

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

August 6, 2007

The Town Council of the Town of Carolina Beach met in a special session to hold a public hearing concerning the 2005 Land Use Plan on August 6, 2007 at 7:30 p.m. in the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. This is the third public hearing held on the 2005 Land Use Plan. The following were present: Mayor, Bill Clark; Mayor Pro Tem (MPT), Alan Gilbert; Councilwoman, Pat Efird; Councilman, Jerry Johnson; and Councilman, Joel Macon. Also present were Town Manager, Tim Owens; Town Clerk, Lynn Prusa; and Senior Planner, Ed Parvin.

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

2005 LAND USE PLAN (DRAFT) REVIEW

The Town Manager, Tim Owens, presented a brief overview of the process and where we are today with the Land Use Plan (LUP) (*Exhibit 1*). Mr. Owens said the town tried to upload the changes to the May 7th LUP that occurred at the June 18, 2007 meeting to the website, but what appeared was the May 7th LUP without the changes. It was discovered internally and he changed the document on the website as of June 26, 2007, being 11 of the 30 days that are required. Mr. Owens requested Council to consider letting the September 11, 2007 meeting be the last public hearing, and not vote on the plan tonight. He feels it is important to get additional public comment as well as the additional review by staff for consistency which helps to clarify the plan. The town has met all of the hearing requirements except for the 19 days on the web. If the Council adopts the plan at the next meeting it will be presented at the November 29th - 30th CRC meeting to be held in Greenville.

Mr. Owens then began reviewing with Council the changes from the June 18th meeting (*Exhibit 2*).

Robert Ward, 302 Canal Drive, Unit B-14, stated he objects to the 115' height in

Commercial 2. He doesn't understand why it is 115' there and 50' in the Boardwalk area, and feels there should be a balance. He said the residents do not want anything 115' high and are strongly opposed.

Attorney Ken Shanklin spoke next and said he is here tonight with his law partner, Paul Nichols. They have one request, an exception to one item which deals with vested rights. Mr. Shanklin said that on May 30, 2007 he wrote Town Attorney, Al Clyburn, a letter regarding the vested rights of Park Place which he concurred with. He explained that this deals with matters of fairness and what has been adopted already by Council. He then presented a proposed policy addressing vested rights (*Exhibit 3*). Mr. Shanklin said it is simple and straightforward. He also reviewed a recent case with the Supreme Court. Mr. Shanklin asked if there were any questions.

MPT Gilbert asked if the case presented was in response to an appellate court overturn with respect to a CAMA LUP application. Mr. Shanklin said no, that it dealt with plans/all applications to a town or city. Basically holds with the proposition that what you start under you finish out under.

Leroy Franks, 908 Canal Drive, stated that his family and friends on Canal Drive and Carolina Beach Avenue protest anything over 50' in height.

Terry Hamm, 111 Virginia Avenue, said that he feels the LUP is an extremely important document, have a good Zoning Ordinance in effect here; however, it has a lot of provisions with CUP's, etc. Feels Council should proceed with the changes proposed in the LUP, feels the town has had public participation and if there were 10 more meetings there would be people wanting changes. Said the public participation took place in the election 2 years ago and that's what people told you they wanted and he feels you should proceed with it.

Charma McKnight, 400 Virginia Avenue. Said she would like to confer with Mr. Hamm. She believes the residents of this town are trusting Council to send through the best LUP they can with the revisions that will protect our environment, the users of this plan and the future of this area. She said there are a lot of things to think about because of the market and what kind of development we want here that will bring people here to stay. Please carefully write the best plan and send it forward.

Lynn Denne, 100 N. 7th Street, concurred with the last several people who spoke. She is not necessarily all about a limit of 50' because she would like to encourage development in the CBD but feels there is a need for height limits. She is concerned about density,

wants the residential area to be protected, concerned about infrastructure and development such as the incident that took place recently close to the lake when some people hooked up and some water mains were blown - need to make sure the infrastructure is in place. We need to protect what is unique and wonderful about Carolina Beach while we plan for growth. We need to be smart about the direction we choose, and we need to look at the LUP amendment and move forward in a positive way.

Michelle Connett, 1321 Cabot Court. She has several concerns regarding the LUP, feels the master plan should come before adopting the LUP. A true master plan will have true public participation, not public hearings or comments as in the LUP ad hoc committee meetings. Five minutes in a public hearing is not appropriate, what is appropriate is public participation. What we need is true public participation, the process, and workshops. The public hearing format is not doing the right thing for all the citizens of Carolina Beach. What needs to occur is a format similar to what occurred when the last LUP was adopted. Active public participation, input in the process, similar to the hotel project workshops at the Cabana de Mar. There were three public workshops; everyone there was involved in that process. Through this process, consensus can be thought through and reached. Voting to postpone the LUP adoption until these criteria are met is the responsible thing to do.

Mary Nolan, 301 S. 8th Street, said it seems like the same things keep happening over and over. She moved here 4 years ago in March, and went to Council meetings which talked about the LUP. She has continued to go to Council meetings 2 years later that talked about the LUP. It is 2007 and we're still on the 1997 LUP. In her estimation, the LUP sets up the rules. You can't have a master plan unless you know what the rules are. It makes no sense to put it off any longer. People in Carolina Beach who have lived here all their lives have never agreed. It is past time to pass a LUP. It may not be perfect but it is what the State of North Carolina has mandated that beach communities have. We would like to build a community where young families can come and live. We need more families or we will lose the school.

Jan Weissbeck, 118 Georgia Avenue, feels the whole fight comes down to height limits. We need limits as a society otherwise everyone would be behaving on their own selfish interests. During the last campaign, voters listened to promises of limiting density and based on that they said they wanted this administration in who will not let the selfish interests of a few dictate the direction our town is going to take. That was our mandate to you. The fight over height limits is what is holding up this LUP. The majority of the voters have said what they want. Discussions in previous meetings have said that all this development will give us a bigger tax base, so taxes won't go up. That's naïve, taxes will

always go up especially with the influx of people, the growth, the infrastructure has to keep up, and public services have to keep up. That money is going to come from taxes whether property is reassessed or they just go up. The question becomes “do you want to pay more taxes living in the quiet, little seaside town that you moved to because you loved it or do you want to pay more taxes living in an overcrowded, concrete canyon?” That is a no brainer. The ball is in your court.

Rich Lehrar, 106 Tennessee Avenue, said he was on the ad hoc committee. Figure Eight Island has a 44’ height limit and an architectural review committee. The average price per sq. ft. is \$798. Bald Head Island has a limit of 35’, an architectural review committee and their average price per sq. ft. is over \$850. Wrightsville Beach has a 40’ height limit, including their commercial, and their average price per sq. ft. is \$615. Carolina Beach has no height limits in its CBD, no setbacks and its average price per sq. ft. is \$258. Covenants in the neighborhood - we all understand those. If you have no covenants and someone can put a trailer next door and junk cars there, is that neighborhood going to be as much as the neighborhood that has covenants where you have height limits, you have to mow your lawn, a homogeneous group of houses built. Neighborhoods with the strictest covenants seem to have the highest property values and covenants are like our LUP and our ordinances. On June 17, 2005, Carolina Beach went to unlimited height. At that time the average unit house price was \$421,750. In June 2007, the average unit house price is \$270, 813. Since we decided to open the door to architectural anarchy where anything goes, our prices are down \$151,000. Wrightsville Beach, June 2005 average unit house price was \$986, 231 and in June 2007, \$1,250,000 for a price increase of \$289,000 where you can’t even build your commercial building over 40’. They have very strict covenants. There was architectural anarchy with the Arcadius project. If you look at the first and second mortgage, they’ve got a default foreclosure of basically \$17,000,000 and we have other projects that are very close to that same problem. We’re going to lose our banks who will even want to lend here and people who will even want to build.

Richard Cecelski, 941 Carolina Sands Drive, is also a small business owner in Carolina Beach which also operates out of Morehead and Beaufort, but his headquarters is located here. He said that the last time he spoke before Council, before the previous administration, the town was considering Arcadius in one of its original forms. One of the gentlemen who spoke in favor of Arcadius at that time criticized the people who were comparing what Carolina Beach could be - like Myrtle Beach. He said that we were not even 1/50th of Myrtle Beach which is a multi-billion dollar economy. Myrtle Beach got to where it is not overnight. They went through the same process that we’re going through tonight 20 - 40 years ago. It’s not so much where we are now but the direction

we could be heading in tonight. He encouraged Council to approve the LUP as approved by Planning and Zoning. He recently talked with some people from south Florida at a wedding reception in Wrightsville Beach, and they couldn't believe what Carolina Beach was and said to please do whatever you can to keep it more like it is now.

Tom Jennings, 415 Charlotte Avenue. He feels we have had enough time and input and opportunities to develop this LUP. I don't like all of it, I like the protections for the residential areas. He would like to see some height limits, and would like to protect what we have here. A long time ago we lived in south Florida but we saw what was happening there and would never go back, even to visit. Please move ahead here and get this job done and get this LUP implemented before the next election.

Rick Rogge, 301 Spartanburg, thanked everyone for their efforts put into this so far and for seeing a little more diversity in the plan now than he saw originally. There can never be enough public input. Strive to get as much input as possible and do the best you can.

Appearing to be no further public comment, Councilwoman Efird made a motion to close the public hearing. Mayor Clark asked if anyone else would like to speak before calling for a vote.

Garland Garrett came forward and said he represents the Boardwalk LLC, and he lives at 306 5th Avenue N., Kure Beach. He appreciates the job Council does. He would like to keep the beach like it was when he was a kid in the 50's, but he knows you can't do that. He doesn't think this is an issue about height. The residential area should have a height limit; it does have and has had. He is concerned about the CBD and the heart and soul of a town is the business district. Ours is pathetic, and we need leadership from this Council to make a change. He doesn't care if you put a height limit on it but he wants flexibility within that area so that if a project comes here that makes sense for the town then you should be able to approve it without having to go through a long process to change the LUP. He doesn't think anyone is complaining about the Marriott, it's an asset to the community, it goes up to 140'. We have people complaining about buildings putting a shadow on the beach and most of them live off the CBD. He feels the people of the town didn't vote in height when they voted. He asked Council to make good business common sense when it is related to the CBD and this LUP does not do it. It should be delayed. He added that he appreciated what Mr. Owens has done to clean up the mess about the process. The ad hoc committee - and there will be sworn affidavits that did not follow the process. He asked Council not vote in the LUP until you clean it up. Thank you.

Jade Denne, 100 N. 7th Street, said she isn't old enough to vote yet, but she asked Council

to please adopt this LUP. She would like for she and her friends and their children to grow up with the beach that they love and know now and not just a concrete mess.

Ward Manning, said he agrees with a lot of people here. Council was voted in to pass something and get it done. We do need rules and limits. Most people don't know that we reduced Park Place from 165' to a current 140' which happens to be the same height as the Marriott. Other people have made some really good points about banks not coming to this town and it's true, I am a developer. The banks don't want to lend money here, for development or to good credit, hardworking individuals that have a right to move here and live here because they're scared of the beach - not just Carolina Beach, but all beaches. Mr. Manning said that he has been vocal about not liking the Arcadius project, a lot of people did. Since this Council has been elected they have done good things and bad things. Parking was a huge issue from the beginning but you still passed a building with no parking requirements in hopes that they would use another parking garage. He agreed with Mr. Garrett. The height limits are great and he doesn't want to see the concrete as well. He feels there have been some great projects within the 50' limit and he is the only one who has brought a project out of ground. We have Jubilee Village that we're still trying to bring out of ground with 50' height limits. We understand height limits and what the people here want. They voted you in; get it done whether it's good, bad or indifferent. Remember the vested rights; remember what you have in the past. Please preserve, if you can, the CBD. It's extremely important to this town. It needs to change. I'm embarrassed for it. His family came for a visit this weekend and there was nothing for them to do. If you want tourism dollars then we need hotels, vital businesses, restaurants, clothing stores, shoe stores, doctors and everything else. He feels that Council is doing it right just make sure there is flexibility in the CBD.

Alan Pacek, 101 Island Mimosa Drive. He feels there is a divide here and it's very easy to blame it on height and make that be a central focus, but he feels it goes beyond height as to what everyone's vision for this island is. Many of us seek a bygone era but we live in a very complex society now and we must deal with sustainability of the CBD which is key. The LUP in process offers an opportunity to bring everyone together in order to come up with an idea and a consensus for what the CBD should be. With that process and focus bringing it all together there are enough people in this room that you would have a critical mass that they would understand it. This is where we want Carolina Beach to go. It takes following a process. Maybe the master planning process will be the magic that will do that. There are a lot of people here with good ideas and the words they say come from the heart. Everyone wants good for Carolina Beach. He urged Council to utilize the process to build consensus to decide upon a plan so that whenever people come to you they can tie into what everyone has agreed on, whatever the plan is. He

feels that no matter how Mr. Owens tries to fine tune this, there just won't be the consensus. He urged again for public participation so that the end result is not just a plan that you use to follow but is actually a vision that everyone can see and be on board with and then see some positive growth.

Dan Wilcox, 614 Monroe Avenue, said he has been before Council numerous times regarding the LUP. Each time he has argued for more education and public participation. After the recent hearings someone asked him what his specific problem was. He said that his response was that there has been inadequate public participation. They said they meant what was his problem with the content of the plan. He said his problem was that it is not a true product of the public. He feels it should be about what the public thinks and what the technical studies support. If the town did not do its job getting the public out to the meetings, they don't know what they think - you have a flawed process. He has asked for heights that are derived at through technical studies meaning analysis of our infrastructure and what it will support, life, safety, fire, water, sewer, etc., provide that information to the public including tax adjustments that might have to be made and let them make a decision with informed information. The land use process is supposed to be based on public input; a group of people cannot make up the minds of everyone. The height issue started with the previous P&Z and we had a height limit. Then it went to the previous Council and they took the height limit out. Then it went to this Council who appointed an ad hoc committee, and in that meeting there was no technical information provided and the height limit bounced everywhere from 35' to 140'. They eventually came back with a recommendation and sent it to P&Z. P&Z changed it in their first meeting and then in their second meeting, he believed. That information came back to this body and it was changed again. Where in all of that is the public participation process and where are the technical studies? Where is the information that these types of decisions are supposed to be based on? Those are my concerns.

Nick Nolan of 301 S. 8th Street said that Mr. Wilcox believes we did not have sufficient public participation because we did not get a technical analysis to be used to establish our height limitations. He would reject the notion that having a bevy of fire engineers come to town and tell us we can afford to put up a 200' structure because there exists a piece of fire apparatus on the market that we can put out fires safely in a 200' building. And I reject the concept that we bring other technical people in to say that for technical reasons you can support limits of unlimited height or extreme heights. It is far more material to the fact that we rely on what the sense of our community is, community is what this is all about, not about technical analysis.

Diane Murphy, 1112 Merchant Lane, said she was a member of the ad hoc committee the night of the discussion about height. I never thought that when we were appointed to that committee that we were going to decide what the height was in the CBD but it started out with a question about the Marriott, and various heights were suggested. She felt that as laymen, how could they decide. What does a 100' get us - 10 floors with two levels of parking, are we in or out of the flood zone, that's all I wanted. All she wants to know is what does 90' economically and feasibly bring to the city. Not asking about the fire apparatus, asking what other buildings in other communities of a business district as small as Carolina Beach is, not Myrtle Beach or south Florida. She feels sure we can figure out what 100' or 50' economically and feasibly gives us. She does not feel that various members of the public attending are that far apart as a group. There is a common line and it comes down to 15 blocks. She said to get the master plan, get the LUP and get them into action.

Linda Lashley of 102 Florida Avenue said we talk about a mandate. She recalled the last two elections have been extremely close about 80 votes and 30 votes for mayor, and Council has had a wide array of support so she doesn't think she would feel impelled to act because I thought I had a mandate. She also thinks that we need to move forward. Our CBD is dilapidated, and she is almost ashamed to admit that she doesn't take her visitors to the Boardwalk. She goes, but she doesn't take her visitors there because she is embarrassed by it and she doesn't want to be because she loves this beach and doesn't want to be embarrassed by it and knows it can be something everyone can be proud of. She would like everyone to analyze their thoughts and their consciences very scrupulously and decide whether the process is really the issue or our position the issue. If the process has to be delayed a little longer, what harm would there be if truly the issue is the process and people could walk away and say they got what they needed from this, but if the issue is truly one of having ones position then there is no reason to delay. She asked that each of us examine ourselves and find out what our real situation is.

Dave Denne, 100 N. 7th Street, said he agreed with Mr. Manning. The CBD is a mess and there needs to be some incentive for developers to do other things like restaurants and attractions. He doesn't know what the incentive should be, but he doesn't feel there is a need for anymore condos.

Bruce Holsten, said he is speaking on behalf of the Pleasure Island Chamber of Commerce Board of Directors. Many decisions were made since he last spoke that have changed the landscape of the discussion and the CBD and he thanked everyone on behalf of the Chamber, especially the Mayor who voted to amend the LUP to accommodate the

new Boardwalk hotel. The Chamber believes that many of the decisions made over the last month were based on vision, courage and doing the right thing and we are now asking Council to do the right thing. At the Chamber's July board meeting, there was sufficient confusion with 15 business members of the community about whether they should even be speaking tonight and almost didn't. At the August meeting, the board unanimously agreed that there had been one consistent, unchanged issue since the beginning of their fight against approval of this plan. It was an oversight of this Council not to demand comprehensive public input and involvement and a clear educational process to help the public understand the process. This is about process and not content. If we didn't get the support we wanted from the public we should have done it again. There are numerous statutory oversights in this process, any one of which would be sufficient justification by CAMA to suspend this plan which will be addressed again at the September 11th meeting. He feels Council acted on that in any case when they approved the hotel plan and apparently when the September 11th meeting was created. The modifications to accommodate the hotel project was just one example that demonstrates that it is not too late to make a material change to this plan and the public input would be warmly received. What they are asking for since the first 2006 ad hoc committee meeting is that there be further education, further public discussion, further debate with everyone involved and that all residents and stakeholders be properly informed that they can attend these meetings, not in a public hearing format, but in a normal, open ended, freely discussed meeting where people listen to one another. There are few issues today that are more critical than the laws that define land use and value of our residential and commercial properties and there is no political or regulatory reason why this plan has to be submitted in its current form. The Chamber is once again asking Council to please defer sending this LUP to CAMA until there have been more public meetings, open discussions and active participation. It is not too late. There was a technical analysis issue question brought up by Mr. Nolan. The Chamber believes that technical analysis is the basis. He said that he has talked to the Mayor about the experts being involved. It is critical to be led by sound and good advice that has some basis in reality and not just supposition or based on a political platform. The Chamber is not sensitive to height issues in the residential area but the CBD needs help.

Leroy Franks, 908 Canal Drive, said he feels everyone is addressing issues about process, height limits and everyone wants public input. He suggested placing the CBD height limit in a referendum for the November election and see what the voters want.

David Lawn, 1112 Merchant Lane said he has heard people say that the sides are not that far apart but feels people are just getting tired of the fight. He feels there should be a goal to develop a consensus in the community, feels the specific issues will fall away as long

as the process is followed. Mr. Wilcox spoke about technical reviews - when the height got put into the most recent LUP, that was the issue that struck his chord because of the way it happened. He wouldn't make a decision for his family without looking at all the facts to make that decision. He heard the minutes of that meeting and how the decision was made and the facts weren't there. When talking about technical analysis - really after looking at everything that can possibly be looked at to come to the best decision. He thinks that is mandated by CAMA too, doesn't feel that justice has been served the way it has been handled. Need to pursue the issues and get the people together and not assume a mandate or what people are thinking. Need to try to get everyone together for a plan we all can adopt, otherwise there will still be a divided community.

Robert Ward of 302 Canal Drive feels that heights are the issue. There will always be developers who ask for more height and the town does not have the infrastructure to support the height over 100' which was witnessed by the fire at the Hotel Astor. The water pressure was pumped up and every water main broke. Height is definitely the issue and he wants to keep them down. We have 115' in Commercial 2 and 50' in the Boardwalk, and maybe we can bring them to a certain height.

Nell Hunnicutt, 800 Cape Fear said she moved to Carolina Beach in 1970 and it has come a long way. She commented to Mr. Manning that they had the money to build a house and all that was needed was \$5,000. They went to Nations Bank (now Bank of America) and were turned down because Carolina Beach was a risk. She referred to his comment about the banks still being in a quandary as to what to do which surprised her. We need to use sound judgment and let the people of Carolina Beach and New Hanover County (NHC) and especially the banking industry know that we are solid with a purpose and focus and know what we're doing. When that is done they will look at us in a positive way. As Mr. Garrett said, it's not a matter of height; it's a matter of a CBD. She is not worried about taxes but insurance which has gone up 50%. She said that she recently purchased a house and had to pay \$2,300 for wind and hail before closing. The CBD will be the town's lifeline and base, we're self-contained here and we can do a lot. Ms. Hunnicutt one of the reasons why she left once in 1980 because NHC put the landfill here and that is what NHC thought of Carolina Beach, but it didn't last forever. We have built a good image with NHC but we need to have a good, solid CBD. Even in the 70's when Mr. Garrett had a lot of activity on the Boardwalk and it has been said there isn't that much in the CBD to bring people to the Boardwalk. When she and her husband sold the property that is now Harbor Oaks, it wasn't a question of height in order for them to sell, it was were the borings going to prove. So height is not the issue. We need quality on the boardwalk.

Terry Hamm, 111 Virginia Avenue, agrees that the CBD is vital to the growth of the island. In response to the gentleman who asked why he, as a resident of Virginia Avenue, cares what the density or the height limits are at Carolina Beach, doesn't live at Carolina Beach. He is part of the public input. He saw the ad, came to the meeting and

gave his input. He asked, what is the town supposed to do, knock on people's doors and drag them to the meeting? The people there are probably the same people every time. You can have 10 - 15 more meetings but you can't make the people come. The people have told you what they want and they keep saying that doesn't mean anything, yes it does. People get tired of saying the same thing over and over again. He is part of the public and cares what happens to the beach and he does live here.

Richard Leher said in response to Ms. Murphy's comments about other communities and heights - Surf City 60', Wrightsville Beach 40', St. Simons Island with over 17,000 people and two booming business districts 48', Brunswick, GA a large port town, 18,000 people 60'. Mr. Leher said he can name ten communities with height limits well under ours for any one that is over ours, doesn't know if they got it by technical analysis. There is a divide here between builders, people who have sat on their properties and let them decay and wanted all the money and didn't get it, along with some developers vs. the rest of the town. That's the divide.

Garland Garrett spoke again in response to other comments. He explained that he doesn't live in Carolina Beach but he owns property here and property owners have rights too. He is not opposed to height limits but what he wants is flexibility so that if a good project does come forward, regardless of who does it, it can happen. Russ Maynard's project should have been higher than that so he could have had some amenities. He said, I applaud the Mayor for doing what he did. The 100' helps him get the project off the ground. Mr. Garrett feels that the Chamber and CBD all want flexibility so that if a project comes forward and it will work and improve the town, then you will vote for it.

Lynn Denne spoke again and said her family has had property here her entire 47 years of life and has lived here permanently since 1979. She said that everyone would never agree on everything. We need to try to figure out what is best for everyone, need to address the CBD and have good things happen there. People tonight are complaining about process and it seems that people complained about process with the last administration. There is never enough time and never will be but she hopes everyone can agree to disagree and all live in this town and be friends to one another, especially with the coming election. She is concerned about people taking political sides. It you want

everyone to have input, put a questionnaire in the water bill and have people mail it back, if you want to drag it out forever or make a decision.

Dan Wilcox, spoke again to address some comments about what the town's obligation is for public participation. He feels there is some misconception regarding the level of requirement. He said this is not like the other public hearing where you put an ad in the paper and people come and have five minutes to speak. CAMA's guidelines are clear, for example, the NC Administrative Code in the section where it talks about notifying non-resident landowners to be included in the public participation process, it reads: "more than one means is required and at least one effort shall be made to solicit input

from non-resident landowners", and it goes on to talk about what you have to do to that, a proactive method, and it can't be for instance it's a good idea to put things in the water bill but a lot of property owners live out of town and have renters and they don't get their water bill. They don't read the Gazette. You are supposed to make a proactive attempt to contact the property owners. As of tonight, that hasn't been done. Unless there has been some recent notification to come to this public hearing, the CAMA requirement is to notify landowners that come to the public participation process so they can be involved in the process of shaping the policies, not to come before you after those policies have been decided. He agreed that the divide is not that far off and feels if Council gave the process another shot, a couple of meetings with true planning sessions, he feels that all the people in the room and maybe several times more would show up and participate. He feels the process has brought people closer together and if everyone went to that public process and it is handled properly, people are notified properly and education is taken care of - whatever comes out of that process, that is what comes out of it but we don't know that because we haven't gone through the process. MPT Gilbert asked Mr. Wilcox, who in 2003 was responsible for that public participation in making sure there was education and participation? Mr. Wilcox said it has been a long convoluted process, and he thinks the town was led down the wrong path, and the Council of Governments failed to follow the CAMA guidelines, failed to inform the town about the technical studies or all the information that they later found out was available and that they were supposed to be following. Mr. Wilcox said he never knew how the aggressively the town was supposed to go after landowners and such in the land use process until later on when he ran across those documents. He thought it was just like every other public hearing but it is a much higher standard. He thinks the COG led them down the wrong path in the beginning, they didn't give staff proper advice or the ad hoc committee proper direction. He isn't sure why because those are people that are supposed to know that stuff. He said this is not about blaming Council or staff. There were problems with the old administration. P&Z thought they were doing the right thing when he was on it. He wished he had

known the proper process then because it wasn't followed. Whatever they did follow, they did get some public participation from which some of the policies were shaped. Then later on the ad hoc committee came in, without the same public participation, and changed those policies. There is a real problem with legitimacy in this process and it won't stand the test of time or the test of future administrations or benefit our town.

Dick Engels, 414 Hamlet Avenue, said this is his third time participating and he is getting tired of it. His views haven't changed since the first time he spoke and doubts they will the next time. He likes what the plan says and will continue to do so unless there are some major changes. He urged Council to move ahead.

Ward Manning spoke again. Mr. Manning said he was born and raised in NC and moved here six years ago. He is here four nights a week, his house is in Charlotte and he goes back and forth. His uncle is founder of the Cape Fear Hospital. He said there is not one thing he would consider doing to hurt this beach. His family has had businesses here. He

agreed with what is going on and the process but also agreed with the public to move forward and get it done. The only thing he asked was to give the CBD a little time and hope to improve. He has been a property owner for about 25-30 years. He wants the input of those who just moved here and he wants the property values to at least maintain instead of decreasing. He would like to see it increase for retirees and to benefit from that increase. Councilwoman Efird said there are 670 houses on the market. He asked Council to get it as right as they possibly can. He hopes that at the upcoming election people would not do what they did last time. He urged people to get along.

Mayor Pro Tem Gilbert made a motion to close the public hearing. Mayor Clark said there is a motion on the floor to close the public hearing unless anyone else would like to speak.

Charma McKnight spoke again. She asked for clarification on the process - reviewing the LUP started in 2003 and should have been completed in 2005. In November 2005 there were approximately 15 amendments passed by past Council. She attended many of those meetings with P&Z and Council and none of the people had a clue where those amendments came from. Then the current Council came on board in December and said they didn't know either and that is what continued this process to make sure what was going on was the best LUP. She feels that Council has done that and needs to move on. This LUP will be the foundation for the master plan to give a vision of what the town is going to build for the community. The town needs limits and Council has done their job and needs to move on.

Jan Weisneck spoke again. She said there is a big difference between developers and regular citizens who show up to speak. The developers have millions of dollars on the line; she has none on the line. She does not have the same financial interest as the developers and feels it is unrealistic that they will come to an agreement that easily. She believes it will take a long time, longer than it should to get the LUP through.

Mayor Clark said there is a motion on the floor to close the public hearing, and he called for a vote. MOTION CARRIED UNANIMOUSLY. Mayor Clark made a request for Council to take a ten minute recess.

After taking a short recess, Mayor Clark called the meeting back to order.

COUNCIL DISCUSSION

Mayor Clark asked for a comment from Mr. Owens on the suggestion of vested rights pursuant to and according to NC statutes, and if he knew CAMA's understanding of it. Mr. Owens said he had not talked to CAMA about it. The way it is written may work for their situation but he isn't sure how CAMA would feel about it. Their response normally is that we might not catch everything that's inconsistent with what is on the table now

and that's why you have the amendment process. When someone comes forward with a proposal that doesn't mesh with the LUP, the amendment process is what you go through which is basically one public hearing and two notices. Mayor Clark said that is what they're looking for with the master plan if necessary there is an amendment process for that. Mr. Owen said he did not have an opinion from CAMA on introducing that language. They have talked about inconsistencies such as Mr. Manning's project, what happens when something is adopted and they don't have CAMA permitting in place or in the process and that is why you have the amendment process. MPT Gilbert asked, if that was included as a policy in the LUP and it is advertised for the September meeting and then going on to the CRC in November, if Council finds out in the interim of the advertising process that this language does not meet the DCM's protocol, would it be problematic at the next public hearing to remove it if it is and then request the amendment process. Mr. Owen said it could be, but even tonight if you were going to adopt a plan it says you can do editorial stuff as long as you don't change policy or even a hint of policy. Mr. Owens said, would adding this in and deleting this later - I can not answer that. That's a CRC question. MPT Gilbert said in order to get it into the LUP, the only option right now is to make a motion to include it and then on Mr. Owen's further review and comment from the DCM, it would stay or go. Mr. Owen said CAMA

probably won't question your content and intent; they look at the consistency part of it. He is not sure if they would question whether it is the right or wrong policy or stand up in court or not. Mr. Owen referred Council to page 82 under management topic local concerns, there is a section that deals with economic and community growth and development, and this could be added as (e) possibly. Once you change policies and add a new policy it will create a lot of other ramifications throughout the process. MPT Gilbert asked Mr. Owens if he is recommending at this point not to include this policy as recommended and cross that bridge when we need to with the amendment process. Mr. Owens does not know what the ramifications of this amendment are. He needs to talk to division staff. They saw the May 7th document. They haven't seen any new policy per se. MPT Gilbert said that is his fear is that this has to be reviewed by DCM and there is policy that hasn't been reviewed. Mr. Owens said when we discussed the Arcadius project and other projects, basically they said when they want to apply for a CAMA permit they can also apply for a LUP amendment as well. MPT Gilbert said then this could be considered beyond editorial. Mr. Owens said most of those are editorial. Some of the changes that we made at the June 18th meeting could go either way, but you could argue either side, and it depends on who is arguing the point. Mayor Clark asked if he sees any inconsistencies if we do this in comparison to other applicants. Mr. Owens said he is not sure how they have addressed inconsistencies in other land use plans. Mayor Clark said he feels the master development plan will force amendments to this plan. Councilman Macon asked how many projects are really affected by this recommended policy. Mr. Owens Arcadius – they are talking more about vested rights then existing CUPs – any others would be hard to say. Councilman Macon said that it basically says that if you have a CUP that has vested rights that was approved at a time before the LUP was changed. MPT Gilbert said if you have an approved site plan, that there are some

caveats within the CUP if you have that then you get vested rights. He doesn't know if any other than Park Place has gone to the level to have vested rights. Mr. Owens said there are zoning vested rights for up to two years, and our ordinance needs a little work with regard to that. Councilman Macon asked what harm would it be to include it in the Land Use Plan. Mr. Owens said none other than it may or may not be something that CAMA would like to see, but they will probably look at it and say if that is what the municipality wants then so be it. Councilman Macon said all it does is clarify what the intent of vested right is. Mr. Owens said the inclusion would allow adopted CUP's and those that have zoning vested rights or five year vested rights to continue forward with the CAMA permit process. Councilman Macon said otherwise we would have to adjust the plan at a later date, and what are you going to say we are going to let this particular parcel go to 150'. Mr. Owens said it would be very difficult because it would be site specific. Councilman Macon said so it would be on the verge of impossible to get CRC t

get that site specific. Mr. Owens said it would be difficult. Councilman Macon said so what this does is keep it from going to the Supreme Court one day and the town spend a lot of money on lawsuits. Mr. Owens said it could be further simplified by stating that all CUP's and/or zoning vested rights prior to a certain date are exempt from MP Gilbert said that is what his concern is whether this is the best language and is it date specific so that future planners will find it open ended. MPT Gilbert read "the town's LUP shall not be interpreted as in conflict", meaning that the certain projects shall not be interpreted as in conflict with the LUP. The certain projects are the subject on what we are talking about. Councilmember Macon said if Council were to add it as a certain change and advertise it then it would be okay. Mr. Owens said yes if it is editorial in nature then that is appropriate.

Mayor Clark said we other changes to consider.

Mr. Owens began to review the clarification items. He referred everyone to page 74, Policy 31, put not to exceed in front of fifty (50) feet which means that the town will implement heights of 50 feet throughout the community. Policy 31 (A) Residential 5, to make it more consistent, should be added. Marina Mixed Use and also Mixed Use 3 east of CBA south, all those would be consistent with the back part of the document. Policy 31 (B) because Residential 5 is in the upper exception, it should be Residential 1 through 4 to make it more consistent.

He asked everyone to go to Page 75, Policy 46, "the town will make all municipal facilities" - should be changed to utilities.

On Page 86, Residential 1, make reference to the policy statement 31 (B) on page 74 for clarification.

Page 87, Residential 3, basically says 50 feet in the R-3 and the future characteristics of Residential 3, both areas should probably be 40 feet. R-3 is where we currently have 40

feet, basically the same as Residential 3 in the LUP classification table.

Page 88, Mixed Use, make reference to Policy 31 (A).

Page 89, in future Mixed Use 1, add reference to Policy 31 (A).

Page 92, North Pier Commerce Area, make reference to Policy 31 (A). Page 92, Industrial and Future Characteristics of the Industrial Area, add reference to Policy 31 (A).

Page 95, Table 33, delete reference to Multi-Family at North End in paragraph below the table which says “that will prohibit a new multi- family development in R-1 with the exception of Residential area“. This has been stricken everywhere else.

Page 111, same language in Table 35, remove “multi-family from Residential 1 through 4 with the exception of the Residential 1 area in the vicinity of Canal“.

Page 132, Policy 24, delete “with the exception of Residential 1 in the vicinity of Canal and CBA north”.

Mayor Pro Tem Gilbert made a motion to implement the recommended changes from Page 74 through Page 132 and reviewed by Mr. Owens and include them in the draft of the LUP. Councilman Johnson would like to add that these are policies to the August 6, 2007 draft. Mayor Pro Tem Gilbert amended his motion to implement the recommended changes from Page 74 through Page 132 and include them in the August 6, 2007 draft of the LUP. MOTION CARRIED UNANIMOUSLY.

Mr. Owens said this will be the draft to go to the next public hearing.

Councilman Johnson said the only item left to consider is this policy. Mr. Owens suggested that if Council wants, to consider making it a portion of Policy 86 under (E) in Local Concerns, Economic Community Growth and Development.

Although the public hearing was closed, Council was in general agreement to ask Attorney Ken Shanklin to assist them with the wording.

Councilman Macon made a motion to amend Policy 86 to include as Item (E), “The town recognizes that projects have been approved by Town Council under the provisions of Article 14 (“Conditional Use Permit”) of the town’s Zoning Ordinance

with a site specific development plan and have been granted vested rights under the town's ordinances and the provisions of NCGS 160A-385.1. In recognition of the town's obligations under NCGS 160A-385.1 these projects shall not be deemed in conflict with the town's LUP provided the projects are constructed during the applicable vested rights period provided and pursuant to NCGS 160A-385.1. MOTION CARRIED UNANIMOUSLY.

Mr. Owens recommended the public hearing for September 11, which is a regularly scheduled Council meeting, and, if necessary, the public hearing could be carried over to the 12th if the regular meeting is too long. If the LUP is adopted that evening it will go to the November 29th CRC meeting in Greenville, NC.

Councilwoman Efird made a motion to hold a public hearing on September 11, 2007 at 7:30 p.m. concerning the draft 2005 Land Use Plan. MOTION CARRIED UNANIMOUSLY.

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

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____