

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

**June 13, 2006**

The Town Council of the Town of Carolina Beach met in regular session on June 13, 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 Town Manager, Tim Owens, and Town Clerk, Lynn N. Prusa.

Mayor Clark called the meeting to order.

***INVOCATION BY PHILLIP PENNINGTON, PASTOR OF KURE MEMORIAL LUTHERAN CHURCH***

Pastor Pennington led everyone in the invocation.

***PLEDGE OF ALLEGIANCE***

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

Before moving to the next item, Mayor Clark stated we have a mega agenda tonight. Ms. Prusa is going to have an alarm set for 10:45 p.m. so we are going to end by 11:00 p.m. We are going to attempt to go through Item #20, which is all of the public hearings. Anything beyond Item #20 is going to be carried over to this Thursday night, June 15th, starting at 6:30 p.m. in the Council Chambers.

***ADOPT THE AGENDA***

Mayor Clark stated Item #39 (Discussion Concerning Hurricane Preparedness) will now be Item #5A and Item #10 (Consider Adopting FY 2006/2007 Budget) will be the first public hearing.

Councilman Johnson said Item #8 (Consider Request for a Conditional Use Permit for a Planned Unit Development for a Duplex at 104 Virginia Avenue) under public hearings was not on the approved May 9th Consent Agenda or part of the advertisement in the Island Gazette on May 24th and 31st. The item was advertised on June 1st in the Star News and June 7th in the Island Gazette for tonight's meeting. He requested that Item #8 should follow Item #17 (Consider Amending Planned Unit Development Regulations and

Article 3 Zoning District Regulations, 3.8-1 Table of Permitted Uses) of the public hearings, since it was a late advertisement.

Councilman Johnson made a motion to adopt the agenda with the changes. **MOTION CARRIED 4-1 WITH COUNCILMAN MACON VOTING NO**

### ***RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE***

Mayor Clark asked Roger Trogdon to come forward. He said Roger has worked for the town for five years. He comes from a large family, nine brothers and sisters and is a professed internet junkie. His supervisor Warren DeWolf said Roger likes to come to work and likes his job. He also helps the ladies around Town Hall. They say if they need any detailed work Roger is the detail man. Tonight we want to recognize Roger for five years of work with the town. Mayor Clark presented to Mr. Trogdon a certificate of achievement.

### ***DISCUSSION CONCERNING HURRICANE PREPAREDNESS***

Tim Owens, Town Manager, stated today we held a staff hurricane preparedness meeting which came at an opportune time. We talked a little bit about tropical storm Alberto. We began to pump the lake this morning in preparation of a significant rainfall event. We hope the rainfall does not occur in the town. We began some preparation by fueling vehicles and picking up around our buildings.

The bigger cause of that meeting was to talk about our long term hurricane plans. Primarily June 1st is the kick off of hurricane season and that is when you hold an event. We have been talking about and looking at a hurricane evacuation and re-entry plan. We went over a pretty bad scenario today. It was very similar to the Port Charlotte incident where a few hours before landfall it went from a Category 2 to a Category 4. We basically made sure to have things in place prior to an event. I have been with the town for about two months and most of the department heads have been through numerous events unfortunately, and they are a really good resource. We did talk about each event being very different and the response very different. We played on some of the things that we have probably done well in the past and some of the things that we haven't done as well in the past.

Mayor Clark said tomorrow evening the hurricane volunteers will meet in the training room at 6:00 p.m. for continued training.

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

Randy Simon said again I appear as I do every month trying to remedy the situation at 930 St. Joseph Street, the Mona Black Marina. Three months ago Town Council decided

to get an independent marine engineer. Councilman Gilbert even mentioned during the last meeting that the marine engineer would actually be representing Ms. Black in reality. Three months have gone by and no marine engineer. Three months ago Town Council directed storm drain people to get an estimate for dredging the two slips in question at Mona Black Marina. Harry Oakes came down at that period of time and said he would not get estimates on two slips as Town Council directed. He said he was only going to get one slip estimate, which was \$10,500. The Town Manager, Mr. Owens, acknowledged at the last meeting that it was \$10,500. Ms. Black directed me to get the other estimate and that she would pay for it because it has to be done. That estimate was \$5,000 from Snow's Dredging. According to Snow's Dredging, the Town of Carolina Beach has not taken any action. Mr. Simon said that he called Mr. Snow and he wanted \$1,000 from Ms. Black for the \$5,000 on the second slip and he had been instructed to pick the check up at the marina at his convenience. Since last meeting, two boats have gone aground on that sandbar created by the storm drain system on the second slip, referring to the \$5000 dredging. Nothing has been done on the \$10,500 suggestion. Nothing has been done to my knowledge about the marine engineer, which was directed for the last three months from Town Council. There has been no communication to myself or Ms. Black. I shouldn't be appearing here every month. Town Council is making directives and nothing is being followed up as far as I know. If I am wrong, please take the rest of my time and tell me where I'm wrong. Those are the questions I would really like to have answered. It needs to be remedied.

Mr. Simon said the picture I have here leaves no doubt in anybody's mind where the dirt is coming from. I would be more than happy to pass this, which he gave to Council. I have other pictures here which I have shown Town Council. I have pictures I have shown to Planning and Zoning. Mr. Johnson is very familiar with the pictures I showed him when he was presiding on Planning and Zoning. I have followed every rule. I have tried to show everything. The storm drainage department actually came down and took these pictures as I have stated many times. Councilman Gilbert made a point, we are talking about multiple days or did it happen on one occasion when the water main broke on Lake Park Blvd. Regardless if it took one day, a combination of two days, a month or two years and four months, the same dirt came out of that same pipe.

Town Council should be a neighbor to all the citizens. When Town Council is elected and there is something wrong, simply say I'm sorry and we will help remedy the program. Help you remedy with the financial responsibility if there is some. Ms. Black is not asking for the whole marina to be dredged, just the two slips that are going high and dry because of all the sand and the pollutants coming out of that 30 inch storm drain pipe. Please Town Council, two years and four months, I have the pictures of dirt actually coming out of the pipe. I showed the pictures of the creek where the boats are going aground. Please do something to help Ms. Black who is here tonight and she signed up to speak. I would love to have her come up and get her five minutes and just receive answers to maybe some of the questions that I have addressed to Town Council.

Mona Faye Black said she didn't really have anything to add other than she was hoping that Council had some information. She knows that pictures have been made of the

drain. There has been additional sand that has been washed into the marina. She said, I guess you're trying to clean it up to take the pictures and she asked if anyone had an answer.

Mayor Clark said I know the project has been worked on. Mr. Owens said I can update you. Basically we secured an engineer to examine the situation and to tell us what the problem may or may not be. He is working on the project. I think he is going to meet with some marine scientists at UNCW to get their opinion on the matter as well. It took a while for us to video camera the storm water facilities because our video camera did not work. I think they went out Memorial Day weekend and videotaped that. The engineer needed that data in order to start his study. It is in his hands now. Our operations director did talk to the gentlemen today and he is working on it continually.

Mr. Simon asked about the estimates that the town requested three months ago, for \$10,500, and if he had responded to that. Mr. Owens said I think the direction from Council was to look at it, let the engineer tell us if there's a problem or if there is not a problem, and then we would respond at their direction to the dredging aspect of it. Mr. Simon said our permit for dredging expires in August. Mr. Owens said then obviously we will have to seek another permit if we run over that time.

Ms. Karen Kirk, was the next to speak. Ms. Kirk said that she represents the homeowner's association at Old Mariner's Village, which represents about 30 Carolina Beach taxpayers. I haven't had the opportunity to address this Council, although we have brought this item to the Council last year and certainly Mr. Johnson has heard from us in the Planning Commission last year. We're not sure what the agenda item will address when it comes to the location of the skateboard park at this point. We have been trying to follow this issue through the items in the newspaper and through talking with Ted Lashley over at the Recreation Center. It is coming back up and we just wanted to remind this Town Council a couple of things. One is that last year this skateboard park was voted down by the Planning Commission 6 to 0 in terms of the location of it being right here at the back of the Recreation Center area. The town board did vote last year to search for an alternative site. We don't know of any progress on that. I think the homeowner's association would appreciate any knowledge of what's going on with that kind of effort. We still believe that the skateboard park right where it was proposed or even closer to the building would be in violation of the town's noise ordinance of 65 decibels. We're not sure if anybody has asked the Presbyterian Church what they think about that, if it is moved closer even to the building. We've looked into a couple of different expert opinions about that and we are being told at least 100 feet away from any residential area and a lot of the nature conservation boards we have looked into said 600 feet away from a residential area. We just wanted to bring this to you again and tell you that the homeowner's association is very interested still in this issue. We do intend to stay on top of it, talk with you about it, and we hope we can work together to find something that is reasonable for everyone.

I just wanted to also mention that I am a child psychologist and one of the things that I like to do is always research and assess issues like this to see what's really going on.

When I've actually talked to the people who I think will be the users of the park, they actually have told me on a number of different occasions that this is not, here in the Recreation Center parking lot, where they prefer to have the skateboard park. They actually want it down by the boardwalk. I am curious whose agenda this might be and if we really want to address what the kids want. Has anybody really asked them what they want? Have we asked them where and would they actually use it.

Debbie Jackson who lives on Pinfish Lane was the next to speak. She stated, I spoke with Councilman Gilbert last week about speed humps being placed on my street. I originally thought stop signs would be great but they do not work well on Mackerel Lane so I don't think stop signs are going to work. I think when South Carolina and Texas are paved that will be the ideal time to install them. I would like for you to consider this.

Twig Wiggins said that he had the privilege to speak to Council five weeks ago today concerning some of the concerns at the North End of Carolina Beach now called Freeman Park. I am not going to rehash some of the issues I brought to you. It was published in the paper the following week. Whoever reported that item I guess took verbatim what I said and it was a tremendous article. I would like to thank that gentleman for publishing that.

One thing I would like to revisit is that I said that it was a matter of time before somebody is hurt out there. We had a young man come down with his mother and his brother walking on the beach right at the high tide line and he stepped on a piece of glass. Thank goodness it was not serious. It did not require stitches but it could have been a lot more serious. If you would look at one of the pictures you will see where as I dug into that fire pit I found portions of a couple of bottles where they had burned the bottles in the pit. Of course, they were hidden at that time and not exposed. I don't know if any of you had the privilege to ride out there over Memorial Day weekend but it was an absolute zoo. It was very chaotic. It looked like a tent city out there. I was embarrassed to be honest with you because like I said I go down there about 200 days a year. It was really embarrassing the way that beach looked. He presented Council with pictures of some of the smoldering fires on the beach and lumber ready to be burned. There was one guy down there, he not only brought a tent down, he brought a carport down and four cords of wood to burn. Mayor Pro Tem Gilbert said that he was there. Mr. Wiggins asked him if he was embarrassed and Mayor Pro Tem Gilbert replied that he was. Mr. Wiggins said there is absolutely no control down there on the weekend. He said that he was one of the real proponents of charging to come down there. I think now maybe people's understanding is that since they pay \$40 or \$10 that they can basically do what they want. I'm not so sure we don't need to charge \$500 a year or \$50 a day but of course that is being cynical. We need some control down there. Things are not going to get better. They continue to get worse. I would just ask you to please come down there and take a look at that little piece of paradise that we have and please judge for yourself. Would you want your children, wife, husband, parents, or your grandparents to have to be exposed to that on the weekends? Concerning the issue of dogs on the beach, he mentioned that the dogs are basically under control now. It's a good thing. The leash law went up and you see most of the people with leashes and carrying bags. Thank you for putting the sign up

there and most people are adhering to it. I can still say something to the people about the dogs whenever they mess on the beach; but these people burning these bonfires and putting these tents down I don't have the authorization to say anything. I wouldn't feel comfortable saying anything. I do not want to restrict campfire or camping but we have to put these people in one area. I know you understand dollars, you continue to lose dollars by people walking on that beach camping and they do this at the edge of the fence.

Mayor Clark said on Thursday night the Freeman Park Committee will be meeting in the training room at 7:00 p.m. and he encouraged Mr. Wiggins to attend.

Leroy Franks of 908 Canal Drive said I would like to address a public safety and welfare issue. As you know, we are in the hurricane season. One can quickly develop into a direct threat to Carolina Beach in a matter of a few hours. We cannot schedule action by Town Council to coincide with an approaching hurricane. The problem is two-fold. One is the single family residence previously located at 410 Canal Drive was temporarily relocated to 411 Carolina Beach Avenue North and is not on a firm foundation and would cause extreme damage to adjacent property if not properly secured from storm surge and high winds. Secondly, with the amount of ongoing construction no ordinance has been established requiring the securing of building materials as a hurricane approaches and could result in severe damage to adjacent property. Please consider these facts and let's act promptly. Let's move ahead of the curve. Let's be the prime beach town if that is what we want to do.

Nancy Busovme said I would like to thank the Town of Carolina Beach for allowing the Pleasure Island Sea Turtle Project to put an insert in the water bills this past month. The response we got was really overwhelming. It was wonderful public awareness and I just wanted to say thank you for doing that for us.

Brett Keeler representing Black Horn Bar & Kitchen was the last to speak. He said last December when we were about to open up we wanted to put up a sign on the side of our building. We already designated that area on the north wall, the 76 foot side of the building as a prime place to put signage. In our engineer plans from back in August, there were fixtures for lighting to light the sign. We worked with Mr. Harrell, Director of Planning and Development, on going through the right steps because you are only allowed one signage per business on any building. From my interpretation of the change in the ordinance, it was going to allow for my sign to go on the north end facing Canal Drive and facing Harper Avenue. The verbiage for the ordinance change says that you are allowed one sign per structure with two exceptions. Corner structures where a maximum of two signs are allowed, one sign facing each adjacent corner road or passing way, a total of which should not exceed 25% of the front building face area. Two structures in front and back, each abut a road or pedestrian way where a maximum of two signs are allowed, one sign facing each adjacent road or pedestrian way. Each sign shall not exceed 25% of the respected building face area. Where our building is located we have a front and back that are abut to two roadways, Carolina Beach Avenue North and Canal Drive. Also in between our property and the sand lot, there is a pedestrian

easement that allows to beach access where there is the little alley way. We had a sign permit and stamped that the description for the proposed sign site placement is descriptive as the logo painted on the north side of the building closest to Canal Drive. From my interpretation of the way that it was written we have a structure that fronts and backs both abut, which goes up to two roadways and the sign is allowed to face each adjacent, which means next to or near a road or pedestrian way. The sign on the front of our building, the front entrance way, faces the pedestrian road. We are proposing to put the sign where we already have a lighting system as well as a big black box right now from when we got stopped from painting it that both faces an adjacent pedestrian way which separates our property from the sandlot as well as faces Canal Drive and Harper Avenue depending upon your vantage point. What I was told, to get some kind of decision upon it, I would have to go back through the zoning process. This has already been a six month process for a \$400 sign and to do other avenues would cost thousands of dollars. This is also left up to the interpretation from what I am told from the town manager to the Town Council. I am just asking for an interpretation upon this ordinance whether or not this sign permit is actually legitimate and I could put my sign where I believe interpretively it's allowed to be put.

Councilman Macon asked, can we take a short recess because it is simple enough to look at the map if it is a pedestrian way? Mayor Pro Tem Gilbert agreed. Councilman Macon asked, it should show up on the tax map, shouldn't it Steve? Mr. Harrell said I would think so, yes sir. Mayor Clark said we will take a five minute recess to look at this issue.

After the recess, Mayor Clark called the meeting back to order and said he will let the town manager address this. Mr. Owens said we did talk about this with Mr. Keeler. While it may not have accomplished what he was wishing to accomplish, my interpretation as well as the planning director's interpretation of the issue was that you could have one facing a pedestrian way. My interpretation of that would be a public pedestrian way such as the Boardwalk as well as a road, such as a public road. The north side of the building where they wish to place a sign faces neither one of those. Indirectly it faces probably several different roads. My interpretation is that it's directly adjacent to a road. If you interpret the ordinance as Mr. Keeler wishes you to interpret the ordinance, you could probably put a sign pretty much anywhere on any building. My interpretation of it is that it is a public roadway and a public pedestrian way meaning the back road and the Boardwalk. The process is essentially if they do not agree with our interpretation would be to take it to the Board of Adjustment and seek clarification. It's not really up to the Town Council. The other process is to go back through the process again and apply for whatever might suit their needs. At this point, I don't see any action that the board can take unless there is some discussion we want to have about interpretation. Mayor Clark said we can't change ordinances on the fly so we would have to defer that back to staff.

Mr. Harrell asked Mr. Owens, is the Planning staff being asked to begin some sort of amendment process or consideration for an amendment process? Mayor Clark said no, maybe just to review to make sure the interpretation is agreeable. Mr. Owens said I am comfortable with my interpretation of it and I think it was the same as the planning staff.

If the applicant wants to pursue a change to this, we will work with him to run it back through the process. Mr. Harrell said he has the right to ask for the amendment if he wants to as well.

Mayor Pro Tem Gilbert said I didn't see on this when you handed it to us that there are some highlighted items and some things that are lined out is this the actual ordinance. It says one sign facing each adjacent corner road or pedestrian way. Is that in the ordinance or what am I looking at here because you are allowing a sign on the side of the building if you're talking about an adjacent corner road. I know his building is not on a corner of a road. Mr. Harrell said you are looking at the write up that we sent to the Council last month. What is in the dark unshaded areas was the original ordinance. The section that you are taking about, where it says only one sign per structure with corner structures where a maximum of two signs are allowed, that has always been referring to a corner lot that abuts public rights-of-ways - either pedestrian or road right-of ways. That is how it has been enforced for many years.

**CONSENT AGENDA**

Approval of the Minutes

Regular Meeting	May 9, 2006
Recessed Meeting of May 9, 2006	May 12, 2006
Recessed Meeting of May 9, 2006	June 1, 2006

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

Council also considered the other items on the Consent Agenda, as follows:

**Transfer-Executive Department**

The Executive Department is requesting a transfer from account 104200.53-Dues and Subscriptions into account 104200.14-Travel & Training in the amount of \$1000. These monies are to cover costs related to the Interim Town Manager.

**Transfer-Police Department**

The Police Department is requesting two transfers. The transfers are needed to cover costs within the department through 6/30/06. The first request is to transfer \$5000 from account 105100.45-Contract Services into account 105100.03-Overtime, the second request is to transfer \$2000 from account 105100.45-Contract Services into account 105100.33-Supplies.

### **Transfer-Fire Department**

Two transfers are needed within the Fire Department to cover the costs related to overtime and holiday pay through 6/30/06. \$948.99 will be transferred from account 105300.14-Travel & Training and will be placed into account 105300.03-Overtime. \$600 will be transferred from account 105300.53-Dues and Subscriptions and will be placed into account 105300.01-Holiday Pay.

### **Transfer-Marina Department**

There is a shortfall in the Marina Department's liability and workman's compensation insurance account in the amount of \$500; therefore, a transfer will be made from account 255500.13-Electric Account into account 255500.51-Liability and Workman's Compensation Insurance.

### **Amendment-Parks & Recreation Department**

The Recreation Department is in need of replacing a piece of damaged equipment as part of the maintenance of the trail and park systems. The equipment is a John Deere Gator. The gator which they currently have has been deemed to be unserviceable by the Fleet Maintenance Department; therefore they would like to purchase a new John Deere Gator. The monies will come from monies available in the Contract Services account 106200.45 in the amount of \$8335. If approved by Council the monies will be appropriated into account 106200.75-Capital Projects less than \$10,000.

### **Transfer-WWT Department**

Monies are needed in the Wastewater Treatment Department for Chemicals and Lab Fees. The Operations Director is asking that \$845 be transferred from account 308100.03-Overtime and \$2755 be transferred from account 308100.78-Permit Fees into account 308100.32 Chemicals and Lab Fees. These monies are needed to cover costs through 6/30/06.

### **Amendment and Resignation of Funds-Stormwater Department**

Earlier this year a pump was stolen from the Stormwater Department our insurance company reimbursed the Town in the amount of \$955. We therefore need to appropriate these monies into the expenditure account 309000.75-Capital Projects less than \$10,000 and into revenue account 303860.00 in order to purchase another pump. Along with these monies the Stormwater Department is asking that monies available in other designations within the .75 account be used to purchase an additional pump. The request is for \$485 from the Blue Dye listing, \$650 from the Fountain Listing and \$600 from the Boat Trailer Listing be used to purchase the additional pump. In this situation, no money will be transferred, it will be redesignated.

### **Amendment-Water Department**

In March of 2006, Mr. Ron Jessup who owns property on Clam Shell Lane paid the Town \$54,141 for water and sewer improvements for this property. We need to appropriate these monies within our budget. Therefore, the amendment will be to increase revenue line item 303720.00-Water Taps and increase expenditure line item 308120.20-Water Maintenance to Mains.

### **Transfer-Planning Department**

The Planning Department is asking that \$1000 be transferred from their salary account 104910.02 and be placed into their overtime account 104910.03 due to overages in overtime costs. The department is also asking that \$500 be transferred from account 104910.45-Contract Services into account 104910.53-Dues and Subscriptions for monthly computer program, dues and memberships.

### **Transfer Legislative and Clerk**

In the current budget year there were not enough monies appropriated to cover the legislative salary costs for the entire year; therefore, a budget amendment is needed to cover these costs. \$12,670 is needed in account 104100.02, the funds will be transferred as follows: \$3000 from account 104100.06-Group Insurance, \$2070 from account 104100.52-Special Events and \$7600 from account 104100.10-Legal Fees. Additional monies are also needed in the Clerk's advertising account 104300.12 in the amount of \$2616.42, these monies are being transferred from the following accounts, 104100.52-Special Events in the amount of \$1566.42, \$350 from account 104200.43-Executive Dues and Subscriptions, \$350 from account 104500.75-Human Resources Capital Projects < \$10,000 and \$350 from account 106200.55-Parks and Recreation Athletic Programs.

Election expenses were more than anticipated resulting in a need of an additional appropriation of \$1736.55 into account 104100.45, these monies are coming from account number 104100.16-Maintenance and Repair of Equipment in the amount of \$500 and from account number 104300.45-Clerk Contract Services in the amount of \$1236.55. There was a shortfall in the municipal complex loan account number 104100.86 in the amount of \$.47 a transfer in this amount will come from account 104100.14-Legislative Travel and Training.

The Legislative supply account number 104100.33 is also short in the amount of \$8 these monies will be transferred from account 104100.57-Legislative Miscellaneous. The Clerk's account for supplies 104300.33 needs \$80 and this money will come from a transfer from account 104300.14-Travel and Training.

### **Amendment-Legislative and Clerk**

As you know a law suit was settled with Coastal Plains Utilities in the amount of \$35,000. These monies were not anticipated in the current years' budget. When the

check was paid, the monies were allocated from the Legal Salaries line item 104100.10. We need to make an appropriation from undesignated fund balance account 103990.00 in the amount of \$35,000 into account 104100.10.

The costs for advertising in the current year have been heavy. Additional monies are needed in this account to cover anticipated costs through 6/30/06. Therefore the Town Clerk is asking that \$5000 be appropriated from the unappropriated fund balance account 103990.00 and be placed into account 104300.12-Printing and Publishing.

Set a public hearing date for July 11, 2006 at 7:30 p.m. or soon thereafter to consider a conditional use permit for Harbor View a Mixed Use Development located at 309, 310, 312 and 315 Canal Drive and 311 Carolina Beach Avenue North.

Set a public hearing date for July 11, 2006 at 7:30 p.m. or soon thereafter to consider a request to rezone First Baptist Church property located at 202 Lumberton Avenue and part of 409 North Lake Park Blvd. from Mixed Use (MX) to Central Business District (CBC).

Approve auditing contract with Goodson & Taylor, CPA's to audit accounts from period July 1, 2005 to June 30, 2006.

Set a public hearing date for July 11, 2006 at 7:30 p.m. or soon thereafter to consider an amendment to the Code of Ordinances, Chapter 13 Police, Section 13-56 Division Established, to include amended language in compliance with NCGS 160A 282(a) and (b) concerning auxiliary police.

Mayor Clark made a motion to approve the Consent Agenda. **MOTION CARRIED UNANIMOUSLY.**

### **CONSIDER ADOPTING FY 2006/2007 BUDGET**

Mr. Owens said the budget that I will present to you tonight represents countless hours of work by Town Council, myself, our finance officer, department heads, and my co-workers. You have a copy of that budget tonight. This budget has been on display with the town clerk as well as out in the lobby for individuals to come in and take a look at.

The fiscal year budget is never perfect. They are many forces that drive and potentially can change a budget over the coming year. The budge process is a balancing act between revenue that the town anticipates receiving and expenditures that need to occur during that budget year. Those expenditures generally include routine operating costs, debt service, capital expenditures, and the level and types of service that residents, business owners, and visitors can expect. The town is required at a minimum to adopt a balanced yearly budget with the budget year beginning July 1st and ending on June 30th.

The town's budget is broken down into three funds: the general fund, the tourism fund, as well as the water/sewer and storm water fund. Mr. Owens made a presented an overhead and explained that this slide represents the typical budget process that the Town of Carolina Beach goes through on a yearly basis. The first one begins after the adoption of the budget. We look at numbers, we look at the data, and we begin right after the adoption of this budget. Primarily, the formal kick off is somewhere in January. We will go through the budget process, CIP review, and workshops in January. Department heads typically present their budgets anywhere from February, March, or April but this year it was in April. The manager and finance officer compiles the budget in May. On June 1st, the draft budget was presented to you and that is the deadline per the general statutes. We must have a public hearing on the budget, which is what we are doing this evening. People can come forward and express their opinions or concerns on the proposed budget. That needs to be advertised 10 days prior to that budget public hearing. If there are no significant changes, we ask that you adopt the proposed budget, budget ordinance, and fee schedule. At a minimum, you have to adopt it prior to June 30th or you must follow other procedures.

One part as I mentioned is the budget ordinance. This represents a portion of the budget ordinance and I will go through it. I won't read it verbatim. Generally, it sets out the stage for the budget, why you need to do a budget, the authorization, planning and fiscal management portion of the budget. Typically this budget ordinance will look differently at different communities. Once again we get into some things that the budget ordinance needs to spell out, that would be the tax rate and any water and sewer rates that you propose. We periodically adopt rates and fees and changes in those rates and fees yearly. The only one that we can't change is the ad valorem tax rate. Then there is the fiscal calendar and who receives the budget.

As I mentioned, the budget ordinance is broken down into three main funds. The first one is the general fund. This year we are proposing revenue in the amount of \$7,286,202. We are proposing expenditures in the same amount \$7,286,202. We have given you a general breakdown, this is not your line item budget but a general breakdown of what revenues are coming in and what we anticipate as well as the expenditures by department that we expect to expend during the course of the year.

The tourism fund is technically operated as an enterprise fund. Basically, we charge fees for services and in turn provide those services, very much like your water and sewer and storm water fund. As you can see, we are proposing revenues in the amount of \$1,375,415 and expenditures in the amount of \$1,375,415. In that, you can see the proposed revenue that we are anticipating as well as the different departments within the tourism fund, the lifeguard, the marina, parking, and beach maintenance.

Finally, we have the utilities fund. Once again it is an enterprise fund. It encompasses the water department, sewer department, and storm water. The revenues that we are anticipating collecting this year are in the amount of \$5,292,418. A good portion of that is going to be the water and sewer fees that we collect for services at customers' homes and businesses. Expenditures are broken down into several different departments:

utilities administration, waste water treatment, waste water collection, water distribution, water and sewer fleet maintenance, and storm water. The total budget for this year is \$13,954,035.

Moving on in that budget ordinance you have several items here, things that get into setting the tax rate. We get into special authorizations. We go down to restrictions of the budget officer. Basically, we set some standards for staff and myself to operate. If adopted, we would execute the budget ordinance.

In summary, he presented some graphics as to what type of revenue comes in. Once again you have your general fund revenue and it is broken down by property taxes and all the other types of taxes we collect and fees. All of this is located within your budget. For expenditures, we broke it out by departments. It shows which departments have the most expenditure, so you can see it graphically.

We propose that there is no ad valorem tax increase. We will maintain the tax rate of \$0.38 (thirty eight cents) per hundred (\$100) valuation. We anticipate that the town's valuation will rise from \$821,000,000 to \$891,000,000. We did propose right around \$316,000 in capital expenditures and purchases this year. This represents no fund balance appropriation in your general fund with our fund balance being 54% or 3.4% and you are to be commended for that. We just finished talking about hurricanes and the need for those funds in the future. Plus they help us operate when we don't have that ad valorem tax coming in at the beginning of the year. You are to be commended for that. There are other projects that we have on-going. We talked about the planning and permitting construction in Wilmington Beach. That is something we are going to get into this year. It is an on-going process. We are in the planning and permitting process right now. We did talk about the potential for a skateboard park. Completing Carolina Sands, is underway as well as the T-21 bike path off of Dow Road. This is just a summary of some of the things we are seeking to accomplish with this budget.

We are proposing a 3.4% COLA, cost of living adjustment for employees. We are proposing the hiring of a payroll technician. Currently we are outsourcing our payroll operation through an outside vendor. We are proposing the hiring of a fire fighter, a recreation employee, and converting an administrative assistant in Planning to full time. Finally we will take a look and reexamine all the positions prior to that hiring. We talked about that in the budget process.

The tourism fund, once again it is a break out and you have seen this graphically of what types of revenue we expect to come in. Expenditures, once again, there are your four different departments within the tourism fund. Basically, we are proposing no fee changes to any of the tourism fund at this point. Your revenue is primarily derived from Freeman Park, parking lots, the marina, and your room occupancy tax. We are proposing two new employees budgeted in this fund, two police officers to primarily focus on Freeman Park and provide 24 hour coverage there as well as one beach maintenance worker, which will focus on the beach areas, Freeman Park and our parking areas.

The utilities fund talks about the revenue. You can see graphically the expenditures in the different departments and how they line up. We propose a water rate increase of \$0.09 per 1000 gallons, basically to \$1.80 per 1000 gallons. We are also proposing a sewer rate increase of \$0.19 per 1000 gallons to \$3.91 per 1000 gallons. Our flat rate water and sewer charge we proposed to increase by \$4 total between the two, \$2 for water and \$2 per sewer for the month. This equates to about \$5 additional per month for a typical family of four if this budget is adopted. It may ease about 6000 gallons. The rates basically increased because I felt it was a significant reliance on our facilities fees. Facility fees, in my opinion, should try to go back and pay for that debt service as well as new capital. That's not a very stable revenue source. If we had a situation where building would slow down that revenue source would not be there and you would see a drastic increase in your water and sewer rates. We are trying to get those rates to a point where we feel comfortable that they are covering our operational costs.

Some of the projects we will be working on are engineering permitting for lift station #1. That carries a majority of our wastes to our waste treatment plant from the beach area. It is in a vulnerable area and it needs to be rehabilitated. It is 20 plus years old. That's funded this year. The actual project itself is not funded but we will probably come back to you and seek funding for that project once we get finished with the planning and permitting, which could take a year. The other part is we talked about our need for water improvements. A portion of that is funded in here. As far as the actual planning and permitting, we continue to work on that. We will probably come back at a later date to seek those improvements once we determine what our course of action is and get our plans and permits in place. Mayor Pro Tem Gilbert asked, are we only talking about water and sewer rate increases? Mr. Owens replied, yes sir. Mayor Pro Tem Gilbert asked, and the direction for doing this came from a third party engineering group, right? Mr. Owens said, yes. Mayor Pro Tem Gilbert said, Engineering Services, they are usually referred to as the town engineer, but that's a third party professional engineering group that made recommendation as where we need to be. Mr. Owens said they absolutely did and I fully agree with their assessment. I would like to possibly further look into it and do a full blown study. I feel like our storm water situation is not really paying for itself either.

We are proposing to fund one water employee and one sewer employee.

Following the budget presentation, Mayor Clark made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Duke Hagestrom, presenting the Chamber of Commerce, stated that room occupancy tax funds have grown significantly and are on target to grow by another 20% adding \$50,000 to the town's tourism fund this year for a total of over \$360,000. Room occupancy tax funds are the number one source of revenue for the tourism fund. Per state legislation the town is a steward of those funds to ensure that they are spent wisely to bring more visitors to this town.

Kure Beach values the Chamber of Commerce so much and the initiatives that we have brought to this island, they have increased funding support for the Chamber by over 500% this year. That money is coming from the room occupancy tax fund. The Town of Carolina Beach is proposing a budget tonight that will leave a fund balance in the tourism fund of over \$500,000 for the next year. This past weekend I spoke to Mayor Clark about carrying this unprecedented enterprise fund balance. Mayor Clark informed me that the Council of Government recommends a 46% balance in the tourism fund. I called the Council of Government and they mentioned that they don't make recommendations on fund balance budgets, the Local Government Commission does. Today I spoke to the Local Government Commission and they said indeed they do make recommendations on balances that towns should carry in their general fund. They require a minimum of 8% and they really like it to be 17%. For small coastal towns like ours, they even like it to be more. It is completely at the discretion of this Town Council as to how much money you decide you want to carry in that fund. Mr. Hagestrom questioned why the Town of Carolina Beach proposes a budget that slashes funding for the Chamber of Commerce by more than 90%, which is a level lower than it has been in many years. Thousands are going to enjoy the free fire works and movies for the rest of the summer and the Seafood Blues and Jazz Festival will be our island's biggest event. These events are a part of why room occupancy tax continues to grow. He begged for a Council member to modify the budget to reinstate the funding for the Chamber and consider adding funding for the summer fire works and the movie series as well.

He said I would also like to make a gentle reminder of a few campaign promises that were made by some of our newer members of Council. Mayor Clark's platform includes the following commitment to seek out for culture and family entertainment and family oriented recreation. Mayor Pro Tem Gilbert's platform includes creating a wholesome environment for our families, includes recognizing our youth and their needs and tourism is one of the major industries generating revenue for Carolina Beach. Focusing on the simple things will provide an atmosphere where visitors will likely return. Councilman Johnson said the town shall seek to promote a family oriented community with entertainment, recreational, and commercial services geared toward both the town's permanent and vacationing families. I am struggling to see why we want to keep \$500,000 just sitting in an account for the next year when we can invest it in more awesome things for this community.

Councilman Macon asked, what is the figure was for the fireworks and the movies? Mr. Hagestrom said the request was for \$52,000 which includes, fireworks, movies, Seafood Blues and Jazz Festival, support for 4th of July fireworks.

The next to speak was Ann Cohen, owner of Squiggley's Ice Cream. She said, I am not as technical as Duke but I am here for the same reason. She said, I have families that come in every day and every night. They are looking for something to do. Jubilee Park is down. There is nothing else for them to do. I am so proud on Sunday night to say go to the movies and sit at the lake under the stars, a family oriented event. It is something that Carolina Beach can be proud of. The Chamber of Commerce is getting phone calls from other towns saying how are you doing this, how are you putting it on, how does one

go about putting on fireworks every Thursday night and movies every Sunday night for the tourists to see. It is just a good, wholesome thing, something we want Wilmington, the Star-News and everybody else to hear. We are doing something we are really proud of that is for the family. We are asking you to look at your budget and to give the Chamber of Commerce \$52,000 so we can put on this wonderful thing every single week, a free movie and free fireworks so the people of Carolina Beach and all our tourists can go to it. I think you would be mighty proud to do this and I am hoping you will reconsider it.

Jan Wisebeck said my understanding at the time Freeman Park was developed was that the funds collected would go back into maintaining the park. It seems by looking at the budget and from what I understood a couple of meetings ago, that actually it is just going into the general tourism fund. She said Freeman Park generated \$356,000 that just went into tourism fund. I would really like to see a separate category in the budget for Freeman Park. It's 1½ miles long, roughly the same length as the public beach, but it has many more people. You can't even make a comparison. It has dogs on it, drinking on it, camping, overnight partying, and it has dunes which are really precious to us and we need to protect them. I have seen people off loading dirt bikes down there and I know they are not going to ride in the surf. Most importantly, I think, there are no lifeguards there. We are taking people's money and we know they are going swimming yet when one of them gets in trouble lifeguards have to hustle from the other end of the beach and hope they get there in time. I think it is really important to provide lifeguards when you have that many people going in the water and you have that many riptides and that much of a changing shoreline. It changes constantly. You can't be sure from year to year what is safe and what is not. Having a lifeguard presence there would also deter some of the other behavior that is causing problems down there. It would deter people from going in the dunes. It would deter excessive drinking, fighting, and partying. They don't have law enforcement capacity but they could certainly radio for a policeman to come to a certain spot. I would like you to consider, therefore, making that a separate item designating if not all then most of the money that it generates back into the maintenance of the park and the protection of it.

Jack Ventner said he is from 1004 Carolina Beach Avenue South however if you talk to the Water Department I live at 1003 Lake Park South. Most of you that are from the south are familiar with a plant called kudzu, it's kind of a vine and you can almost watch it grow. It will almost take over everything if you don't prune it back. I was disappointed and I admit I don't have a prepared speech but I went by this afternoon and took a look at the budget. I note that the budget is increasing this year again by \$1,544,219 which represents about a 12.4% increase in the budget against 3.3% CPI growth this year. Last year was about a 9.75% increase and the year before that was a 10.32% increase. If you continue to increase the budget by 10% a year, you are going to double it in about 5½ to 6 years. If the budget had been increased just by inflation since 2001 it would be about \$9,705,000 this year. I am concerned at the growth in the budget and the growth in the government here in Carolina Beach. It is a small town. Dick Engles presented you a paper about two months ago that showed the population of the town has not increased. I realize somebody is going to jump up and say in the summer

the population doubles or triples; but if that is the case, then we should address it on a part time basis as opposed to a full time basis. I hope that you would try at some point to cut back on these increases.

Also I always have to come here to the lobby of the Town Hall to look at the budget. A couple of years ago I asked the former town manager if he would put a copy of the budget in the library. It showed up there for about two weeks. I don't know if somebody stole it but I would like you to try and at least to take enough money out of this million and a half dollar increase to make one copy of the budget available at the library. The New Hanover County budget is there and nobody ever seems to steal that.

Mayor Clark said we have been assured that there is going to be one in the library. Mr. Owens said I believe it is on-line as well or a portion of it.

David Bowles, owner of the Dolphin Lane Motel spoke about the tourism dollars. I answer calls everyday from potential tourists and I have had several this year telling me that they have heard everything is getting torn down as far as Jubilee Park and that sort of thing. I just wanted to reiterate what Duke said and tell you how important that is to have things for families to do when they do come here.

Dan Denston, who owns three businesses on the island, said all of the revenue from those businesses comes from tourism dollars. I think if you were to do a study of businesses on the island and looked at how much revenue comes from tourism dollars you would find it would be a significant amount. Investing in bringing tourism to the island would be a very important duty for you as Town Council.

Scott Patton who owns a couple of businesses on the island, which includes a hotel which is where the room occupancy tax comes from, said he wants to reiterate what everybody else has said that we support the great functions of the fireworks and the movie on Sunday night. It's a small town feeling when you have that and people come and gather, tourists and citizens alike. It's a great function.

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

Mayor Clark asked the town manager to address the Chamber funding. Mr. Owens said he really doesn't have any opinion on the matter. If the board wishes to do something, we could either amend the budget, which I really don't want to do at this time because it is balanced and ready, or we could do a budget amendment and allocate funds from our existing fund balance which all you have to do is instruct staff to do so.

Mayor Pro Tem Gilbert asked Mr. Owens if he could speak to Duke Hagestrom's concerns about the balance. Mr. Owens said I can speak a little about it towards the tourism fund in general. Freeman Park, while I haven't done any studies, will generate probably close to \$400,000 to \$500,000 this year. We do have a number of employees that are tied into Freeman Park who do the cleaning and that type of thing. We also have

an attendant who stays there and helps people in and out as far as the parking goes. A lot, if not all of Freeman Park money, goes back into Freeman Park. They are commingled into the tourism fund. As far as the room occupancy tax, we have budgeted \$365,000 in it this year. That is probably significantly more than what we have collected in the past; it has been somewhere around \$225,000 to \$250,000. We hope that we collect \$365,000. What I foresee happening is that the whole budget in itself will wash with the increase revenue at Freeman Park. In general, all those activities that are associated with the tourism fund, the lifeguards, etc. are funded through those main sources of revenue. I think it has been the practice of this board in the past to fund our lifeguard's service through our room occupancy tax funds. If you look at the total lifeguard budget, it would exceed what we really anticipate the funding from the room occupancy tax to be.

Mayor Pro Tem Gilbert said the reserves of our tourism fund are basically being projected to be used in an emergency to pay those kinds of employees' salaries. Mr. Owens said the reserves essentially can be used in that manner. We also would use them like we do the general fund balance. Before the revenue from parking and that type of thing come in, we would help fund those activities until we receive that revenue. We have a fund balance and we pay payroll out of that. Then we start collecting taxes around January, February, or March so it is used to offset the revenue that hasn't come in yet.

Councilwoman Efirm said we have already funded \$25,000. Mr. Owens said I think we have funded \$25,000 this year. Councilwoman Efirm asked does anyone remember what we funded last year. Mr. Owens said I think around November there was \$17,000 given to the Merchant's Association. You should have a list of those funds. Since I wasn't here, Dawn Johnson, Finance Director, may be able to answer that more directly. Ms. Johnson said so far this year the Chamber has been given \$6,000 from the town and \$25,000 we filed from TDA (Tourism Development Authority) and received those funds. In 2004-2005, the Chamber received \$4,000 from the town. In 2004-2005, the Pleasure Island Merchant's Association received \$6,000 from the town. In this year's budget they received \$5,000 also from the town and then \$18,000 the town paid and then was reimbursed from TDA. The thing we are having a difficult time quantifying is the time we spend assisting in some of the activities. A lot of activities are funded by their volunteers but there is police and fire presence. I think we could probably start trying to collect that back through the room occupancy tax if the board wishes to do that but that cuts into the room occupancy tax that we collect. Mayor Pro Tem Gilbert asked, are you talking about the town's expenditures like personnel staffing? Mr. Owens said, yes whether it be our maintenance employees, trash collection, or police and fire presence. Mayor Pro Tem Gilbert said roughly \$31,000 has been given to the Chamber this year. Ms. Johnson said that is correct. She continued by stating that as she mentioned \$5,000 and \$18,000 were given in August to the Pleasure Island Merchant's Association. Mayor Pro Tem Gilbert said it has been roughly \$54,000 in this budget year and Ms. Johnson agreed. Councilwoman Efirm said that is including the Pleasure Island Merchant's Association and the Chamber.

Mayor Clark said the Tourism Authority Board gave the Chamber money a couple months ago and that board has asked for that money to come out of the tourism fund.

Right now that balance is \$2,755. We did recoup lifeguards for last year. We have been spending approximately \$250,000 out of the tourism fund for the lifeguards. If we don't go to the room occupancy tax for that money, then it has to come from somewhere. From the Freeman Park area, we still have parking lots to pay for, we are still paying for a beach rake, and beach maintenance is \$493,000. He reiterated that even though it shows a big balance that money has to come from somewhere.

Councilwoman Efird said a lot of the people who go to Freeman Park go because that is the place they want to be. We have other tourists who come down here to go fishing and to use the beach. I do agree we have nothing to offer the tourists. It is getting very hard to invite people to the coast when we have nothing to offer, nothing for the children and nothing for the grown ups. I know this is going to be a tough year. We have a lot of things in this budget we need to do but we are a tourist town. Councilman Efird made a motion that we allocate the Chamber of Commerce \$52,000 and make an amendment to the budget.

Councilman Johnson asked is this \$52,000 for the remainder of 2006 and end of 2007? Mr. Owens said we can allocate it any way you would like. I would prefer if we are going to take it out of the fund balance in that tourism fund that we basically do a budget adjustment that staff can take care of. I am anticipating that it is \$52,000 effective July 1, 2006 through June 30, 2007. Councilman Johnson said approximately two months ago we gave \$25,000, and Mr. Owens said that it correct.

Councilman Macon seconded Councilwoman Efird's motion. Mayor Pro Tem Gilbert asked for clarity, are we talking about \$27,000 or a total of \$52,000 and not including the \$25,000 we already gave them. Ms. Johnson said when the request came through and Council voted, they voted to award the \$25,000 initially towards the 2006/2007 Budget. If you are amending that, then you would be amending it to the \$52,000, so a total dollar amount for 2006/2007 would be \$77,000. Mayor Pro Tem Gilbert said I do remember the decision that we were going to give them half up front and the other half when the budget came around. He asked Councilwoman Efird, are you are talking about \$77,000 total? Councilman Johnson said actually what we need is \$27,000 to make the \$52,000. Mr. Owens said that was the way I understood it when the original request came in. I think they are asking for an additional \$52,000 for this upcoming year.

Mr. Hagestrom said regardless of how it was approved the \$25,000 we requested was for the 2005/2006 fiscal year. It was to allow us to kick off the fireworks series this summer. Starting July 1, 2006 for 2006/2007, we are asking for \$52,000. However it ended up getting approved, we were asking for the \$25,000 to cover us so that we could get into contracts for the spring up until July 1, 2006. We are asking starting July 1 of this new budget, for \$52,000 to carry us through the end of the 2006/2007 fiscal year.

Mayor Pro Tem Gilbert said this is very confusing for me because you and I had a conversation and he asked, are you saying that you already spent the \$25,000? Mr. Hagestrom said the \$25,000 was so we could go ahead and do the fireworks and movie series this summer, which allows us to start and actually get into doing this. This summer

it is going to cost us \$52,000 to do all the events we are going to do. We didn't have any of the money. We asked for the \$25,000 to get started so we could go through July 1st. Now what we are asking for is in the 2006/2007 Budget is for \$52,000 so we can do the fireworks and the movies through the rest of the year and also be able to do it into the end of the fiscal year. Mayor Pro Tem Gilbert asked, are you are going to cover spring of next year with a portion of this money? Mr. Hagestrom said that's correct. Mayor Pro Tem Gilbert asked, are you are going to be asking for \$52,000 each fiscal year and that will take you through the summer and through the spring? Mr. Hagestrom said that's correct. That is what it takes to do the whole series. Councilman Johnson said we have given them \$25,000; if we give them \$27,000 that will get them through December 31, 2006. Mr. Hagestrom said that would get us through 2006. Councilman Johnson said we can address this two different ways. We can do it that way and then in January we can look at it and make an amendment for the spring. Mayor Pro Tem Gilbert said that is what happened to them before and they can do the same thing this year. Movies might go up and they may need more. Mr. Owens stated that is another way to approach it.

There was discussion of Councilwoman Efird amending her motion and taking Councilman Johnson's approach. However, Councilwoman Efird decided to stick with her original motion to allocate the Chamber of Commerce \$52,000 and make an amendment to the budget. Councilman Macon had already seconded the original motion. Mayor Clark called for a vote. **MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson made a motion to adopt Ordinance No. 06-640, approving the balanced Budget for FY 2006/2007 as presented by the town manager (*Exhibit 1*). **MOTION CARRIED UNANIMOUSLY.**

Councilwoman Efird said she would like to thank the staff and our new manager for all of their hard work.

***CONSIDER AMENDING CHAPTER 2 ADMINISTRATION, ARTICLE II MAYOR AND COUNCIL, SECTION 2.17 MEETINGS, TIME AND PLACE, TO CHANGE REGULAR MEETING TIME FROM 7:30 P.M. TO 6:30 P.M. AND CONSIDER APPROVING A POLICY TO START ALL PUBLIC HEARINGS AT 7:30 P.M. OR SOON THEREAFTER***

Mayor Clark said the issue is to consider changing the meeting time from 7:30 p.m. to 6:30 p.m. Mr. Owens said another aspect of that would be to consider adopting a policy to hold our public hearings at 7:30 p.m. or soon thereafter to try to keep us on a time schedule for those folks who may have to get here after work. Councilwoman Efird made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

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

Councilwoman Efird made a motion to adopt Ordinance No. 06-639 (*Exhibit 2*) along with the proposed policy to hold public hearings at 7:30 p.m. **MOTION CARRIED UNANIMOUSLY.**

### ***REQUEST TO CONSIDER CLOSING BURRIS DRIVE***

Senior Planner, Ed Parvin, said the proposal to close Burris Drive was heard at the March 27, 2006 Technical Review Committee meeting. The following conclusions were drawn if the right-of-way is closed. Mr. Parvin presented the following criteria that staff reviewed at the TRC meeting:

1. Some right-of-ways still provide either primary or secondary access to properties, while many others are no longer in regular use. These areas often become places to deposit rubbish, have the potential to become fire hazards but most importantly are perceived to be a security risk to adjacent properties.

Our conclusions were there is not current use of the right-of-way. The eastern end of Burris Drive has actually been fenced off for several years as shown on the provided survey.

2. Secondly we looked at the land is divided as equitably as possible, generally by way of a '50/50' split between the adjoining land owners. Should certain adjoining land owners not wish to acquire land from the right-of-way, then generally the land will be offered to the other abutting land owners in a private agreement.

Our conclusions were any agreement to divide the property other than a 50/50 split shall be a private agreement formulated between the adjacent land owners.

3. Finally we looked at no individual property in the vicinity of the street or alley subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to their property.

We concluded Burris Drive does not serve as access to any adjacent properties. All adjacent property owners have signed the application. The final survey (created by the applicant) showing the new allocation of the road to property owners shall include a utility easement of at least 7.5 feet to serve the water line for the Federal Point Yacht Club.

The Planning and Zoning Commission reviewed this application at its April 13, 2006 regularly scheduled meeting and unanimously recommended approval subject to the TRC findings.

Mr. Parvin also went over the process of closing the right-of-way, as follows:

**Process to close a right-of-way:**

1. Petition or Request for Street Closing
2. Resolution of Intent to Close
3. Publication of Resolution of Intent to Close and Notification to Adjoining Property Owners, which has been done over the last month
4. Public Hearing Following Four Weeks of Advertising, which is the point we are at today
5. Resolution Ordering Street Closed
6. Record at Register of Deeds the Resolution Ordering Street Closed

Mr. Parvin showed several slides of different sections of Burriss Drive as it is today. After the slides were presented, Mr. Parvin was ready to receive questions.

Councilman Johnson asked about the 7½ foot easement to serve the water line and where it is located in reference to this. Mr. Parvin said it would be located per the Operations Department wherever they require it to be. Councilman Johnson asked if anyone from operations was here tonight. Mr. Owens said no one was here but he could speak on that. He said I do not believe that 7½ feet is adequate enough to get a piece of equipment in and essentially work on that water line. It is probably not a very large water line. I think it is two inches if I'm not mistaken. Fifteen feet is probably pushing it.

Mayor Pro Tem Gilbert said we have made errors in the past by not keeping a right-of-way so is that a discussion for Operations or anywhere else. Mr. Parvin said that was brought up at the Technical Review Committee meeting before the current manager was here. It was a recommendation by Operations that it be 7½ feet. Mayor Pro Tem Gilbert asked Mr. Owens if 7½ feet was not enough. Mr. Owens said that is my opinion unless we expected that to be 7½ feet on either side but there is no one here from Operations to verify that. I would say a minimum of 15 feet to go in there. If you think about taking a front end loader or something like that in there, there is no way you can do it with 7½ feet. Councilman Johnson said I don't see how you can get it in there with a front end loader if you had to dig up the line. You have to lay the dirt and open the ditch within 7½ feet. Mr. Owens said 15 feet is about as minimal you would want to go. Councilman Johnson said I am reluctant to closing public streets even though this hasn't been used for years. My concern is what the long range picture might be and then that day comes when we question why we closed it. This has happened in the past. Mistakes have been made. Mr. Parvin said my understanding from the past this was to access a fish house that was at the end of Burriss Drive. It never was used for access. Councilman Johnson said if you go back to the aerial view slide of the property at the very bottom it is abutting Federal

Point. Yacht Road is the only access right now. Councilman Johnson's concern is what would happen 5 to 20 years down the road, if we had a severe hurricane and a lot of that property was destroyed then we couldn't do anything about it because we closed the road and gave it away and Mr. Parvin agreed.

Mayor Pro Tem Gilbert said in closing this road half of this is going to go to the Federal Point Yacht Club and Mr. and Mrs. Winseck. Mr. Owens and Mr. Parvin both agreed. Councilman Johnson said it is 30 foot wide. Depending on which side that easement is on, you are closing the access but you are retaining an easement and the easement is going against one side of the property owners but not against the other one. Mayor Pro Tem Gilbert was in agreement with Councilman Johnson.

Mr. Owens asked Mr. Parvin to go back to a particular slide. In that slide, he pointed out a street light and wanted to know if it was a private security light or is it something in the right-of-way that could belong to the town. It was suggested that it was in Federal Point's parking lot, and Mr. Parvin agreed. Mr. Owens said it doesn't look like it is in Federal Point's parking lot; it is beside the fence post. Councilman Johnson said it looks like it is in between two fences. Mr. Owens said that could be.

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

Teresa Clontz said I would like to point out on Burris Drive right now it's a road that's going nowhere. On the back side is a five foot privacy fence that separates this property from Federal Point. The nice homes in Federal Point Yacht Club don't really want to look in the backyard where it is just a messy sight. Until the people recently mowed it, it was terrible. I worked with Mr. Wells on the request for the closing of the street and he cannot be here tonight because his wife just had surgery. I would like to point out that to the left is the Checkered Church. By closing this portion of the street that is going nowhere, it is going to allow her to have a couple of parking spaces for her business. She is very excited and very much in agreement that this is a good thing. A couple of things are going to happen that is going to improve this whole site for the whole community. It is not necessarily a bad thing because it doesn't serve a purpose.

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

Councilman Macon made a motion to approve Ordinance No. 06-641 (*Exhibit 3*) closing Burris Drive. Mayor Pro Tem Gilbert said I would like to know if we need the 15 foot easement to service that. Mr. Owens said I think our staff's interpretation was that it is 7½ feet. Mr. Harrell said that was not necessarily the interpretation and that was Mr. Pagley's consideration. Mayor Pro Tem Gilbert asked if Mr. Pagley is comfortable with that and Mr. Harrell replied that is what he said at TRC. Councilman Macon said he would like to amend his motion to include the 7½ foot easement as per Mr. Pagley. **MOTION CARRIED 4-1 WITH COUNCILMAN JOHNSON VOTING NO.**

Mayor Clark said for anyone who has come in late the announcement was tonight we are going to try to go through the public hearings. Anything on the old business or new business we are going to take up Thursday night so hopefully we can all get out of here by 11:00 p.m.

Before we go to the next item, Mayor Clark said, I would like for our town attorney to address the conditional use permit procedure.

Al Clyburn, Town Attorney, said anyone who has attended a Town Council meeting can see that the Town Council makes a number of different decisions and a number of different types of decisions at every meeting. Sometimes you are adopting a budget, closing streets, appointing folks to committees, amending zoning ordinances, and hearing a request for a conditional use permit. When you are hearing a request for a conditional use permit, you are sitting as a quasi-judicial body. That means that you are sitting as a court of law. As we all know, our zoning code regulates our use of land. That is how we regulate the way in which the land within our territorial jurisdiction will be used. Sometimes people want to make use of the land that is not permitted. Sometimes the use of the land that is not ordinarily permitted by the code may be allowed if the applicant qualifies for what is called a conditional use permit. When the Council hears a request for a conditional use permit, as I said earlier, you sit as a court of law because you are applying the ordinance that governs the conditional use permit process. You are applying that ordinance to a certain set of facts and you have to apply it on a case-by-case basis because every request is different. I have never heard two requests for a conditional use permit that is exactly the same. Your role is to hear the evidence. Let me be clear about that. What you should be considering when you hear a request for a conditional use permit is you are hearing evidence. Not everything, not every feeling that somebody might have about a request for a project is evidence. There are four general conditions that the applicant must meet when asking for a conditional use permit. Folks who have heard your conditional use permit hearings will often hear that a Council member will make a motion that we approve the conditional use permit subject to the four general conditions. The four general conditions are as follows:

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 issuance of the Conditional Use Permit.
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.
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.

When we are in a court of law we talk about burdens. It is the burden of the applicant that means it is their job to establish, to persuade you, to convince you that their project meets all of these four conditions. It is their responsibility to provide you with competent evidence to satisfy those four conditions. If they do that, the burden shifts to those who would oppose the project to persuade you by competent, material and substantial evidence that the project doesn't meet these four conditions. One thing you want to be aware of is that somebody might oppose the project simply because they don't like the way it looks. That's not substantial, material, and competent evidence that has anything to do with these four conditions. Somebody might speculate that the project is going to increase the traffic in that particular part of town; that is not necessarily competent material and substantial evidence that relates to those four conditions.

This is a different type of hearing from a legislative hearing. For example, when you are considering a text amendment to an ordinance, when you are considering amending an ordinance for example you are sitting as a legislature. In a legislative hearing, public opinion is relevant, it is important, it is admissible, and you ought to listen to it. But that is different from a conditional use permit hearing where you are sitting as a court of law. The reason that is so important is your decision is subject to review by the Superior Court. If you choose to deny the applicant's request, the applicant has the right to appeal your decision to the Superior Court and the Superior Court will be reviewing your decision to see whether you followed the law as you ruled on the request of the applicant. Because you are operating as a court of law when you hear a conditional use permit request, it is important that our process resemble a court room. What happens in a court room is witnesses' present evidence to you. Those who, for example, oppose the project are entitled to cross examine the witnesses if they want to. As you remember, we always swear our witnesses who intend to speak at a conditional use permit hearing and that is because it is important that the testimony you hear from witnesses be sworn and they give you truthful and honest testimony. There are some hallmarks of the court room proceeding that are to be followed in a conditional use permit hearing and again the decision that the Town Council makes has to be based on as I said competent material and substantial evidence that all of the conditions that are required to be met have been met.

Mayor Clark thanked Mr. Clyburn and said I think Council and the audience needed to hear that. Councilman Macon said we may want to do some research on the four conditions. There has been some research done and I think those conditions have changed. Those particular set of conditions haven't been used in a long time as far as being recommended by the Institute of Government. Mr. Clyburn said these conditions came from Chapel Hill a long time ago and Chapel Hill has revised their conditions. I don't believe Chapel Hill continues to use these exact conditions. There has been some discussions at the planning and zoning level about looking into whether we should continue to follow these conditions or update them.

***REQUEST FOR A CONDITIONAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 400, 400A AND 402 N. LAKE PARK BLVD.***

After Mr. Parvin was sworn in by the town clerk, he said the applicant is requesting a conditional use permit to construct one approximately 66,000 square feet of heated and unheated space in a five story structure with four elevated residential levels including 8 approximately 1,420 square foot units per level under the planned unit development residential requirements. The current structures include a single family residence on 400A and Domino's Pizza at 400 Lake Park Blvd. North will be demolished. 402 North Lake Park Blvd. is a vacant piece of property. The parcels are located within the 100 year floodplain and will be required to have elevated living space. They are also located in the CAMA AEC.

Mr. Parvin continued with his presentation:

**Analysis**

The building site property total square footage is approximately 51,090 square feet on 1.173 acres of upland area. The current properties are under two zoning districts with the bisecting line running north-south 155 feet east of the western property line. The western portion of the property is zoned Highway Business (HB) and the eastern piece is Marina Business (MB). There are no density requirements in Highway Business or Marina Business. Highway Business has a 60% lot coverage minimum while Marina Business is limited to 40%. The 40% lot coverage applies to this project. The footprint of the structure is approximately 16,500 square feet or 32.29% lot coverage. The proposed structure will be 56 feet in height. According to the 1997 Land Use Plan for each additional 1 foot in height there shall be a 1 foot increase in front yard setbacks and ½ foot taken from each side. The setback requirements for Highway Business and Marina Business are 30 feet on the front, the side for Highway Business and Marina Business are both 10 feet, the rear in Highway Business is 20 feet and Marina Business is 10 feet. The only difference in setbacks is with the rear property line. In this case, the Division of Coastal Management requires a 30 foot setback from the bulkhead which is the most restrictive in this case and it will apply. The applicant's structure is actually setback 62 feet from the south, the south is 13 feet 7½ inches, the north is 13 feet, and 37 feet from the bulkhead.

**Parking**

Parking for this project will be at grade level with one point of ingress and egress from Lee's Lane. Each residence will have two unobstructed parking spaces for a total of 64 spaces. Three spaces are allocated to the 225 square foot pool for a total of 67 spaces. The applicant will provide a minimum of 67 spaces and a maximum of 71 pending final structural design.

## **Landscaping**

Planned Unit Developments require 25% open space. The applicant is providing 16,877 square feet of open space or 33% open space. A ten foot "Type B" buffer is being provided.

## **Infrastructure and Stormwater**

The applicant plans to retain all storm water on-site. The town engineer is reviewing this site to determine if the current sewer and water lines are adequate. Upgrades shall be in accordance with the Operation's Director.

## **Land Use Plan Consistency**

The proposal is in general consistency with the town Land Use Plan. Concerns for landside condominium developments causing traffic congestion are discussed in 8.1.8A Marinas. The applicant has addressed this concern by limiting access to Lee's Lane and also the applicant is willing to work with the North Carolina DOT and the town to reconfigure the intersection of St. Joseph Street and North Lake Park Blvd. We have discussed these changes with the North Carolina DOT and asked them what the options would be to redesign the intersection at St. Joseph and North Lake Park Blvd. I just got the response late last week or early this week. I will give you a copy of that now. Essentially they gave us two alternatives:

1. Keep the intersection as is with appropriate signage
2. They have sketched in on the second page of your handout and essentially creating versus the four islands they have two islands and eliminate the potential for making a left hand turn onto St. Joseph off of Lake Park Blvd. Mr. Harrell added as well as a left turn off of St. Joseph onto Lake Park Blvd. It will only allow a right turn onto Lake Park Blvd, which Mr. Parvin agreed.

Mr. Parvin said those are the only options DOT would support and they would not support funding for that. The town would have to provide funding to reconfigure that. Also concerns for losing commercial space to marinas associated with an onshore residential development are discussed in 9.4.8 The Marina Area. The applicant is creating a boardwalk area adjacent to the sound and is willing to provide a future connection when the adjacent property to the south is redeveloped.

The proposal as presented has not received any negative comments from Storm Water, Operations, Fire and Inspection Departments. Planned unit development residential is allowed with the approval of a conditional use permit in these zones. Staff recommends conditions 1-26 if it is to be approved.

The Planning and Zoning Commission heard this proposal at its May 11, 2006 regularly scheduled meeting and recommended approval by a 5-1 vote for the request subject to their findings.

A couple of other concerns addressed at the Planning and Zoning meeting were originally they were going to dredge part of Lee's Lane which is adjacent to the bulkhead. There were some concerns from Inland Harbor, the property owner to the north. They have modified their plans now. They will not be modifying Lee's Lane. That will stay unmodified all the way out to the bulkhead or they will be moving the bulkhead landward on the remainder of their property.

During the review process of this permit, a new ordinance was passed last month by Town Council for a 6-12 roof pitch. Staff has reviewed this amendment and they discussed the intent whether it should apply and believe that the intent was for it to apply for this type of residential development.

Mr. Parvin presented with use of the overhead projector some slides of the properties. One of the slides was 400 Lake Park Blvd. which is Dominio's, 400 A is a single family residence and 402 is now vacant. He showed Lee's Lane on the north end, Inland Harbor Yacht Club. He also said you have your adjacent property The Lime and Coconut and Blackburn Seafood and across the street you have the auto sales, Connie's and the Last Resort on the corner of St. Joseph's.

Mayor Clark asked if the sewer will be going to Lift Station 1 and Mr. Parvin replied yes. Mayor Clark said we need to get the modification going soon.

Mayor Pro Tem Gilbert asked does our Ordinance No. 06-635, amending Appendix A Zoning, Article 7, Off-Street Parking and Loading Requirements, Section 7.1(d) Off-Street Parking Standards apply here since this would permeate into the sound? Mr. Parvin said we didn't consider that for this project. We consider that the street ends on the oceanfront and Canal Drive. We recommend they come off of Lee's Lane.

Mr. Harrell was sworn in. He explained that the ordinance applies to the termination of a public right-of-way and this is an easement as opposed to a road right-of-way. Lee's Lane is not a road right-of-way.

Mayor Pro Tem Gilbert asked, do we have the town's engineer review of the site to determine if the current sewer and water lines are adequate? Mr. Parvin said I do not but the applicant may have more information than I do from the Operation's Department and the engineer. Mayor Pro Tem Gilbert said the last sentence reads that upgrades shall be made in accordance with the operations director. If we approve this tonight, we don't have a cost estimate or an impact, so that leaves the applicant open for the mercy of Mr. Pagley. Mr. Harrell said they have been in conversations and they might be able to answer that in their presentation.

The next part, Mayor Pro Tem Gilbert brought up, was that it says the applicant is willing to work with the North Carolina Department of Transportation (DOT) and the town to reconfigure the intersection. Since it won't be funded by the DOT, I think there needs to be some consideration in that discussion of what it would cost. What I would request in the general conditions is that be part of the debate, whatever Mr. Pagley needs and whatever those improvements are. It might behoove us to have some discussion on how much that might be and if they are willing to pay for that. We may want to consider including those actions in the actual conditions whenever the motions are made.

Mr. Harrell said to Mayor Pro Tem Gilbert I am afraid that our options at that intersection based on this most recent correspondence from the state is limited. They are telling us based on their records as to the number of accidents, there has been one in the last five years, and they are giving us two options. That doesn't mean we can't go back and continue to discuss it further. Their two options at the moment are the one that is in front of you which would allow for you to enter St. Joseph's Street off of Lake Park Blvd. traveling north and to exit with a right turn only onto Lake Park Blvd. You would not be able to turn left onto St. Joseph's Street or left onto Lake Park Blvd. and they are recommending that the town begin to get use to using Carl Winner as the way to get to St. Joseph off of Lake Park Blvd. The other option is to at least come in and properly sign and put the proper lanes there. That intersection is a mess when it comes to figuring out how to use it. Mayor Pro Tem Gilbert said I think what they are saying is that they didn't have enough accidents there to justify them paying for it or finding the funds so this is what your options are and you pay for it. My point is we should do whatever the police chief, Police Advisory Committee or operations thinks we should do and use whatever signage is needed. The intersection is deteriorating and it is getting broken apart and you have a lot of debris there. It needs to be taken care of pretty much immediately probably to help with their construction traffic. Mr. Harrell said if all we are talking about from DOT is proper signage and fixing those broken curbs, they are willing to do that in their maintenance budget. It is the more dramatic change that is in front of you that they are not willing to do. Mayor Pro Tem Gilbert said I would like to hear the discussion in the future or maybe towards this with respect to the police and how they feel about that intersection.

Councilman Johnson said you required a total of 67 parking spaces. How many handicapped parking spaces are you requiring? Mr. Parvin said I would have to look at the building code to see how many are required. For the first 25, I know you have to have one but after that I don't know. Councilman Johnson said I would like to follow-up on that.

He said as far as St. Joseph's Street I can't imagine a smoother traffic flow then being able to shoot off to the right versus closing that off and trying to make some right hand turn and back up traffic. I would not be presently in favor of doing that if that is the proposal. Mr. Harrell said the proposal is to keep the straight end shot. Councilman Johnson said there was mention of a cul-de-sac by DOT. Mr. Parvin said we had given them a few options at their request. That would be limiting the number of islands to two but you would still have the entrances and exits better marked and you would have a

larger landscape island. He said it is similar to that except you can go in and out. Mr. Harrell said we never suggested that the straight end shot be made a right hand turn.

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

The following people were sworn in for this public hearing: Darryl Barker, 1912 Hawthorne Road, Wilmington; Jeff Mann, 4837 Delta Lake Drive, Raleigh; Scott Patton; Leroy Franks; Mark Miller; Crickett Dye, and Chris Dean.

Darryl Barker, the architect for the project at Marina East, said I want to go over a couple of things from the site plan. The project is looking at taking an unused lot, a single residence, and a small commercial building and turning them into a bigger project of 32 residential units, two bedrooms, two baths, condominiums.

The bulkhead is in current disrepair. We are going to move it landward and add more water surface to the end and replace the bulkhead. We are in a unique situation where we have split zoning requirements. Per the ordinances, we are going to be governed by the most restrictive which is the marina business in terms of density per lot coverage. The project as it stands right now will meet all of the current guidelines. Regarding the building footprint, we are under the percentage that is allowed. We are meeting the height requirement guidelines for the project, all the setback lines as required, as well as CAMA. We are putting a large walkway across the back of the project that hopefully will connect as it goes south with the next property owner and then on down into the parking lot that currently exists by the city. The building itself will be designed to meet all of North Carolina state code requirements which will include the ADA accessibility. There will be three required handicapped spaces. One of those will be van and two will be cars. We are going to provide a pool as an amenity on the project on the water side of the building. We will meet the parking requirements that have been established by the city for the parking for the pool as well as the residential units. We are also proposing to have more open space than what the town requires in its ordinance as well as meet the landscaping buffer requirements around the project. As discussed, we propose that we do provide ingress and egress from Lee's Lane as was stated earlier. It is an easement that is owned by this piece of property with access easement provided to the neighbors to the north for their ingress and egress also. We believe this project meets the general conditions that were discussed earlier in terms that the project will not endanger the public health or safety and we think that the 27 conditions that we have from the TRC and planning staff we are prepared to address and meet all of those. We believe that the project will not create a distress for any of the abutting property owners but will actually increase their property values. As Mr. Parvin said we are meeting and in conformance with the overall Land Use Plan of the town. I am going to turn it over to Mr. Jeff Mann who is going to talk about some utilities.

Jeff Mann, the engineer for the project, said I would like to speak to some of the questions about utilities. Our utility plan had to have two two-inch water lines coming into the property as well as the fire line and a four inch sewer leading. There is an eight

inch water line going up St. Joseph's that Mr. Pagley said we will have more than sufficient water to service this planned development. The question resided around the sewer line running down North Lake Park Blvd. I have had several conversations with Brian Cox, the independent consultant who works for the town, who has informed me that the existing line, the eight inch sentry sewer line, will have the capacity to handle this development. However, there is the question of Life Station 1, which is being addressed separately with the town right now. It would be contingent upon Lift Station 1. The existing sanitary sewer line that is there will handle this planned development.

Stormwater as Mr. Parvin had said will be handled on site. At this point in time, we are looking at installing a sand filter system that will treat the first flush as Deaner likes to refer to it, the water with the nutrients and contamination in it that's at issue of getting into our surface waters. After being treated, it will be discharged down south on Lake Park Blvd. which ultimately runs to the marina, the city stormwater system.

Scott Patton of 917 Carolina Beach Avenue North said I have a couple of questions that I need to direct toward staff in reference to one of the conditions that was recommended and I guess it goes into the new ordinance with the 6-12 pitch. I need to know the definition of a commercial building and a residential building by code enforcement and also within the ordinance. Mr. Owens I think you guys have had that conversation in reference to how this building does pertain to that specific new ordinance.

Mr. Harrell said we have had a conversation about that. The building code would look at this property as a commercial property. However, according to the building inspector who I have had conversations with; it is looked at under a subcategory of the commercial code called residential occupancy. This is a residentially used property, a property proposed for residential occupancy under the commercial building code. That includes a number of things: condominiums, three unit buildings or larger, hotels. There is that distinction in the building code. When I drafted the roof pitch amendment, the terminology that was used was residential development. As I understood it from Mr. Johnson, who asked me to bring that for Council's consideration, the intent for residential development was for residential uses. With that distinction being to be commercially built but under the residential occupancy, we believe that the residential development language that was used does apply here.

Mr. Patton said the conflict I see here is if you go to the permitted use matrix in highway business you are not even permitted to build residential in highway business. Again I think there is a conflict in referencing interpretation of what is residential and what is commercial. From my perspective, and again this is a legal question that maybe Mr. Clyburn can address, is the definition of what a commercial building is and a residential building. I think within the ordinance itself it states that it is not permitted, which would reinforce what I'm saying that this is a commercial building and that it is not permitted to even build a defined residential building within highway business. Again I am having some conflict with what the interpretation is between the staff and what the definition is of commercial/residential not only on the level of the definition but also within the permitted use matrix.

Mr. Baker said the building code has two separate building codes. One addresses residential only which is up to two, three units. The other addresses commercial uses which as he said there is probably 15 different classifications within the commercial building code of which residential is one, business is one, assembly is one, and these are further broken down into subcategories. The reason for that is that they want to take and address the uses as it pertains to life safety. Certain things are going to be stricter on you for an assembly hall where you have 1000 people versus where you have a business occupancy that has maybe 100 people. So the exiting requirements, sprinkler requirements and all those things become much more stringent when you start looking at different classifications. To me as an architect that is the realm of the building code rather than governing building from an ordinance or a zoning standpoint. As the sketch shows here in our purview, this is a commercial building although it happens to have a residential use.

Mr. Harrell said, as a clarification, in actuality under our zoning ordinance under permitted uses, planning and development of residential uses under a conditional use permit are allowed on both highway business and in marina business. So you could do a residential development. Mr. Patton said I agree with what you are saying. From our standpoint, it's not a matter if you can build a planned unit development it's a matter of the definition of what that building is. This is a commercial building under the planned unit development not a residential building which then would not be allowed within highway business. This ordinance was drafted in the process of and approved after we had gone through planning and zoning and had gotten the recommendation for approval from planning and zoning. I guess we are having a hard time going through our planning and design process to prepare for the conditional use and then have this ordinance changed.

Mayor Pro Tem Gilbert asked if he could interrupt to ask Councilman Johnson a question, which Mr. Patton said sure. Mayor Pro Tem Gilbert said to Councilman Johnson with the intent of that language, did you project that roof pitch and slope would be for a building like this. Councilman Johnson said, not really. He said the example I was looking at is what we currently have at Woody Hewitt and the nearest intersection would be Atlanta toward the Oceanside. I had gotten a lot of phone calls how did they end up doing their roof line the way they did. Our current ordinance allowed that because we did not address in those particular zones. Then I made a recommendation that this be brought before us so the 6-12 be required for all residential units. I didn't look at the commercial aspect of it.

Mr. Harrell said as I brought it forward my understanding was that it was for residential development as in residential use. Councilman Johnson said and this is correct. Mr. Harrell said I guess the question here is you build this under the commercial code but it is going to be used for residential purposes. Mr. Patton said what Councilman Johnson just said is that your intent when you designed that was specific to a duplex or single family in the residential areas and not per se a building that is again a commercial building but with a residential use. I guess that is what we are trying to clear up and make sure we

understand Council's intent. Personally we don't think that we would have to apply the 6-12 pitch because this is a commercial building. The new ordinance is specific as you just mentioned to outlying residential areas which we would support. Mr. Harrell said only as purely clarification, the ordinance was written, Mr. Patton, for residential uses in both residential and nonresidential districts. Councilman Johnson said that is correct; it is wherever residential is allowed. Mayor Pro Tem Gilbert said I didn't think I projected that we would put that roof pitch on that type of structure because I think if you look to the north of there that yacht building is functionally the same. It's a box with a flat roof and I think there are other ones going in. I think we are dealing with some semantics and maybe some misinterpretation of it. I don't think we have to beat this one up too much. Mr. Patton said it was just one of the conditions that were attached. We have a concern of doing that because now we are going to have to go back and redesign our whole building which would cost significant decrease in residential units. Councilman Macon said personally if you put a 6-12 roof on that, it is not going to look too good. That was a poor ordinance; it was a poorly thought out ordinance and it was pushed and rushed through without much discussion. Mayor Pro Tem Gilbert couldn't even build his house because his house doesn't have a 6-12 roof. There's a house that just got built on the oceanfront at Kure Beach near the monument that doesn't have a 6-12 roof on it and it is very beautifully architecturally designed and you are restricting architectural design. I don't think that is why we are here. Mr. Patton said I think we are all on the same page in reference to interpretation.

Mr. Patton said I would like to make another comment in reference to DOT. We saw this when we were exploring this opportunity and that is a horrible intersection. You don't know which way you are suppose to go. If you are turning right, turning left - which lane do you get into. We saw this as an opportunity in which to come and talk to Mr. Parvin and Mr. Harrell and say this is what I think we view as a problem. It was agreed upon that it was a problem. We then offered that with the development of this project we would work with the town or DOT to rectify the problem and properly engineer this intersection. We are still committed to that completely. I do want to make sure that we are part of the process. To pass the cost all on to us, I think that is a point of discussion as to what costs we would share with the town. We are committed to work and fix that intersection. It will be a good thing for the town and a good thing for our project for that to be fixed. I will help the town out and we will work with the town but again those are just points of discussion that we think we need to have in the future as you the leaders decide which direction you are going with that intersection.

Mayor Clark asked Mr. Patton when he would need water and sewer pumping into Lift Station #1. What is your time frame projection? Mr. Patton said I would say our construction schedule would begin within the next 5 to 7 months. From there we would probably have somewhere between a 14 to 16 months build-out period of time. You are looking at 1½ to 2 years before this project would be completed.

Mayor Pro Tem Gilbert asked, what do you perceive as your responsibility with Lift Station #1? Lift Station 1 is overtaxed. It seems that every project that is coming to us is going through Lift Station 1. He asked Mr. Patton, what do you feel is your

responsibility monetarily if we list as a condition this action that says you are going to be responsible for some portion? He asked for a brief comment on what he perceives as Engineering Services recommendation of cost with the impact of the project. Mr. Patton said I think you framed the answer within your question when you alluded to the amount of people who are doing projects that are going to Lift Station 1. Lift Station 1 passes through to me on two other projects I am involved in with other partnerships. Those are all things we have known going into that as a development as a whole that those issues are going to have to be addressed at Lift Station 1. I think those costs should be spread out between the town and through these future projects. In all the conversations that I have had with the town, we have told them we will work with the town to get these upgrades. I understand a portion of those costs are going to have to be absorbed by us in this specific project and other projects I am personally involved in. We are comfortable with that. I don't think we are going to come to an answer tonight. We are willing to sit down as a group and work through that and negotiate with the town and make sure that it is fair and amicable for everybody. It needs to be done and there is no question about that. We are here if there are any other questions that may arise in the conversations.

Leroy Franks, 908 Canal Drive, said he disapproves the project based on the following facts and legal background. One is the additional strain on the Carolina Beach lift station. It places the public's health at risk that is inherent with any new major construction. This project will add more silt in the storm drains and will increase the problem at Black's Marina. North Carolina General Statutes 143.279.9 applies to contaminated building sites. Council should investigate completely before they approve this conditional use permit. Ladies and gentlemen I have previously tried to find information on this quasi judicial statute from Mr. Clyburn and I have not received a reply to date. He asked Mr. Clyburn if he has that information available. Mr. Clyburn said he will get that to him by the end of this week if that is acceptable. Mr. Franks said thank you sir and went on to say that he looked it up on his computer and did not find it.

Mark Miller of 702 Seafarer Lane said I think this is one of the better projects I have seen come through the pipe down here. It's in harmony with the properties around it, at least to the north. It's not in harmony with the Fish House. It's low elevation; it's not high elevation. They say they are going to help out with the lift station down at the main beach because that needs a lot of work. I know in planning everybody is building out in maximum footprints and we are talking about bringing them inside the footprint a little bit and this one is being brought inside the footprint on all four sides. They probably could have stuck a couple of more units in there and they didn't. I think it is a pretty neat project.

Chris Dean, whose primary residence is in Carolina Beach at 504 Peninsula, said he has a family here and he spoke in favor of the project. He explained that when you look at projects like this and look at Carolina Beach, we want to look at revitalization of the area. I think by some of the pictures that were shown we could see a project of this nature should increase the beautification of that area. All the members of this project are property owners of Carolina Beach and have a vested interest in making sure that what is done is in the best interest of this community. I think it will have a positive economic

impact which is what I think the Council likes to hear. The land that is there now provides little tax value to the community. By improving it, it will add substantially to the tax base of the community. I think listening to the four prerequisites that we have to meet it doesn't materially endanger anybody by the conditional use permit. I think the only thing that is materially endangered right now is Domino's Pizza and they have agreed to move elsewhere. If you look at the other three conditions, we met those through Planning and Zoning. I think those things have spoken for themselves. The project met with the approval of the four conditions from Planning and Zoning. I think because of the dual diligence and the things that the project has looked for, we look for a favorable ruling.

Crickett Dye, 500 St. Joseph's Street, is the secretary of the Board of Directors of the Inland Harbor Yacht Club Condominium Association, which is the property to the north of this development. She said that when she spoke before the Planning Commission several weeks ago, she was actually opposed to this project and came before them to speak against it because this project at the time used the easement for which we have a right-of-way. They incorporated that in their plan with having a boat dock in some of their common area. It was very funny since I was opposed and I am in a position now of saying actually I am in favor of this project. Upon being informed of our objections, Marina East moved very quickly to revise their plan to take care of that issue and they took it off their plan so they did not use that easement. They have been really good about talking with us and meeting with our board of directors to meet our concerns and to address any concerns that we might have. I urge you tonight to consider strongly approving this project. They have actually in fact met with us to ask for our input on how we can improve not only our project but their project, which is rare. The people to the north of us did not have that same concern for our property. Again, I appreciate the opportunity to speak in favor of this group and I hope that you will approve it.

Mayor Clark said before we close the public hearing I have asked the town attorney to address the intent of the ordinance on the 6-12 pitch and the legal side. Mr. Clyburn said one of the general conditions that we reviewed earlier and that you must review requires that the location and the character of 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 use plan policies. I think it is permissible and relevant to know what the intent of the ordinance was in ruling on the request and identifying any conditions that you will or will not impose on the project.

Mr. Owens said after looking at that ordinance, it was our interpretation of what the Council wanted was that it would apply to any residential use. Some of the concerns, the one across from the lake, I believe it is multiple stories and it would probably be constructed in a similar manner. I could be wrong I am not a construction expert, but as our planning director said it would apply to all commercial uses. Whether we intended to do that in this instance or not, I felt like that was what was approved.

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

Councilman Johnson asked Mr. Harrell if this were approved would there a problem as far as the planning department going and looking back at the 6-12 as far as the application in his particular process or in commercial type areas. Mr. Harrell said I think I would have to have the town attorney to help me in this area. My initial response would be no, it would not be an issue to go back and look at the ordinance again and bring it back to Council for whatever consideration they want.

Councilman Macon said on that note, I guess as a shocker to me that we would take an ordinance of this magnitude and have it not go to P&Z and it come from the former chairman of the P&Z. I think an ordinance like that should go to the P&Z for recommendation. That is the whole point of it.

Mr. Harrell said if you want to direct it to go the P&Z we will do so. As I said last month, the reason we didn't direct it there was because it wasn't part of the zoning ordinance. If it is Council's wish to do that, we will certainly do so. Councilman Macon replied whether it is part of the zoning ordinance or not it directly applies to development in the town. Mr. Harrell said yes, sir. Mayor Pro Tem Gilbert said he supports it to go to Planning and Zoning.

Mayor Clark said personally I am going to feel better about possibly 18 months to 2 years needing water and sewer. I like the project. I hate to hamper it with our 6-12 pitch ordinance.

Councilman Macon said we were talking about general conditions; that is something else that should be reviewed by P&Z. It should be looked at because I think the one we are using is an outdated one. The definition of harmony comes into play. I think there has been a lot of discussion about trying to find out where we define that. I think that also needs to go to P&Z to be looked at.

Mayor Pro Tem Gilbert said he had a conversation with the town attorney for Wilmington and he seemed pretty confident that he can define character and harmony. I think it is a good discussion for steering committees and Planning and Zoning to come up with it and maybe work with him where he has challenged it in the appellate level, defined it, and did pretty well with it in court.

Mayor Pro Tem Gilbert continued that Mr. Parvin mentioned a boardwalk connecting through when the southern property gets developed. That kind of saddens me because that means we are probably displacing one of our commercial fishing entities there and the Fish House, which we are losing. If we lose the Fish House we lose a place for those to dock. Thirty-two condominiums adjacent to a fish house, I guess it would be inevitable. There has been a lot of discussion lately about preserving our North Carolina fishing industries. I think we ought to work through planning to try to preserve some of our fish houses and our commercial docks. I think there are ways we can preserve that through lessening the tax burden. I think there should be some discussion to try to preserve Blackburn Brothers Fish House and those docks there. Whoever is going to put

this motion through, I would like to see discussion towards some cost sharing with the intersection. I would like to see any projects that will be going through Lift Station 1 that there is consideration of cost sharing.

Councilman Johnson made a motion to approve the conditional use permit for a planned unit development located at 400, 400A and 402 N. Lake Park Blvd consistent with the findings in the zoning ordinance 1-4, and subject to meeting the required findings 1-7, the TRC conditions, to include 1-3 Fire, 1-3 Operations, 1-3, 1-5 Planning, and staff recommendations 1-26 in addition as Mayor Pro Tem Gilbert mentioned cost sharing to be negotiated and agreed upon for reworking the possible islands and improving the islands. I would also like to clarify that doesn't mean to close off our right-of-way going up through St. Joseph's north right now and also agreeable costs in the upgrade of Lift Station #1. The conditions are as follows:

**REQUIRED FINDINGS:**

*Specific standards. Applicant must make provisions for:*

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

*General conditions.*

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

**Fire:**

1. Need Class 1 standpipe
2. Need sprinklers
3. Need alarm system

**Operations:**

1. Still going into lift station 1
2. Will have to use 2-inch water line
3. Expand on your stormwater plans (infiltration system to hold 100%)

**Planning:**

1. Show the following on your site plan:
  - a. Front setback
  - b. Show the zoning districts on the site plan
  - c. Setbacks from new bulkhead
  - d. Show all zoning and CAMA setback lines as well as actual building setbacks
  - e. Traffic flow
  - f. Parking spaces (handicapped)
  - g. Show all curb cuts
2. Indicate the following in your narrative
  - a. Tract size (from the original; excluding the easement)
  - b. Square footage with the easement (upland existing)
3. Include rendering that shows elevations of building
4. Pool not allowed in setbacks of estuarine waters (DCM rule)
5. Submit a Town CUP application with \$800.00 fee

**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 Coastal Management 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. Prior to Certificate of Occupancy, an architect or engineer must certify structure does not exceed 56 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 67 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 relocated in the right-of-way and run lines to the units.

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. Sidewalks curb and gutter shall be installed in accordance with Article 8 of the zoning ordinance and be ADA compliant.
26. Exterior lighting should be shielded on the building.

**MOTION CARRIED UNANIMOUSLY.**

***REQUEST FOR A CONDITIONAL USE PERMIT FOR A 3-UNIT PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 613 CAROLINA BEACH AVENUE NORTH***

While Mr. Parvin and Mr. Harrell were being sworn in, Mayor Clark said for those who came in late our intention was to go through the public hearings but also get out of this meeting by 11:00 p.m. and recess until Thursday. Since it is 10:35 p.m. this may be the last item on the agenda.

Mr. Parvin opened by saying the applicant is proposing to construct (1) approximately 6,102 sq. ft. structure including three 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. It is also in the CAMA Area of Environmental Concern. This project originally came before you on April 11, 2006 and you recommended it be sent back to the Technical Review Committee and Planning and Zoning to discuss concerns over parking and access. TRC and Planning and Zoning have reviewed it and I will go through some of the changes that were made in my memo.

**ANALYSIS:**

*Zoning*

The property total square footage is 7,479 square feet or .17 acres. Density in R1 is 15 units per acre or 2.57 for this project (they are proposing 03 stacked units). R-1 zoned properties allow for maximum lot coverage of 40% including the buildings, decks and steps. The footprint is 2,410 sq. ft or 32.22% lot coverage. The proposed structure will be 47 feet in height. Setbacks in R-1 are 20' on the front, 10' rear and 7.5' on the side. The first change is the front setback was originally 22 feet when it came through the first time and it is now 30 feet from the property line to the south. The sides are still the same at 7' 8" each; and the rear is the same at 10' from the property to the rear.

*Parking*

There are three (3) 3 bedroom units. Before when it was presented, there were two (2) four bedroom units and one (1) 3 bedroom units. They have reduced the number of bedrooms, which reduced the required parking from 9 spaces to 8 spaces and they will still have the three stacked spaces for each unit. The property is accessed off an easement on the lot to

the east that faces Carolina Beach Avenue North. The size of the easement is 10.5 feet. The 8 foot utility easement is not included in the access. However, the 10.5' access has been reviewed by the Fire Marshall and has been determined to be adequate for the triplex proposal. The purpose for the 22' access easement on project site according to the property owner to the south is to allow a turning radius for access into his rear property.

#### *Landscaping*

A total of 33% open space or 2,533 square feet is being provided. They are required 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 by the TRC.

Planning and Zoning heard this proposal again at its May 11, 2006 scheduled meeting. They recommended by a 5-1 vote subject to required findings, TRC comments, and staff conditions and one additional condition that the project be approved and that staff consult with the town attorney and have him provide an opinion to determine if Section 3.3 of our current zoning ordinance prevents the proposed building on the lot in question. The town attorney has reviewed 3.3 and does not consider that to prevent this type of development. I am sure he could address that further.

Mr. Parvin showed overheads of this project and commented on some of the changes that were made. During this time, he said one additional condition I didn't discuss at TRC was signage for the easement. They will have signage for no parking which was an additional condition that was added by the police department.

Councilman Johnson asked Mr. Parvin to go back to the parking slide. He said before you had 9 parking spaces and now you say there are only 8 parking spaces. Mr. Parvin said there are 8 required parking spaces but there are still now 9 parking spaces. Councilman Johnson said three of them will be partially under the building and partially out, which Mr. Parvin agreed.

Mayor Pro Tem Gilbert asked Mr. Parvin to show the set back change. Mr. Parvin said before it was a 22' setback and showed on the slide approximately where it was. He said it went from a 22' setback from this property line to a 30' setback. Councilman Johnson said so they shortened building 8' and Mr. Parvin replied exactly. Mr. Harrell said that was at their volition.

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

The applicant stated he wasn't going to make a presentation.

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

Mayor Clark stated I remember this project came up at the April Council meeting and we sent it back for review because we had some issues. The 8 foot change in the building size is good. Mr. Harrell said that was the major change. They brought it to TRC and said this is what we proposed to do to accommodate the ability to turn in there more freely and to accommodate some of the concerns that Council had about additional cars that might be parked in there and the ability to get out.

Mayor Pro Tem Gilbert asked the town attorney to give his interpretation of mutually exclusive. Mr. Clyburn said Mr. Harrell called and asked me to review the application of this particular section of the ordinance to the project. We went through it. He referred Council to page 5 in their materials. He explained that when they went through it and for instance looked at number A and determined if we fit under A (every structure hereafter erected shall be on a lot adjacent to a street as defined in Article 23). We considered if we met that condition. Mr. Clyburn said no, we don't meet that section; but if you follow -- or to a right-of-way or easement, which was platted and recorded prior to the adoption date of this ordinance -- my next question was, was this easement platted and recorded prior to the adoption date of this ordinance. Mr. Harrell said no. Mr. Clyburn continued so we don't qualify under subsection A. That required us to look at these two exemptions:

1. Lots of record prior to the adoption date of the initial Zoning Ordinance (April 24, 1979) that have sufficient area to meet the minimum requirements of the district in which they are located. Question #1 did this lot exist as of record prior to the adoption of this Zoning Ordinance (April 24, 1979). Mr. Harrell answered no sir. Mr. Clyburn said so that one doesn't work for us.
2. Single and/or two-family dwellings -- Does this involve single or two family dwellings? Mr. Harrell replied no. Mr. Clyburn said so these two exemptions if you strictly read the ordinance and apply this back situation to the ordinance you have a problem. But with the inclusion of the planned unit development section of our zoning ordinance, this Council is free to deviate from the strict application of the ordinance to projects such as this one. Even if they don't meet the exemptions that exist under 3.3 A 1 or 2, you as the Council are free to allow them to deviate from the strict application of the ordinance.

Mayor Pro Tem Gilbert thanked Mr. Clyburn and said that is exactly what I did. Then I went a step further and applied the PUD to it. I think we need to re-evaluate the PUD. When you go through the purpose of a PUD and you do the same exercise you have done, it looks like we are not getting anything out of it. I really appreciate them reducing the density. I think we need some future conversations of applying the same methodology we just applied to the PUD and then I think it will all wring out. Mr. Harrell said we are in that process.

Mayor Pro Tem Gilbert made a motion to approve the conditional use permit to construct planned unit development located at 613 Carolina Beach Avenue North meeting specific standards 1-7, general conditions 1-4, TRC comments from planning 1-7, operations 1-3,

fire 1-3, staff recommendations 1-23 and recommendations by planning 1-3 and police to include the no parking signage and a contract with a tow company and if they are going through Lift Station 1 that there is a discussion with the TRC and operations to consider the impact and possible cost sharing going through Lift Station 1. That would be conditional use 24 under staff recommendations, that any impact on Lift Station 1 we enter into an agreement with cost sharing on that.

Mr. Harrell said the one item that dealt with the contract for towing, we discussed that at P&Z and the feeling of P&Z was questionable as to whether we could require that as a condition. I would like to ask the town attorney if that would be something that we could require as a condition, a towing contract. Mr. Clyburn answered yes.

**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

**Planning:**

1. Show adjacent properties owners and uses on site plan (show easement)

2. Delineate 9x18 parking spaces (list total spaces in narrative – will need 9 spaces)  
The four bedroom units will require 3 spaces each. The three bedroom unit will require 2.5 for a total of nine spaces.
3. To scale vicinity map on site plan with at least 1 inch = 2000 scale on site plan
4. Need to show footprint
5. List percentage of open space
6. Locate closest fire hydrant on site plan
7. Include in your narrative: total number of bedrooms; footprint of the building including all decks and steps; Meets and bounds description in narrative (bearings and distance and directions); amount of open space; estimated project completion date

**Operations:**

1. Groundwater elevations
2. Site map showing how lot is going to drain
3. More detailed description of stormwater

**Fire:**

1. Need sprinkler system
2. Need Knocks Box
3. Need fire alarm system

**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 09 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 relocated in the right-of-way and run lines to each 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. That any impact on Lift Station#1 would require entering an agreement with cost sharing.

**Planning:**

1. Adding 8 ft. to the 22' setback
2. Please submit a narrative describing all modifications to your plans, i.e. changes in bedrooms, lot coverage, % of green space, and number of parking spaces. Also, any information that will change from your original submittal.
3. Site plans showing all setbacks, landscaping, utilities, stormwater, and parking plan.

**Police:**

Include "no parking" signage and a contract with a tow company

**MOTION CARRIED UNANIMOUSLY.**

Mayor Clark reminded everyone that we said if we recess to Thursday night we are not going to have any public hearings until 7:30 p.m. Mr. Owens said we can recess the meeting at any time and pick up from where you left off if that is what you wish to do. We are not going to have public comment.

Mayor Pro Tem Gilbert made a motion to recess until Thursday, June 15, 2006 at 6:30 p.m. Mayor Clark said we will pick up with Item #14. **MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa

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