

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

August 12, 2008

The Town Council of the Town of Carolina Beach met in regular session on August 12, 2008 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; Councilwoman Pat Efir; Councilman Jerry Johnson; and Councilman Alan Gilbert. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order.

INVOCATION

Mr. Tom Campbell opened in prayer.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the Pledge of Allegiance.

CHANGES TO THE AGENDA

MPT Wilcox made a motion to delete Item #8f (request to set a public hearing date for a text amendment to allow an additional beach vendor along the municipal beach strand and in Freeman Park) and move Item #8b to Item #9a. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Chief Younginer recognized Billy Goodson, Lieutenant Detective, for 10 years of service.

CAROLINA BEACH COMMITTEE REPORTS

The first to speak was Ann Bowman. Ms. Bowman operates a business at 1335 Bridge Barrier Road, Suite 6, and she is Chairman of Operations Advisory Committee. She said that they have a member recently appointed by Council who asked the committee to change their meeting date and time to late in the afternoon or early evening. Most of them have already made arrangements for the first Tuesday of every month at 8:30 a.m.

Consequently they told him they could not. Fred Fisher has not attended the last three meetings. She has tried to contact him several times with no response. According to policy, they need Council's approval to consider three missed meetings with no communication from Mr. Fisher as a resignation. They have another application that they have been holding since they advertised for the opening on the committee. They have morning meetings to accommodate the staff and some of the consultants. They have found that anyone who wants to come to their meetings usually does. They have visitors all the time. Councilman Gilbert said he feels that evening meetings would be more accommodating to the general public. Ms. Bowman said they took a poll of the members, when Mr. Fisher made the request, and everyone felt the morning meetings were so much better. She said that if anyone told them they would like to come to their meeting but couldn't make it in the morning meeting she is sure they would be glad to accommodate them with one meeting. However, if they ever change the meeting time they would have to advertise it. Council would like to send Mr. Fisher a letter regarding this matter. Ms. Bowman said they asked the town clerk to do that and she said she wanted Council's request to do so. Council requested the town clerk to send a letter to Mr. Fisher and ask him to discuss this with one of the members of Council. Priscilla Olivolo would like to be on the committee. She has attended two of their meetings and they were very impressed. Ms. Bowman said because of the terms coming up they should have an opening soon and she presented the application to the Council.

Duke Hagestrom, Carolina Beach Ad Hoc Marketing Advisory Committee, gave background on the committee which was formed several years ago with the passing of ROT legislation. They continued to oversee the ROT funds, the second half of the 3% to make sure they were used adequately. They work closely with the staff at the Convention and Visitor's Bureau and some of their consulting partners. A lot of their focus is to make sure they measure their results. He reviewed the numbers (*see Exhibit 1*). They use the funds to market the region and, therefore, grow additional room occupancy tax. Every year they have continued to grow. They continue to track in Carolina Beach ahead of the rest of the county with respect to ROT growth. They are very proud of the website www.carolinabeachgetaway.com which didn't exist 3 years ago. Visitors continue to grow with peak months of over 30,000 visitors. It is the number one referring site for most of our accommodations and many of our businesses. He reviewed costs and what the money is spent on. They will be bringing in the results of an island wide market study that they are partnering with the Chamber of Commerce around October/November. He reviewed the direct mail effort to public relations writers, some of the capabilities of the website, their marketing brochure, posters, and e-newsletters. He said the full budget of the second 3% is about \$340,000 for 07/08. 62% of that is the media spend of which a portion of that is the trackable inquiries. Promotions come out about 22%, fulfillment 5%, photography 1%, and publications 5%. The trend is toward the internet now instead of print media. The CVB acts as an intermediary on their part for the fiduciary part so they are able to allocate the money as they think it is appropriate and then they can take it to the TDA Board for approval. The survey was outsourced to Randall and Marketing, the same company that conducted the survey for the city of Wilmington. Judy Randall will be presenting the findings.

PUBLIC DISCUSSION (Five minute time limit per person)

Louise May, 7837 Cypress Island Drive, said she is here regarding the Steve Haydu Low Tide Run. They have held this run for the past four years to support victims of cancer. She thanked all of the staff and town for their support. The race has been set for March 14, 2009 at 9:00 a.m. Board member Brenda Butler coordinates all of the activities and has done an awesome job. They look forward to working with everyone this year.

ADOPT THE CONSENT AGENDA

MPT Wilcox made a motion to adopt the consent agenda less Item #8b as follows:

Approval of the Minutes:

Special Meeting	May 28, 2008
Special Meeting	June 24, 2008
Regular Meeting	June 30, 2008
Recessed from 6/10/08	
Regular Meeting	July 7, 2008

Set a public hearing date for September 9, 2008 at 6:30 p.m., or soon thereafter, to consider amending the Code of Ordinances, Chapter 16 Utilities, Article V Carolina Beach Operations Department Advisory Committee, Section 16-236 Meetings to consider changing the meeting time from 8:30 a.m. to 9:00 a.m.

Set a public hearing date for September 9, 2008 at 7:30 p.m., or soon thereafter, to consider amending the Zoning Ordinance to change restaurants from a conditional use to a permitted use and to address standards for all eating and drinking establishments.

Set a public hearing date for September 9, 2008 at 7:30 p.m., or soon thereafter, to consider a request for a Conditional Use Permit (CUP) modification to increase allowed seating from 143 seats to 250 seats and to allow the addition of a tiki bar located at Harbor Master's Restaurant, 313 Canal Drive (PIN 313011-56-7531-000).

MOTION CARRIED UNANIMOUSLY.

UPDATE ON VARIETY OF PROJECTS AND PERMITTING STATUS - LIFT STATION #1, 3 MGD TANK AND NEW WELL SITE IN BUFFER ZONE, NEW WELL SITE ON THE FRINGE OF THE STATE PARK OFF OF BRIDGE BARRIER ROAD, NEW WELL SITE ACROSS FROM THE TOWN HALL, LINE UPGRADES IN LAKE PARK BLVD., WILMINGTON BEACH STREET PROJECT AND OTHERS

Tim Owens said there are a large number of items being worked on, trying to get permitted and bring to construction. He asked for a workshop to give an update and status on these projects, especially on some of the items that are coming up and hopefully permitted soon: Wilmington Beach, Lift Station #1 and 3 mgd ground storage and well improvements. He would like to get some concurrence from Council on how to proceed. Council agreed to set the meeting for September 9, 2008 at 2:00 p.m. for a special meeting to discuss various projects.

CONSIDER PROCLAIMING AUGUST 20-23, 2008 AS “TRINITY CHILDREN CHARITY DAYS”

Mayor Macon said this is in support of the 3rd Annual Charity Ride, a four day event beginning on August 20, 2008 at 3:00 p.m. at the Kure Beach Pier. The purpose is for community education, awareness and fundraising to support the Boys and Girls Homes of NC, The Carousel Center, The Children’s Home, Inc., and South Mountain Family and Children Services.

Councilman Gilbert made a motion to adopt Proclamation No. 08-924. MOTION CARRIED UNANIMOUSLY.

DISCUSSION REGARDING OUTDOOR SEATING/CAFES ON TOWN SIDEWALKS

Tim Owens presented. He said we currently have an ordinance which allows for outdoor cafes. There have been some concerns by adjacent businesses as well as some of the general public which he reviewed. The ordinance does require the business owner to operate under certain parameters and restrictions. Permits are up every year on August 31st so there is a revocation situation if things were to get out of control. There has been some non-compliance which he has witnessed. Depending on Council’s wishes, he will charge staff to ensure compliance of all the provisions of this code. If Council wishes to make changes to the code, staff could possibly advertise for the September meeting.

MPT Wilcox questioned where the ordinance requires furniture to be removed from the sidewalks. Mr. Owens said item no. 8 basically says that but it is not real clear but it was a definite requirement of the CUP. Council said that should be spelled out and made clearer. MPT Wilcox said they should also discuss the issue of what food service is. Mr. Owens said they could run this back through the Planning and Zoning Commission to let

them take a look at it and then bring it forward. MPT Wilcox said that people who are not in compliance should be sent a letter. Mayor Macon said we do need to enforce our regulations and we may need to tighten up on what is served with regard to food. Peanuts in a bucket may not meet the requirement. MPT Wilcox said regardless of whether you have an outdoor café or not, he sees a lot of places with “no smoking” and people stepping outside to smoke or talk on a cell phone. This also seems to be a part of the problem. He has noticed even where there is not outdoor seating, there is a group of people standing outside smoking, etc. Councilman Johnson said he would like to ask someone from operations why we can’t move the trash receptacle that was moved in front of the Wanda Inn that is filled with beer cans/bottles every morning back down to the north, to the hashed out area(referring to a map) on the corner of Raleigh. Nobody can park there and it is part of the noise problem too. Mr. Owens said he would make sure that happens. He said two permits have been issued. He has talked to both of the owners and said there have been some issues, warned them of these issues - taking furniture in, drinking outside. The police chief has also gone to several establishments and warned them of the same thing. These have been basically courtesy calls.

Mayor Macon called for a short break until Council starts the public hearings at 7:30 p.m.

Mayor Macon called the meeting back to order.

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR AN EXISTING SWIMMING POOL AND PARKING AT 701 ELTON AVENUE (PIN 313010-36-3134-000)

Ed Parvin, Gary Ferguson, Tim Owens and Randy Crouch were sworn in by the town clerk. Mr. Parvin said the applicant is requesting a CUP for a public swimming pool at a Planned Unit Development (PUD) at 701 Elton Avenue in the Ocean Heights subdivision and reviewed history of the request. Currently there is a 600 square foot pool and 277 square foot pool house on the lot. The pool did not meet the required front setback and was denied a variance by the Board of Adjustment. After the denial, the applicant then decided to make the pool a public pool which is allowed by CUP and have it serve their 26 lots at the Ocean Heights subdivision. Under PUD there is an allowance for up to 10’ in the front yard setback. The applicant is asking for a reduction of the front setback from 20’ to 15’ and requesting this be a public pool servicing those lots for future development. MH zoning district allows for single-family and duplex development. Lot coverage is 40%, parking requirements have been met with 9 spaces proposed including 1 handicapped. Staff recommends that an ADA compliant 4’ width sidewalk be installed 300’ from the property along Elton Avenue and Blanche Avenue and terminating at Hiram Avenue due to the pedestrian nature of the development.

The Planning and Zoning Commission recommended approval at their July meeting. They added to condition #7 - adequate sanitation pickup shall be provided; changed condition #13 - to install an ADA compliant sidewalk from the pool parking lot to Hiram

Street; and added condition #14 - the pool shall comply with New Hanover County Health Department rules and regulations.

Mr. Parvin said the pool would only service those 26 lots. The development is currently an existing subdivision, but not a PUD in effect for that area. This will be a separate PUD for the pool to service the subdivision.

MPT Wilcox questioned whether we have the ability to impose standards on the subdivision for approval of this PUD which is not part of the subdivision, it appears. By placing a standard on the subdivision to install sidewalks, he questions whether we legally have the ability to do that.

The Town Attorney, Steve Coggins, said he is confused on this application about what exactly is the PUD.

Gary Ferguson said the issue at hand is one where the applicant inadvertently placed the pool too close to the street right-of-way. He tried to get a variance from the Board of Adjustment which was denied because it didn't meet the five conditions for a hardship. He then came to staff for help and asked if he was supposed to remove the pool. So staff tries to give people options. One of the options was to look at this lot as a PUD, since we have no minimum lot size for a PUD. That was how we approached it. The applicant is going to allow the 26 properties to be a part of maintaining the swimming pool. He assumes it will be built into the homeowners association as well.

MPT Wilcox asked if the subdivision was required to have sidewalks when it was approved. Staff said no. MPT Wilcox said the pool was always there and he is questioning the logic of now going back and suggesting that because we are considering this pool where it is located now the subdivision now needs to go back and put sidewalks in which was originally approved without sidewalks under the same conditions

Mr. Ferguson said that originally there was a duplex associated with the pool. It was a pool with a duplex. The applicant never got a permit for the duplex, he just built the pool. When he came to build the duplex he discovered he was better off just building the pool because of the depressed market. It was at that point staff said if he won't come in for a PUD we are asking, not demanding, as a condition of your approval for the pool to be part of the subdivision that you run a sidewalk 300'. The 300' distance requirement is based on where parking is. If you are over 300' from the pool, then you should provide parking according to the zoning ordinance. If you are less than 300', no parking is required for the pool. So it was that 300' distance that really asked the applicant, or conditional the approval on and he was agreeable to that. He was agreeable to put a sidewalk in to serve the neighborhood for a distance of 300'.

Tim Owens said he thinks we could, we are considering this a PUD. If we required him to extend the waterline or sewer line down that roadway, he doesn't see it as any different than that. It is infrastructure. The Planning Director gave his approach as to why we

needed it. They are providing less parking because of the walk ability. He asked if that is correct.

Gary Ferguson said they are providing parking in accordance with the zoning ordinance. The zoning ordinance says if your property is over 300', if this particular amenity is over 300', then you must provide parking to serve residents of the subdivision to get to the amenity. What staff is saying we think that if you are over 300' you need to provide a sidewalk up to that point within 300' otherwise people are going to be driving from outside of 300' to the pool and that is why the 9 parking spaces are placed on the site.

Councilman Gilbert said that public pools have a different fee structure than private pools and asked how that is being administrated.

Gary Ferguson said this is going to be a private pool, only for the residents of the subdivision – the 26 lots.

Tim Owens said they would have to pay the difference on the impact fees.

Councilman Gilbert said he is talking about facility fees. A pool that he puts in his yard has a separate impact facility fee and a public pool has a separate impact fee, I believe. He asked, am I right on that? Mr. Owens said that is right.

MPT Wilcox asked for clarification, the duplex that was going to have the pool if that was part of the subdivision. Mr. Parvin said that is right, that is one of the lots in the ownership now verses the duplex area will be the parking.

Steve Coggins said my only inquiry is whether the procedures regarding planned developments in Section 16 of our Zoning Ordinance would apply. He is not able to pick up one way or another from these materials. There are pre-requisites in Section 16 in the Zoning Ordinance for the establishment of planned unit developments in residential areas. All he is asking is, has that been done. It is not clear to him from the materials. Mr. Ferguson said there is no specific provision that would require sidewalks to be placed in a development. His question goes back before that. We are talking about a subdivision and then we're talking about the tail end of a subdivision having a PUD. There are specific procedures set forth for the designation and creation of PUDs. All he is asking is, has that been done.

Ed Parvin said yes. They have reviewed the ordinance at TRC and Planning and Zoning. We can look at those again tonight if Council would like but they feel they have met the criteria for a PUD.

Mayor Macon asked, so they did pull a permit for a duplex and a pool. Mr. Parvin said right, that was the original plan. Mayor Macon asked if the duplex has been constructed. Mr. Parvin said the 26 lots are planned for duplex development and this lot will be for the pool and parking area. Mayor Macon asked, how much are we talking about that they are encroaching? Mr. Parvin said it will be 5' and with a PUD they would be allowed 10'

and the applicant will talk about what happened with the survey stakes and how they got to the point where they were with the 5' and they are encroaching in the 20' setback and now they are at 15'. Mayor Macon asked, is that part of the concrete walkway or part of the pool. Mr. Parvin said it is part of the pool, concrete and the fence.

Councilman Gilbert asked if the landscaping for a PUD has been accommodated on the east side. He said if this goes forward there probably needs to be a commitment to contain the rock so it doesn't migrate into the road.

Ed Parvin said they would have the 5' landscape buffer and they're planning to maintain the stormwater on site. They haven't come in to put that in yet but that was their plan.

Tim Owens said, regarding impact fees for parking, he thinks they are talking about two different things. It's not counted as part of the zoning requirements but it would be for stormwater requirements.

The applicant, Randy Crouch, said they inherited this mess about a year ago. When it was first being built, the builders made these errors and have since left and now Ocean Heights has a new group of partners. When they went to get the permit for the pool was when they discovered the pool was sitting in the road. They did not know this when they began the project. They have tried to correct all of these problems. They thought they had everything done. They have a stormwater retention basin planned but they are just trying to get to that point. Stormwater engineering has been done. They are going to put a 90' basin in and direct the water down to the landscaping to the right. The asphalt is going to be on a buildable lot that they have had to give up in order to provide the parking for the pool. The other asphalt area is a service area for handicapped or service truck. Staff said it would count as part of the impervious surface. Mr. Crouch said the HOA is going to remove the rock and replace it with sod. There is some shrubbery in place now.

Councilman Johnson said their site map does not make clear what the 26 lots are and as part of the CUP as another condition, the applicant should provide a list identifying each lot number and address these 26 lots make up so it is clear who has a right to use this pool.

Tim Owens said he would also like to see the HOA documents and who is responsible for the maintenance and upkeep of the pool as a condition of the CUP.

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

Ann Bowman, 1335 Bridge Barrier Road, was sworn in by the town clerk. She has an HOA management company that she owns and is very familiar with the property. She met Randy and the partners last year shortly after they bought it and was the property manager until about a month ago. She has a copy of their HOA and condominium documents and they are in order and filed. A budget was set for this year. With the pool

not allowed to be open they went ahead and have been maintaining it. She was working with the landscaper when the town sent them a \$1,000 water bill for a month in which nothing was going on. The town assumed the pool was leaking but they had it checked and it wasn't. An underground irrigation head had been run over by a truck that pulled off Dow Road to park there. Consequently, they are half appealing the water bill through the operations department and it was at that time that she and Randy decided it might be a conflict for her to represent them and be on the Operations Advisory Committee. She does want Council to understand very carefully that the landscaping died because of that underground irrigation not working where it was leaking. No one has been in the pool all summer. Mayor Macon said he does not see the conflict of her representing them. Staff said there should have been a backflow preventer.

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

MPT Wilcox made a motion to approve the request based on Zoning Ordinance Items 1-4, the four general conditions, the seven specific conditions, TRC recommendations, the additional conditions recommended by the Planning and Zoning Committee to install the sidewalk, clarification on what we want from the HOA on maintenance of the pool provided to the town manager, and provide a list identifying each lot and address and in the convenance as well.

Councilman Gilbert made a motion to amend the motion for a commitment to remove the rock as part of the condition. He is concerned if they are bought out by somebody it may not convey.

The Town Attorney, Steve Coggins, said his understanding of a planned unit development and as it is defined in the ordinance is a concept where a defined piece of property is within it a combination of uses within that parcel and with open space and an entity is responsible for what is within that precise, defined boundary and nothing more. He said I don't pretend to have had time to study this situation but, as he understands it, we have at the tail end of an approved subdivision, that is not part of the planned unit development, a single parcel sticking at the end and the only structure on it is a swimming pool and we are asking an entity that has responsibility for this PUD to also take active steps and, if you will, controls outside the boundaries of that PUD. This is like putting a square peg in a round hole.

Councilman Gilbert said, with regard to his motion, the gentleman committed to get the rock cleaned up and he wants to make sure it conveys with the vested rights of the CUP if the property gets sold 3 or 4 times and the HOA changes hands – he just committed to it and since CUP convey with the property ... Is that okay to put it with the conditions?

Mr. Owens said if he accepts it as a condition, he doesn't see it as an issue.

MPT Wilcox asked if there might be some future problem with the PUD associated with the subdivision relationship.

Mr. Coggins said it would make a lot more sense to him if the all the lots being served by this pool was a defined boundary of the PUD then that would make some sense. He is having a hard time conceiving of a PUD consisting of a swimming pool.

Mayor Macon said he doesn't know that they can require the applicant this part of the CUP to do something that is not on his property.

Mr. Coggins said that is not uncommon for PUDs and subdivisions to developers, as part of the conditions to make improvements on highway access. According to DOT specifications, it's not technically on any of their right-of-ways or their property so that happens all the time.

MPT Wilcox said let me go ahead and perfect that motion and include Alan's amendment. He asked the applicant if this is a concern for the attorney and wants to look at it and put it off until the next meeting, would that be a timing issue for him.

Mr. Crouch said that if everything went all right tonight they were going to get the permits tomorrow and start building this week on the lot next to the parking lot and that would all be built at the same time.

Councilman Gilbert suggested issuing the CUP. If there are any challenges the attorney wants to research on this, the board has the opportunity to pull the CUP or bring it back for any discussion so if we have to do anything legally. We can approve the CUP on the evidence as presented tonight and go forward with it. Any challenges through the research of it, we can visit it at a later date.

MPT Wilcox said he could amend the motion to do that.

Tim Owens said that once it has been issued, it's issued. Any kind of challenges would be a revocation of the process. He probably wouldn't be too happy about that.

Gary Ferguson said he believes it is in the ordinance. It is kind of after the fact situation. He doesn't think the applicant proposed the pool to be designed the way it is designed but now he has come up with what they feel is a good idea - eliminating the duplex. He is creating more open space and serving a broader part of the community and we see those as all positives and he is putting in a sidewalk.

Randy Crouch said they would like a concession on the sidewalk, maybe build that as they build the houses or give them a timeframe. Each driveway is going to be 35' and it's going to leave a 15' sidewalk. It would not make any sense to put in 15' sections just to have the trucks run over it and break it up.

Staff said each sidewalk would have to be put in before receiving a certificate of occupancy.

Mayor Macon said there is a motion on the floor. He asked Councilman Gilbert if he would like to rescind his motion since MPT Wilcox added it. **Councilman Gilbert rescinded his motion.**

Steve Coggins asked why the application does not include the lot on which the duplex is to be built so that we have this acreage where the PUD encompasses the duplex you want to build as well as the swimming pool.

Randy Crouch said the duplex they want to start building is on an entirely different lot and does not have anything to do with this CUP. It's just the next house in the subdivision and one of the 26 houses served by the pool.

Tim Owens said that ideally all of the 26 lots and the pool could have been one PUD. He thinks this is one way that Planning brought it through, it's doing the same thing in his opinion. He thinks their ordinance does allow for one lot PUDs. It accomplishes the same thing. Where they are tonight, according to planning staff, it's supported in the ordinance.

Steve Coggins said he doesn't think it is supported or unsupported so do what you want to do.

MOTION CARRIED UNANIMOUSLY.

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR AN EXISTING 7 FOOT FENCE LOCATED AT 507 MONROE AVENUE (PIN 313010-36-3134-000)

Gary Ferguson, Ed Parvin, John Arnette, James Eldridge, Charles Bell, Nikole Mizzani and Peter Powell were sworn in by the town clerk.

Gary Ferguson presented John Arnette's request for a 7' fence located at 507 Monroe Avenue which currently exists a few inches off the rear and side lot lines. He said, the applicant purchased the property this year with the fence constructed by the previous owner without a permit with some sections at 8'. Mr. Arnette added a 16' section to the east side and an 8' section to the west side, also without a permit. In 2008 the applicant built a storage room addition to the dwelling at which time the inspector noticed the fence and instructed him to get a permit for the new portions. The applicant applied for a 6' x 18' fence on the east side with a maximum height of 6'. On second inspection it was discovered that the 18' section was 6'6" and leading to the rear yard to the west side of the property the fence was 7'. The property is zoned R-3. Staff did not provide a land use plan analysis as this is not a new use but a dimensional standard of a fence. The seven specific standards are not impacted but does not meet all of the general conditions. It does meet the requirements for a conditional use permit. The Technical Review Committee had no issues with it. Staff recommends approval.

The Planning and Zoning Commission recommended approval at their July 10, 2008 meeting with the following conditions:

1. No additional fencing shall be erected by any person until a permit has been issued.
2. 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.
3. All fences shall at all times be kept in good repair. If at any time a fence should become unsafe or poorly maintained, the building inspector or code enforcement officer shall notify the owner of such condition, and upon failure of the owner to correct such situation within a thirty day period, the building inspector or code enforcement officer shall take appropriate legal action to have such fence(s) repaired or removed.
4. All fences permitted shall meet the structural requirements of the North Carolina State Building Code and other wind resistant construction requirements that may be specified or suggested by the building inspector.
5. Mr. Arnette shall seek permission from adjacent property owners for purposes of maintaining the fence and the growth of the grass around it.
6. If more than 50% of the fence is destroyed/removed for whatever reason, the entire fence shall be replaced in conformance with the building code and the zoning ordinance that is in effect at that time.

MPT Wilcox said that since it is an after the fact situation, what was the reason why this didn't go to the Board of Adjustment?

Mr. Ferguson said he didn't think it would meet the criteria for a variance. He didn't think there was an option for a hardship here and could not see one. This was purely either a mistake or oversight. He thinks Mr. Arnette tried to do this as best he could. He was simply replacing sections of his fence. According to what they saw in the photographs that it was a pre-existing fence built in January 2007 by Mr. Bell. Both parties are here to speak to those questions.

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

Jim Eldridge, attorney representing Steve and Donna Levesque is in opposition to the request. He gave copies of his letter to the town clerk requesting a written copy of the decision, and other exhibits for the record. Mr. Eldridge said he is currently the attorney for the Town of Bellville, he sits on their TRC and he has looked at their conditional use/special uses for the last 10 years. He said his clients live several blocks away. They are opposed to the fence for three reasons:

1. It doesn't meet the zoning ordinance.
2. Granting the CUP would be contrary to the public policy of the zoning ordinance.
3. Granting the CUP, this case presents public policy issues.

Staff did not mention that there is a chain link fence directly behind this particular fence. He said, referring to the pictures, when you look at the front of the property you have a fence on the left hand side and a fence in the back. At various portions on the left hand side the fence measures as high as 88". On the rear, every section that Mrs. Levesque measured is greater than 72". On both sides, left and rear, there is a chain link fence which shows in the photos, within inches of the wooden fence Mr. Arnette wants to present. All of the pictures from that direction that is with Monroe Street behind, you are looking towards the rear of the property. In that section and along the entire rear section of the fence you have just mere inches between the two fences. If you walked to the end towards the rear of the left section and looked back up towards Monroe, there is actually a wider gap there big enough for a human or animal to get into. If you got in there and walked back towards Monroe, it tapers down to a really tight spot. The pictures show the tightness of the space. He presented a sworn statement from Charles Bell regarding the original construction of the fence with design specifications on the back. Looking at that you see that he contracted to build a 7' fence. As stated in staff's report, there was no building permit for this or it wouldn't have gotten to this point to begin with. He was not aware that Mr. Arnette had built his section of the fence without a permit. He has a copy dated April 21 of Mr. Arnette's building permit application which specifically says he is going to build a 6' height and, for some reason, on April 25th a final inspection for meeting the 6' requirement on the building permit, yet we know that it is not a 6' fence. We know that not only from Mrs. Levesque's measurements but also from the zoning administrator's notice of violation to Mr. Arnette dated May 21, 2008. This notice of violation, it may not meet the requirements of a notice of violation, but at the bottom it talks about being in violation and being subject to a \$50 fine. It basically says that you are not in compliance with the height restriction, you need to modify it to meet that height restriction and you have until June 8th to do so. So what starts out as an original fence built without a permit in excess of the height restriction, which is improved upon without a permit and in excess of the height restriction and which, for some reason passes the final inspection. What we have is a code enforcement issue that is trying to be fixed through the conditional use process and he thinks that is backwards and not appropriate. He said I have copies of Mr. Arnette's conditional use application form on which he mentions a site plan. He handed out the site plan. Just like anything, whether it is a PUD or a subdivision or CO or building permit, your site plan has to tell you what you need to know to approve it. What we don't have on this site plan, which was affixed to the conditional use permit application, is the location of the fence. We don't know where this fence is. It doesn't show up as a structure on this site plan and, rather than hand them up to you, Section 17.6 tells you that for conditional uses says, "Projects requiring a conditional use permit requires site plan review. In such instances, the site plan review requirements and procedures shall be followed." If you look further into the ordinance

around the check list for your conditional use permit application, you have to show all structures. He indicates on his application that that is not applicable for this purpose but we don't know, if you approve this conditional use permit, in theory, you don't know if it is on somebody else's property or not. It doesn't show on your site plan. You don't know if you are creating a trespass or something other than a trespass. It just doesn't show on the site plan. Furthermore, Article 17.2 requires compliance with the site plan, "It shall be unlawful for any person to construct, erect or alter a building or structure (and fences are structures under your ordinance) except in accordance with the approved site plan." It goes on to state that you need that for conditional use permits. Staff did a good job telling you the specific standards that you must find as fact in this quasi-judicial hearing in order to grant the conditional use permit. He has highlighted the matters that he thinks are pertinent. Required yards and other open space, he knows this is a bit creative on his part and understands that is setbacks and open space but, that requirement under Article 10 that you have to leave enough space between the fences in order to maintain them is how he is viewing open space in this case. More importantly, the last two points, that the use will not materially endanger the public health or safety if located where proposed and that the use meets all required conditions and specifications. The specification in question is Section 10.2 and 10.1. Section 10.1 says this ordinance provides standards for the erection, construction, location and maintenance of fences and ensures that hazardous or nuisance situations do not result from said erection, construction or location. Along those lines then it makes perfect, logical sense in order to achieve the purpose of 10.1 to require in 10.2 that no fence shall be erected in any location that prohibits the owner on the property from having access for maintenance purposes to all sides of such fence. Go back and look at those pictures that we presented. There is no way. There are two main points about those pictures. You can't get in between those fences to maintain that fence but that is not the real point. Here is the real point. She saw a snake in there the other day. You have fire ants, wasps, pets and small children. God forbid that we sit here and grant this conditional use permit and someday some toddler gets chased by a dog in there and gets stuck, can't get back out because the dog is on the other end or gets in there out of curiosity and gets stuck over a fire ant nest or wasp nest. None of us want that. It would be a bad day to have this approved and then someday read about that in the paper and he doesn't think that is necessarily a stretch of the imagination. Here is the other thing. You have a fence that ever since it was first built was a code violation and now you are trying to fix that code violation through a conditional use process after the fact, going backwards, and yet in March and May (*in audible*) ... Mr. Hardison that their fence is not in compliance and that they are in a zoning violation because it is too high and because they didn't leave enough space in between the two fences to allow for maintenance purposes. In this case nobody told them to come in and get a conditional use permit. They are threatened with continuing fines. Why should it be any different for Mr. Arnette? Please don't take this the wrong way, but you are here to do the public's business, not Mr. Arnette's business. This is a code enforcement matter that, and when it came up before, code enforcement required compliance. He doesn't see why it should be any different for Mr. Arnette who is equally situated and would certainly like equal protection and enforcement all the way around. He said he would be glad to answer any questions and that Mrs. Levesque is also there to answer any questions.

Charles Bell, 1080 St. Joseph Street, said Mr. Eldridge has done a very nice job, very thorough. He has not shared any information that he is aware of that staff did not already know. He didn't hear anything that he didn't already know. While he and Mr. Arnette do not have a law degree, they do have something that Mr. Attorney doesn't have. We're neighbors, we live in Carolina Beach. Mr. Arnette's other neighbors are here tonight, the adjoining neighbors who have no objection to the CUP request that he is asking for. He purchased the house in 2006 as a residence for himself and did do some improvements to the property for which he had a permit. Unfortunately he did not obtain a permit for the fence which he constructed in the back and side yards and deeply regrets the hardship that he has caused Mr. Arnette, who is his friend, and Mrs. Arnette, who later purchased the house from him. He has apologized to them and apologizes to the town that they are even here tonight spinning wheels and taking up time on this issue. He apologizes to the lady who is here objecting to this and wouldn't have to be here tonight if he had done the right thing and gotten a permit for the fence. While he erred in not obtaining the separate fence permit, he did do two acts of due diligence. He did obtain a survey of the property. The fence is not on somebody else's property, it is on Mr. Arnette's property. Secondly, he verified with his neighbors their approval and some of them are here tonight. Mr. Risley, who lived on one side, passed away and Dr. Ked who lives at the next house over, who was unable to be there tonight due to emergency surgery on a dog but stated to him that he has no objections whatsoever. To his knowledge there have been no objections to this fence by any adjoining neighbor or anybody in sight of the fence, only by someone who is out of sight of the fence. Some mention has been made about the foliage behind the fence, some vines. When he was there, there was also a blue tarp over a storage building and some junk. All of that was back there before the fence was constructed so please don't hold the Arnette's responsible for the growth that some other neighbor is not maintaining particularly one he believes is a rental house. Robin and Johnny are neighbors and have been long time residents of Carolina Beach and, along with their son Cameron, he thinks they are well respected citizens. Since they purchased the house at 507 Monroe they have improved the property and the neighborhood. He asks that Council please consider them favorably on their CUP request. He thanked Council for their time and efforts.

Johnny Arnette, applicant, 507 Monroe Avenue, said he bought the house in February and the fence was there. He hired a contractor to build a shed/RV port and he was also to add on to his fence 12' on one side and on the west side there was a fence with a section missing and then there was fence up and he enclosed the two sections. He got the permit and didn't know of a fence permit not did he, the applicant. The people that are complaining about it live a block over and a block down and couldn't see his house if they stood on top of their house. From his understanding, they had a problem from a previous inspector on their fence and now they are trying to take it out on him. He doesn't know why. He has a well constructed fence with 6' x 6' posts and it would take several thousand dollars to cut it down 1'. He would appreciate any consideration.

Peter Powell, 201 N. 5th Street, has lived there for 3 years and when the fence was constructed approximately 18 months ago, they hadn't heard of any complaints. No one in the direct area has complained about it. The complaint that had been filed in reference

to the fence wasn't filed by the Town of Carolina Beach Police Department or Fire Department because they felt it was a safety, health or hazard concern to the adjoining residents. As Mr. Arnette said, it was filed by someone who feels as if they have a grievance with the town because of a fence they had to take down and perhaps they didn't follow the proper procedure. He thinks Mr. Arnette, given the situation he's faced with, has done the best that he can and has taken the steps that are necessary to be issued this conditional use permit. He would appreciate their consideration in granting him the conditional use permit.

Nicole Mazanie, 508 Raleigh Avenue, is an adjacent neighbor and has owned her home for over a year. Her fence is across on the corner to Mr. Arnette's fence. There is a gap there but her three small dogs have never had an issue getting back in there. No one else in the neighborhood that she knows of who has spoken to her about it has had an issue with this fence. It is a beautiful fence and she wishes she had the privacy that they have with it. She has no issue with it nor did the people who owned the house before she bought it.

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

MPT Wilcox asked if the ordinance which states that no fence shall be erected in any location that prohibit the owner of the property on which said fence is erected from having access, for maintenance purposes, to all sides of such fence, whether it is specified how that is done. Mr. Ferguson said no. MPT Wilcox said if you had a chain link fence on the other side and it could be rolled back for maintenance or repairs, is there anything in the ordinance regarding that. Mr. Ferguson said no. MPT Wilcox asked which of the two fences in the pictures are on the property line.

Mr. Ferguson said they both appeared to be. He and staff have discussed what is an adequate width between fences or off the property line in order to do proper maintenance. There are a variety of ways to do that and it is not spelled out in the ordinance. So they have been a bit lax in the way they have looked at the setbacks for fences from property lines.

MPT Wilcox said it appears to be arbitrary what the proper maintenance distance is. Staff agreed and said that is the problem.

Mr. Ferguson said that fence permits are not common in the communities he has worked in, this one is the first but height requirements, absolutely. You specify what the height is and say you cannot go over that and it is a complaint driven process because there is no inspection. Communities do have fencing rules but they do not have building permits for fences. Rules are usually very similar to ours.

Councilman Johnson made a motion to approve the conditional use permit due to the circumstances involved beginning with Mr. Bell, the original owner. He would also like to add to it to ask the planning department to look at this William and Dolly Whittington situation. He would like to know more about this to be fair here or at least advise them that they have the opportunity also to appeal to the Board of Adjustment or bring to Council if the planning department cannot work out the situation. He would also ask the owner to get with the adjacent property owners where the gap is and come up with an agreeable situation to close that gap very easily preventing any possible problems in the future.

MPT Wilcox asked, has the Whittington fence been removed?

Jim Eldridge said his point was that the Whittington's had to reduce the height on one portion of their fence but not on another portion. He said what is really driving this train is that Mrs. Levesque went to the planning department looking to build a higher fence and Gary Ferguson told her she couldn't do that, you have to meet the height restriction. Her option was to get a variance but she would lose in that she couldn't prove a hardship. No one told her about the conditional use. So, she's playing by the rules, the Whittington's are being punished and Mr. Arnette gets to have his fence. It doesn't seem fair to her.

The town manager asked, do we need to open this up to a public hearing again?

Councilman Gilbert made a motion to open the public hearing because there is some opportunity for some for and against and there has been some testimony in my mind that has clouded this issue and he would like to hear from staff. Mayor Macon said well we don't have to open it for a public hearing if you just want to hear from staff. Councilman Gilbert said he would like to open it for public hearing. Mayor Macon called for a vote. **MOTION CARRIED 3-2 WITH COUNCILWOMAN EFIRD AND COUNCILMAN JOHNSON VOTING NO.**

Councilman Gilbert said our ordinance does not discriminate against residential or commercial but it says you can get a conditional use permit if you want to go higher and asked Mr. Eldridge if he agreed and he said yes. So if you wanted to go higher than 6' you would do it through a conditional use permit.

Mr. Eldridge said it sets out height restrictions for various uses and exempts two particular commercial uses - batting cages and tennis courts. His client's point is that she wanted a bigger fence, she played by the rules and nobody told her the conditional use permit was an option. She got a fence smaller than what she wanted, the Whittington's got punished and Mr. Arnette gets his conditional use permit. It just doesn't seem to be equal treatment under the ordinance.

Mr. Ferguson said he has never, since he has been there, given anyone the directive, "No, your fence is too high and you must take it down." That has not been his directive and that's not the directive staff has been giving in Planning.

Mr. Eldridge asked if Mr. Ferguson advised Mrs. Levesque of the conditional use permit process. Mr. Ferguson said no because Mrs. Levesque never came to him. He was not here at the time Mrs. Levesque had a concern about her fence.

MPT Wilcox said he thinks staff typically goes out of their way to accommodate and help people. They are not going to get it right 100% of the time but the ordinance allows for and no one is discriminated under our ordinance. If they wanted to read the ordinance and find out if a conditional use permit is available, they had the same right to come forward.

Mr. Eldridge said he is just pointing out an on the ground, factual situation that occurred in this instance. He is not trying to point fingers. He is just trying to get to a just result. Sure, she read the ordinance, she could have picked that up. Likewise Mr. Arnette and Mr. Bell could have read the ordinance and done it right to begin with and we wouldn't be here.

Councilman Gilbert read, for the record, "For fences exceeding the following height restrictions a conditional use permit shall be required. Fences intended solely for enclosure of tennis courts, batting cages or similar structures shall be exempt from the maximum height requirements of this section. Zoning districts all residential districts 6'." In reading this it says that if you want to go over 6 feet you get a conditional use permit and asked staff's interpretation.

Mr. Ferguson said that for all uses that are non commercial. If you have a batting cage or tennis court or swimming pool, he looks at those things as being recreational and if you wish to enclose those facilities with a fence, the way he reads that section is that the fence cannot exceed 6 feet.

Mr. Eldridge agreed with Councilman Gilbert but what would normally happen is you would bring in your site review plan, go through the Planning Commission, go through the Board of Commissioners and get the permit. Then you construct it. You don't come back in afterwards to fix an error.

Councilman Gilbert asked for the town attorney's interpretation of Section 10.4.

The Town Attorney, Steve Coggins, said he thinks you are really asking is the relation between 10.4 and the site plan requirement which Council for the protester is siding with 17.2. He understands Council's point. He said Councilman Gilbert is reading it correctly that a conditional use permit is required for a fence only if you intend to exceed a particular height requirement. That is not answering the primary question that is being posed by counsel for the protester and that is that as you read our ordinances, particularly 17.2, a fence is a structure as defined in our ordinances and we have here what appears to be a rather unduly cumbersome procedure for submitting of a formal site plan that is set

forth in our ordinances that would apply with respect to a fence. His instincts tell him that when you have a separate, specific chapter dealing with something like a fence, it is fair to construe that 17.2 does not necessarily apply. With two lawyers you will always get two different opinions. If you have a separate chapter pertaining to fences and unless it specifically requires the site plan procedure involved - he has a difficult time that that was the intent of the Town of Carolina Beach to require the formal site plan process with respect to fences in residential areas.

Councilman Gilbert said he did not know that he answered his question.

Mayor Macon said let me simplify the matter in that your argument is that the fence in question which is what the application is for is not indicated on the site drawing., and your saying that Tim Owens said it is on the site drawing that he is looking at. It says a 7' fence at the rear of the backyard and shows a line going all the way around where it stops. It is not a commercial site plan but pretty good for a residential submittal. Mr. Coggins said the point being is that you don't do a site plan for something that is already done, but something that is proposed to be done and I understand that point. He said I am just saying that I construed the fence (*inaudible*). Mayor Macon asked the town manager what is the site plan that he is referring to. Mr. Owens showed him the site plan, and Mayor Macon said that is sufficient in my book.

Mr. Eldridge said that the one they acquired from planning with the application does not indicate what his copy shows. The one that is a matter of record that was obtained by Mrs. Levesque from Planning and Zoning, which is in evidence, does not show that fence (*inaudible*) contrary to the town manager's copy.

MPT Wilcox made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Mayor Macon said there is still a motion on the floor for approval. He asked if there are any clarifications that need to be made for the rest of Council.

MPT Wilcox said in his mind he doesn't have a problem with the setbacks. My decision is based on, would I approve this if it came to them normally, and he doesn't see any reason that he would not approve this. He said it is private property and they have a right to their privacy and he doesn't find it unsightly. He is dealing with the height issue based on that and he differs with the Mayor that it would probably take a couple of thousand dollars to cut it down not that his decision is based on that.

Councilman Johnson restated the motion to approve the conditional use permit for the existing 7 foot fence consistent with the findings in the Zoning Ordinance 1-4, all 7 of the required findings and general conditions 1-4, all Technical Review Committee comments, all staff conditions and any recommendations of the Planning and Zoning Commission and that it is consistent with the Land Use Plan, 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;**
- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;**
- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;**
- (4) Utilities, with reference to locations, availability, and compatibility;**
- (5) Screening and buffering with reference to type, dimensions, and character;**
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;**
- (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;**

General conditions:

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

The Technical Review Committee recommended the project to be submitted to the Planning and Zoning Commission with the following comment:

Planning – meets requirements for a CUP

Town Manager – None

Police – None

Utilities – None

Staff Recommendations:

The proposal as presented has not received any negative comments from storm water operations, fire and inspection. Fences over the 6 foot height limit are allowed with the approval of a conditional use permit. Staff recommends the following conditions if the proposed is to be recommended for approval:

- (1) No additional fencing shall be erected by any person until a permit has been issued.**
- (2) 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.**
- (3) All fences shall at all times be kept in good repair. If at any time a fence should become unsafe or poorly maintained, the building inspector or code enforcement officer shall notify the owner of such condition, and upon failure of the owner to correct such situation within a thirty-day period, the building inspector or code enforcement officer shall take appropriate legal action to have such fence(s) repaired or removed.**
- (4) All fences permitted shall meet the structural requirements of the North Carolina State Building Code and other wind resistant construction requirements that may be specified or suggested by the building inspector.**
- (5) Mr. Arnette shall seek permission from adjacent property owners for purposes of maintaining the fence and growth of the grass around it.**
- (6) If more than 50% of the fence is destroyed/removed for whatever reason the entire fence shall be replaced in conformance with the building code and the zoning ordinance that is in effect at that time.**

Planning and Zoning Commission recommendation:

Planning and Zoning recommends approval unanimously (5 to 1) of this Conditional Use Permit request, specific standards 1-7, general conditions 1-4, staff recommendations 1-6, and to advise that it is consistent with the Land Use Plan.

Councilman Gilbert said he just wanted to make sure it was on the record that he doesn't think any evidence has been presented to conflict with items 1 and 2 of the general conditions, and that it is consistent with items 3 and 4. Our ordinance allows for fences over 6 feet through conditional use permits.

The town clerk asked Councilman Johnson if he would like to include in the restated motion the comments that he included in the earlier motion concerning the Whitting property and filling in the gap between the fences. **Councilman Johnson withdrew the portion of the original motion concerning the Whittington property and the portion of the motion concerning filling in the gap as he feels the property owners can work out those matters.**

Mayor Macon called for a voted. **MOTION CARRIED 4-1 WITH MAYOR MACON VOTING NO.**

CONSIDER AMENDING THE CODE OF ORDINANCES, CHAPTER 10 OFFENSES, ADDING A NEW ARTICLE VI BEACH VITEX PROHIBITED

Tim Owens presented proposed Ordinance 08-753 to amend Chapter 10 adding a new Article VI Beach Vitex Prohibited which declares Beach Vitex a public nuisance and the planting or maintaining of Beach Vitex is prohibited. It also contemplates the eradication of Beach Vitex. Melanie Doyle will speak tonight. She has identified numerous properties where Beach Vitex exists. The town will work with the property owners and hopefully find some funds to help eradicate it. One of the locations happens to be in our maintenance yard. There is a civil citation of \$25 for the offense, then \$50 for any offense thereafter. The majority of the Beach Vitex is primarily at the north end.

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

Melanie Doyle, Horticulturist at the North Carolina Aquarium at Ft. Fisher and also the North Carolina coordinator for the Carolina Beach Task Force, presented this item. She showed photos of locations where the plant is in Carolina Beach. She has not finished surveying Carolina Beach. So far, 16 sites have been located. Most are located in the front of dune systems. The large area at the north end will require a lot of labor and manpower and use of grant money. She discussed method of eradication through the use of a systemic herbicide. The process is to find the Beach Vitex which is done by car, on foot, from the front of dune systems on public beach areas, use of binoculars. They do not trespass. They will ask permission to go on private property. They need public cooperation to locate it in areas that are not visible. Seeds travel by birds, air and water movement. They then talk to the property owner and explain about the plant and how they would remove it with their permission. The task force has funds to remove the plant. The third thing they do, with the property owner's request, once the above ground, dead vitex is removed the following spring after treatment, they can go in and plant native vegetation like sea oats and bitter panecum and have the dunes restore themselves back to their natural state.

Fred Fisher, Drill Shell Lane, asked if vitex is the new kudzu of the 21st century.

Ms. Doyle said it is threatening the stability of the dunes, to sea turtle nests and explained how it destroys the dune system.

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

MPT Wilcox made a motion to adopt Ordinance 08-753 (Exhibit 2). MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE CODE OF ORDINANCES, CHAPTER 9 MOTOR VEHICLES AND TRAFFIC, ARTICLE VI SCHEDULED, SCHEDULE B STOP INTERSECTIONS, TO CONSIDER ALLOWING ADDITIONAL THREE-WAY STOP SIGNS AT THE INTERSECTIONS OF COAST WALK LANE AND SEAFARER DRIVE AND WHITECAPS LANE AND SEAFARER DRIVE

The town manager said the Carolina Sands HOA has expressed concerns about speeding in Carolina Sands and, in response, the town has stepped up enforcement but they believe a series of stop signs could help slow down traffic. He reviewed locations and the proposed ordinance.

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

Elaine Stewart, 408 Carolina Sands Drive, President of the HOA asked if they had any stop signs for Carolina Sands Drive in the proposal. Mr. Owens said no, there is one existing 3-way stop sign. He did have one on the original proposal and got a response back that it was not where they wanted to go. Anything they do now would be up to Council whether it would require a public hearing because it is not a zoning issue. Ms. Stewart said Carolina Sands Drive is their drag strip and they have a lot of problems there. She feels there will be a problem enforcing the stop signs. Ms. Stewart thanked Council for work on the storm water system and the new roads. She said there has been some property damage from speeders to include a car going through someone's house and knocking it off the pilings. That house has been hit twice in 10 years. There are several property owners there to speak about the damage. They are going to need something on Carolina Sands Drive as well as Seafarer. The one stop sign on Carolina Sands Drive and Riptide has been driven through 84 times by count in one day. They don't know if more of them will make them stop. They were hoping for enforcement and perhaps the fines would control it. She reviewed their 3-part plan to stop speeders: (1) Signage at each entrance saying speeding would be strictly enforced, that was never done; (2) Put in stop signs at various locations; and (3) Speed bumps but poll of residents determined they were not wanted. Anything the town can come up to stop the speeders would be welcome. There are a lot of children in the community and there are no sidewalks so they walk on the road and they want to try to prevent anyone from being hit by a car.

Mark Miller, 702 Seafarer Drive, said Seafarer Drive used to be the racetrack and they have had this problem for a long time. He lives on a blind curve and Mr. Owens has seen the speeders from his house. Most of them don't live in the neighborhood and they are using it as a cut through. He showed location of his driveway and stop sign near by. He said speeders go through the stop sign and are driving about 40 mph past his house.

Bill Baum, 923 Coastwalk Lane, said he agrees with Councilman Wilcox in that he is not sure stop signs are the right answer. If they are not stopping at the ones there now, he's not sure putting in extra ones will make any difference. He thinks there should be speed bumps like you see at the airports that are wide enough with a walkway that you have to slow down. Adding more stop signs without enforcement or enforcement dropping off, eventually everyone will know they can speed through without stopping. It needs to be a combination of enforcement and slowing them down and the only way he knows to do that is raise the road in some areas.

Alicia LaChance of 102 Carolina Sands Drive said she lives in the first house on her road and sees everything that goes on. Her yard has been damaged twice this summer. When they make the turn to come in off Lake Park Blvd. they hop the curve and have torn out two \$500 palms she has had to replace on the corner. She agrees with the stop signs. The problem now with people running the one stop sign they do have on Carolina Sands Drive is that when you enter on Carolina Sands Drive, you can't see that stop sign because it is so far down the drag strip that you don't realize it is there until you are on top of it. Her recommendation would be to put a 3-way intersection stop sign at Seafarer and Carolina Sands which is clearly visible. Measuring the distance that would be a two block increment and would be reasonable. Everybody comes from Kure Beach and south of them and uses their neighborhood to cut through which is a nice, straight shot until you get to the hairpin right turn which is where a lot of people lose control especially in the evening when there is a lot of alcohol involved. She thinks stop signs should be added on each end, east and west of Whitecaps, Riptide where they currently have them, up at Coastwalk and then down where the two arrows mark at Seafarer to give consistency with the drivers because the stop sign at Riptide does sneak up on you.

Mike Hoffer, 608 Seafarer Drive, he lives on the other side of the hairpin turn that Mark Miller and he share. He also has kids and dogs and they walk down the street all the time. There is no question, it is an issue. He approached Tim Owens and Bill Clark about a year ago asking for a slow down for kids sign or something, particularly around his curve and didn't get any action. He doesn't think more stop signs is the correct approach. He feels you are going to add more inconvenience to all the people who really are not the problem. He is an advocate for speed humps as in Veteran's Park. If you are doing the speed limit it is not an issue. You are not going to blow through a speed hump like a stop sign. The best solution for the curve on Seafarer would be to put the speed humps on either side of that curve. It would be easier to enforce and would like it to be considered.

Lynne Denne said she resides on 7th Street, and it is now the cut through from anywhere in the residential neighborhood to avoid downtown and is a speedway from the main street through. So while you are talking about people blowing stop signs, racetracks, needing stop signs and speed bumps, please consider 7th Street.

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

Councilman Gilbert does not agree that stop signs will work and feels the speed humps are the only way to slow down traffic. MPT Wilcox agreed.

Councilman Johnson said he thinks they need to direct the town manager to investigate the cost of speed humps, the probability and locations of speed humps in Carolina Sands. In the interim, if they want to go ahead and approve the installation of the two stop sign locations as presented in the ordinance. He agrees that he doesn't think it will solve the problem.

Tim Owens said he is very concerned about putting in speed humps, doesn't think that is the right way to go. You will have requests for speed humps in every neighborhood and street in town. He would recommend some kind of traffic calming methods.

Councilman Gilbert suggested doing a traffic survey on those roads and find out what time people are on those roads and maybe that will dictate our enforcement of it and make it known there will be a police officer during certain times. Maybe they won't have to be so invasive.

Kurt Bartley, Police Captain, said that when they put Carolina Sands in and connected it to 6th Street, it became a connector for mostly residents trying to get to the southern end of the island, especially in the summer. They found that the north-south roads, not east-west, were not marked and so they fell under the 35 mph rule. That is why they proposed last month about changing all the roads to 25 mph. In the past week the big signs have gone up and they have pretty much taken down all of the 35 mph signs. They are also running ads in the newspaper saying that it is 25 mph whether you see a speed sign or not. Connecting into Carolina Sands, maybe the solution would be limiting what you flow down 6th Street into Carolina Sands with maybe a one way out of Carolina Sands where only Carolina Sands people are exiting it and not going in through the back way.

MPT Wilcox made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Elaine Stewart said everyone in Carolina Sands was notified about the recommendation. She said they have had property damage with people speeding and feels it is a matter of time before a child gets hurt, especially in July with people going to the beach. It is on record that they have come there. There is a great amount of speed in the evenings between 10:00 p.m. and 11:00 p.m. and she is afraid someone is going to get hurt.

MPT Wilcox said it appears that people who want the stop signs can't agree on where they want them and some who don't want them. He recommended sending it to the Police Advisory and have the Police Chief and Kurt Bartley look at it and bring back a recommendation to Council.

Tim Owens said they did bring back a recommendation which he reviewed.

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

Mayor Macon called the meeting back to order.

Councilman Gilbert made a motion to approve Ordinance 08-754 (Exhibit 3) with the changes as recommended by the town manager and residents to amend the ordinance with their recommendations and give staff direction to research speed humps and an economic application of the speed humps where we could serve that community if the stop signs don't work. MOTION CARRIED 4-1 WITH MAYOR MACON VOTING NO.

Mayor Macon made a motion to move Item #28 to Item #15(a). MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE CODE OF ORDINANCES, CHAPTER 11 PARKS AND RECREATION, BY ADDING A NEW ARTICLE VI FREEMAN PARK COMMITTEE, CHANGING THIS FROM AN AD-HOC COMMITTEE TO A PERMANENT TOWN COMMITTEE

Tim Owens said the proposal is to make the Freeman Park Committee a standing committee as opposed to an ad hoc committee. One of the changes he would like to see which would be consistent with 11-69 of the ordinance proposal is in 11-68 to change the town representative from police chief to the town manager or his/her designee. He said as part of the motion, if Council approves the ordinance, would be to take the list of members and allocate two of the members for one year terms, two members for two year terms and three members for three year terms beginning August 12th and make them staggered terms.

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

Lincoln Hill, resident of the Monkey Junction area, said he is a member of the ad hoc committee, and he recommended that a Freeman family member be made a standing committee member.

Councilman Johnson said it should be if they so desire.

Gina Benton, 711 Columbia Avenue, member of the ad hoc committee, said that several years ago when the ad hoc committee was designed it was called Phase I and they did an excellent job but they have gone into many more phases and still have a lot of work to do. She said that they requested in May 2007 to be made a committee of Carolina Beach. In June 2007 the chairman did not bring that to Council's attention and she is sorry they had to wait another year. She said last year Freeman Park brought in over \$500,000 and she feels there should be a committee to serve as liaison between the town and Council. She also agrees with Mr. Hill that they do need a member of the Freeman family or a property owner, that's 12 properties, on this committee. This is their avenue to have input on what goes on in Freeman Park. She is asking Council to approve this request.

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

Ms. Benton said they have a public discussion item also. They talk to a lot of people in Freeman Park and they bring their suggestions and ideas back to the committee and discuss it with the town manager and chief of police such as fires in the sand. There is an ongoing need to be a communicator between the community that utilizes the park and the town. They meet quarterly, before and after the season, and bring information/issues back to the town. She would like to see in the ordinance where at-large members are mentioned, specifics with community members, Freeman family members spelled out.

Councilmember Gilbert made a motion to approve Ordinance 08-752 (Exhibit 4) and to add the language "comprised of seven members and one official representative from the Town of Carolina Beach to serve and, included in the seven members, one member of the Freeman family or property owner as available at minimum"; take out police chief and add town manager or his/her designee in Sec. 11-68; and give two year terms to John Batson and Gina Benton, three year terms to William Freeman, Ruby Freeman and Lincoln Hill, and one year terms to David Tilley and Twig Wiggins. MOTION CARRIED UNANIMOUSLY.

CONTINUED DISCUSSION CONCERNING BOARDWALK ART VENDING IN CAROLINA BEACH

Elaine Stewart, Co-Chair of the Arts and Activities Committee and Boardwalk Makeover, said they have had two boardwalk art showings, July 31st and August 7th. She has a list of 16 artists in two weeks that have shown their artwork. She doesn't think they made very much money but it is a step towards getting some art at the boardwalk. They have a rule that it must be handmade and said there is a lot of talent. They have set up 8 spots and were full to capacity on August 7th. They would like to continue for the rest of the month. She thinks the town approved it until August 7th and would like Council to approve further dates for Thursdays to continue the boardwalk art. The goal is to get everyone interested in a Boardwalk Art Show or maybe have their own day like on a

Saturday afternoon. The Arts and Activities Committee is going to have a meeting with the artists and see where they can go with it.

Tim Owens said that everyone will need to make sure they come in and get a privilege license and it will need to be displayed.

Ms. Stewart said that, for now, only artists and their original work represented by them or their spouse is being accepted. They are trying to develop the local art and discourage people coming in and taking over the booths and doing resales. She has turned away someone for doing that. They have a lot of talent on the beach and hope to get more talent from across the bridge. She said they have an authorization form the artists have to sign each time they display that holds the town harmless and informs them they have to pay their taxes. Already they need more spots.

Tim Owens said if they would like to expand it that would be fine. They would have to go through the fire chief and make sure there is proper separation between the canopies. He has no problem with it if Council is okay with it.

Councilman Gilbert brought up the question of insurance and who is responsible for providing that. MPT Wilcox said in this case it is under the Boardwalk Makeover. He feels it could be done now the same way as some of the other Boardwalk Makeover events.

Greg Reynolds, 711 Canal Drive, said he is an artist but does not show art down there but his wife does. He said they have a good group of people, the atmosphere has changed from the first event with people staying the whole evening and it is bringing culture to the boardwalk. He is also requesting three more dates to finish out the season. It is a very positive event.

Mark Miller said three more dates would be good but he would like to see Council give the Arts and Activities Committee any weekend they want to try to set something up from here to the end of the year or into next year. If they can make it happen, let it happen. This is the liveliest he has seen the boardwalk in a long time.

Lynne Denne, 100 N. 7th Street, said she is one of the artists who showed her work this past week and feels it is a win, win situation. She also shows at Mr. Gilbert's business. She is always looking for more outlets for her work. She feels the artists there are also ambassadors for the town and bring something to the island other people can enjoy and provide an activity for families. She would appreciate Council continuing this.

MPT Wilcox made a motion to give this event the next three weeks to finish what they are doing and come back with future recommendations; also, the ability to have the town manager or fire chief review the area for expansion. There would be two Thursday events and one Saturday event. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson proposed, due to the lateness of the hour and the extensive closed session they have, to table Items #16-27 to the August 22nd meeting. Tim Owens said to set meeting dates for Items #17 and #18 tonight and continue the Items #16 and Items #19-27 for another night. Council agreed to recess to August 22nd at 2:00 p.m.

SET A DATE AND TIME FOR A MEETING TO DISCUSS THE MASTER DEVELOPMENT PLAN

Council agreed to meet on September 8th following the Budget Workshop meeting.

SET A DATE AND TIME FOR A BUDGET WORKSHOP

Council agreed to meet on September 8th at 9:00 a.m. to 12:00 p.m.

DISCUSSION AND CONSIDERATION OF BANNING OVERNIGHT CANOPY TENTS ALONG THE MUNICIPAL BEACH STRAND

Mayor Macon made a motion to set a public hearing date for September 9, 2008 at 7:30 p.m. or soon thereafter. **MOTION CARRIED UNANIMOUSLY.**

REQUEST FOR CLOSED SESSION TO DISCUSS PERSONNEL, REAL ESTATE AND LEGAL MATTERS [NCGS 143-318.11(a) 3, 5 and 6]

Mayor Macon made a motion to go into closed session to discuss personnel, real estate and legal matters pursuant to [NCGS 143-318.11(a) 3, 5 and 6]. **MOTION CARRIED UNANIMOUSLY.**

A motion was made to return to open session. **MOTION CARRIED UNANIMOUSLY.**

ADJOURNMENT

There being no further business, a motion was made by Mayor Macon to adjourn. **MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____

