

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

August 11, 2009

The Town Council of the Town of Carolina Beach met in regular session on August 11, 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; Councilwoman Pat Efird and Councilman Jerry Johnson. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order.

MPT Wilcox and Mayor Macon requested prayers for Judy Malcutt, a resident and Boardwalk Makeover volunteer, and James Golden, a resident of Carolina Beach.

INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Macon opened in prayer. Following prayer he led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

Councilwoman Efird made a motion to adopt the agenda. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon and Chief Younginer recognized Detective Harry Humphries for 10 years of service and presented a plaque to him from the state for completing his Criminal Investigation Certificate. Chief Younginer said Detective Humphries completed 500 hours of training and was the first one here to do so.

Mayor Macon and Gene Gurganus recognized Roy Gardner, Utility Maintenance Mechanic for the town's Operations Department for five years of service to the town.

TOWN MANAGER TO OPEN DISCUSSION REGARDING THE SUBMITTAL OF AN APPLICATION TO BE CONSIDERED FOR WATERFRONT ACCESS AND MARINE INDUSTRY FUNDS

Tim Owens said he just became aware at the end of July that \$4.5 million dollars is

available in Water Access and Marine Industry funds (WAMI). He has been working to fill out a grant application which is due by Monday and he will probably end up having to drive there. He is close to being finished. He would like for Council to consider applying for \$2 million dollars and, if awarded, would hopefully go towards purchasing property for a pier - NC Aquarium Pier at Carolina Beach. He asked Council to consider adopting proposed Resolution No. 09-978 which authorizes the grant application and terms of the grant application.

**Councilwoman Efirm made a motion to adopt Resolution No. 09-978 (Exhibit 1).
MOTION CARRIED UNANIMOUSLY.**

CAROLINA BEACH COMMITTEE REPORTS

Elaine Stewart of the Arts and Activities Committee said the committee is working on the Christmas by the Sea event. This event was approved last year by Council but because of time constraints they did not get it off the ground. This year they voted to move forward as a town sponsored event in conjunction with the Boardwalk Makeover group. Christmas by the Sea will consist of 10 coves, the gazebo and possibly the FEMA lot being decorated by various organizations and residents of the town. The Boardwalk will light up right after Island of the Lights. This will also enhance the New Year's Eve celebration that will be in Carolina Beach this year. The decorations will come down January 5th.

Concerning other upcoming events, Ms. Stewart also announced an art show to be held this Saturday, 11:00 a.m. to 7:00 p.m., and Sunday, noon to 7:00 p.m. at the lake. They also voted to make the Farmer's Market a town sponsored event to be held every Saturday from 7:00 a.m. to noon, April through September starting next year. They are still working on the dog show with Jeannie Mintz which will take place on October 17th.

Jerry Bigley, Police Advisory Board, said that they fed the kids with the DARE program several weeks ago. He also spoke about the Night Out on the Boardwalk at which the PAC, Police Department, Mayor, Sheriff, etc. participated with residents.

Fred Crouch, Operations Committee Chairman, said he was appointed when Ann Bowman stepped down. The committee is keeping an eye out for products and new technologies that would improve the town. They recently gave the town manager a wood product to consider which has a 40 year warranty to possibly be used for walkovers or the walk around the lake. They are also looking into solar and wind power options.

Randy Simon, Police Advisory Committee Chairman, said they have been working on improving communications between the residents and the police department and the Town Council and feels they have been very successful. They just completed a joint operation with the National Night Out event which they extended to three consecutive meetings which ended August 4th with the National Night Out. They received donations from the Marriott, Harris Teeter and he recognized Steve Stanton, Vice Chairman of the

PAC. He thanked Council and Sheriff Ed Mc Mann and a number of deputies for their participation. The committee will not be meeting next month because of Labor Day. They will meet again on August 5th going back to their normal first Monday of the month schedule. They also thanked the Chief of Police for all his help with the events and the publications.

Randy Simon, representing the Harbor Commission, said they have been working very hard in trying to establish the public access areas, the transient dockages, and the parcel of waterfront that was awarded at the city marina. They have attempted to get this done as fast as they could but have hit some roadblocks - one being they had the money spent and the work done to get the section of the southwest corner of the town marina open and vacated for docks to be built to supply dockage to daytime boaters, which would help our merchants, not to mention public access which is very limited along the entire coastline. They obtained bids and but he was led to believe today that they no longer have the bids to do a phase one of getting something down there. With the roadblocks they are not able to get anything done for the remainder of this year. They had the CAMA permits in place but because of the certifications, his understanding of the contractors who submitted the bids not being sanctioned or had the seal of a marine contractor they were not able to go ahead. Unless Council helps them over these hurdles, they will not be able to do anything for the remainder of 2009. Mayor Macon said he was aware of the problems. He said a general contractor's license is required for work over \$30,000 which was not the case except for one vendor. The town manager said he was going to get plans done. He is going to hire an engineer - it is required that the plans be engineered. He will submit it out for bids again and take the most responsible bidder and hopefully that won't take to the end of the year. Mr. Simon said there has been one hurdle after another. They didn't realize they had to have a complete environmental impact study done before they could do a mooring field. After speaking to several attorneys he found out that all of our ordinances that govern our waterways, in particular Myrtle Grove Sound, are in a grey area as far as being enforceable. The committee is looking into this. He met with Councilman Wilcox about a month ago regarding the ordinances, what we have and do not have. He was told the committee would be afforded an opportunity to have a maritime attorney at the next Harbor Commission meeting to look at this and try to come up with a resolution. He and Capt. Bartley will be going ahead with publications which include the Atlantic Coast Cruising Guide but because of the delays the project is not where it should be and they cannot provide pictures and info to these publications. They need Council's help to get over these hurdles. The next meeting is the 26th at 6:30 p.m. at the police training room.

Lonnie Lashley spoke on behalf of the Parks and Recreation Committee. He said they are in the initial stages of creating a teen center at the Recreation Center. They will provide more details later. They are planning on moving some areas within the Recreation Center and come up with a couple of rooms to start a teen center which is definitely needed on the island.

PUBLIC DISCUSSION

Jerry Bigley, owner of Half Price Ice and other businesses, said that for the last year and a half the town has moved forward more than he has seen in 35 years and he thanked everyone. He said he would like to see the CBD extended from the Food Lion down to Carolina Sands. Right now one of his pieces of property 304 is in the CBD but the other 306 is not and it's kind of stupid.

Concerning signage, when you get signs, people might be interested in getting digital like his which is first class and has received a lot of favorable comments.

He said the town has a lot of great employees and feels something should be done to recognize them or help them out.

He also feels that banners should go all year round because they all look good.

Regarding the new trees at the Palms, in a few years they will be blocking the view. They have invested a lot of money there and at his restaurant and he thinks the town should look at that.

He thanked Councilman Wilcox and all the hard work that was done at the Boardwalk but don't forget the people on 421, everyone should be treated equally.

Tom McDonald, 521 Swordfish Lane, said he will defer speaking on towing until later in the agenda. He went on to say that he and his wife participated in the art show that was on the Boardwalk on the 25th of July. It turned out for them and the other vendors to be generally a disaster. First of all the area where they were, the grassy area between the businesses and the Boardwalk, was very ill-suited for interacting with the crowds, which there weren't any. They had a terrible experience and they think it was probably mirrored by the other participants with a same group of unsupervised teenagers who were driving customers away. When it started to become dark they started to pack up and he called one of the members of the Arts and Activities Committee to give her some feedback and at that point they ended up with almost an armed escort out of there. The evening got a lot worse after that. That area is completely ill-suited for that type of activity. He and his wife do art shows in the area and have never encountered anything like that. From a standpoint of security, lighting, lack of crowds, it is really ill-suited. It's a great idea but it needs to be by the crowds and in a supervised location. From a conversation with Ms. Stewart and an e-mail with Councilman Wilcox, he understands these are issues that are going to be discussed. He would like to participate in that. You have a good base of local artists who would like to become a part of this without having to be a shop owner. The worst part of the evening was when his wife was sitting with things folded up, including their tent or tables and everything, he started with his first load back to their designated parking area and his vehicle had been towed. They were in the designated area with other vehicles with their parking permit on the dashboard. Two of them had been towed. He had to go into Wilmington to Earl's Towing to pay \$100 to get his vehicle back. He did get his money back but it took him 10 days, 3 phone calls of which none were returned. There was never an apology or explanation. It made him

livid at the time and he is still angry to think about it and he is not going to stand for it. He is glad it is being discussed. He was parked in a place where there had been prearrangement with the owner of the lot. The whole lot was completely empty. He was parked where he was supposed to be, with permission, showing a permit, and yet he got towed. He was less victimized and inconvenienced by the person who broke into his car and stole his radio than this towing company. He understands that there is a limit as to what the police department can do and was told by the officer that this is a civil matter. We need to change it so it is not a civil matter and if you get towed improperly, it needs to be a criminal matter.

Susan Keelin, 1315 John's Creek Road, said she is here this evening to represent the interests of Myrtle Grove Properties which is the owner of the acre of property on Carolina Beach Avenue N. that was formerly operated as the Sea Witch Motel and Café and Tiki Bar. She wanted to formally state that Myrtle Grove Properties is very interested in making that property, the Sea Witch property, available for purchase by the town for the NC Aquarium Pier. There are a lot of attributes: it's an acre of property and single ownership; there is 150' of ocean frontage; it borders a parking lot the town already owns; and, is very close to the marina which would provide a great resource for education and recreational opportunities in conjunction with the pier. She respectfully asks the town give serious consideration to this location as they deliberate what she feels is the best opportunity for the town and the pier.

Cindy Sneed, said she is employed by Network Real Estate and she is representing the board of directors for the Breakers, Sun Skipper and Sea Scape. She asked Council to consider tabling the issue on towing until she can contact the board of directors to review these changes.

Wayne Gunter, Pleasure Island Towing, said he is here to serve the town and people and he only tows when 911 calls him. If a person has a flat he fixes it. If they break down he tows them where they need to go. On the July 4th weekend he donated about 20-30 hours at the north end with his 4-wheel drive tow truck and never charged for it. On the towing situation he had been sort or threatened by one of the companies because he told him he would tow his trucks if he saw them towing one. He doesn't believe in it. He believes the community thrives on tourism business. If they are going to get a black eye because of what other companies are doing, that's bad. He will do a tow away if 911 calls him or if a business is blocked but if he does something, 911 knows about it before he does anything. This is his home and he is proud to serve his community.

Earl Chambers, runs a towing service out of Wilmington but he does not do tow aways - he does whatever the property owner wants him to. The only way he does a tow away is if the owner of the property signs the invoice then that is the only way he will tow. He has done this for 45 years. His point is that on a tow away it is whatever the property owner wants and he signs an invoice then yes he'll tow it away, otherwise he will not.

Bob Lewis, 670 St. Joseph Street, said he is glad to see they are doing something about the towing. There does seem to be a predatory practice going on here, not with the locals.

Concerning another matter, Mr. Lewis said he would like Council to consider doing a resolution. All 3 state boat ramps are going to be closed at the same time which could cause a little danger to the community. He thinks the state is doing the right thing in repairing the ramps but it looks like it is not going to be done until maybe the end of next year. He knows a lot of the captains here locally are signing letters asking the state to move one of those back for a period of time. It will affect our community because you are not going to have fishermen come here. He can help draft something for the town consisting of a resolution to the state asking them to take a look at how they are planning these things because it looks like they are all going to be closed at the same time and could be a long period of time.

The other thing he would like to talk about is the police department. He doesn't think they get enough recognition. He is getting a lot of unsolicited comments from vacationers of how great the police department is, how helpful they have been and their presence makes them feel safe - the fire department as well. There have been a lot of beach rescues this year plus they have helped Kure Beach as well. Mr. Lewis said that he and a group of businessmen are talking about maybe doing some fundraising. Another life was lost due to rip currents so they are talking about doing fundraising for maybe coming up with another jet ski for the beach rescue and they think it will take a period of time because the big ones are expensive. What they would like to do is maybe once the rides are shut down at the Boardwalk is to consider letting them use some of that property down there for a day. They already have a couple of bands that are interested in donating free time to do a fundraiser down there. It might be the first of a number of fundraisers. The large jet skis cost between \$15,000 to \$20,000. They would like to see that done. It will help save lives. Lastly, regarding the sign ordinance, there is a motion on the floor to have a joint meeting between the Planning and Zoning Commission and Council and there are probably about 10 small business people who would like to be involved in that meeting. The idea is to educate ourselves on signs and their impact and then come up with some kind of resolution. They are supportive of that.

The town manager said if Council would like him to he could draft a letter on behalf of the Mayor and Council and send it to the agencies involved in closure of state ramps. Council agreed.

ADOPT THE CONSENT AGENDA

Councilwoman Efird made a motion to adopt the consent agenda as follows:

Approval of the minutes:

Special Meeting	May 19, 2009
Special Meeting	June 23, 2009
Regular Meeting	July 14, 2009

Set a public hearing date for September 8, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 3: Section 3.9(5)a - Dimensional Standards for the various zoning districts to clarify and allow HVAC units to encroach into setbacks a minimum of four (4) feet without regard to whether they are elevated or on the ground.

Set a public hearing date for September 8, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article IV; Inspection Department to require foundation surveys and to modify the current requirement for “as built surveys” only when proposed development is within two (2) feet of a setback line.

Set a public hearing date for September 8, 2009 at 7:30 p.m., or soon thereafter, to consider amending the Zoning Ordinance to add Section 1.8(c) definitions in italics which will alert the reader that italicized words have special meaning as defined in the Zoning Ordinance.

Set a public hearing date for September 8, 2009 at 7:30 p.m., or soon thereafter, to consider amending the Zoning Ordinance to address the types, standards and definitions of eating and/or drinking establishments in Carolina Beach.

Requests for the following budget amendment and transfer:

POLICE DEPARTMENT

Approve the appropriation of \$23,275 for radio flashing in the 09/10 budget into account 105100.74. The monies will come from the unexpended monies from the 08/09 budget.

FIRE DEPARTMENT

Transfer \$17,000.00 from line item #5300.02 to line item #5300.10 (Volunteer Call Pay).

Transfer \$76,000.00 from line item #5300.02 to line item #5300.09 (Part-time Salaries).

Approve agreement with NCDOT for the 2009 Comprehensive Bicycle Transportation Planning Grant (NCDOT funding \$20,000 and town portion \$5,000).

MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE TOWN CODE CHAPTER 9 MOTOR VEHICLES AND TRAFFIC; ARTICLE VII WRECKER/TOWING SERVICES & IMPOUNDMENT

Tim Owens presented this item. He said the town has had some concerns about towing and predatory type towing. The current ordinance spells out some things that have to be done for towing and if you want a wrecker service or rotation type service. The agenda was advertised in the Island Gazette but not the public hearing but you do not have to

have advertising to amend town code.

MPT Wilcox said he received several e-mails and phone calls and he would like to discuss this tonight, advertise it and bring it back if it is Council's pleasure so other people can come and speak.

Mayor Macon made a motion to move to Item # 13 in front of Item #10. MOTION CARRIED UNANIMOUSLY.

CONSIDER CALLING A SPECIAL MEETING FOR AUGUST 25, 2009 AT 5:30 P.M. TO BE HELD IN THE COUNCIL ROOM AT THE CAROLINA BEACH MUNICIPAL ADMINISTRATION BUILDING, 1121 N. LAKE PARK BLVD., TO CONSIDER THE ITEMS ON THE DRAFT AGENDA

Lynn Prusa, Town Clerk, said she had a couple of changes: Item #10 Consider Request to Purchase 1710 Canal Drive change to 1710 Carolina Beach Avenue N. Also, Ms. Prusa said she inadvertently forgot to forward to Council at the last meeting Christine Higgins' application for consideration of appointment to the Arts and Activities Committee. The application had been presented to Council at the meeting prior. Council appointed a number of people at the last meeting to that committee, but Ms. Higgins is still interested. Council might like to consider appointing her tonight or it could be added to the next agenda.

Mr. Owens said Jeannie Mintz would like to be on the agenda to talk a little more about the dog program. Council was in general agreement to add this as Item #3(a) on the August 25th agenda.

MPT Wilcox made a motion to appoint Christine Higgins to the Arts and Activities Committee. MOTION CARRIED UNANIMOUSLY.

Councilman Gilbert suggested that Council might consider directing staff that if there is a light agenda on the second Tuesday to consolidate those items into one meeting and eliminate the cost of televising the second meeting; let the town manager and town clerk make that decision. Council was in general agreement.

Mayor Macon made a motion to call a special meeting on August 25, 2009 at 5:30 p.m. with changes. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE TOWN CODE CHAPTER 9 MOTOR VEHICLES AND TRAFFIC; ARTICLE VII WRECKER/TOWING SERVICES & IMPOUNDMENT

Mr. Owens said there has been some concern about towing and folks coming back to condos and finding that their cars have been towed, whether they are parked there

illegally or not. Sometimes people don't put their hangers up. He has brought Council some suggestions as to how they might be able to amend their code. The town is a creature of the state and can adopt those regulations and the General Statute gives them the authority to do so. He would like to hear the town attorney's opinion. The ordinance he gave Council include some changes he will summarize. One of the first changes is that a responsible party as outlined in the ordinance must request the towing of a vehicle from private property. There would have to be some kind of signed document and eventually transferred over to the police department, either faxed or sent to 911 center on a form made by the town that would include who the person was, phone number, contact information and original signature. The responsible party would fill out the form, sign off on the tow, be given to the tow company and they would send it to the town. No. 2 would be that the responsible party must submit in writing a request to tow the vehicle from private property. Same thing, this would be in line with the General Statute here. No. 3, the request must have an original signature. No. 4, the request for towing must be quickly faxed to the Police Department. No. 5, the vehicle must be completely secured on the site of the private property.

Councilman Johnson recommended adding that the vehicle is to be secured on the site of the private property by the towing company before they leave the site.

Mr. Owens said he would look at that. No. 6, the tow truck operator must drop a vehicle when approached by the owner at the site or if contacted prior to the vehicle leaving the island provided payment can be made at the time. He has heard people have come up to the tow truck operators and requested it be dropped and it was not. No. 7, tow truck operators and tow truck companies must accept all major forms of payment as defined by the ordinance change. Basically, those payments would be any type of credit/debit card, personal check or cash. The penalty in the General Statute say that the parties may be cited for a Class 3 misdemeanor and upon being found guilty may be fined up to \$10 at the discretion of the judge. State citation at court appearance would also require the payment for the court costs. The police department would issue a state citation. From a negative consequence of this ordinance it would be difficult to get private vehicles towed from private property, would be a more difficult process. They may not have access to a fax machine or any immediate way to fax it to the police department or get it back to the tow truck operators. It is more time consuming. If you are an absentee property owner and have a lot of occurrences of folks parking on your lot, the process becomes a lot more difficult. Staff tried to advertise. It was sent to the Island Gazette but for some reason did not get advertised other than the agenda. They did call all the tow truck operators to give them a heads up. He has also talked to some property managers at different places. The majority of the ordinance change really starts in Section 9-153. The changes are reflected as *italicized* wording, as well as strikeouts. If this is something they decide to delay, they could also post this on the website. The General Statute he believes governs towing on private property is 20-219.2 which he has summarized and underlined some of the things staff tried to hit on when they did some of the revisions to the ordinance which is basically that there has to be permission, a written request, to tow a car from a private parking area.

MPT Wilcox said his only issue with this is with the part that says that every time a vehicle is towed from your spot somebody has to issue a separate, written request for the tow company to do that. He doesn't think that is realistic. As far as he can tell, that is not what the state says. It seems like it would all still work without that part of it. A HOA should be able to contract a towing company and give a signature saying you can tow from those spots upon our request or whatever those terms are and then every time they tow from that, they have to have the signage and everything, that towing company should be responsible for notifying the police department about the vehicle and where they towed it from, etc.

Mr. Owens said that would be another way to resolve things. We just need to know who's being towed and where they're being towed and we really need an adequate count of how many cars. He has had complaints that a vehicle owner was just checking in and they were towed.

MPT Wilcox said that is the relationship of the private property owner and the tow company. If the private property owner doesn't advise them that they need to notify somebody or need to wait a certain period of time or they have a check-in area. Those things have to be resolved between the private property owner and the tow company.

Mr. Owens said, regarding this ordinance, it's a weird situation to be put in because these are private contracts with private property owners and we are being asked to regulate this activity.

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

Tom McDonald, 1521 Swordfish, said he thinks the ordinance already has some of the protections built into it that if they were enforced would resolve this problem. There is already a requirement of immediate notification by the tow truck operator to the police department. That's kind of hard in the middle of the night but one of the things that the tow truck operator has to provide is the name of the person who requested the vehicle be towed. That was one of the problems he had having been towed out of this lot. There are basically two sections - there's the immediate notification requirement and then the posting requirement. The ordinance already says that one of the things the tow truck driver has to provide, it's not an original signature, maybe that is too much, but one of the things they have to be able to provide to the police department is the name of the person who is requesting the tow. Nobody requested that he be towed. It seems like if that was simply enforced you would immediately remove the problem that you have when you give tow truck operators, and we're talking about ones who tow in a predatory manner, you take away from them the power to be the property owner. The property owner certainly shouldn't have to tolerate people that are parking illegally. Let them initiate the call and have the tow done. One of the things he found a little frustrating here is he wanted to see that because he knew that that tow report wasn't going to have anybody on it because the tow truck driver, when he approached him and wanted to engage in a conversation with him and his response was that this is private property and you can't

park here. He knew nobody had called and he called the police department here to request the tow report and was told they would request it back from Earl's and he did eventually get that. He was shocked to find out that they only retain that tow report for 3 days. In the period of time it took him to get traction on this, the tow report that had come from Earl's to the police department had already been discarded and the only way that he got it was because the police department called Earl's back and got another copy of it. To the extent that you are talking about having good data and knowing what is going on, one of the things you should put in the ordinance when you amend it is that the police department has an obligation to retain those. Not only is it good for the police department, maybe to be able to run lien information but what about the property owner, what about the owner of where it is towed from and the owner of the car. It is a way for them to see what is going on. The tow report he got back doesn't have anything on it about who requested that he be towed because that would obviously be absent. It also cites trespass towing notice to police required, it is a City of Wilmington form. You can get a long way on things by starting with the ordinance we have, looking at it, reading it, and enforcing it. Our ordinance requires certain types of notice signage and the thing that was absent here is, not that they had any right to remove him, our signs have to be a minimum of 6 feet off the ground. The one there is like here and he has been driving around and would be surprised if much of the towing signage in this town is even compliant. When you take the time to enact the ordinance and you decide what is going to be in there, then you hand that off and then the question is how do you enforce that? Right now you have specific signage requirements that it seems to him are not being complied with, you have specific reporting requirements that include the name of the person who initiates the tow. He can understand the concern for having to have the property owner be physically present to sign a tow order but it is completely reasonable to require that the property owner initiate the tow and that simply be documented in a reasonable way. That is a really good middle ground. What you are trying to do here is to strike a balance. Right now the thing you are attempting to address is the evil of having people park places they are not supposed to be. If they are parked someplace where they are unsafe, they're blocking traffic, they're a hazard, you have separate portions of the ordinance and the police obviously have the ability to deal with that. So what you are doing right here is you are resolving an issue of trespassing. Let the property owner be the one who initiates that because what he dealt with was judge, jury and executioner in the guise of the tow truck driver. Even if you put that the tow has to be initiated, specifically say that a property owner cannot appoint a tow truck operator their power of attorney or their agent to get around that. Let the property owner initiate the tow, document that and then enforce the ordinance you have.

MPT Wilcox apologized for what happened to him. He stated this is a complicated issue because they are trying to regulate what happens on private property. As a kind of caveat to what he just said, if he had a piece of property and he followed state requirements and give a written request to a tow company and tell them anytime they drive by there and see a car parked on that property, he wants them to tow it. That's all he should have to do as a private property owner because that is his property. Where it gets complicated is when there is a situation like Mr. McDonald had, a person has a piece of private property and they want to allow people to park on it on occasion then that is a private issue and the

property owner has to have that relationship with the towing company telling them he is issuing passes and he doesn't know what the town can do about that. It also extends up to the HOA situations where they have to have people towed. There is such a range of issues here as a private property owner. If he is following state code as he sees it, he can issue a written request and say anytime you see a vehicle on his property he wants them to tow it and should be able to do that. Therefore, he thinks that is why this is so difficult to deal with. There are certain private property rights here they are trying to regulate and he wants to fix it and find a middle ground but that would be a concern to him as a property owner.

Mr. McDonald says he understands that and that is the balance that has to be reached because, honestly, but for any of these statutes, if somebody parks on your property, they're trespassing. He's not saying people should have a right to do that but what happens is as soon as you cross that line and you give any incentive to that tow truck operator, he has seen it himself, the office he works at. There was a lot next door and those signs went up one day and people park there out of habit and there was a tow truck operator in there and we had people trying to block him getting out. It becomes a public safety issue because you turn it into a feeding frenzy. What seems like a benign right of the property owner to be able to control where people park, you have to remember what that turns into is the tow truck operator, there are good ones and bad ones, it's like an old fashioned letter of mark of reprisal from the king. He knows that two of the tow truck drivers from this service had the debate. One said he didn't think they should tow these people. It sure seems like if you have a whole bunch with a parking pass, let's do a little bit of due diligence and the other one said, nope, we're towing them anyway. As soon as it turns into that every car is \$100-\$150 it turns into something you don't intend it to be.

MPT Wilcox said what should happen there is if he owns that piece of property you got towed from and he had an agreement with the tow company that nobody could park there unless they had a pass. It is his responsibility to make the tow company know that if they have a pass, they can't tow. And if they tow people with a pass, he needs to fire that company. That's his responsibility. He doesn't know that the town can do that.

Mr. McDonald said the town has already in the past enacted requirements in its ordinance that are different than the state statute. Raleigh has done it. Raleigh has what they call a wrongful towing ordinance. They have gone in the complete opposite direction. They have actually looked at towing as something that has to be controlled almost criminally. So the town has already in the past enacted an ordinance that is different than the state statute. He believes that the town has the ability to step outside of the state statute and do other things. Frankly, he thinks the state statute is exactly the reason this has happened. It creates a feeding frenzy. So, already the town has adopted in the past what it believes to be reasonable regulations different than the state statute one of which is that when that tow occurs you have to immediately report who initiated the tow. That is already in place. Already in place is a requirement that signs be 6 feet high.

MPT Wilcox said back to his first item, if he had issued a written request to a tow company that any time you see a vehicle on that property, it gets towed. He is the person

who authorized it.

Mr. McDonald said that is not how he would interpret that requirement.

Keith Young, owner Young's Towing and Recovery in Wilmington and New Hanover County, said he had a few issues he would like to explain. One is called common morals, why is he in that type of business. It is no different than law enforcement, EMS or anything like that. He serves the public and creates relationships and friendships with many. That is why he enjoys what he does and he is good at what he does. If you are in property management, there are a few things that they need to happen. His personal opinion, 24x24, just like the City of Wilmington regulates it signs at all entrances and exits of properties. Not on third story condos, not on the fence line below, not behind the bushes. It also has a recovery time and it also has international no parking zone. That covers a lot of ground and that is your contract. It is posted at the entrance to that property. For instance, one of the properties on the boardwalk, the sign clearly states 24x24, parking is required by permit or pass only. There is no 5 or 10 minutes. If you come out there and your vehicle is there and you are picked up and you are coming down the street with it and somebody comes down to the property then there is what they call a drop fee. If you own property in the State of North Carolina and you have that property and this gentleman is talking about vandalism or whatever happens, you have a responsibility of what's on that property at the time to be responsible for it. And if there is drug activity, vandalism or anything of that nature - it's your property and who you want to regulate to be on your property is your choice, that's why you own ownership of it and that is his personal opinion and thinks that for the people who do get towed on there, 99% of the time you see the signs and roll the dice. Sometimes you win and sometimes you don't. If the sign is at the property at the entrance and exit, not in the corner or on the walls, you roll the dice. He thinks with the regulations of the signs on all entrances of the properties, with a correct sign and recovery time then that is the common thing to do. He thinks that needs to be enforced more with the towing businesses.

Bob Lewis, 670 St. Joseph Street, said there are predatory practices happening here. What the town has come up with is a good idea. As a business owner with a small lot, we basically encourage people who may have had more than they care to drink, we encourage people to take a cab home and let them park overnight in the lot. Without solicitation we have had numerous tow truck drivers come into the lot and say they have seen that car here all day, can I take it out of your lot for you. If I am not there as an owner or somebody else is not there as an owner, they could be talking to anybody at our place. He thinks the regulations and the enforcement that you have and the things you are trying to do today are important. They see the tow trucks on 421 circling the town on big weekends and after the summer they'll be gone. Our local guys will still be here but the others will be gone as soon as summer is over. There are definitely predatory practices. They are going around trying to find business while they are riding around. It doesn't make any sense to him.

Robert Rozak, Rozak's Towing and Coastal Recovery Towing, 312 Alex Drive, Wilmington, said speaking about some of the problems with the towing, it's all getting

focused at his company or the other tow companies down here on the island. We need to step back and take a good look at the realty companies, not the HOA's, that are renting out these condos at the island. He knows there are a few of them that he deals with that do a good job with making the people who are paying big money to come here and spend a week aware that that pass has to be in their car, the whole time it is in that parking lot or else they are going to be towed. If all the different type of realty companies would take two minutes of their time and make that person who just paid \$1,800 to spend a week here with their family to enjoy the beach, etc., to put that pass in their car, they wouldn't have been towed if they were supposed to be there. The other ones who are not supposed to be there, that's what they are here for. They are here for the owners of the HOA's to tow the vehicles out of the way that don't belong. He agrees with the gentleman who had a pass in a designated area where he was supposed to be and he shouldn't have gotten towed. Back to the signed paper authorizing them to tow away, the HOA shouldn't have to go down there at 3:00 a.m. because somebody is partying and got a whole bunch of cars in that parking lot that need to be towed away that don't belong there to sign a piece of paper. They should be able to do a blanket like the other gentleman said to let us know that if we see a vehicle there to go ahead and tow it away if it doesn't belong there.

Mayor Macon said he has gotten a couple of e-mails from individuals who have checked into a place, gotten their pass and not realized that they have such a narrow window of time. They go up to their room, get their luggage up to their room and, before they can get back down, they are already towed because the tow truck guy is sitting in the back of the lot and jumping on it. That is what they are talking about predatory towing.

Mr. Rozak said, for example, they do Pelican Watch, Sea Colony, and Sands V.

Mayor Macon said Pelican Watch is the one he has received the most complaints about.

Mr. Rozak said they park in the back of the parking lot, walk the entire property, leave there and go to Sea Colony, walk that entire property and then go to Sands V and walk that entire property. We don't just roll up into a parking lot and as soon as they find the first car, tow it. They allow an ample amount of time and it takes a good amount of time to walk through the property, before they tow the first car. They check to see if everybody has their pass properly displayed. If they are on the owner's side where their hanging passes belong at, they make sure all of them are right because if they don't do that, we got complaints back from the HOA or the original owners of them spots and that is why we take the extra amount of time to walk these properties before we tow the first car. We don't run right over there and grab that car.

MPT Wilcox asked if the pass is there they have a right to park and if the pass is not there they don't have a right to park there and that is how the tow companies determine whether they are supposed to tow that vehicle or not.

Mr. Rozak said yes. Some places have an actual written pass, some have a hanging pass and some have stickers on the vehicle. A lot of times the sticker belongs to the person who owns the unit. He was speaking with Mr. Willard, one of the editors for the Island

Gazette, and explained to him. He kind of agrees with his ideal of what he put in the newspaper about trying to make everybody have a sticker no matter how long you are there and then there are no question if it falls off the car because it is going to be stuck on the window where it is visible. That's up to a lot of people to justify that.

Councilman Gilbert said he has noticed that a lot of Mr. Rozak's signs this year at places he has never noticed before. He doesn't know if they are 2'x 2' but how long has he been working in Carolina Beach?

Mr. Rozak said he has been working in Carolina Beach for the past few years on the rotation, picking up the wrecked vehicles, and doing towings for breakdowns.

Councilman Gilbert asked how long he has been doing tow aways in Carolina Beach at the level he is doing them right now and contracted with the number of HOA's that he is doing right now? Mr. Rozak said they have really grown this past year.

Councilman Gilbert said his signs look brand new. He has noticed them at the Food Lion, is that a new contract? Mr. Rozak said they have had it since before the beginning of summer. They contacted us, we didn't contact them. They acquired Sunskipper in the past few months, Pelican Watch all summer but less than a year.

Councilman Gilbert said the majority of these higher density places you have within a year. Councilman Gilbert said he has sat on this Council for 4 years and doesn't remember this being an issue but he has seen his tow truck drivers sitting in Pelican Watch public parking waiting to get somebody. He has followed behind his tow truck drivers down Carolina Beach Avenue N. going about 5 mph all the way down. I don't know what they are doing if they are not waiting for somebody to park and then run over and do something. He doesn't know and he is not here to speculate but he thinks he is new to the tow away on the island and what he has heard this year that it is more aggressive than what we have had in the past. He would like to see a copy of his contract with the HOA and would like to ask our attorney if a contract between you and an HOA for towing is an actual written request per the owner of that parking space. He knows condominium owners have a parking space. Are you contracting with every single one of those people, is that the written request? Councilman Gilbert said he doesn't want to sit here and debate him but the feedback he has gotten and what he has noticed with his signs, they're probably not 2'x 2', they're probably not 6' off the ground but you appear to be new to the tow away and you have admitted this is your first year with what he would say is Sunskipper, a very challenging situation, Pelican Watch, very challenging, and the Food Lion. As an observation, we've got Wayne and Earl, they've been here a long time and probably have a different philosophy to the hospitality impact and what we are trying to do. He respects private property owners. He leases a property, has two big signs that say you will be towed. They don't have a problem and he doesn't have anybody towed. If it was a problem they probably would. We've got some good guys and we've got some guys that are perceived to be bad guys. You seem like a good guy but it sounds like you've gotten into a new market on the tow away, it's a first year for you and you are impacting the image of Carolina Beach with respect to hospitality and

that is the feedback he is getting. He is getting calls from people saying they will never come back. They have been coming here 20 years and now this is the first year that they have stayed at Pelican Watch and, for whatever reason, their daughter got towed. He had a guy at Sunskipper and his two daughters and wife got towed. It is a hospitality issue. He appreciates him trying to make a dollar but the aggressiveness of it is not something the visitors on this island are used to. This is his opinion from feedback he has gotten from people. He thinks the future is there case history what a written request is, is a contract between him and Pelican Watch a written request for each of the single parking spaces interesting deliberation, but not for today. He represents a good portion of this community who voted for him and this is the feedback he is getting. He thought he would share that with him from his position. He appreciates his commitment.

Mayor Macon said that four of the council members own businesses. They know how hard it is to make money, make a living and he knows those trucks cost him a lot of money but what he is trying to tell him is that it has never been that big of an issue until this year and most of the complaints he has gotten are from people who were legally staying at Pelican Watch that were towed before they could get back to their car to put their hanging tag or pass in there. He's sure that Mr. Rozak is not there towing 24/7 and it is just like with Earl over here, his two drivers sat there and there was a discussion between the two drivers. There were passes in the cars and one of them said, and I'll talk to you Earl, I'm going to tow them any way and this is where it becomes an issue of judgment and a judgment call where there is some common courtesy. It is a problem he has in this country where we are getting to where we don't have some common courtesy and decency to make a living the right way. The problem is that it is hard for us to address that issue because you have every right to tow cars for those folks but the problem is that those condominium associations, the fallout is huge because if you are towing cars that the people just haven't gotten back to their vehicles, eventually people are going to stop going to that condominium complex and then the HOA is going to start losing owners and they are going to start having problems. They're going to have people who aren't going to stay there, people who can't afford those units because they are not being rented out anymore. It grows and grows and grows. Some decency and courtesy is what he is talking about. This is the worst he has ever seen it.

Mr. Rozak said he understands where he is coming from but the other company I own has been down here even longer than I have and I have acquired it. It's not like he is just here because he has been doing stuff with them at times but the whole thing is that he is not new to this period. He has been in business for 10 years. He is not new to the towing game. Before that he has done work for his brother-in-law which owns Wayne's Exxon, Oleander Exxon, towing for like 15 years before he even started his own company. He is already pretty advanced in the towing business. He is not like an overnight situation.

Mayor Macon said he understands but he is not always in that vehicle and it's your people who are and, evidently, if somebody who is driving your vehicle that doesn't make a good judgment call, just like in his business, if he's not there and the person who is supposed to be running his business makes a bad judgment call, that reflects on him. So it reflects on Mr. Rozak if somebody is being towed. The gentleman who got towed

who had the pass and he has been tenacious on this situation. Mayor Macon said he's nothing to what I would have been if I would have been towed because he had a pass and had the right to be there whether it was miscommunication or not. And if the gentleman still works for you that did that, he shouldn't and that is where he is at. You have been very nice about it, you've been tenacious about it, you've been good about it as far as he is concerned because he wouldn't have been that nice. And he wasn't that nice when he called the Chief of Police trying to get your number, Earl. You are in a tough business and he understands that the way you guys look at it that it's a safety issue when you're hooking up a car, you're trying to get it up and away because then you have to deal with a mad car owner but when you pull it out into the right-of-way to finish hooking it up, that can be a problem.

Mr. Rozak said he wanted to say something and he is sure Young's and Earl's will say the same thing, not every car is the same. You are more than welcome to ride with them or watch them tow or whatever. The whole thing about securing it on that private property, a lot of times when you go to start pulling that vehicle out, depending on how big the property is that you are on that you are pulling it from, you don't know if the wheels are going to cut side to side until you done pulled out. Once you have you've got to get to a safe area at that time to go ahead and put the dolly's on the car so that way you don't have to be pulling down Lake Park Blvd. sideways taking up two lanes of traffic and cause an accident. He can't take a chance on hitting another car or damaging that person's property so that is why we've got to pull over on the side of the road if we have to, to a safe place out of the roadway, to go ahead and put the dolly's on the vehicle.

Councilman Gilbert said he can appreciate that but the appearance is that you are trying to get out of there as fast as you can so you don't have to drop it, that's the appearance. It is hard to set those appearances aside and he wants to make something clear because he doesn't think the spirit of what they are doing here is to sit here and debate you on this where you have to defend yourself. The impression is you want to do it and get out of there in a hurry.

Mr. Rozak said he apologizes if that is the way it seems but the whole thing is this, irregardless, if you come running out and we're hooked up and you don't belong there, you have a drop fee. We're getting \$50 regardless. Like in Wilmington and you coming running out and we are still on that property we have to drop it for nothing.

Councilman Gilbert said that is a great opportunity for us to fine tune our ordinance that we can maybe fine tune it that way and it might be more effective and efficient and more hospitable. I want to make sure I am clear on this. I'm not questioning your experience. Ten years in towing is probably sufficient to become good at it. What I am questioning is the aggressiveness that you have brought to the island this year. We're not used to it, our visitors are not used to it so he is speaking to it from the hospitality end. I don't want to sit here and put you on the spot and I don't expect you to sit here and defend yourself all night but the aggressiveness this year is more than we have ever dealt with. The feedback we are getting from our visitors is not good and the feedback is we're not coming back, we'll find other places to go if that is the hospitality we can expect. We

expect that maybe we can partner with you and maybe partner with the HOA that we can help look at the contracts and say how do we both win and how can we be hospitable and make sure we have parking for our visitors who are paying. Where is that middle of the road?

Mr. Rozak said his help suggested that if they really want to solve a towing problem - right beside the lake you have that new complex. It's inside of a brick wall with a gate. There is nobody going to park in there and get towed out of there. If they do it's just cause they live there or left a vehicle there but they're not going to be towed from that property because there is a gate. So what do we do then, we put gates at all of the complexes. That cures some of the problem but you done made that person that owns that condo or renting that condo feel like they're fenced in. For example, Sea Colony, they're like walled off on the side because they have public parking beside them and then they got some other condos on the other side but the whole thing is they've got to put locked gates to keep people out of their pool, to keep people from cutting through going to the beach. If you go along the street that's right over from S. Lake Park Blvd. and you ride and look on there how many people park along the side of the street there, because, really, they're within the utility easements and we can't tow them cars. So how many cars parked illegally that we still can't tow and it seems like there's a big controversy over the few that we do.

Mayor Macon said he doesn't have a problem with you towing cars off of private property that aren't supposed to be there but the things that he hears or gets in his e-mails are from somebody who just hasn't made it back down to their car from taking up their luggage and they haven't got their tag in the window yet and that is the sad for him because we are a tourist environment and tourist town. We're trying to get people down here, we want them to visit. That's good for you too because if they are coming here, we all prosper and you as well.

Mr. Rozak said, for example, when they come down here, they've got to check in at Laney's, they've got to check in at all these different places. If they hadn't already paid, they've got to go in to get their key and pass and that's where he can still say, if they took two minutes to say this pass has got to be in this car the whole time it's in that parking lot because towing is enforced. That would solve a lot of the problem. How many people come to his place and pick up their vehicle that's been towed and they're mad as can be and they have that pass in their car and they open their glove box and there it falls out or on the armrest. It takes two minutes for them to sit down with that customer when they're there, getting their money, getting all their information packets together, maybe a map, etc. Network Realty does it and others do it. They take that extra time with that customer who has spent all that money to come here and make sure that they put that pass out. That's one of the things that he talked to Mr. Willard with the paper was, instead of hitting all of us tow companies as a predator or shark, how about lets put something in that paper that says if you're renting these places, why don't you take two minutes to let the people know to have that pass out and that will cut down on people that's actually paying \$1,400-\$1,500 to stay there and the ones who are just coming down from Clinton today to play at the beach that don't want to pay \$5 to park or feed that meter all day long

that parks up in Pelican Watch.

Mayor Macon said that is true and that is part of the process we'll be going through, meeting with the HOA's in an attempt to educate.

MPT Wilcox said he agrees with everything Councilman Gilbert and Mayor Macon said but, the point he was trying to make earlier was, and you just hit on it, there is a responsibility of these homeowners, property owners, HOA's, to manage this towing situation properly and he thinks what is happening in a lot of these cases is that private contract is not being managed properly. That is what is giving us the black eye. That is why he is questioning how much control we have over that private contract and micromanaging those people to make sure they are doing the right job. If they do a bad job, it's our black eye but his question is how much control we have over it.

Cory Garsh, The Breakers, said in defense of Mr. Rozak, he has to say he does a great job. He has seen him personally go around looking in cars to make sure the sticker didn't fall on the floor and there have been cases where he was told so and so is just visiting but it really boils down to the town. You issued the license. You have 35 complaints against one company then pull their license – it's that simple. The other thing is, the homeowners, property owners, property managers sign a blanket agreement or a verbal agreement, whichever it may be, with the towing company that posts their signs. These people come in, they're not alerted to the fact that they need a parking pass. They take two hours, they feel like they can go across the street and take a dip in the ocean first before they put their stuff in the condo or whatever and comeback and their car is gone. It falls, like they said, on the owners of the property, the homeowners. When he rents his unit out, all his e-mails strictly state do not waste time putting the tag on your mirror or you will be towed. Again, when they get in his condo, on the top with the keys to the other things that they need and the codes to the pool, there are two parking passes, even though they only have one vehicle in case they lose one and it strictly says in the written bill of rights that they get to rent his place, post the sticker immediately. Don't waste time. He has never had anybody towed but he has watched them come in off the north end and pull into their parking lot, whole family, 20-30 pile out of the back of the pickup truck come over to the water by the pool, shower, rinse and you know what water costs on this island, it's more than gold and we as homeowners have to share that cost. Every year when their dues go up because the water bill is exorbitant, it's because these people come in and wash their dogs, wash their cars, wash their fishing equipment. They use our pool, somehow they get the code to the pool. They climb over the fence to get into the pool at night and Robert pulls up with his tow truck, yeah, go on, take them but this is what we have to put up with. It is unbelievable and there are a lot of times when he gets there just as they are pulling off and they're just coming back to their vehicles. He let's them go but the fact of the matter is if you need somebody there to be on site to sign a form, he wouldn't be able to get to his own unit or swim in his own pool. There was a van from Massachusetts pull into the parking lot with about 15 kids and they're all in the pool. He asked them where they live and they said they don't. Here he is performing a service and you are ripping him open, that's wrong. This is a public hearing not to berate him or any of the other companies. That was wrong. You need to pull the license of the

offenders. Don't stand up here in front of the public and chew the poor kid out. He's been in business a long time and does a darn good job but if you give them a license, take it away if they're an offender. If they've got more than two offenses, pull their license.

Mayor Macon said the problem is when you say offenses, it's hard to document whether or not - it's a he said, she said situation and that's the problem. He thanked him for being a good sport but he is one of the ones he has not gotten to talk to and there are a couple more that he hasn't gotten to talk to. His point is to make sure they understand that we need tourism, we need to be user friendly and that is important to us. I'm relaying how important it is to me and this Council and to the Town of Carolina Beach. As long as we keep it that way then everyone benefits. The town has been busier than it has been in a long time and that's the way we want to keep it. He agrees with him when you do have a pass and you just haven't made it back down to your vehicle that does tug at the heart strings. You carried your luggage up there, you weren't advised how important it is - that's a tough one. It does fall on personal responsibility.

Mr. Garsh said at that point there comes a time when how many tow companies are there on the island, how many do we need. Fourth of July weekend, yeah, we probably could have used 30 more but that is a two-three day event. In the long run, like you said, who is here all year long? We've got a few on the island, a few close by, we've got a few that's been here a long time but the ones that are new or just in off the beat or recently signed on, if you only need four companies, limit it to four.

Mayor Macon said he is a free market guy so that would be a problem for him.

Mr. Garsh said you can't penalize the whole crowd. It's like Mr. Wilcox said, how do you get an owner at 3:00 in the morning to sign a form? It should be good enough if the signs are posted 2' x 2' or whatever size they're supposed to be, how high off the ground. When did that ordinance come into effect? I'm sure there are signs that have been out there probably grandfathered in that aren't 2' x 2' and 6' off the ground. You might have to send a letter to the property owner or the HOA to make them aware of the fact that they need to be redone to bring in into compliance but that is a small part of the picture. Tourism is the ultimate goal.

Councilwoman Eford asked the town manager how many towing licenses we have. Tim Owens said he is not sure that is something you regulate either. He's not sure, maybe 6 or 8.

Ms. Dawn from 306 S. 3rd Street, Kure Beach, wanted to lend her perspective as a business owner and HOA manager, if someone comes into town her experience has been they come in, rent a unit, have an assigned parking. The rental agencies have done a terrific job giving them their passes. They show up and someone is parked in their spot and that is what they deal with as property managers. And we get called and that is a different perspective. They have come on vacation and they're ready to have a good time and someone is parked in their spot. Also, with the HOA's, the boards and the homeowners hire management companies like hers to represent them so when we sign a

contract it states that she is signing that contract on behalf of the homeowners. So, for us to be called every time we have to get a towing company out there to sign a piece of paper, the practicality of that wouldn't work. She gets paged, she's on call almost every weekend, at least 5 times on towing and Rozak does provide towing for a lot of their associations and he has done a really good job. She just wanted to give them that perspective.

Cindy Snead, Network Real Estate, said they are concerned with tourists and they don't like the idea of the predatory towing. Rozak does three of hers under Coastal Recovery and he has been doing an excellent job. She has had no complaints since he has been doing it.

Tom McDonald asked if they know how many tows occur or have occurred? Is that something they track data on? Mayor Macon said no, we need to.

Keith Young said the biggest thing is common morals and how you carry yourself, why you are in this business. For example, he has one of the properties on the Boardwalk. About 4 weeks ago one of the lifeguards parked directly in front of the sign and one of his drivers charged him \$25 and the next day he gave that money back because that's not a kid down there jumping from bar to bar, that's not a mom and dad who's got a babysitter at home who's going out and having a good time, its to serve somebody else. The point is, it's common morals, give the money back. There are tow companies who come down here that don't do property management. He has three properties down here. He is the inventor and founder of a national trademark DWI rescue program. He has come down to Tangerine's, the Dive, Harbor Master and takes home on an average of 7 to 10 a weekend and will probably take home some tonight. Every single night we come down here we're taking people home with their vehicles because it's like this if there are only two people he's going to take them home. He's going to take home their Sealy Posturepedic and this gentleman here, he doesn't have a Sealy Posturpedic and his bed is not going to be the same as yours and that is the reason why he takes him home.

Elaine Stewart, 408 Carolina Sands, she thinks the thing that really bothered the Arts and Activities Committee is having a pass in that windshield, being in a parking lot that has had previous permission and still being towed. That was the straw that broke the camel's back with a lot of people that were involved in that. The question she has for all the tow truck drivers is, when you see a pass in the window don't you think it's common sense to check on it before you tow it and you see several vehicles with the same pass?

MPT Wilcox said to Ms. Stewart that Russ gave them permission to park there, set up the passes and asked her to explain the breakdown.

Mayor Macon corrected him and said that Gary gave them permission on Russ's property.

Ms. Stewart said that she and Lynn Denne. spoke in person with Gary, gave him all the dates that the Arts and Activities Committee would be down at the boardwalk and he

asked them to do one favor and make sure they had some kind of pass in the windshield so they don't get towed. They actually made a different pass every art show with the date and they were big passes. They were banner size, art show and had the date in bold. They had July 25th written out, 2009 and all of the cars had those in their windshields. They actually had somebody from the Arts and Activities Committee handing out those passes and telling them to make sure that they had them in the windshield or they would be towed. She feels like the Arts and Activities Committee has done everything in their power possible that this wouldn't happen to their artists.

MPT Wilcox asked if she had any knowledge as to what was relayed to the towing company from Gary or that organization about their passes. Ms. Stewart said she did not.

Councilman Gilbert asked who contracted with the towing company. Ms. Stewart said it is her understanding that there were a couple of towing companies there and Tom was the one who got caught in the middle of that. A couple of the towing companies told the towing company who towed him they didn't think they should be towing them and, as Mr. Macon said, they said they were towing them anyway. And he was told that they didn't think they should be towing them, they had passes. To me, that's predatory.

MPT Wilcox said he thinks what happened there is somewhat of an isolated case and a ridiculous case but he still has to question what the breakdown was and it seems to him that the breakdown for somebody to just say make sure they have passes. He's not sure what was relayed to the towing company.

Ms. Stewart said she was sorry but she is. When the gentleman says that he doesn't care that they have passes and tow them anyway, that told here that was the breakdown with the towing company. She doesn't see it any other way.

Steve Coggins, Town Attorney, said he would be grateful to Council if public comment would be given by operators of the towing companies that are here to specifically address what is the policy that is communicated to their employees and provisions within their contracts with respect to what to do if a pass is clearly on display within the vehicle. He doesn't recall that particular point yet being addressed by any of the owners or proprietors of those companies. That is a recurring theme he hears but he has yet to hear a specific input from the industry on that particular point.

MPT Wilcox said he would not only like to hear that but he would like to hear specifically from the towing company that towed off that lot as to what their motivations were.

Alicia LaChance, 102 Carolina Sands Drive, had a few questions for the towing companies. She sits at the front of her house and watches Sand Pebbles and that is Earl's Towing. She has watched that for two summers. She has been towed, not in this area but in another area and it's not fun but what is the practice of touching a legally parked vehicle with dolly's to move it out of the way where somebody has checked in after hours at a drop box and has one pass and they have put two cars in to block that first car that

didn't get a pass because the rental agency was closed and they have moved the legally parked vehicle out of the space to get the vehicle without the tag and put the legally parked vehicle back. She has seen that. She has also seen Earl's Towing driving down the wrong way of the one way street. She has called the police for that. She has approached them and they said they don't have to have lights in a parking lot. She asked them if they have to have them when they're driving on the highway and they said yes. She then said she was going to call the police. They were gone for the evening after that. She sees the tourists come in and sees them checking in late and there is no balance. To her, that company is a predator problem company and if they get enough valid complaints and there is any way to ban or contact Sand Pebbles or who they are towing out then the town needs to work with the HOA and the property owner to improve that image and get a better quality organization to support their parking rather than what they've got right now.

Councilman Gilbert asked said Wayne Gunther of Pleasure Island Towing said he did not do tow aways. He asked if Earl Chambers said he did not do tow aways and Mr. Chambers said he did not. The name of his company is Chambers' Towing which is different from Earl's Wrecker Service.

Earl Hewitt, owner of Earl's Wrecker Service, said he does not do predatory towing. He said Ms. LaChance said he did towing at Sand Pebbles this year and he has not towed from Sand Pebbles this year on Carolina Beach. He has been towing down at Carolina Beach for 14 years. Mr. Chambers, the name of his company is Chambers Service Center and his is Earl's Wrecker Service - two entirely different companies. He has put Earl's on the side of his truck because there is a state - whatever the name of you business is, you have to run that on there. So this year he has had to put Earl Chambers on the side of his vehicles. His own clearly states Earl's Wrecker Service. The incident over here with the passes, the driver doesn't work, and if he owes them an apology, he has apologized to them. They were told when they put the signs up and his signs are 24"x 24" and they are off the ground. He tows for two places at Carolina Beach, that's the two places he tows for and all his signs are legal where you can see them. They were told, contracted to tow, anything out of the middle parking lot. The art gallery was to park behind the house which is four spaces behind that house. From what he gathers they were told to park there, not in the middle. They were towed from the middle. He did speak with the Mayor here and he did a refund on one and had the driver bring one back, the only two people who were towed. He did mail a check to the gentleman and also brought the pickup truck back.

MPT Wilcox said that is the point. That is clearly not what the Arts and Activities Committee understood, it's not what the people who parked there understood. You have a different understanding than what they had and he thinks the breakdown is between the people who own the property and what they told Mr. Hewitt. This is a problem.

Mr. Hewitt said it is a miscommunication and the tow companies get penalized for it.

Mayor Macon said you have a miscommunication, yes, but if the gentleman owns all of

that property, there's four cars in there now that have a pass. Whether you think they're in the right spot or not, some common sense would have your driver call you and have you call the owner of the property. I'm sure you have his number because you get a paycheck from him or towing fees and you have to have his name, address and telephone number because you have a contract with him. Some simple process of elimination could have stopped a lot of heartache that night and the driver that was there to make that call did not make the right call and the owner didn't do what they needed to do.

The town attorney asked what's their policy, if any, that you have with your employee drivers about what to do if in fact there is a pass that is visible within the vehicle and, a related question, is in your contract with the owner what, if anything, is said about passes in the vehicle?

Mr. Hewitt said they are not to tow a car with a pass in it. That's why he doesn't work for me now. There's nothing he can do about it now. He can work on it to make it better from the two places he tows from.

MPT Wilcox asked if the passes are something the HOA's or property owners give them a copy of to show them what the pass looks like or can anybody make a pass and put it in the car window and you're not supposed to tow it?

Mr. Hewitt said anybody can make a pass. They find them all the time.

MPT Wilcox asked if they are told to only allow a certain kind of pass or if somebody says if there's a pass, are you trying to figure out whether that pass is valid or if there is a pass there they just don't mess with it or what?

Mr. Hewitt said if there is a pass there he doesn't mess with it - any kind of pass.

MPT Wilcox said he assumes that not the same for every property owner. Mr. Hewitt said no.

The town attorney asked if that is specified in their contract with the owner of the property? Mr. Hewitt said it is not but it is their policy.

The town attorney asked how his employee is compensated. Does he have a base salary or is the employee compensated on the basis of volume of towing vehicles?

Mr. Hewitt said his employees are paid by salary.

The town attorney then said it is not a quota they have to have.

Mr. Hewitt said they do not have a quota. He has one guy that tows, he's real good at it and is paid extra for what he tows but he does have a base salary.

Councilman Gilbert asked if he is compensated for what he tows. Mr. Hewitt said yes.

His trucks do not live on Carolina Beach. He has not had a truck down here but one time this whole week. They were not down here but one time over the weekend. So he does not come to Carolina Beach every night. He does not run his trucks up and down Carolina Beach unless he is down here doing a tow.

Councilman Gilbert said he mentioned he had two properties and there is the boardwalk property and you mentioned a house. What house is he talking about? Mr. Hewitt said in the lot, where the big lot is they're talking about, the little house that sits right there, Russ Maynard's office, right behind there are four parking spots they use for that property.

Mayor Macon said if the other tow truck owners want to get up and answer some of the attorney's questions about how they're compensated and things of that nature and policy on passes and contract provisions.

Councilman Gilbert asked if it would be reasonable that they could put some questions together that they can get out to the HOA's that they could share or vice versa that they could maybe flesh this out because they have had one HOA that said they didn't see this and they want to run it by their owners. He's guessing that they are going to continue this at this point.

Mayor Macon said this is going to get continued. Without the advertising he doesn't think they should be doing anything tonight but, maybe that is the case.

The town attorney said he is trying to take advantage of the presence of the actual tow truck operators.

Keith Young said he has repeated this every time he has come here, it's called common morals and how you carry yourself. If somebody comes out there and a mistake is made, it's not come all the way to the yard and get your vehicle. It's turn the truck around and bring it back. It's all about the relationship that you start from the get go with the HOA's. He has one condo unit in all of this whole area of the island he chooses not to do because of the situation and the blasting that's going on. He has two commercial properties, that's all he has here and he chooses not to do apartment complexes. He doesn't want to do the he says, she says or I told him this weekend or whatever the deal is. Signs are posted. Signs are the biggest issue. If you have any other questions, his guys don't get paid on commission. They are on a straight salary. When you're on call that week, you're on call after hours and then you rotate it through the drivers. He doesn't get an incentive to go out and tow cars. He does have two commercial properties here. He has Federal Point Shopping Center and you cannot tell him that you can get on that shopping center. You've seen the signs, big, giant 24"x 24". They're white, they're reflective with black lettering, international no parking symbol and recovery time on them. They're metal and indestructible with 150 mph wind tested through them and they're posted. He does have one property at the boardwalk right next to the Blackhorn and everybody in this room has rode by there and saw that sign sitting right next to Prudential's and it says, no parking without a permit or pass. That's where you've got to give the choice to the person because the man who owns that property does not want no

one. He even had to go to Mr. Younger and say, hey listen, lifeguards, no, he doesn't want nobody on his property. He went into the Blackhorn. He has signs in there for his DUI program in his restaurant to say, hey look, don't mind you guys coming down here and there are many times he came in there and said, hey listen guys, no. But if you roll the dice and say I can get away with this, then it's you making a moral decision considering there are two parking lots directly across the street that you pay parking to get into.

The town attorney asked if he has a contract or a relationship with a HOA or apartment complex? Mr. Young said he does with a realtor here in town.

The Town Attorney asked, in that do you have an understanding or contractual understanding in that situation regarding parking passes? Mr. Young said he does and he actually works with them and supplies those passes and their passes are stickers which are placed on the left hand side right above the inspection sticker on the windshield. And people make mistakes because, what if you car gets in a wreck next week and you've got a rental car. They have had that happen and they have turned right around returned the vehicle because that is called common morals. Don't be in this business to make thousands of dollars overnight.

The town attorney said he is just trying to figure out what the facts are. In your particular situation then, you are telling the Council that you don't deal with the situation where someone places a written pass and is placed on their dashboard or hangs from the mirror. You deal exclusively with a situation where an adhesive thing is actually stuck onto the windshield. Is that correct? Mr. Young said yes. He said 95% of everything he does is commercial property. He regulates property management 212 commercial properties in New Hanover County for lots of businesses, banks and organizations all throughout the county and a lot of shopping centers. Their signs are all in accordance. He works his tail off with Tom Pollard with the City of Wilmington and the inspector to make sure that those signs are 24"x 24" with the symbols on it and there are a lot of towing companies that don't like him, that don't care for his knowledge and what it is but you have to give the people the moral decision to make the right decision to either park there or not. His drivers know right now and Chief Younginer will tell you this, anytime a vehicle is picked up it is called in within the first 5 minutes. The city requires 30 minutes. They call the first 5 minutes and the reason is this is 421, a state highway. You don't know if somebody stops a state trooper on the side of the road. Who's he going to call. He's going to call the 911 distribution center, the same place the Town of Carolina Beach calls and that's what it comes down to. That way they know everybody is on the same page and if you can't do this with morals, why do it?

Councilman Gilbert asked if it is Young's Towing and is he Keith Young. Mr. Young said yes.

Councilman Gilbert said he mentioned commercial properties. Are these longer term residents or part-time residents? Are there are lot of people coming and going? Mr. Young said he does and one of the things they have had are people who come and park

their vehicles on Friday night to go out on the north end of the beach to camp out and then they expect that property owner to say, okay, sure leave vehicle there to get stolen or broken into at 3:00 a.m. For example, on the 4th of July weekend he had kids out there skateboarding on a guy's M5 BMW, on the bumper of it. That's a \$65,000 car. The property owners do not want to have people on their property after hours and that is why our signs state no parking after business hours. And how they regulate that is every one of those businesses has got their normal business hours on their front doors.

The town attorney asked when he says commercial property, what does he mean when he says that? Mr. Young said shopping centers, such as Federal Point Shopping Center, that is a commercial property.

Councilman Gilbert asked if he is proactive or reactive at Federal Point Shopping Center? Do they call you and say there is a car out here? Mr. Young said they are a regulated timeframe. We come in, as requested by the property owner, from 12:00 midnight to 7:00 a.m. They do not come in before then because there are ladies who work at Maxway who are stocking, etc. The sign says no parking after business hours. They do not come in there until after midnight. On Friday and Saturday nights they don't come in until about 3:00 a.m. because the movie theater has a 12:30 midnight showing and he works with them exclusively. He knows on Thursday nights when they do a prescreening and they have had no problems down there ever since they have taken over there. If you are going to be in this business, do it to establish relationships with people you're doing it with because, like it or not, every towing company needs to realize this, they are first representation of that HOA or that commercial property.

The town attorney asked how he handles the situation where there is the sticker, the people who are residents but who have guests, somebody is invited to be there and he is assuming the person wants them parking there? How do you handle that situation? Mr. Young said in the past they have had if the person who owns that property there would call and say, hey, listen we're having a few people or a gathering here and lets them know ahead of time, then that's in our mind. If the actual homeowner has to call us and say they had a few people and it's our fault, there is no question. It's called common morals. We spin it around and bring the vehicle back. If it's already in our yard and in our custody, then we say not a problem, a mistake was made, come out and get your vehicle.

Councilwoman Efirm made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

MPT Wilcox said he had a couple of questions for the town attorney. The state information you provided to us talks about putting those 24" signs on the entrances and clearly marked and all that but then it goes on to say, "spaces within the lot be clearly marked by signs setting forth the name of each individual lessee or owner", he assumes a parking lot like Federal Point, you could just have a couple of big signs there that say these lots all belong to Federal Point but this would lead him to believe that a HOA or a condominium complex you would have to have each of those spaces either marked as an

HOA, if there is a management company or whoever is representing them, you would have to have the owner's name on those parking spots or have to have some representatives name on them? That's a question for the town attorney.

The town attorney said this is a hybrid statute and by a hybrid he means is both a criminal statute and a civil statute and a penalty statute all in one. That has important implications in how you construe and apply something. As you've known in the very beginning it talks about what is unlawful to do. It's against the law for someone to park in a private parking space if they don't have the express permission of the owner. That is against the law. However, that person who has already broken the law, it goes on to say, if you have this signage, as you've described, and it talks about what has to be required in order to convict somebody because you notice in subsection B, violation of the statute is a misdemeanor and, in criminal law, you strictly construe, you narrowly construe statutes that fines somebody that they have violated the law and this is something that goes on their record so you would construe it one way in that instance. But then you keep on reading and then it goes on to say, once you have established what the person can do, legally or illegally, you then talk about the circumstances by which a vehicle could be removed. That's an entirely separate subject. That's the civil part of the statute he is talking about here. A vehicle parked in violation may be removed upon written request of the parking space owner. That's a separate issue entirely from whether or not someone has violated the law or not. Now what we are talking about is what private remedies do people have. Can they have a towing company remove it and under what circumstances. That is separate and apart from how you analyze the language right before it. And then what you have is a purely civil, remedial statute here that, under no circumstances is a towing company to be liable in civil court to any person whose car has been improperly towed for damages unless, of course, they intentionally damage the vehicle or something like that. It's a completely different kind of provision. So that is why he is saying this statute is a hybrid and it is very difficult for you to analyze. So, if somebody was charged with illegal parking and Ben David, NHC District Attorney's office, is trying to prosecute them, the criminal defense attorney is going to say that you can't convict his client of this crime because there is no sign at the particular space ... and the parking spaces within the parking lot to be clearly marked by signs, same for the name. All that is a requirement of is if somebody is going to be convicted of having committed a crime. That is separate and apart from what should be a civil obligation that is separate and apart from violating the criminal laws.

MPT Wilcox said it says you have a sign that identifies those parking spaces, that would lead you to believe that each parking space in some cases have to have a sign. There may be some cases where that is a fact but both those HOA's, that's common area that belongs to the HOA so all those parking spots belong to the HOA. They don't belong to the individual owners. The individual owners have assignment to park there but they belong to the HOA so in that case, it sounds to him, a sign that clearly says all these parking spots belong to such and such HOA meets that requirement.

The town attorney said he thinks he is correct because what you are drawing a distinction between is that there is a big difference between asking whether or not something is

required to convict somebody of a crime and whether or not something is sufficient in order to authorize a private property owner to have someone towed. Those are two different questions.

MPT Wilcox said he is trying to drill down that these 3 or 4 basic tenets here that will give the town some teeth and be able to enforce something and it sounds like that's one of them, the signs are one of them. I guess we're supposed to enforce the fact that those signs are the right size, height, etc. The town attorney said that is another issue altogether because there are also some provisions within Chapter 168 that need to be examined, in addition to these that are in Article 20 that are equally relevant.

Councilman Gilbert said he had a question with regard to the sign size. Every car that was towed this year in Carolina Beach, that was towed from a property with an improper sign, then that was a misdemeanor then. Is that the way he interprets the general statute is that any towing company that towed from a property that had improper signs could be charged with a misdemeanor? The town attorney said no, that is not the way he reads the statutes. This is pointed to criminal activity by the person who is doing the illegal parking.

Mr. Owens said you could probably read this statute 10 different ways. He doesn't know what the intent was but was to allow folks to be able to tow folks from their private property in situations where there is common parking and not be liable for it that could be one reading of the general statute but it is more broad than that.

Councilman Gilbert asked where did we codify it that makes it a misdemeanor. He asked for help with the language. Mr. Owens said in the ordinance at the very end, it's one of the last paragraphs under Section 9-14 Penalty. He basically just took the general statute language. This is in the proposed ordinance change. MPT Wilcox said that speaks to the tow company's responsibilities and what they are supposed to do.

Councilman Gilbert said that is what he read in the ordinance, so you have covered the signage in our ordinance that basically states if it is not 2' x 2' or whatever we put in here, whatever we codify, if they tow from a property that doesn't meet that then it is a misdemeanor against them. MPT Wilcox said that is a good question. Who is the misdemeanor against? Is it the property owner's requirement to have the signs the right size? The town attorney said he was talking about GS 20-219.2.

MPT Wilcox said they are talking about the signage and who is responsible if the signage. Is it the tow company's responsibility or is it the HOA's responsibility? Mr. Owens said if you've contracted that responsibility out, he doesn't know. It gets complex.

MPT Wilcox said it sounds to him like we can't regulate common sense, we can hope the people follow it. We clearly have a problem. He thinks we need to look for things that the town can actually enforce and we have some limitations with regard to private contracts but, clearly one size doesn't fit all here and thinks we still have some work to

do.

Mr. Owens said he thinks it is limited and what we do need is some knowledge of where these cars are getting towed, who is under contract and who is not. We definitely need that type of knowledge and probably some data and if these folks were faxing in information they towed cars, reporting, that important information.

MPT Wilcox said he is completely unclear about what the town would do about this situation with Arts and Activities Committee if there was a breakdown between the people that own the property and the tow company.

Mr. Owens said it is a civil matter. That is what the police officer told them. His intent is to bring back some other recommendations and would like to hear from Council. He can come back with more recommendations/options than just this one.

Mayor Macon made a motion to continue this to the meeting on September 8, 2009. MOTION CARRIED UNANIMOUSLY.

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT TO EXPAND THE EXISTING ISLAND KITE AND SURF SHOP FROM ONE (1) UNIT TO A THREE (3) UNIT MULTI-USE FACILITY LOCATED AT 207 AND 209 LAKE PARK BLVD. SOUTH AND 106 FAYETTEVILLE AVENUE (PIN: R09006-035-004-000, R09006-035-005-000, R09006-035-006-000)

Jeremy Hardison, Tim Owens, Ryan David, and Gary Parker were sworn in.

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

Jeremy Hardison presented this item. He said currently this is a one unit retail building. The proposal is for a 3 unit multi-use facility located at 209 S. Lake Park Blvd. He showed an aerial picture of the property. It's located on the corner of Lake Park Blvd. and Fayetteville Avenue. He showed a survey of it. The parcel consists of 18,750 sq. ft. and is in an MX zoning district. There's a gravel parking lot with two driveway cuts, one off Fayetteville and one off of Lake Park Blvd. The improvements consist of addition of two retail spaces of 2,500 sq. ft., there will be a paved parking lot consisting of 21 parking spaces, there will be a stormwater system to handle the runoff, they will be replacing the sidewalk that is currently on Fayetteville Avenue and a new sidewalk will be installed off of Lake Park Blvd. They received word that that will be funded from a grant received by the town from DOT. They will provide a 5' landscape buffer on the entire perimeter of the property. The current building as it sits does not meet setbacks or flood requirements, it is non-conforming and will be subject to the non-conforming regulations set forth in the Zoning Ordinance. However, the new addition will meet flood code and setback requirements. In speaking with FEMA on this, it is looked at as two separate structures. One is the existing structure which, if anything happens to that will

be subject to the 50% threshold and the new addition is looked at separate as a standalone addition. The current setbacks in the MX district, is 20' in the front, 7 ½' off the sides, 12 ½' off the corner and 10' in the rear, which the project meets. Lot coverage in MX is 40%, the proposal is at 24%. He showed a breakdown of parking. The regulation is based on gross, leasable area. The total equals 20.24 parking spaces in requirement and they are providing 21 spaces. He showed the landscaping plan beautifying that corner and it is a Type A buffer requirement. He showed the floor plan of the three units and photos looking to the rear of the property and the existing gravel lot and the sidewalk on Fayetteville, the multi-unit project to the south, across the street on Lake Park Blvd., the retail shop to the north and the residential unit at the rear. It is consistent with the Land Use Plan.

Ryan David, III, representing Mike Milan, property owner, said they have worked well with staff and they feel the project will add to the streetscape on Lake Park Blvd. He said if the grant falls through for the sidewalk they will follow up with their commitment to put in the sidewalk. They put a lot of effort into the stormwater under the parking lot and are treating the 10 year storm with excess and will be good for the corner that sees a lot of flooding and ponding, it sits in a low area that they will be bringing up a little bit. They are installing a storm drain in the front of the project as well he thinks in excess of what would be required. There have been some requests from staff. There is a plat that will need to be required to consolidate the three parcels, which they are putting together now and will be completed before submission of a building permit. There have also been some easement requests for the big storm drain that cuts across their site which they are more than willing to give the town.

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

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

Councilman Johnson asked if the sidewalk on Fayetteville is tying in to an existing walk and Mr. David said yes.

MPT Wilcox made a motion to approve the applicant's request based on Specific Standards 1-7, General Conditions 1-4, comments by Technical Review Committee, town manager, planning, building operations, police and fire and staff recommendations 1-17 with the additional condition that if a grant is not available for the sidewalks the applicant will be responsible to put in the sidewalk. The conditions are as follows:

Specific standards. Applicant must make provisions for:

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

The proposed project will have an improved drive way cut off of Fayetteville Ave that will disperse traffic onto S. Lake Park Blvd at the intersection.

There is currently a sidewalk on Fayetteville Ave that will be replaced by the owner and a proposed sidewalk to be built on S. Lake Park Blvd to accommodate pedestrian traffic.

- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;

There will be 21 paved parking spaces on site for the retail use.

- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;

There will be rollaway trash cans used for refuse.

- (4) Utilities, with reference to locations, availability, and compatibility;

Currently there is one meter serving the building. There will be separate meters for each unit. The increased wastewater flow rate for the additional retail space is estimated 236 gallons per day. The increase usage will not result in any upgrades to the system. The stormwater runoff generated by the site will be handled through an infiltration system.

- (5) Screening and buffering with reference to type, dimensions, and character;

Type A landscaping buffer is shown around the perimeter of the building which is in compliance with the zoning ordinance.

- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

If any additional freestanding or temporary signs are proposed a permit shall be obtained prior to its placement.

- (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;

There is no vegetation on the properties that will be removed.

General conditions.

- (1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the C.U.P.;

The plan did not receive any negative comments from TRC.

- (2) That the use meets all required conditions and specifications;

Town staff has reviewed the proposal to ensure it meets all code requirements.

- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and

The proposed use is similar to the commercial uses within the area and will not injure the value of adjoining properties.

- (4) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Town Land Use Plan and Policies

The property is located in the Mixed Use 3 of the CAMA land use classification map and shall primarily include office, restaurant, commercial lodging and service and small-retail, therefore the use is in conformity with the 2007 Land Use Plan.

The Technical Review Committee reviewed this proposal at its May 20, 2008 scheduled meeting:

Manager: Will address stormwater issues with Brian Stanberry.

Planning: Property shall be recombined. Shield and security lighting from Fayetteville and Lake Park Blvd. Any landscaping on corner of Fayetteville and Lake Park should allow for triangle of sight. Expansion must meet flood; if expansion exceeds 50% of existing value, the existing will be required to meet flood. Provide DOT authorization permit if applicable.

Building: New handicap parking sign will be required.

Operations: Operations will review previous uses for basis of impact fees.

Police: No comments.

Fire: No comments.

STAFF RECOMMENDATIONS:

Multi-use facilities consisting of more than 2 units are allowed with the approval of a Conditional Use Permit for MX zoned properties. Staff recommends approval with the following conditions:

1. The storm water plan must be submitted to the Division of Water Quality and the Carolina Beach Stormwater Superintendent for construction authorization prior to issuance of a building permit. The storm water system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
2. A driveway permit and construction authorization permit from the Town of Carolina Beach and NCDOT will be required before issuance of a Building Permit.
3. Refuse collection agency that will be used must be included on final site plan. Before the issuance of a building permit, a letter of approval from the refuse collection agency stating the waste removal plan is adequate for this site
4. Maintenance of permanent open space parking, streets, drainage systems, utilities, and other such facilities-
All common facilities shall be maintained for their intended purpose as expressed in the approved final site plan. The method of providing for such maintenance shall be submitted prior to Certificate of Occupancy by one (1) or more of the following:
 - a. Public dedication to the Town, subject to the Town's formal acceptance of such facilities in its sole discretion.
 - b. Establishments of an association or nonprofit corporation of all individuals or corporations owning property within the mixed use development for the purpose of ensuring maintenance of common facilities.
 - c. Retention of ownership, control, and maintenance of common facilities by the developer
5. Water meters must be located in accordance with specifications of the Operations Department.
6. Lighting installation requirements.
 - 1) Outdoor artificial lighting fixtures shall be designed and positioned so that the point source of light or any reflective surface from a light fixture is not directly visible from adjacent properties.
 - 2) All types of wall pack fixtures mounted on a vertical structure shall be full cutoff or fully shielded.
 - 3) Outdoor fixtures mounted on a building structure are considered appropriately designed if they are completely shielded down light only fixtures or are recessed fixtures having low wattage (i.e. 50 watts or less) "bug" type bulbs and non-reflective interior surfaces. Other fixtures that have appropriate shields, louvers, or full-cutoff features may also be used if they are in compliance with subsections (6)(1), (2) and (3) above.

7. Certification shall be provided that all improvements, including but not limited to paving, drainage, storm water, landscaping shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee prior to Certificate of Occupancy.
8. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint. All setbacks shall be maintained as presented. Any increase in building footprints shall constitute a major modification.
9. Flood Certification must be presented in accordance with the flood damage prevention ordinance. As built surveys shall be submitted prior to issuance of a certificate of occupancy.
10. Prior to Certificate of Occupancy, an architect or engineer must confirm the structure's height is consistent with the conditional use permit.
11. Final project shall be designed to provide the required number of parking spaces to reflect no less than the 21 required parking spaces.
12. Type A landscape buffer shall be installed. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.
13. A sign permit must be obtained for any new signs located on the property.
14. 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 Article 14 of the zoning ordinance.
15. Prior to issuance of a building permit a recombination plat shall be signed recorded in accordance with Town Code. All easements shall be included on the plat. All easements shall be reviewed by TRC before being deeded to the Town. One full size copy of the map shall be submitted to the Department of Planning and Development that includes the map book and page number where the map was recorded at New Hanover County.
16. Loading plan must be submitted prior to issuance of a building permit.
17. The structure must be designed to meet minimum NC Fire Prevention Code. Approval letter from the Carolina Beach Fire Chief must be submitted prior to Certificate of Occupancy.
18. If a grant is not available for the sidewalks the applicant will be responsible to put in the sidewalk.

MOTION CARRIED UNANIMOUSLY.

CONSIDER REQUEST TO REZONE APPROXIMATELY 0.9 ACRES FROM R-3 TO R-1 LOCATED AT 600, 602 AND 606 HARPER AVENUE (PIN: 313010-36-0861-000, 313010-36-0981-000, AND 313010-26-9869-000) - Request Withdrawn

This request was withdrawn by the applicant; therefore, no action was taken.

NON-AGENDA ITEMS

Fire Chief Rorie referred to memo sent to Council by the Town Clerk regarding the Residential Firefighter Program and Sleeper Program. They took the house at 811 Cape Fear, made some improvements to the garage by converting it into 2 additional bedrooms

and 1 bathroom. At this point, the intent is to try to maintain the property to get some longevity out of it and continue this program for as long as it is sustainable. He would estimate that the conversion of the garage is approximately \$32,000 but could be more. They used volunteer forces in terms of labor, mostly by staff, and what they ended up with is a very good project. They have implemented the program. They are staffing with 3 people, 24 hours a day now which is a significant accomplishment over the course of the last year. They are doing that to the tune of about what would be \$72,000 a year. To do that with full-time staff would be approximately \$300,000 which represents \$2,250,000 per year. He wanted to update Council on the program. They would like to conduct a ribbon cutting, by Council's choice, on Friday, August 14th at noon at the project site, 811 Cape Fear Blvd. He would like to walk them through the station to show some of the other improvements approved by Council to show them where they are at and what they are trying to accomplish. He applauded everyone's efforts which have created public value, enhanced service to the community that is faster, cheaper and of the same quality compared to traditional staffing models throughout North Carolina and the US.

Mr. Owens said the I&I project got underway on Monday evening. Gene in trying to stay ahead of them so folks are notified that it will be coming their way. They are starting on the south end heading north. The place where there will be the most inconvenience is between Harper and Florence. They are working totally at night before Labor Day, after which they will work during the daytime. They are doing all they can to not block driveways or too in the way of traffic. The stormwater ponds are also underway. They are digging on Greenville Avenue and things seem to be going well. They have filled some storage basins and are stockpiling dirt for other projects they might have. He is going to Raleigh tomorrow to attend the NC Water Congress. There is a lot of discussion about funding, beach nourishment and some of the water projects they have going on. The stormwater study has been completed. Council should get a copy tomorrow. At some point they will discuss it a little further. The bid for lift station number 1 went out and are due back somewhere between September 10th and 30th. The entryway project is nearing completion and would like to have a ribbon cutting for that at some point. Regarding the streetscape plan, he needs to get the streetscape comments back and wrap that up. There are a lot of projects that are close to coming to construction and need to get bid out. They have an important meeting on October 13th with Engineering Services to talk about a lot of those projects and maybe go over the stormwater study as well in a little more detail.

Police Chief Younginer said there have been several e-mails and stuff in the paper saying he has asked for 10 lifeguards which he has not. He did meet with the Mayor and Councilman Gilbert about the lifeguard situation. They have expanded the hours and he feels they have done a really good job. They have received more training this year than ever before. The proposal, if they needed more lifeguards, where would you put them. One response was for 5 more stands and another 10 lifeguards would give you another shift giving the ability to start earlier in the morning and stay later at night. It's too late in the season now, he is losing lifeguards due to school starting. This is food for thought. Next year's budget process puts them into the season already so if you want to see some

changes to the lifeguard program or discuss it, they need to have a meeting about it before the budget process. It does not include another trailer stand at the north end. This is the lifeguard stands with Cy building them and us buying the materials, the cans and that kind of thing. It didn't account for radios because they are getting some radios in some funding they already had from last year. There are some other things he could add to it on the north end because that is what the lifeguards want. Just this part would be around \$72,000.

Mr. Owens suggested, before getting into a detailed discussion, to wait until they get all the numbers in from the end of the season and have a workshop soon. Maybe put it on the agenda to schedule a date and decide where they want to go with the lifeguard program. Also, Cy is going to regional meeting to get data about what other folks do.

Mayor Macon said the Police Department is adequately staffed for what they have needed in the past but is not sure they are now and need to discuss that as well when they discuss the lifeguard program. He doesn't think they have advertised for part-time police officers during the summer when they really need them and they should take a look at that. He understands how busy they are.

Mr. Owens said one of the other things they have is the parking program and where they want to go with meters and maybe they could have a joint workshop with those two items.

Mayor Macon said this includes Gene's department too because of late hours required to remove trash from the beach. This is a good time to prepare for next year for what they need. He emphasized the importance of temporary employees.

Gary Ferguson said he heard a comment this evening about what they are doing with the sign regulations and they have a Planning and Zoning Commission meeting this Thursday evening where they are presenting a memorandum to the commission opting for two options in the sign review. One is the educational effort that Council spoke to on the 28th but also to address the immediacy of banners. He is following on the coattails of what Council has said recent meetings. They can delay the banner issue and look at signs holistically throughout the town vs. addressing the banners first and look at signs in total second. He would like to do what Council wishes. Councilman Gilbert feels giving the option is fine.

Councilman Gilbert said he has been trying for 7 years to get crosswalks across 421. He said the town manager has committed that the engineering is in process and that they are looking at it and the hope is they will have crosswalks at every beach access. They have to pay for it and he is going to some discretionary funds within the DOT to see if they can find it on the safety end and if anyone has access to someone who has some purse strings on discretionary funds, it is something they can do to create a more hospitable environment for residents and tourists. Nags Head has exactly what they need. It's state law and it works because everybody was yielding to the pedestrians there. He really appreciates the town manager's efforts to get it done.

Mr. Owens said he would like to take a look at the beach accesses to make sure they have included those that need to be. DOT will let them do a marked crosswalk with signs that say yield to pedestrians. It would appear that if they get encroachment agreements they can do it.

MPT Wilcox asked Chief Younginer about how they are dealing with the problem they have been having with kids on the front row boardwalk who are harassing tourists, etc.

Chief Younginer said they don't do those things when they are down there but they have identified some of those kids and he has had some of the detectives and officers have walked around in plainclothes and run them off. He needs help from people when they see those things, instead of waiting hours and complaining to Council, to go ahead and dial 911 and they will take care of it.

Mr. Owens said some of the other things they will be doing is to put a light on the substation and probably look at some cameras in there.

MPT Wilcox said he feels running them off is not going to work and wonders about what other remedies are available. They're loitering, leaving trash, cursing, skateboard/bike riding in pedestrian areas.

Chief Younginer said they have written citations on some of them and called the parents on others which is part of the problem too, the parents. These things happen before curfew at midnight. They will continue to work on it.

Mayor Macon made a motion to go into closed session to discuss real estate and attorney/client matters in compliance with NCGS 143-318.11(a)3&5. MOTION CARRIED UNANIMOUSLY.

Mayor Macon called the meeting back to order announced that action is not necessary as a result of the closed session.

Councilwoman Efirm made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____