

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

**December 17, 2009**

The Town Council of the Town of Carolina Beach met in special session on December 17, 2009 at 7:30 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) Pat Efird; Councilman Lonnie Lashley; Councilman Bob Lewis; and Councilman Dan Wilcox. Also the following were present: Town Manager Tim Owens, Town Attorney Steve Coggins, Finance Director Dawn Johnson and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order.

***PUBLIC HEARING REGARDING THE TOWN FORMING A NON-PROFIT CORPORATION THAT CAN ACT SOLELY FOR TOWN-AUTHORIZED PUBLIC PURPOSES, AND THE POTENTIAL ROLE OF THE SAID CORPORATION IN PURCHASE AND INSTALLMENT DEBT FINANCING OF 309 CAROLINA BEACH AVENUE NORTH (PIN#3130-56-9368), 234 CAROLINA BEACH AVENUE NORTH (PIN#3130-65-0927), 236 CAROLINA BEACH AVENUE NORTH (PIN#3130-66-0057), 239 CAROLINA BEACH AVENUE NORTH (PIN#3130-56-9121), 237 CAROLINA BEACH AVENUE NORTH (PIN#3130-56-9007), 235 CAROLINA BEACH AVENUE NORTH (PIN#3130-55-8969), 302 CAROLINA BEACH AVENUE NORTH (PIN#3130-66-0198), AND TO DISCUSS AND RECEIVE PUBLIC INPUT ON TRANSACTIONS AND ANY FINANCE CONTRACTS IN CONNECTION WITH THE SAME, PURSUANT TO THE TOWN'S AUTHORITY PROVIDED BY N.C.G.S. 159-48, 160A-4, - 11, -12, AND -20; ARTICLE I OF THE TOWN CHARTER, TOWN CODE SECTION 16; AND ANY OTHER APPLICABLE PROVISION OF LAW***

Steve Coggins, Town Attorney, said thank you Mr. Mayor and honorable members of the Council. I'll be brief but thanks to you for calling this special meeting to order and taking time out of their busy schedules to attend to important business of the town as we move forward.

To summarize, the town was interested in purchasing the Arcadius additional properties. You may recall the town has already purchased a parking lot, what we know as Arcadius H for \$475,000 which was financed through BB&T. The town has acquired rights to purchase from the bankrupt estate and the primary lender of the bankrupt what we know is Arcadius A, B, C, and D, also basically the Guy Johnson and the Surfside Motel properties and the parking lot for the purchase price of 3.6 million dollars. The financing that has been negotiated in the favorable lending climate in which we're in is a loan overall of 4.3 million dollars which would finance the 3.6 million dollar purchase, the payoff of the loan that was obtained approximately five weeks ago for the \$475,000 by which the town within owned that lot free and clear and then associated operational and accounting, professional, and other associated expenses with the closing. What has occurred is that we have set up, since the last Council meeting, as per Council's authorization a non-profit corporation know as CBP3, Inc., which has already met. Its Board met officially

yesterday with its organizational meeting and executed a number of documents. The way it is structured is that at a closing that is anticipated to take place officially on Monday and with disbursements on that date is that CBP3, Inc. will take title to the property directly from the assignee of U.S. Acquisitions, which is the primary lender, creditor if you would, in the bankruptcy that had the credit bid at the auction. Their assignee is Carolina Beach, LLC. They will be conveying that property to CBP3, Inc. CBP3, Inc. in turn, will borrow from Branch Bank and Trust under terms similar to what would be available to the town that lending sum of the 4.3 million dollars which will be used to acquire the property, pay off the debt on the parking lot, the Property H Lot, and pay for these operational expenses. Of course, CBP3 does not have any assets of its own other, of course, in the property and assets that do not generate substantial revenues apart, of course, from the potential from receiving revenues from the Guy Johnson and the Surfside Motel pending its demolition which reminds me to say that the whole point of acquiring this property is in hope of the public purpose would be fulfilled that we enter into a joint venture/partnership, if you would, with the state for the construction of the aquarium pier based there on the boardwalk which will provide that connection synergy between the Yacht Basin and the ocean boardwalk area in the CBD. Concurrently with the closing, CBP3 is authorized to grant to the town an option to purchase the property for a period of four years which is the period of time of the loan that CBP3 has. This loan has for the 4.3 million dollars at 4.96% is for four years. It's advertised though as 20. There will be a payment due in a year and a balloon payment at the end. Meanwhile when the town exercises its option, the purchase price will be whatever is, of course, the balance that is owed on that loan that is owed by CBP3 to the bank; and at that time, the town would refinance that with great hope at a substantially less purchase price would be owed ultimately by the town in the meantime pursuing the various grants that are out there and potentially available to it. So through this structure the town has allowed itself to take advantage of timely acquisition of the property given the current market at the current also lending rates. Obviously we don't know what those lending rates would be if we had to wait years and the property certainly wouldn't be available at this price but at the same time also we're allowed to pursue the grants and to be able to defray the costs. CBP3 will be contractually bound to cooperate with the town and to convey it at the appropriate time by a combination of the restrictions in the Articles of Incorporation, the By-Laws, a Support Agreement which it has already signed also for with the town, and various other documents and resolutions so that it would be so bound at that time. Of course, BB&T will be secured during all of this time. The documents that have already been executed, and again I am doing this for the purposes of the record is the resolution of the last meeting of the town council approving and endorsing the formation of the corporation, the election by the town council of the CBP3 directors, and I'm pleased to report to council that those directors have been diligent in assuming their duty and their obligation to the people of the Town of Carolina Beach, and taking time out of their busy schedules this time of year to do the requisite paperwork, and the signing of documents, and to bring themselves up-to-speed on that. Articles of Incorporation have been filed, By-Laws have been adopted, various other resolutions adopted authorizing all acts for the acquisition, and approving going forward with this particular transaction and other minutes, and there's been prepared we've been shown the proposed deed will be coming down.

For execution tonight by the town if you would allow this to proceed further and to consummate what's been contemplated is the Bill of Sale for the Personal Property, the Support Agreement among CBP3, the Town, and BB&T, the Resolution of the Town Council Supporting the

Financing Agreement and the Deed of Trust, the Option to Purchase being available, the BB&T proposal to CBP3 and the town for the financing, the Town Clerk's Certificate, the Town Attorney's Certificate, the Town Closing Certificate, the Seller's Draft Closing Statement, and the Assignment of the Assumption of our Rights Under the Purchase and I'll be tendering a formal request by CBP3 to pay all the closing expenses and handling all disbursements that under the Closing Statement that's attached would normally be an attributable bit but then again for which CBP3 simply does not have the resources to do that. Again, we have to do it in this particular structure because the town does not have the legal capability of guaranteeing the debts of the other. We are contractually bound simply to establish line items in our budget and to agree to consider a formal request by CBP3 to pay certain expenses and a resolution has been prepared to that effect, and then a formal resolution by the town authorizing the payment of those expenses. I have a copy of these documents and the originals prepared for execution at the appropriate time assuming that is the pleasure of council and I am here to answer any questions.

Mayor Macon asked Council if they had any questions. No one responded.

Mr. Owens, the town manager, said there is one other item that I would like for you to consider. In order to get things started, the town would need to create, in my opinion, two line items—one, a revenue line item and one, an expenditure line item. I'm proposing a \$50,000 expenditure line item; not proposing any revenue at this time but revenue could be generated at some point and passed to the town. The insurance for the structures alone was roughly \$29,000 so part of that would be paid through this line item. I am asking for a new line item to come out of the funds would be coming from the general fund fund balance in the amount of \$50,000.

Councilman Lashley asked what is our first year's payment? Mr. Coggins said the payment that is due approximately a year from now is 400 plus...Mr. Owens answered \$427,000. Mr. Coggins said it is approximately like that and I have that...Mr. Owens continued that it is due on December 21, 2010 so it will be next budget year. Mr. Coggins said and then no other payments will be owed until the balloon at the end. Mr. Owens stated you will have a yearly payment after that up until...so there's three payments I think if I'm not mistaken and then the balloon. That's what the thing...that I looked at today. Mr. Coggins responded fair enough.

Mayor Macon asked if there were any other questions. Mayor Pro Tem Efird said it sounds like you are on go. Mr. Coggins said thank you Ms. Efird.

Mayor Macon said okay so you need us to make a motion to add two budget items, a revenue side and an expenditure side and Mr. Owens added and then those documents that he just mentioned will be included in that. Mayor Macon said and you want to put what 50 grand. Mr. Owens reply was in the expenditure side.

**Councilman Wilcox made a motion to direct the town manager and the finance director to create two line items, one revenue and one expense \$50,000 for operational expenses for CBP3. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon addressed Mr. Coggins by saying sir what do you need us to do specifically. Mr. Coggins responded a, if you would, resolution if you could to adopt the various documents that I

just finished reading into the record. I'd be happy to repeat those if you wish.

Mayor Macon asked Ms. Prusa, do you need that and her reply was probably. Do you want to go over them one more time for the record? Mr. Coggins replied yes. For this evening the Bill of Sale for Personal Property, the Support Agreement, the Resolution of Town Council Supporting the Financing, the Option to Purchase, the Draft, the BB&T Proposal to the Town and the CBP3 for Financing, the Town Clerk's Certificate, the Town Attorney's Certificate, the Town Closing Certificate, the signing off on the Seller's Draft Closing Statement, the Assignment and Assumption of Agreement for the Right to Purchase, and the Resolution of the Town Granting the Request of CBP3 to Pay the Expenses for the closing and the handling and disbursement of funds that would normally go to CBP3. Mr. Owens interjected prior to doing this we need to make sure we have a public hearing. This is a public hearing so we need to open it for public hearing. Mayor Macon replied 10-4. You've got all of that Lynn and she replied yes and added and I will assign resolution numbers to...Mayor Macon said each item...Ms. Prusa said each resolution. Mayor Macon said thank you sir; any further questions.

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

Mayor Macon said anyone wishing to speak on this matter please step forward and state your name and address. There were no public comments.

**Mayor Pro Tem Efird made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Councilman Lewis said one question I have is basically at the end of the balloon payment, we have to refinance this so we are going to have to go through closing costs again in three years. It sounds like it is going to cost us a couple hundred thousand bucks to go through closing now. It's going to cost us a couple hundred thousand dollars when we close on this in three years. Mayor Macon answered hopefully not. Dawn Johnson, the finance director, answered it was my understanding that BB&T was also in agreement of potentially to letting us roll the loan over from them. We talked about that issue and they're wanting to do that. Councilman Lewis responded okay. Mr. Coggins added as an example in their good faith for instance we're paying off the lot on the loan and they waived the pre-payment penalty on that. Mr. Owens stated that they said they would consider holding the interest rate as well. Councilman Lewis said oh they would, okay.

Mr. Coggins said I neglected also to mention that based on what the town does tonight, CBP3 has to execute further documents and their Board of Directors is available for execution of those as well to show that it is working in compliance with the Support Agreement.

Mr. Owens said the other thing that we really haven't talked about either is the Management Contract that CBP3 is contemplating with Village Realty. He said Dan do you want to talk...Mayor Macon interjected can we do that after we do the resolutions. Mr. Owens responded yes sir.

**Mayor Macon made a motion to the resolutions as laid out by the town attorney and all the documents that he identified. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon addressed Councilman Wilcox and asked him if he wants to speak on the matter of...Councilman Wilcox said I can speak to it a little bit if you want. Mayor Macon told him to go ahead.

Councilman Wilcox said well we, in our capacity on the Board, Lonnie, myself, and the other members met earlier this evening with Bob Oakes, the owner of the company that's the management company, and Bruce, who has been the operator-manager on-site. They showed us certain financial information about what their income has been, what they shared with Arcadius, and we talked about personal property, and all the aspects of the Management Contract. There were a few requests made of them and I understand that those like raise the insurance liability to cover the Board and things of that nature that have been discussed and I think they're in agreement to that. Generally speaking our Board was in favor of the Management Contract with this group. Mr. Owens added we still have to finalize the Management Contract but I hope to get that finalized with Steve I guess and get to them the latest Monday morning I would say. They did meet with CBP3. Councilman Wilcox asked Bob or Bruce would either one of you all like to...one of them replied I will be here on Monday...Councilman Wilcox continued would like to say anything. You good? Mr. Owens said you traveled all this way Bob. There was laughter and Mayor Macon said he's a smart man. He continued by asking do you need us to do anything on that? Mr. Owens replied no sir. Mayor Macon asked is that it? Mr. Owens said that's all I have.

**Mayor Pro Tem Efird made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa  
Town Clerk

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