

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

September 29, 2006

The Town Council of the Town of Carolina Beach met in a special meeting on September 29, 2006 at 2:00 p.m. in the Council Room at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor, Bill Clark; Mayor Pro Tem (MPT), Alan Gilbert; Councilwoman, Pat Efirid; Councilman, Jerry Johnson; and Councilman, Joel Macon. Also present: Town Manager, Tim Owens; and Administrative Secretary II to the Town Clerk, Sara Hartman.

Mayor Clark called the meeting to order.

REQUEST FOR A REDUCTION IN FEES FOR THE NEW CONSTRUCTION OF A WAREHOUSE PROJECT AT 100 DOW ROAD

This issue is being brought back to Council as a result of Councilman Macon's request for staff to re-examine the fee schedule. The town manager recommended that we delete the per urinal/per toilet fee. The \$300 per 100 sq. ft of office space equates out to \$12-12.50 per gallon and he feels that is equitable. They requested that we keep the per urinal fee in the schedule for common areas that are open for the public. He explained that a typical office is about 100 sq. ft., and the state says that each employee will use 25 gallons of water per day and that equates to \$12.00 per gallon charge.

What that means for this proposal is essentially it would be about \$18,000 less than the originally proposed fees that equates to \$60,481 and that would be the amount they would pay instead of \$78,481. They felt like the original proposal was unfair.

Mayor Pro Tem Gilbert said that he talked to Mr. Pagley and he explained that what happens sometimes is the fees get perpetuated from each budget year and are not used a lot and are not tested, such as in this case. Mayor Pro Tem Gilbert said he would like for staff to take a look at the fees in the budget to see if they are equitable, and the town manager agreed. Mr. Owens said this does happen from time to time and they will take a look at all of the fees.

Councilman Macon made a motion that we accept the new fees.

Jim Conlon said he asked his engineer to give him some kind of idea what he felt would be a fair fee in this scenario. His engineer calculated it, based on a residency equivalency type of arrangement, and they were at \$12,000. He said this was based on what the state would say would be normal usage, and he doesn't understand how he could go from \$12,000 based on what the state would say would be normal. The town manager said he doesn't have an explanation because he hasn't looked at it so he cannot dispute or

promote it. He said the staff researched it and was unable to find the original discussion for establishing these fees.

Next to speak was Mr. Conlon's Engineer, Jim Fentress with Stroud Engineering. Mr. Fentress explained what he did was look at 6 employees per office at 25 gallons per day per employee and contrived an overall flow rate for the facility and divided that by 360 gallons a day which is the residential equivalent for a three bedroom home and based on that is how we came up with \$12,000. The overall design flow for 7 units was 1,050 gallons per day based on 6 employees and they have provided parking for 6 employees for each one of the units. They felt this was fair and equitable based on the flow rates the state uses for these types of facilities. Councilman Johnson asked Mr. Fentress if they presented to the town operations department what they came up with and he said it was not presented to them.

The town manager explained further how they arrived at the numbers and he felt that what he recommended was fair and equitable.

Councilman Macon said he doesn't have a problem with accepting the recommendation and continuing to look at it.

MPT Gilbert said he believes that staff found the flaw in the office space fees and have corrected that so it is more equitable. He feels that more time needs to go into this before the next budget. The bigger picture is testing these fees. We need to continue to go forward, and as we hash this out and we find that something is not right then you may be owed something.

Councilman Macon said he would like to stick with his original motion. If there are still some feelings that the fee is not equitable then we need to continue to have the committee look at the fee structure and if we are off then there is no reason why we can't work with the applicant. Councilman Macon made a motion that we accept the new fees as presented by the town manager and if the fees are found to be inequitable that Mr. Conlon be refunded. **MOTION CARRIED UNANIMOUSLY.**

STORM WATER PIPE ISSUE – MONA BLACK MARINA

Craig Turner, Vice President with Land Management Group, was hired by the town to prepare a storm water assessment of Black's Marina and Captain's Quarters. Mr. Turner opened with a presentation. He explained Land Management is an environmental consulting firm and they presently have a staff of 30 environmental scientists that do work related to land development, wetlands, coastal issues, CAMA permitting, hazardous wastes, geological investigations, soil works, and a broad spectrum of work that has to do with any of the environmental regulations currently on the books.

He said they were asked to look at the two sites at Black's Marina and Captain's Quarters to give Council a snapshot picture of where we have come from and where we are today,

and to do a qualitative assessment which means they did not collect a lot of field data, measure sediment or do extensive research because that is not what they were scoped to do. They tried to figure out the processes that were involved, what processes of those came from town activities, and what's the land use around there. They spoke with town personnel and they visited both sites. He referred Council to the report that he submitted concerning Black's Marina (*identified in the minute book as Exhibit 1 herein*).

In reference to Black's Marina, Mr. Turner said the best record that you can find about what has happened to a site is to go back and look at the existing aerial photos and see what the land use was at the time of each flight of aerial photos that were conducted and that is exactly what they did.

They found out that the drainage swell that goes down through the Black's Marina site is an old natural swell where water came down and at some time in the past, time undetermined, that swell was piped. In talking with county personnel, the end of the old galvanized pipe had begun to deteriorate and concrete sections of the pipe were breaking and falling in. It was badly decomposed and still eroding back and hadn't had much maintenance over the years. At the time the property owner looked at building the facility as part of the overall CAMA permitting process the state wanted to see what are the storm water needs and what are you willing to do. So there was a joint effort on the town's part as well as the applicants to bring the storm water discharge up to state specifications and basically that is what was done - replacement of the old existing pipe, bringing it up into the existing headwall with an outlet and tying it into the bulkhead that was constructed for the entire marina.

Mr. Turner said to the best of his knowledge no new drainage areas were incorporated so the water that was going through before is the same water that is coming through there now - pre and post marina construction. He said so the town, as best as we can tell, didn't add any more drainage area and they didn't add any increased flow. He said there is nothing on the city's part that has caused any accelerated volumes to come through there in terms of planning design. There was a large water main that burst and led to some sediment being discharged down through there and that is understandable and that will happen during those types of events, but it's not something that the town from a planning purpose has added additional drainage areas, caused additional runoff which could cause additional sediment to come down. In summary for the Black's Marina site we have an outfall pipe that may be having a little bottom scour which will move a very short distance out into the natural water body, but we don't have anything in the way of added flows, added values that are going to generate higher sediment outputs than pre-dated the sediment output that drainage swell would have carried prior to the marina construction.

Mayor Pro Tem Gilbert said, so you're saying like this photo of 1981 basically pre-dates the marina and this swell goes back toward the road and it looks open. Mr. Turner said we cannot determine if there is any pipe laid in, but the v-shape in the marsh edge is characteristic of landscape features where water comes out and begins removing sediment at the mouth. MPT Gilbert said it looks like it is fanning out and Mr. Turner

agreed. MPT said so this is the natural outflow, and Mr. Turner said that is Mother Nature doing her work. MPT asked, is there anyway you can tell from event to event how much material could get deposited through there? Mr. Turner said site specific to this, no. He said you would have to find some comparable land features and swells and do some limited sand generation sampling and coastal modeling - you could possibly come up with some numbers. MPT Gilbert said that would indicate what a natural deposit of material would look like, and Mr. Turner said that is right. He explained that these coastal margins are going to carry some body of material because that is how Mother Nature does it.

MPT Gilbert asked, when was the marina actually dredged? Mr. Turner said the permit was issued in 2002 by CAMA. He referred everyone to Figure 6 of the report that shows a 2002 aerial and the bulkhead shows the dredge area out of the CAMA application. After viewing photographs with the use of the overhead projector, Mr. Turner stated that in 2002 the ditch was still open. MPT Gilbert asked if material was removed from the bulkhead during the original construction. Mr. Turner said that was not shown on the original application. He said there is nothing in the CAMA application relative to dredging in this area.

Mayor Clark said you mentioned there was bottom scour that we are getting out of the pipe, and he asked if that is from high flow. Mr. Turner said if you get peak rain (like 4 inches per hour) that occurs within low tide it becomes the garden hose effect. It will fill up the pipe and have it jetting out at low tide, it will go straight into the water and that will set up a hydraulic and you will actually pick up some material off of the bottom. It's not a frequent event, but it will happen. Councilman Johnson asked Mr. Turner, in this particular situation and in your opinion, how far would that scour be pushed down that stream? Mr. Turner said it would depend on how much rain we had, where we are in the tidal cycle, in what period of time, and how much rain did we have before that. He proceeded to give Council some examples.

MPT Gilbert said, what I just interpreted is we had an event that occurred, a water main break that wasn't caused by the town, there could have been some particular that was transferred through that pipe and there could have been some scouring but we don't know if it was low or high tide, and there is no way to predict how much material and where it was deposited from that event. Mr. Turner said without knowing some of the factors and nailing them down you are kind of doing this (demonstrating with his hands).

Mayor Clark said this concludes the presentation from Mr. Turner concerning Black's Marina. He then asked the town manager to present his report.

The town manager presented and went over some of the photographs of the area in question. Mr. Owens said he became involved with this as soon as he got here. He continued, the marina project was built to include the dredging of material in front of the storm water outfall. The town installed a pipe in the drainage ditch to improve the marina project.

A waterline break occurred in June 2004 basically from an NCDOT contractor that damaged a water line and the town spent approximately 12 hours trying to repair the problem. He feels sure there was some mud and silt in the hole that we were pumping into the street that was going down and into the drainage way.

We submitted an insurance claim to the insurance company. They ruled that it was not our fault and it was the contractor's fault and that we do not have any liability so they will not pay for any damages that occurred. He said, the marina is one of several businesses claiming damage due to either being out of water or damage from the water.

He said that some time following the Mona Black Marina incident, a homeowner from the Captain's Quarters claimed the town's storm water pipe filled in their marina.

In the summer of 2006, the town hired an engineer to review the town's concerns of both the Captain's Quarters and Mona Black's Marina.

The owner of Mona Black's Marina claimed that the town's storm water pipe is causing the marina to fill in and seeking damages for the entire dredged area (\$15,000) plus attorney fees. They claim that the majority of the filling occurred due to the waterline break.

The manager's assessment of Black's Marina is:

He became involved in April 2006 and he has visited the site on many occasions.

The storm water outfall is 1 of 36 in the basin.

There are suspended solids and particles that enter the basin through the system.

The force of water would fan soil out (particularly at low tide).

The original permit application drawing for the marina shows an existing elevation change near outfall.

The outfall predates the marina.

The owner dredged directly in front of the outfall.

The outfall is equipped with sediment basin to help trap sediment.

The town did not cause the line break and only repaired damage that occurred by a contractor.

The dredged areas do fill in naturally (further exacerbated by force of water from an outfall that predated the marina and by a sailboat that rarely moves).

The town's insurance company stated that the town is not liable and it will not pay the claim.

After studying the situation, The Land Management Group has determined that the town has no obligation or liability to the marina.

The town manager feels that based on his findings that the town is not liable or obligated to remove sediment from the dredged area nor obligated to pay legal bills. He recommends that the town continue routine maintenance of the system to lessen any sediment. He also recommends that we investigate installing riprap at the end of the outfall to lessen the scour.

Councilman Johnson asked, did the town ever seek reimbursement from DOT since it was their contractor that was responsible for the water line break? The town manager said he wasn't here at that time and he doesn't know for sure, but he doesn't believe so. He said that typically the town would work with DOT and they work with us.

The Mayor asked the representative from the storm water department if we increased any maintenance in this area for clean outs. Harry Oakes from storm water responded by stating, yes, we have installed some sediment traps and we have increased our sweeping also.

MPT Gilbert said with respect to the outfall with the installation of the riprap do you think that would take care of the scour, and Harry Oakes answered yes.

MPT Gilbert asked if the town went after the contractor. The manager said that is the way that he understands it and it is a case by case basis whether we would go after the contractor or not and we try to work with public entities like DOT or the power company because invariably we may mess up something. MPT Gilbert asked if there was ever a different route considered for this. The town attorney said his recollection is a claim was made by Ms. Black with the NCLM and that is what generated the initial investigation and an engineer from Raleigh was hired by the League to investigate it and he drew the conclusion there was no action or negligence on the part of the town that led to whatever damages they said they suffered and that is why the insurance company denied the claim. MPT Gilbert said so we didn't initiate the claim and it was made by Mona Black Marina against the insurance company. Mr. Owens explained that whenever anything happens and somebody starts questioning us we will call the insurance company to put them on notice. Councilman Macon and Councilwoman Efirid both said it was handled on the management level at that time. Councilman Efirid said that Ms. Black tried to make contact on several occasions at that time that she know of, but it wasn't followed through and she feels it was a big mistake on the part of the town that it wasn't looked into earlier than what was done.

MPT Gilbert said he would like to hear from Ms. Black or her representative of what has been presented or if anything was inaccurate or needs clarification.

Mr. Randy Simon, the marina manager at Mona Black Marina located at 930 St. Joseph Street, said that in reference to what the town attorney just mentioned he has no idea where that came from because Ms. Black never filed a claim with the League of Municipalities or never filed a claim against anybody or anything. The town manager referred to a letter dated July 13, 2005 from the insurance adjuster, Max Eatman that references a letter from Ms. Black's attorney Mr. John Wessell. The town manager added that it probably would have been a letter earlier than this because it happened in 2004; and as soon as we got the claim, we contacted the NCLM and they came out. Mr. Simon said at any point they do not recollect filing a form for retrieval from any insurance company and they always felt that the town was responsible for that easement, that pipe, and what is around it and what comes out of it.

Mr. Simon said they started initiating this in March 2004 and he believes the spill was in June 2004, and at that point they wanted the town to assist them because what happened as the result was the town's business (referring to DOT the contractor that broke it). Mr. Simon said that he hopes they are not playing on words, because he is hearing distinctly the town is not responsible for the break. He said they have felt all along that the town was responsible for what was coming out of the pipe. He said they gave the easement and they cannot touch that pipe. He said this started 3 months prior to the spill and he saw the words that it was a major contributor and it was not. He explained that it contributed to their dilemma at the marina, but the problem existed to a degree that you could see the sand rising from the bottom of the water and replacing the water with dry sand at one point that was above the water level. He said the situation has been on-going.

Also, he said that he heard a report from Mr. Turner that nothing has been added to this storm drain system. Mr. Simon said that is a complete falsehood. The original pipeline ran 120' from the outflow, the one that was so deteriorated, and it was replaced with a much larger pipe at the time the easement was agreed to. It ran from the outflow to St. Joseph Street and that is where it ended. It also had a branch that would drain the shopping center. Since then a line has been added to it that runs all the way across the Jubilee Park area and underneath the four lanes at Lake Park Blvd., and behind Microtel to a pond in that location. He said so the report that states that nothing has been added to it is not accurate because he knows that there are approximately 32 open grates to that particular pipeline that outflows into Mona Black Marina and there are 4 that goes to St. Joseph Street. So there are 28 additional open grates now leading into there in contradiction to the statement that nothing else has been added.

Mr. Simon asked if he could introduce his licensed marine engineer who has reviewed the report. He would like to go over what he considers to be major discrepancies in the report submitted by the Land Management people.

Mr. Edward Albada, PE, opened by stating that he has 8 years of experience with a specialty in coastal engineering worldwide. He also said that he would like it to be known that he is representing himself at this time and not his company. He is a member of the Mona Black Marina and a concerned citizen. He believes that Mr. Turner has

made a simplistic explanation of the situation and he believes that the situation demands that we look at it more comprehensively.

Mr. Albada said that the first statement that Mr. Turner made was that he did not make a quantitative assessment of the problem and that he assessed it qualitatively, but yet in his report he makes some bold statements to the matter that there is no sediment coming out of the discharge pipe and there has not been a problem to date. He argues that such statements have to be made on a quantitative basis.

Mr. Albada said that Mr. Turner also addressed that the capacity and sources of the swell has not increased without describing the existing domain of the swell or the discharge pipes and to date we don't know the exact area and what the sources of whatever feeds into this discharge pipe. He said to date we don't know the exact area or the sources of whatever feeds into this discharge pipe. We also don't know if the swell was manmade. He heard some inferences that it was a natural swell.

He apologized for coming up with a lot of further questions and he realizes that he is being particularly critical of Mr. Turner's report. He doesn't have the answers to these questions and he poses them to Council for consideration.

Mr. Alabatto continued that he has heard a lot about the garden hose effect and the possible lining of riprap along the swell. He said that Mr. Turner is correct in stating that at times of high flows and low water, in other words low tide with a lot of discharge, there will be scour from the beginning of that swell out into the open water. Mr. Albada pointed out that during times of low tide and high water that this implies you will get sedimentation to collect inside that scour hole, which also implies that there is sedimentation coming out of that discharge pipe and settling into that scour hole for a future point in time when you will get high flows and low tide to push that sedimentation out again. So by that very definition he is implying that there is sedimentation coming out of that discharge pipe. Mr. Albada believes it would be very difficult to get a CAMA permit to do that, and he also believes that is addressing the problem and not the solution.

He said that Mr. Turner also touched on sediment load and he didn't make a distinction between bed load which is sediment moving along the bed and suspended load which is a totally different phenomenon.

He concluded by stating that Mr. Turner's report is a qualitative report based on visual observations that he made at the site visit, and on page 3 of the 4th paragraph of his report it states "Subsequent to that period, Figures 10, photo 6, 7 and 8 show the extent of mean low water now and indicates that there is still sufficient water depth below the vessel hull." He said that with all due respect the water in the sound is nothing like the Florida Keys so to get an accurate reading of the water depth you would need to do a proper survey.

The deposition in the dredge area also does not consider the complex phenomenon that the situation demands, for example the tidal currents that may wash the currents north

and south within the sound as well as possibly some salinity effects of the fresh water entering the saline sound. You also have a dynamic water surface elevation which can contribute to relative set in motion, and he believes that to get a proper interpretation of where we think some sedimentation could occur would require some hydrodynamic modeling at the least or some detailed surveys of the tank.

Mr. Albada said they also did mention the coverage of the system or the efficiency of the system. They don't have records of the maintenance schedule or the cleaning out of the outfall.

The last comment that he made was concerning the picture that Mr. Turner claims was taken at the site on August 3rd at 2:10 p.m. According to the tidal records on August 3rd at 2:10 p.m. it was high tide and Mr. Turner said it was taken at approximately mean low tide. He believes the picture was taken at a lower than normal tide and he suggested that Mr. Turner check his record on when high tide and when low tide was on that date.

MPT Gilbert asked to see the photo of the sailboat. He then asked Mr. Albada if in his opinion with his background, could that sailboat where it is positioned in that marina when you talked about transporting material high/low tide north and south, could that sailboat cause shoaling around it and material be deposited next to that sailboat. Mr. Albada said it is possible. The sailboat would definitely retard the velocity. MPT asked, so you would get some shoaling around it? Mr. Albada said, possibly. MPT Gilbert then asked Mr. Abatto in his experience as member of that marina, how frequently does that boat leave that slip? Mr. Albada answered, once every two weeks. Councilman Macon said, for clarification that is a catamaran and very little is under water. Mr. Albada said especially the bow, but the catamaran does protrude from the bulkhead line. MPT Gilbert said it sticks out pretty far. He said from watching it over the year, and every time he goes down there the boat is there and he was curious if it could cause some shoaling. Mr. Albada said he did miss one point that he would like to address real quick and that is that Mr. Turner said that based on his visual observations he assessed that the bottom contours were approximately in the same position that they were in during 2001 before the marina was built, but apparently he wasn't aware of the dredging that occurred in 2004 which removed 1,000 cubic yards of material.

This concluded Mr. Albada's presentation.

Councilman Macon asked Mr. Simon, after the 2004 event and when you dredged in November, how much was spent then? Mr. Simon said \$16,000 for the two slips only. He said that he hopes it would be common knowledge that if you have the area to the two slips and most particularly where the catamaran was and to redredge at a cost of \$16,000 that adjacent slips were damaged in some form that Ms. Black has not brought to the table. She is just seeking for the two slips that were most severe, and continues to be, damaged by the outflow of the sediment and silt that is still coming out of that storm drain. Councilman Macon asked, based on that 2004 dredge was there contact with the town? Mr. Simon said, yes.

Councilman Macon explained that he is trying to work out a timeline, so basically we have already established that if we have a contact from a citizen that we have a problem that a call would be placed to our insurance company. Mr. Owens said basically if we get a call like that and we perceive there could be problems or liability we will contact the insurance company, and that happened in July 2004. Councilman Macon said so we have established that, and he tends to agree that there have been improvements in that pipe and an increase in size as well as the Microtel having been built and improvements made in the piping at that time. Prior to the Microtel and prior to other things that based on flows and pipe size, and the reason why the pipe was increased in size is because he has seen the water flowing across St. Joseph Street and washing out the front yard of a little house there and that is why the pipe size was increase. There is a natural swell that's probably been there that flows toward that area and typically where pipes end up is where the natural swells are located. So, we have established that it has already been flowing that way, we have established that we have improved the size of the pipe, that we probably have had more sediment going in there before we improved the size of the pipe, we have established that there has been construction that has possibly increased the volume of flow as well as increasing the size of the pipe, and we have established that something happened because it didn't just appear over time – it appeared in a short period of time. Mr. Simon said his contention is that it has been appearing continuously over a long period of time, and the problem was added when we had that 12 hour incident and it added to the continuation that I brought to the attention of the town in March of 2004 and have continuously been doing that for that 2 ½ year period. Councilman Macon asked, so what we are saying is that we didn't break the pipe and somebody else did, but when we were fixing the pipe any sediment that would have been pumped in that line drain we would have caused. Mr. Owens said that is right and we had to pump the hole to repair the line and the water went down the street and into that storm drain. Councilman Macon said so any sediment would have gone into that drain and that is what we would have caused. Mr. Owens said that is right as a secondary impact of somebody breaking that line.

Councilman Macon asked how much we have spent so far for engineering fees to look into this? Mr. Owens said \$2,400 total and a lot of staff time. Councilman Macon said that he tends to agree that there is likelihood of us being able to put in riprap and he doesn't know what the ability of CAMA is on that. Mr. Owens said that Mr. Turner may be able to shed some light on what he thinks our permitting chances are and if he feels that would allow us to do that. Councilman Macon asked, if we hired Land Management on behalf of the Town of Carolina Beach to do that what would you say our odds are to install that type of material there? Mr. Turner said we would do a modification of the first CAMA permit and anytime you are trying to elevate storm water discharges that carries a little more weight in what CAMA will allow and there are some provisions within the CAMA regulations. Mr. Owens asked if there is something you can install on the pipe itself and not have to go into the water? Mr. Turner said you would have to sit down with your engineers and look at your choices. Councilman Macon asked, so odds could be fairly good? Mr. Turner said we would have to call CAMA and find out. If you extend it out to the mean high water they get very particular about that.

MPT Gilbert said his thought is that the riprap is probably the most cost effective way to do it. He asked Mr. Turner if that is his feeling that the riprap is cost effective but there are other opportunities if we can't do it. Councilman Macon said the \$100,000+ option is similar to what we discussed with Kure Beach and they are doing it. He said they are doing a study of that as far as the ocean is concerned and he questioned if they could become part of that with some grant money as far as the sound is concerned.

Councilman Macon said he feels that we may have caused the original problem to a certain extent and he is willing to assist in a refund of portions of that original dredging, and he is for looking at permanent solution to all of our outfall pipes one at a time to make sure that we don't have this problem. He feels this way not because it is causing a business person a problem, but because it is an environmental issue. MPT Gilbert said he would like to hear what the manager agrees with as far as Councilman Macon's recommendation. Mr. Owens said he didn't hear a number. He went on to say that he believes that any reasonable person would say there is some silt, suspended solid, etc. coming out of that pipe during any rainfall event, but he doesn't believe that we filled in both sides of the basin. That is just his opinion. There could be some sediment that washed out during this event – maybe. Is it two slips - absolutely not. He doesn't feel the town is really at fault.

MPT Gilbert said what he heard Mr. Simon say in looking at this and separating it from the event and for some clarity, he feels that 24/7 the town is responsible for the outfall from that and he also feels that the outfall is continuously filling in the marina and that should be our responsibility for the maintenance of that marina. Mr. Simon said, no. MPT Gilbert asked him to then qualify what is the town's responsibility. MPT Gilbert said he looks at it as naturally occurring and his thought is the riprap and maybe some other things. He would like to understand, if Councilman Macon is proposing that we pay for a portion of the previous dredging, he would like to know what future dredging he perceives as the responsibility for the on-going maintenance of that marina. Mr. Simon said in a couple of weeks at a cost of \$15,500 more dollars they will have to dredge the same two slips, given the contract has been accepted. He said in fact the town, several months ago, instructed storm drainage to get the estimates to get those two slips dredged again. MPT Gilbert said it was dredged once since the event, is that correct? Mr. Simon said that is correct. MPT Gilbert said so after the event that possibly caused it to fill in, it was dredged once? Mr. Simon said that is correct. MPT Gilbert asked was that at a cost of \$16,000. Mr. Simon said, yes. MPT Gilbert said the same two slips will be dredged again within two weeks. Mr. Simon said, yes. MPT Gilbert asked, then why did it fill in? Mr. Simon said that is my point – it is still flowing. Mr. Simon said that another obstacle they had, he was told that it was coming from the road. He said that the town has a street sweeper and he was told by Brian that they have to sweep the streets 2-3 times per week. Mr. Simon said this is because the sand builds up. He said at one time before the street sweeper was brought back on line, at the entrance of Mona Black Marina, he could literally take his foot at the paved shoulder and scrape up a pile only going out 3' in a circular area creating that much sand, a storm comes and washes it into the marina. He said there are 32 open grates. He said the town did take some action and put socks on 2 of the open grates and these socks simply collect the debris at that 1 site.

MPT Gilbert asked the Storm water Superintendent, Brian Stansberry, do we have 36 outfalls into the marina, is that right? Mr. Stansberry said I believe so. MPT Gilbert asked Mr. Stansberry, in your opinion do we have a problem with those outfalls filling in the marina? Mr. Stansberry said we have a small problem but it isn't that extensive. He also explained in follow-up to a statement made earlier about the streets having to be swept 2-3 times per week, we do it as a maintenance thing but not because it is that deep in the streets. He said we installed 3 sediment traps, two across the street and 1 beside the marina. We installed those in the basin and all of those boxes going out through what used to be Jubilee Park are so high and sediment can't come up and in. He said therefore Lake Park would be the main source. Councilman Macon said I don't care who you work for – I want to hear what you think. MPT Gilbert wants to know what is going on in his opinion, and he asked do we have an outfall of material there that is filling in that marina on a normal daily operation of that outfall. Mr. Stansberry said from what he has seen that he doesn't think so. Mr. Owens said that water quality is definitely an issue and you are going to hear this as a concern of our residents. He wanted to bring that point up and we could probably look at each one of them and determine if there is or isn't any impact. He is really concerned about that. Mr. Johnson asked Mr. Simon, concerning the 7/13/05 letter from NCLM, after receiving that letter did you even think about pursuing the contractor as far as that event? Mr. Simon said there were many meetings with the previous administration. Mr. Simon said they felt all along their business was with the Town of Carolina Beach, and if there was any action to be taken that the town should go after DOT. They felt that the town was responsible not just on that one incident. That is where their direction was always focused and they never attempted nor thought about taking action against the DOT or the contractor hired by DOT or Carolina Beach. They went to their Town Council to say they had a problem with the pipe that was controlled by the Town of Carolina Beach. He went on to say that on occasions of a rain storm that is when the sediment is coming through. He explained that sand blows on the street and you can't clean the street everyday and we have open ditches flowing into that storm drain system. He said we have open ditches flowing into that storm system and one in particular is at the movie theater. He said that during his 2 ½ years he has tried to get help to solve this problem, there wasn't any riprap there and the hole is so dredged out you could probably put a Volkswagon in there, that is how deep it was before they put the rock in there to cover it up. That whole ditch is nothing but sand and when it rains that sand is going to move. The caverns between every single rock is full of sand and all of that sand came into the Mona Black Marina. For a period of 6 months there was no sweeper at all and all of that sand came into the marina. The Town Council ordered work to be done taking pictures finding out if there were any breaks in the pipe and prior to that his unofficial information is that between 7-17 loads, referring to the Vactor truck they used in cleaning out the system, were taken out of that system prior to the cameras. In addition after that was done, fire hoses at high pressure were flushing out the lines and every bit came out into the marina so thick you could take your hand and fill the scum from all of the years from inside the pipe and it was done with no notification to the boat owners or the marina management. These boats have heating and air conditioning units that take in the saltwater and he lost and burned up units. He was in the hospital when this was going on and when he returned the last day he still saw the debris coming out the

30" pipe at the marina created by the high pressure fire hose. Councilman Macon asked storm water to address that. He asked, was the Vactor used to clean-out the storm drain system in that area prior to putting the camera in there? Mr. Stansberry said, the large lines from Lake Park to Jubilee Park, 36" line, didn't need to be jetted and it was very thin on the bottom. Councilman Macon said for clarification, we had to clean out some of the pipe so we could get the camera in there. He asked what was in there? Mr. Stansberry said there was some sand. Councilman Macon said so we are establishing that 4 months ago there was enough sand that we couldn't get the camera through there. He then asked how many times did we fill the Vactor truck up and haul it away when we were doing that? Mr. Stansberry said he isn't sure about that but the 7 truck loads could be accurate. Mr. Owens said he talked to Steve Pagley about that and he said it could have been on the lower number that Mr. Simon mentioned and it was a mix of sand and water. Councilman Macon asked how much does the truck hold? Mr. Owens said the way that he understands the process is there are bellies in these things when they settle out and you have to remove the material so it can go along the bottom of the pipe. MPT Gilbert asked, do you feel that the sand that was removed from those pipes would end up filling in the marina with all of your catch basins and the way that system is supposed to work? Mr. Stansberry said a lot of those catch basins are deeper in design to trap that sediment before it goes into the pipe and it goes through a series of catch basins before it goes out into the marina. Mr. Owens said he doesn't think anyone is arguing that there is some sediment that goes into all 36 pipes and if you had to camera into the pipes you would probably have to rinse them out before you could look at them. Councilman Macon said that is the nature of the beast, and he believes in personal responsibility. He explained that he is trying to take all of this into consideration and come up with some type of solution we can all live with. We are hearing information that we have not been given which is before we could get the camera in we had to Vactor the trucks out and we were never told that specific. He went on to say that Mr. Simon told us, but staff didn't tell us and he has a problem with that. Councilman Macon said the other statement that Mr. Simon made was that we flushed the lines. Mr. Stansberry said that is news to him. Mr. Owens said he didn't know about that either. Mr. Owens said he does know you have to use water to operate the camera and if anybody was riding down the road during that time you would have seen it hooked up to the hydrant and so you would see some water come out of it. MPT Gilbert said he likes what Councilman Macon said, there is some dual responsibility here. The people that built the marina next to a natural outfall is accepting some responsibility so there is a routine maintenance involved in this. He said we can't take responsibility for every natural creek that deposits there, but it is a balance of responsibility. We have to recognize that if you dig a hole in the sound that eventually it will fill in for a number of reasons. If we can take our money and put in a riprap system to help then let's pursue doing it, but we can't take responsibility for the sound filling in. We should have been better shepherds when we realized the insurance company wasn't going to cover this and it said the town wasn't responsible. We should have taken your hand and gone through the process, talked to our attorney and gone after the contractor who caused the problem. The bigger problem is what you perceive is the outfall and we are going to try and figure it out. MPT Gilbert said it took 12 hours to get control of that and he is guessing that we didn't know where the valve was and if this

happened today could we do better than 12 hours, and Mr. Oakes answered absolutely. MPT Gilbert said that was what he was hoping to hear.

Mr. Simon reiterated that he has just shown there were 7 truckloads that were pumped out, after the help came with the socks. The 7 truckloads was remnants of what was left over. He asked how much was flushed out before the 7 truckloads were left over that all flowed out into Mona Black Marina? Also, take into consideration that our sweeper was down for over 6 months.

Mr. Owens said we have heard different sides to this and Mr. Turner may want a chance to talk to some of these things.

Dan Wilcox of 614 Monroe Avenue, said from a common sense perspective he has heard a lot of discussion about the material not coming from the pipe or that the pipe is not causing a substantial amount of material. He hasn't heard any good testimony about where the material is coming from. He said if you go 3 to 4 slips back in the marina its 19-20' deep and it continues to get deeper towards the center of the basin, and his experience has been that silt and sand is not going to climb up hill to deposit itself under these two slips. He asked, where is the scientific evidence about where that material is coming from? Also, anytime you have an event you have sand in the streets and in the pipes and during your initial flush of that material comes out the pipe and down that hole, when you have got a drop on that pipe like there is and the amount of pressure it is going to blow that material right back at the hole and down the center of the stream, and so he doesn't think the material is going to stay in the hole if after the material is deposited you continue to have water run into the hole and blowing that material out. He said the other point that MPT Gilbert mentioned was this is a natural outflow. Mr. Wilcox said this is a point source outflow and we are not only collecting silt and materials just from this immediate area but it is coming from all the way down the street. MPT Gilbert said his point was this creek has been here a long time and there has been shoaling there for a very long time. Mr. Wilcox said he understands and his point was where is it coming from.

Mr. Jerry Bigley owns about 18 pieces of property here and he has had a problem with 1011 Waterview Place since 2000, and not since this thing happened on June of 2004, but before that sand has increased and he can hardly get two boats in the two boat slips if he wanted to. He said that he has gone to Town Hall since 2001 complaining and never gets anything done. Also, a while back when they built Wing's there was a retention pond next door. He said when he returned home from Mexico he found that the hole had been filled up and they were building a hotel there. Also between 304 and 302 N. Lake Park Blvd. there is drain that goes from there and beneath the ground to the fishing boats and it clogs up. He said that all of the sand goes through there. Where his two boat slips are it has increased about half-way up from what it was when he first had the property and so there is something wrong somewhere and how they can cover up a retention pond he will never know.

Mr. Simon said to MPT Gilbert in reference to the natural outflow to the creek that you keep responding to, that flow was created by the immediate area and the town added to the storm drain system creating 32 open grates going way beyond the relative area and actually under the 4-lane highway and back to the Microtel Hotel. He said we have increased that flow of water and point of impact so dramatically. He said you mentioned the word scouring a lot and we didn't have that until the town added that secondary arm to the system which was much larger than the original that started at St. Joseph Street and all the way to Jubilee Park and so the water content drastically increased and it is not anything natural anymore. MPT Gilbert said the way that he understands it from the former property owners who used to own that whole tract of land on St. Joseph, was that creek went all the way up to Hwy 421 back in the day and it was a natural outflow coming from the area that it naturally comes from now. Mr. Simon said he didn't realize that it went that far, but he wanted to reiterate through construction of a four lane highway bound by curbed areas, run off from parking lots, and he is not a marine engineer but he knows a natural phenomenon is drastically different from a manmade phenomenon. MPT Gilbert said he agrees and if they filled in the retention pond that is problematic and we know that manmade obstacles have caused a lot of problems just like in Carolina Sands.

Mr. Simon said that Ms. Black has suffered and she is asking for some relief and she is not seeking for 100%. No small business can absorb \$32,000 in damages from that storm drain. He feels that he has shown that 7 truckloads were pumped out with remnants of what was left over and there was a lot more debris that were taken out that he reported, but he won't go into the details of those debris that he was told about unless necessary because it wasn't pleasant. So, there is a problem and definitely there is sediment coming out of the pipe. Sweeping the road helps, putting socks on 4 areas, but there are 28 more open culverts that aren't being filtered at all. There are no catch basins. He suggested that we check into the story of the fire hoses. He didn't see them, but that is what he was told by storm drainage. As far as \$2,400 being absorbed by the Town of Carolina Beach, he said Ms. Black had to absorb at least that much money in legal fees in those years and that is one person absorbing everything vs. the town. He feels that it is very unfortunate with her character, her demeanor and her presence on this island for a long time and he feels that she deserves some help and he would appreciate working with the town in creating a solution to this problem.

Councilman Macon made a motion to go into a closed session to confer with the town attorney in compliance with G.S. 143-318.11(a)(3). **MOTION CARRIED UNANIMOUSLY.**

After returning to open session, Mayor Clark announced that no action was taken on the discussion in the closed session. He then entertained a motion on the storm water issue with Mona Black Marina.

A motion was made Councilman Macon that we reimburse Ms. Black/Black's Marina \$6,000 for monies expended in 2004 for dredging. **MOTION CARRIED** (4-1 with Mayor Pro Tem Gilbert voting, no).

The town manager asked if the board would like for the attorney to draw up any kind of document that might cover this incident? Councilman Macon apologized and assumed that was the intent. The town attorney asked Councilman Macon to consider amending his motion and that a condition of the reimbursement be that the marina agree to execute a release in favor of the town. Councilman Macon said he would amend his motion.

MPT Gilbert asked if he can make a motion to rescind that vote and let him make another motion to include that. The town attorney said that he can ask Councilman Macon to withdraw his motion.

A motion was made by Councilman Macon to rescind his motion. **MOTION CARRIED UNANIMOUSLY.**

A motion was made by Councilman Macon that we reimburse \$6,000 with a release in favor of the town being draw up by the town attorney. **MOTION CARRIED UNANIMOUSLY.**

STORM WATER PIPE ISSUE - CAPTAIN'S QUARTERS

Mr. Craig Turner with Land Management Group, Inc. reviewed with Council his findings (*identified in the minute book as Exhibit 2 herein*). Mr. Turner shared with Council aerial photographs of the land in question. He said this is an established channel, and it is characterized by sediments that are very fine sticky mud as opposed to sand. He said we may have flow through here but the flows are not sufficient that they are carrying large amounts of sand, otherwise up along the margins of this channel you would find sand banks and when the flow gets up and it overtops you get levies and bars and there is none of that up and down this channel. He said looking at the storm water system by Captain's Quarters we are not accelerating our flow there that you would have to do to carry sediments, and we have no evidence of sediment loads being deposited on the channel. There is really nothing in here that the town has done that would have changed the reach and flow of the storm water nor increased the amount of storm water that comes through that system. He said the photographic record shows that the marsh is stable. You may see changes in where that channel is located, and that is the normal coastal dynamics, channels will shift as they discharge but in terms of a large plumes of sediments out beyond where they were, we don't see that here. We don't see anything here in the way of deposition out there that says that the town has shifted a considerable amount of flow into the system and caused any kind of shoaling. The marsh is pure stable in there in any number of perimeters. He feels the town has no real significant impacts on the storm water and adjacent structures.

Councilman Macon said you would imply that the failure of the bulkhead over time and the lack of maintenance of that is a huge factor. MPT Gilbert said basically the migration of that material is coming back down. Mr. Turner said that is why we put bulkheads up

and we have to maintain them is because with time they degrade and you will lose that sediment load.

The town manager gave a quick synopsis as follows:

The homeowner claims that work was done to the pipe that caused the sediment to fill in the boat dock area.

LMG contends that the sediment (if any) is likely due to a damaged bulkhead in the area.

The town manager's observation is:

Outfall has to traverse a lot of marsh and distance to affect the basin.

2 areas are dredged adjacent to the outfall.

Velocity of water may likely be fanning the soil out but not filling in the slips.

Outfall does include a sediment basin.

Slips will fill in naturally.

The town manager's recommendation is the town is not liable or obligated to remove sediment from the dredged area. Also, that we continue to do routine maintenance of the system to lessen any sediment transport.

Don Scott, representing Captain Quarter's, said the study shows that we have no significant issue or problem. It also says the storm water system today is discharging no more sediment than it did prior to the dock construction. He is not sure that the study reflects when the dock was built. He said that he can tell you that when the dock was built that no dredging was required, there was plenty of water for all 24 slips and there was actually enough water (he referred everyone to photo 1) that was taken on low tide. He said on low tide today we will have some natural fill, but on low tide that's the north end of the dock and it is sitting on sand on low tide and that may be natural shoaling or runoff; however, around the right hand side there is plenty of water there and that was the case when these docks were built. He said you could actually bring a load in through there and around back. What happened in 2002 was we did have a drain on the Captain's Quarters property and it was caved in and full of sand, it had virtually little flow coming out of it. He said what happened in the repair work is they had to go in with fire hoses to get in there to do the repair work, take jacks to jack up the caved in galvanized pipe that was there so they could insert a sleeve and that then created in 2002 a pipe that water could flow through without obstruction. We didn't have what I'm getting ready to show you prior to '02. He said that he isn't here to say the town has any responsibility in filling in the slips, but what he is here to say is that is what we have on a normal high tide

right now (demonstrating with picture). Out in front you can see the creek that has been formed by the drain flowing out and you can see the funnel effect of the debris carrying sand, sediment, etc. with it and as it empties into the sound it opens up like a funnel and creates the shoaling and it is impassable to even a john boat at low tide. He agrees with what the study shows that the marsh is, as it was and has been for many, many years, but the sand bar has been there for about the last 4 years. After viewing other photos, Mr. Scott said what we have is not event caused other than the pipe being fixed. He said it is continuing and worsening. He said the first 2 slips you cannot get into unless it is mid to low tide. He said this is not new news. He said in 2004 Charlotte Buckley represented the town and attended a homeowners meeting and she was going to assist in getting a dredging permit. Now she is no longer with the town and those files are available is what we were told. He is here now asking for assistance.

Councilman Macon asked him how long he has been with Captain's Quarters, and Mr. Scott replied since 1979. He asked Mr. Scott how many times have the slips been dredged. Mr. Scott said they have never been dredged. He said the Yachtsman were dredged at least once that he knows of from the last finger dock 10-12' feet back in this direction.

MPT Gilbert asked, when they were originally installed was there any dredging? Mr. Scott said they didn't have to be. MPT Gilbert asked, was there a CAMA permit that was needed to drive those pilings? Mr. Scott said that Suggs and Harrellson was the developer and he is sure they had to get one. Mr. Scott asked Mr. Turner if he could answer when the docks went in, and Mr. Turner could not. Mr. Scott said then he questions how he can make a statement that the runoff now is no greater than when the docks went in. Mr. Scott asked if he adequately represented what the drain was like and that it was nonfunctional? MPT said there isn't any question that we have had some problems with our drainage and we are on the road to some kind of recovery. He asked, if a CAMA permit was pulled to build those would there be an opportunity to piggyback on that CAMA permit and do some dredging of that. Mr. Turner said if dredging had been a condition to get the permit that would be the strongest criteria and if there was maintenance and operations dredging those would be the types of things you would look for. Mr. Owens said he believes it depends on if it had been dredged or not before and if not then you have to go through a big process. Mr. Scott said they are working with someone now on trying to get a permit for dredging but what they are really talking about is about 20' out in front of our slips extending for about 30-35' more out and the width of about 25-30' wide. The slips are floatable today, you just can't get into them. Mr. Scott said the gentlemen they are working with says this entire basin at one time was dredged and manmade and if that is true then any permit needed henceforth is a maintenance permit. Mr. Owens said if that is the case then that is an easier permit to get. Mr. Scott said their request is they would like any assistance, financial preferably, towards dredging the area not in our slips but external to our slips that prevent us from getting there. He said they will take care of their slips. Secondary, you are talking about riprap for Black's, but if somehow the velocity of flow could be diverted from a stream to a sheet he believes we wouldn't be faced with this situation here and he thinks it would be diverted throughout this marsh area and never start shoaling in the sound, but that is his

opinion. Mr. Turner said from an engineering opinion you are correct, but it depends on what CAMA will allow. Mr. Scott said at one point in time the area where Captain's Quarters is now was at one time a recreational area and a sandy beach where people put boats in and parked vehicles there. All of this marsh area has grown in since 1979, and there was no drain prior to this area being used as a recreation area.

Councilman Macon said he would like to take a look at this in more detail and he is not ready to take any action on this. Councilman Johnson suggested that the staff research the CAMA permits for these two areas here for the dredging situation and find out whether or not they can even dredge per those CAMA permits. MPT Gilbert said we have 36 outfalls and he would like staff to initiate an aggressive investigation into each of those outfalls to come up with a plan to monitor what is coming out to see what kind of migration we have.

MPT Gilbert said he believes with respect to Mona Black that we had a singular event that was caused by a contractor and not the town and the velocity of that water, because nothing has been substantiated qualitative or quantitative, could have premature filling in of where it was dredged. He thinks the future filling in and dredging, a percentage of it that we don't know, could be caused by the outfall but we don't know percentage wise or responsibility wise how to put a number of that. He thinks what we can do is go back and do everything we can in our power to either meet or exceed the standards on these outfalls. He said if you can find a way to divert it or do riprap then we need to do something about that and get serious about it and make a commitment.

Councilman Macon asked to see the picture of the original site before anything was built there. Mr. Owens projected a picture from 1949. Councilman Macon said that is a natural channel and he asked if there are any grant opportunities out there for dredging a channel. Mr. Owens said there is sometimes through Water Resources and he has used them before and he can explore that and find out what is available. There may also be some grants through Clean Water Management. Councilman Macon said they are not asking us to clean out their boat slips – they are asking us to dredge the channel. MPT Gilbert thinks the commitment to Captain's Quarters is to get working on it and figure out if anything is available or anyway to do it.

Mayor Clark made a motion to go into closed session in compliance with G.S. 143-318.11(a)(3). **MOTION CARRIED UNANIMOUSLY.**

After returning to open session, Mayor Clark announced that no action was taken during closed session, and he made a motion to adjourn. **MOTION CARRIED UNANIMOUSLY.** The meeting adjourned at 6:15 p.m.

Respectfully submitted,

Sara Hartman
Administrative Secretary II

Approved: _____