties
16. Want to see adjoining properties (boundaries, owners name, use and zone)
17. Short on landscaping (9 canopy trees short) (can put in understory trees – include in narrative)

***Fire Condition:***

Need to show existing fire hydrants.

***Stormwater Condition:***

Need 2 cleanouts and 2 meters per building.

Need curb and gutter throughout

Need sidewalk along Spencer Farlow and into interior of the property by new road

***Staff Recommendations:***

1. The stormwater plan must be submitted prior to issuance of a building permit. The stormwater system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
2. Drainage plan must be submitted and approved prior to issuance of a building permit. The drainage system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
3. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of Building Permit.
4. Approval from the Division of Water Quality for a CAMA Permit.
5. Approval Letter from Division of Water Quality from the Public Water Supply Section for a construction authorization permit.
6. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
7. Flood Certification must be presented prior to issuance of certificate of occupancy.
8. The structure shall be limited to 50' in height. Prior to Certificate of Occupancy, an architect or engineer must certify structure does not exceed 50 feet in height
9. 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 42 parking spaces.
10. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
11. 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.
12. Refuse collection agency that will be used must be included on final site plan.

13. 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.
14. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
15. A sign permit must be obtained for any new signs located on the property.
16. 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.
17. 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.
18. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
19. 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.
20. 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.
21. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.
22. Water meters must be located in front of and run to each individual unit.
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.
24. All lots utilized for the project shall be combined before issuance of a Certificate of Occupancy.
25. Existing pool shall be upgraded to commercial code requirements
26. Sidewalks curb and gutter shall be installed in accordance with Article 8 of the zoning ordinance and be ADA compliant.

**MOTION CARRIED UNANIMOUSLY.**

***REQUEST FOR A CONDITIONAL USE PERMIT AT 1303 CANAL DRIVE FOR A TRIPLEX***

Following being sworn in, Mr. Steve Harrell began his presentation.

The applicant is proposing a three-unit, four-and-a-half story sprinklered condominium building. The property is located at 1303 Canal Drive and is zoned R-1. The upland area of the property is 7,808 sq. ft.(.18 acres)(including CAMA buffer area).

**ANALYSIS:**

*Zoning*

In R-1, maximum allowable lot coverage is 40%; structure coverage is 38%. Set backs in R-1 are 20 ft. front, 10 ft. back and 7.5 ft side. Setbacks are met by project. Building height is 49' 6". Property is located in 100 year flood plain.

*Parking*

Parking meets required 8 spaces (2 spaces per dwelling plus 0.5 spaces per bedroom over 2).

*Landscaping*

Project meets required Type A landscaping buffer (one (1) canopy tree, two (2) understory trees and three (3) shrubs per 50 linear feet).

The drainage plan showing on your plan is not acceptable. The applicant is here tonight to present a change to the drainage plan. There wasn't a drainage plan initially at the P&Z meeting. There was an understanding it would be required before the building permit would be issued. Additionally, the plan you see shows an accessory building in the CAMA yard. That's not acceptable. There was a proposed gazebo that would not be allowed.

The Planning and Zoning Commission heard the proposal at its February 9, 2006 regularly scheduled meeting. It was unanimously recommended by the P&Z Commission subject to required findings, TRC comments and staff conditions. Mr. Harrell presented slides of the property and the area around the property.

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

After Mr. Dennis Chisom, the builder for the applicant, was sworn in, he handed out the new drainage plan. He stated that Mr. Brian Stansberry, the town's Stormwater Superintendent, helped him develop it today based on something that had been approved elsewhere. Councilwoman Efirm asked if Planning and Zoning has seen this plan and Mr. Harrell answered they have not seen the drainage plan.

Mayor Pro Tem Gilbert asked is this running out into the canal. Mr. Chisom answered no it's not. He said they had a proposal that would have but he was told that it was unacceptable. He said that Mr. Harrell contacted him last night and this morning and he talked to Mr. Stansberry. He said that Mr. Stansberry showed him some other approaches on how we can do it and that is how we came up with this idea. These drainage ditches in front will go over the two driveways. He said that he knows it is difficult to see it, but the proposed ones on the Canal Drive side would span the two driveways. There is a depression where it reads proposed grassy area and they will

feed into that. In the rear of the building all of the downspouts on the sides of the building will drain to the drainage trench in the rear of the building and collect the stormwater there. Mayor Pro Tem Gilbert asked if these are all retention trenches. Mr. Chisom said in a manner of speaking they are. Mayor Pro Tem Gilbert said they are designed to retain the water and Mr. Chisom said that is correct. Mayor Pro Tem Gilbert said he didn't see the elevations. Mr. Chisom said they are on the other one and the land is virtually flat. Councilman Johnson asked if they are exposed trenches. Mr. Chisom said they will have grates across them. He said he was told he needed to modify the proposal he had. He met with Mr. Stansberry this morning and they came up with this plan. Mr. Stansberry told him this is about all you can do because there is no stormwater system in the streets so there is no where to go with the water. We can retain it there and this was the best proposal. He more or less mimicked what was done elsewhere. Mayor Pro Tem Gilbert said what he was curious about was Ann Bowman had come up in front of us and said there is basically no way to retain on Canal Drive. I know there are V structures that are different. Retention to me is you hold everything; detention is it is seeping out and going somewhere. I am concerned when you have this retention system set up, and I still don't see any elevations on that, if it doesn't work, they have brought in fill. Once they bring in fill then things seem to work. What I'm concerned is that if somebody else gets their hands on this, like the state, and they look at it and determine this isn't going to work then somebody is going to say you are going to have to fill in this lot. That becomes problematic for the other homeowners. Mr. Chisom said you couldn't do a sedimentation basin or a full blown retention because we didn't have the space so it would be more like you are saying a detention. He continued by stating there is really no way to do it. If I built it much higher, my neighbors would suffer so there weren't many options. He said that Brian was real good about looking at it and working with us. Mayor Pro Tem Gilbert said I've seen some of the work they have done and it is impressive. I haven't seen anything up there. That is why it concerns me because of the high tides and the issues we have. Mr. Chisom said it is a definite issue; that's true what you are saying. He continued, if they had some sort of storm drainage system in the streets of course that would be ideal but we don't. We have to work with what we have. This is the best we could come up with. We were certainly open to any ideas – the owners are for sure. This was the best idea that they came up with. Mayor Pro Tem Gilbert asked if the state will have to approve this system. Is there the potential that the state looks at it and says this isn't going to work. Councilman Macon said it is approved in-house with the town and it is based on the engineering from his stormwater engineer. Mayor Pro Tem Gilbert said you are saying the state water quality is not going to come and look at this. Councilman Macon said with all respect to Ann, she is on the Stormwater Committee, she is a realtor and not an engineer.

Mr. Steve Pagley, Director of Operations, was sworn in. He stated that he hasn't seen the plan but it won't get approval until they get some ground water tables from it. It is not 100% retention; it will be detention. Mayor Pro Tem Gilbert said you still have to do water level assessments. We can get it through this and you are still going to have to put some kind of stamp of approval on it for this detention type system. Councilman Macon said before a permit can be issued. Mr. Pagley said Brian helped him put something together today with some other systems that were built. Mayor Clark asked, do we need to table this or do you have some time to look at it? Mr. Pagley said we wouldn't issue a building permit until all the engineering has been met. That would be up to you. Mr. Harrell said that is always part of the conditions; it has to meet all of the engineering requirements and pass through operations before the building permit would be approved. Councilman Macon said it gives them the option of either retaining stormwater or paying a fee. Mr. Pagley said retain some and still pay the fee. We are going to request them to retain some. Councilman Macon said that is part of the conditional use permit and that's not a problem. Mr. Pagley agreed.

Councilman Johnson said to Mr. Pagley, currently we have a lot of concrete on the site right now. The new proposal is going to have more green space. There is going to be less ground covered by concrete with the new dwelling than what's existing there now. Mr. Chisom and Mr. Pagley said they are not sure. Councilman Johnson asked, currently where is the stormwater drain going? Mr. Pagley said I guess some drains into drop inlets in Canal Drive and out into the canal. Some is saturated into the ground and some just washes off the back of the property directly into the canal. Councilman Macon said the rear portion of the house is out over the sound currently. Mr. Pagley said we are seeing systems now that can be put under the driveways and so forth. Maybe he will be fortunate enough to detain 100%. Councilman Johnson said the new dwelling will not be out over the water. Is that not correct? Mr. Harrell said it will not be out over the water.

Mayor Clark asked if anyone else would like to speak on this item. Mr. Leroy Franks of 908 Canal Drive was sworn in. He said once more we are talking about an R-1 area which allows for single family or duplex. Using this excuse for a conditional use permit to build triplexes is just a ploy to get around the Land Use Plan. I don't approve of it now or any project and the general public does not either.

Mayor Pro Tem Gilbert said a comment to that is we need to get a handle on the ratio of single to multi family. Our Land Use Plan says we won't compromise that ratio. We had a gentlemen talk about how many duplexes have been built with respect to that. We are compromising our single family so somebody has to come up with the ratio and we need to maintain that ratio. It makes a commitment. We don't have any idea of what it is. We put multi-family here but we put single family here. I don't see a lot of single family going in. To do a service with what Mr. Franks' said, let's get a ratio of single to multi family. If it is mitigating should we be listening to it or basically consider planning to it. If there is no way to get a handle on it, then we should take it out of the Land Use Plan.

Mayor Clark said first we should finish our public hearing and asked if anyone else would like to speak on this item. Since no one else wanted to speak, Mayor Clark made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson asked Mr. Harrell, does this coincide with our current Land Use Plan? Mr. Harrell said yes. Councilman Johnson asked in what way. It coincides in that the R-1 zone does allow for this type of development. If we want to do what Mayor Pro Tem Gilbert is suggesting, then we can do that calculation. Mayor Pro Tem Gilbert said the Land Use Plan states we'll maintain the ratio between our single and multi-family dwellings. Either we are doing it or we are not doing it. I think your charge by the General Statutes is in an AEC you will prescribe to the Land Use Plan. If it doesn't conform to the Land Use Plan, it should be presented to us. I don't think it has been presented. It isn't an AEC. There is a caveat in the Land Use Plan that says we'll maintain multi and single family. Somebody should present to us to say well it does or it doesn't meet the spirit of the Land Use Plan. We've got Item 4 here that basically discusses that. It says 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. I think in the spirit of the Land Use Plan, if there are 10 items it conforms with and only one item it doesn't conform with at least we should know that. We are making a quasi-judicial decision on these general conditions. I feel a little remiss in not seeing how it does when I know there is one condition that it doesn't meet. We have been doing a lot of these so I think at some point we have to make a comment to it. Mr. Harrell said yes sir. Councilman Macon said, he says it does conform. The key there is in zoning you are talking about a specific and the Land Use Plan is talking about the big picture of the whole town. This is a wider lot than a normal lot, so there is no increase density because there

are three units. It is allowed based on the size of the lot. When they are talking about the ratio, they are not talking about in a multi-family area you have to have the ratio of single family versus multi-family. They are talking about in the whole town. Mayor Pro Tem Gilbert said I agree with that. But if you took the whole town, we are not charting it on a large basis either. We don't know what the ratio is as multi to single anywhere. Councilman Macon said there just happens to be a lot of duplexes and triplexes being built right now. That is what is hot right now. Two years from now, it could be single family dwellings and no duplexes. That has been the case prior to this.

Councilman Johnson said let me ask one question before we make a motion. Mr. Harrell, how long would it take the Planning Department to come up with that ratio? Mr. Harrell said we could do that at the next meeting.

Councilwoman Efird made a motion to approve the request for the conditional use permit at 1303 Canal Drive for a triplex with approval of the General Conditions 1-4, the Required Findings 1-7, the TRC Review 1-14, and Staff Recommendations 1-20 as follows:

***Required Findings:***

- (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***

Fire: Need sprinklers (13R) and alarms with pull stations

If top floor 30 ft. above grade, need stand pipe system

Operations: Show existing size of sewer and water pipes

Show cleanouts and locations

Planning:

- 1) Need signed statement that applicant is officially representing property owners
- 2) Incl. boundary description in metes and bounds
- 3) Show total & usable floor area, lot coverage, breakout of parking – all on site plan
- 4) Incl. vicinity (location) map
- 5) Specify project completion schedule
- 6) Incl. written statements relative to impacts on infrastructure and on natural environment
- 7) Show suitable title block on site plan
- 8) Incl. proposed storm drainage system
- 9) List any CAMA Areas of Environmental Concern (AEC)
- 10) Show exact location of the flood plain, floodway and floodway fringe areas as determined by FEMA
- 11) Incl. finished floor elevation
- 12) Incl. proposed grading schedule
- 13) Landscaping – try to meet Type A requirements – if not able to do so, get with agricultural ext. agent and provide written alternative
- 14) 8 parking spaces required

***Staff Recommendations:***

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 subject to Town's approval.
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 along the front 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 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.
  13. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.
  14. 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.
  15. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of Building Permit.
  16. Approval Letter from Division of Water Quality from the Public Water Supply Section for a construction authorization permit.
  17. 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 8 parking spaces.
  18. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
  19. 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.
  20. Sidewalks shall be installed in accordance with Article 8 of the zoning ordinance and be ADA compliant.

**MOTION CARRIED 4-1 WITH MAYOR PRO TEM GILBERT VOTING NO**

Councilman Macon asked if we can clarify what ratio we are looking for. Mayor Pro Tem Gilbert said single to multi-family. Councilman Macon asked, are we talking about land mass or how many lots are dedicated for single family and how many lots are dedicated to multi-family? I am trying to find out what are we looking for. Mayor Pro Tem Gilbert said I think the ratio is clear. It is how many multi-family we have to how many single family. Mr. Harrell commented I would say all of that would have to be discussed among staff as to how we want to do that ratio. We can provide some different alternatives to Council in May. We have to come up with a methodology to do that. Mayor Pro Tem Gilbert said I will clarify my no vote because I don't have anything in front of me that says it is or isn't conforming to the Land Use Plan. I will continue to vote no until somebody shows me that it does or doesn't conform. What I would like to see is that if I have to make that commitment on the general condition about the Land Use Plan that there is a statement that says it meets these conditions. You can be general with it, but if I know of one that doesn't meet and you haven't discussed it or showed me it doesn't, then I have more of an issue with that.

Mayor Clark said Planning and Zoning has a meeting this week so maybe you could discuss it at that meeting. Mr. Harrell said that could be a non agenda item.

***REQUEST FOR A CONDITIONAL USE PERMIT FOR A TRIPLEX AT 613 CAROLINA BEACH AVENUE NORTH***

Mr. Parvin was sworn in prior to making his presentation.

The applicant is proposing to construct (1) approximately 6,180 sq. ft. structure to include three (3) residential units under Planned Unit Development. The site is currently vacant. The parcels are located within the 100-year floodplain and will be required to have elevated living space. The property is also located within a CAMA Area of Environmental Concern.

***ANALYSIS:***

*Zoning*

The property total square footage is 7,380 square feet or .17 acres. Density of units allowed in R-1 is 15 units per acre or 2.54 units for this project (applicant proposed 03 stacked units). R-1 zoned properties allow for a maximum lot coverage of 40% which includes the footprint of the buildings, decks and steps. The footprint of the structure is approximately 2,619 sq. ft or 35.48% lot coverage. The proposed structure will be 47 feet in height. Setbacks in the R-1 District are 20' (front), 10' (rear), and 7.5' (side). The front of the structure has been determined to face the side of the property where the easement exists on the south. The applicant is proposing a setback of 22' from the property line to the south; the sides are 7' 8" each; and 10' from the property to the rear (north).

*Parking*

There are two (2) 4 bedroom units and one (1) three bedroom unit for a total of 9 required parking spaces. The applicant is providing 03 unobstructed and 06 obstructed parking

spaces. The property is accessed off an easement on the lot to the east that faces Carolina Beach Avenue North. The actual size of the easement open for access is 10.5 feet. The 8 foot utility easement is not included in the access. As initially presented to the Planning & Zoning Commission, based on plans provided by the applicant, the 10.5 foot access easement and the 8 foot utility easement appeared to be a cleared easement of 20.5 feet and the project was recommended by P & Z with such to Council. It has since been learned that the 8 foot utility easement is not cleared and cannot be used for access. However, the remaining 10.5' access has been reviewed by the Fire Marshall and determined to be adequate for the triplex proposal. Also, unknown at the February 09, 2006 Planning and Zoning meeting was the purpose for the 22' access easement on project site. It was not specified on the deed defining the easements, although the property owner to the south stated the 22' section was to allow a turning radius for access into the rear of his property.

#### *Landscaping*

A total of 33% open space or 2,533 square feet is being provided. The applicant is providing a 5' "Type A" landscape buffer.

#### *Infrastructure*

The applicant plans to retain all stormwater on-site with an engineered plan containing an infiltration system with an additional swale to run water to the stormwater system. Existing water lines are 8" and have been determined to be adequate for this project by the TRC.

The Planning and Zoning Commission heard this proposal at its February 9, 2006 regularly scheduled meeting and recommended approval by a 5/2 vote for the request subject to the required findings, TRC comments, and staff conditions.

Mr. Parvin showed many different slides pertaining to this project and the area around it. Several of the slides were the actual easement as it looks. One of them was how the 10 ½ feet run. From the parking place to the building to the south, there is 7 ½ feet. There is a 7 ½ foot parking place that was approved for the project to the south. Then you have the 10 ½ foot easement. Mr. Parvin shows where the pole starts, you have an 8 foot utility easement. Mayor Pro Tem Gilbert wanted to know if that continues all the way to the back. Mr. Parvin said it goes to the white fence here and showed him on the slide. He showed on the slide where the utility easement stops and starts on the right of way on Carolina Beach Avenue North and goes to the white fence. On another slide, he shows where the 10 ½ feet and the 8 foot ends. Then he shows the 22 foot. Mayor Pro Tem Gilbert wanted to know if that goes to the property line or to the parking spaces or are there parking spaces on the property. Mr. Parvin said the easement is on the property. He showed where the building will start and how all the parking will be stacked underneath the building. Mayor Pro Tem Gilbert said the 22 foot is for the people to the south to turn around in. Mr. Parvin said it will be used for an easement for the people to the south to go around in and it will also be the turn around for the triplex. Mayor Pro Tem Gilbert said, so nobody could park in that functionally and Mr. Parvin agreed.

Councilman Johnson asked how the people to the south can use this person's property for turning around which Mayor Pro Tem Gilbert replied they have a deeded easement. Councilman Johnson said only 10 ½ feet is the easement. The rest of it is the property. Mayor Pro Tem Gilbert said the deed says 22 feet after that. Mr. Parvin said it is 10 ½ feet with an 8 foot utility easement. After it actually gets onto the property that we are talking about, it is 22 feet wide. The easement on the property to the east is the 10 ½ and 8 foot. Councilman Johnson said there is nothing in the deed that says the property owner to the south has access. Mr. Parvin said what he has told me is that's the reason the easement was created. Mayor Pro Tem Gilbert said but it is in the deed that there is a 22 foot easement. Mr. Parvin said it is in the deed but for why it was created all I have is the word of the property owner to the south. The applicant may have more information on that. On the last slide, Mr. Parvin said this is looking to the northeast on the property; that was the actual property to the south. Most of the lot is paved now and the western part of the lot is grass area now.

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

James McCulloh, 1608 Carolina Beach Avenue North, was sworn in. Mr. McCulloh is a member of the Planning and Zoning Commission. He read briefly Article 3.3 Every Lot Shall Have Access to a Street. Every structure hereafter erected or moved shall be on a lot adjacent to a street as defined in Article 23 or to a right of way or easement which was platted and recorded prior to the adoption date of this ordinance. The adoption date of this ordinance was April 24, 1979. Application is for a property which does not have access to a street and which was not platted prior to April 24, 1979. The application is contrary to our zoning document.

Next to be sworn in was Leroy Franks. He said this is the second time we are going into a triplex which violates the zoning. It is just a ploy to get around it. It has to stop somewhere. It started not on your watch but on a previous administration. It is time to put an end to it. You need to look according to the figures. I would like to remind the Council of one fact and Mr. Harrell needs to check FEMA Publication 95-3, Obstruction of Flow. It does not permit a swimming pool in a V-zone.

Dan Wilcox, 614 Monroe Avenue, was sworn in. He said I don't have a comment for or against this project but you made some comments in the last conditional use permit regarding the ratio. I think we had some discussions on this before. I agree with Mayor Pro Tem Gilbert. When we last talked about it, I said it would be nice to know that ratio. I think it is important to also remember that just like Planning and Zoning, the only thing you see that comes before you is triplexes or quadriplexes. We have a tendency to think perhaps there are more triplexes than anything else going into town. When you drive around town, it is real easy to determine the bulk of what is being built is duplexes, not triplexes. I would just remind you and staff when you compile those calculations duplexes is a single family dwelling. They don't count on the triplex side of the calculation. It's not a scientific calculation, but when you drive around time, it is probably pretty easy to understand the amount of triplexes that come before us pale in

comparison to the amount of duplexes and single families being built. This is just a comment. Mayor Pro Tem Gilbert said he would love to see the ratio so we have a barometer.

Next to speak after being sworn in was Jerry Hamm of 111 Virginia Avenue. He said he doesn't have a specific bone with this project. He has a comment that is relative to this project and the others that were spoken about and the comment Mr. Wilcox just made. Duplexes are not single family homes. You can call them that in your zoning ordinances if you want; but as the gentleman spoke earlier, that ratio is going down. There are no more single family homes being built in this community. Why is that? There are no single family neighborhoods. As long as you keep the CUP allowable to build PUDs in R1B or triplexes in R1, it is a joke to say we have any single family neighborhoods because they are not. There is a loop hole to get around. These developers are utilizing it. As I petitioned each of you in an e-mail about a month ago, we would like to see that changed. A CUP is nothing but a back door to get around it. The mission statement to the zoning policies says the primary objective is to maintain stable, single family neighborhoods. There are none and there aren't going to be any if you don't do something about it.

Martin Strickland of Strickland Builders was sworn in. He is the principal applicant and the designer of the building for the project at 613 Carolina Beach Avenue North. He wanted to make a few comments about the structure. He said we did successfully get to this point by keeping the project rather simple but stylish. We tried to design in privacy issues to respect the privacy of the neighbors to the south and to the west of us and the interaction of the other properties around us were carefully considered. We met all the requirements, the normal set back requirements of the town, height requirements, depth, and landscaping requirements. As far as the other departments, like the fire department and the public utilities, everybody passed us. I just wanted to make those comments. I want to make myself available if you have any questions, concerns or inquiries.

Before she spoke, Gina Mecca was sworn in. She is a resident of Carolina Beach and a real estate agent. She said she is very familiar with this project, the property, and the location of the lot. I do feel it is a benefit to that area of Carolina Beach on the North End. I think we are all familiar and by the pictures can see there are many multi-family units around there. We have condos in front and to the side. I think it is going to be a beautiful structure. I think we are seeing that area of the beach changing. I wanted to approve it.

Mark Dunnagan who owns a unit in the property to the south was sworn in. I have a view of most everything that will be going on as it is happening. I think me and the gentlemen who built the building and who actually use to own all of those three properties that are joined have come to a gentlemen's understanding of how it is all going to happen and where the easements are and whatnot. I will express a general concern with my friends in the room that construction traffic is going to be a little bit of a challenge. We all tend to rent our units. As you have noted, our parking spaces are a bit tight. I have large vehicles and construction vehicles tend to be quite large. I am going

to ask we all keep our tempers under control and be a little considerate of each other's space. Regarding the 20 feet at the back, to the earlier questions, if you were to drive down that road with the parking spaces full you would actually understand why it is there. You can't get in and out unless you would back out completely all the way. Mr. Mansor, the gentlemen who actually built the structure, owns a series of tow trucks that he keeps underneath the building which is why the wide swing out and why that has been set up that way. My only other point is as you noted there are a couple of posts in that fence that actually go into the utility easement. You know they are an easement and really shouldn't be there. I actually encouraged my new neighbors to work with the property owner there to find some sort of suitable way for them to feel like they have their space but not within the easement. I will also note the palm tree you saw with the concrete construction around it also is in the utility easement and may need to be relocated. So the fence, the rope wall, and a concrete structure around the palm tree are all in the utility easement. Other than that, I really don't have an issue. I think we all know these are going to be high end properties and folks probably aren't going to be living there, so I don't see an issue with the density. We are here once a month, so I expect the same from the rest.

Mayor Clark asked the fire chief to be sworn in so they could ask him some questions. Mayor Clark asked Chief Roberts to tell them about the interior lot and how he feels the fire department is capable of fighting a fire back there. Chief Roberts said I will give you the code interpretation. I will refrain from giving personal opinion on this. There were some concerns early on about access for fire trucks. What the state fire code says is you have to have a fire access road to take you within 150 feet of the structure. The fact that we have Carolina Beach Avenue North there it is within 150 feet of the structure. As a fire chief, I would not position my fire apparatus down that easement to protect that structure. We would attack it from Carolina Beach Avenue North side and just pull hoses. It is in compliance with the state code. That's what I have to enforce here. By being within 150 feet of CBA North, he does not have to comply with the 20 foot wide fire access road. I am not going to pull my fire truck down there. It will be on CBA North. Mayor Clark asked, is it a sprinklered system and Chief Roberts said yes.

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

Mayor Pro Tem Gilbert asked if there was any position from staff when the gentlemen spoke earlier about the access. Mr. Harrell said it is a planned unit development which allows for deviations from standard requirements in the Zoning Ordinance. It would allow for a deviation from that because it does have access to a street. Ordinance No. 3.13 actually says single family and duplexes if they have access over an easement to the street can be developed. Since this is a planned unit development under the PUD, it can be a standard deviation to the triplex. Mayor Pro Tem Gilbert said the only other comment was the gentlemen who spoke about having patience. I drove down there, and took a look at that. The 10 ½ foot access starts right on the white line, so a very large vehicle doesn't really fit within the line. The other concern is the easiest way to get into those parking places is pulling straight in. If there was a building or anything up there, I

guess the smaller car would probably back out. I don't know about turning around. Even a large truck it seems like you would probably back out of there instead of going all the way down and try to come out. I did see it is on their property; it is an easement and I don't know that you can't put something on the easement. If somebody has to get to it, they'll tear it up; they'll tear the tree down. It is a nuisance to you and I can see how that is. During construction, people are going to have to be real patient during tenants should be told that it is going to be problematic. I think it will be a problem down there as narrow as that is on a day-to-day basis and they're using a drainage area that could be perceived as a parking area which is in the 22 foot. I see problems coming from that. The only other comment I have is you are using pervious concrete and is that going to connect to the drain. It doesn't really show any connection to any swales and with your elevation there I don't know how you can do that. What you are doing is making a little pool. That is just a thought on the pervious material.

Councilman Johnson said he had a couple of comments. He appreciates what the fire chief said and what the code says. I also drove down there, did some measuring, and took my big vehicle down there to see how it would be. I see some safety issues. This is stacked parking. You have three vehicles per unit stacked. You have only got 22 feet to back out. Yet the property owner to the south, the way I understand it, also has use of this 22 foot easement to get into the backside of his property. Is that correct? Mr. Harrell replied that's correct. Councilman Johnson said I see problems if these vehicles are parked one or two that are not under the building you already have problems because they are out there in that 22 feet. Am I correct? Mr. Harrell answered if they are parked out in there. Councilman Johnson said he can see people not pulling all the way under. I see it all the time. I also see when somebody is the second or third car in and they want to get out the other people have to move their cars and now we have them jammed up in there. I see it as a safety access issue and I appreciate the fire chief saying he wouldn't pull his truck down there. At the same time, I just wonder what the liability of the town would be if you needed to get the ladder truck in there for access for a rescue. I just have problems with the way it is situated and with that stack parking and with only 10 ½ foot going down that drive I see problems with vehicle traffic.

Chief Roberts said in answer to your question, for a typical fire I would not pull my truck in there. My trucks are 8 feet wide minimum. I couldn't get an aerial in there. It's not my desired thing because I don't want to tie up a 500-600 million dollar piece of equipment and a possible collapse. We do what we have to do. If needed, we could get our truck in there. Councilman Johnson said I understand that. I was trying to paint the scenario that you have vehicles parked out there and you can't get it in there if you needed to. If they are not parked under the structure, they are blocked in there. I don't think anybody can guarantee that everybody is going to park completely underneath the structure. Chief Roberts said no, they won't.

Councilman Macon asked, do we know when this plot was platted? Mr. Harrell responded it was after 1979. We don't have an exact date. Councilman Macon said he was wondering how and when this lot was created. Mr. Harrell said it was after 1979; so that particular part of it, the prohibition against it would apply since it was platted after

1979. It is a planned unit development and it meets the second part of it which deals with access over private easement to the street. Mayor Pro Tem Gilbert said so if it wasn't a planned unit development then it would apply. Mr. Harrell replied yes, unless it was developed as a single family or duplex. If it was a single family or duplex, you could use the easement to get to the street. Mayor Pro Tem Gilbert asked, per the code that was quoted to us, at what point would that be applied - triplex not a PUD? Mr. Harrell said the triplex under the way this applied in our ordinance is a PUD. Mayor Pro Tem Gilbert said in the ordinance that was quoted to us give me an example of how that would apply to an interior lot. Mr. Harrell said in reply to an interior lot that did not have an easement that had access to a street. In other words, if it was platted before 1979, it could still be developed even if it did not have an easement to access to the street. Mayor Pro Tem Gilbert said so what makes this different is it has an easement and Mr. Harrell said yes. Councilman Macon asked can we get staff to bring the old text maps that are in the drawer, can we bring out that section? I would like to see that.

Mayor Clark called for a ten minute recess.

At approximately 9:30 p.m., Mayor Clark called the meeting back to order.

Mayor Clark said the previous site was the Carolina Beach Hotel. Councilman Macon said my question was basically answered. The lot was subdivided but he didn't create any non-conformity as far as lot size. Mayor Clark said we have had a lot of comments both ways on this issue. Mayor Clark made a motion to send this project back to Planning for further review taking in all the comments from the neighbors and the fire chief. **MOTION CARRIED 4-1 WITH COUNCILMAN MACON VOTING NO**

***REQUEST TO CONSIDER ALLOWING OUTSIDE ALCOHOL SALES FOR  
SIDEWALK CAFES REQUIRING AMENDMENTS TO CHAPTER 8 LICENSES &  
BUSINESS REGULATIONS AND CHAPTER 10 OFFENSES, SECTION 10-2  
DRINKING IN PUBLIC***

Mr. Steve Harrell said this particular ordinance is not a zoning issue. It is an amendment you would be considering to Chapter 8 Licenses and Business Regulations and Chapter 10 Offenses, Section 10-2 Drinking in Public. The amendments being proposed at this time were brought about due to a request by Mr. Brett Keeler of the Black Horn Bar & Kitchen, Boardwalk Arcade, and following a preface-type presentation to Council last month when I wanted to know if you wanted me to bring back something to at least consider. My instructions were to do so.

You'll also find my memorandum in your packet. Basically, the outside seating of the front of the restaurant is controlled by the Zoning Ordinance. We are not proposing to make an amendment to that particular section. It did not go to P&Z because it does not involve a Zoning Ordinance. State ABC laws do allow for sidewalk cafes to sell and have alcoholic beverages consumed upon proper permitting by both the municipality and the ABC. You will notice I also included in the back of this packet excerpts from state

statute. It basically says an ABC permit shall authorize the permitted activity only on the premises of the establishment. You can establish what the premises are through a permit, a lease, or anything of that nature. The City of Wilmington does it through a permit process, which can be allowed. The city in our region using this is the City of Wilmington primarily in their downtown historic district. Enclosed is a copy of the ordinance from the City of Wilmington that you can look at. The essentials of that ordinance is simply the portion of the sidewalk will be permitted by the city that is the area immediately adjacent to the restaurant, has agreement to indemnify the city, proof of liability and a site plan for the sidewalk cafes. A copy of the ordinance is enclosed. What it does is set up a permit process whereby it is permitted through the town manager's office and the regulation is to how the permit would be applied and how would the permit be enforced. If you go to Section 8-188, which is really the key part dealing with the alcoholic beverages, notwithstanding the provisions of Section 10-2 of the town Code, the sidewalk café shall be a part of a standard restaurant as that term is defined in Section 8-185 of the Code, and shall otherwise be authorized, permitted, or licensed under the state law and town Code to serve and sell alcoholic beverages for on-premises consumption. The portion of the sidewalk where alcohol is or may be served shall be enclosed by clearly visible barricades and shall have not more than two (2) points of ingress and egress. The sidewalk café must be included as part of the premises for which an ABC permit is issued pursuant to G.S. 18B-1001 for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages. Signs shall be posted, visible at all exit points from the sidewalk café, that it is unlawful to remove alcoholic beverages in open or unsealed containers from the premises. This is a section I added in consultation with the police chief. Further, consumption of alcoholic beverages shall only be allowed while seated at the tables of the sidewalk café. In other words, it would not become a general bar area that you could roam around in. You will actually be seated at your table while you are enjoying your meal. One other section that does model the City of Wilmington, that the police chief and I both felt should be included in the ordinance if Council were to adopt it, is no person shall operate a sidewalk café later than 11:00 p.m. Sunday through Thursday and 12:00 midnight on Fridays and Saturdays. After such hours, the area of the sidewalk café shall be open to the public and shall not be considered part of the premises of the restaurant. Any person consuming alcoholic beverages in a sidewalk café after such hours shall be subject to the provisions of Section 10-2, Drinking in Public of the town Code. What we are really trying to do is if you were to adopt something like this it would limit the consumption of the alcohol to what most people would consider to be the hours of eating your late dinner rather than going over into hours which typically you are not talking about eating any kind of dinner or supper.

Under Offenses Chapter 10, which basically says you can't drink in public in Carolina Beach unless it is a special event approved by the town manager. We would add another section that would say notwithstanding the provisions of this section, alcoholic beverages may be served at sidewalk cafes provided the requirements of Chapter 8, Article VIX Sidewalk Cafes are met.

I would like to point out to Council that I am not bringing this forward as a recommendation. We had a request from a restaurant owner to have this type of amenity at sidewalk cafes which are allowed already in Carolina Beach. I came to you last month and said do you want to see a proposed ordinance. I brought something back today to that regard. With that said, Chief Younginer would also like to make some comments from a public safety standpoint. I would add, if the police chief is okay with me saying this, if you were to decide to do this he has seen the ordinance and it is a good restrictive type of ordinance for enforcing something like this and he can comment further on that as well.

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

William Younginer, Police Chief, said I passed around some pictures just to give you an idea of what that area of the Boardwalk looks like. If this was passed, we could do it in several different places at the Boardwalk, any place that was primarily at restaurant. As a police department, I am opposed to it right now. I don't think we are quite ready for it. I think one of the things is we are trying to change our image down there from just being primarily a drinking place. I know the ordinance says it is going to be drinking and you have to be seated to eat. That is why I agreed with Steve. If it is passed, there are some teeth in there. As a police department, we try to become user friendly, patron friendly, and visitor friendly. I don't think we are going to be quite as friendly because everybody is going to be walking out now with a beer in their hand. They are not going to be seated so we are going to be there the whole time going you need to sit down with that beer. That is not a friendly thing I think we should be doing. Wilmington does have this down there. Wilmington has a different set up than we have. Wilmington also has a part of their police force dedicated to that downtown area all the time. They don't leave that area. The other units patrol the city. We don't have the flexibility to do that. I believe it would be a control problem for the owner of that establishment and any of the establishments out there. They are really going to have to keep somebody outside of their business to watch what is going on the whole time. I think it could be a liability to the town which we need to think about in that area. We are talking about passing alcohol to the public as you come by. What we have seen already with the little chained in areas, as people see their friends they hop over the fence and they run to go see them. They are going to do the same thing with a beer in their hand. We are going to be standing there and be the bad guy. I just don't want to be the bad guy. It is inside now and it is a nice little place to walk. Also we have taken an area of the boardwalk and made half of it not passable to the public in that area. The Police Advisory Board took a look at it and they voted unanimously no with the same stipulations that I said. They took a look at it from those standpoints and I wanted to pass that on to you. I will be glad to answer any questions you have.

Councilwoman Efird said if the people across the street decided to do same thing there wouldn't be enough passage way. Chief Younginer said if you look at what they have now they are all the way out to where the planters are. I believe that would be restricted back a little bit further. Mr. Harrell said we will be requiring that it pull back some as we

get into the height of the tourist season. With the alcohol sales, we would want to pull it back so there would be passage. The way it has been done up to this point, there is no issue there in terms of passage. It will become a problem. Chief Younginer said if they both had it, I believe there is suppose to be a minimum of four feet left in the middle. Mr. Harrell said this particular section of the boardwalk is a dedicated street itself, the whole 20 feet. The interpretation we gave to Mr. Keeler was to leave what would be a four foot strip in the middle. Since it is a dedicated street right of way, we have the option of pulling it back if it is necessary for pedestrians to go through there. Based on what the Chief has been telling me, we really need to have a wider area there for folks to get through. We would require it to be pulled back probably no more than four feet out from the side of the building, which is really much in line with what a lot of sidewalk cafes have.

Brett Keeler, 303 Hamlet, represented Black Horn Bar & Kitchen. He said we are enabled to have the sidewalk café but we are limited in the fact that we cannot sell alcoholic beverages; they can't be consumed on the sidewalk. The way we envision it is this is a vacation area, a tourist place. The economy is based off tourism. There are not many tourist friendly things down here. What do you like to do when you go on vacation? You like to sit outside and people watch and maybe partake in a couple cocktails, eat outside and enjoy being on vacation or being away from the day-to-day grind. There are no places like that in this area. One of your main platforms was to revitalize the central business district. To be progressive and proactive in that manner, there is no status quo. Dormancy is the same as being regressive. We need to be progressive in this manner and why not look at it as if you are the ABC Commission. Do it as a probationary period for 15 or 30 days and see how it works. The worse thing to do is inaction and to not try different things. Maybe we aren't up to par with how the community wants to be. We have taken huge steps with certain businesses leaving in the past couple of weeks from that area. March 17th we had a special permit that was signed by the town manager and approved by the chief of police to have outdoor alcohol sales and consumption for St. Patrick's Day. April 6th we had an on-location radio broadcast for Thirsty Thursday with Surf 98.3, which was signed off by Town Council as well as the chief of police. There were no incidents. It was used as a special event in a manner that was different than what the uses would be as spelled out in this privilege change. There were no broken bottles, no problems, and no formal complaints from the police or from any citizen to my knowledge. The biggest thing is that this would be an amendment to the business privileges and licenses. The key word is privilege. Worries that have been voiced to me is how long are we going to be there if it is given to us, who are the next people going to be, if there is even going to be a next person. It is a privilege. It is a police right to take it away or to allow it. It didn't need to be brought up in front of Town Council. It could have been done through the police and with Council with an amendment. There's a problem if it's not allowed. Let's just see how it goes and give it a temporary time period to see if it works out. If it doesn't work out, then it can be pulled. If it does work out, then I think it is another attribute and another positive for the community.

Jacob Soviana, 408 Harper Avenue, said he wanted to comment on this because he is an adjacent property owner. I own 105 Carolina Beach Avenue North as well as 106, so I have several properties over there. Hopefully in the next few weeks I am going to try to put some businesses in there and generate some more people coming out to the Boardwalk. I think it really needs it. I actually got a chance to read over some of the ordinances and some of the recommendations. I don't have a problem with it. I think the Black Horn has been a benefit. People are going down to the Boardwalk. I wasn't even sure if it was going to be a good idea to put it in there. I have been there and I have never seen a problem. I think you have police officers moonlighting there, so there are people watching the place. It can be revoked. The town could take it away. It could be checked. I don't have a problem with it at all and I just wanted to state that.

George Connet began by saying I wasn't going to do this but I better stand up here and agree with the police chief. You are trying to clean it up down there. You are going to invite more drinking outside. You don't have enough room down there. He opened up a restaurant. One third of the building is restaurant and two-thirds is an arcade, which involves the children. They are really going after the arcade business. I think that is really what is going to happen down there. You are going to be drinking outside and the kids are going to be running inside. I'm against it and I wish there were other people who would speak up and say the same thing but that's up to them. I'm with the police chief.

Nicholas Tucker who lives at 108 Carolina Beach Avenue North said we are trying to revitalize this town. I'm looking at it from the perspective of bringing my finance/wife up here soon and I don't want to have us near a bar. I can move that's no problem. But if I want to take children or my family out for an evening walk at 8:00 p.m. what is the face we are presenting for Carolina Beach on the Boardwalk. It should be our flag ship. Right now the face is a bar.

Mayor Clark motioned to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Clark said he had a call from a restaurant owner on the Boardwalk. They feel like this is opening a can of worms. There are people who are walking around with open containers and this would only open it up more for it. This is just a feeling from the Boardwalk area. They said it would be nice if they could put it out in front of their place but she said she wouldn't have it. Councilman Macon asked if that was a restaurant and Mayor Clark replied a restaurant/bar. It is the same type of business.

Councilman Macon said everywhere I've traveled there have been cafes where you can have a sandwich and a beer and sit outside. They are the places I frequent when I travel. I really don't see a problem with it. Typically in a restaurant-type situation that is what people do. If you go to a restaurant and have a sandwich and a beer you are not there to drink to intoxication and cause trouble. That is why we have a police force.

Councilman Macon made a motion to adopt proposed Ordinance No. 06-626.

Mayor Pro Tem Gilbert said I think Carolina Beach does have a stigmatism and a persona and it probably leads back to a binging mentality. Calling things Two for Tuesdays, Thirsty Thursdays, things like that is a negative. I would like a place where maybe from 10:00 a.m. to 10:00 p.m. I can sit down and have dinner or lunch and a beer and be responsible and expect the owners of that facility would personify that. I would like a place that I can go and maybe the kids can go to the arcade and hang out and I can have a sandwich and if I have a coke or I have a beer that's my choice. I think we need responsible restaurateurs and responsible businesses. I think instead of passing an ordinance, I think we should consider a permit first. In that permit, we try to do maybe 12:00 p.m. to 11:00 p.m. and they pull the chairs in after 11:00 p.m. and we try to monitor it. I think we can try to be responsible. I think there are a lot of towns like Charleston and Savannah and other places where they have restaurants where you can sit outside and have a glass of wine and the restaurateurs are responsible. It is not a binging mentality. I think it is about time we prove to people we can be responsible. We can step up and be that Charleston, Savannah, or downtown Wilmington; we can shed that persona. I will support Councilman Macon's motion. I would like to see we make it a privilege type permit before committing all the way. Maybe the Black Horn can be the guinea pig and we put them under the microscope. We can say it's from whenever lunch starts at 11:00 a.m. and it ends at 11:00 p.m. You stop serving at 10:30 p.m. so you are not taking drinks out of people's hands. You need to be smart about the management of it. I think it is time Carolina Beach residents and visitors prove we can be responsible. I think something like this we can monitor.

Councilwoman Efirm said she would like to see it done on a trial basis. Give maybe whatever time two months, three months, six months, and see how it works before we change an ordinance. If we change the ordinance, we are going to be stuck with it. I don't think that would be the right thing to do.

Councilman Johnson said he is going to be the devil here. I am against this because I can remember when we spent a lot of time, a lot of effort, a lot of administration in trying to clean up bars. We went from approximately 20 to approximately less than a half a dozen actual bars. I think we need to keep remembering we are not just talking about the boardwalk we are talking about the whole Central Business District. If we do this, I truly believe we are opening up a can of worms because you are going to have a problem on your hands. Councilman Macon said I think that is the key word you said bar. This is not a bar. This is a restaurant. Councilman Johnson said the same thing. You have alcohol on the outside of the boardwalk. We were trying to clean up the boardwalk to get the families back down there. I agree totally with the Chief. We do not have the manpower to have a policeman up there not just at this particular location but other locations that may come in here and want to do the same thing throughout the CBD.

Mayor Clark wanted to clarify with Mr. Harrell if this should pass, it says you will be seated with food. Mr. Harrell said yes. Mayor Clark continued, so does that mean you would have to have a license to have food out there first? It has to go before the Board of

New Hanover County to get approval to serve food outdoors. Mr. Harrell said they are allowed to serve the food outdoors at the sidewalk café. They are doing that now. Mr. Harrell asked Mr. Keeler are you not? Mr. Keeler's response was very rarely. Mayor Clark said my understanding was you have to have a permit to serve food outdoors. Mr. Harrell said any permits that are necessary at the county level they would have to have those permits. Mr. Keeler said through the Health Department. Mr. Harrell said to Mayor Clark you are correct. Any county permits, health permits, etc. they have to have all of those before they could operate. Mayor Clark said before this could take effect, they would have to have the Health Department permits. Mr. Harrell said they will have to have those, display those and show they have those. That is true with any restaurant.

Councilman Macon said I would like to say we cleaned up the Boardwalk but we killed it. When there were 20 bars, there were people and families and it was a hustling and bustling place. If that is what you wanted to do, that is what happened because nobody goes down there now. Mayor Pro Tem Gilbert said maybe we can construct a permit that contains the language of your ordinance and it's administered by the town manager on a case by case basis. We have one guinea pig to start with before we go forward with this. We can have a permit with all the rules and restrictions in it. I would like to see alcohol sales stop at 10:30 p.m. and all drinking ceases at 11:00 p.m. so we know we get it cleaned out before any kind of persona of drinking outside happens after you stop eating. Can that be a 90 day permit to give these guys a chance to see if they can be responsible restaurant owners and we can be responsible patrons? Can we do it that way instead of putting an ordinance in place? Mr. Harrell said he would defer to the town attorney as to whether or not you could construct a permit outside of enacting an ordinance. The special events ability of the town manager for special events for alcohol is enabled through an ordinance. My initial reaction is no you couldn't do it outside of an ordinance because 10-2 won't allow you to drink in public places other than special events allowed by the town manager. Whether or not you could adopt an ordinance and sunset it again, I would have to defer it to the town attorney. Mr. Clyburn said I think you could either sunset it and if it proves to be a problem you could repeal it. You can't do that under the motion that is in front of you. The motion that is in front of you is to pass the ordinance as proposed. If you are uncomfortable passing the ordinance as proposed, obviously you know how to vote. If you pass this ordinance as is and it proves not to be workable certainly you can repeal it. Chief Younginer said I believe it says you have to have a permit with this ordinance. Mr. Clyburn said that's right. Mr. Harrell said my other point is you could issue a permit without an ordinance. Mr. Clyburn said correct. Mr. Harrell continued saying if you wanted to sunset it you could sunset it. Mr. Clyburn said yes. Councilman Macon said and that permit can be revoked. The bar has demonstrated through the times they have had special events that they are responsible. Mr. Harrell said I would add that if you want to add Mayor Pro Tem Gilbert's hours that is slightly different then the hours that are in the ordinance that is before you. If Councilman Macon wanted to allow that to be part of his motion you can change the hours. The hours currently there is 11:00 p.m. Sunday through Thursday and 12:00 a.m. on Friday and Saturday. If you wanted to bring it back to 11:00 p.m. just period you could do that. You could also have no selling after 10:30 p.m. Councilman Macon said you are free to vote how you want to vote and it either passes or it doesn't. Then somebody can make

another motion. Councilman Macon said his motion was to adopt proposed Ordinance No. 06-626. **MOTION DENIED ( Mayor Clark, Councilwoman Efird and Councilman Johnson voted no)**

Councilwoman Efird made a motion to approve Ordinance No. 06-626 (*Exhibit 1*) with the ordinance to sunset after a period of 90 days on a trial basis and change the hours to 11:00 p.m. and to quit serving alcohol at 10:30 p.m. **MOTION CARRIED (Councilman Johnson voted No)**

***CONSIDER AN AMENDMENT TO ARTICLE 7 OFF-STREET PARKING & LOADING REQUIREMENTS, SECTION 7.2(F) SURFACING OF OFF-STREET LOADING SPACE***

Mr. Harrell said this particular public hearing is in two parts. One part deals with pervious surface and the second part deals with marina parking. That section will be handled by Mr. Parvin.

We advertised for a public hearing under one section and there were two parts to it. The second part did not get included in the packet, which was the marina parking. It was advertised properly.

The first section deals with Article 7.1, (e)(7) which requires all off-street parking facilities to have a paved surface of concrete or asphalt material. It does allow for concrete pavers, brick “turfstone” or similar material if approved by the public works director. However, our Land Use Plan, Section 8.1.7 Storm Water Runoff encourages the town to use “pervious or semi-pervious materials”. I have the language there from the actual Land Use Plan.

What was presented to Planning and Zoning was to amend Article 7 (e)(7) Off-Street Parking Loading Requirements to use exactly the language that came from the Land Use Plan. Required servicing-all parking facilities shall provide a paved surface of concrete or asphalt material. Concrete pavers, brick, pervious or semi-pervious materials (i.e., “turfstone or gravel) that is straight out of the Land Use Plan or similar material may be used if determined to exhibit equivalent wear resistance and load-bearing characteristics as asphalt or concrete and acceptable to, and I did make this change myself, the director of operations. That is in line with our current titles, rather than public works director. This was recommended to Town Council unanimously by the P&Z and also by staff to make this change in the language. We had a discussion with the director of operations about the language change as well. It puts in there what the Land Use Plan says. Councilman Macon said he appreciates it. It’s been three years in waiting. Mr. Harrell said he remembers from previous meetings.

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

Since no one came forward to speak, Mayor Clark made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Macon said he had an issue with “equivalent” in the language. It says to exhibit equivalent wear resistance. It has been used in an inappropriate manner in the past in part of the interpretation where someone attempted to construct a different type of drive. Councilwoman Eford asked Councilman Macon is that the one we had the problem with the wood and he replied yes. Councilman Johnson asked Mr. Harrell if they needed that word in there. Councilman Macon asked if they could add an s to the word exhibit and make it exhibits. Mr. Harrell said if you take the word equivalent out I think you would have to take out asphalt or concrete as well and say if so determined exhibits resistance to load-bearing characteristics acceptable to the director of operations. It still leaves it to his discretion like the current ordinance reads. Mr. Wilcox said the reason we put the word equivalent in there was to save us trouble in the future to go back and modify the ordinance with regard to new products that are on the horizon and may be available rather than have to go back and modify the ordinance to specifically identify those items. Then we made it at the discretion of the director of operations. There is data available that tells you whether the wear characteristics are the low requirements and will they meet those standards. He would be able to make that judgment of a new product that came along. I understand your concerns about the word equivalent. I wanted you to understand why we put it in there, which will be to save us some time in the future.

Councilman Macon made a motion we adopt Ordinance No. 06-627 striking the words equivalent, as asphalt or concrete and still say acceptable to the director of operations. It still gives him the prerogative to look for wear resistance and low grade characteristics.

The town clerk, said there are two pieces to that one ordinance. Councilman Macon said we haven’t heard the other. She suggested you may want to wait until you hear the second part of it. You can make a motion to approve that piece of the ordinance. Councilman Macon wanted to know if that was all a part of the same ordinance. Ms. Prusa said it is all under the same chapter and Councilman Johnson added it is all under Chapter 7. Mr. Harrell said the marina parking is on the top and the pervious part is on the bottom. He explained that Ms. Prusa is saying if you want to say you approve that piece of the ordinance and then you can approve the other piece of it once we have the public hearing on the other. Ms. Prusa said to make sure you are looking at the ordinance that was with the changes to the agenda tonight under Item 15. Councilman Johnson said I think we need to hear both parts and then we can act on the ordinance as it is presented. Since both parts fall under the same ordinance and it is under the same chapter. Mr. Clyburn suggested to Councilman Macon you might withdraw your motion at this time, open public hearing, and then make a new motion.

Mr. Parvin presented the second part of the presentation. He said the second half deals with Article 7. It is a change requesting the town bring its requirements into consistency with other coastal communities with concern to the number of parking places required for web boat slips. Currently it is 1 per 3 wet boat storage spaces and the request is to go to 1 per wet boat storage space.

Councilman Johnson said for further clarification this is what we are recommending to change it back to which is what we originally had before it got changed last November. Mr. Parvin said November 15, 2005 it was changed to 1 per 3.

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

There being no public comments, Councilwoman Efirm made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson asked Councilman Macon in your motion you are deleting that word. Councilman Macon said he is going to vote no on one so I don't think they should be presented together when it is two separate items. I am going to vote no for this. I don't want that changed. I wouldn't have changed it in November if I would have wanted this changed. I am for the change on the impervious surface driveways.

Mr. Clyburn said why don't you make a motion on that piece of it and let a separate motion be made on the second piece.

Councilman Macon made a motion to approve the section of Ordinance No. 06-627 (*Exhibit 2*) referencing (7) Parking Design and Construction to read as typed except to take out the words "equivalent as asphalt or concrete and". **MOTION CARRIED UNANIMOUSLY**

Mayor Pro Tem Gilbert asked is this reverting back to a more conservative stand where you get more parking. Councilman Johnson said what it requires is for every wet boat slip you have to have one parking space. If you have 10 wet boat slips out there, you have to have 10 parking spaces. It was changed last November to say for every 3 wet slips you only have to have 1 parking space. Whereas all the other beaches and towns it is one to one.

Councilman Johnson made a motion to accept Ordinance No. 06-627 Off-Street Parking Space Schedule, Types of Uses, Commercial Marina, number of required parking spaces 1 per wet boat storage space, 1 per 2 dry storage, 1 per service bay, 1 per 2 employees, plus required for all other on-site uses as presented. Ms. Prusa said she would like to assign a different ordinance number to that and make it two separate ordinances. Councilman Johnson asked what that number would be but she did not know at that time. Councilman Johnson said to approve it with the ordinance number to be determined. (*Exhibit 3*) **MOTION CARRIED 4-1 WITH COUNCILMAN MACON VOTING NO.**

### ***CONSIDER AN AMENDMENT TO ARTICLE 8.9 DESIGN SPECIFICATION STANDARDS***

Mr. Harrell stated this one has two parts as well. The first part deals with sidewalks and the second part deals with the shielding of dumpsters. You received the shielding of dumpsters language this evening. Both are under Article 8.9 Design Specification Standards.

Mr. Harrell said if Council were to recall a couple of months ago questions arose as to whether to require a sidewalk to be constructed on a property, which I believe was on Carolina Beach Avenue North. Because the way the ordinance was written, they would have to put a sidewalk in. Someone pointed out that there was a sidewalk across the street. Should we require it on one side if it is already on the other side? It opened up an entire discussion at that point as to whether we want to require sidewalks as a matter of a mandate in the ordinance or we wanted to go back to a standard of determining by review whether or not to require sidewalks. I think that was an old standard the town used some time in the past. We took that to P&Z with some language. You have it in your packet. What is in bold face is already in the ordinance and what is in the shaded areas is what has been added. This again was suggested to P&Z. I will point out the changes. In Section 2: Sidewalk and Curb & Gutter, under b instead of reading sidewalks shall it would be sidewalks may be required to be installed within the right-of-way behind the curb and gutter. A new section that has been added is the determination of required curb, gutter and/or sidewalk shall be made by the Town Council upon review and recommendation by the Planning and Zoning Commission. In number 3 the language reads installed curb, gutter and sidewalks shall be for the entire length of the property. There was a little change in the wording there as to where the word installed is in the sentence. Number 4 says required sidewalk shall be based upon one or more of the following: a) reasonable evidence that the sidewalk would be essential for pedestrian access to community facilities; b) that such is necessary to provide safe pedestrian movement outside the street or street rights-of-way area; c) that such an extension could reasonably become an extension of existing sidewalks and/or other pedestrian ways. Those are not all inclusive. As you see, one or more of the following could determine whether you wanted a sidewalk. It was voted on by P&Z to recommend to the Council. Councilman Johnson asked this was a unanimous vote and Mr. Harrell replied yes.

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

No one came forward so Councilman Johnson made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Macon said this was a bit of a pet peeve with me as well. The reason for this is we had several situations that came up where we had to require somebody to put in a sidewalk when it made absolutely no sense because the ordinance said so. With this you at least have the flexibility to require one or not. This gives Council the flexibility in a conditional use permit type situation to require one or not.

Mayor Pro Tem Gilbert said I think it is a good idea for the flexibility. I like the idea of sidewalks for safety. The other reason is I think we need to be flexible because of our stormwater management. I think it gives us a little more flexibility.

Councilwoman Efirm said it would also make a difference in some of the developments. We've asked them to do sidewalks and when they came back, they didn't have room for sidewalks. This happened in the development right here behind us. To me, that was a big mistake because they needed sidewalks.

Mayor Pro Tem Gilbert said this would give us the flexibility to say you have to have the sidewalk.

Councilwoman Efirm made a motion to adopt Ordinance No. 06-628.

Councilman Johnson said you are right this is also a two part. He asked, would Ordinance No. 06-628 just be for the sidewalk? It was decided there would be two ordinances.

A vote was taken in reference to Councilwoman Efirm's motion to adopt Ordinance No. 06-628 relating to sidewalks (*Exhibit 4*). **MOTION CARRIED UNANIMOUSLY**

Councilman Macon suggested the ordinance changes should be done on a one-by-one basis instead of us being confused and trying to split it up. Mr. Harrell said he has noted this. He said a good example would be you might be in favor of one portion and not the other portion.

Mr. Parvin came forward to present part two.

On July 12, 2005 Town Council adopted changes to our landscaping ordinance. One change was to require all dumpster enclosures to be four (4) sided enclosures. Chapter 14 (Solid Waste), Section 14-6 (Dumpsters) was visited in Fall 2005 to create consistency with the landscaping and solid waste ordinance. The Planning and Zoning Commission unanimously recommended approval of the proposed change to make Chapter 14 (Solid Waste) consistent with Section 14-6 (Dumpsters) at its September 8, 2005 regularly scheduled meeting. The Town Council reviewed the change at its October 27, 2005 workshop and unanimously recommended denial due to increase in costs as stated below:

If that becomes the standard in the future, it's going to slow down waste industries. They estimate an average of three minutes per site. The monthly charge for pick up for opening and closing the dumpster:

- for opening and closing the dumpster; once a week is estimated to be and additional \$13.70
- twice a week is \$27.42;
- three times a week is \$41.31.

Planning and Zoning unanimously recommended approval of this text at its March 9, 2006 regularly scheduled meeting to change it back in our Article 8.9 Design Specification Standards to read dumpster enclosures on three sides versus the four sides.

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

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

Councilman Macon this was a pet peeve of mine as well. When it came up to do the four sides, I knew it was going to cost more money but nobody checked into it. Councilman Macon asked do we have an ordinance number. Ms. Prusa said I will put a number on that one. Councilman Macon made a motion to approve the Section 3: Dumpster Enclosures to read as proposed with the ordinance number to be determined (*Exhibit 5*).

Before they voted on this, Councilman Johnson said we all know we are in a hurricane environment so since you are going back to three sides do we have something that will beef up the standards of the three sided enclosure. We have quite a few in town right now that are about to fall out. Also there is the trash problem outside the dumpster inside these three sided enclosures. That was one of the main reasons we did it. It was a big eye sore. I understand what Councilman Macon is saying about the cost and the problems of opening the gates. We need something that is going to have teeth that we can enforce to make sure we don't have bad construction out there.

Mr. Mike Hoffer, Code Enforcer, said he works with Mr. Van Paxton, the Building Inspector and they put together some specifications for the three sided enclosure to require a specific depth that the posts have to be sunk in with footings. We only allow shadow box or stockade wood fence. We have beefed up the specifications to make it something a little stronger to hold up not only against hurricanes but the dump trucks bumping into the thing which is more likely what happens. We have in the clean community regulations if there is a mess in a dumpster enclosure they have to have it cleaned within 48 hours. The very lease it turns over pretty quick. I have already started addressing some of the run down ones.

There being no further discussion, a vote was taken. **MOTION CARRIED UNANIMOUSLY**

***CONSIDER AN AMENDMENT TO SECTION 22.7 PROHIBITION OF CERTAIN TESTIMONY, UNDER ARTICLE 22 ZONING ORDINANCE TEXT & MAP AMENDMENTS***

Mr. Harrell said the next item deals with Article 22.7, which was discussed at P&Z's January 12, 2006 and February 9, 2006 meetings. It deals with an amendment to the ordinance that speaks to testimony by an applicant asking for a rezoning. Under the current ordinance, there is an outright prohibition that an applicant cannot present any evidence as to why he or she is asking for a rezoning. The purpose for that is so Council would not inadvertently use that representation to agree to the rezoning, which would be contract zoning. That is very conservative language to prohibit it. There is nothing in the statutes that says you have to prohibit testimony by an applicant. You can do so. However, the language to P&Z is if you were to do so the language would actually have in there that you would not rely on the representations of the applicant to make your rezoning decision. Then it becomes a liability later for contract zoning. Planning and Zoning ultimately decided they would prefer Council stick with the conservative approach that is currently in the ordinance, the applicant be prohibited from presenting the reason for requesting the rezoning. This is the recommendation unanimously from P&Z.

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

Since no one approached to speak, Councilwoman Efirm made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY**

Mayor Pro Tem Gilbert asked Mr. Harrell if there is any discussion about conditional zoning. We had talked about it at one point to see if there was any precedents or if it stood up under scrutiny through the Council of Governments or Institute of Governments about looking at conditional use permitting as compared to conditional zoning. Mr. Harrell said we have not discussed that at P&Z yet. It is an area we need to talk about. As you can see, we are changing ordinances like crazy.

Councilman Johnson said if I understand correctly, P&Z's recommendation is keep it as it is so the ordinance presented would be if we do not want to approve it. Mr. Harrell replied that is correct. Mr. Harrell said to Mr. Clyburn if the ordinance is going to stay like it is, it doesn't need to be voted on so you wouldn't have to make a motion. Mr. Clyburn agreed with Mr. Harrell. Mr. Harrell continued by stating that P&Z is recommending that you don't adopt this language. You are not obligated to vote against it because the language you have is already in place and enforced.

Since Council was in agreement not to adopt this language, no action was taken.

***CONSIDER AN AMENDMENT TO ARTICLE 3.3 EVERY LOT SHALL HAVE ACCESS TO A STREET***

Mr. Parvin said this text from the Zoning Ordinance was generally read from earlier tonight.

Currently the Zoning Ordinance's text contains the language requiring every structure to be erected on a lot adjacent to a street with two (2) exemptions; lots of record prior to the adoption of the Zoning Ordinance and certain lots and uses having access over a private easement or access right-of-way to a street.

***Analysis***

Exemption (2) has been interpreted to allow new easements to be formed to serve minor subdivisions. The current planning staff would like to add language into the ordinance that clarifies how this section should be administered.

***Recommendation***

The Planning and Zoning Commission unanimously recommended approval of a text change at its March 9, 2006 meeting that prevents any new easements to access a new lot formed under a minor subdivision. All newly platted lots will be required to be adjacent to a street or right-of-way.

Mr. Pavin went over the proposed changes to the ordinance.

Mr. Parvin showed some slides one of which was a planned unit development approved earlier tonight. On the west side of the planned unit development, before the subdivision was done, there was a minor subdivision which Mr. Parvin pointed out on the slide. He showed several lots

that were all new access easements formed under a minor subdivision reviewed by TRC. Under the current language, this has been allowed. This would prevent future minor subdivisions to be able to offer a similar type easement. The only option for an oversized lot would be to do a major subdivision or to do a planned unit development.

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

No one came forward to speak, so Councilwoman Efird made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY**

Mayor Pro Tem Gilbert made a motion to approve Ordinance No. 06-630 (*Exhibit 6*) as presented. **MOTION CARRIED UNANIMOUSLY.**

***CONSIDER REVOKING A CONDITIONAL USE PERMIT FOR FAILURE TO COMPLY AT 1003 BENNET LANE (ISLAND BUSINESS CENTER)***

Mr. Hoffer stated that the Island Business Center located at 1003 Bennet Lane is in the highway business district. Outdoor storage of construction equipment and similar items is allowed but only with a conditional use permit. In March 2002, they received a conditional use permit to allow outdoor storage. Some of the neighbors were concerned about them getting the permit. If you live on Colonial Circle you look straight down your street into the back of the buildings. One of the conditions of the permit was the gates be kept closed, except when entering and exiting the building. Within five weeks of getting the permit, letters were being sent to them.

Mr. Clyburn interrupted and addressed Mayor Clark. He suggested Mr. Hoffer be sworn in since this is an application to revoke a conditional use permit.

After being sworn in, Mr. Hoffer continued his presentation. The neighbors have had problems with them. This has been on my plate since I took this position almost 1 ½ years ago. Verbal and written warnings have not worked. The door doesn't stay closed. I feel there are two options, we can revoke the conditional use permit or amend the original conditional use permit to require an electronic gate. After discussions with Mr. Harrell, we have to consider in their conditional use permit, is a 12 foot fence. Twelve foot fences are not allowed within our Zoning Ordinance. We only allow a six foot fence. If the conditional use permit was revoked, the fence should be altered down to a six foot fence. In my opinion, the best solution would be to require them to put in an electric fence that closes automatically so this problem doesn't continue. They haven't met the conditions of the permit as it stands. I know there are some representatives from the Island Business Center Owners Association who would like to present a solution to you.

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

Alfred Olivolo was sworn in. He said we realize there is a problem. Part of the problem is the development built to the south of our building. The zoning was changed from commercial to residential when the building was already there. We have a conditional use permit and we would like to make a recommendation that we do in fact put in an electronic gate. We have a petition where 13 of the 14 unit members have signed stating we will put in the electronic gate. We would like an extension of 90 days to do the work. The members of the association would punch in their code, the gate would open, we would enter the property, upon entering there would be a

time device and the gate would close. When we leave, we would have another instrument on the inside of the gate we would hit. The gate would open for an allowable time and the gate would close. I think it would end the problem of the gate. The real concern I have is the insurance. If we have to take down the gate, the neighbor now has a 24/7 view of the driveway, which is not exactly attractive. We are concerned about the children in the neighborhood going in the back of the buildings to playing and possibly being hurt. We would like to leave the fence as it is, put in an electronic gate, and not have a problem.

Councilman Johnson asked Mr. Hoffer if we decide to do that, you are going to give him 90 days to put in an electronic fence. Mr. Olivolo said I want 90 days to install the gate. We haven't contracted to this as of yet. We do have a majority vote. Some of the other issues brought up were the car that was stored in there, which has been removed. One of the other issues was the trash on the outside of the gate, which we have completely cleaned. Part of the problem is the people in the neighborhood who drop off rugs or construction debris. We have cleaned the gate completely. He showed a photograph he took this afternoon. He said I completely cleaned it myself. Councilman Johnson asked if this is going to be a solid gate, which Mr. Olivolo answered yes. He said it would be a shadow box so it would conform to the rest of the fence. You wouldn't be able to see through it. Mr. Harrell said the 90 days is Mr. Olivolo's suggestion. Mr. Hoffer did not tell him you have 90 days to do it.

Mayor Pro Tem Gilbert asked Mr. Hoffer how long it has been an on-going problem. He answered since the conditional use permit was granted, which was three years ago. Mayor Pro Tem Gilbert asked has there been a suggestion before to you about an automatic gate. Mr. Olivolo said the only time he was informed of this was a few weeks ago when he got the letter. Mr. Hoffer and I have had some discussion about it. Mr. Olivolo said that when he got the letter is when he decided to get the other people together and put in an electronic gate. He asked Mr. Hoffer if there has been an on-going dialogue for three years or is this the first time it has gotten serious where you had to put something in writing. Mr. Harrell asked Mr. Hoffer to tell them about the September letter. Mr. Hoffer said he can't say specifically what was going on before I took my position here, except there was a letter sent to the property owners within five weeks of the permit. Mayor Pro Tem Gilbert said five weeks after the conditional use permit an issue started. How many different businesses go in and out of that gate? Mr. Olivolo said it is not the businesses that are the problem. The problem is the delivery people who drop off supplies. They open the gate. They are not members of the association. They drop off their materials and they don't close the gate. We try our best to keep it closed. Mr. Harrell said Mr. Hoffer did send a letter in September 2005 that stated this is your last warning. If it happens again, we will begin the process of revocation. That is why we are bringing it to your attention tonight because that is what that letter said would happen. Mr. Olivolo said they made a serious effort to try to keep the gate closed. Mayor Pro Tem Gilbert said just by design it is not going to happen. Mr. Olivolo said that is why I feel by installing the electronic gate it will end the problem forever. It stops the liability of keeping the gate open where a child could go back there and get hurt. It really is a solution for the neighborhood. We are willing to do it within the 90 day period, if not sooner.

Councilman Johnson said that as many fence contractors that we have in New Hanover County I can't imagine it taking that long to put in one gate. I am not in favor of 90 days, maybe 30 or 45 days. Mr. Olivolo said that's fine. Mayor Pro Tem Gilbert said he agreed with Councilman Johnson. He continued let's say 30 days and if there is some kind of extenuating circumstance... Mr. Olivolo interrupted and said I think the circumstance is the electricity. We need to get Progress Energy in there to actually bring electric from our pole to this actual location. It wasn't provided for. When Secof built the building, they should have been required at that time to put in the electronic gate and they didn't. I don't think it is the fact of putting the gate in or doing the

construction, the gate is already there. It is a matter of getting Progress Energy to help us provide the electric. How about we go to 60 days? Mayor Pro Tem Gilbert said 30 days. If you can't do it in 30 days, you can talk to Mr. Hoffer and you can figure it out. Mr. Olivolo said that is reasonable. Mayor Pro Tem Gilbert said it has been going on since September and Mr. Hoffer has spent a lot of time worrying over it. He is a good guy and you can work with him. Mr. Olivolo said he wasn't aware of it in September.

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

Councilman Johnson made a motion in considering revoking the conditional use permit for failure to comply at 1003 Bennet Lane, Island Business Center, we approve amending the original conditional use permit to require an automatic gate to be in place within 30 days of this date. Mayor Pro Tem Gilbert added barring any extenuating circumstances and Councilman Johnson agreed. **MOTION CARRIED UNANIMOUSLY**

***REQUEST FOR A CONDITIONAL USE PERMIT FOR A DUPLEX AT 104 VIRGINIA AVENUE (APPLICANT PULLED APPLICATION)***

No action was required.

***CONSIDER AN AMENDMENT TO APPENDIX A ZONING, ARTICLE 22 ZONING ORDINANCE TEXT & MAP AMENDMENTS, SECTION 22.1 AUTHORIZATION TO AMEND; WHO MAY INITIATE – (PULL - NOT CONSIDERED BY P&Z AFTER FURTHER LEGAL REVIEW REVEALED UNNECESSARY)***

Mr. Harrell asked that this item be pulled from the agenda at this time. No action was required.

***CONSIDER AMENDMENTS RELATING TO TOWNHOUSES: APPRENDIX A ZONING, ARTICLE 3 ZONING DISTRICT REGULATIONS: ARTICLE 7 OFF STREET PARKING AND LOADING REQUIREMENTS; ARTICLE 8 LANDSCAPING AND DEVELOPMENT SPECIFICATION STANDARDS; ARTICLE 17 SITE PLAN REQUIREMENTS AND APPROVALS; ARTICLE 23 DEFINITIONS TO ADDRESS “SINGLE FAMILY”, “TWO FAMILY” AND “MULTI-FAMILY” DEVELOPMENTS; APPENDIX A ZONING TO INCLUDE TOWNHOUSES (REQUEST TO TABLE TO MAY 9, 2006 AT 7:30 P.M.)***

Mayor Clark made a motion to table the request to consider amendments relating to townhouses: Appendix A Zoning, Article 3 Zoning District Regulations: Article 7 Off Street Parking and Loading Requirements; Article 8 Landscaping and Development Specification Standards; Article 17 Site Plan Requirements and Approvals; Article 23 Definitions to Address “Single Family”, “Two Family” and “Multi-Family” Developments; Appendix A Zoning to include townhouses to May 9, 2006 at 7:30 p.m. **MOTION CARRIED UNANIMOUSLY**

***CONSIDER AMENDING APPENDIX A ZONING, ARTICLE 4 OVERLAY DISTRICTS & OTHER SPECIAL DISTRICTS – (REQUEST TO TABLE TO MAY 9, 2006 AT 7:30 P.M.)***

Mayor Clark made a motion to table the request to consider amending Appendix A Zoning, Article 4 Overlay Districts & Other Special Districts to May 9, 2006 at 7:30 p.m. **MOTION CARRIED UNANIMOUSLY**

***CONSIDER AMENDING APPENDIX A ZONING, ARTICLE 3 ZONING DISTRICT REGULATIONS, SECTION 3.9(6) ALLOWABLE INTRUSIONS INTO REQUIRED SETBACKS FOR RESIDENTIAL ZONES (REQUEST TO TABLE TO MAY, 9, 2006 AT 7:30 P.M.)***

Mayor Clark made a motion to table the request to consider amending Appendix A Zoning, Article 3 Zoning District Regulations, Section 3.9(6) Allowable Intrusions into Required Setbacks for Residential Zones to May 9, 2006 at 7:30 p.m. **MOTION CARRIED UNANIMOUSLY**

***CONSIDER AMENDING ARTICLE 14.8 ACTION BY TOWN COUNCIL TABLED TO MAY 9, 2006 AT 7:30 P.M (REQUEST TO TABLE TO MAY 9, 2006 AT 7:30 P.M.)***

Mayor Clark made a motion to table the request to consider amending Article 14.8 Action by Town Council to May 9, 2006 at 7:30 p.m. **MOTION CARRIED UNANIMOUSLY**

#### ***APPOINTMENTS TO THE PARKS & RECREATION COMMITTEE***

Mayor Clark said terms are expiring for five members of the Parks & Recreation Committee. Councilman Johnson said they were presented with a copy of all the committees' policies and procedures. The cover on this is an ordinance for a policy adopted by the Council on March 12, 2002. In the policy, it says any committee, commission, board, or authority unless otherwise stated by statute or charter, all terms of office shall be for three years. No appointees may serve more than two consecutive terms. It does say the policy may be waived if the Town Council determines the removal or a number of individuals made ineligible by this policy would be detrimental to the functioning of that board, commission, committee, or authority. I have suggested since their terms expired April 9th, we extend their term until the next Council meeting. Parks & Recreation will go back and look at these five particular applicants to see if they have served more than two terms. At the same time, instruct the town clerk to notify all boards, committees, and commissions to do the same.

Councilwoman Efirid disagreed with Councilman Johnson. She said they used to literally beg people to sign up for these things. These people on the Parks and Recreation Committee have been faithful and have worked very hard because I have seen them. I know each one of them personally. I don't know if they have been there for three years, five years, or ten years. I don't agree with that.

Mayor Pro Tem Gilbert asked what should be done with the other applications. Councilwoman Efirid said if someone wants to quit then put them on. Councilman Johnson said one of these applicants is one they presented last month. They have a lot of experience. I totally agree with what you were saying because I served for 11 plus years on the Planning Commission. The only reason I was there that long was nobody else was applying. Now our town has grown and we have a lot of people who want to get involved but they can't. From what I was told that was one of the reasons this policy was adopted by the Council in 2002. Councilman Macon said we were just saying earlier our town hasn't grown. Mayor Pro Tem Gilbert said we have had a population

turn over. He continued by stating that his big concern is we have new people applying and we're turning them away. If some of these people are on their second, third, or fourth term, we probably need to get some new blood in there just to carry on with new perspectives. It is sad we have people willing to step up and other terms are up and we can't use them somewhere. They may not volunteer next time because we didn't find them valuable. I am for tabling this and sending it back to the Recreation Committee and other committees to say review your membership and let's make sure we are getting a turn over. Maybe some of these people will want to serve other committees. Mayor Pro Tem Gilbert said he serves on a number of national committees and we have a term. When our term is up we become friends of the committee. We continue to participate. Maybe we can consider having active committee members who vote. When their term is completed they can apply to be a friend of the committee and be involved in subcommittees. Councilman Macon said the policy allows for Council to have some flexibility. I think if it is this Council's wish to stick to the guns of two terms, then we send a letter out and let the boards know that is how we are going to be looking at it.

Councilman Macon said right now I will make a motion to reappoint these five people.

Mayor Clark said it is hard to get volunteers to come out and work. Yet when you have a volunteer, you don't want to tell them you can't serve because you have already completed your time. You want to keep them involved but you also have the new volunteers who are qualified and they want to come in. It is hard to have it both ways. Councilman Johnson said there must have been a reason it was adopted in 2002 and Councilman Macon commented and it has an out if you have a member who is serving in that capacity. Councilman Johnson said if you are not getting applications and you are short then there is the out to reappoint those people. If you have an influx of people who are applying and others have served more than two terms, then give some other people a chance. Mayor Clark said but somehow hold on to the ones who want to be there; you can do friends of the committee.

Councilman Macon restated his motion to reappoint the five individuals that the Parks & Rec Committee recommended to reappoint for a three year term. **MOTION DENIED (Mayor Clark, Mayor Pro Tem Gilbert and Councilman Johnson voted no)**

Mayor Clark said I think we should send it back to the committee.

Councilman Johnson made a motion to extend these five people's terms until the next Council meeting so they are still active until Mr. Lashley can do a review on them to see if they have served two terms.

Mayor Clark said it doesn't mean they are off the committee. Councilman Johnson said we do need to be fair about this in the procedure that was adopted. We need to send it to all the committees so people are aware of the policy. Councilwoman Efird said you all weren't around when we were begging people. When you have good people on board to serve and do their job, they should stay there. Councilman Johnson said we as Council people don't stay here unless we get voted back in. The Mayor can't stay in for more than two years. He has to run for re-election. Councilwoman Efird said he isn't appointed, he is elected.

There being no further discussion, a vote was taken. **MOTION CARRIED (Councilwoman Efird and Councilman Macon voted no)**

***AMEND FLOOD DAMAGE PREVENTION ORDINANCE (ORDINANCE NO. 05-614),  
SEC. 12-171 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD***

Mr. Harrell stated this deals with an amendment to the Flood Damage Prevention Ordinance Council adopted on November 15, 2005. We found out from FEMA last week the ordinance adopted in November should have actually adopted by reference to the April 3, 2006 map we are currently enforcing as of April 3, 2006. The language Council adopted was from the model ordinance provided by the state in the spring of 2005. Last week in a phone conversation, FEMA told us the Attorney General of North Carolina in October said that language needed to be specifically to the ordinance of 2006 and not reference the 1986 ordinance and revisions thereto. They said we are in compliance for this past week as long as we were enforcing it but they want to see the language changed and actually adopt the April 3, 2006 FEMA Flood Insurance Rate Map.

Mayor Pro Tem Gilbert made a motion to adopt Ordinance No. 06-631 (*Exhibit 7*) as presented.  
**MOTION CARRIED UNANIMOUSLY**

***ITEMS NOT ON THE AGENDA***

Mr. Pagley said two Council meetings ago Council directed me to solve the problem at Black's Marina. I talked to ADS Pipe. They were able to make a presentation to me and our engineers, Brian Cox and Harry Dail, and suggested this type of sediment chamber. As you see on the screen, this is the flow coming into the pipe. If you look the flow dumps, captures the TSS, total suspended solids, which is the sand here. When the chamber fills up, it goes over a dam. This is like an enclosed retention pond. It will capture all the oils, papers and trash on this side and the water would go underneath and forward onto the outlet of the marina. Also on the system is built a by-pass just in case we get hurricane rains. If the water can't get through here fast enough, it will go through the by-pass. It has two access points. On the slide he showed where one of the access points is this side where it collects the oil and debris and this is the in where it captures the sand first. I remember conversations with Council and Mrs. Black and she didn't want it on her property. This can be installed in the street under St. Joseph's with the two access points being manhole lids. This is my recommendation to fix that problem. We haven't done the engineering yet because we have to determine how much flow is coming off of 421 and goes through that system out to Black's Marina. The cost to solve this problem could be in excess of \$150,000. If you want me to move forward, I was going to request tonight for you do a budget amendment. Take money out of the water and sewer fund balance and transfer \$150,000 into the stormwater CIP for the repair.

Mayor Clark said the whole issue is to catch it. How is that going to work with the by-pass? Mr. Pagley said the only time the by-pass goes into effect is when we get large amounts of rain. Otherwise the water will flow through the path of least resistance, which is straight. If we get two or three inches of rain in 45 minutes, the by-pass will give some relief so it won't back up further up the system. Mayor Pro Tem Gilbert asked, when there are heavy rains is that the only time the sediment is being deposited there? Mr. Pagley said he doesn't know when the sediment is being deposited there. Mayor Pro Tem Gilbert asked, should we figure that out first before we spend \$150,000?

Mr. Pagley said we have had main breaks and they try to blame the problems on the water main break which most of the dirt and soil from that break was put on 421 and put back in the hold. We have gone through this and most of our catch basins there have drop inlets. When the

engineers and insurance people looked at them, the drop inlets were not full of sand. They were empty. They were two feet below the bottom of the pipe.

You asked me to come up with the solution to make sure that doesn't happen again. Mayor Pro Tem Gilbert asked, do you know where the sand is coming from? Mr. Pagley said I never said the sand came from the road. The sand was coming from somewhere. It was presented to you it was coming from the road and through construction sites and so forth. For me to capture the sand, this is the system I am going to have to put in. I'm willing to go back to the drawing board and start over. Councilman Johnson asked, can we not determine where it is coming from? Mr. Pagley stated when the engineers and insurance agents reviewed the situation two years ago they found no sand at the bottom of those catch basins. Those catch basins are designed with two foot drops below the pipe. They weren't full of debris. Councilman Johnson said that is not what I'm asking. We know it is coming from somewhere. Can we determine where it is coming from? Mr. Pagley said I can't. I drive on the North End and some days you see an island between us and Masonboro Island. Some days you see the dredging bars shooting sand up into the air trying to dredge the inlet open again. Is the sand coming from there during high tide into the marina and depositing it there? Mayor Pro Tem Gilbert said his concern is you spend \$150,000 and we find out it is a tidal movement pushing it in there. I am not discounting it is coming from there. It just seems engineering wise we can capture some of the sand and say it is coming from here or it is coming from there.

Mr. Pagley said he has installed silt sacs in some of the catch basins on St. Joseph and 421 and we haven't had to clean those yet. We are street sweeping the streets especially 421. We started doing a lot of the streets like St. Joseph and others that don't have curbs to push the sand back off the road. Councilman Johnson said we recently had rain Saturday a week ago. Was silt coming through the pipe? Mr. Pagley said he didn't see any. He said I don't have an overabundance of sand captured in those silt sacs at this time. Mayor Pro Tem Gilbert said in your professional capacity, with the amount of sand in the silt sacs, is that where the sand is coming from that is being deposited in the marina? Mr. Pagley answered I am questioning is it coming through tidal movement or is it coming from off the streets. Mayor Pro Tem Gilbert said I think we need to figure that out.

Councilman Johnson asked, the pictures that were presented where we saw this flowing through the pipe and we saw where it is filled in pretty high and dry, is it still like that? Mr. Pagley asked, the bottom of the basins? Councilman Johnson said no, at Black's Marina. At the end of the pipe has that build up been removed? Mr. Pagley stated it is still there. Councilman Johnson asked, what is existing right now that supposedly came through our pipe, have we determined a cost to go in there from the town's standpoint with Black Marina's permission to clean it out? Mr. Pagley said he heard it would be \$15,000 but he hasn't confirmed that. Councilman Johnson said we should determine what that cost is and possibly clean that out before we spend \$150,000 that may not cure the problem. Mayor Pro Tem Gilbert said my fear is if you put this \$150,000 thing in there and it is still filling in you will say I told you it wasn't there.

Councilman Macon said his problem is I have never seen an insurance company that didn't find a reason every time not to do a claim and Mr. Pagley agreed with him. Mayor Pro Tem Gilbert asked about getting the cost for a third party engineering group to come in and monitor the situation. We know the cost to get it cleaned out and the cost to put the apparatus in. Mr. Pagley said there are engineering firms in Wilmington we can ask. Mayor Clark suggested hearing from Mr. Simon.

Mr. Randy Simon, manager for Mona Black's Marina at 930 St. Joseph Street said he saw the \$150,000 project and he was glad to see a project. He has fought hard for two years for a project. He didn't like the outflow when a down pour comes because it defeats the whole purpose. The two feet catch basins are described as always clean. If you come over during a thunderstorm and see the 30 inch pipe fully capacitated at a 15 foot blast coming out of the storm drain you would know why all the traps are clean, they are being flushed out. I know where the problem is coming from. I can see the sand build up from the outflow pipe directly to the boat slips filling in. It disappoints me when I hear it is being caused by a dredging of the inlet. I am also discouraged about the line of communication. I fought hard for two years and I wasn't notified this was going to be added to tonight's agenda. Mr. Mayor you went out of your way to make sure the line of communication was much better. For me or Ms. Black not to be notified about the importance being discussed tonight, it is hard to take in and I'm very disappointed. Mayor Clark stated it was just added this afternoon and he apologized. Mr. Simon said I just happened to come over for a visit and found out about it.

He continued by stating that he has seen an oil chamber and sand and silt chamber and it's all going into the marina. I don't know what I'm supposed to do next. Ms. Black has already paid \$16,000 since the original dredging in 2002. It needs it again and she has to reapply before August 2006 to do another dredging. She has an existing permit to do a minor dredging. She must apply again between now and August to get the minor dredging or she has to go back to square one at a lengthy period of time.

Mayor Pro Tem Gilbert said I think Mr. Pagley tried to move this along as fast as he could to present it to us tonight. He is trying to give us a solution. I have heard an insurance person who has an opinion, Mr. Pagley has an opinion. I have seen pictures from stormwater people who aren't on staff any longer so we can't ask them their opinion, and we have a \$150,000 price tag for something we don't know will definitely fix the problem. I feel for you for being put off for two years.

Mayor Clark said it sounds like we have a window here with a permit that the marina cleaning needs to be done. Mr. Simon said that Ms. Black must apply between now and August for another dredging.

Councilwoman Efirid said she feels this has gone on too long. This Council promised her we would fix it. We didn't know it would be that much money. There should be alternatives to take care of her. I think this is very, very wrong. She has done everything she's supposed to do. I feel really bad we haven't done anything to help her. I want to do it at all costs. Councilman Macon asked do you gamble with \$150,000 or do you gamble with \$15,000.

Councilman Johnson asked Mr. Simon if he knows what the dredging cost is. Mr. Simon answered she paid \$16,000 out of her pocket. The situation isn't as bad as it was when we did the dredging 12-14 months ago. It hasn't gotten to the extreme of the boat being high and dry now. It needs to be dredged again yes. Is it as bad when we dredged in November 2004 no When we dredged in 2004 we had a place next door where we could put the sediment through permits. It is not available now. Even though we have less dredging to do, the question is how much more do we have to pay for not having a place to put the soil. Councilman Johnson asked do we have a sight we could dispose of it. Mr. Pagley said we could bring it to the Operations Center.

Councilman Macon said he agrees with Councilman Johnson. I want to fix the problem too. I'd rather pay to dredge it and have the engineering firm. Councilman Johnson said the engineering firm comes up with a solution but it doesn't fix that it is high and dry down there now. That still

has to be done no matter what. In the interim, we can do that until we come up with a reasonable solution that is going to work and stop the problem from filling in when we dredge it out. I think we need to help them out and get the dredging done. Can the town work under his permit? Mr. Pagley said we can reimburse them for the dredging. Councilman Johnson asked who did the dredging before and Mr. Simon replied Tommy Rothrock. Councilman Johnson said Tommy Rothrock's business was bought out by Carl Snow. Mr. Simon answered yes. Councilman Johnson asked if the dredging was done by a barge or land side. Since Mr. Simon was not present during the actual dredging, he could not answer that although he thought it was done both ways. Councilman Johnson said maybe we can have Mr. Pagley contact Carl Snow and get an estimate to dredge what is existing right now while the engineer works on trying to find out where the problem is coming from and what the best solution is for fixing it. Mayor Pro Tem Gilbert asked if they are going to dredge back to the pipe. Mr. Simon said no, that can't be touch because it is considered wetlands. Mayor Pro Tem Gilbert said a full force of water is coming out there and that is splashing into that pipe which has the potential to drive the sand in there out of there. It is only adding very minimal to that because the ditch doesn't grow any larger. Council asked Mr. Pagley to contact Carl Snow to get an estimate of what it would cost to dredge out the area they have been talking about tonight. Mr. Simon asked if he presents papers of the \$16,000 where she just recently did the same thing would that be taken into consideration into in addition to the upcoming dredging. Councilman Johnson said I don't have a problem with the \$16,000 later on if it is determined what the cause is. Mayor Pro Tem Gilbert said let's get this cleaned, get some conclusion of where it is coming from, then that will mitigate the \$16,000. Councilman Macon said being the steward of the taxpayers' money and you being a taxpayer, I don't have a problem paying Ms. Black \$16,000. The smart way to do it is make sure we have it looked at by an independent third party to make sure that is the case. If they come back and say yes that is where it is coming from, I don't have a problem paying that.

Mr. Pagley said he will come back to Council with an estimate from Carl Snow for dredging the marina. He will also come back with an estimate for engineering cost for a study to determine where the sand is coming from.

#### ***CONSIDERING APPROVING A LEASE AGREEMENT FOR A CELLULAR ANTENNA***

Mr. Pagley said he would like Town Council to give him permission to continue dealing beyond just a verbal conversation with TH Inc. Management. Karen Hill is representing Alltel. I have one space left on my Dow Road water tank I could lease to Alltel. I was going to try to negotiate \$3,000 a month with 3% increase annually and \$1,500 administrative fee. After I have the lease agreement, I will send it to Mr. Clyburn to review. My last negotiation was with US Cellular six or seven months ago. We are receiving \$2,500 a month from them with a 3% annual increase. There was \$1,000 administrative fee. Mayor Pro Tem Gilbert said he heard Verizon was coming which Mr. Pagley responded he still has a tank on Alabama. Council gave Mr. Pagley authority to represent the Town of Carolina Beach in negotiating with TH Inc.

#### ***CONSIDER AGREEMENT WITH PROGRESS ENERGY FOR OUTDOOR STREET LIGHTING***

It was reported by Mr. Pagley he has been working with Progress Energy. They have submitted their plans and proposal to DOT to put lights on the north side of the bridge as they are on the south side; which is why it is taking them so long to get an answer. DOT will never give us permission to put lights on the bridge so I thought I could get lights on the south side when you

break the plain. When you break the plain going north, you will have lights as you come off the bridge. Councilman Macon said I am assuming we are using our extraterritorial jurisdiction to put lights on the other side of the bridge and Mr. Pagley said yes. He continued by asking if anyone has talked to the folks on the other side of bridge about having lights there? Mr. Pagley said he wasn't going to do that until he knew if DOT was going to give Progress Energy permission to do so.

The second proposal Mr. Pagley spoke about pertained to the old fiberglass street lights. We own 190 of those that go up Harper, around the lake, on the Boardwalk, and Lake Park Blvd. The original count was 209 but then he found out that 17 of those were lease lights from Progress Energy. The black ones at the Marina have the plain globe on top.

Mayor Clark said this issue started when we were doing action items for the Council and one of the action items was to help revitalize the Boardwalk. Part of it was safety and security on the Boardwalk. We felt like lighting was a big part of safety. Mr. Pagley was challenged to get with Progress Energy and work up some numbers. Mr. Pagley recommended the Masterpiece because the globe sits in a basket and we are in a high wind area. That is what they installed in the Seagrove subdivision.

After some research he found out that our average monthly cost for street lights is \$7,660 throughout the island. On the projector, Mr. Pagley showed there are quite a few street lights on Harper Avenue that are in the center of the median. We could probably reduce that number because they are close together. We own those lights and they don't make the lights or parts for them anymore. As you drive down Lake Park Blvd., you can see some of the caps are gone and some don't come on around the lake. If we were to go into contract with Progress Energy to take over the 190 lights, they would even put them around the lake and maintain them there. If they get hit by a car and so forth, we give them the number and they come and fix the light or replace the bulb. It takes us completely out of the street light business. It would be an extra \$6,100 a month, raising our average street light bill to \$13,827 for 10 years. Mayor Pro Tem Gilbert asked, what is the \$7,600? Mr. Pagley said the \$7,600 is our average monthly street light bill. Councilwoman Ebird asked does this include Canal Drive and Carolina Beach Avenue North. He said no. Councilman Johnson said these are just for the free standing pole lights which Mr. Pagley replied yes. Mayor Pro Tem Gilbert asked if that includes electricity. Mr. Pagley said yes because we are paying the electricity for those lights right now so I assume that would include the electricity. He we are leasing the installation of the new lights. Councilman Johnson asked if it takes 10 years to pay it off. Mr. Pagley said no, you can pay it off next year if you want. Councilman Johnson asked if we take all the old ones up and put the new ones in and we reduce the number of what we have there now we are paying for new ones plus the installation costs. Mr. Pagley said Progress Energy gave him a quote that was a lighting solution cost, which included the sodium, the pink light. I have 190 of them at \$16.41 each and of course they are going to charge for the posts. They are \$15.00 each. That is boring, installation and wiring. We are getting all new wiring to those lights. There is an underground service charge per pole of \$3.62. If we pay that up front, we will probably save \$60,000. If we made them a first time payment of \$37,000, we could pay off all the underground service charges per pole and probably save \$60,000 in the course of 10 years. Our average monthly street light cost would probably run around \$13,500. That would make it around \$165,000 a year in street lighting. Councilman Johnson said he is a little confused why the monthly cost is almost double. Mr. Pagley answered they are offering a lease purchase to install those lights. If we want to get rid of the old fashion hat lights and go with cobra lights that hang from the pole, it would probably be no cost at all. Councilman Macon said that is something we should consider. I can understand down 421. Let's also consider the fact that down 421 they are talking about doing the landscape and redoing the

road. You don't want to have that work done and do it again unless they were going to take care of it. He asked, do you need it down Harper Avenue or can you go back to regular street lights on Harper Avenue and that will eliminate quite a few lights? They are kind of cool around the lake and down the middle of 421 and in the Boardwalk area. Mayor Pro Tem Gilbert said we have an immediate need in the Boardwalk because about 50% of those lights are out and it definitely is a security issue. We can't go forward there without safety. Mr. Pagley said our immediate need is the Boardwalk and the lake. Councilman Johnson asked what is our immediate need number and get that cost. Councilman Johnson said he agrees with Councilman Macon about the proposed changes on Lake Park Blvd but also the proposed changes on Cape Fear Blvd, and Harper Avenue. Until those changes take place spending money on extra lighting there now may be a waste. Councilman Macon reiterated eliminating the ones on Harper Avenue and go back to street lights. Councilman Johnson said they will do those for free. Mr. Pagley said I think so but if not I think it would be pretty minimal. Mayor Clark said the Boardwalk and lake we need to go with right away. Mr. Pagley said he will go back to Mr. David Munn at Progress Energy and tell him right now we would like to get a proposal for the Boardwalk and lake and see what it would cost to have cobra lights put on Harper Avenue and take out those poles. We will take out the poles and save those for parts for everything left on 421.

Mayor Pro Tem Gilbert asked if there are any special financing issues when we talk about long term. Mr. Pagley said electric is a line item in the environmental budget. Ms. Johnson said it would be an increase for Council in the electric accounts for next year in the general fund. In the current proposal, he had an increase of about \$165,000 in the general fund. Mr. Pagley said it would be \$71,000 total. He continued right now our average is \$91,000 a year for street lights and with this increase it would be \$165,000.

Mr. Pagley said his inmate construction labor crew came back today. They will be here for one month rebuilding beach crossovers. Mayor Clark said thanks to Senator Julia Boseman. He continued they had turned us down because they were finished for the year. Senator Boseman wrote a letter and they came back and helped us.

Mr. Clyburn said at the town's direction the town was able to conclude a piece of litigation recently. The state law requires we disclose the terms of that settlement. It was a piece of litigation that had been pending since the summer of 2001. In exchange for a payment of \$35,000 to Coastal Plains Utilities, Coastal Plains Utilities claims against the town were dismissed with prejudice.

Mayor Pro Tem Gilbert said the Transportation Advisory Committee needs a list of projects. I sent Mr. Pagley and Mr. Harrell paperwork. He mentioned that he forgot Ocean Blvd paving. He asked to please get those to him. There was also some other money available for the school and he talked to the principal and she put her list together. He need to get the list of road improvements that the state funds.

Mayor Clark announced that the Tourism Development Authority approved \$105,000 for lifeguards. We should be getting a check in the mail.

He reminded everyone to complete your annual evaluations.

He also announced that the new Town Manager, Tim Owens' first official day is Tuesday, April 18th. He is coming into town this weekend and he will probably be here sometime on Monday.

Mayor Clark said that Representative Mike McIntyre is working hard for us for beach renourishment money. We have some money but we are \$2 million dollars short. We are working hard to get that approved through the Energy and Water Appropriations Bill.

***ADJOURNMENT***

There being no further business to conduct, a motion was made by Councilwoman Efirm to adjourn. **MOTION CARRIED UNANIMOUSLY.** The meeting adjourned at 12:16 a.m.

Respectfully submitted,

Lynn N. Prusa  
Town Clerk

Approved: \_\_\_\_\_