

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

September 27, 2005

The Town Council of the Town of Carolina Beach met in regular session on September 27, 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 Efirid; Councilman, Jack Lynch; and Councilman, Gary Doetsch. 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 reminded everyone that the regular meeting had to be postponed for two weeks due to the hurricane and stated there would be additions and deletions to the agenda.

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

Remove from the agenda Item #9(c) "Set a Public Hearing Date to Consider Formally Adopting the Land Use Plan Update," Item #9(d) "Set a Public Hearing Date to Consider Amendments to the Code of Ordinances, Chapter 12 Planning & Development, Article 4 Flood Damage Prevention and Adopt the New Flood Insurance Rate Maps to be in Effect as of February 3, 2006," Item #9(k) "Set a Public Hearing Date to Consider a Request to Rezone from HB (Highway Business) & MB (Marina Business) to CBD (Central Business District) at 304, 306, 400, 400A and 402 North Lake Park Boulevard," and Item #9(l) "Set a Public Hearing Date to Consider a Request to Rezone from R-3 to R-1 Property Located at 600, 602, 606, 610, 612, 614 Harper Avenue and 601, 605, 609, 615 Rocky Mount Avenue and 304 7th Street" from the agenda.

Move Item #17 "Consider Rescheduling the November 8, 2005 Regular Meeting of the Town Council to November 15, 2005 at 7:30 P.M." to be included as Item #4(a).

Add to the agenda package a letter from Sandra G. O'Dell concerning Item #5 Wilmington Beach assessments.

Add to the agenda package a preliminary map concerning Item #10, "Consider a Request for a Conditional Use Permit to Construct Three (3) 3-Bedroom Luxury Condominiums as a Planned Unit Development at 400 Canal Drive."

Add to the agenda package an updated staff memo concerning Item #12 “Consider a Request for a Conditional Use Permit to Construct an Outdoor Recreational Area (Skate Park) at 1121 N. Lake Park Blvd.”

Add to the agenda package a preliminary plan for Coral Cay Subdivision concerning Item #16 “Consider a Request for Preliminary Plat for Coral Cay Subdivision Located on the East Side of Seventh Street Between Old Mariners Way and Palm Breeze.”

Add to the agenda under “Non Agenda Items” the following: Item #18(a), “Consider Entering an Agreement with Dr. Mark Imperial for the Development of the Town’s Water Access and Harbor Management Plan,” Item #18 (b) “Selecting a Voting and Alternate Voting Delegate for the National League of Cities’ Annual Business Meeting to Be Held on Saturday, December 10, 2005 at the Congress of Cities in Charlotte, NC,” Item #18(c) “Consider Adopting Resolution No. 05-844 *Entering a North Carolina Interlocal Agreement for Risk Management Agency – (Workers Compensation)*,” Item #18(d) “Consider Accepting a Proposal for a 59-Month Lease with Copy Pro for the Replacement of the Copy Machine in the Police Department/Town Hall,” and Item #18(e) “Consider Approving a Lease Agreement with Verizon Wireless for Installation of Antennas on the Dow Road Water Tower.”

Mayor Barbour made a motion to adopt the agenda with the aforementioned changes.
MOTION CARRIED UNANIMOUSLY.

Mayor Barbour motioned to excuse Councilman Joel Macon, who is out of town.
MOTION CARRIED UNANIMOUSLY.

CONSIDER RESCHEDULING THE NOVEMBER 8, 2005 REGULAR MEETING OF THE TOWN COUNCIL TO NOVEMBER 15, 2005 AT 7:30 P.M .

Mayor Barbour stated that November 8, 2005 is Election Day and made a motion to reschedule the meeting to November 15, 2005. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER ALL MATTERS COVERED BY RESOLUTION NO. 05-823, A PRELIMINARY ASSESSMENT RESOLUTION FOR STREET PAVING IN THE AREA KNOWN AS WILMINGTON BEACH (Croaker Lane, NC Avenue, SC Avenue, Spot Lane, Searay Lane, Mackerel Lane, Bonito Lane, Swordfish Lane, Texas Avenue, Snapper Lane, Bowfin Lane and Tennessee Avenue).

Calvin Peck, Town Manager, made the slide presentation of the site plan (*Exhibit 1*). He stated that per Council’s direction, a public meeting was held in August and a lot of feedback was received. He further stated there were a couple of minor problems with the project site plan that was in the original packet and that this is an updated plan. He stated the two main issues are whether there should be grass swells or a curb and gutter. Advantages to both were discussed at the public meeting. Grass swells are a less expensive method of dealing with storm water but require a lot more maintenance and cleaning. Curb and gutter is a higher up front expense, but a

much more finished looking job, easier to maintain, and does tend to add value to the property. The entire project is estimated to be \$3.9 million. Mr. Peck stated that the project was initially to assess 100% of road improvements at an equal cost per affected lot including paving all roads (about 3 ½ miles), drainage for the entire system, curb and gutters, and sidewalks on one side of the street – to be repaid at some period of time – the initial thought being ten years. He stated there is a significant issue with ten years that will be discussed later. There are 253 property owners or 467 equivalent lots. Based on session law 160A-233(d) and Article IX, Section 9.1 and 9.2 of the Town Code gives the authority to the Town to allow special assessments. Mr. Peck stated that it was initially thought that it was only based on the session law but, in fact, the Town Charter gives the authority to the Town to assess property owners for street improvements without a petition. For sidewalk improvements, the same language exists. N.C.G.S. 160A-233(d) states that you have ten years from the date of the assessment to do an action or a proceeding to enforce any remedy for the special assessment liens. The Town has ten years from the assessment date in order to begin collection action. He stated that presents a problem with the ten year payback period because there is not time to pay it back and to do enforcement action, so some time shorter than that needs to be put in place.

Mr. Peck stated property owners have raised questions. The first question was whose project the water and sewer project was? He stated it is, in fact, New Hanover County who is putting in the water and sewer and doing the assessments. The next question was why don't all Wilmington Beach residents pay for Snapper drainage work? He stated this goes back to assessments for road work, which includes the drainage work necessary to make the roads work properly; therefore, those property owners – those roads that are already paved - have significantly less problems with drainage than those that are not paved. They are not working perfectly, but they are working better.

Mr. Peck then addressed the opposition question, which was if the ditches are already in place, then why do the property owners have to pay for it at all? He stated he had explained on a number of occasions that there are significant drainage problems. The ditches, in many cases, flow in the wrong direction and create drainage problems throughout the entire south end of Carolina Beach to include Carolina Sands. He stated now is the time to fix those and that is just part of the cost.

Mr. Peck then addressed the next question or comment that the Town promised to pay half the cost of doing the roads in the FY 2000-2001 budget. He stated there was that statement in the budget message. He stated he thought that was the intent. However, it is so much more significant a problem than anyone realized. Once they got preliminary engineering work done, he stated they realized it is simply not feasible to do that and that the Town is not financially able to do that.

Another question was how did sidewalks, storm water, curb and gutter get added to the project? The project was brought before Council with a recommendation and Council accepted the recommendation which was to put sidewalks, storm water, curb and gutter in the project. He stated that is how it got added from the initial idea of just paving the roads.

Mr. Peck stated that in looking for ways to pay for the project or help the project without doing assessments, a number of questions were asked about what are our property taxes for, what are storm water fees for, etc.? Regarding storm water fees in particular, the question was what does storm water fee pay for? Storm water fee is to fix drainage problems that exist in Carolina Beach. He stated that is the big project that is being done this year, and we will pay for it over the next number of years, is to take an area that has had significant problems with their existing drainage system, which is Carolina Sands. He stated the drainage system has been in place for 25 years and worked relatively well for most of that time, but now the project is failing and is causing public safety concerns in that the roads are caving in. There is a public health concern with the standing water that exists because it is not draining. Therefore, Council made the decision to put that money (it is a \$2 million project) to essentially put a lot of those storm water fees into fixing the particular problem first.

There are a lot of other projects going on – a lot of smaller projects that have been fixed throughout the Town. The new street sweeper, which specifically has a device to clean out storm sewers, was purchased with the storm water fee, etc. So, there are a lot of things that the storm water fee does. The question was asked, what about using impact fees to pay for this? Impact fees have to be specifically authorized by the General Assembly. Carolina Beach does not have them. We have user fees that are specifically for water and sewer and those go to build infrastructure for other water and sewer projects.

Councilman Doetsch and a number of citizens have asked the question, how have previous paving projects been paid for? Looking at the history of Town initiated street assessments since the '70s, there have been three significant street assessments done (one in each of those eras - the '70's, '80's and '90's). In 1973, Canal Drive and a lot of the side streets around it were done. In 1989, there were a number of assessments in the main residential area. That is when a lot of the streets back off of 5th, 6th, 7th and 8th Streets got paved. And then in 1998, there was a northern annexation. In every case that the Town initiated the assessment, 2/3 of the cost was paid by the property owners and 1/3 by the Town. There was a provision that's done in nearly every case exclusive of the work done in intersections. So, work specifically done in and for the intersections (not the roads themselves) was paid for as part of the Town's cost. In each case the assessments were given five years to pay back with interest rates of 6% to 8% and there was no discount authorized for early payment. There have been some citizen petitions for street and sidewalk improvements in the past. In the '60's and '70's there were petitions to do some work on Cape Fear median and to do some paving on it, which evidently wasn't done because Cape Fear doesn't have a median. But 9th Street, Raleigh Avenue and then some sidewalks on Harper, in particular, in every case where there was a petition for assessments, 100% of the cost was paid for by the property owners. The Town paid the cost of the intersections only with five years to pay it back, 6% to 8% interest, and no discount authorized for early payment or pre-payment.

So, based on that history and based on what the direction of Council is, Mr. Peck's recommendation is as follows: that the Town construct the total project including paving, drainage, curb and gutter, and sidewalks, and to assess the property owners 2/3 of the project exclusive of the intersections, which is what has been done in the past, exclusive of curb and gutter, which is what he believes is the desire of Council. It may be the desire of many of the residents, but certainly not the desire of the residents to pay for. And exclusive of sidewalks in

that Council has initiated a number of sidewalk projects recently. In every case that has been a Town project supported by Town funds. And so, that leaves the Town to pay for 1/3 of the cost of the entire project plus intersections plus the curb and gutter plus sidewalks. And as per our history, we have five years to repay at 6% interest. When you see the total project cost, the breakdown as before – paving and draining, curb and gutter, sidewalks – total is \$3.89 or about \$3.9 million. The Town pays for intersections plus 1/3. Intersections were figured to be about 10% of the total. With curb and gutter and sidewalks, the Town ends up with a tab of \$2.081 million dollars. If you include the Harper Avenue and Cape Fear improvements, which I think will probably go to for financing for the whole project as one large project of about \$.5 million. The total project is \$4.4 million. Property owners, again, approximately \$1.809 million divided by 467 properties – that is an assessment of \$3,618 each or approximately \$750 a year for five years with interest.

Next steps: we have completed 1 and 1(a). The notice was mailed to all and we are having the public hearing. The scope of the project can change, you can delete streets, and you can do more or less project wise. However, if there is a change in the percentage that is paid by the property owners, the law states any change to the percentage (higher or lower doesn't matter), then a new preliminary resolution is required. And so, if Council wants to go forward at the end of the public hearing, with 100% of the cost to be borne by the property owners, then the action would be to adopt an assessment resolution and start the project. However, if Council wishes to change the percentage to be paid by the property owner in the assessment, then you must adopt a new preliminary resolution. We have checked into timing and there is time for notice to be mailed by first class – the public hearing to be properly noticed so that a public hearing could be done on the new preliminary resolution at the October Council meeting.

Councilman Doetsch asked a question about the amount of time for payback of this assessment and that we would run into problems with ten years. He stated Mr. Peck is recommending a five year payment. He asked that if we went to 9 ½ years, would that still put us in a situation where we would run into problems?

Mr. Peck stated he thought so. He stated it would take a number of years to do all the actions, to check everything that's complete, and to initiate any actions that would be necessary in order to collect the money, put liens on properties, etc. It is not a single year or half year project. It is a multi year.

Councilman Doetsch asked if Council were to decide to do 7 ½ years, would that give us enough time to do everything we need to do?

Mr. Peck recommended whole years, because it makes it easier to do it on an anniversary date that is due. He stated seven years would probably be enough time to complete the tail end of the project. He stated the reason he recommended five years is that is the history of what's been done in the past.

Mayor Barbour summarized that the recommendation is for the Town to pay fully for sidewalks and curb and gutter. As far as the streets and the storm water, that will be shared – the Town

pays for 1/3, 1/3 each side of the street basically pays for (each property owner), and the Town pays for all of the intersections for paving and storm water. Mr. Peck stated that is correct.

Mayor Barbour said that what had been talked about at the workshop was considering a 50/50 share, basically the 1/3, 1/3, 1/3 and then taking out the intersections is about 50/50 in terms of just the streets and the storm water. He asked if that was correct? Mr. Peck stated it is close. With curb and gutter, he didn't figure it out that way. But with the curb and gutter and sidewalk included, again the Town pays \$2.081 million. The property owners would divide \$1.8 million.

Mayor Barbour asked what percentage the Town is paying based on those numbers? Mr. Peck stated with the total project, something over 50% - 55%.

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

Chuck Mullen, resident of 315 Harper Avenue, addressed the Council and stated that a few years ago the County Commissioners came along and offered us water and sewer project in Wilmington Beach. They promised or led us to believe about \$2,700 would cover it for each 50' property. It was supposed to be just the streets that were occupied mostly, not the streets that were unoccupied and not the streets that were developed. So, someone got the ear of the County Commissioners and before it was over, every street down there, including the ones that still had trees on the streets, was included in this project. So, it ended up costing us about \$4,200 - \$4,500 a piece instead of \$2,700. Meanwhile, the major property owners down there got these streets opened up at the others' expense. They divided their share, of course, but the rest of us paid a share of opening those streets also – about 300 lots. So, now we are looking at paving, guttering and putting sidewalks in and the rest of Carolina Beach doesn't even have these conveniences. Mr. Mullen stated that there are just a couple of streets in Carolina Beach that have sidewalks. So, he feels that we are now going to spend \$2 million for people down there that do not even have houses, never mind sidewalks. We've got some company down there that owns about 100 of those lots who will end up benefiting again from the public expense of \$2 million opening up these streets and putting sidewalks, gutters and streets in. So, Mr. Mullen thinks it would probably be a good idea to do some things in the old part of town before we force these people down there in Wilmington Beach to take this on themselves and pay for something that they are really not asking for. Meanwhile, the other thought is let's leave these streets down there that are not occupied with trees instead of gutters and sidewalks and streets, or else let's charge the people more that are benefiting from all these improvements that the rest of Carolina Beach has to pay for. We are going to do 55% of this project – over \$2 million coming out of our pockets. Mr. Mullen questioned what is being done here. He stated there are pot holes all over town, no gutters and sewers, and here we are dictating what is going to happen down in Wilmington Beach when there are no residents down there on a lot of these streets. So, maybe before we spend \$2.5 million dollars or whatever our cost is going to be, we should think about doing these things in the old part of town when we've been paying taxes for 35 or 40 years, and longer, some of us. Mr. Mullen asked the Council to think about that before making a resolution to improve an agenda down there that no one even lives on and creating financial windfalls for the people who are getting the benefit of our 55%.

Bill Strickland, a resident of 1307 Swordfish Lane, addressed the Council. He stated that he believed back in the June meeting that he spoke to Councilman Jack Lynch after the meeting regarding getting a survey to the land owners in the Wilmington Beach area. Councilman Lynch confirmed. Mr. Strickland stated he has the survey results back. He stated this was as of September 10th. He said he asked everyone to have them back by the 6th and some were a little late. Mr. Strickland stated the first page is a copy of the survey that was sent out. The second page contains the results. He stated they sent out 248. 8 were returned because they were non-deliverable. He said they got 123 surveys back, which was 52%.

Mr. Strickland stated that on the survey the first question was, "If I am assessed for the paving of the streets of Wilmington Beach, I would prefer they remain unpaved." 69% said that they would just assume they be unpaved. The second question was, "I want the improvements paid for by assessment of property owners." 78% said no. The next question had 3 parts: "If the Town Council decides to go ahead and proceed with this project, would you just want paving and drainage only?" 76% said yes. 78% said they didn't want sidewalks and 73% said they didn't want curb and gutter either. And of course, #4 was, "I want the Town of Carolina Beach sharing the cost" and that was 95% of the survey. He stated that was for all of the people and their comments are stapled behind the survey.

Referring to the site map to Snapper and Mackerel, Mr. Strickland stated he understood that this whole area has got some type of storm water drainage. He pointed to Snapper Lane and stated there is a ditch that runs nearly the entire distance of this road. He stated the water comes from here to Snapper Lane. Through the paved streets there is another ditch that drains all this down to Snapper Lane, too. All of the water from over here comes down this street right here and these are the two main streets that we're talking about. He stated it is going to cost major bucks to fill them up. Personally, he doesn't think that people should have to pay for drainage for all of Wilmington Beach. He said the whole area just about drains to those three ditches and all of them go toward the lake. The main one cuts across on Mackerel and gets on Snapper. Mr. Strickland asked the Council to take that into consideration too because it is going to put a lot of burden on the people on the paved streets to pay for drainage for all the other paved streets in that general area.

Councilman Doetsch had a question for Mr. Strickland. If people felt like it was going to be a partnership between them and the Town for the expense of paving, do you have a feeling that this might be different? And if you do, where were they? Mr. Strickland stated he would think it would be, but he couldn't really say. He stated that you've got several people here from Wilmington Beach and you could take a show of hands and see if maybe it changes just with the people you've got here. Mr. Strickland stated he was sure it would change some, but he couldn't say really how much. Councilman Doetsch asked, some for the better, would you think? Mr. Strickland stated he would think so – yes. He stated he thought it would be more supported, but he didn't really know how much more supported it would be.

Mayor Barbour thanked Mr. Strickland for his extra effort to provide this information to Council.

Jerri Graham, a resident of 1306 Snapper Lane, thanked Mr. Strickland for pointing out the drainage issue on Snapper Lane. She stated you needed to have been there during Hurricane

Ophelia and living on that street and watching all the water from all that surrounding area coming right down into your property and then the swells that have been built up along the ditch prevented any water going into the ditch. So, all of that water was in her yard. She stated her neighbors and she went out and dug a trench so that the water could be alleviated and go into the ditch instead of washing away her house. Ms. Graham stated she fully supports the idea of doing something about the drainage. She absolutely cannot understand why anyone would want to put a sidewalk on Snapper Lane. She thinks there needs to be some common sense as to which streets really could best utilize a sidewalk because that really is a tiny road and you can barely get one car through there. So, Ms. Graham asked that we do please use some common sense as we are looking at which roads – not every road is the same in our area. She thanked the Council for looking at the ditch and for recognizing that it is a problem. She hopes that we don't have to wait for years to get those ditches controlled because it is a frightening thing to see all of that water coming right down into your area. Ms. Graham said that those houses would have floated away. It was coming down that fast – that torrentially.

Councilman Doetsch had a quick question for the Town Manager: If we develop some of these roads, these are going to be State standards on size? Is that correct? So, what you normally see now – it might be a little larger? Mr. Peck stated that just because Snapper Lane is 10 feet wide, the right-of-way is 50 feet. It's a wide road. Councilman Doetsch asked if he anticipated the road being quite a bit wider than what these people currently have in front of their houses now? Mr. Peck stated that is correct.

Lonnie Lashley of 102 Florida Avenue stated he had a couple of questions. He asked about the undeveloped lots – that if the Town is going to pay for the pavement and everything, are we going to get that back through impact fees later on? Mayor Barbour stated that the undeveloped lots, with this plan, would be assessed the same rate as the developed lots. Mr. Lashley stated that if the Town would be paying for 55% of what is going to occur on that lot, are we going to get that money back through impact fees or has the Council even considered that? Mayor Barbour stated that we don't charge impact fees. We charge user fees. Mr. Lashley asked if we would get user fees back. He stated we're paying 55%, quoted by your Council, for these lots that are undeveloped at this time – our money – our taxpayer's money. Are we going to get that back some kind of way when someone develops that lot? Councilman Lynch replied to the question by stating that we will get back a whole lot in property taxes. Mayor Barbour stated that also later tonight there would be a presentation from Charlotte Buckley, the Stormwater Superintendent, about storm water fees and any development also has to pay storm water development fees, as well as water and sewer. Councilman Lynch said the tax base is being increased too. Mr. Lashley said he wasn't going to argue about it, but it is something that concerns us.

Mr. Lashley then addressed the issue of senior citizens. Mr. Lashley stated that he and Councilman Lynch and Councilman Doetsch were at the tax assessment meeting. He stated they mentioned about a tax relief in New Hanover County for real estate and personal taxes. He stated we don't have that in Carolina Beach. We take 38% of the money. We don't give any senior on this island any break on tax relief. He stated with something like this improvement, any major improvement, as well as real estate, as well as personal property, that we may want to look at anyone that's a hardship case. He gave an example of a hardship case: two people that

are on Social Security. You've already hit them for the sewage and you're going to hit them now. You're going to help them, hopefully. But still, it's hard on someone who is living on Social Security to get hit \$60 or \$70 a month or \$600 or \$700 a month. Also, it's hard when they have to pay for their real estate taxes full force, as we don't have to pay in New Hanover County. So, Mr. Lashley said the Council should consider that for senior citizens – someone 65 or over who is living on Social Security – both people living on Social Security or just one living on Social Security. Councilman Doetsch stated he would like to consider that for all of the residents of Carolina Beach. He stated if we build our tax base by making these improvements, then we have the opportunity to lower the tax rate and that benefits not just senior citizens, but everyone in the Town.

Mr. Lashley stated he wanted the Council to think about major improvements, not just the real estate and the personal property – but major improvements like this. Councilman Lynch stated it was all tax base related and asked Mr. Lashley to remember that the water and sewer assessment were brought on by New Hanover County.

Mr. Peck stated that this price will probably go up with the change in gas prices and everything, so we need to be aware of it. Councilman Lynch said it would be even more if we wait.

John Malistrie, a resident of 1114 Bowfin Lane, stated that part of their street is paved in front of their property and part isn't. Since 1/3 is unpaved, does he have to pay only 1/3 of the assessment? He stated he and his wife wrote a letter that Council should have gotten a couple of weeks ago. Mr. Malistrie does not like sidewalks and thinks they are a waste of money, a waste of cements, and people don't use them on side streets. He stated in the neighborhood he lives in, people walk in the street. He asked if Council has looked at the sidewalks on 3rd Street. He stated they are mostly overgrown where you can hardly see them. He asked why do you want to put sidewalks in – because the developers want them? He stated he doesn't know anybody that really wants sidewalks. He thinks too much is being done for developers like the curbs and sidewalks. He stated he is thankful he wasn't made to buy palm trees. He wants the Council to look at what the people that bought years ago in Wilmington Beach want and not what the developers want.

Jerry Jones, a resident of 707 Ocean Boulevard, thanked the Council for the opportunity to speak and thanked the Council for their public service. He stated that Council responded to a question he had before about Searay Lane, approximately 120 yards south of Ocean Boulevard, as you said the Corps of Engineers was looking at it as a wetlands area. Mr. Jones asked if there had been any response to that? Mr. Peck responded by saying that we have an environmental consultant that is looking at both Searay and Spot Lane that runs south from Ocean and we have not gotten the final result back from them. Mr. Jones stated there are only three dwellings on Searay that do not have pavement or sidewalks. He stated none of them want any type of changes made, if possible. That's 100% of the people who have developed property now.

Kent Stanton, a resident of 1316 Mackerel Lane, feels that a lot of this seems to be more political issues than quality of life issues. He feels it is more of a quality of life issue to have the roads paved and curb and gutter and sidewalks put in. Mr. Stanton has a two year old daughter and a 14 week old son and would lobby to even have Ocean Boulevard set up by the DOT to have

sidewalks and curb and gutters. He stated it is not real safe when you walk down to the beach. The ditches there are probably about five feet wide and six feet deep on Mackerel Lane. He stated his is the only house on Mackerel Lane. He stated if you take a walk around with the traffic the way it is and the way people currently drive and the construction going on, it is not a real safe environment. Therefore, Mr. Stanton is for it. He thinks the Town picking up part of the bill would be great and would help out a lot. He stated even if they didn't, he would be willing to go for it himself. He stated he doesn't know how many other people feel that way and maybe he is a minority here tonight, but to him it is a quality of life issue because he is raising his kids here. He stated he grew up here for the last 35 years when the roads were dirt and Carolina Sands weren't even developed. So, he thinks we should move forward and get it done as soon as possible to save as much money as possible.

Everett Smith, of 1518 Snapper Lane, asked about separating money for storm water improvement and paving. He stated it was shown as \$3 million for both of them. He stated we pay storm water fees. The storm water money that is going right now is being used to redo Carolina Sands. Would it not be appropriate for that money to be used toward the gutter improvements on this improvement and have those two items separate? Mayor Barbour stated that he had explained it before, but he would try to answer it and to correct him if he was wrong. He stated if you have been assessed for improvements before, whether that was rolled into your development cost, lot cost, or whatever, then the Town does not assess again. Carolina Sands was a development that was built back in the '80's and all of those property owners there paid for paved streets. They have an asphalt curb, not a concrete curb, and storm water. And now their systems are failing. Therefore, that is a replacement of a system versus installation of a new system. That is the difference in that. Mayor Barbour stated we can't assess Carolina Sands. This is new development, new paving, new storm water with, as presented here so far, curb and gutter and sidewalks. So, that is the difference in the two.

Mayor Barbour asked for any further discussion.

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

Mayor Barbour then stated he had a quick question about the way the water flows currently, as Mr. Strickland had explained. He stated that it all eventually appears to head toward the Carolina Beach Lake. He asked if this drainage project would direct part or all of that water to the retention pond?

Mr. Peck stated that the Seagrove area – one of the provisions to their Conditional Use Permit for that project was that they put in storm water to take the water that used to flow from there to the lake through Carolina Sands to a certain extent, and certainly all down Snapper and then across, and take it away. He stated that also allows us to take half of Carolina Sands' water and take it to the west. He stated to the best of his knowledge, all the rest of the water, at least as far south as Texas or South Carolina, flows to Carolina Lake. South of that point it flows out to 421 and then it magically goes someplace else. It is part of the DOT system.

Councilman Lynch asked Mayor Barbour if we could talk about the sidewalks because a lot of people seem to not want the sidewalks. He asked Mr. Peck how much the sidewalks are going to cost? Mr. Peck stated approximately \$330,000. Councilman Lynch asked for how many lots, Mr. Peck stated 467 lots. Councilman Lynch said it seems to be a nice amenity. He stated we are requiring sidewalks in all new developments. He asked if the Town is paying for it, why a sidewalk would not be a nice amenity? He stated he understands about Snapper, but Snapper will be wider and it will be a standard size road. Mr. Peck confirmed that. He stated he would like to hear some discussion on that. Mr. Peck stated he thinks that is probably why a lot of the people object to that is because they think we're using the vision of what's there now and how do you put a sidewalk into a small or a narrow street and he thinks they're missing the point that those streets are going to be much wider and certainly more opened up. He asked if it was 50' wide on Snapper and that was confirmed. He stated that is considerably bigger than what is there currently. He stated he was fortunate enough to ride around with Mr. Strickland and that he wanted to address the drainage because the people down there have had to deal with the drainage the best way they could. He stated Mr. Strickland has been extremely good at doing what he had to do, but he thinks what we're looking at here is putting in a comprehensive drainage program that benefits everybody and you don't end up with 80% of it going through your yard. That will be split up and hopefully will make it a comprehensive drainage program that benefits all down there. He stated that a lot of this was brought up at a budget retreat two years ago – that we wanted to have a plan to both curb and gutter all the streets in Carolina Beach. He stated he thought Mr. Pagley was given the charge to come back with a plan that included gutters and stuff like that. Since this was really a big area that we addressed first, we assumed that would probably be a good place to start that. So, he stated we are going to work on the entire part of the beach. This seems, since we're going to do the drainage and the street portion of it, a good place to start. Mr. Peck feels we really need to view this in terms of streets and roughly how they will look in the southern portion of Carolina Beach. He thinks sidewalks are certainly reasonable.

Mayor Barbour stated that sidewalks will only be on one side of the streets, not both sides. Mr. Peck confirmed that. He stated sidewalks are planned for Cape Fear and Harper all the way out to Dow Road, and bike lanes, too.

Mayor Pro Tem, Pat Efird, stated the most serious problem is the flooding, is it not? Mr. Peck stated that it sounded like it from the lady that spoke a moment ago.

Mayor Barbour stated the storm water drainage system, whatever is put in, will be an engineered system where there won't be any areas that can collect and pool and pond like it currently is doing. Mr. Peck stated he thinks any system that is put in is only as good as the maintenance that is done on it. There is significantly less maintenance required in a curb and gutter type system than there is in a swell system. There are some definite advantages to using swells. It slows the water down. It helps with absorption. But they are a tremendous maintenance problem and that is one of the reasons that the ditches in Wilmington Beach are as bad as they are. Over time they have gotten worse and worse and worse to the point where they are totally unmanageable. He stated he thinks that is just the trade off that you get when you go with swells versus a curb and gutter system.

Mayor Barbour made a motion to reopen the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Jerri Graham, a resident of 1306 Snapper Lane, said that she is sitting here thinking that on her 50' x 100' lot that 40' of that is now going to be turned over to the Town so that my lot is 50' x 60'. Mr. Peck stated that won't happen. Mr. Peck stated that there is actually 50' between the front of your property and the front of your neighbor's property line. He stated none of us really know where that property line is because it has been so long since.... Ms. Graham interrupted and said that she just had it surveyed. Mr. Peck replied that if you go 50' from there across, that's where the road is. Some of the ditch is much more on the east side. It doesn't go straight. It sort of meanders and it takes in probably 20' of that 50' right-of-way, but stated that none of Ms. Graham's property is included in the right-of-way. The right-of-way is a separate 50' that separates the property to the east and the property to the west. It is not included in Ms. Graham's 50' x 100' at all. Ms. Graham asked if that property would then remain intact? Mr. Peck stated that is correct.

Jane Hendrix, a resident of 1611 Snapper Lane, stated that this summer an investor's son told her that we were going to get sidewalks and curb and gutter and the road would be paved. She stated she did research and found out (and this person sent her a copy from Raleigh, she believes from the News and Observer) that the Town had gone to court and taken out a lien on a person's property because they had not paid for the repair bill on a sidewalk that was on a Town right-of-way. She stated she called Will and she has called several towns such as Southport, Wilmington, and several of the beaches, and one of the people at one of the towns told her that it was in every town's charter that a citizen could be assessed 100% of any repair bill on a sidewalk on Town right property. She stated she called Will and told him the information that she had received and she also saw the next week that the charter was in the paper. She stated that in the paper it showed where the residents would be charged for any repair bill on sidewalks on town right-of-way. She said it's in the paper. She said that this is probably why a lot of the people do not want sidewalks. She said the man in Raleigh told her that that was their policy basically. She said she didn't know whether Council was aware of it or not, but the other towns told her that they had a certain amount in their budget to repair sidewalks. She further stated that we do have a lot of sink holes around here and we would not want to pay the repair bills. Councilman Lynch asked Mr. Peck if that is in our charter? He said he has no idea. Councilman Lynch stated if it is, we need to get it out. He said we would never assess a resident for maintenance to a sidewalk. Mr. Peck said we never have. Ms. Hendrix said well, it's in the paper. Councilman Lynch said let's put it in the minutes that he doesn't think this Council will ever charge a resident for maintenance on a sidewalk as long as I am a councilperson. Ms. Hendrix said she called Raleigh and Raleigh does. Mayor Barbour stated that may be allowable, but to his knowledge, the Town has repaired a lot of sidewalks in town and never charged anyone anything. Ms. Hendrix stated she did want to share that information with the Council. Ms. Hendrix said it is in our charter. General agreement of Council was that citizens would not be charged for repair of sidewalks. Ms. Hendrix further complained that a ditch was filled in years ago, so that was drainage taken away years ago. She stated she was also aware that the Town was supposed to have – years ago that area was designed for small cottages – not three and four story buildings and houses. So, now the Town has to take care of back problems that have been created. Councilman Doetsch said the way we did business a long time ago in Carolina Beach is a lot different than the way we

do business today. We have an engineer sitting right here with an engineering firm to make sure we do things right and to the letter of the law. Ms. Hendrix said she hopes he realizes we have a drainage problem, too. Councilman Doetsch said he is quite sure he does. Mr. Peck said he would check on that.

Bill Wilson, who has property on North Carolina and on the corner of Snapper, asked what year were we annexed into Carolina Beach – Wilmington Beach into Carolina Beach? The response was 2001. Mr. Wilson stated that most of the homeowners would have a better vision of the paved roads if they would have had some service down there since then. He said there has been no scraping and hardly any gravel since annexation. He said if it had already been scraped to some kind of indication as to how big the road was going to be when it was completed, they would have a better vision of what it would be like when it was paved. He stated he is for having it paved. He stated it has been a mess down there and he's been there almost 20 years.

Alan Gilbert, a resident of 601 Atlanta Avenue, asked if the Council is proposing that taxpayer funds be used to create a grid of sidewalks on every street in Wilmington Beach? The answer of Council was unpaved – on unpaved streets. Mr. Gilbert asked if you are creating a grid of sidewalks – north, south, east and west – with taxpayer funds on every street that's unpaved right now? Council said that is the recommendation. Mr. Gilbert said he lives on Atlanta Avenue and they don't have sidewalks, but they have pretty good drainage. He would recommend, since we have drainage problems throughout Carolina Beach and on the coast by design, that Council consider including sidewalks on east-west passages possibly to beach accesses. He doesn't know that north-south impervious material like sidewalks would even be utilized back there. Just a consideration - looking at traffic flow, he stated they ride their bikes back through there and they ride their bikes through the entire town and he doesn't know that you need north-south sidewalks to be paid for by taxpayers in areas that aren't necessarily developed. He does agree where you have beach access where you have a lot of people riding bikes to the beach, but he thinks east-west. So, he would like consideration, if his tax funds are going to be used to put sidewalks in, that Council be a little more considerate to storm runoff and where they will actually be used. Councilman Doetsch asked Mr. Gilbert that if they do that, how do you treat future developments? Do you tell the new developer just to run them east and west and north and south? How do you do that? Mr. Gilbert said certainly. Councilman Doetsch said that if you're going to have a policy where you require sidewalks, how do you just do part sidewalks? Mr. Gilbert said that Princeton University, when it does reconstruction or development, it doesn't put sidewalks in and it watches how the students get to and from – then they go in and retroactively put the sidewalks in so they're not tracking up the grass. So, he thinks a little forethought on storm water runoff should be given. He doesn't know what idealistic community people are viewing as a grid of sidewalks as a good thing. He doesn't think that the sidewalks are a good idea and you have to look at where the people are trafficking and consider that before you project your ideal community with sidewalks on other people.

Councilman Doetsch said that if we had just run sidewalks east and west in the old portion of Carolina Beach then he would have had to walk into the street going to elementary school. So, there is some need for laterals put in there, too.

Debbie Jackson, of 1420 Pinfish Lane, had a question about the wetlands because Spot and Searay are flooded all the time. She said since they have mowed you can see standing water all the time. So, at what point will you decide that and then at what point will you say South Carolina will not be paved from Pinfish towards those streets? She stated there are only four lots involved that way. Mayor Barbour said those were the streets we were talking about earlier with the wetlands. Mr. Peck stated that is correct. Again, he stated we have hired an environmental consultant who is doing an evaluation of the whole area to make sure that there aren't significant problems – wetlands concerns. If areas are, in fact, undevelopable because they are wetlands, then we'll come back and make a recommendation to Council to amend the project and remove whatever streets need to be removed out of it.

Wayne Gomery, a resident of 1509 Snapper Lane, stated his observation that if for whatever reason it is decided to not use the curb and sidewalk systems on these streets, is it safe to assume that the same 55% will be picked up by the Town – less that? Mayor Barbour stated the proposal currently is for the Town to pay for all sidewalks and curbs. Mr. Gomery said he understood, but that was in the full equation. Mayor Barbour stated that the assessment, as mentioned earlier from a historical standpoint, has been the 1/3, 1/3, 1/3 split. Mr. Gomery asked if we took that off and used 55% of whatever the ratio was for just the streets – he said he, for one, would like to have streets out there. He thinks it might sway some other people because it is going to drop their costs overall. Mayor Barbour said to be fair to the other residents, the precedent has been set at 1/3 and he thinks it would be unfair for the Town to pay more than 1/3.

Chuck Mullen, of 315 Harper Avenue, asked that when we paid the water and sewer assessment in Carolina Beach South, when the lot was sold the full assessment had to be up front and he hopes Council is thinking in that direction. Council assured him they will. Mr. Mullen stated if it is transferred, then the full assessment is collected. Council agreed.

Mayor Barbour asked for any further discussion.

There being no further public comments or questions, Councilman Doetsch made the motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Doetsch made the statement that he has listened to a lot of people tonight and for the most part he thinks everybody is in agreement that the improvements down there are certainly necessary and have been needed for an awful long time. He said he was sorry they hadn't been able to do them before now. Things happen and budgets are budgets and hopefully with the support of the rest of the Council we can bring you up to standards more in line with what's in Carolina Beach. For the other part of people who live in Carolina Beach, as we get our curb and guttering plan throughout the entire beach, other people will see that happen also, even in the old areas of Carolina Beach. It will be a very lengthy process because we have quite a few roads and quite a few sidewalks to build and gutters to build. He stated the other residents of Carolina Beach have not been forgotten. That is coming. He listened to special consideration for seniors and he stated he is getting close to the point where he is close to being a senior and certainly understands that. He thinks what we need to do is to provide some kind of consideration for all of the residents of Carolina Beach, including the seniors and everybody else who lives here. So, by increasing our tax base that makes it a whole lot more acceptable for everybody at Carolina

Beach and that will certainly happen with the improvements in Carolina Beach South. It's not Wilmington Beach anymore.

Councilman Doetsch stated he appreciated everybody's input here tonight. He stated he has spent some time with Mr. Strickland and has rode down and looked at a lot of the issues down there and is sorry the people there have had to wait so long to get the improvements you hopefully will get after tonight.

Mayor Pro Tem Efirid stated she thought we had neglected that area too much from the time it was annexed. She stated we had sort of let it go by the wayside and she is certainly in favor of doing whatever we have to do and she would just be more than thrilled if we could do something to Canal Drive where she lives. She would love to have a sidewalk or curb and gutter where the water would flow better. And of course, all taxpayers, if we ever do something like that, would have to pay for our part as well as for yours. She is definitely in favor of doing anything we can to make the improvements and to keep the residents satisfied. She appreciates all the letters and input she's gotten. She stated she has read and studied every one of them and spent time with Mr. Strickland. She stated she also appreciated his efforts and that he has done his homework, which all of us should do in all of these projects. She is for going for the 55%.

Councilman Lynch stated he would like to change the five years to at least seven years. Councilman Doetsch agreed with that also. He stated that would help the residents some and he thinks that the gentleman on Harper made a good point – we need to be sure that we put in there that if those lots are sold that they are due on sale at closing so the Town gets their money. He also thinks the 6% is a very competitive rate. He would like those changes made.

Councilman Lynch made a motion to rescind Resolution 05-823 and approve Resolution 05-842 (*Exhibit 2*) with the recommendation of the Town Manager on the splitting of the cost, changing the 60 months to 84 months, setting the interest rate at 6%, and a clause in the agreement that says that if the property is transferred the Town is to be paid in full at closing.

Mr. Peck stated that 2/3 total cost of said paving shall hereafter be assessed upon the benefited properties on the basis of the number of lots served. Assessment to be paid in seven equal annual assessments, said assessment to bear an interest rate of 6%. And it sets a public hearing for 7:30 on the 11th day of October, 2005, which is the next Council meeting.

Mayor Barbour said there is a motion on the floor and he called for a vote. **MOTION CARRIED UNANIMOUSLY.**

Mayor Barbour stated that it was brought up by the tax administrator about the credit for senior citizens. He said that if you know of anyone who is over 65 years old living anywhere in Carolina Beach that has an income of less than \$19,500, they can get a significant tax credit of either \$20,000 or 50% of the value of their property. He said he's not sure that all seniors really know that, so any of you that know a senior, you might want to just ask them and be sure they are taking advantage of that.

Mayor Barbour called for a five minute recess.

Mayor Barbour called the meeting back to order.

INTRODUCE NEW TOWN EMPLOYEES

No employees were present.

PRESENTATION CONCERNING STORM WATER FEES

Charlotte Buckley, Superintendent of Storm water, addressed the Council and made a slide presentation concerning storm water fees. Ms. Buckley stated the first slide depicted who the Operations Committee is, with Steve Pagley being the Operations Director.

Mayor Barbour made the comment that the Storm water Committee was formed several years ago when we put in place a Storm water Department. Then we decided to form an Operations Committee, so most of that committee was absorbed by the Operations Committee and the Operations Committee was formed to provide us input by meeting with our staff of operations and storm water management, as far as direction on what we should take for future storm water fees, as well as operational situations and improvements within the Town.

Ms. Buckley stated the Operations Committee has obtained information from the Institute of Government, a survey of local government water utilities in North Carolina. She stated she just went through and pulled some of the major cities and what they charge and those are reflected on the handouts she provided to Council. The main thing she wants Council to know is that most cities in North Carolina charge a fee per ERU, which is erosion rate unit. That is on square footage and is either billed monthly or bi-monthly. The only city that has storm water different than that which she could find out was Wilmington. Wilmington currently has a flat rate which is \$4.75 per month for a single family. For any commercial site or new development, it has to handle its storm water on-site. If it cannot handle it on-site, then it is per site particular and a fee is paid in lieu of the storm water. The criteria are that there has to be a storm water system in place that can handle that storm water. She stated that every other city uses a monthly fee. Ms. Buckley further stated that there are also governments that have chosen just to do a flat rate in their taxes to cover their storm water to meet storm water requirements.

Ms. Buckley stated she has a storm water fee calculation to give everyone so that they understand how storm water fees are calculated currently and she distributed those. She stated that one of the largest questions from the Council, developers or individual residents who want to do a new home is why is one property storm water fee so high and a lot across the street or next door has fees that are lower? Ms. Buckley said she found two properties that were across the street from each other to use as an example. 407 North Carolina Avenue – Ms. Fraley purchased the property on 12 of 1998. She paid \$8,500. The tax value on that piece of property according to today's taxes is \$15,000. So, if you take the tax value of \$15,000 and fill in the blank. The next is the \$4,830 and that fee is construction cost – is the approximate cost this year to build a detention on-site including seeding and drainage. So, that is a standard that is on every single piece of property. Next, you put in the site acreage and the site acreage, as most people would

know, is 5,000 square feet, which is 1.11% of an acre. So, her lot is a 50' x 100' lot, which most lots are in Wilmington Beach, so it is .11. Then she gives a site plan to Planning and I review it and on that site plan it tells me the percentage of the impervious surface. Impervious surface is anything that you drive upon or has a roof and that includes pavement, sidewalks, and any concrete. So, on this site it was 48%. You then take $1/10 \times$ the tax value (and that can be either the land value or the tax value) and the reason why we use that is because the tax values have not changed. We are up for a tax re-evaluation which will occur and take place and be on your tax bills in 2007. So, you can either use the tax value – whichever one is higher. So, you take $1/10 \times$ \$15,000 and you come up with \$1,500. You take the \$4,830 x .11 and you come up with \$531.30. Then you take those and add the \$1,500 plus the \$531.30 and you come up with \$2,031.30. Next you take the \$2,031.30 and multiply it by 48% and that gives you a total of \$975.02. So, this is a house that the lady bought the lot for \$8,500 and across the street is a building site that H&S Builders bought. The tax value on the books currently is \$17,500. He paid \$275,000 for this site – the same size lot that Ms. Farley bought across the street. So, if you fill this in to \$275,000 and you still have this fixed amount, the \$4,830 and the size lot did not change – it's .11 – and he covered less percentage than Ms. Farley – he covered 40% - and working the same equation – his total storm water came up to \$11,212.52. So, that represents how this has been working currently for the last two years. Ms. Buckley asked if there were any questions about how she goes about finding and getting those figures? She stated that there has been a question about how she comes up with the values. Realizing that the county has up to a year to update the tax records, Ms. Buckley calls her connection at the tax office in order to get up to date information as to what properties sold for. Ms. Buckley stated she uses that for back up and to make sure that every single permit has the right tax value down. She stated it is based on the sale price or if the person has owned the property like Ms. Farley – she bought it for \$8,500 years ago – and she decided to build her own house, then of course, her storm water fees are lower. Councilman Lynch asked if she used the tax value as opposed to the sale price? Ms. Buckley said yes.

Ms. Buckley stated these are our revenues that have been collected. It's one year and one month. Those are the storm water fees. Councilman Doetsch asked how much are we spending? Ms. Buckley stated Council already knows that because it is budgeted every year. Councilman Doetsch said his point is that it is going back into the system? Ms. Buckley said yes. The Operations Committee, after reviewing the above information and other data, would advise retaining the current storm water development fee. However, she stated they do have some recommendations from the Operations Committee. As stated previously, on 1/1/07 the new tax values will be available and we recommend calculating the storm water fees off the existing tax value instead of the sale price or the current tax value. Ann Bowman spoke with Ms. Buckley earlier today and was supposed to be present tonight, but she had surgery. However, Ms. Bowman did tell Ms. Buckley that when tax evaluations are done at the end of that seven year period, the tax values do not reflect the true value of property. When they do the re-evaluation, it can be within 10% of the true value of a piece of property. So, Ms. Buckley thinks when this tax value comes out, it is the Operations Committee's recommendation that we use the tax value and it will be across the board on every single piece of property. Councilman Doetsch questioned what happens at the end of that eight year cycle again when possibly the values have gone back up again and we're still charging maybe the lower rate? Should we leave it alone as it is now because as the tax administrator told us, eight years by law, and sooner if development requires

or warrants it, but it could be eight more years before they do another re-evaluation of properties and if we're stuck with that same rate again, will we not be losing money possibly? Ms. Buckley stated that they looked at how many properties have been developed in Carolina Beach and how many vacant properties are left and then also redevelopment possibilities. She stated it might be something we have to look at again after a period of time. Councilman Doetsch stated his only concern here is if you change the wording and you get people used to doing it one way and then down the road four years after 2007 we say this isn't quite right so we're going to change the wording again. He thinks we might be better off just leaving it like it is now as opposed to changing it and then having to go back and change it again. He stated all of this is confusing enough for most people and if we keep changing it, it makes it a tougher moving target. Ms. Buckley replied by stating that she thinks the Operations Committee is to look at some alternatives and they're just making some recommendations. They are not saying that this would be the best way to go, but wanted to make it so there is a choice. That's for the Council to look at and make some recommendations back to the Operations Committee and then they will proceed with what Council would like to do. Councilman Doetsch said the other side of the coin is that we're directed by both State and Federal mandates for storm water collection and we get very little compensation to implement programs that they request. So, people say why is this so much and how come we're always on top of it? But it's really just to keep our head above water – not to make a great profit. And as what we're spending shows, we're putting it back into the drainage system of Carolina Beach. Councilman Lynch stated that once they go with the new tax value – the value between the 2007 re-evaluation and the tax value for the next four, five or six years is probably not going to jump as much as it has in the last few years and so at least there's more quality here. Councilman Doetsch said if you look at the graph of tax base, Wrightsville Beach has gradually climbed along and increased their tax base and we've just kind of gone to a certain point and went up. So, maybe we've just caught up with – well, we're not caught up with Wrightsville Beach yet, but we're starting to get there. Mayor Barbour stated he thinks this is a good discussion, but this is something that is recommended for 2007 and we have over a year to give it consideration. Probably the proper time to enact it would be our budget approval in 2006, so he recommended we move on to the next recommendation.

Ms. Buckley stated the second recommendation is the Town could designate areas susceptible to flooding and drainage problems be divided into different categories according to some criteria, possibly by using existing flood zone information, soil types and hazard mitigation plans. Applicant would be required to handle as much storm water on site as feasible. That's exactly what Wilmington is doing currently and we wanted to recommend something like that. You can really tell by the soils and other things whether the soil can hold the amount and how much. If it was engineered, then we could do it on a sliding scale and give them credit for whatever they could handle. Right now, it's either or all. You don't have a choice.

Ms. Buckley stated the third recommendation is applicant uses an approved impervious material or is able to handle a percentage of the storm water on site certified by a registered engineer and then a credit would be given.

Ms. Buckley stated the fourth recommendation is that the Town would require an inspection of all individual storm water systems every three years for maintenance issues.

Fifth recommendation is the requirement of sod on all new development sites and we spoke about this six months ago. Ms. Buckley does think that with straw and seed usually ends up in the storm drains and this would keep the erosion factor down on each individual site.

The sixth recommendation is if finished driveway elevations are 10% or greater than the crown of the existing street, then grades shall be installed at the end of paved driveways to keep storm water from sheet flow from the public street or right-of-way. Ms. Buckley had an example of these grades and stated you've probably seen them along Canal Drive. That would only be required if there was 10% difference in the grade.

The seventh recommendation is all new development shall be required to provide the existing and proposed elevations at the time of application of the site plan. Ms. Buckley stated she would really like these two rules to become in effect.

The eighth recommendation is that lots may not be filled at a grade higher than the average existing grade of the adjacent properties or the crown of the existing or proposed road. Ms. Buckley stated she was called out to do a final inspection on a home. The site was finished. There was sod. It was an excellent site. On one side to the right hand side of the property there was a mobile home on a very low lying lot and on the other side was another mobile home and neither one of the properties were for sale. Of course, Ms. Buckley said she had to protect – and there was no berm in between – so, the gentleman wanted his closing and she had him put in sock pipe with a stone base, a French drain on each side of the property, and he had to take up his sod. So, that delayed his closing and also put a strain on his financial ability. So, she feels that if she has the site plan and the information is given to her in advance then she can better prepare the property owner for what needs to be done to the site.

The next recommendation is to raise the penalties for violations such as grading and clearing without a permit and lack of improper installation of silt fence. Right now our penalties are \$50 per day and she really thinks that those need to be higher so we can protect our storm water.

Councilman Doetsch stated that in one of the Council meetings not long ago, we required the developers of any property to try to maintain as much of the natural vegetation that is there, which also kind of dictates the level. Are we looking at that, too? He wanted to know how does that work? When somebody comes into develop it, do they just put a mote around a tree and build up the lot around it?

Ms. Buckley stated we currently have the Planning staff and the Storm Water Department working hand in hand with a grading and clearing permit and we both sign off on it. There are a lot of exceptions and we do recommend, but we do not have anything formally to save trees or a tree preservation plan.

Ms. Buckley showed an example of proper installation of silt fencing. It had reinforced wire on the outside and was trenched in properly. She said it really protected the site.

Ms. Buckley stated that was the conclusion of her presentation and asked if there were any questions.

Mayor Barbour stated they did a nice job and asked her if she wanted Council to review the recommendations and give her feedback? Ms. Buckley stated, yes. She stated they meet once a month and they would like some recommendations back, as well as any other ideas Council may have that they could look into. Mayor Barbour thanked her for her presentation.

PUBLIC DISCUSSION

Dee Jenzano, a resident of 100 North Lake Park Boulevard, said she assumed Council already knew that PIMA has dissolved for lack of participation. She would like to ask each Council member if they would still support the Beach Music Festival and the Haunted House. The present location is the American Legion. She wants to know if Council would still support it if the American Legion hosts both events? Council all said yes. Mayor Barbour stated the Beach Music Festival is definitely a major event for us during the summer time that he always participates in and enjoys. He definitely wants to talk to the American Legion about what their plans and needs are for the Beach Music Festival and also the Haunted House.

Ms. Jenzano also stated we had funding due to PIMA and they can't close their books out until they get the check for that funding and she didn't know if Council had even received an invoice yet. She said since she was coming tonight anyway, she was asked to ask if they could get that wrapped up. It was for the fireworks and the movies. Council stated they had not received any invoice or any accounting of monies. Ms. Jenzano said she would be sure Council gets the invoice. Council thanked Ms. Jenzano and commented that they thought the fireworks and the movies were very successful.

Mayor Barbour stated the only other one that is signed up under this item is concerning the skateboard park and we will get to that as a public hearing under Conditional Use Permit in a few minutes.

CONSENT AGENDA

Councilman Doetsch made a motion to adopt the consent agenda as follows, striking Items 9(c), 9(d), 9(k) and 9(l) as noted under Adopt the Agenda above:

Approval of the Minutes:

Regular Meeting August 9, 2005

Approve budget amendments and acknowledge transfers as follows:

Transfer from the Operations Department for \$40,000. The transfer is to budget monies into the telephone and postage account (308120.11) from account maintenance to mains (308120.20). This transfer has been completed and only requires your notification.

In last year's account 308120.45-Contract Services there were monies still available at year end. The Operations Director, Steve Pagley is requesting that \$9790 from those monies be appropriated into this years' budget. Therefore, the request is to increase account 308120.45-Water Contract Services and increase 303990.00 W&S Unappropriated Fund Balance in the amount of \$9790.

Due to the delay in the Skate Park Project the Parks and Recreation department has had to cancel their purchase order request approved in the 04/05 budget in the amount of \$\$57,500 to Lumina Builders, they are now requesting that those monies be brought into the 05/06 budget. Therefore, we need to increase account 106200.74-Capital Projects and increase the General Fund Unappropriated Fund Balance in the amount of \$57,500.

Central Parking had made a request at the September 1, 2005 meeting of additional funding for Freeman Park to be used for 1 extra person and more ambassador hours in the amount of \$20,795.70. The amendment will be increase account 253900.00-Tourism Fund Appropriated Fund Balance and increase account 256300.45-Beach Maintenance Contract Services.

As you know in the 2004/2005 Budget we had two projects approved with DOT, one for the Off Road/Bike Multi Use Trail, in which the Town contributed \$25,000 and DOT contributed \$49,357, the second was the North End Peninsula Pedestrian and Bicycle Project in which the Town contributed \$84,000 and DOT contributed \$196,000. Both of these projects were not able to start in the 2004/2005 budget but will be started in the 2005/2006 budget. Because of this we need to appropriate these monies into our 2005/2006 budget. Therefore, the request is to increase DOT Monies line item 103430.01 in the amount of \$\$245,357, increase unappropriated fund balance account 103990.00 in the amount of \$109,000, increase account 106200.74-P&R Capital Project in the amount of \$74,357 and increase Public Works Administration 104930.74 in the amount of \$280,000.

Set a public hearing date for October 11, 2005 at 7:30 p.m. or soon thereafter to consider Amendments to Appendix A Zoning Ordinance, Article 18 Non-Conforming Situations, Section 18.2 Non-Conforming Lots.

Set a public hearing date for October 11, 2005 at 7:30 p.m. or soon thereafter to consider Amendments to Appendix A Zoning Ordinance, Article 23, Sec. 23.3 Definitions to Add a Definition for High-Rise.

Set a public hearing date for October 11, 2005 at 7:30 p.m. or soon thereafter to consider Amendments to Appendix A Zoning, Article 8, Section 2 Sidewalk Curb and Gutter.

Set a public hearing date for October 11, 2005 at 7:30 p.m. or soon thereafter to consider Amendments to the Code of Ordinances, Chapter 12 Planning & Development, Section 12-130 Sidewalks.

Set a public hearing date for October 11, 2005 at 7:30 p.m. or soon thereafter to consider Amendments to the Code of Ordinances, Chapter 9 Motor Vehicles & Traffic, Article VI Schedules to Reduce Speed Limit on Spencer Farlow Drive from 35 MPH to 25 MPH.

Set a public hearing date for October 11, 2005 at 7:30 p.m. or soon thereafter to consider Amendments to the Code of Ordinances, Chapter 14 Solid Waste, Section 14-6 Dumpsters.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING – CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT TO CONSTRUCT THREE (3) 3-BEDROOM LUXURY CONDOMINIUMS AS A PLANNED UNIT DEVELOPMENT AT 400 CANAL DRIVE.

Prior to speaking, Ed. H. Parvin, Interim Planning and Development Director, was sworn in by the Town Clerk and began making the presentation.

BACKGROUND:

The applicant is proposing a triplex with three (3) 3-bedroom units permitted under Planned Unit Development. The lot is located at 400 Canal Drive in the T-1 Zoning District. The property is 6250 square feet in size (.14 acre). Planned Unit Development may be allowed as a Conditional use in R-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:

Zoning

The maximum allowable lot coverage (includes building, decks, and steps) is 40% or 2500 square feet. Based upon the allowable density calculation, applicant may build up to 4 units on this site. The applicant is proposing 3 units on a 2293 square feet footprint or 37% lot coverage. Set-backs in T-1 district are 10' (side), 20' (front) and 10' (rear). Corner lots require a 12.5' side setback. The applicant is proposing a 10' setbacks on the north side and 12.5' off of Dolphin; a front setback of 25' and; a rear setback of 24'.

Parking

3 units * 2.5 = 7.5 (8 required spaces; 2 per dwelling unit + 0.5 per bedroom over 2)

Eight unobstructed parking places are providing with access off of Dolphin (see attached site plan).

Landscaping

A five (5) foot sidewalk plus curb/gutter is being proposed along Canal Drive. Landscaping buffers along each property boundary are to be five (5) feet (Type "A" buffer yard).

Stormwater

The applicant proposes to retain part of the storm water on-site and provide a prorated payment for storm water fees on the remainder of the 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

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

1. Show curb, gutter, and sidewalks.

STAFF RECOMMENDATIONS:

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

1. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
2. CAMA Minor Permit must be secured prior to Issuance of Building Permit.
3. The structure shall be limited to 50' in height. A sealed set of plans from an engineer must accompany the building permit showing that the structure does not exceed 50'.
4. Flood certification must be presented prior to issuance of certificate of occupancy.
5. Final project must be designed to provide the required 8 parking spaces.
6. Final site plan must include cross-section of paving detail.
7. Dwelling must be designed and constructed so that it will not impair any adequate supply of light and air to adjacent properties.
8. Landscaping must be provided on all borders of the property. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.
9. 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.
10. 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.
11. Prior to issuance of a building permit, an engineered stormwater plan must be submitted and approved. The stormwater system shall be installed according to approved plans and a letter signed and sealed by a licensed engineer shall be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy or payment of stormwater management contribution satisfactory to the Town.
12. 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.
13. 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.
14. Dwelling must be constructed to meet minimum North Carolina fire code and must be approved by the Fire Marshall
15. 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.

16. 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 11, 2005 Scheduled Meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to required findings 1-7 general conditions 1-4 and staff conditions 1-16 above and the following additional conditions or changes:

1. Maintain as much stormwater on-site as possible
2. Bond for sidewalk curb and gutter prior to issuance of a building permit

Mr. Parvin showed an aerial of the site, the site plan, a rendering of what will be there, and what is existing there today.

Mayor Pro Tem Efird asked if Mr. King owned that property? Mr. Parvin said that he did not know. Council said yes.

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

There being no public comments or questions, Lynch made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Calvin Peck, Town Manager, stated that he had an observation. He was sworn in by the Town Clerk. Mr. Peck stated that there is a fundamental difference of opinion between Planning and Zoning and staff and possibly Council. He stated the ordinance says that you require curb and gutter, sidewalks, etc. on all these projects. The concern, as he understands it, from Planning and Zoning is that if you have a street such as this where you have a project on a corner of a street, a couple of projects in the next block, and a project in the third block, what you end up with is a hodge-podge of curb and gutter and sidewalk, then no curb and gutter, curb and gutter, etc. What the recommendation is is to take the money that they would have had to pay to put curb and gutter and sidewalk in, for example, this property and somehow bond it until the block, the entire street, the entire something is able to be done. That, he believes, is Planning and Zoning's view. The alternate view is had we done that in the past we would end up like we have in some other areas where there is no curb and gutter, there is no sidewalk, nothing has been done. Even though there has been money put into, for example, sidewalks for a number of years and we've done some sidewalk improvements, there has never been enough money (probably never will be enough money) to do everything whenever it gets ready. The second problem comes in if these four property owners all bond for improvements and it is time to do a block and this block is done, these folks will never be happy because you spent my money, my bond on someone else's lot, someone else's block. And that's just a fundamental difference of opinion. He doesn't know

that one way is right or wrong. We don't have any provisions currently for bonding for any future improvements that we don't know when they might take place.

Councilman Doetsch said his only question here is, do we have a set of standards? In other words, if we decided to strike that from this and let's say each individual were to develop those properties, are they going to be held to a set of standards so that they all are reasonably the same? Mr. Parvin stated he thinks the intent from Planning and Zoning was for Condition #2 – bond for sidewalk, curb and gutter prior to issuance of a building permit – was the argument that the Town Manager just made. They have actually proposed some language that will come through at the next meeting to try to allow for a new way to address sidewalk, curb and gutter. That language in there now – you can bond for curb and gutter and sidewalks and that's fine but they'll still have to have it in by CO. Mr. Parvin said he has addressed that with the applicants and they know that. Councilman Doetsch said he could see where they would be awfully upset if the two center properties there were developed with that bond money and then the other two, with the increase of cost escalating and where everybody had put money into this fund or bond and then only two of the four saw some kind of a benefit from it. He could see where that would be an issue with the other two.

Mr. Peck stated he thought Ed was correct in that the way this is written, the bond for the sidewalk, curb and gutter prior to issuance of a building permit doesn't have anything to do with the CO and whether or not they have to do it. He knows that their intent in the past has been, and he's sure as Ed says will be in the future, to somehow bond for the project until such time that the entire block – the entire something can be done. Mr. Parvin said that was the reasoning for putting that extra condition on there, although that will not create that extra fund. He stated the proposal is to bring some language to create another fund that the money will go into. Those issues were discussed at Planning and Zoning and there was no resolution at Planning and Zoning either. Mayor Barbour said if the CO is going to require curb and gutter and if we have nothing in place right now to deal with bonding, why are we making that a requirement at this point? Mr. Peck said that staff didn't – that it was a recommendation of Planning and Zoning. Councilman Lynch asked that if in the alternative could we determine the cost of that and just have the developer pay into a fund and hold that money in an escrow account until we decide to do that block? Mr. Peck said that, as he had said, that is some of the language that is going to come forward as a recommendation from P&Z at some point in the future, but he doesn't think they have yet figured out all of the details. He asked Mr. Parvin if that was correct? Mr. Parvin stated they haven't, but they have proposed some language that will be upcoming. Councilman Doetsch asked wouldn't it just be simpler to have a set of standards that you build to? Mr. Peck said we do. He said we are requiring all new projects to be built to that same standard. Councilman Doetsch asked what is the problem then? Mr. Peck said he is not on P&Z and he doesn't know.

Mayor Barbour asked if there were any further questions. There being no further questions, Councilman Doetsch made a motion to approve the Conditional Use Permit at 400 Canal Drive with the required findings 1-7, the general conditions 1-4, the technical review committee's request #1, staff recommendations 1-16, and Planning and Zoning's recommendation #1 only, striking the bond recommendation. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT TO CONSTRUCT A TRIPLEX WITH THREE (3) 3-BEDROOM UNITS UNDER PLANNED UNIT DEVELOPMENT AT 904 CANAL DRIVE/819 N. CAROLINA BEACH BOULEVARD.

Prior to speaking, Ed. H. Parvin, Interim Planning and Development Director, was sworn in by the Town Clerk and began making the presentation.

BACKGROUND:

The applicant is proposing a triplex with three (3) 3-bedroom units permitted as a Planned Unit Development on two (2) adjoining lots (one conforming and one non-conforming that are under common ownership and which are to be combined). The lots are located at 904 Canal Drive and 819 N. Carolina Beach Avenue North in the R-1 Zoning District. Planned Unit Development may be allowed as a Conditional use in R-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:

Zoning

The maximum allowable lot coverage includes building, decks, and steps is 3740 square feet which equals 40% of the total lot square footage (9250 square feet; .21 acres). Based upon the allowable density calculation, applicant is allowed 3.2 units for the site. The applicant is proposing a 2,718 square feet footprint or 29% lot coverage. Set-backs in R-1 district are 7.5' (side), 20' (front) and 10' (rear). The applicant is proposing 7.5' setbacks on the sides, a front setback of 94' and a rear setback of 10'.

Parking

3 units * 2.5 = 7.5 (8 required spaces; 2 per dwelling unit + 0.5 per bedroom over 2)

Eight (8) unobstructed parking spaces have been provided in front of the building (see attached site plan).

Landscaping

A five (5) foot sidewalk plus curb/gutter is being proposed along Canal Drive. Landscaping buffers along each property boundary are to be five (5) feet with the exception of the landscape buffer bordering the Northern and Southern boundaries of the parking lot. Four (4) feet landscaping buffers are proposed along the Northern and Southern boundaries of the parking lot. The applicant is requesting a one (1) foot variance in the landscaping buffer along the Northern and Southern boundaries of the parking lot in order to comply with dimensional requirements of the parking lot provisions of the Town Ordinance.

Stormwater

The applicant proposes to retain an average of one (1) inch of stormwater runoff and to accommodate the balance of the storm drainage via a prorated payment of storm water fees to the Town of Carolina Beach. On-site grading will be designed to direct the site generated drainage such that it does not flow directly on adjacent properties.

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

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

General conditions.

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

The Technical Review Committee reviewed this proposal at its July 21, 2005 regularly Scheduled Meeting. The TRC recommended the project to be submitted to the Planning and Zoning Commission if the following 4 comments are addressed:

1. Show separate six inch water line for fire services
2. Show nearest fire hydrant
3. Show tie in location/connection for sewer
4. Need to make storm water improvements in which to hold the 1st inch if possible before it dumps into the towns system (still required to pay Storm water development fees).

STAFF RECOMMENDATIONS:

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

1. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
2. CAMA Minor Permit must be secured prior to Issuance of Building Permit.
3. The structure shall be limited to 50' in height. A sealed set of plans from an engineer must accompany the building permit showing that the structure does not exceed 50'.
4. Flood certification must be presented prior to issuance of certificate of occupancy.
5. Final project must be designed to provide the required 9 parking spaces.
6. Final site plan must include cross-section of paving detail.
7. Dwelling must be designed and constructed so that it will not impair any adequate supply of light and air to adjacent properties.
8. Landscaping must be provided on all borders of the property. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.
9. Maintenance of permanent open space, parking, streets, drainage systems, utilities, and other such facilities-
 - a. 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.
10. 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.
11. Prior to issuance of a building permit, an engineered stormwater plan must be submitted and approved. The stormwater system shall be installed according to approved plans and a letter signed and sealed by a licensed engineer shall be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy or payment of stormwater management contribution satisfactory to the Town.
12. 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.
13. 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.

14. Dwelling must be constructed to meet minimum North Carolina fire code and must be approved by the Fire Marshall
15. 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.
16. 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.
17. Water meters must be relocated in the right-of-way and run three lines to the units.
18. Prior to issuance of a building permit, a plan that includes a grading schedule and construction schedule shall be approved by the TRC.
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" equals 50' or larger showing the site and all land within 150' of the site.

The Planning and Zoning Commission heard this proposal at its August 11, 2005 Scheduled Meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to required findings 1-7 general conditions 1-4 and staff conditions 1-16 above and the following additional conditions or changes:

1. 819 Carolina Beach Avenue and 904 Canal shall be combined
2. Modification of the site plan to reduce parking from 9 to 8 spaces
3. Bond for sidewalk curb and gutter prior to issuance of a building permit
4. The easement from the property to Carolina Beach Avenue North shall be removed.

Mr. Parvin recommended striking P&Z Condition #3, bond for sidewalk curb and gutter prior to issuance of a building permit. Mr. Parvin also recommended striking P&Z Condition #4. He stated that having that in there could constitute a taking by the Town by requiring the easement to be removed. Councilman Lynch asked what is the easement for? Mr. Parvin stated the easement was for the 819 property, which was their access out. He stated that when they combine the lots then they won't need the easement. Mr. Parvin stated he would take any questions.

Councilman Lynch stated he remembered this coming before the Council once before. Mr. Parvin stated that it came before the Council a little over a year ago as a quadraplex with traffic flowing all the way from Canal to Carolina Beach Avenue North. Councilman Lynch wanted to know who owns the lot with the easement going back over to Carolina Beach Avenue North? Mr. Parvin stated the gentleman was here tonight and that he did talk to him. He stated that he is interested in dissolving the easement and it may have to be dissolved if those lots are combined. That is something the applicant and the property owner will address. Mayor Barbour asked if the entire easement is on those two properties or does it overlap on the adjoining property? Mr. Parvin stated it is only on the property to the east of 819 N. Carolina Beach Blvd. and to the north of the easement is the property owner.

Councilman Lynch stated he was curious as to why it wouldn't be wise to have that easement removed? He stated we can't do that because we don't own that easement. He wanted to know who owns it? Mr. Parvin stated the property owner in front of the 819 lot owns the easement so he would have to be compensated if the Town required the removal of that easement. Mr. Parvin said that the project doesn't need the easement. He stated the previous project had traffic going all the way through, utilizing the easement, and this project does not do that.

There being no further questions, Councilman Lynch made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

After being sworn in, Wallace West, a resident of 320 Wayne Drive, Wilmington, NC, stated he is here tonight representing the owner of this property, Michael Maisonet. Mr. West said that Mr. Parvin had done a very good job summarizing what they propose to do on the site and he would like to add some clarification to the issue regarding the easement and to answer any questions that Council may have. Mr. West stated the easement that currently is there – when the Planning Commission approved the project subject to that – when subsequently reviewed by their attorney, he suggested that it might indeed be a taking if the Town required, as a condition of approval of the project, removal of that easement. He stated that once the lots are combined there is a statute and case law that addresses that easement and what has to happen with that and Mr. Maisonet is prepared to follow whatever the statutes and case law require in that regard. Mr. Height, who is the owner of that property, and Mr. West have had communication about this also. Ms. West stated that there is a conforming lot and a non-conforming lot. The conforming lot is part of the property to the west and the non-conforming lot is the portion of the property to the east, which at one time had a house on that lot. He stated the easement was the access to that house (the driveway). He further stated that when the lot was originally purchased from those owners in the 1980's it had a Conditional Use Permit for 12 units on it. He stated for this particular piece of property, they are asking for approval for 3 units.

Councilman Lynch remembered Mr. Height speaking about the easement at a P&Z meeting and stated Mr. Height strongly wanted the easement to be removed. He asked Mr. West if Mr. Height could be assured that the easement would be given up by Mr. Maisonet? Mr. West stated if that is what the statute and case law says – yes. Councilman Lynch asked if that is what is says? Mr. West stated he is not a lawyer and he can't answer that. He stated he understood that there is case law that addresses that issue and that if it inures to the benefit of more than just that original property owner, then the easement must be returned. However, he stated he is not a lawyer and he is not stating that as fact. He stated Mr. Maisonet will do whatever is required.

Councilman Lynch expressed some obligation to Mr. Height regarding the crossing of his property. Mr. West said he understands that and they are not utilizing the easement in this particular design. Councilman said that doesn't mean that you couldn't utilize it? Councilman Doetsch asked if it could revert back to the original owner, which is Mr. Height? Mayor Barbour stated that it is not a Town easement. It is a property easement between property owners and it is a private easement, so we really have no jurisdiction to move an easement that belongs to somebody else.

Lonnie Lashley, of 102 Florida Avenue was sworn in and stated his concern is a builder's youth fee, which he has mentioned to Council before, as well as to P&Z. He would like to see the Town have a user fee whenever someone builds a lot for our children in the future. We have a Recreational Committee. Those funds could go to that committee and they could come before Council and recommend how they want to use those funds. He personally thinks we need a public swimming pool for the island and a teen center. He stated we can always help any of our leagues – recreation or over at the youth park. He asked Council to please consider a builder's youth fee again for any new construction on this island. Mayor Barbour stated that typically our user fees are incorporated in the budget review and final budget approval, which occurs by June 30th of every year. He said they will be glad to, in the process of going back through the budget hearings – public hearings – to consider that in next year's budget. Mr. Lashley thanked the Council.

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

Mr. Parvin stated that you can always bond for sidewalks or improvements before you get a CO. He stated he can still have a bond for his sidewalk, curb and gutter.

Councilman Lynch made a motion to approve the Request for a Conditional Use Permit to construct a triplex at 904 Canal Drive/810 North Carolina Beach Boulevard subject to Required Findings 1-7, General Conditions 1-4, Technical Review Committee 1-4, Staff Recommendations 1-16 and P&Z recommendations #1 and #2, striking P&Z recommendations #3 and #4. **MOTION CARRIED UNANIMOUSLY.**

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT TO CONSTRUCT AN OUTDOOR RECREATIONAL AREA (SKATE PARK) AT 1121 N. LAKE PARK BLVD.

Prior to speaking, Ed Parvin, Interim Planning and Development Director, was sworn in by the Town Clerk and began making the presentation.

BACKGROUND/HISTORY:

The applicant is proposing to construct a skate park approximately 4,600 sq. ft. of concrete skating area. The project is located in the R-1 zoning district and is being proposed as a park. The Municipal Complex site is 6.94 acres with the front half facing U.S. 421 zoned HB and the rear section zoned R-1. The site contains:

Parks and Recreation Center	16,800 square feet
Federal Point History Center	1,536 square feet
Town Hall	20,344 square feet
Skate Park	4,600 square feet
Total lot coverage	43,280 square feet
Percentage lot coverage	22%

The rear portion of the Town Hall complex lot off of 7th Street is zoned R-1 and consists of approximately 102,939 square feet. This portion of the Town Hall tract is currently vacant with the exception of an Operations storage building.

ANALYSIS:

Maximum lot coverage within the R-1 district is 40%; the footprint of the park is approximately 4,600 sq. ft, and is of the allowable square footage. The proposed structure will be in ground or to grade with a few jumps above grade not to exceed 4' feet in height. Setbacks in the R-1 District are 7.5' (side), 20' (front), and 10' (rear). Corner lots require a 12.5' side setback. The applicant's proposed structure is setback 30' off of 7th Street, 27 feet from the Town Hall entrance, 18' from the parking lot, and 42' from Old Mariners Village. Hours of operation will be 9am until 9pm Monday – Friday, 10am to 9pm on Saturday and 1pm to 5pm on Sunday. Winter operating hours are the same with the park closing at dusk.

PARKING

Town Hall Complex:	1 per 300 square feet	68 spaces.
Parks and Recreation:	1 per 200 square feet	84 spaces
Federal Point History Center:	1 per 500 square feet	3 spaces
Total number accounted for:		155 spaces
Total provided on-site		211 spaces
Available parking		56 spaces

Parking for outdoor recreation is calculated according to *Article 7 Off-street Parking and Loading Requirements*: “Adequate to handle the anticipated normal capacity for patron use, as determined by the building inspector, plus 1 space for each employee.” Inspections staff has determined adequate parking exists.

LANDSCAPING

The skate park will be surrounded by a 6' chain linked fence to prevent entrance during closed hours. Outside the fence will be a 3' grass berm for aesthetics and to reduce noise. A 10' wide Type “B” buffer yard will be required on all sides of the development. Additional vegetation will be provided in the area adjacent to Old Mariner's Villiage.

STORMWATER

Storm water management facilities are in place to handle all water for the site.

NOISE ANALYSIS

Town staff visited the skate park at Greenfield Lake on August 26, 2005 along with four skateboarders, two spectators, and one attendant. Music was playing inside the park with the installed surround sound system. The following results were drawn with the noise meter:

Inside the Park:	65 decibels
10 feet	65.6 decibels
30 feet	66.1 decibels (increase possibly associated with other outside noises)

Except as allowed in this article, no person shall willfully engage in any activity on any premises or public area in the town which produces or constitutes a noise disturbance on occupied neighboring premises or public area. Without limiting the generality of the foregoing, a sound or noise shall be deemed a noise disturbance if, when measured as prescribed herein, it exceeds the level set forth below:

(a) *Residential area:* 65dB(A) (daytime level) between the hours of 7:00 a.m. and 11:00 p.m., or 55dB (night time level) between the hours of 11:00 p.m. and 7:00 a.m.

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:

The proposal as presented has not received any negative comments from Stormwater and Operations, Fire and Inspection. Public Park proposals are allowed with the approval of a Conditional Use Permit in R-1 zoned properties. Staff recommends the following conditions if the proposal is to be recommended for approval:

1. A letter shall be provided that stormwater and drainage can be accommodated with the proposed additional facilities
2. Drainage plan must be submitted and approved prior to issuance of a building permit. The drainage system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
3. Hours of operation and number of employees must be provided prior to issuance of Certificate of Compliance.
4. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
5. 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.
6. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to Certificate of Occupancy.
7. A sign permit must be obtained for any new signs located on the property.
8. 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 Compliance.
9. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
10. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire.
11. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission.

The Planning and Zoning Commission heard this proposal at its September 08, 2005 Scheduled Meeting. The Planning and Zoning Commission recommended unanimously recommended denial due to capacity to meet the Town's noise ordinance. Inability to meet the Town's noise ordinance falls under general condition 2: "That the use meets all required conditions and specifications."

Councilman Doetsch asked if the noise was less in the park (Greenfield Lake) than what the road noise was adjacent to it? Mr. Parvin said yes. Councilman Doetsch asked if the project does meet the Town's noise ordinance of 65 decibels? Mr. Parvin confirmed that it does.

There being no further comments from Council, Mayor Barbour made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Brian Metcalfe of 176 Old Mariner's Way was sworn in prior to speaking and stated that his wife and he drained a 401K investment account to buy a house in a neighborhood with the hopes of moving down here in 3 to 4 years. He stated that they looked at all the neighborhoods in the area and this is what they could afford. He said that they never expected to have this thing dropped in their laps. Referring to the Council Room, he stated that this room is about 45 feet in length and that is about how far this thing is going to be from their bedroom, give or take about 20 feet from the fence to the Carolina Beach property. He stated they have a 9-year old daughter and it is a quiet neighborhood. He stated this is upsetting that this project would be that close to them, it will have foot traffic, and they didn't expect this. He hopes that Council will consider that P&Z unanimously voted this down and that he is speaking at probably 65 decibels right now. He is against the project.

D.A. Lewis, a resident of 604 Clarendon Boulevard, Carolina Beach, was sworn in prior to speaking and he stated that on September 8 the Planning and Zoning Commission met, discussed in length and voted unanimously to recommend to Council that a different location be selected for the proposed skateboard park. He does not oppose the Town building a skateboard park, but he does oppose what he believes is a poor location in that it is in very close proximity to a subdivision. This Mayor and Council need to face the fact that a much used outdoor skateboard park is a very noisy venture. He stated the Town Planning Department recently conducted a noise study at Greenfield Lake and that with 4 skaters, 2 spectators and music and it was 65 to 66 decibels. He said this could not be taken as credible because an average skateboard park would have more than four skaters. He asked what Council thought the decibel level would have been if you had 35 to 40 skaters at the same time and 10 spectators rooting them on, plus skate music loud enough for the skaters to hear? He stated Council first believed that this was zoned Highway Business and now they have found out it is not. He stated that is when this thing should have changed, should have been dropped and a new location found. Mr. Lewis stated Old Mariner's Village residents have their homes in this residential area and should not have to suffer financial loss from noise pollution and a sub-standard quality of living because of poor planning in the choosing of this location for a park. He believes the town would have numerous noise violations that will create a nuisance situation from this park if Council votes to issue a Conditional Use Permit and votes to build it there. If documented noise violations were allowed to go on for any length of time, and you can be assured there will be based on the decibel readings of the study of the skateboard park at Greenfield Lake, it will result in the closure of the park and numerous lawsuits if it not closed. This will result in \$115,000 plus lawyer fees plus settlements paid our taxpayer dollars if Council and Mayor choose this poor location. Mr. Lewis understands the owners of Old Mariner's Village have more than one decibel meter to be able to measure the noise from this proposed park, so any violations he is sure would be documented. Mr. Lewis doesn't believe any member, or at least the majority, of this Council would want or vote to have a skateboard park built in their backyards and the residents of Old Mariner's Village do not want nor deserve to have this park forced on them by their elected officials. He stated that if we run out of locations for a skateboard park, then Council should take back one of the parking lots that has been designated to be part of the parking, give it away free of charge and build a skateboard park on one of them. After all is said and done and the bottom line, Mr. Lewis asked

who is more important – the developers or our kids? Mr. Lewis hopes Council will take what they have heard from the citizens and find a more suitable location for this project. At Planning and Zoning, the consensus was that people were not against the skateboard park. They were against the location. The location is the issue.

Dave Johnson was sworn in and stated that he is a resident of 192 Old Mariner's Way, and he is opposed to the proposed location of the skate park. He stated there has been much discussion of this subject recently in various Town meetings and he wanted to remind Council of a couple of statements and views expressed at those meetings that led up to the unanimous rejection on September 8th. Mr. Johnson said the source of his quotes is the Island Gazette. He stated that on July 28th at a Town meeting, Mayor Barbour said, "Anyone who doesn't have a child that is a skateboarder is not going to want this near their neighborhood" and then went on to say, "I feel that if there is a real big problem with our plans to date it will surface in the public hearings for the Planning and Zoning and Town Council." Mr. Johnson stated that Mayor Barbour said that "Once concrete is put down, it is not easy to move. Whenever we put it down we need to make sure we put it in the right place. I understand the housing development wasn't there when we first looked at it. Things change and I want to make sure we do the right thing." Mr. Johnson hopes this evening will convince Mayor Barbour and Council that this is the wrong location for this facility. He said that at the August 11th Planning and Zoning meeting, Jim Reese, the park designer, said "If there is a better location, I will gladly redesign the park because I sympathize with the adjacent homeowners." He also said, "It will be a park that would get year-round use, so there will be people there and noise." Again, at the September 8th meeting, it was rejected. What was interesting there in the public discussion was everybody who was in favor of the skate park was sympathetic to the people in Old Mariner's Village and basically said yes, we need the park, but we don't need it in the proposed location. Basically, the Commissioners rejected the proposal based on the close proximity to the neighborhood, the fact that the park would violate the Town's noise ordinance, and there was also concern expressed over the lack of supervision or the fact that the park would be running largely unsupervised. Mr. Johnson states he has some documents where he has tried to research this to figure out his own opinion. He has a publication issued by the Pennsylvania Department of Conservation and Natural Resources called "*State Parks – A Practical Guide to Planning and Development*" that is intended to help people plan for skate parks. He also has a document issued by the State Park Association of USA called "*Skate Park Design, Construction and Maintenance Considerations*." He also researched and got some information from the Tony Hawk Foundation, which is an organization set up to provide grants and donations for public skate parks. All of these organizations are active proponents, obviously, of public skate parks. Mr. Johnson stated he emailed the Tony Hawk Foundation and asked what distance would you recommend be provided between skate parks and residential areas in order to avoid noise issues? He said he got a response from Mickey Lukavelch, the foundation's Executive Director, who said, "I have spoken to a municipal sound engineer in Portland, Oregon. He said that based on his measurements, an in-ground concrete skate park at 100 feet generates noise equivalent to an average conversation of approximately 65 decibels." That's exactly the size of the park being proposed here and he thinks this information, as well as other opinions which have been expressed, bring into question the validity of the measurements which were taken at the skate park locally. Obviously, as the distance decreases the sound level will increase. The Carolina Beach noise ordinance is 65 decibels. He thinks that level will be exceeded and the noise will be deemed a nuisance. He

further stated the Pennsylvania document states that you need to have good consideration for your neighbors. They refer to an industry standard that recommends a skate park should be a minimum of 150 yards from any residential area – 450 feet – not the 42 feet that we're talking about here. He stated there are many stories in the UK, which is his homeland, about skate parks. In the UK, land is scarce and that has resulted in the skate parks being located very, very close to residential areas and now they are having to close them down because of noise complaints. He has three stories and web addresses for three skate parks that had to close down. He has a picture of one that the local council had to fill in with sand to stop the skateboarders from using it because of the noise issue. As a result of that, the Air Quality Management Magazine, which is a UK publication, has reported that councils there have come up with their own recommendations for providing adequate distance between skate parks and residential areas: Oxford City Council – 200 meters (that's 600+ feet); North Hampton Borough Council – 100 meters (300+ feet); South North Hamps - 150 meters (450+ feet). So obviously this is an issue recognized around the world and some people are having to do some backtracking to undo mistakes.

Mr. Johnson further spoke about supervision and liability. In the Planning and Zoning meetings, it was stated that the skate park would be unsupervised the majority of the time with Rec Center staff providing periodic supervision. There were comments made by someone in support of the park at the August 11th P&Z meeting saying that there were issues with the children. There were some unfortunate deaths recently. There have been problems with sexual activities and drug abuse. Mr. Johnson thinks that if we're going to take care of the kids and provide them with a facility, it should be made a supervised facility where they can have supervision and not get into trouble. The SPA USA document he referenced basically said that if you've got a semi-staffed location, it's the worst you can have from a liability standpoint. Obviously, there is a belief that if it is unsupervised, your liability is minimized. But they cite the worst situation as when it is partially supervised because if there is an issue and somebody tries to sue you, they'll ask the question well, why wasn't anybody there at the time that this accident happened. So, Mr. Johnson thinks the current plans leaves the Town open to maximum liability. Has has more information, but in the interest of time, he has made his key points. Mayor Barbour stated that if Mr. Johnson has more information and he would like to submit it as part of the public record, that he could give it to the Clerk and she will include it as part of the minutes. Mr. Johnson stated he would do that. Council thanked Mr. Johnson.

Paul Feldman, of 172 Old Mariner's Way, was sworn in and stated that he is not against skate parks. He thinks it is a great idea, but not in his backyard. He stated he is in the closest proximity and showed a photograph of how close the project would be to his house. He said the distance is equivalent to the room they are meeting in. He stated he has always supported Carolina Beach. He has lived here before and came back and bought a house again here. He supports all the businesses in Carolina Beach. He buys everything for his home in town. He stated he spends a lot of time here. He said the real problem is the noise ordinance. He stated he was troubled by Mr. Parvin's numbers he put up. He said if you're going to spend \$150,000 on a skate park and think there's only going to be four people there, that's a terrible issue. We need to be realistic. Mr. Feldman then gave a demonstration of a noise meter. He set the levels at a minimum of 30 and a maximum of 100 decibels. Normal voice is 65 decibels. Mr. Feldman made some noises which registered at 84 (clapping), 58, 72, 71, 73, 68. He has a problem with

anyone who thinks this isn't going to happen. He stated the noise ordinance is very specific. In Section 10.6, the violations fall under 10-7A1, 10-7A5. He stated he made a videotape, which he would gladly make copies for everyone here. He set up inside the skate park at Greenfield Park and ten feet away in a parking lot. He stated the numbers were not even close. He stated that one thing that should have been entered into the record was that the noise peaks. If any time it exceeds 65 in a one minute span, it's a violation.

Mr. Feldman also feels the project will devalue his property with a noisy skate park in his backyard. He stated there are alternatives. He suggested Chapel Park and he showed a lot with an existing volleyball court that is not being used or is being used sparingly. He said this lot, without any buffers on it, measures 8600 square feet. He said with a ten foot buffer all the way around it, it would be 5200 square feet and the park can fit in there. It is only 4600 square feet. He stated there is a water fountain, bathrooms, and ample parking. It is already a recreational area. Mayor Barbour asked what the closest house is? Mr. Feldman said the closest house is over 325 feet away. He measured from the property out to a rental house located across the street. So, there is an alternative. He reiterated that he thought a skate park was a good idea and that there should be things for the kids in town. He supports it 100%, but please not in his backyard. Council thanked Mr. Feldman for his comments and presentation.

Also sworn in was Hector Ingram, a real estate appraiser from Wilmington. He stated that he has been appraising in New Hanover, Pender and Brunswick Counties since 1991 and prepares appraisal reports on valuation issues for real property, private individuals, banks, state and federal local agencies. Since 1991 his company has prepared six appraisals for the Town of Carolina Beach. He thanked Mr. Peck for hiring them. Mr. Ingram stated that Mr. Feldman asked him to come down and take a look at this property – the proposed site of the skateboard park – in relation to his property and some other properties around him to see whether Mr. Ingram thought there would be any diminution in value due to this proposed park. He inspected the park, looked around, walked the boundaries, and looked at the proposed plans. He noted that the adjacent houses that are 42 feet away are all set 2 feet above the height of the privacy fence that they have at the back of their property, so the finished floor elevation is two feet exposed overlooking the park perfectly. He made a study of various Appraisal Institute Journal articles regarding diminution in value and having read those and viewed the property, it is his opinion that there will be a diminution in value to the adjacent properties due to this Conditional Use Permit because it results in such a dramatic change in use from what they have right now. It was also his opinion that there would be a diminution in value due to the likely noise and the possibility of increasing the amount of lighting they have out there currently, which is parking lot lighting. There will be a diminution in value due to the loss of residential character in the neighborhood, having this next door. He doesn't think that the proposed use is in harmony with the existing R-1 Zoning Ordinance. He asked the question, if he were to give you the opportunity to choose two houses to keep – identical houses – except that one was next to a skateboard park and one wasn't – which one would you choose? He thinks that there is a real value issue here. He is happy to answer any questions Council may have.

Mayor Barbour stated to Mr. Ingram that at public hearings they usually take pertinent testimony and part of the approval process for properties – one of the four conditions is that it does not

decrease the value of adjoining properties. If you make a statement that there will be a diminished value, Council would request that he put either a value or a percentage on it.

Mr. Ingram stated that at this point he hasn't been able to collect enough evidence because he was given this assignment last Thursday. If he were to make an estimation based on the other work that he has done – he stated his firm is working on a Department of Navy project right now regarding diminution in value due to noise easements, various decibel levels – they have determined that the value range can be considerable depending upon the exact amount of noise. The other problem that we have at Carolina Beach is you've had such rapid increases in property value due to the underlying economic situation that we're probably not going to see a loss in value month to month. He would have to go outside of the area and pull data from other towns where it has been a little more stable where there has been a natural and passive increase in property value. He hasn't had a chance to do that yet. He stated he will be happy to present that data if Council would like. Council thanked Mr. Ingram.

David Ray, an attorney from Wilmington, addressed Council on behalf of Mr. Feldman as well. He stated that everyone has done a fantastic presentation and that it is clear that no one really opposes the concept of a skate park. He stated he used to skateboard as a kid. He thinks the problem here is that the Town is being asked to approve the location of this 4600 square foot skate park in an R-1 zoning district. He thinks from the photographs he's showing Council can appreciate exactly how close 42 feet is from these folks' property lines. He stated there are a lot of unanswered questions. People are concerned about the lack of supervision. This would be a park that would operate and be open until 9:00 p.m. at night Monday through Saturday and until 5:00 p.m. on Sunday. He stated there is no plan that has been heard for supervision. There was talk of a chain link fence around, but yet nothing has been said as to how this facility will be locked at night or will there be any monitoring of any sort to make sure that people aren't in there after hours. The problem is again that it is located 42 feet off this back property line and specifically this is R-1. This isn't HB. He thinks all the comments and quotes from meetings and P&Z is telling and reminds Council that the recommendation to deny was unanimous. He thinks that is very important. From a legal standpoint, Mr. Ray said there are two questions before Council tonight. The first is does your zoning ordinance allow a skate park to be located in an R-1? Secondly, if it does, have you been presented tonight by the applicant the kind of competent and substantial evidence that will allow you to make the four findings that you have to make in order to issue this permit? Mr. Ray said that Staff Recommendations says it does allow it as a conditional use because it is a park – a public park. He stated R-1 district is moderate to high density single-family and two family residential use (quoting from the district definition). The regulations of this district are intended to discourage any use, which because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district. That being said, he thinks staff looks at the zoning ordinance and says that a skate park can be located in an R-1 district as long as there is an approved Conditional Use Permit. He thinks they look at the designation that says parks, playgrounds and recreation buildings that are public can be located in R-1 with a Conditional Use Permit. He thinks you have to look at the plain language of the statute. The statute talks about recreation buildings. A concrete skate park with no walls and no roof is a recreation building. It is not a playground. A traditional playground that the statute probably contemplates, again being able to be located in a residential district, is a playground with swing sets and jungle

gyms and the things you may have in other parts of town. He guesses what staff relies on is simply the words “public parks.” He submits to Council that a skate park is something different than a public park and that the intentions when this was drafted is that a public park is the traditional park we’re used to with green spaces and benches and ponds and wooded areas. He doesn’t think that the intention is to allow a concrete skate park capable of making high levels of noise in an R-1 district, even with a Conditional Use Permit. He submits to the Council that he questions whether the ordinance allows the location of the skate park at all in R-1. If Council believes that it does – if that, is in essence a public park – then the next question is have you had evidence presented to you tonight that will allow you to make the four findings of the conditions set forth in 14.8d of your zoning ordinance. Those conditions that you must find, and again they must be supported by competent and substantial evidence, are: (1) the use will not materially endanger the public health or safety; (2) the use meets all required conditions and specifications; (3) the use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity; and (4) the location and character of the use is in harmony with the area in which it will be located. Mr. Ray said tonight he is focusing only on conditions 2, 3 and 4. He said we have heard the Town’s own study at Greenfield Lake with only four skaters (important to remember) which measured noise levels in excess of what the ordinance allows. He believes Mr. Feldman has done a nice job tonight questioning the accuracy of those measurements and coming up with measurements in this very room that exceed your noise ordinance. That is the reason that the P&Z Commission recommended denial. Mr. Ray thinks there is no competent evidence in front of the Board tonight upon which they could find that the proposed use meets all the required conditions and specifications of the ordinances. Mr. Ray said that Mr. Ingram addressed the value question and stated that in his opinion there would be a diminution in value suffered by these homeowners. He stated some of the issues Mr. Ingram cited were: increased traffic; increased noise from the skate park; increase in pedestrian traffic; no supervision or control; hours of operation; the issue of lighting (this seems to have been left wide open – whether later on they will request additional lighting); and an integrated music system. All these same factors that Mr. Ingram discussed also support the position that this is not in harmony with a residential zoning district. Mr. Ray stated it is important to remember that the burden coming before the Council is on the applicant to present evidence that allows Council to make those four findings. He respectfully submits to Council that the only competent and substantial evidence in front of them tonight suggests that they can’t find #2, 3 or 4 of the general conditions. He said it only takes one that’s not satisfied and the Conditional Use Permit should not issue. He thanked Council for their time and offered to answer any questions.

Mayor Barbour asked for any further public comments or discussion. There being no further comments, Mayor Pro Tem Efirid made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Doetsch asked Calvin Peck, Town Manager, if this park could be built in Chapel Park with the requirements that the government places on the Town and the buffer zone? Mr. Peck stated they made a request to military at Sunny Point to expand the park to include a number of things such as a bike path, more ball fields, etc. That request was denied. Mr. Peck does not know if an alternate use was going to be done – take out a ball field, take out something that’s already at Chapel Park, and put this in its place because there is no room to expand the use. He doesn’t know if it would be approved by Sunny Point.

Mayor Barbour stated that all of that property in Chapel Park is in the military buffer zone and everything that we have done there in the past had to be done with the permission of Sunny Point. Years ago when there was a concession stand constructed, it was not with the permission of Sunny Point. They were very upset with the Town and it took the Town about 10 years to re-establish a relationship with them that would allow the Town to simply clear the northernmost part of that property and put in two baseball fields, with the promise the Town would not put in any permanent structures. Mayor Barbour stated the current score boxes are removable and not permanent structures. So, that is what is faced with trying to use that property. Mayor Barbour stated they have been back to Sunny Point trying to expand our footprint of a park just to make a soccer field and have been denied thus far. He thinks 9/11 probably had a lot to do with that because it is the blast scene. Mayor Barbour is disappointed because we've been working on this for two years. He stated we started discussing it at our budget workshop as an idea to give kids a place to go skateboarding and keep them off the highways and off the boardwalk – because they like to skate on the boardwalk – and the streets. He stated they even changed the zoning to allow them to skateboard on the back streets because it was basically not allowed in the ordinance prior to about 2000. So, they have been working on this a long time. He is disappointed that they have such opposition. From a noise standpoint, he understands the concern. He has no small kids right now that are skateboards, so it is not for his personal need to construct a skateboard park. It is for the other kids that live in Carolina Beach. He stated one of the residents on Clarendon can probably remember when he had a half-pipe in his backyard when he did have a small child and stated yes, it was a little noisy, but it was recreation for him and the rest of the neighborhood. He stated again he was disappointed. They are trying to do something for the kids in an area that is part of our recreation center that can be supervised, as a matter of fact. Mayor Barbour stated his requirement would have been for a camera to be installed with a monitor at the Rec Center to allow supervision from a visual standpoint. He stated they don't know whether someone is looking or not when there's a camera hanging there. Mayor Barbour further expressed his concern about the legal questions that were brought up. His own personal opinion is that most of these conditions that require the Council to approve this Conditional Use Permit can be met. He is sure that the Town's attorney will look into the questions brought up. Mayor Barbour stated he is not saying this is not the right place for it and he is not saying it is the perfect place for it, but stated they were going to find a place, whether it is there or somewhere else, to put a skateboard park for the kids at Carolina Beach. That is his commitment he made two years ago and he stated he will fulfill it.

Councilman Lynch stated he may have a solution. He said he would be concerned, even if you could get permission, to put a skateboard park at Mike Chapel. He said if you had a young child over there – he just thinks that is a long way from any supervision. One reason he said we wanted to put it back here is because we do have the police department and the recreation department and other officials around this area. Therefore, he would like to make a motion that we send this back to the recreation department and committee with this request – that you try to move it as far north as you can on 7th Street over next to the Rec Center. This means that we'll have to change some of the paving over there, but still it would be as far as you could get it over next to the gym, and put as nice a berm over there and as heavy landscaping as you can to keep it safe. He thinks P&Z may be right - to consider an earlier closing time. He doesn't know that music would hurt because it's going to go down at closing anyway. He likes the Mayor's suggestion of having a

camera and the police periodically checking. Councilman Lynch asked if the gate would be locked at night? The response was yes. Councilman Lynch made a motion that they send it back and that a noise study be done. He would like it to come back to Council as soon as possible. He would like to see it stay where the recreation department is and he thinks that may solve some of the problems.

Councilman Doetsch requested that they at least check on Chapel Park first and determine if that is not a suitable place. Councilman Lynch agreed. Councilman Lynch agreed to amend the motion to that effect. Councilman Doetsch stated that if that is the case that we would have to come back closer to the recreation center here. He thinks the Chief's officers could probably check it there as well as anywhere else when they are out and around. Councilman Lynch stated they were still hoping to do the senior center and library and that would be some kind of buffer.

Al Clyburn, Town Attorney, stated we really should look at the North Carolina General Statute, which says if you supervise this the statute says it is unsupervised still. He thinks we really should delve into this law in the first place, but if it becomes supervised you are not going to be indemnified for damages. He thinks the shield the Town is trying to hide behind is we put it there, we put signs up saying wear your knee pads and your helmet and you're good to go, and we won't get sued. He thinks we really, really look at that question because he thinks some of the things the Town is doing is going to put it in great conflict. That law was written specifically for very small towns that don't have money that may be able to put something like this up but can't afford the insurance. He is not so sure that Carolina Beach fits into the general theory of what they're looking for. Councilman Lynch asked Mr. Clyburn to look into that and Mr. Clyburn agreed.

Mayor Barbour asked Councilman Lynch to amend the motion to have our attorney look into not only that but to be sure any approval of a skateboard park meets our four conditions of approval for the Conditional Use Permit process. Councilman Lynch agreed to amend the motion. He restated his motion that we send this back to the Recreation Department and the Committee to look at Mike Chapel as an alternative site, to look at moving it as far as you can back towards the gymnasium and 7th Street, with the request that you give us something back with heavy landscaping and a berm as high as possible on the south side to protect the neighbors that have the concern this evening, consider changing the closing time to maybe sun down, look into the music, camera, and to have our attorney check to make sure that the zoning ordinance does permit a skate park in an R-1, to check also on what Mr. Feldman checked about on the liability for the Town with having it unsupervised, and that the four conditions be consistent with approval of the Conditional Use Permit. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT TO LOCATE A REAL ESTATE OFFICE AT 1118 S. LAKE PARK BOULEVARD

Prior to speaking, Ed Parvin, Interim Planning and Development Director, was sworn in by the Town Clerk and began making the presentation.

BACKGROUND:

The applicant wishes to locate a real-estate office at 1118 S. Lake Park Blvd in an existing single-family dwelling. The site is currently being used and designed as a single-family home in the existing one story 720 sq ft building. The applicant would use the site for his real estate business only. The business will locate on-site without any interior or exterior alterations.

ANALYSIS:*Zoning*

Offices are allowed by conditional use permit in the MX District.

Parking

The applicant will provide the 3 required parking spaces on-site with one being handicapped (1 space per 300 square feet). DOT's recommendation would be to relocate the parking driveway to the rear of the house and to move the existing carport, which the applicant is going to comply with.

Landscaping

A five foot Type "A" landscape buffer will be provided along the northern property line and front of the building. Existing trees shall remain in the rear.

REQUIRED FINDINGS:

Specific standards. Applicant must make provisions for:

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

General conditions.

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

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

1. Supply comments from DOT regarding driveway
2. Concrete and asphalt only for driveway surface
3. 10 feet setback minimum
4. Need to see nearest hydrant location

STAFF RECOMMENDATION:

Staff recommends approval of the Conditional Use Permit subject to the above required findings and the following conditions:

1. The location and dimensions of refuse collection container, a statement identifying the method and frequency of refuse collection, and agency to be used must be included on the site plan. The container shall be enclosed on all four sides.
2. Concrete and asphalt for driveway and parking surfaces.
3. A sign permit must be obtained for any change in signage or any new signs proposed on the property.
4. All permits required by Federal, State, and Local Agencies must be submitted prior to Certificate of Compliance is issued.
5. Any modifications to this proposal (as deemed significant by the Director of Planning or his designee) will require new application for Conditional Use Permit
6. Must bring site to ADA compliance before issuance of a Certificate of Compliance.
7. Site plan must be approved by the Department of Transportation before issuance of any permits..
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. 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 Compliance.
10. Landscaping must be provided around proposed parking area. The number and types of vegetation must be included on the final plan. A Certificate of Compliance shall not be issued until landscaping is planted according to approved final site plan.
11. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of building permit.
12. Building would need to be signed off by an engineer that it meets commercial standards, prior to the issuance of a building permit.

The Planning and Zoning Commission heard this proposal at its August 11, 2005 Scheduled Meeting. The Planning and Zoning Commission unanimously recommended approval of the request subject to required findings 1-7 general conditions 1-4 and staff conditions 1-12 above and the following additional conditions or changes:

1. The Town consider allowing pervious or semi-pervious surface with a three or four foot concrete border along the street line. If allowed the handicap space shall be a hard surface.
2. Reconfigure the site plan to accommodate all parking to the rear of the lot as long as it does not require tree removal.
3. Ensure proper vision clearance at the driveway.

Planning taff asked to remove the Planning and Zoning recommendation #1, as it must be an approved surface by our ordinance and the applicant has reconfigured the parking in #2, for all three spaces are now in the rear of the lot on his plan. The applicant has preserved the trees on the lot. Mr. Parvin stated he would take any questions. Councilman Doetsch asked if the applicant ever put in place the landscaping request that we talked about a meeting or two ago regarding if for some reason you had to remove a tree that you at least planted something back indigenious to the area? He said it sounds like we haven't got it in place because it looks like they're putting it in place here in Item #2. Mr. Parvin stated you have to preserve or replace trees that are four inches in caliper and ten feet in height and you are required to do a landscape buffer. He stated the applicant does have some old, large trees on the site and he will maintain all those trees.

There being no further questions or comments, Mayor Barbour made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no questions or comments from the public, Mayor Pro Tem Efird made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Doetsch motioned to approve the Conditional Use Permit including required findings 1-7, general conditions 1-4, Technical Review Committee requests 1-4, staff recommendations 1-12, and all P&Z recommendations except for #1. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT TO CONSTRUCT 7 OFFICE UNITS ON A 1.04 ACRE TRACT LOCATED ON THE WEST SIDE OF DOW ROAD IN THE I-1 (INDUSTRIAL ZONE)

Prior to speaking, Ed Parvin, Interim Planning and Development Director, was sworn in by the Town Clerk and began making the presentation.

BACKGROUND:

Applicant proposes to construct:

Unit	Office (2 nd floor) square feet	Warehouse (1 st floor) square feet	Caretaker Dwelling (3 rd floor) square feet
A	1,363	1,520	2,100
B	1,363	1,520	
C	1,363	1,520	
D	2,405	1,406	
E	1,807	2,805	
F	1,363	1,520	
G	1,363	1,520	
Stairs (down)		265	
Stairs (up)	260		
Totals	11,027	12,076	

One building is proposed with a total of 7 industrial/ manufacturing business units and 1 inclusive caretaker dwelling unit on a 1.04-acre tract located on the west side of Dow Road in the I-1 (industrial zone). The property is surrounded by industrial zoned areas on the north, east and south. The buffer zone is located to the west. Industrial Development may be allowed as a conditional use in I-1 zoned properties. The normal density, setbacks, and lot coverage standards for the I-1 district apply.

ANALYSIS:

Zoning

The minimum size for an industrial planned unit development is three (3) acres. This acreage requirement may be waived by the Town Council after a favorable recommendation for such a waiver by the Planning and Zoning Commission. Maximum lot coverage is 50% for industrial

planned unit developments, which includes footprint of the building, decks, and steps. The property total square footage is 45,343 sq feet. The applicant's proposed total lot coverage equals 12,075 sq. ft. or 27% lot coverage. Density of units allowed under industrial planned unit development in the I-1 district is determined through maximum allowable lot coverage as per Section 3.9.1 of the Zoning Ordinance and review of a Conditional Use Permit. The applicant's structures will not exceed 50' in height. Setbacks in the I-1 district are 0' (side), 30' (front), and 0' (rear). The applicant is proposing a 320' setback off of Dow Road; 5' off of the eastern property line, 15' from the north property line and 0' off the buffer zone to the west.

Parking

The applicant is required to provide 37 parking spaces (1 per employee + 1 per vehicle used directly in conduct of such use).

4 employees/unit * 7 units = 28 parking spaces

1 vehicle * 7 units = 07 parking spaces

Caretaker unit = 02 parking spaces

Total parking required = 37 parking spaces

The applicant is providing 37 parking spaces (See Attached Site Plan).

Landscaping

The applicant is requesting a waiver for the 15' Type C buffer yard on the southwestern and eastern property lines. The applicant is providing 8% interior landscaping and landscaping on each side of the building.

Stormwater

The applicant plans to retain all 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.

The Technical Review Committee reviewed this proposal at its July 21, 2005 regularly Scheduled Meeting. The TRC recommended the project to be submitted to the Planning and Zoning Commission if the following 5 comments are addressed:

1. Show fire hydrants.
2. Need to run a 6" fire line for a fire hydrant.
3. 2 inch meter to be installed at the road on Dow Rd.
4. Need to check for fire sprinkler system
5. Show sewer line to tie-in on east side of Dow Rd.

STAFF RECOMMENDATIONS:

Industrial Planned Unit Development proposals are allowed with the approval of a Conditional Use Permit in I-1 zoned properties. If approval is recommended the Conditional Use Permit will be subject to the required findings and TRC comments above and the following conditions**:

1. A stormwater plan must be submitted and approved prior to issuance of a building permit. The stormwater system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
2. Drainage plan must be submitted and approved prior to issuance of a building permit, and signed and sealed by a licensed engineer verifying that the system is properly installed and functioning prior to issuance of a certificate of occupancy.
3. Approval Letter from Division of Water Quality for Stormwater Permit before issuance of Building Permit.
4. Approval Letter from Division of Land Quality for Sedimentation and Erosion Control Permit before issuance of Building Permit.
5. Approval Letter from the Division of Water Quality for construction authorization for public water supply.
6. A driveway permit must be obtained from the NCDOT and Town of Carolina Beach.
7. Sign permits must be obtained for any new signs located on the property.

8. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
9. All structures shall be limited to 50' in height prior to issuance of a certificate of occupancy, certification by an engineer or architect must be submitted and approved.
10. Final project must be designed to provide the required 38 parking spaces and must comply with Article 7 of the Carolina Beach Zoning Ordinance.
11. Dwelling must be constructed to meet minimum NC Fire Code and must be approved by the fire marshal.
12. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
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. 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.
15. Maintenance of permanent open space, parking, streets, drainage systems, utilities, and other such facilities-
All common facilities shall be maintained for their intended purpose as expressed in the approved final site plan. The method of providing for such maintenance shall be submitted prior to Certificate of Occupancy by one (1) or more of the following:
 - a. Public dedication to the Town, subject to the Town's formal acceptance of such facilities in its sole discretion.
 - b. Establishments of an association or nonprofit corporation of all individuals or corporations owning property within the planned unit/mixed use development for the purpose of ensuring maintenance of common facilities.
 - c. Retention of ownership, control, and maintenance of common facilities by the developer or Home Owner's Association.
16. 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.
17. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
18. 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.
19. 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 11, 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. The request for a waiver of the 15' Type C buffer yard only be allowed on the MOTSU buffer side of the development; allow the 5' buffer on the east side, but require the 15' buffer on the north of the building.
2. Ask the Town to consider allowing pervious services for the parking surface at this site

Mr. Parvin said that staff would recommend striking Condition #2 of P&Z recommendations. Mr. Parvin stated the applicant has made provisions for Condition #1 on their updated plans. Mr. Parvin showed an aerial of the site and proposed structures. He stated the garage is on the first floor and offices will be located on the second floor. He showed the site as it exists today. Mr. Parvin stated the applicant has accommodated Condition #1 in his new site plan.

There being no further questions or comments, Mayor Barbour made a motion to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no questions or comments from the public, Councilman Lynch made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Councilman Lynch made a motion to approve the Request for a Conditional Use Permit to construct 7 office units on a 1.04 acre tract located on the West side of Dow Road in the I-1 (Industrial Zone) subject to required findings 1-7, general conditions 1-4, technical review committee recommendations 1-5, staff recommendations 1-19, P&Z recommendation #1, and striking P&Z recommendation #2. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING – CONSIDER A REQUEST TO REZONE PROPERTY LOCATED AT 202 S. DOW ROAD FROM C (CONSERVATION) TO I-1 (INDUSTRIAL)

Ed Parvin, Interim Planning and Development Director, began making the presentation.

BACKGROUND:

The applicant currently owns the mini-storage located at 202 Dow Rd. The property is currently zoned Conservation (C). According to the Table of Permissible Uses, a mini storage is not permitted in the Conservation Zoning District but is allowed under a Conditional Use Permit in the Industrial District (I-1). There are no redevelopment plans for the parcel. The applicant would like his existing use for the property to be in compliance with the ordinance.

SURROUNDING LAND USES:

The property is contiguous to a parcel that was rezoned in April, 2005 from C to I-1 located at 110 S. Dow rd. To the south and to the west, the property is owned by the Federal Government the buffer zone and is zoned conservation (C).

STAFF POSITION:

The area is located adjacent to the buffer zone. The 1996 land classification map from the 1997 Land Use Plan classifies the area as Main Residential. In the current update process the Commission has identified the area as future Industrial. “The policy emphasis in this area is to protect the viability of this area for single family residences with an appropriate mix of community and institutional uses.” (1997 LUP, pg 9-5) The request is located contiguous to zoning consistent with the proposed zoning change and existing surrounding uses. The proposed zoning change is not consistent with the 1997 Land Use Plan but is consistent with the future 2005 Update to the Land Use Plan. Planning Staff recommends approval for the proposed zoning change based on the desired future land use of the industrial area according to the land use update.

PLANNING AND ZONING COMMISSION RECOMMENDATION:

The Planning and Zoning Commission heard the rezoning request at its August 11, 2005 regularly Scheduled Meeting. The Planning and Zoning Commission unanimously recommends approval of the rezoning from C (Conservation) to I (Industrial).

Mr. Parvin asked if there were any questions. Mayor Barbour asked how was it that the property was not ever changed from conservation as long as the mini storage locations have been there? Mr. Parvin stated that in 1996, per the old Land Classification map, it was Conservation and why it wasn't changed then he doesn't know. Councilman Doetsch asked if it was all concrete? Mr. Parvin stated it is.

There being no further questions for Mr. Parvin from Council, Mayor Pro Tem Efird motioned to open the public hearing. **MOTION CARRIED UNANIMOUSLY.**

There being no comments from the public, Councilman Doetsch made a motion to close the public hearing. **MOTION CARRIED UNANIMOUSLY.**

Mayor Pro Tem Efird made a motion to adopt Ordinance No. 05-602 (*Exhibit 3*), changing the rezoning from C (Conservation) to I-1 (Industrial). **MOTION CARRIED UNANIMOUSLY.**

NEW BUSINESS

CONSIDER A REQUEST FOR PRELIMINARY PLAT APPROVAL FOR CORAL CAY SUBDIVISION LOCATED ON THE EAST SIDE OF SEVENTH STREET BETWEEN OLD MARINERS WAY AND PALM BREEZE

Ed Parvin, Interim Planning and Development Director, began making the presentation.

BACKGROUND:

The applicant is requesting preliminary plat approval for Coral Cay Subdivision located on the east side of Seventh Street between Old Mariners Way and Palm Breeze. Coral Cay has a total area of approximately 2.0 acres and will consist of 7 lots. Access to the subdivision will be provided by Seventh Street and will consist of a 36' right-of-way.

ANALYSIS:

Zoning

Single-family/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. Maximum height for unsprinklered structures is 50 feet for this district. The maximum lot coverage per lot will not exceed 40% and is within the allowable density for the R-1 zone.

Road and Utilities

The proposed road (Coral Cay Drive) will be 22 feet of pavement (26' including curb and gutter and 36 feet of private right-of-way). The applicant is asking for a reduction in right-of-way from 44' to 36' to accommodate for the 12.5' side setbacks on the existing corner lot homes.

Landscaping

The subdivision will be required to provide a 6-foot wide street yard with street trees every 50' on Seventh Street and a Type "B" buffer on all sides of the subdivision not adjacent to a street. They are asking for a waiver from this requirement for all interior streets due to the reduction in right of way. 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.

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. Show existing vegetation on site that is 4" in caliper and/or 10' in height. Include landscape plan for the Type "B" buffer yard to include types and sizes of trees and shrubs.
 - b. Show bearing and distance chords on the cul-de-sac.
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 Water Quality for stormwater.
4. Approval letter from the Division of Land Quality for Sedimentation and Erosion Control.
5. Approval letter from the Division of Water Quality-Public Water Supply Section.
6. Fill permit and approval letter from the Army Corps of Engineers.
7. Street trees and buffer yard landscaping shall be installed according to preliminary plat submittal. Existing vegetation can be used for this requirement.
8. 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.
9. Sidewalks shall meet the requirements of Article 8 Landscape and Development Specification Standards.
10. Lot coverage for any lot located within the subdivision shall not exceed 40% maximum lot coverage.
11. Road names must be in compliance with the New Hanover County listing of road names.
12. Designate ownership of all open space. 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.
13. No structures or fencing shall be placed within any easements located within the subdivision.

14. 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.
15. 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 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. Complete sidewalks all the way around the cul-de-sac
2. Sidewalks on both sides of 7th Street be handicap accessible
3. Variance is needed regarding the 12.5 setback where the two corner lots are created

Regarding Item #3 under the P&Z recommendations, Mr. Parvin stated that the Board of Adjustments would not consider this a hardship and they would not be granted a variance. He stated that is why P&Z went back and reduced the right-of-way from 44' to 36' so that gives them their 12.5' on existing homes on the lots that are there now.

Mayor Barbour asked if #3 of P&Z recommendations no longer applies? Mr. Parvin stated that is correct.

Mr. Parvin stated this is going to be a test site and Operations is going to allow pervious concrete for this site. He asked if there were any questions. There were no questions from Council.

Mayor Barbour asked for any further discussion. There being no further discussion, Mayor Barbour made a motion to approve the Preliminary Plat for Coral Cay Subdivision subject to all 15 staff recommendations and Planning and Zoning recommendations #1 and #2, striking #3.

MOTION CARRIED UNANIMOUSLY.

CONSIDER ENTERING AN AGREEMENT WITH DR. MARK IMPERIAL FOR THE DEVELOPMENT OF THE TOWN'S WATER ACCESS AND HARBOR MANAGEMENT PLAN

Ed Parvin, Interim Planning and Development Director, began making the presentation.

Mr. Parvin stated that one of the implementation actions for the 1997 plan and the Land Use Plan Update was to have this create a harbor management plan. He said planning staff sent out a request for proposals this summer and received several proposals. Planning staff would like to recommend hiring Dr. Mark Imperial to conduct a study. In his proposal he has an outline with a detailed description describing each phase of the project. He has significant experience with water access issues and the proposal includes entering a subcontract with Cape Fear Council of Council of Government to handle GIS and that will be with Scott Logle who is the one who has been doing our CAMA Land Use Plan Update. It will also utilize an MPA student intern to help with the plan. Mr. Parvin asked if there were any questions. He also stated that the memo

addresses the areas that Planning and Development wants the plan to address. He stated if there are any additional areas, please let him know now or in the future and they will add those.

Councilman Lynch asked if it will take six to nine months, as his letter says? Mr. Parvin stated yes. Mr. Parvin stated they are tentatively thinking about starting in January. Mayor Barbour stated this fits right in with what we have been wanting to do in the yacht basin, which addresses the mooring and boring fields. Mayor Barbour hopes that he will also consider public access for boat launches in with the plan.

Mayor Barbour stated that while we are discussing an approach to MOTSU for room at the park for the possibility of a skateboard park, he would like to also have a discussion with them about the use of the dredge pond as a future public boat ramp. Councilman Doetsch said that was a good idea. Councilman Lynch stated we need it. Mayor Barbour stated that would make a wonderful area. He stated it may be a long shot, but it never hurts to ask. Mayor Barbour stated he would give Council the specifications that he has that the State requires for a public boat ramp in terms of acreage and so forth. He stated he has that information. Mr. Parvin stated he had talked to Councilman Macon about some things that he wanted to see added in the Plan. He said if anyone had anything else, feel free to let him know anytime and they would look at adding that also. Councilman Doetsch said they might want to add a pump out station because he thinks we only have one and that's right behind the Winner boats. So, if you're going to provide mooring opportunities for people on boats, you probably need to provide some kind of a pump out station there, too. He said we certainly don't want them dumping into our yards.

Mayor Barbour made a motion to enter into a contract with UNCW with Dr. Mark Imperial for a Harbor Management Plan. **MOTION CARRIED UNANIMOUSLY.**

SELECT A VOTING AND ALTERNATE VOTING DELEGATE FOR THE NATIONAL LEAGUE OF CITIES' ANNUAL BUSINESS MEETING TO BE HELD ON SATURDAY, DECEMBER 10, 2005 AT THE CONGRESS OF CITIES IN CHARLOTTE, NC

Councilman Lynch made a motion to select the mayor as the voting delegate and Councilman Macon as the alternate voting delegate. **MOTION CARRIED UNANIMOUSLY.**

CONSIDER ADOPTING RESOLUTION NO. 05-844 ENTERING A NC INTERLOCAL AGREEMENT FOR RISK MANAGEMENT AGENCY (WORKERS COMPENSATION)

Lynn Prusa, Town Clerk, stated that back in June she asked Council to consider adopting a similar Resolution and Agreement that was sent to us from the NC League of Municipalities. The agreement at that time was for our pool for the property and liability insurance and at this time it is a similar agreement, but it is for the pool that we're in with other municipalities for the workers compensation. She stated we need you to approve that Interlocal Agreement for the group self insurance pool for workers compensation risk sharing by adopting Resolution 05-844.

Mayor Barbour made a motion to adopt Resolution 05-844 (*Exhibit 4*). **MOTION CARRIED UNANIMOUSLY.**

CONSIDER ACCEPTING A PROPOSAL FOR A 59 MONTH LEASE WITH COPY PRO FOR THE REPLACEMENT OF THE COPY MACHINE FOR THE POLICE DEPARTMENT/TOWN HALL

Mr. Peck, Town Manager, stated the Police Department has the former Town Hall copy machine – the one that we couldn't get maintained and couldn't get fixed under the old contract. He stated Copy Pro has done a good job trying to keep it going, but they are begging for mercy because the Police Department has just killed it. He stated it was dying when they got it and it is terminal now. So, because of that, Copy Pro has decided that rather than have someone move in with the Police Department who is capable of fixing it on a daily basis, they would offer us some very good terms to upgrade our existing copier from a 35 to a 45 copy a minute copier and give us more copies more month on a new copier in Town Hall and take our copier and move it to the Police Department. At \$181 increase a month, he thinks we can spread that through the departments this year without any budget amendment. He asked Council to approve this contract.

Councilman Doetsch if there was any way we could fill the old machine with concrete and then ship it back to the people who gave it to us originally, COD? Mr. Peck said they are actually looking for the guy and Mr. Clyburn's job is to look for the guy to try and sue him for the difference. He stated they are still working on that.

Councilman Lynch stated he went over the numbers and think they are fine. He recommended Council approve the Manager's request to get the new copy machine.

Mayor Barbour made a motion to approve the request for the new copy machine. **MOTION CARRIED UNANIMOUSLY.**

CONSIDER APPROVING A LEASE AGREEMENT WITH VERIZON WIRELESS FOR INSTALLATION OF ANTENNAS ON THE DOW ROAD WATER TOWER

The Assistant Operations Director, Harry Oakes, made a presentation to Council regarding the lease from Verizon or Cellco Partnership. He stated that if Council the plan contains the tower's location, the previous lessee and their waveguide bridge. Right above it is the new proposal for a somewhat larger facility, fenced in for their security, and also a larger waveguide bridge which is essentially an elevated red bridge in which the cables are hanging from there going from the facility to the tower itself. One of the exclusive conditions of the contract is, of course, that the building be able to be fenced – that compound area of lease – and that the coax ladder on the water tower be under their control. A couple other things added on there was that the tenant shall not have the opportunity or right to add additional antennas or cables without prior approval from the Town. We also would hold them to a five year lease. He stated that page 4, item 6 contains the terms of the contract per monthly lease surpasses that of the previous lessee

somewhat, so we're doing pretty good in that respect. Lastly is that any taxes that may be applied to this (it is municipal property and it will be limited to any, if any at all) would be the responsibility of the tenant. The only thing they request is that they have the right to review and appeal those additional taxes. Essentially, that's it to make it brief, and Mr. Oakes asked for Council's consideration and approval of that lease.

Mr. Peck asked did you have option B as to the location? He apologized to Lynn. He stated he gave her the wrong one. I think it's either A or C, but he recognizes that it is not B and he will make sure that we attach with it the proper option for location. He stated that was his error and apologized.

Councilman Doetsch asked if this was the tower on Dow Road? Mr. Peck stated yes. He stated essentially where it will be, as reflected on the option B sheet where it says "lessee 5' x 10' lease area for generator" – that's going to be the location of it rather than on the other side because there's a water line that runs underneath where they want to put their pad.

There being no further discussion, Mayor Barbour motioned to approve the lease with Verizon Wireless for installation of antennas on Dow Road water tower. **MOTION CARRIED UNANIMOUSLY.**

Mayor Barbour extended his appreciation to Ted for all the work that was done on the skateboard park.

Mayor Barbour expressed his appreciation to staff for all the help with the hurricane and stated he has had a lot of positive feedback.

Councilman Doetsch proposed that we give everyone who did participate in the hurricane and subsequent actions afterwards a letter of thanks from the Town. He would also like to perhaps have a picnic for everyone. He would like to see the people from CP&L included in this also. He stated that even though they camped out over the Fire Department for most of the hurricane, they were here with us. He would like for us to make that happen and everyone agree to it tonight. Council agreed. Councilman Doetsch said to make sure we include everybody and not to leave anyone out.

Valita Quattlebaum, Public Information Officer, stated that on October 13th at 3:00 p.m., if Council is in agreement, they want to have the grand opening for the parking lot and bath house at 1708 Canal Drive. Council asked to be reminded of that and Ms. Quattlebaum stated she would send out an email.

Lynn Prusa, Town Clerk, stated we need to conclude our emergency meeting and end our state of emergency. Mayor Barbour made a motion to adjourn our state of emergency meeting from September 13, 2005. **MOTION CARRIED UNANIMOUSLY.**

Councilman Doetsch stated he was speaking with some business owners over the last week or so and they would like for Council to consider some sign ordinances involving informational signs on Hwy 421. He would like for Council to consider establishing a sign committee to look at

signage. He stated there is not a year that goes by that we don't have something off of the sign ordinance come to us for some kind of ratification or change. He stated he would like to see some people that – that's all they do – get involved with it. He thinks we can be a lot more user friendly in the way we do signs on the beach for businesses if we had some input from people. Right now he thinks input is made from individuals and it goes to P&Z and they don't really look at it too closely. Then it comes to Council in the same manner. So, he would like to see an official group set up to just look at signage in Carolina Beach – maybe a cross section of highway and regular business owners along with citizens – to make sure that whatever the proposals are, that they are agreeable to our citizens of the beach and maybe to include a staff person and somebody from DOT. He stated that we attempted to do the signage on Lake Park Boulevard before and we ran into a real stiff block with DOT on it, so maybe if we get a more formal group together we can do a little better. He stated that would take us out of a lot of the issue in a lot of cases except when it comes to final approval.

Ms. Prusa asked if he was recommending proposing a standing committee or ad hoc? Councilman Doetsch said standing committee. He said this is a committee that will never really go away and will just continue to work on issues in signage. And as the town gets better and the needs get greater, they will just take on a new responsibility. Mayor Barbour asked how many members he was proposing? Councilman Doetsch said no more than seven with some kind of split between highway business, business and residential residents including a staff member. He stated he would work on getting someone appointed from DOT. Mr. Parvin said Planning has got to staff that and they can talk about how to do that. Councilman Lynch thought it was a good idea. Councilman Doetsch said he hated to see things come to Council from the sign ordinance and that it is a zoo. Mayor Barbour stated he had just received information yesterday from the Randall Travel Marketing Group and one of the things they didn't like was the signage. There were seven or eight things they liked about our area and two or three things they didn't like - one of those was signage – lack of signage. Councilman Doetsch asked who do we look at for bringing that back to us? Mr. Parvin stated they would look at how they would want to organize that. He wants to think about who should be on it and how they are going to meet, etc. Councilman Doetsch is not sure if they need to come between P&Z and Council or they need to be ahead of P&Z and wants Mr. Parvin to consider that. He stated he personally would rather have them between P&Z and Council so when P&Z reviews it to the ordinances it can go back and forth between them until they get it ironed out and then it come to Council, thus saving Council time. Mayor Barbour suggested that Ed think about that. Councilman Doetsch is open to ideas.

Mr. Peck stated they made it through the first run about storm debris and he will tell the press this also. He said it went well. The next one will start the 10th of October for vegetative debris. Construction demolition material such as shingles, etc., the price they were able to get for that from their contractor was such that we can pick it up ourselves, put it in the dumpsters and have it hauled by Waste Industries a lot cheaper than they can do it. So, over the next couple of weeks their staff will be out picking all of that debris up and getting rid of it. It is less than 2,000 cubic yards.

Mayor Pro Tem Efird thanked the fire department for containing the fire at Sun Skipper last weekend. She said they lost a really great guy, but they did a good job and the family really

appreciated it and felt good about the way the department handled the situation. Councilman Lynch also thanked the chief for the aggressive approach they are taking towards catching drug dealers.

Councilman Doetsch said his wife called the EOC and she said the person she talked to there was extremely polite and extremely knowledgeable about what was going on.

Mayor Barbour thanked everyone for their patience tonight and stated they will get through this issue with the skateboard. He reiterated that he was disappointed but said they would back up, regroup and try again.

ADJOURNMENT

There being no further business, Mayor Pro Tem Efirm made a motion to adjourn. **MOTION CARRIED UNANIMOUSLY.** The meeting adjourned at 11:33 p.m.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

APPROVED: _____