

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

*April 14, 2009*

The Town Council of the Town of Carolina Beach met in regular session on April 14, 2009 at 6:30 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 Joel Macon; Mayor Pro Tem (MPT) Dan Wilcox; Councilman Alan Gilbert; and Councilman Jerry Johnson. Councilwoman Efird was absent. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order.

***INVOCATION AND PLEDGE OF ALLEGIANCE***

Tom Campbell gave the invocation. Mr. Campbell also led everyone in reciting the Pledge of Allegiance.

***CHANGES TO THE AGENDA***

**Mayor Macon made a motion to adopt the agenda with the following changes: move Item #18 to Item #12, which has been withdrawn; and reschedule Item 10(h) on the Consent Agenda to the June meeting and set the public hearing at the May meeting. MOTION CARRIED UNANIMOUSLY.**

***REQUEST BY DEAN MARTIN TO HOLD “BIKINIS VS. BREAST CANCER”  
EVENT IN CAROLINA BEACH ON May 29-30, 2009***

Mr. Dean Martin made presentation. He is the International events director for the 1 in 8 Motorsports and 1 in 8 Foundation out of Cary, NC. He gave a background of the foundation. They raise funds for early detection, mobile mammogram machines and free and low cost mammogram clinics. The event would raise funds for those purposes. It would not pay for research. A diagnosis of stage one breast cancer, there is a 91% chance of survival. Stage two drops to less than 60%, stage three to less than 20% and stage four at less than 2%. Breast cancer strikes 1 in 8 women in the Caucasian race, 1 in 6 in African American women and 1 in 4 lesbian women. Men can also be affected with it. One of their events is called “Bikinis vs. Breast Cancer” which are held around the country and the world. The event is usually done either beachside at a hotel or casino - like the stage at the gazebo here. The event is to attract folks locally and from surrounding towns using local vending services, hotels, etc. They are looking to build it into a yearly event. The first year will always be small because it is new. They are

looking to work with the local hotels for a reduced rate for the event. They will be working with the Chamber to help promote Carolina Beach. They are asking to do it on Friday night, which is round one. Saturday is around 2:00 p.m. and is usually an all day event but they can do it just on Saturday if that would be easier. He understands that is also the “Jazz under the Stars” and that is something they could tie into so it wouldn’t be a whole new setup.

The town manager suggested getting together a month out for pre-planning and a week out for organizational needs. They will also need a liability policy. It would fall between the Beach Music Festival and Memorial Day and he would encourage getting together with the Boardwalk Makeover folks to make sure it doesn’t conflict with any of their activities.

Mr. Martin said he spoke with them about coming out and selling drinks, refreshments, t-shirts, etc. which would bring funds into the boardwalk committee.

MPT Wilcox said they had met and he didn’t see any problem coordinating both events.

**Mayor Macon made a motion to approve the breast cancer fund raising event.**  
**MOTION CARRIED UNANIMOUSLY.**

**Councilman Johnson made a motion to excuse Councilwoman Efird this evening due to sickness. MOTION CARRIED UNANIMOUSLY.**

***PROCLAIM APRIL 2009 AS FAIR HOUSING MONTH***

Mayor Macon read Proclamation No. 09-972.

**Mayor Macon made a motion to adopt Proclamation No. 09-972 (Exhibit 1).**  
**MOTION CARRIED UNANIMOUSLY.**

Mr. Carl Byrd accepted the proclamation and thanked Council and the town for their support.

***BRIAN STANBERRY TO ANNOUNCE SPRING CLEANUP PROGRAM (APRIL 21-25) AND WASTE OIL RECYCLING PROGRAM BEGINNING APRIL 24<sup>TH</sup>***

Brian Stanberry, Interim Public Works Director, reviewed upcoming programs: April 21-25, annual spring cleanup, which has been advertised for Carolina Beach residents and property owners and allows any type of debris, appliances, furniture, etc. and can be dropped off at the town Operations yard at 304 Dow Road from Tuesday through Friday, 8:00 a.m. to 7:00 p.m. and Saturday from 8:00 a.m. to 2:00 p.m. They are also starting a waste oil recycling program where waste oil can be taken to the Operation’s garage on Dow Road and starts on Friday, April 24<sup>th</sup> from 10:00 a.m. to 1:00 p.m. It is for oil only.

For service, ring the bell at the garage.

Tim Owens said that is something they are going to try to do every Friday. This will be a test run to see how it goes or if the schedule needs to be adjusted. There is no cost. Oil must be clean, free of water or gas, and no rags or that type of thing.

### ***CAROLINA BEACH COMMITTEE REPORTS***

Randy Simon, Chairman of the Police Advisory Committee, said the committee has been very active. He said there is one opening on their committee and has an application from Mariam Jean Bond, which he gave Council, and asked Council to consider appointing her.

The town clerk stated that the opening has been advertised and Mr. Simon would like to have this taken care of as soon as possible if Council is willing to do that tonight. This was the only application received.

### **Mayor Macon made a motion to appoint Ms. Bond to the Police Advisory Committee. MOTION CARRIED UNANIMOUSLY.**

Mr. Simon said they are in the process of creating a plaque/award to present to Charlie Grissom next month and would like to have that on the agenda if Council approves. Mayor Macon said he feels that is very appropriate. Mr. Simon then gave an update on some of the things the committee is doing such as held a motto contest with children from the elementary school from March 9<sup>th</sup> through March 20<sup>th</sup>, received over 60 applications and would like to have Council recognize the winning selection with winning motto to be awarded at the end of the month and the winner recognized in May. They are looking at having a stencil made and put on some of the police cars, if appropriate. They have analyzed their mission statement and presented a draft, which incorporates changes made by Council, to Council for their review. Lastly, August 4<sup>th</sup> is National Night Out, bringing awareness to the community regarding crime prevention, and on May 4<sup>th</sup> they will have a draft put together and invited Council to come to that meeting. They want to change their meeting days from the first Monday to the first Tuesday of the month for June and July only to coordinate this with the boardwalk activities to reach out to the community on the boardwalk area about crime prevention, community watch, policing of our beach, etc. They will conclude on August 4<sup>th</sup>, the finale.

### **Mayor Macon made a motion to set a public hearing date to consider amending Article III, Carolina Beach Advisory Committee. Council was in agreement.**

### ***PUBLIC DISCUSSION***

Bob Lewis, 670 St. Joseph Street, made a recommendation to the town about securing a professional grant writer. He feels it would be more than worth the investment and

would provide much more impact.

Brett Keeler, 310 Columbia, representing Blackhorn Bar and Kitchen, wanted to talk about outdoor sidewalk cafes regarding the ordinance requiring removal of the planks they were required to put on the boardwalk for outdoor seating when not in use. It has become very labor intensive. They will take in the tables, chairs, and umbrellas but would like to leave the planks overnight. They can go back down at 7:00 a.m. He is asking that Council direct staff look at the ordinance with the possibility of leaving the planks there overnight.

Mayor Macon asked about keeping up the poles with chains around the planks so it won't be a tripping hazard.

Tim Owens said if Council wants to re-look at that section of the ordinance he recommends going ahead and setting a public hearing for the next meeting so they can bring back some different options. His only concern would be smaller walkways that might be tougher to get around.

**Mayor Macon made a motion to set a public hearing for May to look at that section of the ordinance regarding taking up the platforms. MOTION CARRIED UNANIMOUSLY.**

Randall Purday, 1005 Carolina Beach Avenue North, owner and operator of Green Cab Taxi Service, thanked Council and the police department for their support. He has one small problem in that he can't get here or to the businesses across the street because of the 45 MPH speed limit. He spoke with DOT who told him it just takes a town resolution to drop the speed limit. He is trying to get to Michael's Seafood, the vet office and Cobb's corner and would like to see it dropped to 35 MPH from the ABC store and ACE Hardware to the Dow Road light. He spoke with Shane York at DOT who said it takes a town resolution and felt the area should probably be 35 MPH anyway. Mr. Purday feels it would be helpful to the businesses as well.

Councilman Gilbert suggested going to the Police Advisory Committee to weigh in on it and to give Mr. York's telephone number to the town manager to speak with him.

Mr. Owens said, while they are at it, if they decide to go this route, he also wants to look into speed limit near the lake - 35 MPH in the curve at the lake and then transition to 25 MPH he feels should be 25 MPH before you hit the curve in you are heading north. He would like to check into that as well.

James Golden, 1216 Canal Drive, said he is looking at a restaurant at 5 Boardwalk, next to the Marriott, and he understands Council will have to give him a parking waiver. He is trying to open by May 15<sup>th</sup> and, since it is a permitted use, asked if it was possible to get a waiver tonight instead of having to wait until next month.

Gary Ferguson, Planning Director, said they do have a TRC meeting scheduled to

consider Mr. Golden's request. It is staff's understanding; however, that if he meets all the requirements of a permitted use as a standard restaurant, which he believes he wants to open, then we as staff can waive that parking if it is within 500 feet of public spaces or a public parking lot. That is his understanding of how the ordinance works when a permitted use is coming along in the CBD if they meet all the conditions. These are the standard conditions in Article 12.

***ADOPT THE CONSENT AGENDA***

**MPT Wilcox made a motion to approve the Consent Agenda as follows:**

Reschedule Item #10(h) to the June meeting.

Approval of the minutes:

Special Meeting/Budget Workshop	February 26, 2009
Special Meeting	March 9, 2009
Regular Meeting	March 10, 2009
Special Meeting	March 23, 2009
Special Meeting	March 5, 2009

Notification of Line Item Budget Transfers:

**PARKS AND RECREATION DEPARTMENT**

Transfer \$2,000 from account # 10-620-045-Contract Services to account # 10-620-016-Maintenance & Repair Equipment.

**LEGISLATIVE DEPARTMENT**

Transfer \$341.68 from line item #104100.33-Supplies to line item # 104300.45-Contract Services.

**TOWN CLERK DEPARTMENT**

Transfer \$41.34 from line item #104300.12-Printing & Publishing to line item #104300.14-Travel & Training.

**OPERATIONS**

Transfer \$267.04 from account #105650.33 to account #105650.17.

Transfer \$15,000.00 from account #105650.31 to account #105650.17.

Payment of \$45,000 to Sheila Butner from the Water/Sewer reserve fund.

Approval of audit contract with Goodson & Taylor to perform the 08/09 audit in the amount of \$7,450.

Set a public hearing date for May 12, 2009 at 7:30 p.m., or soon thereafter, to consider a request for a Conditional Use Permit to renovate an existing facility at 6B and 6C Lake Park Blvd. N. (PIN 313011-55-1294.000) to add a rooftop deck on the Dive Restaurant.

Set a public hearing date for May 12, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 8 Landscaping and Development Specification Standards of the Zoning Ordinance to request property owners to maintain ground cover material on private property.

Set a public hearing date for May 12, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 10 Fence Regulation of the Zoning Ordinance.

Set a public hearing date for May 12, 2009 at 7:30 p.m., or soon thereafter, to consider amending Section 8-47 of the Town Code of Ordinances concerning vending operations.

Set a public hearing date for June 12, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 3.8-1 Table of Permissible Uses of the Zoning Ordinance.

Set a public hearing date for May 12, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 12 Development Standards for Particular Uses; Section 12.2 Standards for Bars/Taverns to prescribe how the separation distance will be measured between bar/taverns.

**MOTION CARRIED UNANIMOUSLY.**

***DISCUSSION OF WATER AND SEWER IMPACT FEES FOR EATING AND DRINKING ESTABLISHMENTS***

Ed Parvin gave an overview of what has been discussed on impact fees over the last few months. There have been problems with seating with restaurants. They looked at changing parking from seats to square footage based on various restaurants around town and calculated what parking would be at 1 space per 3 seats, requirement at the time. They then calculated square footage and converted it from seats to square footage utilizing a formula for gross floor area. Then they did a similar study for impact fees. They wanted to come up with an equitable conversion from seats to square footage, just as in parking, so impact fees were calculated for each restaurant based on \$250 per seat, which is the current fee. They used two conversion methods, the current restaurants, and they also used the parking he just talked about. They determined there were 3 seats within 110 square feet which would be  $3 \times \$250 = \$750$ . They took an average of those methods and came up with a number of trying to convert over to an equitable amount. At the same time the Business and Economic Development Committee (BEDC) looked at

maybe decreasing water and sewer impact fees for restaurants. They used an average aggregate of the surrounding communities and came up with a minimum of \$3,333 for a ¾" water line. They found the average sized restaurant, based on staff's study, and did a cost calculation of \$1.16 per square foot or \$127.60 per 110 square feet. Staff would like to move away from seating because of past monitoring problems due to constant summer time seating changes. If the desire to keep it at an equitable rate, they came up with \$629 per 110 square feet. If the desire is to lower the fees, there is an endless amount independent variables one could look at to evaluate the impact fees. The BEDC looked at several and came up with \$127.60 per 110 square feet. Staff is looking for direction from Council.

Tim Owens said a public hearing was held in February on this issue.

Mayor Macon said that at time they were in the process of obtaining a building permit to do some work at the business he owns and he excused himself. And, based on the outcome of the permit and the process that this is going to affect what they do or what they are doing.

Bob Lewis said that in reality over the last 10 years they had one of the members of the restaurant and bar owners group did some research. He came to the town hall and researched some 45 restaurants and bars that opened over the last 10 years. Only 6 of those restaurants paid impact fees. The total amount was \$80,000 over 10 years so you are only looking at \$8,000 a year at what is going on here. They are looking at a way to make this fair and equitable for everyone. Comparable to the neighboring beach communities, people are putting their restaurants there vs. here. They believe what P&Z is doing is exactly right. You need to go to a square foot type thing. There are a lot of identified inequities in enforcement of the fees. Of those 45 businesses, there were probably 30 businesses that had no record as to whether there were any fees charged to them. There is difficulty in the policing. They are not competitive with neighboring communities and it feels more like a punitive tax than a fee to the business owners. They are recommending something more equitable, easier to administrate, eliminate the policing. Kure Beach starts at \$2,500 flat fee, Cape Fear and Water Company is \$4,500 flat fee and Wrightsville Beach is \$3,000 flat fee. Their recommendation, somewhere in the middle of the three, is \$127.60 per 110 square feet for indoor space, which was supported by the BEDC. For outdoor seating it would be 1/3 of the indoor seating amount (based on use 1/3 of the year) or \$42.50 per 110 square feet. They do not support the P&Z recommendation of no future impact fees for the CBD. There are numerous buildings in the CBD that have never had a restaurant or bar. Fees should be administered equitably across the entire town. Also current restaurant owners should be considered in compliance.

James Golden agrees with Mr. Lewis and the BEDC recommendations. He would like to keep that the town gives credit is there was a bar or restaurant there before.

MPT Wilcox asked staff if the previous use was a bar and restaurant and there would normally have been a perceived credit, would you recalculate that to square footage since

they would have the same square footage and would get credit for that. Staff agreed.

Gary Ferguson said they have been trying to do just that for every use that comes along, perhaps that might be some of the justification for when you see no impact fees paid because there were credits associated with the previous uses. More recently staff has been trying to credit those previous uses thereby diminishing the total impact fee owed to the town.

Councilman Gilbert asked the town manager if he had anything on budget impact.

Tim Owens said it is very hard to figure out what the budget impact will be. They do try to credit for existing infrastructure/existing buildings. When he did an analysis several years ago regarding when they went to \$250, he thinks there was some rationale when these were originally set based on the Administrative Code which used certain rates for water usage for restaurants or single families. It equated to a cost per gallon. The easiest way to do this, as far as impact fees go, would be to look at the Administrative Code and apply a cost per gallon. That would be easiest for him. Square footage is good but if you lower restaurants, you might have a single family paying an inequitable share or an office building that is paying more. Those are his concerns.

**Councilman Johnson made a motion to set the water/sewer impact fees for restaurants at \$175 per 110 square feet inside and \$90 per 110 square feet for outside. That puts us in line with our neighboring communities.**

Mayor Macon asked to be excused from this vote because his motion includes outdoor seating that could possibly affect him. The indoor seating does not affect him.

MPT Wilcox said what he is proposing is exactly what it is right now so Mayor Macon withdrew.

**MOTION CARRIED UNANIMOUSLY.**

**Mayor Macon made a motion to take a 5 minute break. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon called the meeting back to order.

***Withdrawn by Applicant - REQUEST FOR CONDITIONAL USE PERMIT TO CONVERT THE RETAIN SHOP FORMERLY "SAND BARZ SURF & SKATE" LOCATED AT 9 CAROLINA BEACH AVENUE NORTH (PIN 313011-55-5120.000) INTO A BOARDWALK BEACH CLUB BAR/TAVERN***

Mayor Macon said this item has been withdrawn by the applicant.

***CONSIDER AMENDING THE CODE OF ORDINANCES, CHAPTER 8 LICENSES AND BUSINESS REGULATIONS, ARTICLE III PEDDLING AND SOLICITING, SECTION 8-47 ALLOWABLE VENDING AND SOLICITING ON PUBLIC PROPERTY WITHIN THE TOWN OR MANAGED BY THE TOWN; RESTRICTIONS (CONCERNING VENDING OPERATIONS)***

Ed Parvin made the presentation. He reviewed the background of where we are. (1) The current ordinance has unlimited number of vendors on the municipal beach strand; 5 town-wide in any public areas within the town are open for permits; 4 allowed for Freeman Park. (2) Some of the problems we have had with the unlimited, it's too open. There is a limit requiring a business in the CBD but the town has been inundated with requests. All the committees have agreed that there should be some vending but we should have some kind of limits on it. Too many vendors would be a bad thing. There is a lot of uncertainty with a town-wide vending request because there are no specific locations identified in our ordinance. There were a lot of requests for vending at Freeman Park and there potentially might not be enough. Council couldn't take any action last month because they were all taken, one person having three and that was an issue. There are several issues staff is working through. (3) Council asked staff to go through a process to come up with a new ordinance, which they did. First they discussed the issues with two people who have been here a long time, Duke Hagestrom and Shawn Cook, and came up with a list of questions which they took to the Business and Economic Development Committee, who has been working a long time on the vending process. They also took it to the Arts and Activities Committee, Freeman Park Committee, Chamber of Commerce, Planning and Zoning and the Harbor Commission. Staff met with their representatives at three meetings to discuss vending and hash out the issues. One of the big ordinance changes was the area where vending is allowed. There are three areas where the committee has decided where vending should be allowed: Freeman Park, the municipal beach strand and three street ends. They determined four (4) vendors for the municipal beach strand based on experience by Duke Hagestrom. The three street ends are Sandpiper (north end) where we already have parking, showers and, potentially a dinghy dock for the mooring field; Ocean (south end) and Alabama (south end) which have large parking areas. Those would have stationary vendors. The limit of four (4) vendors for the municipal beach strand was based on how much traffic vending would have mainly in the CBD. The committee wanted to provide the service to Carolina Beach through vendors but they didn't want to have too many where it would be an annoyance. The street ends would be leased spots through the town. The municipal beach strand would require an established business in the CBD, as you do now, and there would be four (4) available. Freeman Park does not require a commercial business in town now. Under the new ordinance you would have to have a commercial business in Carolina Beach but it is not limited to the CBD but can be in any commercial zoning district of the town. Permits will now be issued by staff. To do that staff tried to incorporate some very objective criteria to define location and amount and exactly what they needed to provide. They will be renewed every year on a first come, first served basis with a renewal request (if desired) submitted by March 1<sup>st</sup> every year which would be reviewed by staff. If any

are available, then they can be issued throughout the year. All completed applications will be kept on file in the Planning Department. There would be an annual fee but that was not listed in the ordinance. They can be listed in the ordinance or in the budget fee schedule. Fees were discussed as being \$100 for those who have established businesses and are getting permits for the municipal beach strand or those who are getting the Freeman Park permits. The stationary ones who would be leasing that spot and do not require a business would be \$500. Those stationary locations would be leased monthly and it was discussed with a monthly lease between \$250 and \$500. Council may wish to discuss that a little more tonight. The contract to vend would be signed annually and any changes to the ordinance would automatically apply to that contract. This was an expedited process which was started right after the March meeting and they worked around the committees' schedules and just wrapped up with the joint committee last Wednesday. The ordinance was put together all day Thursday and staff is aware that Council has not had much time to look at it. Planning and Zoning had even less time but they did make some comments, as well as staff, Council and the joint committee. Mr. Parvin then reviewed some of the additions. First, Restrictions for Specific Areas, under 1. (c) there should be a limit on the lease agreements or a minimum number of months that a lease should be allowed so someone couldn't come in a lease a spot for a month and leave. Tourists/residents should be able to depend on that service. On #2 he put a question mark by for (a) municipal beach strand - we currently have this standard. For Freeman Park, another area he would like to talk about tonight, the goods and services provided as part of the vending activity shall also be offered at the primary business location at a similar cost. That is required for the municipal beach strand now but not for Freeman Park. It was something talked about at the joint committee but he didn't include it as he did not get a clear consensus from the committee. Council may or may not want to include it for Freeman Park. The third, hours of operation, was something that should be in there and is not and that is the hours of operation. They are very similar to what was in there before. The municipal beach strand and street ends are sunrise to sunset, Freeman Park is a little bit longer because you have camping equipment there.

Councilman Gilbert asked for clarification concerning the type of vending activities at Freeman Park and the committee's intent. Mr. Parvin said that it isn't something they had a lot of discussion on. MPT Wilcox said he believes the committee's intent is to give Carolina Beach residents and business owners' preferential treatment with regard to vending at Freeman Park. Since they pay for the policing and town services that they be preferential versus someone else. Mr. Parvin said a good example is if someone who vends ice cream and camping equipment, they might not have a business at all now, but, under the new ordinance they would have to have a store with similar items and would have to have a store that has camping equipment and ice cream at the store as well.

Mr. Parvin said continuing with Restrictions for Specific Areas, 4. (a) and (b) Municipal Beach Strand and Freeman Park - "The primary business shall be open a minimum of 150 days per calendar year." That was in the old ordinance and should be included in the new ordinance as well. "The primary business shall be approved and established. No vending

applications shall be accepted for proposed business locations.” This is something staff feels should be in there to make it more objective for them as it is difficult to approve a vendor who is talking about opening a business and staff needs a solid criteria in there.

He reviewed issuance, submittal and permit. Staff added revocation of permit if the primary business closes down. Some modifications were made to clarify the ordinance such as changing commercial areas to commercial zoning districts inside Carolina Beach; having a maximum number of permits for each area that will be available. For Freeman Park, the four (4) permits will allow only two (2) vehicles per permit accessing the park at any given time. You can have as many vehicles as you want but only two at Freeman Park at a time. You can only get one of each type of vending permit, now we have one person who has three to operate three vehicles. Under the new ordinance they would have one permit and only be allowed those two vehicles and they would have to sell only food, beverage and camping equipment. There is also another category on Freeman Park, it's the only area that has two categories, and that is for fishing equipment/supplies/bait, that type of thing. You can have a vending permit for that and you only get one vehicle. The enforcement of this was reviewed by the police department, Finance, and Zoning at the last meeting to discuss the administration and enforcement of it. Vending permits and privilege licenses will be required to be displayed so the police department knows they are approved. Also to clarify we added that those are leased spaces. Planning and Zoning recommended unanimous approval last Thursday night.

MPT Wilcox reviewed some items for clarification. Vendors will have to buy a pass for each vehicle to access Freeman Park, but you can only have two vehicles to access the park at any given time. Under contract to vend, he feels some consideration needs to be given to that and the primary business has to be open and operational, not just a leased facility, and only selling items that are sold at the primary business. General comments: vending at special events would not require a vending permit as they would be considered concessions within the event but would still require a privilege license. The leased locations, there was some discussion about Freeman Park and beach strand only serving things served at their business locations. If we allow it to residents and business owners and you happen to be a resident, you're not serving anything at a business location, with regard to Freeman Park. Regarding the amount charged for vending permits, he feels there needs to be a distinction in that amount for the leased locations - \$500 for a permit at leased locations at the street ends and \$250+ a month and that staff should identify those items that are acceptable to vend at those locations as well as an acceptable size vending area. Chairs and umbrellas would be in a different part of the ordinance under services.

Mr. Parvin said they had one condition under contract to vend, number (10) which states that at the end of the year the vendors would submit a performance report stating the dates, person vending, time opened and closed for staff to review and from June 1<sup>st</sup> to August 31<sup>st</sup> they would have to be out there 50% of the time to receive renewal of their permit. Otherwise they would have to come back to Council for approval.

Mayor Macon asked about the two current vendors of umbrellas and chairs and how they would be affected by this ordinance.

MPT Wilcox said the vending license for that operation on the beach strand would be freed up and be allowed to service the umbrellas and chairs under a separate part of the ordinance - that would not be a vending operation.

Tim Owens said the concern with that is that would just open that up. It is not in this ordinance and he feels it needs to be regulated.

Councilman Gilbert recommended it come under the province of a concession the same as the paddle boats. Council agreed to have staff bring that back to Council. Mr. Owens agreed.

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

April Williams McMunn, 403 Canal Drive, said she provided a letter tonight regarding vending and the amusements and her feelings on those issues. Mayor Macon read her letter (Exhibit 2).

Chuck Dunlap, 703 Carolina Beach Avenue North, showed a picture of the area he is talking about, said he is speaking for Betty Jo Phelps and employees of CB Fishing Pier and they are asking for beach vending to be prohibited from the north side of the municipal beach which is located about 1,000 feet north of the entrance of Freeman Park near the portable restroom location extending to Sea Oats Lane, which is one block south of the Carolina Beach Fishing Pier. They are in support of vending. They have two beach accesses and do not feel it would be fair for someone to pull up a cart and sell hot dogs at their two entrances where they get the majority of their business during the summer. The Phelps family has been providing hot dogs, hamburgers, ice cream, bait and tackle, and many other items for 29 years at the north end. Their expenses have increased. They would like Council to consider their request.

Council and staff discussed the issued and decided they could put in a clause stating no vending within 1,000 of the pier.

James Golden, 1216 Canal Drive, said he is on the agenda further on for a municipal beach strand permit. If Council approves this ordinance now, it will lock him out of that unless you make it a service permit instead of a vending permit. If the ordinance is approved as recommended, all of the beach strand permits will be gone. MPT Wilcox said that is only those people who have been issued permits and are actually operating within the conditions of that permit and there are some questions about that right now. He has been vending at Freeman Park for about 5 years. His opinion is that 10 vending vehicles on the north end is too much which would put a vending vehicle every 10<sup>th</sup> of a

mile. Going from 2 vendors to 6 vendors is also too much. He feels enforcement will be tough for the police. The town is going away from pre-packaged food and he has concerns about that. The Health Department will be monitoring that but he feels there are safety concerns about the quality of the food. Noise levels on generators vary considerably and he feels that should be considered. He feels the business requirement is a good thing. Regarding the beach strand, he has wanted to vend that area for 3 years and was unaware the ordinance was changed and the requirement then was to open a business in the CBD. They didn't have that at that time but when he found out when the ordinance was opened back up and there were some permits available, he started taking steps to open a boardwalk business. He contacted MPT Wilcox about wanting to lease his building on the boardwalk so he could vend on the beach strand but it didn't work out. He now has a restaurant at 5 Boardwalk which he started so he could get a vending permit for the beach strand and, if the ordinance is adopted as recommended, he would be able to get it because two were given out several meetings ago. Had he know it would change so quickly, he would have come before them then and asked for a permit. They leased a building for 3 years and will be remodeling it and opening a restaurant creating a vital part of the boardwalk. He thinks it is unfortunate that the permits were given to new companies who have just shown up. His business has been there for 10 years and he feels it is unfortunate that he won't get a chance to vend when he has asked so many times. Another thing not in the ordinance is motorized vending on the beach strand. Their idea was to vend the entire beach strand like they did the 4<sup>th</sup> of July last year because they thought they could but couldn't. To do that effectively it will have to be some kind of motorized equipment. They recommend the little Gators. At one of the meetings the Police Chief made the comment that it is tough for him to keep that one lane open for the lifeguards and police. When he did it last July 4<sup>th</sup>, they were not up in that area but closer to the water. At one of the meetings they said they didn't think the areas outside of the direct front of the boardwalk was profitable but they found otherwise during those couple of days. One concern he has with street end vending at Sandpiper is that it would be right in front of the Cupboard Grocery, at which he has financial interest, and it is not fair to them. He doesn't have a problem paying \$500 for those areas. Instead of the street ends, he'll just pay it and vend it all. As far as the motorized, if it becomes a problem, if Council will approve them as a vendor, they will look at it and can change it. They would only be making two trips per day. That run will include, starting at their business and going all the way down and going to the end of Freeman Park and then come back. They will not run during high tides.

Council clarified that only one gator is used to deliver chairs, not for vending up and down the beach.

Leo Pappas, co-owner of the Funky Pelican, 3 Pelican Lane, said they want to play by the rules and they want a fair playing field. Their main goal is to bring business and contribute to Carolina Beach and its residents. Once it is established and they know for certain exactly the rules and regulations and what is available to everyone, they want to play fairly. He just asks that whatever conditions and terms be presented fairly and he would like to know for certain at some point what the rules and requirements are so that everybody would have an equal playing field and be able to apply for the permits.

MPT Wilcox said that is what they are trying to do. All of the permits are due to expire this coming December. The goal was for the committees and staff to get together and rewrite the vending ordinance and, once it is rewritten, those rules could be put out for everyone.

Mr. Pappas said he didn't know if these items were completed tonight and who was in, was in and who was out, was out or if there would be future meetings where you would be invited back in to participate or apply if you so chose to. They do have a vending permit on the beach and applied earlier for Freeman Park. They will be open shortly. They are takeout and delivery only.

Alicia LaChance, 102 Carolina Sands Drive, said she feels the town doesn't care how many people go on the north end. There has been a maximum of around 25,000 people there. Why do they care whether there are 4 vendors or 16 vendors? It took her 1 ½ hours to drive from one end to the other and doesn't go up there for that reason. It seems like there are plenty of customers so why would there be a number limited on vendors - seems like there are plenty of customers for vendors to serve whatever they want. As far as operating a motorized vehicle on the strand, she chooses to go to the beach in front of her home so she doesn't have to deal with anything other than the lifeguards or police vehicles. She doesn't want to have to deal with ATV's coming at her or vending and she would be totally opposed to motorized vehicles being on the beach strand because those are residential areas.

Council/staff clarified that motorized vehicles (licensed vehicles) would be allowed at Freeman Park but not on the beach strand. The 3 street ends are stationary carts.

Diane Dugan, north end resident and a business owner for 15 years said she feels what the town is doing is wonderful and that they do need to cater to the people at the north end to keep people off of Canal Drive. Her friend's daughter was hit by a car and children are getting hurt every year. She feels it will stop the unnecessary traffic at Carolina Beach. As far as the vending permits go, if she is understanding right you have to have a brick and mortar business to get a permit for the north end and, if you have a brick and mortar that business must be open. Is that correct?

MPT Wilcox said that is not the recommendation staff put forward, he was just reviewing some other discussions from past meetings.

Councilman Gilbert stated that what has been presented to him in this ordinance, which he assumed was part of the advertisement, that the vending activities at Freeman Park shall be operated from a primary business located within any commercial area inside Carolina Beach. The vending activity shall be owned and operated by the owners of the primary business. That is the ordinance that has been presented here tonight for deliberation as he reviewed it. Tim Owens said he is correct, it was advertised for discussion and it is not a zoning issue.

Ms. Dugan said she has had a business for 15 years working out of her home in Carolina Beach. She has donated a lot of time and effort as a soccer coach and other activities and feels it is a little unfair to restrict it to just brick and mortar. When she first applied for a vending permit - she knows everything is being talked about now - but she doesn't think it is fair, especially to have one person monopolize the vending. Everyone should have a chance to be a part of the community. Carolina Beach is a wonderful place and she thinks they need to give everyone a chance, especially property owners. She pays taxes, owns three homes at the north end of the beach and she wants to be a part of her community. This is something she was looking at doing. She was not on the agenda, just the way the agenda looked because she did not have a brick and mortar. If she had known that she probably researched a little bit more to do that but the past vending on the north end, the years she has been here, has just been whoever wants to do it, check with the town, and she just thinks they need to give the residents a chance to be more a part of the community.

Mayor Macon said that is probably what will be proposed but it will have to have a majority vote. If they adopt this ordinance, you will not be coming back to Council, you will be dealing with staff.

April McMunn asked about the part where you have to have a lease, she thinks you can go ahead and have an actual lease because there is an area in the standardized North Carolina commercial lease where you put in a use and if you are not allowed for that use, then that lease is voided.

Tom Campbell, 314-1 Columbia Avenue, serves on the Business and Economic Development Committee, stated that one of the aspects about vending that they talked about from the very beginning was the problem that staff currently has by being the recipient of so many requests to vend. They get 203 requests to vend almost every day. That was one of their driving factors in trying to put together an ordinance that might work so that they would have something to show and give to people that came and wanted to vend. He would like to add to that, whether it needs to be part of the ordinance or part of the administration, but he thinks there should be some formalized procedure for people to apply for vending even though permits may not be currently available so that they would then be on a waiting list - maybe time/date stamped for a predetermined period of time so that if a vending license becomes available, then he would simply go to the list and see who is next, see if they meet the criteria and then issue that permit. He didn't know if it needed to be part of the ordinance, it seems like it might. Tim Owens said there is, which he read.

Councilman Gilbert asked Mr. Campbell if they went to other beach communities to see what they did with vending. Mr. Campbell said they did and found the other communities were as confused about their own vending as we are. There are some communities on the North Carolina coast that do not offer vending at all and some allow totally unlimited vending. Those are the two extremes and they wanted to pick something in the middle. They did not discuss it during the joint meetings as it was

pretty much a foregone conclusion that all the participants wanted vending at some level.

MPT Wilcox thanked them for their hard work.

Sean Cook, 2 N. Lake Park Blvd., Pleasure Island Rentals, said that when they were talking about Freeman Park and opening up Freeman Park to residents, 3 homes on the north end and 15 years in business sounds like you're doing pretty good. Folks who have brick and mortar go to work everyday and this is an opportunity to make a few more bucks as being in business - that is their ultimate goal every day. Being able to go to Freeman Park with a potential to make a few extra dollars, he can't see taking that away from a business owner in the CBD and giving it to a resident, not when there are only 4 permits. MPT Wilcox said that right now there is no requirement, they are actually imposing a stricter standard, that is what is being discussed which will give preference to the residents and business people on the island vs. someone coming in from Wilmington. Mr. Cook feels it should be open to any business district in Carolina Beach.

Mayor Macon asked how he feels about not being permitted in the sense of having a permit to vend on the beach, you wouldn't be a vendor, but you would actually be more like a contract service. Mr. Cook said he is all for that. He does think that opens up a can of worms and they should definitely define that. He is all for free enterprise also and he doesn't want to look like he and Duke are monopolizing the area. He has been there for 8 years putting chairs and umbrellas on the beach. People come back every year and call them, expecting it to be there. Duke has Marriott and Atlantic Towers, gentleman's agreement. He has Golden Sands and the rest of the beach because he has one gator. He probably could come to the town and ask to put out other gators, which would potentially make him more money but he is not. They run reservations early in the morning and continue to run throughout the day but the demand is not there. Once they have done what they have in the morning, it is nickel and dimes the rest of the day. Their investment is quite a bit each year because of the quality of their equipment. The potential of putting \$30,000 in chairs and umbrellas each year and possibly losing that privilege is huge for him.

Attorney Jason Kessler, who is standing in for Steve Coggins, stated that the ordinance he received this evening just before the meeting, he thinks there is no doubt that the town can regulate vending through the business general statutes, the business authority to regulate business, or the authority to regulate transient vendors and vending that way. What his concern would be is tying it to the primary business located in Carolina Beach. It may cause equal protection issues and, depending on who owns the businesses, may cause some issues as far as intrastate commerce and people from out of state trying to vend which can cause potential problems down the road. That is his first impression on the ordinance with regard to legal issues.

James Golden said the Freeman Park Committee, which he went to, and all the members of that committee agreed that they didn't want to see it too commercialized and was that way in the very beginning when it started. A lot of that property does belong to the Freeman's.

Duke Hagestrom, Wheel Fun Rentals, said he wanted to commend the group because they put a lot of time and effort into the process. It is a complicated issue. He feels everyone was looking at a way to make it fair and equitable and do the best they could with a difficult situation. He said he wants to keep his vending license as well as doing chairs and umbrellas. Their vending license expires at the end of 2010 when the current ordinance sunsets, which is for icees, water and sundries on the beach. The other service they offer is for chairs and umbrellas, which is done at the two resorts through bookings.

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

Mayor Macon asked if this is addressing the sunset clause as well.

Tim Owens said he thinks they will need to repeal the existing ordinance and adopt the new ordinance which would get rid of the sunset clause and everything that is in it.

Councilman Johnson asked if the existing permits that are issued now would still be honored.

Mr. Owens said that is up to Council. Mr. Golden would go down to one permit but he would be one of the permits that would have three vehicles, he would say until 2010 because he has an existing permit. Mr. Hagestrom would be the same way. He would say they would remain existing permits.

MPT Wilcox asked about changing the ordinance, with existing permits being grandfathered, vs. repealing the ordinance which he thought everyone started out fresh. Mr. Owens said they are still grandfathered and you could consider them as one of the permits.

Mr. Parvin said they talked about repealing the existing ordinance. People who have licenses now would have the first chance to come in and sign contracts under the new ordinance.

MPT Wilcox said one of the purposes for doing that was to get everyone started on the same date but the people who have permits would have preference.

Mr. Owens said the problem with Lee Ann's example is that she is not at the street end at this point. Mr. Parvin said it would affect her permit and it would change Mr. Golden's permits too. MPT Wilcox said he thinks Lee Ann's is the only case. He knows she is within the town limits and might opt to take one of the leased locations given she already has a permit, maybe some concession could be made on fees for the first year, whatever it takes to make the situations right that we have in place with regard to the Freeman Park people and Lee Ann. He thinks those are the only two it applies to.

Mr. Parvin said that is not part of the packet.

Councilman Gilbert said since vending on the public streets is not considered in here, cart vending, what Lee Ann is proposing - is he to assume the committee discussed that and they found it best not to include street vending in Carolina Beach? Mr. Owens said that was the recommendation.

MPT Wilcox said the discussion was not to include street vending because no locations could be identified that people felt were good for vending at this point in time without infringing on brick and mortars.

Mr. Owens said he thinks the easiest way to handle it would be to let the ones who are already permitted expire when the permit is up. The only one that will be a little bit out of the realm would be Lee Ann's permit and if you treat the other ones the same way then you probably need to allow her to continue until 2010. If you don't want to have more than 6 or however many at Freeman Park, you could probably just not issue one of those permits and let him take over one of those permits. He said this is the same thing for Mr. Hagestrom's example. You don't have 4 permits on the beach now. Duke could fill one and then you have three available.

MPT Wilcox said we have the two situations - Lee Ann has a current town-wide permit with the possibility of opening up one of the leased locations in exchange for that, and James having his situation with the brick and mortar down there and the community didn't feel really strongly about the north location, whether it needed to be at Sandpiper or somewhere else and maybe the possibility of opening that up for the north end or to allow him to have that fixed location. He thinks the two fixed locations at the south end are pretty well thought out. Then there are some other issues with regard to brick and mortars and we need to look further into what the attorney said.

Councilman Johnson said to open it up to all residents of Carolina Beach seems fine in one accord but it seems unfair to those people who come and open businesses and invest thousands and thousands of dollars to create that business. From what the attorney said, he doesn't know where that puts us in the new ordinance. We're saying it has to be from an established primary business located within the commercial zoning district or the CBD, depending on which permit, which area it is. If we went forward with the way that wording is right now, if we have issues we could address those down the line, could we not?

The town attorney said yes, he imagined they could. If this is open to residents or property owners, you might get around some of the issues that may arise about the equal protection and the interstate commerce and that kind of thing because you are going to have people from out of state who own property in Carolina Beach that would have an opportunity to apply for the vending but, as it is, you may run into some trouble as far as regulating, equal protection issues and interstate commerce.

Councilman Johnson said, for clarification, that if he lived in Virginia and owned a couple of lots here in Carolina Beach that it should be open to him if he wanted to vend,

he should be allowed to do that.

The town attorney said someone like that may have a claim to say that under equal protection one section is getting treated differently than the other when they should be able to have an opportunity. They have been looking at that issue for the last few months, the authority to regulate vending and found that there is no question that there is the authority to regulate vending. That was the issue that came up with the old ordinance. The same issue arises in the ordinance he received this evening.

Councilman Gilbert said, the authority to regulate vending, the town attorney included the general statute that the town has the authority to do that and he thinks the 1050-53 is justly included in this because it was not included before. The 160A-178 would be misapplied to the brick and mortar people. Certainly what he is saying about Council deciding to exclude or include people because of brick and mortar businesses, he doesn't think that has ever been tested and has probably been in place 3 or 4 years. If you go back to the spirit of when this ordinance was placed with the sunset clause, the discussion was not to have vending at all and that is the easy way out of this and probably what other beach communities have figured out because it is very difficult to regulate. We don't own Freeman Park and we're telling county people they can or can't vend there, that was the challenge back then and that is what the County Manager had a problem with, that we were talking about giving discounts to residents of Carolina Beach and not discounts of the county. Their concern was do we have the right to exclude the county from those discounts since Carolina Beach doesn't own that. He did not support vending on the beach because he supported the brick and mortar businesses who were trying to make a living in a short period of time. His opinion has changed a little with respect to Freeman Park and it's a public safety issue. He has listened to the Police Department and the residents but he has also listened to Chuck and the families who have operated the pier and feels we still have to respect that. He feels we can work with this ordinance.

**Mayor Macon made a motion to take a 5 minute break. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon called the meeting back to order.

**MPT Wilcox made a motion to recess this item to a meeting tomorrow night or another night to give staff and the attorney time to address issues and come back with something easier to vote on.**

**MPT Wilcox withdrew his motion.**

**Councilman Gilbert made a motion to move this item to after Item #23 and review it and get it done. MOTION CARRIED 3-1 WITH MPT WILCOX VOTING NO.**

**Mayor Macon made a motion to move to Item #14 next. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT TO BRING A FAMILY-ORIENTED CARNIVAL CONSISTING OF A SERIES OF LARGE MECHANICAL RIDES, KIDS' RIDES, FUN HOUSES AND FOOD STANDARDS TO BE TEMPORARILY LOCATED ADJACENT TO THE MARRIOTT HOTEL AND GAZEBO***

Greg Reynolds, Robert Megerle, Charles Eaves, Alicia LaChance, Brett Darlington, Ed Parvin, and Gary Ferguson were sworn in.

Gary Ferguson opened with a presentation. Mr. Ferguson said this is a request for a Conditional Use Permit (CUP) from Robbie Megerle to operate an amusement park in the south end of the boardwalk area (showed overhead of area). This is the same spot the Fairfield Inn was proposed and pretty much utilizes all of their properties. A parking lot for 18 cars was originally proposed and is still being proposed for the employees of the amusements. He reviewed location of various rides, food courts, games, storage, and port-a-potties. One of the issues discussed at TRC is the parking requirements. This is a relatively new use to the town and, according to the zoning ordinance, the requirement for parking is to be adequate to handle the anticipated normal capacity for patron use as determined by the Building Inspector. There are 8 rides, 16 persons each for those 8 rides making roughly 128 people. Also, there are 4 rides with 12 patrons each making an additional 48 people. At the 4 food stands there will be approximately a total of 48 people. The estimated total attendance will be 216 people. With that number we are looking at 1 car for every 3 people, therefore, we are looking at a parking standard for the visitors to the site to be roughly 72 parking spaces. The applicant's position is they will have between 18 and 30 employees on the site of which 18 can be handled at the lot shown earlier. As a result of the CUP, there are specific standards that have to be addressed. The parking area shown earlier is within 500 feet of this required use so the waiving of that parking would be acceptable in terms of meeting the requirements of the ordinance. There are 7 specific standards that the applicant must address or meet. Ingress or egress to the property - one of the concerns is that around the Cape Fear area, around the pavilion area, as well as on the boardwalk directly east of the site, there is a concern about the overflow of patrons interfering with the flow of folks on the boardwalk as it exists today. In addition at the rear of the site Mr. Ferguson identified an area and said this could be an area where people may migrate into Canal and staff was asking that some barrier be placed to keep people out from there. He showed the entry points. The area where the games are going to be situated will be oriented towards the boardwalk. That could potentially allow for crowds to be congregating in this area could be a bit of a problem. The suggestion was to have some means of controlling the public from going out into road as well as lines into Cape Fear and the pavilion area. A second concern in part of the specific standards that have to be addressed is parking and we have addressed that. We're looking at 18 employee spaces and, roughly, 72 parking spaces that need to be waived. A third condition is refuse collection. We are going to continue to follow what everyone else in this area generally does. They'll be using the dumpster and on-site receptacles. Fourth is the utilities - one is power. Initially staff was concerned as to

whether they could tie into Progress Energy's power source but they are able to and they will not require generators. They will also be bringing in a generator in case of a power outage to use for such an emergency. The 4 portalettes will be on the back of the property at 2 locations which will accommodate 230 people. One will be handicapped accessible. The other item would be buffer and there are no buffers in the CBD so buffering requirement would have to be met under that condition. Signs will be on the actual rides themselves but they would have to come in and get permits for additional signage. There will be some minor grading at the site immediately adjacent to the Marriott in order to get the rides positioned correctly and stabilized. In addition, there are 4 specific conditions that have to be met. Public health and safety have to be managed properly and the Department of Labor will come through and review these facilities from a maintenance and operation point of view. Staff has asked that these inspection reports be part of the CUP. There is a condition under the grant order that speaks to all state, federal and local ordinances and permits need to be obtained. With that they were going to have to get some kind of approval/inspection by the state. Two, rules and regulations have to be adhered to. The town's rules are being met with this public hearing. In addition to that, the state rule would require a CAMA permit. That could be issued by our local permit officer in the town here. Three, the value of the adjacent property should not be diminished or harmed as a result of this application moving forward. Noise is one issue. The proposal before Council is for the operation to be from 10:00 a.m. until 11:00 p.m. on the weekdays (Sunday, Monday, Tuesday, Wednesday and Thursday). On Friday and Saturday they would like to operate from 10:00 a.m. until midnight. They would still be under the noise ordinance, under the CUP permit proposal that would be conditions #10 and #12. Staff is also concerned about trash and how that will be managed on a daily basis. They assure us that the trash will be managed by them on site and cleaning up at the end of the day. The height is another issue. The ferris wheel will be a maximum of 60 feet and be located at the southwest side of the Marriott. They do not believe it will interfere with any of the Marriott's views. It will pretty much be lined up with the conference room of the Marriott. The last concern was about housing and employees have a place to stay. During the Planning and Zoning meeting, Greg Reynolds, architect for the property, assured staff that housing will be provided across the bridge at an appropriate location but will not be occurring on site and is noted in the CUP application. It is consistent with the Land Use Plan because it encourages family-oriented activities and fulfills a resort market niche. He showed some examples of the types of rides that are being proposed as well as the fencing which will be on site in Carolina Beach. Staff took this issue to Planning and Zoning last Thursday evening and they recommended unanimous approval with one additional condition that the liability insurance also to the benefit of the town, not just for accidents or events that might happen between the operator of the amusements and the public. He reviewed on the overhead the proposed location of the fencing, rides, food courts and entrances and exits.

MPT Wilcox asked about noise control and any special plans after 10:00 p.m. at night to control noise. Mr. Ferguson said the applicant is going to fall under the noise ordinance of Article X of Town Code. The maximum decibel is like 7 dbs. In talking with Greg Reynolds, he seemed to think the applicant could adhere to that. Mr. Parvin said when they talked to him he stated the volume can be adjusted on all the rides and can be

lowered during later hours. MPT Wilcox asked if there are plan to lower levels to some pre-determined time at night. Mr. Ferguson said they don't know, but they were elated to hear they will not be using generators and will be tied into Progress Energy.

Mayor Macon asked if the applicant would like to step forward.

Greg Reynolds, 711 Canal Drive, representing Robbie Megerle, said about 30 days ago Matt Murphy gave him a call and brought this to his attention, said he needed draw up a CUP. He was elated as he felt this was something the town has needed for a long time and will be a big economic stimulus. With that will be a price to pay with regard to control of the crowds and the noise. The applicant would be making a very large investment to bring rides here. He has over 35 years experience and an outstanding safety record. A very positive editorial was also in the paper. Some of the issues they have had - the insurance, he doesn't think they have a problem with that, the town is additionally insured with \$1 million per occurrence and \$1 million aggregate insurance as required by the state. They will be glad to provide the certificate to the town. The cleanup situation, they will have a dumpster on site, southwest side, and containers all around. One of the last things they do at closing each night is to police the entire area, including public area, that's the boardwalk, to make sure they are a good neighbor. Another item, the noise is a big issue. He will let Robbie address specifically after 10:00 p.m. We have to discuss when a band is being played at the gazebo, he will be turning his music down. Typically at a fair situation you have stages throughout the midway and bands play and can be heard and understood. Some of the crowd control they talked about earlier and they are looking at probably an entrance right here (showed on overhead) with a huge hill nearby so they want to put a fence around that all the way down to an entrance at the lower end to keep all the crowds from coming onto the gazebo area. He showed a main entrance at another location and one other entrance. The rides themselves will form a wall that you cannot get through. They have to have fencing around the rides for safety issues by the Department of Labor. They would like to request to have the Town Manager or his representative to come to the site, once the rides get here, and show them where he would like to have fencing. The applicant is very open to keeping the crowd controlled, doesn't want to be a bad neighbor and wants to make sure everybody wins on this situation. He said Robbie and his father used to run the rides that were down by the steel pier and he has run rides in Wilmington as well as North Carolina.

Robbie Megerle said they have been in this business all of their lives and have a very good safety record and never had a problem. They are not bringing a carnival but an amusement company and will do their best to do a nice job. They will work with them anyway they want. They will need someone to come out to set up they way they want. He wants to hire people from town but he needs professional operators to oversee things for safety reasons. Everyone has to go through training and must pass that. They will be upgraded according to their capabilities. Everyone who works on the equipment is responsible for the area around the equipment and cleaning will be ongoing or, if busy, at the end of the evening every night. There will be four trailers who will be vending typical fair type food. All of the equipment is their, no subcontracting. Subcontracting

other food vendors would be a deal breaker.

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

Dale Rackley, 1212 Bowfin, was sworn in. Mr. Rackley said he feels it is a great idea to bring the fair in but he asks that they don't set the rides or games right by his front door or sell hotdogs by Lee Ann's front door. Where they are setting up games is right at his front door and he is wanting to bring in games and adult entertainment, etc. and if they locate right at his front door will kill him. He feels it will hurt the businesses that are trying to start. He is all for the big stuff but it doesn't need to be at his front door. He will be serving food such as sauerkraut and brats. He also will have carnival/arcade games. If Mr. Megerle locates his at another corner then he might get some of that business before they get to them.

Brett Darlington, 100 Charlotte Avenue, General Manager of Courtyard by Marriott, said he is in favor of the project and feels Carolina Beach needs family oriented activities and venues and thinks this will be a big boost for the town. He is happy about the use of direct electricity vs. generators. He is requesting consideration for a privacy fence between parcel 2, which is the lot adjacent to the hotel, and the hotel back loading area. They take trash out many times during the day and there are a lot of deliveries, and some sort of privacy fence would keep that from being on display. He would also like closing times be changed to 10:00 p.m. weekdays and 11:00 p.m. weekends because of noise, crowd and trash issues. They are willing to deal with that because overall they feel it is a good thing but would be more comfortable if the times were, at least, an hour earlier as it would be more manageable from a guest complaint perspective.

Charles Eaves, 1311 S. Lake Park Blvd., Unit 31-B, has lived there since 1984. He is a retired police officer. He asked if the new employees will have a criminal background check and be tested for drugs. He said this outfit is from Florida and thinks the town should check with the Better Business Bureau in Florida. He is representing a multi-millionaire who just bought at Sea Colony who could not be here tonight. He has grandchildren who will be attending the amusement park and wanted Mr. Eaves to cover these issues. His own family will be going to the park and that is why he is voicing his concerns about the background checks, drug testing and the Better Business Bureau.

Alicia LaChance, 102 Carolina Sands Drive, said they were discussing this at the Police Advisory Committee meeting last week, which was the first she had heard of it. She asked if the carnival is going to be responsible for power, water, sewer and trash disposal - will they get a bill? Mayor Macon said they will be billed by Progress Energy. Mr. Owens said if they are tapped into our water supply, then they would but he is not sure they are going to be and the sewer would be the same thing. He is not sure how they would handle impact fees, they haven't gotten that far yet, whether there would be because there were some existing businesses there. They will handle their own trash costs. He will talk about some of the other issues shortly.

Ms. LaChance said she this company has been to three venues already this spring already, Okeechobee County, Sewanee and Blessed Trinity. Two of those three she spoke with today regarding their performance or any issues or complaints/problems they had with the police department/security. Okeechobee said they had no issues with the company but they did station four deputies per 1,000 people just for the carnival and fair. She thinks the town needs to look at that. The town's police department is extremely stressed now with the north end and the boardwalk as it is and you are now jeopardizing residents' safety if someone breaks into her home and she doesn't have an officer to respond. Okichobe billed them \$25 per deputy, those were off-duty officers, for security to keep any gang activity or issues down. That came directly from the sheriff's department. The Blessed Trinity Catholic Church said the fair left everything clean. The only issues they had were that some of the trailers and mobile homes that the operators drove there to stay in for the weekend were hooked up illegally to private property, to people's air conditioning units, water from the school and community buildings in their parks and soccer fields. The town needs to keep an eye on, if RV's are coming in, where they are going to be and keep track that they are hooked up legally in a legal mobile home park or state park where they are paying a daily fee. They also had some damage to a sewer line where they had asked the company not to drive. The gentleman advised her that the line was busted, they left and that bill has not been settled. She spoke with the gentleman with the fairgrounds and he was not aware of the damage until tonight and assured her that he would check into it. She also asked him if it would be reasonable to have background checks, Florida does that. It's not mandatory that the carnival give background checks and provide it to any town they are in, it's voluntary. The gentleman agreed with her this evening before the meeting that that would not be a problem for him. If we are going to gear this towards children, it's very important that we do not have convicted felons and pedophiles taking care of our park. She doesn't want her children up there with a convicted pedophile who can't get a job anywhere else other than a traveling carnival. So she has safety concerns there. He has agreed to do that and she requests that Council requests the background checks for convicted sex offenders and that they not be allowed to operate in this carnival within the town limits. On the last page it says the Town Council may grant an extension to the CUP for an extra summer session. If three or more violations occur, then the CUP shall be revoked. Below that it has: (a) Upon preponderance of the evidence of the establishments patrons display a pattern of disorderly violent, indecent or unlawful conduct if the application contains any material, misrepresentation, misstatement or omission concerning information. She feels (c) contradicts that and she would like that a little clearer because you stated that you will revoke the CUP and then (c) says, "If the use is found guilty by the town of three or more violations during the four month operation, the Town Council will hold a public hearing to review the CUP." That would take months to get and they are only here 3 or 4 months. Her question is whether they are going to revoke it and then hear it and then reinstate it or are you going to wait for a public hearing and then decide to revoke because it says two things on there?

Mr. Ferguson said she is very correct in what she said and he should have brought it to Council's attention. Item #8 in the grant order, there seems to be some confusion in that the last sentence says, "If three or more violations occur then the CUP shall be revoked."

Staff cannot do that so it will have to go to Council and he recommends striking out that last sentence in #8 and bring it down to (c) in #9, which addresses, "If the use is found guilty by the town of three or more violations during the 4 month operating period, then the Council shall hold a public hearing to review the CUP." That is typically what they do if they find a problem and a need to potentially revoke a CUP.

Mayor Macon said as long as they meet the advertising requirements, they can call a special meeting.

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

Robbie Megerle responded to concerns. He said the privacy fence requested by Mr. Darlington is not a problem nor are the criminal background checks/drug testing. He said he was at the Okeechobee Fair which has about 250 acres of land. There are about 400-500 horse people there with trailers and 150 vendors not associated with them. A fair is totally different from what they would be doing here. He does not see the need for any more security than what is in place now at the boardwalk. If they get to the point of where they see they need something, absolutely, but they need to play it by ear and see how it goes. With regard to Blessed Trinity Church, he called his partner about that and Ms. LaChance spoke with the wrong person there because Susie is the girl in charge and they still have a couple of rides that are stored there. They are going to pick them up next week and the lady is getting an estimate and they are handling that for them. When they pick up the rides they will take care of the problem there. They did not leave there and ignore those people. They also do 40 other venues in Florida, some of them for 20 years or more, and they didn't get welcomed back because they are not doing their job. With regard to the Courtyard's request for shorter hours, he said he would have to play it by ear to see how it is going to go. If they need to close earlier, they don't have a problem with that because it will cost them money to stay open. If on the weekends is there for it, that is how they make their living. They would like to be able to comply with the noise and still operate as late as they have to make a living. He would like to have an opportunity to see how it goes before they make some rules. He understands his concerns and he wants to work with him and be a good neighbor. They will do whatever it takes to make that work. If they have to end a little earlier, if it ends up being that way, they will.

MPT Wilcox asked about the 6 foot sidewalk area that offers access to other things going on the boardwalk, as well as areas where booths are routinely set up that would not be available. He feels there may be a real problem there.

Mr. Megerle went over the locations of entrances, fences, etc. on the overhead and said they would work out any issues. The only reason they are putting certain things in certain places is because of electric lines. The Department of Labor won't let him put amusement rides in certain places so they are putting food and games there because there is only so much space. Until they do it, he's not sure how they will get it all in there.

MPT Wilcox wants the amusements there but he is concerned about other businesses, traffic flow for other events and wants everything to work well together. If we leave too many other things to be determined at a later date, it may be a problem.

Mr. Megerle said he knows basically where the entrances will be.

Mayor Macon reiterated that the town wants to continue with the events they've been doing and want to make it better. Everyone needs to work together.

MPT Wilcox said his area of concern is those main walkways and that they do something creative at the arcade game that doesn't allow that to be an open venue to boardwalk.

Councilman Gilbert expressed a concern about the parking area in lot 5, on the south side where there is a parking lot that has a way to drive through into there. His concern is that there will be overflow into the lots, maybe to the north or south. Is there an opportunity that he can delineate the area of that parking lot?

Mr. Owens said there could be some fencing placed there.

Councilman Gilbert said his other concern is that he has received some feedback from people about not wanting to see porta-potties. Business owners have spent a lot of money sprucing up their places and they are requesting they be placed somewhere else.

Mr. Owens said he has a little concern about the police department and the number of calls that they make or the expectation that they need to be around. He has some concerns about that expectation that there needs to be a police officer around because they are very busy in the summertime. Regarding environmental concerns, if they have 500 people at this location at any given time, trash cans are going to be full, toilet paper will need to be changed out, cotton candy will be all over the boardwalk. They have to pressure wash monthly and he can see the need that they might have to do it daily but they do not have the staff at this point to do that. He doesn't know what the backup plan is or how they will help the town accommodate all that activity.

Mayor Macon said they will look into areas for loading and unloading.

**MPT Wilcox made a motion to approve the applicant's request based on meeting the even specific standards and four general requirements based on TRC's review, Planning and Zoning and staff's comments, including that the applicant address the issue of some type of a privacy fence or a fencing situation along the Marriott line as discussed; that the applicant do background checks on the employees; that the applicant be willing to work with staff on any problems related to traffic/crowd control, additional police presence that might be required or any problems that might occur such as the food item that the town manager was addressing; that some type of barrier fence be placed around the employee parking area; and that the closing hours of operation be restricted from 11:00 p.m./12:00 p.m. if there is a**

**problem with the noise ordinance. An additional condition is that the town police chief review the background checks for compliance.**

**The conditions are as follows:**

**BASED ON THE FOREGOING FINDINGS OF FACT,** the Town Council makes the following conclusion as required by Article 14.9 of the Zoning Ordinance of the Town of Carolina Beach:

- 1. It is the Town Council's conclusion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted and approved by the issuance of the conditional use permit.**
- 2. It is the Town Council's conclusion that the use meets all required conditions and specifications.**
- 3. It is the Town Council's conclusion that the use will not substantially injure the value of adjoining or abutting property.**
- 4. It is the Town Council's conclusion 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.**

**Conditions of Approval:**

- 1. Final project shall be designed to provide 18 employee parking spaces on parcel 5. As provided in Article 7 of the Town's Zoning Ordinance, "where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use." Parking for the 72 required spaces shall be waived after the applicant signs a parking waiver stating the Town is not liable for any deficiency of public parking spaces.**
- 2. Solid waste is handled collectively by the boardwalk area businesses. The owner will be required to continue to participate in this program. In addition a dumpster shall be provided on the west side of parcel 2. Trash receptacles shall be provided throughout the five parcels. Trash receptacles shall be emptied daily as needed. Surrounding areas shall be patrolled by employees for any carnival trash throughout the day and at the closing of rides each day.**
- 3. A sign permit shall be obtained for any signs located on the property.**
- 4. All permits and approval letters/final inspections required by all Federal, State, and Local Agencies must be submitted to the Town of Carolina Beach Planning Department prior to beginning operations.**
- 5. 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. Moving of rides on-site may be approved administratively by TRC.
6. Outdoor artificial lighting fixtures shall be designed and positioned so that:
    - a) The point source of light or any reflective surface from a light fixture is not directly visible from the beach.
    - b) Areas seaward of the frontal dune are not directly or indirectly illuminated and
    - c) Areas seaward of the frontal dune are not cumulatively illuminated.
  7. Off-Street loading requirements have been waived by the Town Council. The following loading plan shall be utilized:
    - Loading area is anticipated to be in the designated space on Raleigh Avenue,
    - Loading will typically take place prior to 10am.
    - The largest truck anticipated will be the food delivery typically seen serving the Boardwalk area.
    - The loading period for the vendors should be less than 15 minutes.
  8. The use shall be allowed for one year. The CUP shall be reviewed for compliance with the Town Code of Ordinances and with the original business plan on or before the April 2010 regularly scheduled Town Council meeting. If the use continues to operate with no violations, the Town Council may grant an extension to the CUP for next year's summer season.
  9. This conditional use permit shall be revoked if any of the following are discovered:
    - a. Upon a preponderance of evidence that the establishment's patrons display a pattern of disorderly, violent, indecent or unlawful conduct;
    - b. If the application contains any material misrepresentation, misstatement or omission, concerning information required to be provided.
    - c. If the use is found guilty by the Town of three (3) or more violations during the four month operating period, then the Town Council shall hold a public hearing to review the conditional use permit.
  10. Hours of operation shall be limited to Sunday – Thursday: 10am to 11pm; Friday and Saturday 10am -12am.
  11. A manager shall be on-site at all times when the carnival is open.
  12. The carnival shall maintain compliance with the Carolina Beach Noise Ordinance (Section 10-4 through 10-10 of the Town Code).
  13. No temporary living facilities shall be located on the site.
  14. Criminal background checks shall be performed on all amusement ride operators and employees prior to commencing the event. The cost of these checks shall be at the applicants expense.
  15. During the day and at closing of each night the applicant shall be responsible for security and cleaning up the site and the Town rights-of-ways immediately adjacent to the amusement site.
  16. A fence shall be installed around Parcel 5 (employee parking area) as well as a privacy fence adjacent to the Marriott Hotel.

Councilman Gilbert asked that there be some flexibility with working with brick and mortar regarding food vending or like items.

**MPT Wilcox amended his motion to remove the last sentence in Condition #8, “If three or more violations occur then the CUP shall be revoked”, so that Condition #9 will apply. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER AMENDING THE CODE OF ORDINANCES, CHAPTER 16  
UTILITIES, ARTICLE IV STORMWATER MANAGEMENT ORDINANCE***

Derrick Roberts with Withers and Ravenel said they have been working with staff for several months to create a new stormwater ordinance. He is here with Hunter Freeman. He passed out the revised ordinance which they were working on in through this morning to address comments from the homebuilders association.

Hunter Freeman, Withers and Ravenel, said this mornings changes were minor regarding definitions and clarification on a couple of rules. They did give a presentation last month at the council meeting, a brief overview of the changes to the ordinance. The new stormwater ordinance was required as part of the NPDES Phase II permit, which the State of North Carolina issued the town on March 1, 2007 with a requirements that within 24 months the town adopt a new stormwater ordinance to comply with those NPDES regulations. Their approach was to take existing town policies and ordinances and use those wherever possible and only insert state minimum requirements where they were either not covered by previous town ordinances or were more stringent than town ordinances. The first of those two conditions applied most often. He did not believe there were any existing town ordinances that were less stringent than the state minimum requirements. In general, any changes were to clarify the existing town policies and procedures or to meet state minimum requirements, mainly on larger projects which are adding or otherwise altering over 10,000 square feet built upon area and that's consistent with the current coastal stormwater regulations that are administered by the State of North Carolina. He showed a brief summary chart on the overhead. The main differences being larger projects now have to control and treat the runoff from 1 ½ inches of rainfall, which was consistent with the town's policies before. The permit threshold remains at 500 square feet of impervious area so it would to most projects. The ordinance can be adopted as is by town, the only required element that staff needs to advise on and fill in the ordinance would be effective date and there is the opportunity to set that date 60 to 90 days out from now to provide for a transition period between having applicants submit permits currently to the State Water Quality office, Wilmington regional office, for approval. All of the permitting will now be done by the town. The permits will come into the town and will be issued by the town under this ordinance rather than being issued by the State Stormwater permit from the Division of Water Quality. This new ordinance also removes some of the duplicity of effort there. What the additional timeline vs. adopting the ordinance and the effective date also gives the town that window of opportunity to define their administrative policies and procedures specific to this ordinance such as submittal forms, application forms, fee schedule, stormwater maps defining the coverage areas which, some of this has already been done but just needs to be assembled so the applicant has some guidance. The only changes in this ordinance vs. the one passed out earlier, 3 or 4 changes to definitions, they added 3 definitions; slightly revised Section 187 on expiration to provide an ongoing ability for the Director of Stormwater Management to void out applications for projects that have

gone dormant for a period of greater than 3 months of any time so, if the permit has been issued but during the first year or, in any 3 month consecutive period after that fact, the project has gone dormant and there is no construction activity or no activity on that development site, whether it be construction or permitting or, perhaps coordinating building permits, etc., they can void that stormwater permit and require the applicant to reapply. Those are the two major sections that were changed in this most recent version. This has been sent to the state for review to the Division of Water Quality. To this point they have only issued minor comments which have been addressed and fixed in this but they are of the opinion that this meets their minimum requirements therefore, by the town adopting it, there will be no further review from the state and no potential for them to have additional comments on it. They do not expect that. He said the design manual referred to in Sec. 16-173 refers to the design standards and specifications for individual structural stormwater controls and they referenced the state manual so, as the state updates their standards they will automatically be incorporated into the town's standards and the standards at the time of complete application by the applicant will be applicable throughout that project history. The applicant is subject to the standards at the time of original application under which they submitted. If there was a major design change and staff wished to request that the applicant adjust their design accordingly, they would have the opportunity to do that.

Tim Owens said he felt it would be a good idea to delay the effective date 60 or 90 days for several reasons - they really haven't discussed or considered a review fee. Some of the things are probably within their capability to review. Other more complex items such as a 10 acre subdivision or a huge commercial complex are probably outside of what they would want to review so they may want to consider their fee and maybe send it to an engineer for an initial review. There are other parts of this ordinance that they really need to be attentive to. We don't necessarily have an application at this point, at least one that wouldn't need modification. There are also some legal type issues such as easements. A 90 day effective date he feels is adequate to get those things back to Withers and Ravenel.

MPT Wilcox asked about the fee in lieu - what is the basis for the 10,000 foot cutoff? Mr. Freeman said the current coastal rules and the state minimum requirements are currently, if you were going to the state for a stormwater permit it would be applicable to projects that are adding or replacing greater than 10,000 square feet built upon area. The current town requirements, as he understands them, go down to 500 square feet. In an effort to keep current policies and procedures in place and also meet state minimum requirements, at staff recommendation, they included provisions for a fee in lieu for projects that are adding or building between 500 and 9,999 square feet of impervious area. Once 10,000 hits, because that is the state threshold for a coastal stormwater permit, you would have to meet the state's minimum requirements which are to build a structural BMP and the fee in lieu option would no longer be applicable.

MPT Wilcox said because of our topographics and sea level, there are just some sites that can't be built if a fee in lieu or partial fee in lieu weren't allowed. He asked if you could build two 5,000 square foot structures next to each other and have a fee in lieu but you

can't build a 10,000 square foot structure or can't have some portion of that be fee in lieu where it might be deemed that there is no other option. Mr. Freeman said that is

something they can inquire with the state and request their opinion on whether that would be deemed to be equal or more stringent than their minimum requirement. To address the ability to build two 5,000 square foot projects next to each other, there is a provision in the ordinance and they defined one of the revisions this morning to add a definition for what is called a common plan of development. Those two projects if they were the same owner and under the same master plan, would be considered one project. Two different owners would be different. He is meeting with Division of Water Quality tomorrow and will ask and provide staff with the answer.

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

Tyler Newman with the Business Alliance for a Sound Economy (BASE) said he represents a number of people, including the Wilmington Cape Fear Home Builder's Association. They submitted comments earlier in the day in writing. He thinks the most important thing is to thank staff for their help with the ordinance. He thinks what Withers and Ravenel have come up with, taking the town's old ordinance and the state rules and coming up with something new is consistent with what we are seeing in other areas of the region. The definitions that we suggested in our comments earlier are consistent with what is going on in Leland and Oak Island with their similar revisions. He feels Mr. Wilcox's comment about the fee in lieu is a question they would like to see answered potentially in the next 60 to 90 days, to have clarification from DWQ as to whether you can have a fee in lieu above 10,000 square feet. He knows that restriction is in there but it would be important to have a firm answer one way or another and not just have a threshold because it is there. He thinks the changes that were made today address the majority of their concerns.

Mr. Freeman recommended that the 60 or 90 days start today, whether or not you adopt the ordinance at this meeting. He understands they need to wait and see if they can work the fee in lieu in there but the state requirement was that an ordinance be adopted March 1<sup>st</sup> and the longer you push that out, the more you can ruffle their feathers. There are towns out there that have waited significantly longer.

Mr. Owens said he thinks what they are doing is approving the ordinance, adopting the ordinance tonight with a delayed, effective date, he would prefer 90 days. The other thing they really didn't talk about was that they would like to adopt by reference the Stormwater Phase II Map. If the ordinance is adopted, it outlines those areas that almost have to pay a fee in lieu of. Those are the ones we are building stormwater ponds for in Wilmington Beach.

Mr. Freeman said the state would continue to review the existing permits. The ordinance would go into effect and any plans submitted subsequent to the effective date of the ordinance, the ordinance would be applicable only to those plans.

MPT Wilcox said he feels that anyone who is working on some project that we would, as a courtesy, let them know there is a change coming so they don't do a bunch of engineering only to have to have it redesigned.

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

**Councilman Gilbert made a motion to approve Ordinance 09-780 (Exhibit 3), an ordinance amending Chapter 16 Utilities, Article IV Stormwater Management Ordinance along with the Phase II Stormwater Map as requested by the town manager making this ordinance effective 90 days from today. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon requested that Item #21 be moved to Item #14(a).

***REQUEST BY JACOB TZFANYA FOR A CONDITIONAL USE PERMIT EXTENSION***

Brett Keeler said, as Gregg Reynolds elaborated to Council, this has been very fast paced since Robbie Megerle called the town manager. Two years ago, he believes in June, they went for a CUP for both the Astor lot, the Hilton lot and some of the Fairfield lots for the amusements. Unfortunately no one came down and, apparently when he approached staff, he was under the impression that the CUP was good for two years and so did staff at that point, so they put it on the agenda to try to extend the CUP so that when Mr. Megerle does come down and he does operate that he has the option and he has more games and rides come down, that there can be a readymade spot for him to put more equipment. He asked for the CUP extension in case there is a huge demand to put more amusements. From what he understands, the CUP is expired. Is there any sort of vested rights involved in that or any avenue to go about and, if not, is there any expedited process to get a CUP for the Astor lot? That is the only way the Astor lot is going to be used this summer.

Tim Owens pointed out that item #16 of the order granting the CUP states, "The temporary amusements shall only be allowed until November 1, 2007", and that was a specific condition that was placed on it because no one knew what was going to happen to the Hilton or some other structures.

Councilman Gilbert asked if Mr. Megerle would be willing to include that lot in his CUP?

Mr. Keeler said he thinks that falls into a different CUP issue where, right now he doesn't

have an agreement the land owner. He, Mr. Keeler, has an agreement with New

Amsterdam LLC where the Town Manager received written permission from Jacob Tzfanya for Mr. Keeler to try to extend this permit.

Councilman Gilbert suggested making a motion to reconsider what we just considered and then re-permit his project with that lot in there.

Mr. Owens said the concern would be, there were numerous lots and he thinks the Astor lot would be the only one he really would want to consider. Their CUP had multiple lots.

Mr. Keeler said their CUP had a couple of SECOF's lots that were included in Mr. Megerle's CUP tonight, had the Astor lot and Mr. Maynard's lots that are going to house the Hilton.

Mr. Owens said the other option would be to set a public hearing tonight for June Council meeting, take it to P&Z in May and they could potentially have approval in early June or set up a separate meeting to try to take care of business.

Councilman Gilbert said that Mr. Megerle is no longer at the meeting and he is the applicant. He thinks they could make a motion to reconsider and then add a condition to include that lot but not unless he agrees for it to be on his CUP.

Mr. Ferguson said, from staff's concern from a location point of view and the adjacent property owner notification, etc., he feels they are stepping beyond the notification of what they gave out to the adjacent property owners. If they want to expedite it, do what the Town Manager suggests and bring it back in May or June and then Mr. Megerle can decide if he likes that or not.

**Mayor Macon made a motion to set a public hearing date for June to consider a major modification to the last application or new CUP. MOTION CARRIED UNANIMOUSLY.**

***REQUEST FOR A CONDITIONAL USE PERMIT FOR AN AMUSEMENT AND ENTERTAINMENT COMPLEX WITH A SPECIALTY RESTAURANT (CAPACITY 45) SERVING PREPARED FOODS AND ASSORTED BEVERAGES AT AN EXISTING FACILITY LOCATED AT 12 CAROLINA BEACH AVENUE NORTH***

The following were sworn in: Ed Parvin, Gary Ferguson, Tim Owens, Darryl Rackley, Tom Campbell and Greg Reynolds.

Ed Parvin made presentation. He said this is a conditional use permit approval for two uses at one building. One is for amusements and entertainment on one half of the floor space, which is permitted by right, and then a specialty restaurant, which is also permitted by right if they are requesting to sell alcohol, which they are and the request is to sell

beer, then a CUP is required. He showed the floor plan on the overhead showing the building split in half with the southern half being the specialty restaurant and the other half for games, stage area for entertainment. A storage and prep area for food will be behind the bar and another storage area by the bathrooms. The surrounding uses: this is where the bumper cars were previously located, Frank's Pizza, Britt's Donuts, Sandbarz retail shop, snow cone shop, proposed Pilate's studio, and Beach Portraits. Going through the general conditions and specific standards, staff had serious reservations in recommending approval of this CUP. There are four points he reviewed. (1) The changing nature of activities, the name and the theme of the business. The original proposal came into staff, The Brew Lagoon was the name and the entire area was open. Mr. Rackley asked for free rein of how the area would be set up. He changed that to the plan that was shown. He did say initially that he wanted to do some kind of prepackaged foods and beer for patrons. At TRC, he changed the name from Brew Lagoon to Mein Stein. A narrative was provided which said some prepackaged foods would be provided. The applicant stated that there was a potential that this would turn into a bar during some parts of the day. TRC expressed concerns at that point that the use was in fact a bar. After TRC, the applicant brought in his submittal for Planning and Zoning. Several things were requested, updated narrative, site plan and menu were the main three items that he was required to submit. The floor plan Council has now is basically the same floor plan he has had throughout after TRC. The menu is the same now although a different menu was presented to Planning and Zoning and he might address that again tonight. He did go back to his old menu tonight for your submittal, which is the one Planning and Zoning saw. After TRC and we got his Planning and Zoning submittal, staff did talk to the applicant because there was some conflict between what staff was considering a bar and he was trying to ask for a specialty restaurant. Staff mentioned going through the Board of Adjustment process with Mr. Rackley. He was adamantly opposed to going through that because staff had already started him going through the CUP process. Our option was, you can open up now without alcohol and go to the Board of Adjustment or he can go through the CUP process. He was adamant about wanting to come through the CUP process so staff kept him on that track without going to the Board of Adjustment. When they took it to Planning and Zoning, staff shared their same concerns with this operating as a bar. They agreed with staff and their final recommendations. The submittal that Council has is exactly the same as Planning and Zoning. No changes were made. He has made some modifications to the menu. Bars typically operate with arcades, games and entertainment. Staff looked at the design of the building as well. It is designed as most bars have been designed. At the time there was another bar across the way that was almost identical to this proposal with prepackaged food, entertainment area and games. (3) The proposed use appears to be heavily dependent on alcohol sales. Staff does recognize that other restaurants may turn into bars in the late evening although our definition of a bar says that, if the use is primarily engaged in the sale or service of alcoholic beverage for on-premise consumption during any period of the day, then it will be classified as a bar. That is one of staff's concerns. The difference between this and other restaurants is that this does not clearly fall into a category of an eating and drinking establishment other than a bar we have now. It doesn't fall under a restaurant typically because most restaurants have a kitchen. The only one that doesn't is a specialty restaurant examples of which are ice cream shop,

coffee shop - a specialty item that you cater to. Also, the design, the use seems to be heavily dependent on alcoholic or beer sales. (4) The specialty restaurants are intended to allow establishments that specialize in a certain type of food sales. Planning and Zoning heard this at their March meeting and recommended denial based on basically the presentation he just gave, on general condition (2) that the use meets all required conditions and specifications which passed 4-1. It didn't meet the requirements of a specialty restaurant. It appeared to them to be a German themed bar. His food items were limited to a slice of pizza, sodas and beer and was more conducive to a bar.

MPT Wilcox said he had a few questions and staff probably wouldn't like them. He appreciates that staff is looking out after the town with regard to their recommendations and concerns about the application but he is more concerned about the real evidence and he is not sure that what the applicant told staff during the initial stages or what might have changed at some point in time is relevant to his decision tonight. He is only considering the application before him. He asked, what is a specialty restaurant?

Mr. Parvin said staff wanted to layout the process they went through so Council could see how the use changed through TRC to Planning and Zoning.

MPT Wilcox said that is not uncommon for projects. They change as they work with staff and go through the process.

Mr. Parvin said they usually have the use tied down and maybe the restaurant could have been BOA but the applicant was adamant about wanting to come through and were trying to be accommodating. A specialty restaurant is unique from other restaurants because it doesn't have to have a kitchen but it does accommodate things like a coffee shop. If you sell a specialty item it could be donuts, ice cream. It could be any kind of specialty food item that they are proposing to sell. If they had a specialty that is German food, that could be a specialty restaurant.

MPT Wilcox asked if it is fair to say that a specialty restaurant, because he is getting different answers on this - is a specialty restaurant the use, is it the type of food, is it the name of the place? What is it? Is it fair to say that a specialty restaurant is a place that serves some type of a food product but doesn't meet the qualifications to have full restaurant because it doesn't have a kitchen?

Mr. Parvin said he thinks so but our thought was it wouldn't be prepackaged foods or basically bar food and that was what they really had issues with. It wasn't designed like a Britt's Donuts or Squiggly's Ice Cream or something like that. It was designed with the main business, this is how staff saw it during review, for entertainment, games and alcoholic sales.

MPT Wilcox said he is trying to distinguish between the Mayor's specialty restaurant where they have prepackaged foods and they serve coffee and wine and beer at night. Just like a restaurant, food is available. If nobody is ordering it, it's still available and maybe people consuming alcohol buy food or coffee may not be being served 100% of

the time at the same time alcohol is. He is confused by specialty restaurant because he doesn't think coffee is anything special. There are several coffee places and he doesn't think ice cream is anything special. What he is trying to get to is the meat and potatoes of a specialty restaurant in order for him to figure out what he is doing. If you have a person who wants to serve 7 or 8, 6 or 9 food items, prepackaged desserts, whatever they are serving - isn't that more closely to a restaurant than someone who is serving ice cream, coffee or donuts? Isn't that more closely to the definition a restaurant?

Councilman Gilbert said he thinks MPT Wilcox is putting staff in a poor position here. You are asking him to speak to the evidence here but you are asking for staff's interpretation of some language.

MPT Wilcox said if staff cannot tell him what a specialty restaurant is or he doesn't clearly understand what it is, he cannot make a decision whether it meets specialty restaurant requirements.

Councilman Gilbert said they are the ones who put this ordinance in place, and they're the board who voted on this language.

Gary Ferguson said it is a new ordinance and it is some interpretations involved. He thinks Ed is right and he thinks Dan is right, to a large extent. Dan is asking is it the food that you serve. If he was standing where Ed is right now, he would have to agree with that statement. It is the food served. Example: it's the coffee at a coffee shop that is the specialty, it is the donuts at a donut shop. He thinks what he and Ed were struggling with here was the fact that could a German food shop be a specialty shop and that is what kind of threw them into a curve. It could be. They want to help the economics of the boardwalk and be business friendly so, to some extent they looked at this and were amenable to that concept. It could be but the more they began to look at it, the menu, the items being served, it started looking less and less like an item type restaurant - the coffee shop, the donut shop, the french-fry place, whatever it is. They started looking at how special is this and that is where they found themselves in this interpretive issue.

MPT Wilcox said his problem is he is seeing two things and he has to get over the first one to get to the second one. If you don't consider it a specialty restaurant, it shouldn't be before us. He has heard two different things. If it is not a specialty restaurant, then we can't even consider it to issue it a beer and wine license and that is why he is trying to get to the bottom of that because you give two examples in the ordinance but they don't seem to be consistent. Coffee and ice cream, those are specialty restaurants.

Mr. Ferguson said he thinks he is getting hung up on the term restaurant. A specialty food shop would perhaps be more appropriate. We adopted the word restaurant but he thinks that is the distinction. You have an expectation when you go into a restaurant, you're going to have specialty foods maybe - Italian, German, whatever.

Tim Owens said he thinks the applicant is asking to be a specialty shop or restaurant or whatever you want to call it, it is up to the evidence part of it. We say that he may not be; the applicant says that he may be. He thinks that is where they are at.

MPT Wilcox said he is trying to figure out why staff is thinking they may not be. He can't quite get that clarification and that is his problem because he doesn't get it. What is special about a coffee shop? There are coffee shops everywhere you look.

Mr. Parvin said it is not that they are special it is just that they are designed around that item and if he designs it around the German food, staff thinks they are comfortable. He designed it around beer and has some accessory snacks and prepackaged food like what they are seeing, they saw that as a bar.

MPT Wilcox asked if he designs it around bratwurst sandwiches, German potato salad and German chocolate cake, those are all German items – isn't that a specialty? He is trying to figure out why the applicant is disqualified as a specialty restaurant so he can move on to the other issue or not move on to it and he doesn't see it. If you have a person that is serving these items on the menu, again using the Mayor's business as an example, Joel and Shawn have never run a coffee shop before, they have never run a wine shop before, they open a place and are doing a great job there and it's a boutique type place where you get prepackaged food. There are no donuts or ice cream, they have coffee, prepackaged food and wine and beer and it's a great establishment. So he is trying to figure out by what basis he needs to judge this next person that comes before them. The Mayor's business is a specialty restaurant.

Councilman Gilbert said that is a good point because Council developed this ordinance around Joel's establishment and it was inclusive. They came up with this definition specifically for Joel so he would have some kind of level of conforming use. Is it flawed, is it ambiguous? Absolutely. Is that a poor way to come up with an ordinance? Absolutely. We definitely need to work on this ordinance because the spirit of how the ordinance came forward was flawed. He understands MPT Wilcox's problem with this and that is why he went to the General Statutes. He tried to figure out, through our ordinance, of where you guys came up with it. So he went through his process but, if we look at the spirit of we voted on this, we defined a specialty restaurant as a coffee shop or ice cream shop but we did it in a way that we need to come back and revisit it. At some point they would like this Council to direct to take the ambiguity out of it because if you are telling somebody a permitted use is a specialty restaurant. If you want to serve beer, go get a variance on it, that's a challenge and he thinks that is problematic.

MPT Wilcox said he is not so sure he agrees that they designed an ordinance around Joel's restaurant. He thinks staff took the table of permitted uses and combined a number of different uses in the specialty restaurant. It wasn't just that establishment. His does

happen to fall in there. He is hearing a lot of things and understands staff's reservations. He doesn't know what this applicant is going to do in the future, what his experience is, if he is going to start serving food and then stop serving it or any of those things about him or any other establishment, including The Grind.

Mr. Parvin said that is all they wanted to point out. Those were their reservations.

MPT Wilcox said he understands that but he can't forecast what somebody is going to do or not do. Our ordinance does not stipulate that.

Mayor Macon said he would like to come to his own defense on a couple of issues. First of all he has not run a coffee shop or wine shop before but he has a lot of experience with both. His CUP was issued probably 6 years ago and was issued as a restaurant simply because coffee shops were not in the ordinance at the time and they didn't know what to do with it at the time. So now you have this animal that has a CUP out there that's conditioned as a restaurant. Believe it or not the ABC considers their smoothies and quite a few things they sell, they do have bagels and muffins that are prepackaged but they are made fresh from local cake and bagel place in Wilmington. The problem is that they were there and nobody knew what to do with them and that was one of the reasons they were included in the specialty or the classification was created because we do have a couple of these animals they didn't know what to do with. He doesn't think it was done just for his particular establishment. He does have to say that they are currently adding a kitchen and will be a full blown restaurant shortly.

MPT Wilcox said if they were sitting there and talking to an applicant from Chuck E. Cheese, he doesn't think they would be having this discussion and they would fall very much, from what he can read, into similar lines as this person. He doesn't want to be holding one applicant to a higher standard than he is holding another one and that is why he is trying to figure out what the baseline is.

Mr. Owens said, to move on, he thinks staff's evidence may be flawed if you want to call it that, that is the way you are viewing it. He feels that they can move on based on that.

Mr. Parvin said they do have a grant order with conditions that they have drawn up. Council can look at that. Staff gave their reservations about it. The ordinance, as was mentioned, is not perfect and they are just starting to utilize it. This is the first time one of these has come up before them but they have to point out those situations. That is why they are here.

Greg Reynolds, 711 Canal, spoke on behalf of the applicant. He said he would turn it over to Darryl Rackley shortly but there are a couple of issues. The menu seems to be a big issue. When Darryl wanted the CUP, Darryl asked him to do the menu. He gave him some examples, The Dive's menu for their CUP said seafood and burgers and that's all it said. Tangerine's says hot dogs, french-fries and hamburgers, that's all it says. We both know that is not what they are serving. Darryl's reservations were that he didn't want to put exactly what it was out there so it could be stolen by someone else. He will let him

address that. Unfortunately we don't have an in-between category between hard liquor, liquor by the drink and beer. If you have known Darryl through days at Pop's and everything, he is very much family oriented. He does not want a bar. His intention is to have a nice place out of the sun and to have a place for kids to come. He understands the reservations that it could become a bar, that's why they pulled the CUP. Unfortunately, the menu issue is probably his fault because he told him to keep it simple, that the menu issue wasn't really that big. It has turned out that it is a little bit bigger than he thought. To call our ordinance inclusive of only coffee and ice cream, he was part of that permitted use. He thinks the delivery pizza places are considered specialty restaurants. Rick's Beach Bites, which is now Funky Pelican, is considered a specialty restaurant because it did not have an interior dining room so he thinks it goes a little bit further than just ice cream and coffee which were just examples in the ordinance, the way he read it. He is not a lawyer but sitting on Planning and Zoning, he looks at that as examples in our town. We have a number of coffee shops in this town. He will turn it over to Darryl to answer questions.

Councilman Gilbert said Mr. Reynolds stated that Rick's Beach Bites is a specialty restaurant. Mr. Reynolds said that when they were discussing that ordinance, Rick's Beach Bites was one of the examples that came up.

Councilman Gilbert said that, by our ordinance and definition without providing a kitchen. You mentioned Tangerine's. Mr. Reynolds said Tangerine's was an example of how limited the menu was on the CUP and what it has become.

Councilman Gilbert said he mentioned The Dive, that's a restaurant. So Rick's Beach Bites, what would you consider that with respect to our ordinance? Mr. Reynolds said, again, he doesn't think they have a place for it. It has no interior dining and Dominoes is the same thing. Mr. Parvin said it is a limited service restaurant. Councilman Gilbert said a limited service restaurant is an establishment serving by delivery, pick-up or from a walk-up ordering counter. Consumption shall be off premises, within your vehicle at an outside seating area. Limited service restaurants shall have a kitchen. So Rick's Beach Bites is a limited service restaurant. Mr. Reynolds apologized and said he didn't have the ordinance in front of him.

Councilman Gilbert said he just wanted to make sure for the record, since they are hearing sworn testimony, that he understands what he is saying. The closest thing, by ordinance, to somebody that serves food that doesn't have a kitchen is a specialty restaurant. Staff agreed.

Mr. Reynolds said he wanted to turn it over to the applicant. Overall, they really want to have a place for kids to go, get out of the sun and, again, he understands staff's concerns. They have been through it. He did advise him to keep the menu simple because that really wasn't the issue but, apparently has become a fairly big issue.

Darryl Rackley, 1212 Bowfin, Mein Stein, said yes he changed the name, he wishes he hadn't but did because Brew Lagoon sounded like a beer place. He did not want to be a

beer place. He has little kiddie games in there that he is sure there won't be a bunch of older people drinking and everything like that. He wants a family place where you could come and eat a brat, have a coke, eat some dessert but if you want a beer, you should be authorized to have a beer. You should be able to have one. At Chuck E. Cheese you can have one but he didn't know it was going to be such a big deal to them. He went to them. They told him what to do so he did exactly what they told him to do and then they changed on them so he is a little confused. He reviewed pictures on the overhead and showed what the place looked like before he started working on it. He will have arcade games where kids can win stuffed animals and stuff like that. He showed the table area. There is air hockey and games you can play while you are eating your meal, just like at Chuck E. Cheese. His kids used to play there and he had a good time and enjoyed it. It's the same thing he wants to do here, just like at Wilson's, same thing. If you know him, Pop's Diner, sold more drugs and did more things out of that nice little building but he stopped it and straightened it up and that is what he wants to do. He wants to have a good, clean family restaurant, specialty German. The reason why he changed it to Mein Steins was because Brew Lagoon was alcohol sounding and he didn't want that. He doesn't mind if you want to drink a beer, because he doesn't mind drinking a beer when he goes out, but he went to Mein Steins because it means "my rock" not "my beer". Look the language up. That is how he and his wife are starting over, and it's going to be their thing.

Councilman Johnson asked him what clientele he thinks he will be bringing in since he wants to stay open until 2:00 a.m. in the morning? Mr. Rackley said the reason he wanted to stay open until 2:00 a.m. in the morning is because any business in here has the right to stay open until 2:00 a.m., they shouldn't put a penalty on him to 10:00 p.m. or 11:00 p.m. He should be able to have a right if somebody is in the hotel and they want to come down and goof off with a game, he should have the right to try to get that business. He may not be open until 2:00 a.m. but he doesn't think it is right for somebody to put a curfew on him and right around the corner they can stay open. Councilman Johnson said that was not what he asked him. He asked what kind of clientele? Mr. Rackley said families. If he goes out to the beach, he would be out there all night long. He has a 27, 22 and a 21 and always brought his kids here, always spent money. He has been on the boardwalk late at night and seen kids running around and having a good time when the arcade was open and the arcade would stay open until 1:00 a.m. Kim would have it open. It's a place where you can go and get a sandwich, desserts. He's going to have Italian and German desserts. He is not saying they will want them at 1:00 a.m. or 2:00 a.m. in the morning. He is not saying he will be open at those times but he is saying he would like the opportunity if the business is there. He would like a chance to get the revenue.

Councilman Gilbert said you could see where somebody could be confused with the interpretation of the name. Mr. Rackley agreed but he said they are judging him before he even does anything and he thinks that is un-American. He believes if you do something wrong, you get punished but don't judge him for something he has not done yet. It's not right.

Councilman Gilbert said the hours of 10:00 a.m. to 2:00 a.m. that Councilman Johnson

mentioned, you are expecting families. You just want the potential for families to come in at 2:00 a.m. Mr. Rackley said if no one is there he will close the doors.

Councilman Gilbert said his facility is divided into amusements, you have a stage area, then you have an area that seems to be apportioned to the restaurant with tables. Would people be able to leave their tables with their beers and walk over and play the games and do all that good stuff?

Mr. Rackley said to him, no, because he and his wife will be there. You're at the restaurant part, you're sitting in there. If someone gets up we will be watching them, but if someone gets up and watches their kid playing, he doesn't see anything wrong with that. That is what you do at Chuck E. Cheese's.

Councilman Gilbert said he is just trying to get a little information for his vision. The east end of the facility has a bar area and there are around 9 seats maybe. Mr. Rackley said it will probably be 8 seats. There is about a 25 foot bar but on the end of it is going to be a food thing. You're going to line up against the bar and, on the back wall, you will have things that you can win, stuffed animals, tossing quarters, things like that because he wants people to pitch, like a fair. Councilman Gilbert said he will have 8 or 9 bar stools going to the north side with people sitting there. Their kids might be playing the games but they could be sitting there having a beer but you are not going to preclude if somebody wants to play ping pong, nothing is going to preclude them from walking over there with a beer and playing whatever pong game you play. Through the narrative, it is pretty straightforward but, from the drawing, he was curious how it was segregated and what your potential was if you plan on keeping it segregated or if it was going to be integrated at some level. He feels he has answered his questions.

Councilman Johnson asked if the building is currently heated. Mr. Rackley said no it will be baseboard heated. He is going to have an electrician come in the winter to put in baseboard heating in it. He has worked in that building since October and, when it is cold, the windows were down and it was not really freezing cold in there. Everybody says that building can get so hot but the other day when it was really hot it was really cool in the building. He does not have heating now but will get it as soon as he is approved. He kind of stopped the funds because things took a turn and he is kind of scared and doesn't understand what is going on so he stopped some of the process.

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

Tom Campbell, 314-1 Columbia Avenue, is speaking in favor of this project. He thinks it is clear there is an ambiguity in the definition of specialty restaurant. He thinks it is clear that they are making assumptions about what this applicant might do in the future and he thinks that is why they have a conditional use process. He thinks they can put the conditions on the CUP so that if the applicant goes the wrong way, then they can enforce the CUP but he doesn't think they should be standing here and pre-guessing what might happen and then deny him on that basis. When you look at the fact that the building has

been empty for a long time, at the fact that he thinks it will be a real asset to the boardwalk. If we did not have any bars in town at all and this was being proposed, then he might have Councilman Johnson's concern but, if it is 2:00 a.m. and he wants to go get a drink, he might just go to the bars that are open, not this place. He thinks this place is going to be where he can go get a sandwich, where he might be able to take his granddaughter and let her play the games while he sits at the bar and has a beer. He thinks this is more like a family place and better fits the definition of a specialty restaurant of all evidence he has heard. He is definitely in favor of it.

James Golden, was sworn in. He said the specialty restaurant clause in the ordinance is so confusing because that is what they wanted him to do and then it wouldn't work out and it seems like they might be trying to push him in that direction again instead of a restaurant. That needs to be clarified and he can definitely see where this guy might have had some problems. He wouldn't have gone in there and done all that work if he didn't think he could do what he wanted to do. He may go in there and open a bar, he doesn't know him, but the specialty restaurant thing needs to be clarified. They couldn't ever give him a good answer of what it was. He agrees with Dan on that.

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

Mr. Owens said he had one item to talk about which was discussed briefly at TRC, they have not looked at this thing from an impact fee perspective. The only thing he knows that has ever been in there is one bathroom and a bumper car park. There is obviously some credit there but he wanted a full disclosure and mention that they have not really looked at it for what an impact fee may be. At TRC it was discussed a little bit that there could be an impact fee.

**MPT Wilcox made a motion to approve the applicant's request for a specialty restaurant and the ability to serve beer based on the fact that he meets the seven specific requirements, four general conditions, comments by TRC, Planning and Zoning Commission, town manager, police, fire, planning, building and operations, deleting Items #11 and #14.**

Councilman Gilbert asked staff if one of their concerns was that it was within 100 feet of another bar? Mr. Parvin said if it would be classified as a bar, then that was one of their concerns.

Councilman Gilbert said in staff's narrative he read that if it was a bar and was within 100 feet, the way staff measures it, it's another bar and asked if that was correct. Staff agreed. He said he read through the definitions under eating and drinking establishments and in bars and taverns is says that operation of these types of establishments may exceed the normal operating hours of a restaurant or similar establishment. Then he read over specialty restaurant and tried to determine whether it is a specialty restaurant or bar and his interpretation was that 2:00 a.m. exceeds the normal operating hours of a restaurant which caused him to focus on bars and taverns. He kept reviewing specialty restaurants

and looking at coffee shops and ice cream shops and amusements. He went back to the general statutes to what amusements and entertainment were and ran across this item - "Regulation of places of amusement. A city may by ordinance regulate places of amusement and entertainment and may regulate, restrict or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses or any other itinerant show or exhibition of any kind. Places of amusement and entertainment shall include coffee houses, cocktail lounges, nightclubs, beer halls and similar establishments but any regulation therefore shall be consistent with the permits of licenses North Carolina Alcohol Beverage Commission." He followed our ordinance chain where we state general statutes to reach this point and does not consider this to be a specialty restaurant. He tried but kept going back to hours of operation and bars and taverns. If he had a recommendation he would say, if a specialty restaurant is permitted by right then that is probably what you go for. With respect to his deliberations and the four conditions, he found that condition two was mitigating because the way we measure in the ordinance, a 100 feet from another bar, and the way we measure it, how we changed the ordinance from 200 feet to 100 feet, it seemed to be within 100 feet of another bar. Looking at the specifications, he couldn't find how it was a specialty restaurant. He classified it as a bar and the mitigating thing he used was looking at those normal operating hours. That was the only thing that separated it from specialty restaurant - bar and taverns. He can't see how they can hear a conditional use on a specialty restaurant if it's a bar. That was his conclusion. It might help staff take away some of the ambiguity of what is going on here.

MPT Wilcox said there are plenty of restaurants that stay open until 2:00 a.m. Councilman Gilbert said those restaurants probably have kitchens and that is the mitigating thing.

MPT Wilcox asked if we have any other specialty restaurants who have limited their hours of operation? Mayor Macon said (his business) is considered to be in the specialty restaurant classification, that is what they would have to come for if they got a CUP. They close at 11:00 p.m. of their own choosing. Staff was happy with that. Because they have to get up at 6:30 a.m. to make coffee, they needed to close early to sleep and they didn't want the product that goes along with staying open until 2:00 a.m. when people tend to be more inebriated. They didn't want to have to deal with that type of activity and that is not the kind of place they are.

Gary Ferguson said that in the grant order there are two kinds of unique conditions Council should look at before making approval of this CUP. Condition #11 talks about having the applicant come back after one year. Typically that is not a condition they place on most folks who open up a restaurant, a specialty shop and, obviously, condition #14 speaks to the 10:00 p.m. closing time. Those two conditions, given the comments made this evening, you may or may not want to keep them. He is bringing them to their attention.

MPT Wilcox said his motion is to approve the application as requested.

Mr. Ferguson said that perhaps he didn't understand his comment. He thought we have a

grant order and in the grant order we have conditions (staff's conditions) under the CUP and what he is trying to suggest is - this is the grant order that would be submitted or given to the applicant. He wants to make sure if Council says none of these conditions apply, that's fine, but usually they have a grant order that is conditioned upon the applicant performing in certain ways and that is what this grant order speaks to.

**MOTION DENIED 2-2 ( COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTED NO).**

Mr. Rackley asked if it is the time that is a concern and if so he will change the time if that is what Council wants. He said if that is the only beef you have he wants Council/staff to know that he is putting this on the record that he feels discriminated against and you will see it because this is not right and if you wanted his time changed, all you had to do was say, "Mr. Rackley would you change your time?" and he would. He thinks it is un-American to put a time on him when you don't do it for everybody else.

MPT Wilcox said it could have been a condition whether he wanted to follow it or not.

Mayor Macon said, unfortunately it is said and done now.

Mr. Rackley asked where he goes from here - it's just not done?

Mr. Owens said Council could consider another motion because that motion didn't move.

The Mayor agreed.

**MPT Wilcox made a motion to approve the applicant's request based on the fact that it meets the seven specific standards and the four general conditions and that it meets staff, TRC, town manager, fire, and planning recommendations leaving condition #11 and change condition #14 to 11:00 p.m. and to modify condition #11 to include when the extension is reviewed by Council that the hours of operation may also be reconsidered.**

**The conditions are as follows:**

**BASED ON THE FOREGOING FINDINGS OF FACT, the Town Council makes the following conclusion as required by Article 14.9 of the Zoning Ordinance of the Town of Carolina Beach:**

- 5. It is the Town Council's conclusion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted and approved by the issuance of the conditional use permit.**
- 6. It is the Town Council's conclusion that the use meets all required conditions and specifications.**

7. It is the Town Council's conclusion that the use will not substantially injure the value of adjoining or abutting property.
8. It is the Town Council's conclusion 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.

**Other conditions:**

1. Final project shall be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. "Where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use." Parking for the 25 required spaces shall be waived after the applicant signs a parking waiver stating the Town is not liable for any deficiency of public parking spaces.
2. Solid waste is handled collectively by the boardwalk area businesses. The owner will be required to continue to participate in this program.
3. A sign permit shall be obtained for any signs located on the property.
4. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to issuance of a building permit.
5. 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. All plans will be reviewed to ensure building fire and town codes have been met.
6. 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.
7. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
8. Flood Certification must be presented prior to issuance of certificate of occupancy.
9. Outdoor lighting shall be limited to existing fixtures.
10. Off-Street loading requirements have been waived by the Town Council. The following loading plan shall be utilized:
  - Loading area is anticipated to be in the designated space on Raleigh Avenue,
  - Loading will typically take place prior to 12 Noon.
  - The largest truck anticipated will be the beer trucks typically seen serving the Boardwalk area.
  - The loading period for the vendors should be less than 15 minutes.
11. The use shall be allowed for one year. The CUP shall be reviewed for compliance with the Town Code of Ordinances and with the original business plan on or before the April 2010 regularly scheduled Town Council meeting. If the use continues to operate with no violations, the Town Council may grant an extension to the CUP and consider modifying the hours of operation. If three or more violations occur or if it is determined the business is

primarily operating as a bar, then the CUP shall be revoked.

12. This conditional use permit shall be revoked if any of the following are discovered:

- a. Upon a preponderance of evidence that the establishment's patrons display a pattern of disorderly, violent, indecent or unlawful conduct;
- b. If the application contains any material misrepresentation, misstatement or omission, concerning information required to be provided.
- c. If an ABC license is revoked then the conditional use permit shall also be null and void.
- d. If the use is found guilty by the Town or ABC Commission of three (3) or more violations within any twelve-month period then the Town Council shall hold a public hearing to review the conditional use permit.

13. No outdoor drinking shall be allowed.

14. The use shall close by 11pm.

**MOTION CARRIED UNANIMOUSLY.**

***CONSIDER AMENDING APPENDIX A ZONING ORDINANCE BY MODIFYING THE STANDARD USED TO DETERMINE PARKING FOR OUTDOOR SEATING AREAS AT RESTAURANTS***

Ed Parvin presented this item. He said he already went over this ordinance a little earlier this evening but our old parking standard is one parking per three seats, new is one per 110 square feet gross floor area. In developing a new standard they looked at random restaurants to calculate what their parking was for one space per three seats and then they calculated what their entire gross floor area was to get to the 110. They talked about that earlier tonight. Looking at this amendment there were several reasons they thought inclusion of outdoor areas would be excessive. Number one, sidewalk cafes currently do not require parking. This area was not considered during the approval of the sidewalk café ordinance due to the area being seasonal and limited use. Number two, defining outdoor areas could be confusing as to what should be counted toward your gross floor area and what is open vs. enclosed. Number three, 2007 Land Use Plan does innovative ways to limit on-site parking that may be excessive. Number four, limited use of outdoor facilities and several restaurants have outdoor facilities, which are listed in your memo, but they receive limited use unless it is the summer season and ideal weather during the summer. The purpose of their standards - standards are basically minimum parking standards and they can be often excessive because they don't take into account the specific conditions around them. Right now this is our parking standard from Article VII. Staff added two additional allowances under the parking standards - one per 110 square

feet of indoor gross floor area is our parking standard. If you have parking within 500 feet, a public parking lot within 500 feet and you have an outdoor area, your parking is waived for the outdoor area. If you do not, there is a 50% reduction in the outdoor parking. Staff modified definitions for gross floor area. Right now we use gross floor area for parking and for our loading requirements. Right now he has industrial and residential is not really being used. Industrial is being used only for loading so we are looking at commercial uses and this definition is basically pretty much staying the same. The gross floor outdoor is what they are looking at. Any unenclosed areas where business is conducted, the area shall be considered enclosed if any type of vertical surface other than a typical mesh screen of a screened porch would be allowed. Or anything that would allow air flow to come through would be allowed. Anytime they have a surface that does not allow air flow, like when they have the plastic roll downs, it becomes indoor area and it is counted for parking. Staff said there is an example they give and they are looking at the exemption being screen mesh, like a typical screen on an exterior window - that is an example of what would be allowed. If you get into anything other than that, then you are going to be considered enclosed. They talked about this at Planning and Zoning and they liked Option #3, which he just reviewed, where they gave a couple of examples which was keeping the existing language we have now.

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

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

**Councilman Johnson made a motion to adopt Ordinance No. 09-782 (Exhibit 4) and finds that it is consistent with the Land Use Plan.**

Before taking a vote, Mayor Macon asked to be excused from voting on this matter as it is something that could affect him. **Councilman Gilbert made a motion to excuse Mayor Macon from voting. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon called for a vote. **MOTION CARRIED UNANIMOUSLY.**

***CONSIDER AMENDING CHAPTER 11 PARKS AND RECREATION, ARTICLE V PARKS ORDINANCE***

The town's Parks and Recreation Director, Ted Lashley, presented this item. He said the amendment is to include language that would clearly address Carolina Beach Lake and activities that are permitted and prohibited at Lake Park.

Mr. Owens said one of the items given to Council to consider would be whether to allow launching canoes/ kayaks or not. They were given two options on that.

Mr. Lashley reviewed the changes. Language he would like to see included in the

ordinance: (a) swimming is not allowed within Carolina Beach Lake; (b) the launch and operation of non-motorized kayaks and canoes is allowed during daylight hours only or per Council's decision tonight, not be allowed. (c) If that is passed, all persons using the lake to kayak or canoe must wear a Coast Guard approved personal flotation device; (d) the disposal, pouring or placing of any potentially harmful material into the lake or any ditch or watercourse that leads to the lake is prohibited; (e) the harassment of or causing harm to wildlife or wildlife nesting areas is prohibited; (f) the use of the lake or lake park for a commercial purpose is prohibited unless approved by the Town Council; (g) the use of motorized equipment or devices is prohibited on the lake or within the lake park property with the exception of vehicles located within designated parking areas and driveways and equipment use is part of the town's routine lake park maintenance program; (h) special events and town sponsored activities are exempted from the requirements of this ordinance as deemed necessary and appropriate by the Town Council or Town Manager. He knows there has been a lot of discussion about not having any specific language concerning the lake proper and he feels this will pretty much cover everything. He is requesting Council to consider adopting this ordinance to include allowing kayaking and canoeing or not allow kayaking and canoeing.

Councilman Gilbert said he was approached by an individual who expressed that we didn't have an ordinance not to allow it, just a sign. Through that conversation, he talked to a number of other people who actually kayak and asked them what they thought and they said they were allowed to do it at Greenfield Lake. He then asked Duke Hagestrom what he thought about it and he didn't have a concern. He asked about a specific ordinance and the town manager couldn't find one.

Mr. Lashley said the sign has been there since at least 1992 and he thinks it was more of a policy decision probably based on safety concerns at the time. They have some concerns about several large alligators living in the lake. He has seen everything from snakes, eels, gators, turtles, etc.

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

Duke Hagestrom, 920 Riptide Lane, said his first question would be the standard for kayaking or canoeing. What they have used at the paddleboats is the Coast Guard rules and regulations, which is if they are in the actual boat, if they are 13 and under, they have to have it physically on and then they make adults take it with them. If you are sticking to Coast Guard standards that might be the best way to go, to follow Coast Guard approved standards. The other thing, there seems to be - motorized got introduced at some point, he's not sure why motorized is being eliminated. There are some pretty cool electric things that are out there that they have looked at. In the past they would have to come to Council for approval to do it. He's not saying he is. He said MPT Wilcox also mentioned remote controlled boats, so if you strictly interpret that then that means someone couldn't come out there in an RC boat because it is a motorized device.

Tim Owens said his concern is jet skis or a john boat or something noisy. You can get

some pretty loud remote controlled boats and if they become an issue, we could always bring it back but he doesn't think it will.

Mr. Hagestrom asked, if something is not explicitly listed then how is it dealt with? Mr. Hagestrom said he saw at the Broadway at the Beach they have a giant inflatable ball on a tether that the kids get into it and go out on the water and walk and tumble around. He said that is a sort of use that is not specifically motorized. It is a use that is not specifically outlined. MPT said you could put it as other uses not listed.

Mr. Kessler said item (b) is actually tied to the paddleboat rental contract. It was important not to exclude the public from also using kayaks and paddleboats, just not to launch from his dock. It had to do with the deed and some of the constraints that were on the deed that we not exclude public use. That was actually stated in contract that this does not exclude in any way the public's use of kayaks and canoes and that type of thing. He thinks they did use the non-motorized but that was to discourage jet skis and to draw a line. The deed says public use.

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

**Councilman Gilbert made a motion to approve Ordinance No. 09-781 (Exhibit 5) to allow kayaks and canoes during the daylight hours only; item (c) where it would follow the Coast Guard standards with respect to requiring flotation devices; and item (g) exempting remote controlled style boats. MOTION CARRIED UNANIMOUSLY.**

#### ***REQUESTS TO VEND IN CAROLINA BEACH***

**Councilman Gilbert made a motion to table this item to the next meeting or when the ordinance is approved. MOTION CARRIED UNANIMOUSLY.**

#### ***ADOPT A RESOLUTION TO FINANCE WITH BB&T FOR THE PURCHASE OF 7 PAY STATIONS***

Dawn Johnson made presentation. She stated that during the March 10<sup>th</sup> Council meeting Council authorized the purchase of 7 new parking pay stations at an approximate cost of \$80,000. She obtained 2 bids for financing of this and BB&T was the lowest bid at 3.31% for 3 years financing with an annual payment of \$28,451.16 beginning in 2010 and ending in 2012. In order to approve the financing agreement, she is asking Council to consider adopting proposed Resolution 09-965.

**Mayor Macon made a motion to adopt Resolution No. 09-965 (Exhibit 6) approving the financial terms for the 7 parking pay stations. MOTION CARRIED UNANIMOUSLY.**

***DISCUSSION CONCERNING 2009 NCLM TOWN HALL DAY***

The town clerk said Town Hall Day is scheduled for May 6<sup>th</sup>. Traditionally we go up the day before. She wanted to check with Council to see if they are interested in attending this year. The manager said dinner would be on the evening of May 6<sup>th</sup>. Ms. Prusa said that traditionally they are there the night before so they are there for their early for their morning appointments with the representatives and then have dinner that evening. Councilman Gilbert said he would probably not be able to go. If he is able to go, he might try to meet them up there for that morning meeting. He will do his best to come up and meet with the legislators but, other than that he probably won't be able to stay over. MPT Wilcox said he is probably going. Ms. Prusa said she was going to go ahead and block hotel rooms. Mayor Macon said he will probably definitely be able to go but will let her know tomorrow.

***CONSIDER AMENDING THE CODE OF ORDINANCES, CHAPTER 8 LICENSES AND BUSINESS REGULATIONS, ARTICLE III PEDDLING AND SOLICITING, SECTION 8-47 ALLOWABLE VENDING AND SOLICITING ON PUBLIC PROPERTY WITHIN THE TOWN OR MANAGED BY THE TOWN; RESTRICTIONS (CONCERNING VENDING OPERATIONS)***

**Councilman Gilbert made a motion to approve Ordinance No. 09-783 (Exhibit 7) to include goods and services that are provided as part of the vending activity shall also be offered at the primary business location at a similar cost; that the primary business located in the CBD shall be open a minimum of 150 days per calendar year; item #1 Freeman Park, 4x4 vehicles are licensed and registered vehicles; statement about permit revocation; editorial stuff on 1, 2 and 3 of (a) and (c) - a maximum of 2 permits shall be allowed and add "a maximum of " in front of anywhere where it actually has the number of permits that are being designated; and, under (b) Municipal Beach Strand, there will be no vending permitted within 1,000 feet south or north of the pier as a separation condition under municipal beach strand.**

MPT Wilcox said he would like to make some comments that could be considered part of the motion or they could discuss them. That vending can be a brick and mortar establishment, property owner, or resident and that the town will consider at Freeman Park charging the brick and mortars the standard \$100 fee, and property owners or residents possibly a \$500 fee to equalize that situation. Freeman Park and fixed locations shouldn't be subject to the same requirements to sell only what they are selling out of their brick and mortar, especially if more than brick and mortar is allowed. They might be allowed to have sunglasses or visors for sun protection. Repeal all existing permits and reissue them starting on the March dates as specified by staff and attempt to resolve

the one item with Lee Ann who has that existing town-wide and possibly offer her one of the fixed locations.

Mr. Owens said they were considering repealing the ordinance and, depending on how you want to handle the Just Beachy application, they have a permit until 2010 and they have 3 vehicles that they use.

Councilman Johnson said he thought they were going to repeal the ordinance and he thought the attorney agreed with this, to let the existing permits be grandfathered and continue.

Councilman Gilbert said he would like to have a discussion on how they are going to handle the ordinance as separate from getting this done. Let's get the ordinance repealed and get this in place and then the disposition of the ordinance is really part of that because it is going to be kind of piecemeal.

MPT Wilcox said that the fixed locations be on the beach side. If your primary business is in the CBD for beach strand vending, that your business is open. If you lose your brick and mortar establishment then your permit is revoked. He assumes you want to add some kind of remedy, 30 days or something.

Gary Ferguson said there was one point brought up at the meetings about the property owner - one thing that they did bring out was the issue of home occupations. If you have a property owner who lives in a residential zone and are vending, are they going to be storing their vending materials and equipment? It was a concern.

Mayor Macon said, at this point, Councilman Gilbert is agreeing to add the property owner and primary business at Freeman Park and not use the fee structure.

Councilman Johnson suggested striking "primary" and just making it business.

Councilman Gilbert said you leave the definition of sundries alone. You broaden Freeman Park - 4 permits shall be available to sell food, beverages, camping equipment and sundries to include hats and sunglasses or some essentials.

Mayor Macon said he has a problem with the limitation of 4 licenses on the municipal beach strand.

MPT Wilcox asked if we knew whether all four of those licenses meet their performance criteria, their applications are in order and they have a brick and mortar which is open and everything is in order.

Mr. Parvin said none of them are because they haven't paid their \$100 fee. They would have to go through and look at all the criteria. The Funky Pelican has not opened yet.

Mayor Macon feels there should be 5 licenses on the municipal beach strand because there was a period of time when it was unlimited.

Councilman Gilbert asked if he is saying take Just Beachy, move them up to the municipal beach strand and go from 4 to 5 licenses. Mayor Macon agreed.

MPT Wilcox said they want to keep Freeman Park also. They have one license there and three vehicles.

Mr. Owens suggested he eliminate 1 vehicle at Freeman Park then they could consider the 5 at the municipal beach strand.

**Councilman Gilbert made a motion to change the number of licenses on the municipal beach strand from four (4) to five (5) with respect to Just Beachy giving up that third vehicle at Freeman Park and transfer that over to the fifth license. MOTION CARRIED 3-1 (MPT WILCOX VOTED NO).**

Mr. Owens said they need to consider their fee schedule and set that.

**Councilman Gilbert made a motion to repeal the existing ordinance and all existing vending permits will come under the new ordinance when they expire. MOTION CARRIED UNANIMOUSLY.**

**Mayor Macon made a motion to set fees for Freeman Park at \$100 annually, the municipal beach strand \$100 annually, and the street ends at \$1,500 for a minimum of four (4) months and \$250 for each month thereafter. MOTION CARRIED UNANIMOUSLY.**

#### ***NON-AGENDA ITEMS***

Tim Owens said New Hanover County did adopt a resolution in support of our greenway and safe routes to school and the retrofit of the bridge. Alan Pope from DOT was asking for our resolution and he will send him this one as well.

Councilman Gilbert said he attended the County Commissioner meeting and it was good to see their support and he presented a certificate back on their behalf.

**Mayor Macon made a motion to go into closed session to discuss legal and real estate matters in compliance with [NCGS 143-318-11(A)3, 5 and 6]. MOTION CARRIED UNANIMOUSLY.**

**Mayor Macon made a motion to go back into open session. MOTION CARRIED UNANIMOUSLY.**

**Mayor Macon made a motion to accept the resignation of Colleen Kochanek and stick with the firm Smith, Moore and Leatherwood for the attorney for the Board of Adjustment. MOTION CARRIED UNANIMOUSLY.**

**Mayor Macon made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.**  
The meeting adjourned at approximately 1:45 a.m.

Respectfully submitted,

Lynn N. Prusa  
Town Clerk

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