

**MINUTES OF THE SPECIAL MEETING  
OF APRIL 9, 2009 OF THE TOWN COUNCIL  
TOWN OF CAROLINA BEACH**

*April 9, 2009*

The Town Council of the Town of Carolina Beach met in a special session on April 9, 2009 at 10:00 a.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; MPT Wilcox; Councilman Gilbert; Councilwoman Efirm and Councilman Jerry Johnson. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order. He stated that MPT Wilcox made the request for the special meeting.

***REQUEST BY ARCADIUS DEVELOPMENT, LLC TO EXTEND A CONDITIONAL USE PERMIT***

Tim Owens stated that they have given Council some information and has added some information to that which goes over some of the specifics behind the Arcadius Development, LLC project. He also gave them copies of a newer memo from the town attorney. Ron Mariello is in attendance and will be speaking on behalf of Arcadius Development, LLC.

Mayor Macon called the applicant forward. Ron Mariello thanked MPT Wilcox for requesting the special meeting. Mr. Mariello said he represents the Arcadius project. He is the Executive Manager for Arcadius Development, LLC. He would like to do a couple of things today, one is to ask for an extension of the existing CUP for as long as Council will allow and he would like to give them a general update on the project and what is going on. This Council has extended several courtesies to them and the project. As to the CUP extension, they have asked by letter for a one year extension. Whether that is possible, they are not sure. Council advises that the maximum might be just until October 12<sup>th</sup>, which would be the five year period. This project was originally entitled around October 2004. He and his company came into the picture around November 2005. They ran into some organizational and internal problems. They presented to this Council a completely revised plan of sorts that they thought was generally within the existing CUP. Staff advised, at that time, that if they went forward with that it would likely require a major modification and they have since been asking for extensions. About a year ago about this time they asked for a year extension. They had mentioned to Council that they were having great difficulty with the current market at that time. Demand was definitely weakening. They realized that the folks who had put deposits on it, bought into the condominiums - plans that could not be built for various reasons. They returned all of that money to those folks. So they were stuck with a project they were trying to revitalize and the market didn't agree. Since then they ran into 2009 and are living the headlines that you read. Demand has gone to almost zero and the illiquidity in the financial markets has been very difficult. They have come there on several occasions,

not visiting the Council, and have paid attention to the project but, behind the scenes, from the moment we have been involved, they spend thousands of man hours trying to revitalize this project and at their own cost. He is here to ask for the extension. The current news is that the project is in reorganization under the bankruptcy code, Chapter 11, which is a reorganization code section of the bankruptcy law. It has been in the court jurisdiction from June or July of 2007. Where it stands right now is it probably is moving toward some kind of sale within the next six to nine months. His company would hope they could put a plan together to be a successful bidder. He is here to answer questions and to ask for a motion for the extension.

Councilman Johnson said he is hearing the same thing he has been hearing for the last three years and, as you so stated and as they all know, the market is not there now and he doubts the market will be there within the next five years with the problems the economy has had nationwide and the viewpoint of Council's, overall, for condo type projects, much less high-rises. This property has been tied up and the town has lost a sufficient amount of funds because of the haste in tearing down the existing Paradise Inn, which we are in dire need for motel rooms, especially in this economy. We have lost that revenue, room occupancy tax, for 4 ½ years. He doesn't see any reason to keep extending this CUP or any justification for it.

Mr. Mariello said they understand that. As he said, their first appearance was in 2007. If you have lost tax revenue, they lost many multiples. The reason for this extension at this time is the intrinsic value that they think would be attributed to the project for whomever purchases it because it will have an entitlement attached to it. It is up to them to judge the value of that or lack of it but, if it does not have one there is no chance and they have an obligation to the lenders in this case, to the owners, to ourselves to try to maximize and, at the direction he might say at the bankruptcy court to do all those things that can help it. Whether this market is going to turn in six months or a year, he understands his reservations. He doesn't know that it is five years but they hope that the attachment of any entitlement will accrue to the benefit of the project when it is at sale.

Councilman Johnson said what he is looking at are the projects that have been approved by this Council or previous Councils and, counting his project, there are five projects with none of them breaking ground. The economy hasn't been there and will not be there by all expert forecasts. One of those projects recently has placed a for sale sign on their property and so has the Arcadius project, which he believes Mr. Rivenbark represents, the realtor. He sees these other projects - Park Place, Jubilee Park, they approved a possible Fairfield Inn which hasn't gotten off the ground. They approved a Hilton that was supposed to break ground. They put in a few utilities and nothing has happened. It has been in the news media that construction was supposed to start in December, then January and we are approaching mid April. He hopes that project goes forward because we need those hotel rooms but he understands, with this economy the way it is, somebody wanting to invest or much less get a loan for \$25 million dollars. Again, he just does not see any justification for another extension after 4 ½ years.

Councilwoman Efirm asked if any of the people who formerly started this project before they got involved, are they still involved in this project?

Mr. Mariello said the folks who were originally involved do have an ownership interest. It is the subject of some dispute. They are not actively involved. Some of those folks are under a restraining order not to be involved and he and his partner are the ones that have basically shouldered the entire costs and liabilities, as well as continuing man hours. So they are not actively involved.

Councilman Johnson asked if there are any outstanding taxes on the property at this time.

Mr. Mariello said yes. He believes the amount is about \$170,000. He explained that they closed on the land in January of 2006, they paid the taxes of \$55,000+ in 2007. Then what has accrued is taxes for 2007 and 2008 became claims in the bankruptcy court and so they have been stayed in terms of payment. Another reason, not only as a matter of concept for the greater good of this city but financially, anything they can do to increase the value of this property can help the town because you basically come to the head of the line at the time that this property is sold. He thinks what is outstanding, because it was under the stay in bankruptcy is 2007 and 2008 taxes and soon to be 2009 and he thinks they are in the \$170,000 range. He believes staff has details on that. He believes that is a reasonable representation.

Councilman Gilbert said he has been thinking this over and trying to understand what Chapter 11 is and what just cause is and looking at extending these things beyond just the economic situation and he has put together a few questions. Councilman Gilbert said when I say "your", I mean "Arcadius Development, LLC." Was the Arcadius Development, LLC Chapter 11 voluntary? Mr. Mariello said yes.

Councilman Gilbert said he would qualify it. When he says voluntary, he means that Arcadius Development, LLC voluntarily went into Chapter 11 reorganization on your own. No one made you file that petition. Mr. Mariello said yes.

Councilman Gilbert said they were looking at reorganizing through Chapter 11, not Chapter 7 which would be liquidation. Mr. Mariello said that is correct.

Councilman Gilbert said, not including the real estate, what are the assets of Arcadius Development, LLC? Mr. Mariello said, excluding the land, its assets would be negligible. Councilman Gilbert asked if it would be safe to say zero? Mr. Mariello said yes.

Councilman Gilbert asked how many payroll employees does Arcadius Development, LLC have? Mr. Mariello said none.

Councilman Gilbert asked if the working capital is zero. Mr. Mariello said yes.

Councilman Gilbert asked if he or his examiners submitted a plan of reorganization to the bankruptcy court? Mr. Mariello said yes. It has been a moving target.

Councilman Gilbert asked if that plan for reorganization include you developing that property or selling that property? Mr. Mariello said it includes, he is not sure about developing the property. They have had a plan and he doesn't know if that made its way into the bankruptcy submission but the overall concept in the Chapter 11 is to sell the property.

Councilman Gilbert said the last time they were here to ask for an extension they had a reorganization plan. Mr. Mariello said it would have been the same one - that has not changed.

Councilman Gilbert said Councilman Johnson asked the question about the taxes and the 2007/2008 taxes have not been paid because you are in reorganization with Chapter 11. He asked how many creditors does Arcadius have and what is the total debt in question and, of those creditors, how much of this debt is secured debt? Mr. Mariello said, to the best of his knowledge, its obligations that he would call secured. Their first lien holder (Regions Bank) in the amount of \$8.2 million, seller financing on two of the lots for \$550,000 that are a second. The property owes his company, Egis, on loans that they have made and other obligations that the entity owes them, they have a second position at \$10 million. The total debt is about \$18 to \$19 million.

Councilman Gilbert said the town is owed \$170,000. Where do they fall in the food chain of getting that and our taxes compared to the first lien holder and the other positions? Mr. Mariello said his understanding is they are first in line.

Councilman Gilbert said he found the marketing literature interesting. You are asking for an extension and you have asked for multiple extensions through the years because of the economy. He knows an examiner has been requested by the Arcadia Group North Carolina, LLC - those are the ones who have some interest in this and it seems like the examiner, from what he can understand, kind of holds some feet to the fire at some level in the process. What he finds interesting is that you are asking for an extension for a CUP for condominiums, large scale, high intensity development but your marketing literature doesn't say anything about it. He read, "Resort lots for sale at Carolina Beach. Fourteen parcels totaling 3.2 acres (may be sold separately). Lots are listed at their March 2008 appraisal values. While no value was given to any of the improvements, some lots have structures of significant value. Exceptional assemblage of 14 lots in the heart of Carolina Beach redevelopment. This property has over 550 ft. of oceanfront, with frontage on Carolina Beach Avenue North, Pelican Lane and Canal Drive." There isn't one single reference to a CUP, the value in that. He finds that very strange. The facts are the facts that a realtor, representing the examiner or the court or you, has put together marketing literature. It doesn't say anything about what you are asking for here today. Mr. Mariello said that would not suggest that it was to the exclusion of that. You will notice it doesn't say it cannot be used for this. What that piece of literature is must be looked at in context of the current market and, when you are going out for a sale, the

last thing you want to do, in this market particularly, is say it can only be used for this. The sale's approach in this case is to try to maximize the value of this and so you want to bring in as many potential bidders as possible and they are the ones who determine the use.

Councilman Gilbert agreed and said he respected that reflection on it. What he is trying to find here is cause to extend the CUP. This is a micro-environment. If you want to put these on the street for the 15 or 40,000 people who walk be here every day on July 4<sup>th</sup>, good idea but nothing has been given to Council or him that suggests they are marketing this at the next level to build a big condominium complex. He is looking for cause. Nothing evidentiary has been given to him to do that. For the record, he is going to make a decision today on a few points and he hasn't been given anything that would indicate that there is anything else going on. In early of 2007, Mark Carpenter and Mr. Mariello, offered \$15 million for these three acres. He is assuming that the Arcadia Group North Carolina, LLC asked the judge to block that. Mr. Mariello said yes.

Councilman Gilbert asked if he would make that offer today? Mr. Mariello said he would not.

Councilman Gilbert said Arcadia Group North Carolina, LLC, who is Scott Patton, fundamentally requested to stop the sale. They also requested the examiner as part of this. Mr. Mariello said yes and, in fairness to them, they did and his company agreed.

Councilman Gilbert said Mr. Mariello mentioned earlier that he is revitalizing, spending thousands of hours to revitalize this. He has just asked him a bunch of questions which indicate that they do not have any money. What are you revitalizing? Is that trying to stimulate the sale or are you trying to build a building? It doesn't sound like you are trying to build a building. What are you doing on a day to day, thousands of hours, to revitalize? Is that oriented to the sale of this property? Mr. Mariello said it is really both. This will get into some technical talk, he is speaking as a business person. They wear a couple of hats in this organization. They are owners and managers of this entity, Arcadius Development, LLC. Their other hat is they are investors in the name of Egis, indirectly and we are also a creditor to the tune of \$10 million dollars. They constantly have to balance a fine line between when and where and what issue, which hat they are wearing. They would like to be in a position to be the highest bidder for this property. They believe that the amount of debt that is owed them, the \$10 million, qualifies for what is referred to as credit bid capital. It is not the first debt which gets the \$8.2 million but, in the Egis position, the original plan for the reorganization is that the entity was dysfunctional because there were partners that were arguing. What they strived to do after several mediations failed, including the offer of \$15 million, the only way they could get this right, if you will, is to put it into reorganization so that they or somebody else, a higher bidder, could buy it free and clear of all liens and that is important. That was the plan that remains the plan so, when you hear him talking about revitalizing it, his hope is that can still be the plan that they presented in January. That assumes almost more the Egis role, that Egis will be out there and is out there trying to restructure the debt that could come in and purchase this or make sure that it sells for fair value because

they also owe that obligation to the other partners. They have spent all this time trying to reorganize this from an Egis point of view at the moment of public auction. Arcadius Development, as you indicated, it has no capital. Part of the reason we had to move into the reorganization is that we were the only ones spending money on this project. We kept putting money in and the other interest, we said if you think you own so much of this, why don't match money and they said no, they were not going to do that.

Councilman Gilbert said they went into reorganization to protect their investment. Mr. Mariello said certainly.

MPT Wilcox asked if this was a public hearing. The town attorney said the law does not expressly state that a request for an extension of a CUP is a quasi-judicial proceeding. Clearly if this was a request for a CUP or to modify a CUP, that would be such. Our statutes do not say one way or the other whether or not an extension is quasi-judicial or not.

MPT Wilcox said, as he understands the attorney's information that was sent over, it's your opinion that October 12<sup>th</sup> is the available period of time. Mr. Coggins said that is correct.

MPT Wilcox said he understands Councilmen Johnson's and Gilbert's questions and concerns but he looks at it a little differently. With regard to removing hotels and vacant land sitting there, that is done and over with and what they are dealing with is where they are today. And he looks at the bankruptcy proceedings the same way. Those are things that have taken place for numerous reasons and they are in place. What Council is being asked today is whether there is just cause to allow this applicant an extension on his CUP until October 12<sup>th</sup> when no more extensions would be available. In the argument of wanting to do something with that property, the argument could easily be made if some buyer places a value on this CUP, it is more likely to sell that property and have it become something productive than without it. Having said that, from his perspective as a buyer, he doesn't know if he would place any value on it but, in the market different people place values on different things for different reasons. He is not going to judge their project based on Park Place or somebody else who has not done anything to rescue those projects or to advance in any manner nor is he going to try and impose his opinion about what is marketable or not. What he is seeing is that they have done a lot of work and had a lot of obstacles and that many of their problems may not have been of their own making. In these economic times, the last thing they need to do is create more hardship for anyone that is trying to sell their property. They had a request from the bankruptcy trustee who feels there is some value to this, you feel there is some value to this. If someone buys it, maybe rules will change over modifications and they come back for modifications to that CUP and, therefore, there is some value to it or they won't build on it at all, they won't take advantage of the CUP and there is nothing lost. If they do take advantage of the CUP, we have a project that is moving forward and have gained something. Personally, he doesn't see a problem with extending the CUP or how it causes the town any harm at this point and time.

**MPT Wilcox made a motion to grant the extension to October 12, 2009.**

Councilman Gilbert said that you have somebody who is protecting themselves in bankruptcy court because they have a \$10 million dollar interest or more. There are other cases out there. Wachovia is suing folks because they have just protected themselves in bankruptcy and it won't go into foreclosure, same exact scenario. They don't have a company with assets so they can't reorganize, they went into bankruptcy with an intent of selling the project. It took almost 15 years for Carolina Beach to come out of the last housing downturn. The developers of Arcadius basically perpetuated blighting of an area, the destruction of hotels by demolition and fire. He thinks we deserve better. Let this real estate cycle, let it go. You have an \$8 million loan on it, not everybody is going to get paid. Let it cycle, put it back in the hopper. There have been abuses in the housing market and that is where we are in the economy right now. We need to move on. Folks trying to package something and selling it and marketing it the way you are marketing it, that market may be gone. He respects everyone's position on this and it is tragic but the facts are you are in bankruptcy, there is no money to reorganize, nobody has presented a reorganization plan or shown a marketing plan. He feels he has justified a vote to not go forward with it.

MPT Wilcox said he might be confused on something. Councilman Gilbert says put it back in the hopper. It is in the hopper. It is also in reorganization and you have to follow certain requirements that aren't going to change regardless of extension or non extension.

Councilman Gilbert said he will qualify what he meant by putting it back in the hopper. You have \$21 million listed on 14 properties. The note on it is \$8.2 million. The tax value is \$11 million. He came up with \$12.2 million that has been paid for this stuff and doesn't know where the \$8.2 million came from. We just went through a reassessment in the interim of this property being bought or sold and the assessed value is \$11.2 million. It is pretty obvious that the pricing on this, at \$21 million, probably isn't the market value of it so, when he says put it back in the hopper, let's get the people who need to get paid, paid. Let's put it out there for some fair prices and he bet's if that number was \$11 million and you look at the value of these, some oceanfront and some not, he is saying market it at a fair value. That is what he meant by putting it back in the hopper.

Steve Coggins asked what the bankruptcy court's plans are for the sale of this property regardless of what action Council takes today. His understanding is that the plan is for the property to be sold and what is the applicant's understanding as to when that event is supposed to take place by way of auction or whatever, regardless of what Council does here today.

Mr. Mariello said the process in the bankruptcy court has been evolving much longer than he thinks the stakeholders imagined. There are some parties of interest that have objected to a sale for a variety of different reasons because it would not realize their hoped amount of proceeds. He thinks this has run its course in such a way that given some of the different interests of the stakeholders, the note holders, the people who have

the equity and so forth, his guess is that this will probably go up for auction between the next six to nine months and certainly, depending on who you talk to, it might be earlier and possibly within the window of this CUP extension.

Mr. Coggins asked, at that particular sale, is it Mr. Mariello's understanding that, regardless of whatever action this Council takes or not, that the proceeds generated from that sale would then be applied first to the obligations owed to the Town of Carolina Beach.

Mr. Mariello said that is his understanding.

**MOTION CARRIED 3-2 WITH COUNCILMAN JOHNSON AND COUNCILMAN GILBERT VOTING NO.**

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

Respectfully submitted,

Lynn N. Prusa  
Town Clerk

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