

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

August 9, 2005

The Town Council of the Town of Carolina Beach met in regular session on August 9, 2005 at 7:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor, Dennis Barbour; Mayor Pro Tem, Pat Efird; Councilman, Jack Lynch; Councilman, Gary Doetsch; and Councilman, Joel Macon. Also present was Town Manager, Calvin R. Peck, Jr. and Town Clerk, Lynn N. Prusa.

Councilman Jack Lynch led everyone in the invocation and pledge of allegiance. Immediately following, Mayor Barbour called the meeting to order.

ADOPT THE AGENDA

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

Add to agenda Item #5 "Introduce New Town Employees" with addition of new employees.

Make addition to Item #9(a) "Approval of the Minutes" for July 12, 2005 to include Ordinance 05-597 (Exhibit 5), which was inadvertently left out.

Delete from the agenda Item #15 "Public Hearing." (Planning and Zoning has tabled this for further discussion; therefore, the town planner will recommend that this item be removed from the agenda at this time.)

Delete from the agenda Item #17 "Consider a Request for a Preliminary Plat Approval for Coral Cay Subdivision Located on the East Side of Seventh Street Between Old Mariners Way and Palm Breeze." (Recommended that this item be pulled from the agenda due to unresolved issues.)

Make addition to Item #20 "Appointment to the Planning and Zoning Commission," adding an application to this item for consideration.

MOTION CARRIED UNANIMOUSLY

INTRODUCE NEW TOWN EMPLOYEES

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

Winston "Chad" Soward
Fire Engineer

Linsey Manning
Operations Department

Emily Wright
Recreation Leader

Officer Patrick Smith
Police Officer I

Neil Brooks
Planning Fellow

Council welcomed them to the Town of Carolina Beach.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Barbour recognized the following employees for their years of service in five (5) year increments with the Town of Carolina Beach:

Tim Lawrie
General Maintenance Worker
Operations Department
5 Years of Service

Pat Lyerly
Accounts Payable/Payroll Clerk
Finance Department
15 Years of Service

Mayor Barbour also recognized a former employee with the Town of Carolina Beach:

Sandy Macon

RECOGNITION AND PRESENTATION OF THE "PATRIOT AWARD CERTIFICATE OF APPRECIATION" TO THE TOWN OF CAROLINA BEACH

Lt. Commander Frank Roberts, a Representative of the US Coast Guard on Behalf of the National Committee of the Employer Support of the Guard and Reserve (ESGR) presented to the Council the "Patriot Award Certificate of Appreciation." The Award and a Patriot lapel pin was presented to the town manager on behalf of the Department of Defense.

Lt. Commander Frank Roberts requested that Mayor Barbour and the Department of Human Resources look over the Statement of Support for the Guard and Reserve, to return the form and the Town of Carolina Beach would then receive a frameable Statement of Support.

Mayor Barbour thanked Lt. Commander Roberts and expressed his appreciation for Ed Parvin and all employees who are called to duty with the service.

PUBLIC DISCUSSION

Mayor Barbour stated that Ms. Yvonne Johnson, resident of 403 Marina Street, had signed up to address the council regarding Oceana Marina. Ms. Johnson stated that she did not sign up.

Chris Lutterloah, resident of 7214 Highway 210, with Desperado Horse Farm, spoke to the Council about Ordinance 3.5 which forbids riding, leading or driving animals in the public town or corporate limits of Carolina Beach. Mr. Lutterloah stated that it was his intent to provide a service to the surrounding area to provide horses and ponies for special events such as birthday parties, church groups, boy scout or girl scout troops, etc. Mr. Lutterloah stated that horses and ponies are transported to the location of the event, removed from the trailer, and unloaded onto areas to be used at such events. He stated that he felt it would be detrimental to his income to exclude any area in New Hanover and Pender Counties.

Mr. Lutterloah strongly urged the Town of Carolina Beach to appeal the ordinance immediately to allow him to continue his livelihood in a professional manner. Mr. Lutterloah stated that since 1997 he has been charged criminally, arrested some of those times for this ordinance and he has never paid a fine. He stated the case is presently in the NC Court of Appeals and this may or may not solve the problem. He could find no other ordinance in the State of NC that forbids horses in a municipality. He stated he did not think Carolina Beach had a horse problem, that horses are the foundation of America, and if any town writes a law forbidding horses, he would take it very personally. He stated that he thought that if the Town of Carolina Beach repealed this law, that their horse problems would go away. He hoped that the Town would consult with the Law Enforcement Division of Carolina Beach before addressing this issue. He thanked the Council for their time and consideration in this matter.

CONSENT AGENDA

Councilman Jack Lynch made a motion to adopt the consent agenda as follows:

Approval of the Minutes:

Regular Meeting	July 12, 2005
Special Meeting/Workshop	July 28, 2005

Approve Budget Amendments and Notification of Budget Transfers as follows:

The following is a list of year-end budget transfer made through 6/30/05 of this year. These transfers were necessary to finish out the budget year: (1) Increase Planning Department account 104910.53-Dues and Subscriptions, decrease account 104910.16-Planning Department Maintenance and Repair of equipment in the amount of \$50, (2) Increase account 105100.15-Police Travel and Training and decrease account 105100.21-Police Pin Rental in the amount of \$37, (3) Increase Lifeguard account 255200.16-Maintenance and Repair of Equipment and decrease Lifeguard account 255200.14-Travel and Training in the amount of \$174 and (4)

Increase Parking Account 255700.45-Contract Services and decrease account 255700.33-Supplies in the amount of \$2990. These are just transfers and require notification.

Listed below are the budget amendments requests which require your approval:

Police

The Police Department was given donation of \$5000 from the Manning Company for the purchase of tazers. Also, in the 2005/2006 there were monies appropriated in the amount of \$5000 for the purchase of tazers. The Police Chief is asking for the \$5000 which was appropriated in the budget now be used for the purchase of 800 mhz radios. This does require your approval.

At the end of budget year 2004/2005 the Police Department had remaining \$3124.81 in their drug seizure account. This money needs to be brought forward into budget year 2005/2006; therefore I am requesting the following budget amendment: Increase account 103990.00-Unappropriated Fund Balance and increase account 105100.60-Drug seizure monies in the amount of \$3124.81.

Water

The Water Department is and has been working on a water/sewer installation on Magnolia Avenue. The developer for this project had to pay for this service; this was done in budget year 2004/2005; however as of June 30, 2005 the project was not complete. Therefore, the monies that were not used as of June 30, 2005 need to be placed into the current budget. As a result, I am asking that \$25,642.64 be placed into account 303990.00-Unappropriated Fund Balance and also into account 308120.73-Magnolia Project.

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a Public Skate Park (parks, playgrounds and recreational buildings, public) located at 1121 and 1200 N. Lake Park Blvd and East Side of North 7th Street.

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a Triplex located at 400 Canal Drive.

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a Triplex located at 904 Canal Drive and 819 N. Carolina Beach Avenue.

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a Real Estate Office located at 1118 S. Lake Park Blvd.

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for a Triplex located at 817 Canal Drive.

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider a request for a Conditional Use Permit for an Industrial Planned Development at 110 S. Dow Road.

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider a request to Rezone 202 S. Dow Road from C (Commercial) to I-1 (Industrial).

Set a public hearing date for September 13, 2005 at 7:30 p.m. or soon thereafter to consider Amending Article 4, Flood Damage Prevention of the Town Code of Ordinances.

Refund \$1,057.32 to the NC Aquarium at Ft. Fisher for Wastewater Treatment Fees due to monthly fee adjustment from 1/1/04 to 12/04 based on 2003 Audit.

Approve Resolution No. 05-837 (Exhibit 1), which is a Financing Resolution with BB&T for Vehicles and Equipment as budgeted for FY 2005/2006.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING – CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A BAR/TAVERN TO BE LOCATED AT 600/602 N. LAKE PARK BLVD.

Prior to speaking, Ed H. Parvin, Interim Planning and Development Director, was sworn in by the town clerk and began making the presentation on behalf of the applicant, Billito, Inc.

BACKGROUND: The proposed use for the existing building located at 600/602 N. Lake Park Blvd. is for a “Beer and Wine establishment.” The proposed name of the bar/tavern will be ‘The Last Resort.’ Former uses of the site include “Castaways” (Bar/Tavern), and recently a tanning center and satellite dish sales office. The applicant is proposing to construct a 16’ x 20’ attached deck for outdoor seating. The applicant is proposing a total of 22 seats.

ANALYSIS: Bars/Taverns are allowed by Conditional Use Permit in the Highway Business District. Parking requirements according to Article 7, Section 7.1 (d) of the Zoning Ordinance, are based on 1 space per 4 seats or 50 sq feet (whichever is greater). The proposal requires 6 spaces. The applicant is proposing 6 spaces. The site is a “pie-shaped” lot, making it difficult for parking. Planning Staff has contacted NCDOT (See attached letter) and has worked with the applicant on the layout of the parking. The handicapped space located adjacent to the deck will not block the adjacent space due to the “flow through” design of the adjacent space. The proposed decking can be constructed as proposed under *Section 18.3- Extension or enlargement of non-conforming situations, including land uses and buildings*, as long as there is not a greater nonconformity with respect to the dimensional restrictions. The setback dimensions cannot exceed the existing setback encroachment.

Due to the nature of bars and taverns, they may have serious objectionable characteristics. In order to prevent negative impacts, eleven conditions have been specified in Article 12,

Development Standards for Particular Uses, and the applicant has addressed all eleven of these conditions as presented to the Town in memos as follows:

Conditions to be addressed by applicants (Underlined are new changes to the Ordinance):

1. Must have a person-in-charge on duty at all times and clearly display the name of the person-in-charge in a prominent place.
2. Must be sufficiently staffed to control unruly patrons and maintain order on the premises, and when necessary, must swear out arrest warrants on patrons engaging in violent, disorderly or illegal acts.
3. Must keep interior and exterior of structure in good repair, clean and well maintained.
4. Must comply with noise restrictions.
5. Must meet fire codes and limit occupancy to the maximum number allowed for the facility.
6. Permit may be revoked:
 - (a) Upon a preponderance of evidence that the establishment patrons display a pattern of disorderly, violent, indecent or unlawful conduct;
 - (b) If the application contains any material misrepresentation, misstatement or omission, intentional or inadvertent, concerning information required to be provided.
 - (c) If permittee loses its ABC license its conditional use permit shall be revoked. If the permittee is a restaurant, the permittee shall continue to be allowed to operate as a restaurant as herein defined, however, said permittee shall not be permitted to sell alcohol without first obtaining a new conditional use permit as provided under this section 12.2. For the purpose of this article, a restaurant shall be defined as ‘an establishment substantially engaged in the business of preparing and serving meals.
 - (d) If permittee is found guilty by the ABC Commission and closed for three or more significant violations within any 12 month period.
7. No new bars/taverns shall be permitted within 200 feet of an established church or school nor within 200 feet of any residential district nor within 200 feet of another bar/tavern. A “new bar/tavern as used herein shall be defined as a bar or tavern that did not exist on May 13, 2003.
8. When considering an application for outdoor seating, consider:
 - (a) whether the request will cause damage, hazard, nuisance or other detriment to persons or property;
 - (b) whether outdoor lighting will create additional nuisance impacts to existing or planned adjacent uses;
 - (c) whether outdoor entertainment will create additional nuisance impacts, including, but not limited to noise, on existing or planned adjacent land uses;
 - (d) whether it is necessary to restrict the hours of operation for the outdoor seating; and
 - (e) any other issue that is reasonably related to the nature of the request.

9. Bars/taverns must comply with all provisions of the NC Alcoholic Beverage Commission
10. Conditional use permits are subject to review for continued compliance.
11. The Town shall issue a conditional use permit to any applicant which demonstrates compliance with the conditions of sections 8-68, 12.2, and 18.8.

The proposal, as presented, has not received any negative comments from Operations (Stormwater) and Fire and Inspections. Bar/tavern proposals are allowed with approval of a Conditional Use Permit in the Highway Business zoned properties.

STAFF RECOMMENDATION:

Planning Staff would recommend the following conditions if the proposal is to be recommended for approval:

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

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

General conditions:

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

Staff conditions:

1. Must adhere to the Town of Carolina Beach Noise Ordinance.
2. The proposed bar/tavern cannot exceed 22 seats.
3. Refuse collection agency that will be used must be included on final site plan. The refuse collection site must be enclosed on all four sides and remain closed and secured during inactivity.
4. All permits required by Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
5. Approval Letter must be acquired from the Fire Marshall and the Building Inspector for the proposed bar/tavern and proposed deck prior to Certificate of Occupancy.
6. Limited hours of operation should be considered for the proposal as to reduce impact onto adjacent properties.
7. A sign permit must be obtained for any new signs located on the property.
8. Strict adherence to all provisions of NC ABC license
9. Certification shall be provided that all improvements, shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee) prior to Certificate of Occupancy.
10. Proposal must adhere to Section 8-68. Permits may be revoked as outlined in Section 8-68 Town Code of Ordinances if determined this section is violated.
11. Any modifications to this proposal (as deemed significant by the Director of Planning or his designee) will require new application for conditional use permit.
12. If repairs exceed 50% of the tax or appraised value, the building must be floodproofed.

The Planning and Zoning Commission heard this proposal at its August 2, 2005 Scheduled Meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to the required findings and staff conditions above and the following additional conditions or changes:

1. Installation of a barrier fence around the property per Town guidelines (the applicant is willing to do that).
2. Increase lighting and street markings for safety. (We have worked with the applicant to come up with a plan).

Mr. Parvin made a presentation of the plan to the Council on the screen of the original parking plan. He pointed out that on the very south end there is an additional parking place that is being worked on with the applicant. The purpose of that parking place would be to have a place marked there to prevent some of the drive through traffic going from St. Joseph's over to Goldsboro. He stated that by putting that place there, it would prevent some of that flow through traffic. Mr. Parvin then introduced the site plan which showed property lines and right-of-ways on each side. The seating plan was then introduced showing 12 seats on the deck and 10 inside. The site and parking area as it is today was then shown.

After Mr. Parvin made his presentation, he was asked where the fence would run. Mr. Parvin stated the fence would run around the decking to prevent people from throwing bottles or litter off the deck. He was then asked how tall the fence would be and Mr. Parvin stated the actual height had not been worked out, but it would be limited – probably about four feet.

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

Prior to speaking, Dave and Pam Billito (applicants) were sworn in by the town clerk. Mr. Billito offered to answer any questions and rebut any comments. He explained there is no code for the height of railing for commercial buildings, but that it was suggested that they have one to control access on and off the deck. They plan to have railing with nautical rope on top to prevent people from sitting on it.

Mayor Barbour asked what kind of improvement was going to be made to the exterior and interior of the building. Mr. Billito stated that Dennis Centerfield had just been hired to improve the interior with a tiki/beach theme. The exterior will have grass, beach dressing and bamboo around the building. The deck will go along with that theme with pier pilings and nautical rope. Mr. Billito stated that he could not change that it is a 1950's cinder block building, but that he could dress it up and make it a fun place to be and hopefully an asset to the neighborhood.

Mayor Barbour asked Mr. Billito what the intended use is. He stated he had read that it was a bar and tavern intended for beer and wine and asked Mr. Billito to describe that in further detail.

Pam Billito replied by stating that they were trying to have a nice wine bar with some classy wines, beers and sodas. They intend for it to be a nice, quiet, classy place to sit down and have a glass of wine. They do not want loudness, stated it would not be loud, and that it would be non-smoking inside. Mr. Billito stated he did not think there are enough quality places for people in the 30 to 65 age group in Carolina Beach. Mr. Billito stated the deck would also serve the purpose for smoking, as smoking will not be permitted inside.

Mayor Barbour asked the Billitos if they were going to make a real effort to keep the people quiet on the deck and they both replied yes and that they do not intend for it to become a nuisance.

Mayor Barbour thanked the Billitos for their presentation.

Prior to speaking, Troy Slaughter, resident of 505 Fern Creek Lane, Carolina Beach was sworn in by the town clerk. Mr. Slaughter stated that he is President of Winner Enterprises at Carolina Beach, LLC, which is a property just to the north and to the west of this proposed use. Mr. Slaughter stated that he was the former President of the Carolina Beach Revitalization Committee, which turned into a corporation at one point in time. He stated that he was privileged to be President at a time back in 2001 when about \$10,000 was raised to commission a market study that was performed by Independent Opinion Research and Communications, Inc. Mr. Slaughter stated the findings of that market study were broken down into three categories: the business owners, the residents and the tourists. He stated that without question that all three

groups indicated a desire to discourage additional bars and taverns in Carolina Beach. He further explained that 93% of the business owners said that bars should be reduced or discouraged from future growth and not a single business owner responded that Carolina Beach needed another bar. When residents were asked what improvements could be made to the CBD, they stated they wanted the bars removed from the boardwalk. Tourists' responses were the same. Mr. Slaughter stated this property is only a block from the CBD – about 250' from the First Baptist Church. Mr. Slaughter therefore opposes the project as being appropriate for the location due to the market study among other reasons.

Mr. Slaughter stated that Mr. Gilbert, who is seeking a seat on the Council, spoke in favor of this proposed use at a Planning and Zoning meeting stating that a bar is an excellent use for this building. Mr. Slaughter respectfully disagreed with that and stated he could not think of a more inappropriate use for this property. Mr. Slaughter asked how many upscale patrons were going to go sit in a one-story, cramped cinder block building to sip Cabernet Sauvignon and that he did not think it was going to happen. He stated it was not a proposed use to open a restaurant to serve food and the sole purpose is to go there to drink. He was concerned that the location is right there on US Highway 421 and St. Joseph's street, which is part of the gateway to Carolina Beach. He questioned if this is what we want visitors to see as they are entering Carolina Beach.

Mr. Slaughter stated that before Planning & Zoning last week, the applicant maintained he had a right to do some type of business there and Mr. Slaughter agreed with that statement. However, he stated he does not have the right to open up whatever kind of business he wants. Mr. Slaughter stated that he understood that a stop work order was issued directing the applicant to cease construction of the deck, which is apparently well under way. Mr. Slaughter stated that if the applicant is going to disregard the ordinances and regulations with such a preliminary matter, then what kind of business neighbor would the applicant become and how well would the applicant follow any conditions this council may or may not attach to a Conditional Use Permit?

Mr. Slaughter also stated his concerned about the issue of navigating and getting in and out of this intersection. He stated that any business use would generate additional traffic in this area. However, he stated that this proposed business would generate people getting into their cars after they had been drinking and submitted that this is not an appropriate use for this parcel and this location. Mr. Slaughter stated the argument was made at Planning and Zoning last week that there was a bar named Castaways there in the past, and also Jack's. He contended that there were problems with both Castaways and Jack's, with people parking in the Cove Shop parking lot, additional littering and public urination. Mr. Slaughter suggested Carolina Beach move into the 21st century and not allow this location as a bar?

Prior to speaking, Joe Coen, a resident of 208 S. Lake Park Blvd., was sworn in by the town clerk. Mr. Coen stated that he is not against bars and would love to see a nice quiet piano bar at this location. Mr. Coen stated that he is not sure why there is going to be a public hearing and vote on it since the owners, assuming approval, spent last Saturday and Sunday building the deck to his surprise. Mr. Coen stated that no plans had been seen prior other than the drawing that was presented earlier tonight and expressed his concern about what it was going to look like. He asked where are the plans were for the project and if the council had seen them.

Mr. Coen explained that there is about to be an intersection with an RV park, a used car lot and a bar all on Highway 421 – all for tourists and residents to see. He stated that asked the council to support the vote of Jerry Johnson, Chairman of the Planning and Zoning Commission, when he voted against the Conditional Use Permit on the grounds that it doesn't add to the aesthetic, family oriented safety or strategic planning goals of drawing tourism and giving them a favorable impression of Carolina Beach. He expressed his concern mainly for safety with vehicular traffic due to drinking and driving, as well as distractions from the deck. He stated that is not an intersection where you want to see that kind of activity.

Mr. Billito then addressed the comments made. Mr. Billito stated that there was legitimate miscommunication on the deck permit. He stated that plans were submitted, the plans got lost in the shuffle, and that they stopped work immediately. He stated that the deck is all to code and everything is fine. He stated that in regards to being 250' from the church, that it was more like 600' from the church. Mr. Billito referenced Mr. Slaughter stating that he was going to be developing a trailer park in the next five years. Mr. Billito stated his lease is for five years and he does not feel his property is going to be the eyesore there, although affordable housing is needed. Mr. Billito expressed his concern that this is more an issue with the building than it is the business. He stated that they do have a piano bar with a piano player in town that can set up and does not intend for it to become a nuisance. He stated plans have been submitted on the deck. Mr. Billito stated he has the right to do business there and that he will do some type of business there. He then went over some of the business uses that he does not need approval for – i.e., an art gallery, mini golf facility, ice cream store, florist, mini-mart, laundromat, locksmith, gunsmith, appliance repair and rental facility, cigarette store, beer store, wine store, beer/wine/cigarette store (to go), vehicle sales lot, motorcycle sales lot, and a motorcycle rental facility. He stated those are all permitted uses that he does not need approval for. Mr. Billito stated that they are going to be there for five years, that he would like to put money into the building and dress it up and become an asset to the community.

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

Councilman Doetsch stated that he did have the market study and went over the issues covered in the study. He stated it is mainly dealing with the central business district and not highway business. However, he thought that maybe this wasn't the right thing to put there.

Mayor Barbour stated that the options are approval, denial or continuance of the Conditional Use Permit application.

Councilman Doetsch made a motion to deny the Conditional Use Permit.

Mayor Barbour asked for any further discussion.

Councilman Macon stated that he doesn't mind the camping places and he feels we need more and he doesn't mind the bars and we have less now than we have had in the history of Carolina Beach and if they are properly run, landscaped and cleaned-up it can be an asset to the

community. He went on to say that he lives in a resort town and there are campers and bars in resort towns.

Councilman Lynch stated he has reservations primarily because of the location and because he attends the church that Mr. Slaughter spoke about. He stated that if the building is improved and they run a good store that it might be some improvement. He stated he would like to see something there other than a bar if possible, but he would not be against a bar if it is done right. However, if it is not done right, he would be the first one to go to the chief to see if he could do something about it.

Mayor Pro Tem Efird stated that she agrees with Jack and is not against it. She stated she has already seen what they have done and they have certainly made an effort to beautify the place with landscaping. She thinks he ought to be given a chance to do it.

The town manager asked that before a vote was taken, that denial should be related to one or more of the four specific findings and that the motion should be amended to add whichever specific finding to make denial condition on – those four conditions are listed above under general conditions.

Councilman Doetsch amended his motion to deny the Conditional Use Permit based on safety and ingress/egress - general condition #1 – that the use will materially endanger the public health or safety if located where proposed.

He also stated that he has nothing against a bar either, but just doesn't think this is the right place. He stated that if it were being done somewhere else he would probably be in favor of doing it because of the atmosphere they were wishing to convey.

Mayor Barbour addressed Mr. Clyburn, Town Attorney, regarding Item #11 of the Conditions to be addressed by applicants. He asked if the motion on the floor finds one of those findings not to be adhered to?

Mr. Clyburn stated there were two different considerations. He stated 8-68 and 12.2 and 18.8 are different considerations than the four general conditions which any applicant for a Conditional Use Permit must meet, therefore the answer is no. Mr. Clyburn stated that if they meet the conditions of those three sections which were identified in #11, the council must still be persuaded that they have met these four general conditions that are outlined on page 2 of the packet.

Mayor Barbour asked for any further discussion.

There being no other public comments, Mayor Barbour restated the motion of the floor, to deny the Conditional Use Permit application referencing Item #1 under General Conditions, which states that the use will materially endanger the public health and safety if located where proposed and developed according to the plan as submitted and approved. **MOTION TO DENY FAILED** (The following were opposed to the motion: Mayor Barbour, Mayor Pro Tem Efird, Councilman Macon and Councilman Lynch.)

Councilman Macon made a motion to approve the request for the bar and tavern located at 600 and 602 N. Lake Park Blvd. **MOTION TO APPROVE PASSED 4 TO 1** (Councilman Doetsch voted, no.)

Councilman Macon amended the motion to include the conditions 1-7, 1-12, 1-4, 1-2 P&Z recommendations as stated in the staff report.

Mayor Barbour asked for any further discussion.

MOTION TO APPROVE PASSED 4 TO 1 (Councilman Doetsch voted, no.).

PUBLIC HEARING – CONSIDER A REQUEST TO MODIFY A CONDITIONAL USE PERMIT TO INCLUDE A CONNECTED DELICATESSEN AND PREPARATION AREA ON THE FIRST LEVEL, RESIDENTIAL SPACE ON THE SECOND LEVEL TO BE DISCARDED, LOCATED AT 15 CAROLINA BEACH AVENUE NORTH.

Ed H. Parvin, Interim Planning and Development Director, was sworn in by the town clerk and reviewed with council the request to modify a Conditional Use Permit located at 15 Carolina Beach Avenue North as follows:

BACKGROUND/HISTORY:

The applicant is proposing to redevelop an existing 6,300 sq. ft. structure at 15 North Carolina Beach Avenue. This project is allowed as a mixed use development by Conditional Use Permit in the Central Business District (CBD). Height, Density, Setbacks, and landscaping in the Central Business District are examined through Conditional Use Permit review. The applicant's structure is 21 feet in height. The parcel is located within the 100-year floodplain and will be required to have elevated living space and commercial space on the ground floor shall be floodproofed. The property is also located within a CAMA Area of Environmental Concern.

ANALYSIS:

The renovations will include:

- First floor: arcade (2,850 sq. ft) on the ground floor; 1147 sq. ft. for the restaurant.
- Second floor: Attic space only

Hours of operation for the arcade and restaurant will be 6 a.m. to 2 a.m. Sunday through Saturday. One (1) to ten (10) employees will operate on-site during a shift. Maximum lot coverage within the Central Business District is 100%; the footprint of the structure is approximately 4,330 sq. ft, which maintains the existing footprint and is of the allowable square footage. The structure is 21 feet in height. Setbacks in the Central Business District are 0' (side), 0' (front), and 0' (rear).

Parking

The applicant will provide two loading spaces on the west side of the building off of Canal Drive.

The applicant request to utilize Article 7.1(c) *Waiver of Parking Requirements in Central Business District* for the 25 required spaces:

- 14 (*indoor commercial recreation and retail = 1 per 200 square feet*) required spaces for the arcade space and;
- 11 (*1 per 3 seats*) for the 34 seat restaurant.

This request for parking from the Town of Carolina Beach will have to be recommended by the Planning and Zoning Commission for either approval or denial and formally approved or denied by Town Council.

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

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

General conditions.

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

STAFF RECOMMENDATIONS:

The proposal as presented has not received any negative comments from Stormwater and Operations, Fire and Inspection. Mixed Use Development proposals are allowed with the approval of a Conditional Use Permit in Central Business District zoned properties. Staff recommends the following conditions if the proposal is to be recommended for approval:

1. FEMA form 81-65 (Flood Certification) must be presented prior to Certificate of Occupancy.
2. Final project must be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. **"Where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use." The requested spaces must be recommended for approval or denial by the Planning and Zoning Commission and must be approved by Town Council.**
3. Solid waste is handled collectively by the boardwalk area businesses. The owner will be required to participate in this program and submit a letter confirming participation.
4. All structures must meet minimum NC Fire Prevention Code. Approval letter must be submitted prior to Certificate of Occupancy.
5. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
6. A sign permit must be obtained for any new signs located on the property.
7. 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.
8. 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.
9. Seating for the restaurant use shall be limited to 34 seats.
10. The restaurant may not convert to a private club.
11. Alcohol sales must not comprise more than 49% of total sales (based on ABC and tax records).
12. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission.

The Planning and Zoning Commission heard this proposal at its August 2, 2005 Scheduled Meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to the required findings and staff conditions above.

Mr. Parvin presented an aerial with the site highlighted, a survey of the site and diagrams. He also showed the floor plan for the arcade and restaurant.

There being no further comments from council, a motion was made by Councilman Lynch to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Since no public comments were made, Councilman Doetsch motioned to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Following, Councilman Doetsch made a motion to approve the Conditional Use Permit including the specific standards 1-7, general conditions 1-4 and the staff recommendations 1-12. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A MULTI-FAMILY QUADRAPLEX LOCATED AT 402 CAROLINA BEACH AVENUE SOUTH

Ed H. Parvin, Interim Planning and Development Director, was sworn in by the town clerk.

BACKGROUND:

Applicant proposes to build (2) 4-bedroom residential units and (2) 2-bedroom residential units on a 50' x 125' lot located at 402 Carolina Beach Ave S. in the T-1 Zoning District under Multi-family. The lot is currently vacant. Multi-family may be allowed as a Conditional use in T-1 zoned properties. Normal density, setbacks, and lot coverage standards for the district apply. The lot is located within the 100-year floodplain (A9 zone) and will be required to have elevated living space and is located within a CAMA Area of Environmental Concern.

ANALYSIS:

Maximum lot coverage of 40%, which includes footprint of the building, decks and steps and is of the total allowable square footage of 2,500 sq. ft. The applicant is proposing a 2,499 sq. ft. footprint. Density of units allowed under Multi-family is 29 units per acre in the T-1 Zoning District and the applicant is allowed in this case 4.16 units for the site. The applicant is proposing the height of the structure at 50 feet. Setbacks in the T-1 District are 10' (side), 20' (front), and 10' (rear). The lot is considered a double frontage lot and will require 20' on both Woody Hewett. and Carolina Beach Ave. S. The applicant is proposing 10' setbacks on the side and a front setback of just under 21' on Lake Park Blvd S and Carolina Beach Ave. S. which is one way going south. The applicant is required to provide 10 parking spaces based on 2 per dwelling unit + 0.5 per bedroom over 2. The site plan shows 5 parking spaces on each side of the building. The applicant's parking plan is showing 4 parking spaces for the two 2 bedroom units and 6 parking spaces for the two 4 bedroom units. (See attached site plan). The applicant will provide for landscaping on all borders of the property and sidewalks on CBA S and Woody Hewett. The applicant will also install curb and gutter and plans to handle the stormwater on site.

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

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

General conditions.

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

STAFF RECOMMENDATIONS:

Staff has not received any negative comments from the following agencies: Operations (Stormwater), Fire, and Inspections. A 4-unit dwelling is allowed under Multi-family with the approval of a Conditional Use Permit in T-1 zoned properties. Staff recommends approval of the Conditional Use Permit subject to required findings above and the following conditions:

1. Prior to issuance of a building permit, an engineered stormwater plan must be submitted and approved. The stormwater system shall be installed according to approved plans and a letter signed and sealed by a licensed engineer shall be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.

2. Prior to issuance of a building permit a drainage plan must be submitted and approved. 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. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
4. CAMA Minor Permit must be secured prior to Issuance of Building Permit.
5. Indicate on plan refuse collection and agency to be used. Refuse collection site must be enclosed on all four sides. Site must be closed and secured during inactivity.
6. The structure shall be limited to 50' in height. A sealed set of plans from an engineer must accompany the building permit showing that the structure does not exceed 50'. Prior to Certificate of Occupancy, an architect or engineer must certify structure does not exceed 50 feet in height
7. Flood certification must be presented prior to issuance of certificate of occupancy.
8. Final project must be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. Final project must be designed to provide the required 10 parking spaces.
9. Final site plan must include cross-section of paving detail and areas to be paved.
10. Dwelling must be designed and constructed so that it will not impair any adequate supply of light and air to adjacent properties.
11. Dwelling must be constructed to meet minimum NC Fire Code and must be approved by the fire marshal.
12. Water meters must be relocated in the right-of-way and run 4 lines to the units.
13. Landscaping must be provided on all borders of the property. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.
14. 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 multi-family 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.
15. Certification shall be provided that all improvements, including but not limited to paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee prior to Certificate of Occupancy.

16. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
17. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire.
18. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission.
19. A scaled site plan must be submitted prior to issuance of a building permit. All drawings shall be prepared at a scale of 1"=50' or larger, showing the site and all land within 150' of the site.
20. Indicate on plan refuse collection and agency to be used. Refuse collection site must be enclosed on all four sides. Site must be closed and secured during inactivity.

The Planning and Zoning Commission heard this proposal at its August 2, 2005 scheduled meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to the required findings and staff conditions above and the following additional conditions or changes:

1. Sidewalks at the east and west end of the properties at Woody Hewitt and Carolina Beach Avenue South are ADA accessible.

Mr. Parvin made a motion to modify Item #11 of staff recommendations, which states now that "Dwelling must be constructed to meet minimum fire code to include NFPA13 sprinkler system, knock box, alarm system and must be approved by the fire marshal." Item #11, as modified, should read "Dwelling must be constructed to meet minimum North Carolina fire code and must be approved by the fire marshal."

After Mr. Parvin's presentation, Councilman Lynch made a motion to open the public hearing.
MOTION CARRIED UNANIMOUSLY.

Since no public comments were made, Mayor Barbour motioned to close the public hearing.
MOTION CARRIED UNANIMOUSLY.

Following, a motion was made by Councilman Lynch to approve the request for a Conditional Use Permit for four residential units at 402 Carolina Beach Avenue South called Aqua Vista subject to required findings 1-7, general conditions 1-4, staff recommendations 1-20 as amended in #11 where the minimum NC fire code and approval by the fire marshal must be met, and also subject to Planning and Zoning Item #1 with sidewalks being ADA accessible.
MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING – CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A MULTI-FAMILY QUADRAPLEX LOCATED AT 400 CAROLINA BEACH AVENUE SOUTH

Ed H. Parvin, Interim Planning and Development Director, was sworn in by the town clerk and reviewed the proposed request for a Conditional Use Permit for a multi-family quadraplex located at 400 Carolina Beach Avenue South as follows:

BACKGROUND:

Applicant proposes to (2) 4-bedroom residential units and (2) 2-bedroom residential units on a 50' x 125' lot located at 400 Carolina Beach Ave S. in the T-1 Zoning District under Multi-family. There are currently a dwelling on the lot now and will be removed. Multi-family may be allowed as a Conditional use in T-1 zoned properties. Normal density, setbacks, and lot coverage standards for the district apply. The lot is located within the 100-year floodplain (A9 zone) and will be required to have elevated living space and is located within a CAMA Area of Environmental Concern.

ANALYSIS:

Maximum lot coverage of 40%, which includes footprint of the building, decks and steps and is of the total allowable square footage of 2,500 sq. ft. The applicant is proposing a 2,337 sq. ft. footprint. Density of units allowed under Multi-family is 29 units per acre in the T-1 Zoning District and the applicant is allowed in this case 4.16 units for the site. The applicant is proposing the height of the structure at 50 feet. Setbacks in the T-1 District are 10' (side), 12.5' (corner), 20' (front), and 10' (rear). The lot is considered a double frontage lot and will require 20' on both Woody Hewett and Carolina Beach Ave. S. The applicant is proposing 10' setbacks on the side and 12.5' on the corner of Atlanta, front setback of 20' on Woody Hewett and Carolina Beach Ave. S. which is one way going south. The applicant is required to provide 10 parking spaces based on 2 per dwelling unit + 0.5 per bedroom over 2. The site plan shows 5 parking spaces on each side of the building. (See attached site plan). The applicant will provide for landscaping on all borders of the property. The applicant will install an engineered stormwater plan to handle the stormwater on site.

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

- 1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

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

General conditions.

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

STAFF RECOMMENDATIONS:

Staff has not received any negative comments from the following agencies: Operations (Stormwater), Fire, and Inspections. A 4-unit dwelling is allowed under Multi-family with the approval of a Conditional Use Permit in T-1 zoned properties. Staff recommends approval of the Conditional Use Permit subject to required findings above and the following conditions:

1. A scaled site plan must be submitted prior to issuance of a building permit. All drawings shall be prepared at a scale of 1"=50' or larger, showing the site and all land within 150' of the site.
2. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
3. CAMA Minor Permit must be secured prior to Issuance of Building Permit.
4. The structure shall be limited to 50' in height. A sealed set of plans from an engineer must accompany the building permit showing that the structure does not exceed 50'.
5. Flood certification must be presented prior to issuance of certificate of occupancy.
6. Final project must be designed to provide the required 10 parking spaces.
7. Final site plan must include cross-section of paving detail.
8. Dwelling must be designed and constructed so that it will not impair any adequate supply of light and air to adjacent properties.
9. Landscaping must be provided on all borders of the property. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.

10. 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 multi-family development for the purpose of ensuring maintenance of common facilities.
 - c. Retention of ownership, control, and maintenance of common facilities by the developer or Home Owner's Association.
11. 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.
12. Prior to issuance of a building permit, an engineered stormwater plan must be submitted and approved. The stormwater system shall be installed according to approved plans and a letter signed and sealed by a licensed engineer shall be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy or payment of stormwater management contribution satisfactory to the Town.
13. Drainage plan must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
14. Indicate on plan refuse collection and agency to be used. Refuse collection site must be enclosed on all four sides. Site must be closed and secured during inactivity.
18. Dwelling must be constructed to meet minimum North Carolina Fire Code and must be approved by the fire marshal
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 this article for original submission.
21. Water meters must be relocated in the right-of-way and run 4 lines to the units.

The Planning and Zoning Commission heard this proposal at its August 2, 2005 scheduled meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to the required findings and staff conditions above and the following additional conditions or changes:

1. All sidewalks shall be ADA compliant
2. Vision clearance entering and exiting the driveway should meet Town standards
3. Address the traffic entering and exiting pattern

Mr. Parvin recommended modifying Item #18 of the staff recommendations, which states now that “Dwelling must be constructed to meet minimum fire code to include NFPA13 sprinkler system, knock box, alarm system and must be approved by the fire marshal.” Item #18, as modified, should read “Dwelling must be constructed to meet minimum North Carolina fire code and must be approved by the fire marshal.”

After Mr. Parvin’s presentation, Councilman Lynch made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no comments from the public, Councilman Lynch motioned to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Lynch made a motion to approve the Request for a Conditional Use Permit for a multi-family quadraplex located at 400 Carolina Beach Avenue South, subject to the required findings 1-7, general conditions 1-4, Planning and Zoning recommendations 1-3, and staff recommendations 1-21, with Item #18 of the staff recommends to be amended to read: “Dwelling must be constructed to meet minimum North Carolina fire code and must be approved by the fire marshal.” **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER A REQUEST TO REZONE FROM R-1B (RESIDENTIAL SINGLE FAMILY) TO MB-1 (MARINA BUSINESS) FOR OCEANA MARINA, LLC, AT 401 MARINA STREET

Mr. Parvin made the following presentation:

BACKGROUND:

The applicant wishes to rezone 401 Marina Street from R-1B to MB. The portion of this property in question is currently utilized as a road connecting Florida and Delaware and as a driveway for the Oceana Marina.

SURROUNDING USES:

The surrounding uses for this property are MB to the northwest and SFR on all other sides, with the exception to the east there is a multi-family development. The change in zoning will allow the owner to utilize the property to expand the existing Marina.

ANALYSIS:

The 1997 Land Use Plan states the following: ***“With the possible exception of the MB-1 commercial district at the marina, the Spinnaker Pointe area shall be allowed to continue to develop in accordance with the plan approved by the Town, and as permitted by the zoning ordinance.”***

STAFF RECOMMENDATIONS:

The decision to rezone the property should not be based on the proposed use, but on its consistency with policies, surrounding uses, and the Zoning Ordinance. The request is located contiguous to zoning consistent with the proposed zoning change and existing surrounding uses.

STAFF INCLUDES THE FOLLOWING FINDINGS OF FACT:

- The land which is now a paved road connecting Georgia Ave and Florida Ave was deeded from Spinnaker Point, Ltd. to the Town of Carolina Beach by a Deed of Easement on August 12th 1986.
- The purpose of the deed is to permit ingress and egress for the Town of Carolina Beach.
- A condition of the deed is that the Town of Carolina Beach assumes full and total responsibility for the maintenance of the property (see attached deed).
- No records were found as to who paved the road. The Town has no ownership, but easement rights.

The Planning and Zoning Commission heard this proposal at its August 2, 2005 Scheduled Meeting. The Planning and Zoning Commission denied the request five (5) votes to one (1) to rezone the property from R-1B to MB-1. Mr. Parvin stated their reasoning was there were uses in R-1B that would still allow them to use their property as marina business such as in R-1B you can still have a parking area. There was some concern from the public that it was spot zoning. Planning and Zoning did not see it as spot zoning, nor did the planning staff. Mr. Parvin then read the definition for spot zoning: "It occurs when a small area of land or section in an existing neighborhood is singled out and placed in a different zone from that of neighboring property."

Mr. Parvin stated that an additional concern from the public at the P&Z meeting was future proposals. He stated that there is not conditional rezoning and the only thing being considered tonight is this rezoning and there are no other proposals for a Conditional Use Permit at this time. Mr. Parvin made the presentation of the site and easements. He stated the reason for the rezoning request is that the applicant wants to make his entire property consistent with his use but no proposal has been presented at this time.

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

Richard Berg, a resident of 211 Georgia Avenue asked that the council go along with Planning and Zoning recommendations and asked for soap in the men's restroom.

Jeanne Mintz expressed her concern that this sets a precedence and asked what will protect us if this council is not here come November? She wanted to know what was going to keep someone

from suing the Town for spot zoning and to keep others from doing the same. She stated that there has been no control and wanted to know what is going to be done to protect the Town?

Ms. Mintz asked if anyone had addressed the sewer problems on all three streets – Georgia, Florida and Virginia. She also wanted to know what will stop the traffic from getting worse and what would stop the water pressure from dropping even worse than it is now.

Jan Weisbeck, a resident of Georgia Avenue, expressed that she was tired of coming to these meetings and tired of nasty surprises. She stated the first nasty surprise was a 50' right of way on Delaware that goes to the water which the Town was going to divide in half and give (not sell) half of it to the developer adjacent on one side and half to the property owner adjacent on the other side and that everyone had to come in and get that overturned. She stated the next nasty surprise was that the right of way park was sold (but thankfully that fell through). She went on to state that houses were then built behind Virginia Avenue on what everyone thought were wetlands and that the houses are jammed in and too close to each other. Ms. Weisback expressed her concern that this piece of property now has to be rezoned and wanted to know why it is so important to have it rezoned? She stated that the right of way is contiguous to three lots for sale and what is going to happen when those lots are sold? She stated she is concerned about these nasty surprises and wants the council to protect the single family neighborhood.

Mark Rife, a resident of 209 Georgia Avenue, is confused about a marina that is already doing business and doesn't understand why an area that didn't happen to be zoned properly is a threat to us? He believes rezoning to be the highest and best use and stated he does not have a problem with it.

Yvonne Johnson, a resident of 403 Marina Street, stated she would love to see some improvements to the marina, as it has a dirt drive presently. She understands someone not wanting to put more money into something that is not zoned for what he would like to do. She stated that her neighbors are asking to be told that it will stay R-1. She and most in Oceana feel it would be an improvement if money would be spent on it and fixed up because it really is in bad shape. She asked the council to reassure her neighbors that the residential area will stay residential.

Vaughn King, a resident of 401 Marina Street, stated he purchased the marina on December 1, 2004. He stated the marina has been in operation as a marina for over twenty some years now. He stated that all he is asking to do right now is to keep the property consistent with the rest of it the way he bought it. He stated this is his main and only entrance to the marina. He stated there is also a fuel tank on this property that fuels the boats in the waterway and that that fuel tank is actually on the property zoned residential. He stated a lot of the neighbors feel that it should be zoned marina business just like the rest. Mr. King stated he understands what they are saying and their concern for the protection of their property in the future. He reiterated that the property is already being used as a marina and all he wants is to keep the property consistent with what it is and what it has been used for in the past 20 years.

Rick Rogge, a resident of Canal Drive, stated he has kept his boat at that marina for the past seven years. He is happy that someone is trying to make major improvements there and supports

it. He stated he hopes Mr. King will continue to improve the marina and thinks it is positive for everyone here at the beach and the boat owners.

Terry Hamm, a resident of 111 Virginia Avenue, understands the need to rezone the parking area and does not object to that. However, he expressed his concern about what it will lead to in the future. He stated the property is adjacent to lots that are for sale and is also contiguous to land that the Town is selling. He stated he has seen drawings for a 36 condo unit complex for that area that they plan to build down there. He stated that even though it would not be built in this parking lot, but that would be the first step towards the future for adjacent property. However, he supports the zoning request and thinks it is appropriate.

Birdie Clark expressed her appreciation to speak to the council. She echoed the concerns of the people who spoke before her. She feels this is a gray complicated issue and that it is about more than just a small area and its rezoning. She understands Mr. King has put a lot of money into this investment. She also understands the people that live in Oceana would like to see some improvements made and that he is going to make some of those improvements. She stated the drawings are there. She asked why would he put in a bid for the property if this wasn't part of a plan? She stated that one thing that needs to be considered is if he puts that condo there, then the other property owner will say that he is contiguous with condos and he will want to put condos there, and then so on with condos everywhere just like what happened on Florida Avenue starting at Captain's Quarters. She stated that is the fear and that this is not just one piece in the puzzle. She asked the council to put a price tag on the community and the uniqueness of the area that they want to maintain. She pleaded with council to go along with Planning and Zoning's reasoning and not rezone this area.

Lonnie Lashley, a resident of 102 Florida Avenue, stated he is not for Mr. King getting this approval. He asked about the property that the Town does or doesn't own (?) and wants to know the status of that – has it been sold? Councilman Lynch said he believes the Mayor is going to talk about that at the end of the hearing and the Mayor agreed.

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

Councilman Doetsch stated that he does not consider this to be spot zoning because there are surrounding properties that are MB-1. He read from page 31 of the CAMA Land Use Plan which states, "This district is established to reserve areas along the water's edge for maritime uses, water dependent uses and water oriented uses. This district also provides for a certain residential and other non-water dependent uses which are closely aligned with the water oriented uses." Councilman Doetsch stated that to him it makes sense to put it at MB-1 because it is next to a marina and is owned by a guy who owns the marina. He further stated he cannot answer what is going to happen down the road and that would be up to councils beyond us to decide how zoning will go.

Councilman Doetsch then made a motion to approve the proposed Ordinance 05-601, approving the rezoning of 401 Marina Street from R1-B to MB.

Councilman Lynch asked if the well site is already zoned marina business? Mayor Barbour stated that is correct. Councilman Lynch stated it would be helpful to give some discussion on our visit to Virginia Avenue. Mayor Barbour stated he would prefer to handle the issue before the council.

Councilman Doetsch also quoted the CAMA Land Use Plan on page 13, *Other Existing and Emerging Conditions Identified That Are Driving Community Issues*, which states “Providing more marina and mooring space for transient boaters may help the local economy by capitalizing on the boat traffic traversing the Cape Fear River and the Atlantic Intercoastal Waterway and Snow’s Cut.”

There being no further comments from council Mayor Barbour restated Councilman Doetsch’s motion to approve proposed Ordinance 05-601 (Exhibit 2). **MOTION TO APPROVE PASSED 4 TO 1. (Mayor Pro Tem Efir, voted no.)**

Mayor Barbour stated he had a couple of questions directed to him that he felt were irrelevant to the issue being discussed – the issue to rezone one lot from R1-B to MB marina business. The first question asked was the statement was made “The buck stops with you, Mayor.” Mayor Barbour stated the buck doesn’t stop with him and that he is one member – only the spokesperson – for a five member council. Mayor Barbour next addressed the question of how was he going to keep anything from happening in the future as far as rezoning? He stated that we (and every administration set up here) rezone, change ordinances and change everything that pertains to Town business as the situation dictates.

Mayor Barbour felt one of the important questions is how are we going to maintain our single family neighborhoods? He stated that in the most recent amendments to the Land Use Plan that were adopted back in June, there was strong language put in to protect the single family neighborhoods – the R1B areas. He stated this lot bordered marina business and there is a street separating that and this council saw it fit to rezone this lot to marina business to make it consistent with the adjoining property. Mayor Barbour stated it is his desire to continue to protect the single family neighborhoods and that he lives in a single family neighborhood. He stated the council will do all they can to do that. He stated that future councils can change anything they choose to change. It is not easy to do, as you have seen in all of the Land Use Plan amendments and the Land Use Plan updates which Planning and Zoning is helping us go through now and will be submitted within the next month or so. He said that will be the 2005 Land Use Plan Update, which is a guideline that will guide the Town down the road to protect single family dwellings, single family neighborhoods, as well as promote business in central business districts, highway business districts, marina business districts, and all other areas. Mayor Barbour stated that is why people run for office when you put an election before them and usually there is more than one person who runs – because people have different opinions. That is what we call a democracy. There are people with different opinions and they choose to exercise that opinion by running for office, becoming elected and taking action to change zoning, ordinances, land use plans or whatever the issues may be. Mayor Barbour stated that he and the council will continue to protect the single family residential neighborhoods.

Mayor Barbour then went on to address the last question that was asked – what about the sewer on the north end? Mayor Barbour stated that if there is a problem, he is sure that the Operations Director will look into it tomorrow. He has confidence in him that he will do whatever is needed – whether it be sewer, water or otherwise. He stated the Department did a lot of work today to try to prevent flooding in certain areas after receiving three or four inches of rain and he commended the Operations Department.

Mayor Barbour then received a question about the land. He stated the property has not been sold.

Councilman Macon motioned for a five minute break.

NEW BUSINESS – CONSIDER APPROVAL OF A REQUEST BY NORTH PIER ASSOCIATES, LTD, FOR EXTENSION OF THE CONDITIONAL USE PERMIT FOR 6 CONDOMINIUM UNITS TO BE LOCATED AT THE 1800 BLOCK OF CANAL DRIVE

Mr. Ed H. Parvin stated that he does not have anything additional. He stated they are requesting an extension similar to the extensions presented at the last meeting held for the CAMA Land Use Plan amendments. He stated they are requesting a one-year extension to July of 2006.

The letter dated July 5, 2005 is entered as part of the record (Exhibit 3).

There being no questions for Mr. Parvin, Pat Efird, Mayor Pro Tem Efird, made a motion that council approve the Conditional Use Permit request for a one year extension to July 13, 2006. **MOTION CARRIED UNANIMOUSLY.**

CONSIDER A REQUEST FOR PRELIMINARY PLAT APPROVAL FOR ISLAND PALMS SUBDIVISION LOCATED ON THE EAST SIDE OF NORTH SEVENTH STREET AND WEST OF ISLAND FOREST SUBDIVISION

Mr. Parvin reviewed with council the request for preliminary plat approval for Island Palms Subdivision located on the east side of North Seventh Street and west of Island Forest Subdivision as follows:

BACKGROUND:

The applicant is requesting preliminary plat approval for Island Palms Subdivision located on the east side of N. Seventh St., and west of Island Forest Subdivision. Island Palms has a total area of approximately 3.03 acres and will consist of 16 lots. Access to the subdivision will be provided by a 40' private right-of-way (Island Palms Drive).

ANALYSIS:

Single-family and duplex dwellings are permitted by right in the R-1 zoning district. The minimum lot size is 5,000 square feet and setbacks for structures in this district are 20 feet from the front, 10 feet off the rear, and 7.5 feet from the side yard except on corner lots where 12.5 feet will be required. Net density for the R-1 Zoning District is 15 units/acre. Maximum height for unsprinklered structures is 50 feet for this district. The maximum lot coverage per lot will not exceed 40%. The proposed road (Island Palms Dr.) will be 22 feet of pavement (26' including curb and gutter and 40 feet of right-of-way). The proposal will be required to provide a 6-foot wide streetyard with street trees every 50' on each street including St. Joseph Street. Existing vegetation can be used and is encouraged. Street lighting, street trees, sewage disposal facilities, stormwater drainage facilities and other utilities shall be constructed that meet the minimum requirements of the Town of Carolina Beach Subdivision Regulations. Sidewalks were recommended from the Technical Review Committee along Seventh Street (5' wide) and interior sidewalks (4' wide).

STAFF RECOMMENDATION:

Planning Staff recommends approval of this preliminary plat subject to the following conditions. Final plat may not be submitted for approval until all conditions, revisions, changes and submissions are made. The conditions, revisions, changes and submissions to be made are as follows:

1. Before the preliminary is signed for approval the following items must be included on the plat:
 - a. Street must be labeled has private.
 - b. Show existing vegetation on site and include landscape plan for vegetation to be incorporated into the development site. Landscaping description shall be included on the site plan. Vegetation to be removed that is greater than 4" in caliper must be shown on plat.
 - c. Proposed fill or other structure elevating techniques.
2. A stormwater plan must be submitted and approved prior to approval of the preliminary plat. 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 recordation of the final plat.
3. Approval letter from the Division of Land Quality for Sedimentation and Erosion Control.
4. Approval letter from the Division of Water Quality-Public Water Supply Section.
5. Street trees shall be shown on the preliminary plat and installed according to preliminary plat submittal. Existing vegetation can be used for this requirement.
6. A drainage plan that will include all portions of the development shall be submitted. This plan shall be prepared and sealed by a registered surveyor or engineer. The plan shall provide for a drainage system for these areas that will accommodate a storm event without flooding or substantial ponding of water in the areas included in the plan. The plan must also accommodate any discharge from properties in upland portions of the drainage basin that flows through the property for the same storm event for the type

development for which that property is zoned. The boundary of any drainage area on a portion of the site and/or upland from the site shall be shown on a map. The location, size and/or capacity of all structures included in the drainage system shall be shown on the plan and calculations used in designing the drainage system shall be submitted in a legible format. This plan may be included in the street and drainage plan, storm water management plan or on the preliminary plat, as long as the design professional certifies that the specific drainage plan submitted complies with these requirements and the information required is shown or submitted as noted.

7. Section 12-130 (The Planning and Zoning Commission may require the subdivider to construct a concrete sidewalk on one (1) side of all frontage streets and on one (1) or both sides of all other streets within the subdivision. The construction of all sidewalks shall be in accordance with plans and standard specifications approved by the Planning and Zoning Commission. **TRC recommended that a minimum of a 4' wide sidewalk be installed within the subdivision and a 5' wide sidewalk be installed on N. Seventh St.**
8. Lot coverage for any lot located within the subdivision shall not exceed 40% maximum lot coverage.
9. Road names must be in compliance with the New Hanover County listing of road names.
10. Include note on preliminary and final plat that all infrastructure that is not dedicated to the Town shall be owned and maintained by a Home Owner's Association or other approved method-
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. Establishments of an association or nonprofit corporation of all individuals or corporations owning property within the subdivision for the purpose of ensuring maintenance of common facilities.
 - b. Retention of ownership, control, and maintenance of common facilities by the developer or Home Owner's Association.
11. No plantings, structures and fencing shall be placed within any easements located within the subdivision.
12. Grading, surfacing, curb and gutters, sidewalks, street lighting, street trees, sewage disposal facilities, stormwater drainage facilities, and other utilities shall be installed and certified by a surveyor and/or engineer or Performance Guarantee provided prior to recordation of the final plat. Street lights and street signs must be installed prior to issuance of a Certificate of Occupancy. All conditions of approval must be satisfied prior to Certificate of Occupancy.

The Planning and Zoning Commission heard this proposal at its March 10, 2005 regularly scheduled meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to the required findings and staff conditions above and the following additional conditions or changes:

- 1. Approval of the request by the applicant to delete the sidewalk within the subdivision.**
- 2. Sidewalks, curb and gutter shall be provided along 7th Street.**

Mr. Parvin stated that since March 10, 2005 there has been some changes to the ordinance and now you are required to have sidewalks. The new ordinance was adopted at the last council meeting. A subsequent section of the ordinance that was intended to be included that was not included in the motion required sidewalks on both sides of a subdivision. The ordinance now still remains to be read as you are required to have a sidewalk, but it is not required on both sides. Mr. Parvin stated there are a couple of different options. The proposal could be approved as presented with a sidewalk on one side of the subdivision or it could be tabled and we could set a public hearing for September 13 to adopt the subsequent changes that correlate with the landscape ordinance adopted in July. If that option is taken, then the applicant will have to have sidewalk on both sides.

Mr. Parvin stated "The Planning and Zoning Commission may require the subdivider to construct concrete sidewalks on one or both sides of all other streets within the subdivision" is how it reads now. He stated the subsequent section that was not changed reads "The Planning and Zoning Commission shall require the subdivider to construct concrete sidewalks on all frontage streets and on both sides of all other streets within the subdivision." He stated that was what was intended to be adopted.

Mayor Barbour stated that while this is not a public hearing, if council has any questions for the developer, we can always ask him to come forward.

Rick Rogge, the applicant, addressed the council to answer questions. Mr. Rogge stated there are a couple of issues regarding the sidewalks within the subdivision that he thinks should be brought to light. He stated that when he originally came to Planning and Zoning, it was not required, and he believes that is the way it reads now. He understands there is something the council may pass at next month's meeting that will require it, but he believes at this time it is still to the council's discretion as to whether or not that is the case because the law has not been changed. He stated the reason they didn't care to put sidewalks in has nothing to do with money. He thinks that they look good but is concerned about the environment. He stated the engineer feels it increases the impervious area so much that it creates problems in the subdivision in getting the stormwater program to meet with local and state requirements. He has offered to double the landscape requirement for the roads and perimeters from what the Town requires. He is trying to do something environmentally friendly and feels that a small subdivision like this with a dead end cul-de-sac does not need sidewalks, as there is no place to walk through to. Mr. Rogge asked the council to consider approval without sidewalks, as Planning and Zoning did. He stated he eagerly supports putting a sidewalk along Seventh Street and stated they are doing major landscaping work there to create a border between the homes at the edge of Seventh Street. Mr. Rogge stated that he thinks it is a wonderful plan and that they have exceeded all of the requirements of the Town.

Pat Efird asked how many units he planned to have and Mr. Rogge stated 16.

Mr. Parvin was asked how do we meet Mr. Rogge's request without being in violation of the ordinance? Mr. Parvin stated that the ordinance that was approved and is in effect now does

require sidewalks to be in place in a subdivision. It just doesn't require it on both sides right now.

Mayor Barbour asked Al Clyburn, Town Attorney, if council could approve or disapprove a preliminary plat approval for a subdivision deleting sidewalks requirements when there is a requirement currently existing in the ordinance requiring a sidewalk on one side of the street? Mr. Clyburn said he did not know how you could approve something that would be in violation of the ordinance. He stated you would have to amend your ordinance to accommodate that request.

Mr. Rogge then requested that they put the sidewalk down one side of the street and asked that they not be made to put it down two sides.

Mayor Barbour stated that the other option Mr. Rogge would have, which is open to anyone in the Town of Carolina Beach who intends to develop a subdivision, would be to request a change in the ordinance. Whether it would be passed or not is yet to be determined, but the opportunity is there. He stated that if Mr. Rogge chooses to have the subdivision approved or denied tonight, then the council must go by the ordinance. If Mr. Rogge chooses to delay it and request otherwise, such as an ordinance change, then that would delay the decision on the subdivision.

Mr. Rogge chose not to delay the decision and asked for a decision this evening. He also requested that if the Town Council finds to approve this tonight, he would like it to be conditioned on the fact that approval would be given to Rick Rogge, his wife, Terry Rogge, and John and Julie Thompson to build this.

There being no further questions from council, Councilman Lynch motioned to approve the request for preliminary plat approval for Island Palms in the four names that Mr. Rogge provided (Rick Rogge, Terry Rogge, John Thompson and Julie Thompson) subject to the staff recommendations 1-12 and Planning and Zoning recommendation #2 for sidewalks, curb and gutter along 7th Street and the developer to decide which side of the street the sidewalk will go on in the subdivision.

Mayor Barbour asked for any further discussion of the motion.

Councilman Macon asked the town attorney if it makes any difference since this was in the pipeline before the ordinance changed, and the town attorney said it doesn't matter.

Mayor Barbour asked the town attorney if we can approve it in the 4 names as requested by Mr. Rogge and the town attorney stated that he didn't have any problem with it.

Mayor Barbour called for a vote and the **MOTION CARRIED UNANIMOUSLY.**

APPOINTMENTS TO THE BOARD OF ADJUSTMENT

Councilman Lynch made a motion to reappoint Wayne Hartsell, Sr. and Rick Rogge for three year terms of office on the Board of Adjustment. **MOTION CARRIED UNANIMOUSLY.**

Councilman Lynch asked Lynn Prusa, Town Clerk, if they were still looking for one alternate member to serve a three year term of office? Ms. Prusa confirmed that they are.

APPOINTMENTS TO PLANNING AND ZONING COMMISSION

Councilman Lynch made a motion to appoint Linda Skipper for a three year term of office to the Planning and Zoning Commission. **MOTION CARRIED UNANIMOUSLY.**

APPOINTMENTS TO THE POLICE ADVISORY BOARD

Mayor Barbour stated that currently the Town's Police Captain, Kurt Bartley, is filling the local law enforcement position as a member of the Police Advisory Committee. However, due to his recent promotion and increased responsibilities and duties, he feels that he can no longer serve in this capacity. With council's approval, former Police Lieutenant Grady "Buck" Jarman is willing to fill the vacancy. Mr. Jarman is currently a member of the Town's police auxiliary.

Councilman Doetsch made a motion to appoint Grady "Buck" Jarman to the Police Advisory Committee. **MOTION CARRIED UNANIMOUSLY.**

CONSIDER STREET SWEEPER OPTIONS

Mayor Barbour stated that the Town's street sweeper was not working properly, sent in for repairs, and was found to be in pretty bad shape.

Steve Pagley, Operations Director, stated that the street sweeper was six years old and the repair costs were going to be close to \$82,000. He stated that at the last council meeting he was asked to give the council some options. Mr. Pagley stated he looked at two different types of sweepers – one from Public Works and one from Twin States. He does not have a trade-in value from Twin States, but will have it tomorrow. He has BB&T bank rates, which are 3.65% for five years, if the Town does decide to buy a new sweeper. He understands this can be paid in arrears so we can make sure it is in next year's budget.

Mr. Pagley went to six private companies that do street sweeping and that Super Vac of Jacksonville wanted \$69.81 per curb mile, which means just one side of the street and they charge when they come back down the other side. He said three were not interested because of sand and salt. He also got two \$75 per hour bids that were sent in. Therefore, if the Town paid per curb mile, it would cost \$75,000 a year. If the Town paid an hourly rate and someone was contracted to come down 40 hours a month for 12 months, that would equal \$36,000 a year.

Those are the options Mr. Pagley has for the council tonight. Mr. Pagley stated that if the Town decides to buy a new sweeper, it probably would last five to six years. He was asked if the new sweeper would be sand resistant? He stated that no one makes a sand resistant – salt resistant sweeper. He stated that Myrtle Beach owns their own street sweeper, Wrightsville Beach does not sweep streets, and Shallotte has a street sweeper.

Mayor Barbour asked what amount of time do we spend sweeping per month? Mr. Pagley replied that it had recently increased to five days a week, which probably sped up the deterioration of the existing sweeper. Mr. Pagley stated that if we were to buy a sweeper, we would have a dedicated employee to operate it. He also mentioned a broom attachment to a tractor, which would be best suited to use up at the north end to push the sand back up on the beach because we do that manually now.

Mayor Barbour asked what is the typical contract length these companies want if you contract street sweeping? Mr. Pagley stated he would need to go back and do an informal bid process with them, but that any of them would typically want one year.

Mr. Pagley's recommendation was to buy a street sweeper and put our employee on it. Calvin R. Peck, Jr., Town Manager, agreed. Mr. Peck stated it has been properly bid and he recommended that we purchase the piece of equipment from Public Works Equipment & Supply, which includes the six foot broom for the front of the tractor. The cost is \$128,718. He also suggested that we start enforcing our existing stormwater ordinance that prohibits blowing of sand into curbs and gutters off the driveway. He stated we can do that starting with homeowners associations and those type organizations and that may cut down the amount of sand that is being picked up off of Carolina Beach Avenue North and South and Canal.

Pat Efird, Mayor Pro Tem, made a motion to purchase a street sweeper with six foot broom attachment for the tractor from Public Works Equipment and Supply. **MOTION CARRIED UNANIMOUSLY.**

ITEMS NOT ON THE AGENDA

Steve Pagley, Operations Director, opened a discussion about the water supply and sewer system. He asked to review the water supply and the existing well sites that the Town owns that are producing water at this time. Mr. Pagley stated that he has final approval on wells #13 and #14 and that we are now producing a yield on 12 hours of 1.97 million gallons. The NC Public Water Supply states that our daily is 1.56 and we are at .41. Future development is calculated to use up .21 or 210 gallons of that water, which leaves us with the remaining 200,000 gallons at this time. Test runs are being done on well #14 to push it back to 700 gpm. The 24 hour draw has been done on it and it does produce more than 700 gallons a minute. It produces 750 gpm. well #13 will produce 1,100 gallons per minute. The only reason we are only permitted for 700 is because the filter plant will only do 700 gallons per minute. So, when an additional filter is added in the filter plant we will go back to the State Public Water Supply, do a 24-hour draw down again, give them the 1,100 gpm calculation, and we will get final approval on that. He stated we did finish drilling one of the new test sites at the State park today and he will have

those draw down numbers tomorrow morning. The next site for test wells is at the State park near the marina. After that, they will move down to the Sunny Point land and do two test well sites there, which we have permission to do. Mr. Pagley stated bacteria and chemical analysis on well #4 is also being done before it is put back online. He said if you add the 80 gallons there, future well flow (probably in the next 30 days) will be up to 2.09 instead of 2.04 once that is put back into the system.

Mayor Barbour stated that back in August it was projected we would have a certain capacity and asked if we are there? Mr. Pagley stated yes.

Moving on to the next issue, Mr. Pagley asked council to turn to page 3 of his presentation – Town of Carolina Beach Sewer Capacity, which shows existing capacity with residential customers, commercial customers, etc. He then pointed out future development permitted at 360 gallons per day. He stated the bottom line is with Arcadia, they haven't confirmed with the developer the amount of bedrooms. He stated they do know the amount of bedrooms in Jubilee Park, Park Place and Lakeview development, so they estimated that high – they put in 100,000. Kure Beach, if they are using 100% of their allocation – the sewer plant, running on the high end for June, is only 65% of its permitted capacity. Therefore, we have room in our sewer plant for future growth. We do not have to do any applications to the State for expansion until we get to 80% and then we do not have to actually stop any growth until we get to 90% to 95%, depending on where we are with our expansion.

Mayor Barbour stated that is based on Kure Beach sending us their full allocation of 727,000 gallons per day, because they, on average, do not reach that level. Mr. Pagley agreed. Mr. Pagley stated they have been doing some work over there and we are getting ready to put in a new meter for Kure Beach. Mayor Barbour stated that if they ever continually approached that level, they would also be part of any expansion costs that we might decide to make – whether that be just because we want to expand or whether it be because we need added capacity. Mr. Pagley agreed and stated that when they do expansions or add subdivisions that before they get a permit from the State, they have to get permission from us also. Mayor Barbour stated that their State allocation right now on the books is not near 700 gallons per day. Mr. Pagley stated that they had exceeded that 727,000 because of rain. Mayor Barbour stated that we are encouraging Kure Beach to aggressively attack their inflow and infiltration situation because we have to handle whatever comes down the pipe. He said it is also to their benefit because if they exceed that allocation number, we start charging them a penalty far above and beyond what their normal cost of treating their sewer is. Mr. Pagley said that is looked at every six months. He stated they have exceeded it and when they do it is approximately \$10 over, so it is minimal. Mayor Barbour stated that is usually due to a one day rain event when that it is exceeded. Mr. Pagley agreed.

Mr. Pagley was asked how the land application at the spray field is going and he stated it is going pretty good. He is trying to get it permitted to double so they can throw 60,000 gallons on the ground there instead of 30,000. He stated a test hole is going to be done on the site. The grass at the west end of the spray field is very thick and that they will do a sample cut in the next couple of weeks. He stated that if we can, we will start using some of it on Town sites to improve the

landscaping. Mr. Pagley stated that after all four test wells are done, they will pick two that produce the best water quality and highest volume.

There being no further questions regarding water and sewer issues, Mr. Pagley then went on to state there is an upcoming meeting with Carolina Sands HOA, the engineers and contractors August 18th at 6:30 here. There is also a meeting at 7:30 p.m. on August 18th at the Rec Department for the Wilmington Beach Road improvements.

Mr. Pagley stated we have the new water line on Magnolia down to Seventh and we have removed all of the old galvanized pipe that was found that they didn't know was in the area.

Mr. Pagley stated we do have approval from the State DOT to extend the sidewalk from the church all the way to the back of the Food Lion where it stopped, so that will be worked on in the next couple of weeks. He stated the town manager is writing a letter about pedestrian crossings and that they are thinking about putting those in.

Calvin Peck, Town Manager, stated that they are going to make the request to NCDOT to put in ped heads and do the pedestrian crossing at Dow Road.

Mayor Barbour asked if we were also going to work on handicap accessible spots on down Cape Fear? Mr. Peck stated that we will, but that we are good from here to Goldsboro. He stated there are some problems further down.

Mr. Peck stated that they are still working on and have just about completed the 1700 block of Canal Drive public bathrooms and police substation. When asked if they were going to be connected with the traffic flow and everything up on Canal Drive and Carolina Avenue North, Mr. Pagley stated yes. Mr. Peck stated the scoping meeting was held with NCDOT. They approved the engineer who is doing the plans. They have to approve the contract that we have with them, so that is being worked out. The next step is to show them that we have proper right of way for the whole project, so we are going back to the surveyor that we used for the I&I project. All of that information is being gathered presently. It should be started sometime during the winter. They will look at putting 12" water lines down that street before that happens. Even if they don't tie it in, they will have it there.

Dawn Johnson, Finance Director, announced that approval was granted for the Carolina Sands storm drainage project. Closing for that loan is to be held this Tuesday at 11:00.

Ed Parvin asked council if they wished to set a public hearing for the next meeting, September 13, to consider all the subsequent sections that correlate with Article 8 Landscape Development Specification Standards? Those sections would be the requirements for sidewalks on both sides of a subdivision. He stated that if that was adopted next month then projects like Island Palms would have to have sidewalks on both sides. Mr. Parvin said he would give council a copy of how the language reads now and what the changes would be. The way the ordinance reads now is you may require on one or both sides. The way it was originally intended to be adopted as a subsequent change was to require it on both sides.

Mayor Barbour stated there are already seven public hearings set for next month with the possibility of the two being added that were postponed and that perhaps it should be scheduled for October.

Pat Efird, Mayor Pro Tem, motioned to set the public hearing date to consider amendment to language concerning sidewalks for October 11, 2005. **MOTION CARRIED UNANIMOUSLY.**

Calvin Peck, Town Manager, then showed live video of the pay station from the north end camera. He pointed out that when a car is stopped you can read the license plate very clearly. He stated the video is not streaming, but motion capture. He stated it will be streaming video shortly.

ADJOURNMENT

There being no further business, Mayor Pro Tem Efird made a motion to adjourn. **MOTION CARRIED UNANIMOUSLY.**

The meeting adjourned at 10:35 p.m.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

APPROVED: _____