

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

December 9, 2008

The Town Council of the Town of Carolina Beach met in regular session on December 9, 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 Efird; 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

Mayor Macon led the invocation.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the pledge of allegiance.

CHANGES TO THE AGENDA

Councilman Gilbert made a motion to adopt the agenda with the proposed changes, as follows:

Item #6 – Town of Carolina Beach committee reports

It is my understanding that the ad-hoc Arts and Activities Committee will be asking you this evening to consider appointing an individual to fill a vacant seat. The attached application from Lynn Denne was submitted for your consideration.

Recommendation: Appoint Lynn Denne or direct town clerk to advertise the vacancy.

Item #8(e) – Request to Apply for 25% Match Grant for Hazard Mitigation Plan

Recommendation: Delete this item from the agenda.

Item #9 - Request for a conditional use permit for a planned united development located at 800 Canal Drive and 801 Carolina Beach Avenue North

Recommendation: Table to January 13, 2009 at 7:30 p.m. or soon thereafter.

Item #17 - Consider amending Section 3.9.2 of the Zoning Ordinance to allow for more than one story in accessory structures in residential zoning districts

Recommendation: Table to January 13, 2009 at 7:30 p.m. or soon thereafter.

Item #19 - Consider adopting a resolution to renew a lease with Chamber

Recommendation: Attached is the proposed lease agreement for your consideration.

Item #25 - Review request for proposals for parking management services and the possible award of a bid

Recommendation: Move Item #25 to Item #5(a). Also consider the attached agreement for parking management services with Lanier Parking Meter Services, Inc.

Add Item #31(a) to Agenda – Award of grant for Cape Fear Blvd. Enhancement

Recommendation: Adopt Resolution No. 08-944 authorizing local government execution of a public access grant contract.

Add #31(b) to Agenda – Consider sending several resolutions to state representatives and senator concerning various matters

This item to be presented by the town manager.

MOTION CARRIED UNANIMOUSLY.

INTRODUCE NEW EMPLOYEES

Chief Younginer introduced Steve Dillion, Police Officer I.

CAROLINA BEACH COMMITTEE REPORTS

Lynn Prusa said that the Arts and Activities Committee requested that Council consider appointing an individual to fill a vacant seat and submitted an application from Lynn Denne.

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

REVIEW RFP'S FOR TOWN PARKING MANAGEMENT SERVICES AND CONSIDER AWARDING A CONTRACT

Tim Owens said he is going to recommend to Council to hire Lanier Parking Solutions as our parking attendant contract agency. They will be giving a presentation tonight. He can arrange for the other vendors to make presentations if Council wishes. He reviewed a parking analysis. The town generates between \$270,000 and \$315,000 in parking revenue a year. Freeman Park generates between \$470,000 and \$580,000 with an average revenue of \$750,000 per year for the two programs. Central Parking was our parking attendant since 2002 but they did not send in an RFP. They did provide something today, past the deadline, which he will show to Council. Total payments for the contract to Central Parking for FY 07/08 was \$149,500. He reviewed the following

bids: Lanier Parking Solutions \$251,723; McLaurin Parking Company \$222,525; Park Rite \$185,625; Central Parking \$160,199; in-house with the Town of Carolina Beach \$218,689.92, and Standard Parking \$245,742. He recommended an in-depth discussion under Item No. 25 so a presentation could be made by Lanier Parking.

Scott Diggs, President of Lanier Parking, made a presentation. Kerry Loomis, Operations Manager, attended with him and is responsible for operations for all of southeastern North Carolina including Wilmington, Wrightsville, and Myrtle Beach. He reviewed company history which includes 1,300 employees, 350 locations in 42 cities and 7 municipal programs. The regional headquarters is in Wilmington. They manage about 130,000 parking spaces a day with every kind of pay parking environment. He feels the major difference with their company is customer service and good ambassadors. They have a tremendous amount of municipal experience and have been quoted as the fastest growing parking company in the country. He gave an assessment of the town's current program, said it is more reactive as opposed to proactive. One of the first things they would like to do is have a full operational discussion with staff and then come back to Council to discuss recommendations and put a program together. It does appear that revenues have been declining over the past few years. With regard to enforcement, one of their recommendations is to try to have more hours per day that are being enforced. Last year the average was 13.85 hours per day and they are thinking around the 19 hour range still in the same operating day but with shorter beats and shorter route times so their people can be on the street more. Citation collection is important which they spend a lot of time, energy and money to collect. Wrightsville Beach percentage of collection has been 78% for the past 4 years vs. 65% at Carolina Beach. He would like to suggest a year round operation and to have some hours on Saturday and Sunday. He reviewed revenues at Wrightsville Beach. He feels they can generate at least another \$40,000 a year at Carolina Beach with a cost of about \$25,000 to do it. They were awarded the contract with the City of Wilmington and increased the revenue by almost 20% on same store sales for the year. They are very particular about cash controls and ensuring the town receives the money. They would like to explore putting automation on the honor boxes such as a park by phone system and the digital pioneer pay station. In the winter months they would like to do cleaning/maintenance on the machines. They are full time consultants. The management fee contract gives flexibility to the program for changes. The fixed fee is the opposite with everything being operated within a flat fee which could be more than the actual cost. Figures for both types of contracts submitted were the same so there would be no downside to the town to have that kind of contract. They would get a base management fee of \$1,000 a month plus 10% of all the parking revenue collected. They send the town an invoice at the end of the month for expenses which were pre-approved. A manager, prior to the season, would be getting equipment ready, hiring people, getting staff and vehicles ready and really needs to be employed in February also. On the latter part of the season, November/December time period, they are working on taking all the citations issued and sending notices 2 and 3 to get people to pay before the end of the year. There is a lot of value in having the same manager year after year. If you let someone go for a couple of months, you will probably have to find someone new every year. They can also sell passes and decals. They also provide change service and handing out brochures/special event flyers.

PUBLIC DISCUSSION

Birdie Clark, 233 Florida Avenue, thanked the employees for their work in putting the lights and flags on the poles and appreciates how the lake has been kept up. She also noticed that the street sweeper is coming down the north end on a regular basis and feels it is helping to keep the sand out of the drains. She said that Mr. Ferguson has been very available regarding her CAMA issues and Planning staff has been very helpful. She thanked Councilman Gilbert for recusing himself from voting on an issue because of the appearance of a conflict at the last Council meeting. She did some investigating afterward and thought it was a pretty thin appearance but at the same time it was an issue that night that she thinks some city council people had some real involvement in or connections to that to her were even more of an appearance of a conflict and thought of other projects that have been voted on in the past 6 to 8 months and seemed interesting to her that one of the city council people ended up being the contractor for that project and still was able to vote on it. She appreciated Mr. Gilbert stepping down and having the integrity to do that and to comply with the recommendation but she is curious to know what the appearance of conflict is and what a real conflict is when things come up so she can understand why someone would have to be recused or not. She asked the Town Attorney for clarification on that and maybe put something on the website about conflict of interest and what really constitutes that. She has been at a lot of town/city/state functions with Councilman Gilbert and he always represents our town very well. She also appreciates the hard work of all the Council members.

Mayor Macon said he also thought it was very thin about Councilman Gilbert recusing himself but he requested it. He didn't see any reason why we can't put the law on the website with regard to the specific rule on that. They will make that happen.

ADOPT THE CONSENT AGENDA

Councilman Gilbert made a motion to approve the consent agenda, as follows, with the removal of Item #8(e):

Approval of the Minutes:

Special Meeting	May 2, 2008
Regular Meeting Recessed	July 11, 2008
Special Meeting	September 8, 2008
Special Meeting	October 17, 2008
Special Meeting	October 30, 2008
Special Meeting	November 6, 2008
Special Meeting	November 10, 2008
Regular Meeting	November 10, 2008
Special Meeting	November 14, 2008

Set a public hearing date for January 13, 2009 at 7:30 p.m., or soon thereafter, to seek direction for water/sewer impact fees for restaurants.

Set a public hearing date for January 13, 2009 at 7:30 p.m., or soon thereafter, to consider a request for zoning map amendment to rezone approximately 0.9 acres from R-3 to R-1, properties: 600, 602 and 606 Harper Avenue (PIN: 313010-36-0861-000, 313010-36-0981-000, and 313010-26-9869-000).

Set a public hearing date for January 13, 2009 at 7:30 p.m., or soon thereafter, to amend the town's vending ordinance to allow for an additional beach vendor.

MOTION CARRIED UNANIMOUSLY.

REQUEST TO TABLE - CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT LOCATED AT 800 CANAL DRIVE AND 801 CAROLINA BEACH AVENUE NORTH

Councilman Gilbert made a motion to table Items #9 and #17, as follows, to January 13, 2009.

Consider a request for a conditional use permit for a planned unit development located at 800 Canal Drive and 801 Carolina Beach Avenue North

Consider amending Section 3.9.2 of the Zoning Ordinance to allow for more than one story in accessory structures in residential zoning districts

MOTION CARRIED UNANIMOUSLY.

REQUEST FROM WHEEL FUN RENTALS TO EXTEND A CONTRACT TO RENT PADDLE BOATS AT THE CAROLINA BEACH LAKE

Tim Owens said this is a request to continue an operation that has been going on for over five years. He considers it more of a concession than anything but it could be considered vending and he would like to hear from the town attorney on what he considers it. They are requesting three years of operation at the lake and have agreed to provide insurance and operate the same way as they have for the past five years. The actual contract probably needs a little work with regard to being able to always provide water in the lake. Sometimes we don't always want to be able to do that due to flooding issues. Also needs to have some kind of provision put in for non-compliance or detrimental conduct or something to that effect that would automatically terminate the lease. He would also like for Council to consider some other kind of lease provision, an out provision, and give a certain amount of time. Mr. Hagestrom has some concern about that which he will tell

you about. He wants to plan his business and doesn't want to be sent somewhere else as far as the paddle boat industry goes.

Duke Hagestrom, Wheel Fun Rentals, pointed out the highlights of the proposed contract to begin January 1, 2009 and continue until December 31, 2011 with two consecutive three-year options to renew, payment of 12% of gross revenues generated to the park, \$2,000,000 liability insurance, and an operating schedule of 7 days per week, weather permitting, during peak season. Contractor and park will develop a plan for the off-season. The town has received an estimated \$25,000 in royalties over the years of operation. He and the town manager have discussed putting in a termination clause and he is comfortable with a non-performance, termination agreement but he is concerned about the contract being terminated at any given time which would be a disincentive to invest in additional product/maintenance or long-term marketing. If they are going to have a termination clause, he would ask that they do it at the end of each of the three year intervals.

Mayor Macon made a motion to direct staff and Duke Hagestrom to work out details of a contract and get it back to them for next month and check into the legalities of how it has to be handled, whether it has to be advertised and that type of thing and to adopt a resolution, if necessary, to advertise for next month.

Mr. Owens said he understands it is a three year lease and he will advertise it that way and as far as the terms of the contract, they can look at that contract and amend that contract.

Steve Coggins asked if they do or do not want a three year contract. Mayor Macon said he was fine with that. Mr. Coggins said as long as they have sufficient termination provisions for certain reasons.

Council agreed to a three year lease with a renewal option.

MOTION CARRIED UNANIMOUSLY.

CONSIDER A REQUEST TO CLOSE A 21.59' PORTION OF CAROLINA BEACH AVENUE SOUTH LOCATED IMMEDIATELY SOUTH OF THE MARRIOTT HOTEL

Steve Coggins recommended that the presentations on this be sworn.

Councilman Gilbert made a motion to Council to recuse him because of a perceived bias due to a retail transaction with his store. MOTION CARRIED UNANIMOUSLY.

Steve Coggins said that would leave four voting eligible Council members and the votes would be counted so accordingly. In the event of a tie, the petition would fail. The applicant has the burden of putting forth the evidence on the key criteria that are set forth on the street closing statute.

The following were sworn in: Ed Parvin, Greg Miller, William Wright, Fire Chief Jon Rorie, Charles Barnes, Terry Hamm, Donald Motsinger, Sue Bullock, and Birdie Clark.

Ed Parvin made presentation and said this is a petition for a road closure on Carolina Beach Avenue South (CBAS). He showed a survey of the lot that will obtain the 21' x 15' portion of right-of-way if it is closed tonight. It shows the lot in the bottom right-hand corner with an aerial showing the adjacent properties, the Marriott behind it, and they are looking to square off the property. This went to Planning and Zoning Commission last month. Some of the issues that we discussed at Planning and Zoning were the Marriott road closures that occurred before the Marriott was built. He showed the property prior. They obtained a 15' right-of-way by approximately 51' there is what they added on to their property during the Marriott closure which created that odd shaped lot for them after that closure occurred. There is a pedestrian easement in front of the Marriott that goes from the west side 15' and would run along the northern boundary of 101 CBAS and comes out on the boardwalk, which he showed. Planning and Zoning recommended closure of the 21.59' portion of CBAS. Commissioner Underwood seconded the motion and it passed unanimously. Staff recommends denial due to four reasons: (1) the limitations of pedestrian/emergency traffic access north of 101 CBAS which would limit the ability for people to come on and off of that area by closing another portion of the right-of-way; (2) the potential to build to property line for that piece of property would be available and it is also inconsistent with the remaining right-of-way along CBAS as none of the other properties are built out to that extent; (3) there are utilities running through the Marriott without formal easements and closing another portion would make it difficult to manage those utilities; and (4) we do not have a survey to date that would need to be provided to record the road closure. North Carolina General Statutes, when you are considering a road closure, it's a public hearing and the public speaking on how it's detrimental to the public interest or the property rights of any individuals and your decision, you are looking at two findings - that it is not contrary to the public interest and that no individual would be thereby deprived of reasonable means of ingress or egress.

MPT Wilcox asked to see the aerial photograph showing the entire street. He is curious to know about all the other properties that run along what appears to be inside that easement. He understands where theirs is, the little corner there, but if you were to draw a line from that little corner, where they are proposing to take that, all the way down, it appears there is parking and stairways and fences and that whole street only has a 15'. What is the status on all this? Is this all town property?

Mr. Parvin said it is all town property. In the memo on the first page it shows when those structures were built. There was a lot of discussion about that at the Technical Review Committee (TRC) and Planning and Zoning as far as what happened there, why were

they were allowed to be built in the right-of-way or their parking was in the right-of-way. Some of the people on that street mentioned that there was an agreement with the town that they could utilize that area for parking as long as no structures were built. We couldn't find any record of an agreement like that but obviously those structures were allowed to have those encroachments. But it is still open right-of-way. There is a fence and he thinks an HVAC unit or steps but mostly it is parking.

MPT Wilcox asked him what he considered an open right-of-way. If there are cars and vehicles parked there, how can it be an open right-of-way? Mr. Parvin said he would say it is not. It's open as far as it hasn't been closed as far as the process we are going through tonight. It is still a public right-of-way but it is being utilized for private purposes.

MPT Wilcox said he doesn't ask that because he begrudges these folks any of this parking or anything and maybe there is an agreement but it bears on his decision regarding this little corner over here because if you draw that line straight down there it is difficult to understand how that could be a usable area and he's not sure how long, if they leave it like that and other people are using it, at what point in time it becomes their property.

Tim Owens said he thinks that is a legal question the town attorney needs to address at some point. Whether we need to put those folks on notice that there are encroachments in the right-of-way and just stake that claim as our public right-of-way. He doesn't know how long some of those things have been in that right-of-way.

MPT Wilcox asked if there is also an easement that runs up on the south end of the Marriott that is supposed to run up between that building to the south of the Marriott? Mr. Coggins said they researched that and have not been able to find a document to that effect. Mayor Macon said that to his knowledge that has always been private property. Mr. Owens said the document that he has seen is coming through that old driveway that comes to the west of the pool, and that is his understanding. It comes in where the RV or bus is and goes towards ... Mr. Coggins apologized and said his comment was regarding another area. He was talking about an area approaching the boardwalk.

Councilman Johnson asked the town attorney regarding the applicant who is requesting this closure, exactly what does the applicant have to prove. Mr. Coggins said they need to meet the two criteria satisfying the Council with competent evidence on whether or not the closing of the street or alley would be contrary to public interest. Obviously their contention would be that it would not be contrary to the public interest and they would need to establish to the satisfaction of the Council that if there is any individual that owns property in the vicinity of the street or alley they would not be deprived of reasonable means of ingress or egress from their property.

William Wright, 265 Military Cutoff, firm of Shipman and Wright representing the applicants, provided photos showing the conditions of the property at issue with a plat overview of CBAS. He said the property is in a quasi-natural vegetative state with shells

and plants and all they want to do is square off this 15' x 21' section of the lot that they feel should have been transferred when they closed that portion in front of the Marriott. Marriott at that time was just concerned with putting the frontage of their lot and when they gave the additional 15' in front of our lot, they didn't come down and square it the whole way. Mr. Coggins is exactly right. We bear the burden of proving that this is not contrary to the public interest and that it is not going to change the ingress or egress of any of the adjacent property owners. As you can see by the survey that Mr. Reynolds provided, you still have the same 15' easement that is going to go in front of the Marriott and then run between the Marriott's property and our property down to the beach. The folks at Tidewinds and at Sea Bass will still have their ingress and egress. We don't see how this in any way shape or form harms the public. In general, what they want to do is take that little 15' x 21' section, close it in, they are not going to put any structure there but it will square off their lot so that they can, under color of title and under title, be able to do some beautification there, some landscaping, to make the frontage of the restaurant pretty and make that sidewalk that you see for that 15' easement more beautiful for the folks to pass by. Again, we don't believe it is contrary to the public interest. It is a piece of land that is about the same size as right here, it is going to square off that lot, you will still have the same 15' easement down there. If you look to the south and he thinks the pictures clearly identify and show that the properties to the south go out that far if not further. There is a telephone pole right there. We don't intend to mess with the utilities. Again, this is just going to be for landscaping and beautification. If there was going to be anything done to the utilities, as they discussed before with Ed, they would bear those costs but, as of right now, there are no plans and do not have any plans in the future to do any building there. It is just going to be for the beautification of that little square of the property.

Councilman Johnson asked when that lot was purchased by the applicant. Mr. Wright said in 2005.

MPT Wilcox asked if it is paved. You said it is natural in seashells. Is this whole 15' x 21', is any of it paved? Mr. Wright said no. If you look where the telephone pole is, that section, pavement is elsewhere to the south. He showed a better picture of the area.

Mr. Owens said he wanted to clarify one thing, we're talking about a 15' easement, as best as he can tell there is an 8' easement that basically goes in front of the Marriott indoor pool area, goes east to the ocean and then the rest is a 10' easement that extends over the boardwalk so there is only an 8' easement there. He thinks Mr. Parvin said 15'. He referred Council to the agenda packet with a copy of the easement under Attachment #5.

Mr. Coggins made a clarification for the benefit of Council and said this is a procedure under North Carolina statute for a street closing in which, as Mr. Wright has correctly pointed out, there are criteria to be met. There is no provision within the street closing statute of the ability of the town to impose conditions on the use of the property that would be closed. The town does have the right to retain certain rights within the street within that statute but there is not a reciprocal right to impose conditions on the applicant.

While he appreciates the applicant's representation that there is no intention for there to be a structure on this particular part of the street to be closed, he wants to make clear that Council is not empowered by the statute to impose such a condition.

MPT Wilcox said he has two questions. He understands that, does that also ring true with conditions on a conditional use permit if there is zoning in place, we can't have zoning in a conditional use permit say, for instance, that they had to have a certain setback in order to have the conditional use permit approved. We can't be contrary to the existing zoning, he assumes. Mr. Coggins said for instance like in a planned unit development or something like that, that's possible but he thinks his thinking is basically correct. But there are situations in conditional use permits where you can in fact impose conditions. What he is trying to do is to avoid Council from being confused by being used to doing such a thing when there is no provision for that in this particular procedure.

MPT Wilcox said he understands the additional conditions, as he understands them in different publications, you can be imposed but, generally speaking, they are not supposed to be inconsistent with the spirit of the ordinance so if you have a setback that already exists, you wouldn't impose a different setback just under the conditions of the conditional use permit. He just wanted to verify that but is it possible to convey a piece of land to someone and have them provide the town with an easement that would prevent them from building on it? Mr. Owens said the general statutes talk about utility easements. If we agree to deed something over and they agree to deed it back to us or them to put an easement on it, that is really their prerogative. Once they take title to it and they can place an easement on it. Mr. Coggins said the right the town has is to reserve utility easements if it so desires. Mr. Owens said he didn't think they could make that a condition, he thinks that is what Steve was saying that if we give this to you, you must place a no build, restrictive covenant on it.

MPT Wilcox asked aren't pieces of property transferred all the time with easements recorded? Mr. Coggins said yes but what is going on here is not a transfer of property in that sense. What is going on is the closure of a public street with a specific state statute on it.

Mr. Wright said they are still going to be bound by your setback ordinances where the lot line is so they couldn't build up to the edge of that lot anyway.

MPT Wilcox said it is in the CBD and you can build right to the edge.

Mr. Wright said we have the landscaping buffer there that we're going to put in.

MPT Wilcox asked what is the required landscaping buffer? Staff said 5 feet.

Mr. Owens asked staff if Council can waive that buffer requirement under certain circumstances?

Mr. Ferguson said that it is a buffer yard E for the CBD and the buffer yard E is for a sidewalk and you can put planters and things like that out there. There is no prescribed 5' minimum buffer strip or something like that. It is very optional in the sense it gives you a lot of flexibility for things such as sidewalks, trees, planters, that kind of thing.

MPT Wilcox said this is a question for the Fire Chief, isn't there some kind of fire restriction with the size of the Marriott being 8' away? Wouldn't there be some kind of setback imposed there? Building code, fire code?

Fire Chief Rorie was sworn in. He stated for the record that he knew this came through TRC and in terms of the specific codes, he can't give Council all of those in detail but he does know there are some requirements in terms of sprinkling requirements that relationship to the Marriott. Closing this little 21.5' section he doesn't think is a major impact on us but because of access, that is where the sprinklers and the occupancy come in and that is how they address it as far as the density.

MPT Wilcox said what he was speaking more to was, in building some other projects, we have to be a certain distance away from a neighboring project, because of the size of the project, and he is certainly a lot more than 8' and this is only 8' away so he is asking that question with regard to where those building codes that deal with fire or fire codes that prevent someone from building right up to this property line 8' away from a building the size of the Marriott.

Fire Chief Rorie said, once again, he does not have that specifically but he does know there are some limitations what the height of it is and that is where you start to get into the separation and that comes back into the sprinklers. We are running into the same issue with the Hilton. Specifically he can't tell him but there are some provisions there.

Councilwoman Efird made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

Charles Barnes, 102 Carolina Beach Avenue South, said he lives adjacent to the property in question. Tonight he learned something new that this property was not going to be built on, it was going to be beautified so, why are we here? The property owners down the street that were brought up a while ago, that have had the same thing that they have encroached on, they've used for parking for the past 40 years with verbal agreement that was no problem. They've used it. There has been no problem for 30 or 35 years. Now these guys are going to come in and build a new property and they want this little section with a utility pole on it, utilities under it, whatever - we're not going to build on it, we're going to beautify. Okay, but the legality came up that if you give it to them they can do anything they want to which is rhetoric. Why can't they use it like everyone else on that street has for the past 20 to 30 years, no problem. Plant your bushes, enjoy it, put your garbage cans there and when it gets in the way, move it. You don't have to give them anything and they will get the same thing out of it. Mr. Barnes said that he lives across the street. If you are going to close that street and give them some property, legally, if you go back to street closing, he should get something out of it but he's not. If truly that

is what they are going to use it for, they don't need it. They don't need the land deeded to them which they can turn around in six months and do anything they want to with it and you don't have a say so. He doesn't have a say so. Think about what we are doing before we do it.

Terry Hamm, 111 Virginia Avenue, said he doesn't have a specific ax to grind with this process but he is concerned about the town giving up town assets. He is not here just to say he's against it but he doesn't quite understand in this time in the economy why we are willing to give up things that belong to the town and belong to the taxpayers. Mr. Wilcox made a good statement a while ago about the lake. We don't know what the future use of the lake is going to be 3 to 5 years from now. Well, the town may not need this piece of property today but who is to say that in 3 to 5 years there might not be a use for it. Once you give it away, it is gone. There is a little history here about giving away town land - the fights that he has been here for the last 4 years over Virginia Avenue all started because in June of 1982 the town deemed that they did not need the land at the end of Maryland extension and gave that land to the adjacent property owner, Roberta Hennis. Mrs. Hennis did not combine that property with her other property like she should have, turned around and sold it to Mr. Winger which became his access that opened the back of Virginia Avenue which poured this can of worms out that all started because of this and, ironically, the town ended up getting sued because they gave some land away to somebody. It turned out that they got sued over that access process. So he just doesn't think it is a good idea to give away town land. He doesn't know the specifics of this project. He just, in general, thinks the town ought to hold on to property. Like this gentleman just said, if all they want to do is just beautify, let them use the property but don't give up the rights to it. Who knows what you are going to need it for in 5 or 10 years. Once the master plan gets going, the boardwalk beautification which a lot of good progress has been made and he commends them on the things that are going on down there, but how do you know that you are not going to need that sometime later and once it is gone, it's gone.

Donald Motsinger, 107 Carolina Beach Avenue South, he is one of those who has got some encroachments up there. He is not against what they are trying to do, he just doesn't like the town giving away property. Property is hard to come by. You just recently paid a good deal of money to buy a little bit of it. He looked up on the computer trying to find out where you could give away half a street and couldn't find it.

Mr. Coggins said that was a matter that was researched and there is legal appellate authority that is not specified within the statute but appellate authority that stands for the proposition that, if the General Assembly has conferred a power on a municipality to close all of a particular street, it certainly encompasses within the power to give away or rather to close part of a street and that is case law which is binding. It was done before by virtue in that particular case, the appellate case he is talking about.

Mr. Motsinger said if you are going to give it away, he likes the idea of giving it all away down south which he doesn't think is a good idea. You asked a couple of questions about the 8' to the south side of the Marriott, that has never existed to his knowledge. That was

a parking lot at one time. The encroachment you see, to his knowledge, each encroachment that exists there has got permission of the city whenever it was done. Our cottage was rebuilt in 1954 and the town said they could park there but couldn't build a permanent structure. They couldn't build a deck, steps, you could bring a fence out and the reason being, if you go down that line where you see the parking and so forth, there is a main sewer line that goes down there and you couldn't build on top of that because that would disrupt that. On the far side where the boardwalk condos are, they park out there and they got an agreement with the town to do that when they were building it. He believes they met code at that time without it but they wanted the extra parking spaces. He came up here and got permission to put the fence up before he put those up and the reason he did that was because they had some people who couldn't drive in the road. They seemed to wander a little bit everywhere. He does wonder how they are going to close this though because does this not fall under the, with the power pole sitting there and the utilities. The utilities run all the way up to that he knows. He doesn't know how you get by with that.

MPT Wilcox asked who he talked to for permission to put the fence up. Mr. Motsinger said Harry Oakes. When he put the one up on the vacant lot, and when he put the one on the far side, Jane Daughtridge. Mr. Owens said he does not believe they have the authority to allow anything like that. It sets a bad precedence if nothing else. If it was done, it was done in error. It's there now but he doesn't think they had the ability to do that.

MPT Wilcox said he was curious about the history. If staff couldn't find any agreements, decks and stairways are structures but, obviously people have been told they could put stuff there.

Mr. Motsinger said he thinks there is a difference between a structure and a permanent structure and I guess you could call a step a permanent structure because they are used all the time. MPT Wilcox said that decks and steps are considered permanent structures.

Mayor Macon said he thinks the key here is, yes, it's been okay for 30+ years but that method is really not a good idea so we really need to find a way to make that situation work for everyone and it be in writing so we can lay our hands on it.

Greg Miller, 102 Carolina Beach Avenue South, said he is speaking on behalf of the Tidewinds HOA. He has attended the Planning and Zoning meetings about this and he also, like Mr. Motsinger, raised this at the Planning and Zoning meeting that he didn't see anything in the general statute that referred to the closing of ½ of a street. He appreciates the explanation on that. The resolution also states that the majority of property owners signed an application to close ½ of the street on Carolina Beach Avenue South. Abutting property owners, Tidewinds, has not signed that application and we are an adjacent property owner to the right-of-way of that street. One thing he thinks the general statute does say that protecting any property owners rights in this and one question he does have is if that 15' of that right-of-way is deeded to Paradise Island and the other 15' is not deeded to Tidewinds, then, if at a future time the remaining 15' should be closed would

that mean that Tidewinds would only get 7.5' rather than 15' that we would be entitled to now? If that would be the case, then he would view that as injuring our property rights. That would be a question he would like for them to think about. The other thing, at the Planning and Zoning meetings, he thinks it was stated that the use of that parcel, the intent was to place an elevator shaft on the parcel. He is positive that was what was stated and now it says beautification and, back to your comment, once it's deeded anything can be done. He supposes that is true. He is just stating what he heard in the Planning and Zoning meetings and it is kind of a surprise. He does have some concern with, doesn't think it is in relation to the closing but in some ways it is because he thinks in the last council meeting we talked about deliveries, Carolina Beach Avenue South to the restaurant, the owners of Tidewinds are concerned about that, about congestion or safety during busy times, exactly what you guys said, it's a 15' wide street and is pretty doggone crowded in the summertime. We are concerned about being able to get, if there is additional traffic, ingress or egress to our parking places. Those parking places are deeded to us, they are not town property, and we are concerned about being able to get in and out of our parking places.

MPT Wilcox asked if he sees that changing based on this piece of property?

Mr. Motsinger said he is concerned about the deliveries. The closing of the property, he is just bringing that up because it was discussed at the same time the closing of the property was discussed at the last council meeting was deliveries going up and down Carolina Beach Avenue South. That is a concern of theirs. He doesn't think that has anything to do with the closing of the property. He is just making a point. They are concerned about that and he does know he thinks Council for the applicant stated that there would only be two deliveries a week and they would be made before 11:00 a.m. and there would be a delivery plan submitted and a question he would like to ask is, if there is a delivery plan, if that is allowed, would that delivery plan be made public knowledge? Would it be of access to the citizens of Carolina Beach?

MPT Wilcox said it would be part of the conditional use permit.

Mr. Ferguson said that would be correct. It is a public document and they would be more than happy to furnish you a copy when the applicant provides staff one, when he gets his building permit to start construction.

Mr. Motsinger said he would like to be able to present that to the owners of Tidewinds so we could make arrangements to tell some rental units so they could expect deliveries and so forth.

Sue Bullock, representing the Pruitt family who own the Putt Putt and she is here as information gathering only, she thinks, because it is her understanding from her client that they were noticed that this hearing was taking place and is here gathering information. As you know, they are involved in another street closing issue on the north side of the Marriott where they have objected to that street closing. As it is relevant to

that case, they are here gathering that information. They take no position on this particular situation.

Birdie Clark, 233 Florida Avenue, said she echoes Mr. Hamm's concerns about another giving away of public property, valuable no matter how it is. You don't know the value of it in the future. She thinks this is a slippery slope they are on. We have been doing this a lot and it has become a slippery principle and doesn't feel this should be the way to do stuff. If we are only going to plant trees and stuff on there, why do we need an attorney, to protect this little piece of property if that is all they are going to do with it. She is suspicious. Another point somewhat related is the mess we've got down there with all the encroachments is a perfect example of when you use conditional use permits as candy instead of medicine to our planning. We have to look at the long term of that. If you have a land use plan, you have ordinances, why is everything done by conditional use permit?

MPT Wilcox asked if the encroachments there have something to do with the conditional use permit?

Ms. Clark said she is assuming that when you have hodgepodge things going on that, maybe she is making a false assumption, but that conditional use permits were the thing that allowed those things to go on way back when and that could be way out of line.

MPT Wilcox said he doesn't think those encroachments are a result of conditional use permits and, if they are, maybe somebody could address that.

Ms. Clark said she would like to see us get away from that kind of stuff. Basically she is against it in principle, it is not a good thing to do and she is suspicious of turning over property.

Mr. Wright said the reason they are making this application is because they want to comply with the letter of the law. They don't want to just beautify a piece of property that they don't own and that is what they are trying to rectify here. This building is at the maximum square footage. Initially there was some thought about there being an elevator at that point but they can't go beyond that. They are not going to go back and change their building plan. All they want to be able to do is legally beautify the project and put some landscaping there and that is the whole basis for this application for this small parcel.

Mayor Macon asked if this is the conclusion of all the evidence to be presented. The applicant stated yes.

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

Steve Coggins stated that the statute reads if it appears to the satisfaction of the Council after the hearing that closing the street or alley is not contrary to the public interest and

that no individual owning property in the vicinity of the street or alley or in the subdivision of which it is located would be thereby deprived of reasonable means of ingress or egress to it's property, the Council may adopt an order closing the street. The burden of proof is on the applicant so that it would appear to your satisfaction that the closing of the street would not be contrary to the public interest, it would be the burden on the applicant to prove to your satisfaction, by competent evidence, that no property owner would be deprived of reasonable means of ingress and egress to the property. If the Council is satisfied on those, it may adopt an order closing the street.

MPT Wilcox said he still had some questions he is not clear on. That property is not real property, it's a right-of-way and essentially has no value from a legal perspective, correct? Can the town use that property to build something else on it?

Mr. Coggins said it is a right-of-way and there are procedures by which municipalities can effect other types of uses on a right-of-way besides simply allowing vehicles to go back and forth and to park. You can place bike paths, landscape centerpieces, rotaries, etc.

MPT Wilcox asked about the utilities, if there are utilities going through there, if that right-of-way were conveyed, what is the town's status on the utility pole.

Mr. Coggins said in the absence of retaining an easement, whether there is a utility pole there or not, you would not have the right to that. The statute makes it clear that the city may reserve it's right to an interest in any utility improvement. It may retain utility easements in the cases of streets that are withdrawn.

MPT Wilcox said so the town can retain that easement for utilities which would prevent it from being built on. Mr. Coggins agreed.

Mr. Owens said, to his knowledge, he doesn't have a survey and that is one of the things we need, Operations staff has looked at it and they don't believe there are any utilities in that section. They do know there is probably a power pole that is probably on that property line. He thinks that Progress Energy would probably tell you that you have to move it and charge you to do so.

MPT Wilcox said there is a power pole in that section so the town wouldn't maintain a utility easement through there?

Mr. Owens said he did not confer with Progress Energy.

MPT Wilcox stated that the status on that whole street, it concerns him looking at everything down there, those people he assumes are maintaining the fence, parking areas and those individual property owners are maintaining that, how long do they maintain that before it becomes a legal question of who it belongs to? They are already dealing with this on some other properties.

Mr. Coggins asked if he was speaking with respect to the encroachments in that.

MPT Wilcox said yes. How long can they use and maintain before they can claim it under adverse possession?

Mr. Coggins said under color of title, 7 years, without color of title about 20 years and in some cases it is even higher but there are also other statutes that talk about dealing with encroachments and prohibitions on right-of-ways that may trump all that and that is not something he has researched specifically in this case.

Councilman Johnson said that the applicant purchased this lot back in 2005 and they knew this section of property existed the way it does today. He does not see any justification for the town to close this portion when we, as a Council or Councils after us, who knows what the future will bring and what the needs will be if some of these existing homes and condos that are in the right-of-way or encroaching by their steps and so forth into the right-of-way in the future what it may bring if some of these undersell and these items are torn down or this property is purchased by the town for part of the master plan development. There are too many question marks here.

Councilman Johnson made a motion not to adopt the proposed Ordinance No. 08-767 for the closure of Carolina Beach Avenue South.

Mr. Coggins said, for clarification, but he thinks the appropriate motion is whether or not to approve the petition. Technically what is before you is a request by the Council to approve the petition to close the street.

Mr. Owens said it is an order to close so you would either adopt or deny this order to close.

Mr. Coggins said you may do that and that is true but it is in response to a specific petition to close, a petition for you to order it's closing.

Councilman Johnson amended his motion to not approve the petition to close the 15' x 21.59' portion of Carolina Beach Avenue South.

MPT Wilcox asked Mr. Parvin about one of the conditions is it won't deprive anyone any reasonable means of ingress and egress and asked to see the photo showing what ingress and egress it would prevent. He is curious in that he made the same presentation to Planning and Zoning and they voted for approval unanimously and they were dealing with the same consideration. He is having a hard time trying to figure out whose ingress and egress squaring off this property would damage. It was one of staff's recommendations so he is curious to know what staff's reason was. Mr. Parvin said the easement is 8' so it will not impact the traffic coming off from where the easement is now but the ability for the people to come on and off, it could be more of a bottleneck there without having that additional. It's 8' but you do have 30' of right-of-way there so it is going to limit the area where people can walk to that 15' and, of course, the easement

is actually 8'. MPT Wilcox said ingress/egress is based on the limiting factor, the narrowest space which is 8' so you are not narrowing that 8' to any greater degree. Mr. Parvin said of the easement itself.

MPT Wilcox said that is not what it says. It says if you convey the right-of-way that you are not limiting ingress/egress. If you are not limiting the existing ingress/egress, which is 8 feet, he is trying to figure out why it is two different issues, what it is going to limit. Mr. Parvin said he doesn't think it is specifically talking about the easement but more about the right-of-way. The easement starts after the right-of-way. MPT Wilcox said it is talking about limiting ingress/egress to other properties. It is not talking about the right-of-way. One of the conditions for conveying that property is that it doesn't limit ingress/egress to other properties. The access to those other properties is currently an 8' easement so it is not changing that 8' easement so he is trying to figure out if there is a different reason why staff felt it was limiting ingress/egress and why Planning and Zoning didn't.

Mr. Owens said his biggest concerns were mainly that you could build up to that right-of-way and he does believe you are limiting some access there. At this point if you were to have an emergency and there was something at the pool, you could more easily pull up down that 8' sidewalk. A building there, to him, built upon that property line, which it can be done, creates a lot of different issues.

Mr. Coggins said the point that the town manager just made he feels goes to whether or not this is in the public interest. The ingress/egress language is more precise. The inquiry is whether or not an individual owning property in the vicinity of the street would thereby be deprived of reasonable means of ingress/egress to his property. MPT Wilcox said that is correct and he does not see a problem there. It is not limiting ingress/egress to anybody's property. Mr. Coggins said the point he believes the town manager is making is a separate and distinct point under the public interest. MPT Wilcox said he understands but it concerns him that a lot of the folks who got up and spoke tonight are worried about traffic down that street and worried about closing the public right-of-way but not worried about taking up half of the street for existing purposes. If that is such an issue, then all that property needs to be pulled back and cleaned off and all these non-conformities need to be corrected. It appears to be a double standard here. He is also concerned about the fact if these property owners continue to take care of that property of adverse possession.

Mr. Coggins said it is certainly under the purview of Council to ask staff to investigate that. Mayor Macon said he thinks they have already been charged with that.

Mr. Owens said to the town attorney that he has no idea when those encroachments were placed there and what the agreement was. His guess is that they were probably when Harry Oakes or Jane Daughtridg agreed to let people rebuild things, possibly, or maintain them. He doesn't know that they allowed them to put new stuff in there. Mr. Coggins said he has no idea if they are encroachments, if they just did it, he doesn't know if that is a conditional use permit or by way of variance. He has not been told.

Mr. Owens said it is his opinion that the town should probably put them on notice that they are in the right-of-way and that at such times that they can remove those or relocate their stairs or HVAC units that they should do so.

MPT Wilcox said he is struggling with one problem. He doesn't have a problem with them squaring off this lot. He doesn't want it to be built on out to the property line and he asks the question and is not sure he is clear on the answer, is it possible to the town to maintain an easement through there to prevent someone to build on it? Mr. Coggins said no. The only thing that the town has the power to do under this statute is to retain a utility easement. You cannot build on the easement but we are only talking about existing utilities and that is a separate public statute that we are talking about and a separate notice and intent to reserve an easement provision which he believes is in subsection C or D in that particular statute.

MOTION DENIED 1-3 WITH MAYOR MACON, MPT WILCOX AND COUNCILWOMAN EFIRD VOTING NO.

MPT Wilcox said he would like to see an overall resolution. There is an inequity to what is being asked for here. They are asking to square off a piece of property, which seems to make sense, it's a dogleg piece of property but the folks who are asking them not to do it are using town property anyway. He does not find an equity in that. If we are going to play by a sense of fairness here, he agrees with Mr. Mottsinger in that we ought to come back and look at some relief along that strip, if that is what those property owners need and it ought to apply to everyone or, if they are going to continue to use it as a non-conformity, then he would have less of a problem conveying this piece of right-of-way because of the fact that it does square off the lot. No one has been bringing those proposals forward so we are dealing here with what is in front of us tonight.

MPT Wilcox made a motion to approve the request for the petition to close the 15' x 21.59' portion of Carolina Beach Avenue South (*Exhibit 1*). He would suggest that those property owners that have been using those non-conformities for a long time to come back to Council with some type of proposal/resolution. **MOTION CARRIED 3-1 WITH COUNCILMAN JOHNSON VOTING NO.**

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

Mayor Macon called the meeting back to order. He recognized Donna Moffit from the Aquarium. He also recognized the planning staff for their good work as well as the rest of the town's staff.

CONSIDER AMENDING SECTION 14.21 OF THE ZONING ORDINANCE TO ELIMINATE THE REQUIRED ANNUAL REVIEW OF CONDITIONAL USE PERMITS

Jeremy Hardison made presentation. He stated that staff is requesting Council to delete the Article 14 Section 21 of the town's Zoning Ordinance to conduct annual renewal of Conditional Use Permits (CUP). At the October Council meeting, it was mentioned that the planning department is required by Section 14.21 of the town ordinance to conduct annual inspections of CUP's and to be charging a fee for these inspections. Section 14.21 was added in 2002 to the Zoning Ordinance which states that CUPs are subject to annual review and verification of compliance with stated conditions. Staff will perform an annual review of CUPs and will provide written findings of compliance to verify automatic renewal of the permit. Current investigation procedures of CUPs has been complaint or staff driven which is consistent of how they do current ordinance violations. In 2002 when this item was brought before Council, the Planning Director stated that there would be a nominal fee charged for this review but the fee is not stated in the budget or ordinance. If Town Council recommends in keeping this ordinance should a fee be charged for this review and, if so, how much? Staff recommends deleting the annual renewal of permit from the Zoning Ordinance for the following reasons: (1) There have been 57 CUPs issued since 2002 that are currently open where the business is still open or the project has a certificate of occupancy; this is not the best use of staff's time. (2) Planning has a permit voidance process in place if staff finds that the conditions of a CUP are not being fulfilled in Section 14.11 Permit Voidance. (3) The town's fee schedule does not include a specific line item for performing annual inspections of CUPs. There is a \$50 charge for zoning inspections that is charged when someone is applying for a zoning permit but that is charged when you are applying for a building or zoning permit. (4) This requirement can be perceived as a governmental intrusion into the day to day operations of a lawful and abiding owner of a CUP. The 2007 Land Use Plan does not mention an annual renewal of CUP permit and the proposed amendment is in general conformity with the Land Use Plan. Planning and Zoning heard this item at their November 13, 2008 scheduled meeting and the motion was passed unanimously. Staff is recommending deletion of Sec. 14.21 Annual renewal of permit, both paragraphs.

Councilman Gilbert said currently they have a reactive process and if there is a complaint, which might include a CUP, then staff reacts to it but they do not feel it is a good application of time for staff. Mr. Hardison agreed. He said they have a situation with Harbor Point that has a CUP that by all indications has changed ownership, no one has reviewed or held them to the CUP and now they have a challenge with their parking. Who would be liable with not maintaining that permit? So now we are reacting to that and they have come to us and said they have a problem. What do we do with respect to holding them to that CUP since there was probably a developer who applied for it and now it has been conveyed. Now we are reacting and we don't even have a copy of that CUP because, through time, it has walked off.

Mr. Owens said that Harbor Point is a difficult example. There are a lot of layers to that one. If there is a CUP that someone is in violation of and someone brings it to our attention then it is up to us to enforce that. As far as liability goes, the attorney will have to talk to that but we are charged with making sure that they abide by the CUP - whether you revoke that CUP at a later date or whether we work with them to apply for an amendment to their CUP or otherwise.

Councilman Gilbert said if we don't maintain the CUPs, because he knows there is a whole level of documentation that is lost in the town through flooding, damage, etc., it is gone. So if we are not maintaining those documents, then time will probably dictate where they end up. If we are not going to have a custodian of those documents, what are we doing?

Mr. Owens said they used to record them but he doesn't believe they do that anymore.

Gary Ferguson said we are going to maintain our documents. He thinks Harbor Point is a very unique situation that they cannot even find the CUP for but, by and large, he thinks they do maintain the CUPs files in their office now. Historically there has been flooding and loss of documents but he thinks there has been a concerted effort on staff's part to maintain it. Obviously the permit holder, whether it has changed hands or not, is responsible for the CUP be it a HOA or individual or restaurant owner, etc.

Councilman Gilbert says he understands what he is saying but Harbor Point hasn't been there that long and if we had a document custodian and it seems like you have been doing a review, maybe it's not annual, but at least you know those CUPs are there. Maybe it is a bad example but one that has surfaced more recently. He thinks he understands the spirit of what they are doing here.

MPT Wilcox said it is not a good example for annual inspection because that is a good example for the fact that the CUP is not enforced initially. Before they got their CUP they should have had the parking and everything else in place that was in place. That would have had to be enforced at the time they got their final inspections or occupancy, whenever the town released that land. The other issue is what do you do for these places like restaurants and stuff that have to have a certain amount of seating and he thinks that is more what the annual inspections go to. He doesn't think you can go back to all the old CUPs where the inspector may not have enforced the terms of the CUP. It is two different issues and he just wanted to point out the distinction there.

Mr. Owens said he thinks it is good. He and staff probably need to talk about how we can better preserve those documents, whether it be recording or creating a book of all the CUPs that have ever been approved or rezonings or what have you. We probably need to do a little bit better job of having it all in one place.

Councilman Johnson said the town, to his knowledge, there is no record of the town ever voiding a CUP, is that not correct? No one knew of any. The problem he has with doing

away with this and not requiring the annual review, just like Councilman Gilbert was saying, the possibilities of someone adding something and, then after the fact, somebody one day wonders in and says that wasn't a part of the original CUP. What he has seen of past history of this town is the town will not go in there and say they have to take that out. They have never done that. Once it is done, it's done.

MPT Wilcox asked how many of the existing 57 CUPs do we have documentation on? Mr. Hardison said we have documentation on all 57. Since 2002 our record keeping has been up to date.

Mr. Owens said there is a plat of Harbor Point that was signed off on as a CO that he thinks mimics what is in there today. Mr. Ferguson said he could be mistaken but he thinks Harbor Point was 1996 when the CUP was approved. Construction started in 2000.

MPT Wilcox said the enforcement of that would have been afterwards that but we don't have the documentation. He guesses the problem here is that we are not doing it anyway and everything we are doing is complaint driven just like our code enforcement unless somebody happens to see something. Staff agreed. So in order to keep this we would really need to put something in the ordinance that says this is what needs to be done, here is how much we charge - you're saying we're missing the rest of the elements. Staff said yes, if Council wishes to proceed with this ordinance.

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

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

Mayor Macon said that when this was proposed a few years back he voted against it because staff doesn't have time to do it, secondly there was a fee that was proposed so some of these condominium projects that there are no changes but you are going to charge that condominium \$50 - \$100 or whatever the fee would have been defined as to do virtually nothing. You're going to actually charge a fee for something that somebody already working 40 hours a week to be doing a job anyway so he didn't understand the fee thing anyway because you guys are already working, if that's just something you're working on is checking CUP's and that is just something you're doing, he doesn't think there should be a fee associated with it. So he was against it on those principles. The other thing is that staff doesn't have the time to do. We pass the ordinances sometimes, sunset clauses and this and that of things that get forgotten because staff changes and elected officials come and go and the next thing you know you have all these ordinances on the books that are not being enforced which he thinks is worse than anything else. For him, not only does staff not have time to do it and it has absolutely nothing to do with record keeping, that is just something that should be a given, it's just a waste of staff time. He can say for a fact that the who staff happened to be in a local restaurant because he got the phone call from the restaurant owner complaining to him that he was being

told that he had to take chairs out of something that he had done. So, it does get enforced and they do ask people to fix whatever they have transgressed on.

MPT Wilcox said he thinks he has made the point that there are two different kinds of CUP's. There are the CUP's like for a condo or stuff that will probably never change and there are CUP's for a restaurant that can change. If we were going to have any inspection, we might want to define what gets an annual inspection. He agrees that staff does not have the time and it's not being done and hasn't been done for 6 years.

Councilman Gilbert asked about the liability end. Harbor Point may be a unique situation but it does reflect back on accountability and he thinks restaurants are probably a good example. A CUP is a use that is not normally allowed in that area so that is why the special conditions are there. If we are not going to have any liability and somebody disregards a CUP and puts a grease pit where it's not supposed to be and there is a problem. He doesn't know how you administrate that stuff but with that many permits, staff wouldn't bring it if they didn't need it.

Councilman Johnson asked the Town Attorney if we don't have annual reviews of the CUP's and somebody does do something they're not supposed to and it harms an abutting property owner, is the town liable since we did not enforce the CUP? Mr. Coggins said no.

Mr. Owens said that what they have in their packet is not quite right, 08-768 should actually, if you look at the next page, page 5, there's an Appendix 2, you're going to be deleting that whole Section 14.21. Annual renewal of permit, both paragraphs out of 08-768.

Mayor Macon made a motion to adopt proposed Ordinance No. 08-768 (Exhibit 2) which includes all of Section 14.21. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE ZONING ORDINANCE TO ADDRESS OUTDOOR ENTERTAINMENT AT EATING AND DRINKING ESTABLISHMENTS

Ed Parvin made presentation. He said this is an amendment to allow outdoor entertainment area for eating and drinking establishments. This is a change to the eating and drinking establishment ordinance adopted a couple of months ago. There were some concerns when staff brought up the verbiage under the current ordinance. One of the conditions for circuit breakers for making it a CUP was if there was outside amplified music that there could be some outside unamplified music that could be just as onerous to the neighbors as amplified music. The idea was to replace that with outdoor entertainment. Outdoor entertainment being exterior space dedicated to accessory entertainment uses to include dance floors, stages, live performances, disc jockey areas, and/or any other similar on-site amusement activities. So, essentially when we have a site plan, we will review the area and if they have an area allocated to an outdoor entertainment use for an eating and drinking establishment, that will spark a CUP vs.

proposing outside, amplified music. That is essentially the change. One thing they did present to Planning and Zoning that they opted not to go with this situation but he thought he would bring it up for Council's review as well - the purpose of this amendment is obviously when there is a CUP for an eating and drinking establishment and may have an impact on the neighbors and it comes before Council, if we don't believe there is an impact or there is not outdoor entertainment, normally an eating and drinking establishment will be permitted by right. In the CBD it may be in character with the area with outside entertainment so that is where this language came from. If it was within 100' of the CBD, at least to the 100' border around it, it would still be permitted by right. That was an option we presented to Planning and Zoning and they opted not to utilize this but staff put it in there for their consideration as well.

Councilman Gilbert asked whether an eating and drinking establishment that has an indoor entertainment area would be required to get a CUP.

Mr. Parvin said there is another provision in eating and drinking establishments that addresses that. He believes you have to have more than 15% dedicated to an entertainment area. If more than 15% is dedicated to the entertainment area, then it sparks a CUP.

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

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

Councilman Johnson made a motion to adopt proposed Ordinance No. 08-769 (Exhibit 3) and finds that it is consistent with the Land Use Plan.

MPT Wilcox said he liked the option staff offered up for the CBD. He doesn't know if he can amend the motion to add that or if it is a separate motion after the fact or separate discussion but he thinks we have noise ordinances in place and that is what we should be relying on when it comes to the CBD with regard to enforcement of the noise ordinance instead of doubling up on the ordinances and having a separate restriction for the entertainment even if they do meet the ordinance. He would like to entertain however that would be done.

Councilman Johnson does not want to add that. He is in agreement with the Planning and Zoning Commission. They wanted to exclude this and he is in agreement with excluding it and adopt the ordinance as presented.

Councilman Gilbert agreed with Councilman Johnson and with the Master Plan going forward and the potential for mixed use down there and looking at some of the spirit of what they want to do down there, feels it would be a disservice to the long range plan to not have that part of the CUP process. He feels that is a good circuit breaker for our CBD that is in a transitional time now and, in the long range, we need to keep those CUPs in

there. The process would be, after Councilman Johnson made his motion, you would make a motion to amend his motion with that in there.

MPT Wilcox said his concern about it is the time element, that you have the CBD down there and the nature of those businesses go in to get open for the season and to go through a 3 month CUP process because you want to have some entertainment and there is already a noise ordinance that applies he thinks is a burden for the CBD that is unnecessary given the contiguous uses around.

MPT Wilcox made a motion to amend Councilman Johnson's motion to include the allowance with the exception for the CBD as proposed by staff.

Councilman Gilbert said he understands where he is coming from but the circuit breakers that are in place and our Planning and Zoning Commissioners voted 6-0 not to open that can of worms up and he thinks, again, for the future of that area, we need to do it.

Mr. Owens asked the planner if, when they went through the advertising process, did we bring two different scenarios back or do we need to consider re-advertising? Maybe that's an attorney question.

Mr. Ferguson said they advertised in a general sense, that what they were doing was they were doing was looking at the elimination of amplified music, that's what they were looking at. This came up as kind of an aside. They were just talking before the Planning and Zoning Commission meeting and they suggested this to them as saying is this in character or out of character with the CBD, more of a question and they debated for quite a while and came up with the conclusion that they didn't feel that comfortable with it. It was presented to them.

Mayor Macon called for a vote on the motion to amend as stated by MPT Wilcox.
MOTION CARRIED 3-1 WITH COUNCILMAN JOHNSON AND COUNCILMAN GILBERT VOTING NO.

Vote was then taken for the original motion made by Councilman Johnson. **MOTION CARRIED UNANIMOUSLY.**

CONSIDER AMENDING THE ZONING ORDINANCE TO MAKE VESTED RIGHTS ORDINANCE CONSISTENT WITH NCGS

Ed Parvin presented this item. He showed an overhead of Park Place and Arcadius as two good examples. Arcadius coming in as a phase project and we had building F, which was the building on the northern side. There were some issues, it was part of Phase I and between the Phase II part of it, there were some intertwined parking, intertwined public facilities/infrastructures that were going in, utilities that if one phase was built the other phase wouldn't work without it so there were some difficulties there. Park Place, as some of you may remember that were on the board at the time, they came in for a 5 year

vesting under the general statutes and there were several attorneys here talking about whether this could happen because it is supposed to be spelled out in our ordinance and it ended up happening, they were allowed to have the 5 year vesting adopted by a resolution which is inconsistent with the process that it seemed like the statutes lay out for you - to have the public hearing process in a quasi-judicial manner. So why adopt the ordinance? It establishes a level of review which will be the public hearing/quasi-judicial process. In looking at the CUP process and just reference Article 14 as that. You also have the ability to determine how many years a project can be vested for. Right now your CUPs are 2 years. That ability to have a site specific development plan approved for between 1 and 5 years and there is review criteria in your vested right ordinance that you will look at when one of these projects come before you. There are also conditions you can put on it as necessary to protect the public health, safety and welfare of the community. One part of this is a phase development plan. Under general statutes this has less detail and is often known as future development. We are looking at, because of the Arcadius situation and potential for those projects to be intertwined if a phase development is allowed, that it has the equivalent detail of a site specific development plan. But the purpose of the phase development plan, if adopted, which it would be a standalone project, would start later than the original, proposed project up to 5 years. You could have a phase development going as far as 5 years down the road for the statutory vesting. The proposed ordinance would bring us closer to our compliance with the NCGS. We have been working on that for quite a while. This was added to general statutes in 1991 and this is long overdue coming into our zoning ordinance. It is also policy in our Land Use Plan that talks about vesting and lists the general statutes that talk about site specific development plans and vesting rights so it is consistent with that policy. And then it utilizes a process that is inconsistent with 1-7 in the ordinance which lays out criteria that is beneficial for the town and it gives the developer a sense knowing that they are investing in something that will have a vesting period for up to 5 years. It defines 5 years as allowable, vested period and clearly defines what is a site specific development plan.

Councilman Johnson said one of the things he would like to see that he didn't see in this ordinance, for example, he's not sure it is the right section, but Section 17.8.d where it talks in reference to the vested rights for 2 years but not exceeding 5 years, that wording be inserted that this is from the date of approval of the original CUP. There is no reference to that that he can see.

Mr. Owens said he thinks it would be from the actual approval of when you grant vested rights as opposed to CUP. There is an implied that you have 2 years with a CUP. This is for the 5 year process.

Councilman Gilbert referred to paragraph (2) and asked what that means. It doesn't mean anything.

Mr. Coggins said there is an obligation to identify the document that triggers the vesting.

Councilman Gilbert said that in paragraph (1) that Councilman Johnson is talking about, these determinations shall be made at the sound discretion of the Town. Do you define town in our Planning and Zoning Ordinance of who the Town is?

Councilman Gilbert said he thinks we need to say that if we don't mean staff or something. On paragraph (2) the document that triggers such vesting shall be so identified at the time of its approval. What document are you talking about? Mr. Ferguson said the site specific development plan.

Mr. Parvin said it does reference in number (1) the Town Council in the beginning. They can add Council at the end too.

Councilman Gilbert said he has read this and, yes it does talk about the site specific development plan but it just starts talking about vested rights and then you start getting into document. You don't identify what document you are talking about. It could be the CUP document or it could be the vested rights document.

Mr. Owens said the way he understands it is that basically there is a process you have to apply for vested rights, you go through a process and receive vested rights and at that time you submit a specific development type plan and it's approved by the Council and you grant 2 to 5 years. There are certain types of other vesting rights. A CUP automatically, according to our ordinance, has 2 years of vesting with a 1 year renewal and then there is building permit vesting, common law vesting and some other ones. He thinks this is a process and that is what triggers, when Town Council approves that, that is when it triggers your approval and that is your approval date.

MPT Wilcox said this is separate from the CUP. Mr. Owens said it could be. Mr. Ferguson said it could be in conjunction with it. MPT Wilcox said it could be but it is a separate action. It's a separate option available to developers without coming for the vested rights.

Mr. Owens said you could get your CUP approval say a year before and then come in a year later and say I now want 5 years vesting.

Councilman Gilbert said you are talking about two separate issues then. CUP by statute gives you 2 years vested rights so you are saying it is a separate vesting rights because that is the thing Arcadius didn't do, they never submitted a site specific development plan as required by the CUP ordinance. They wanted to start their vesting by doing some level of upgrade to the lot and that is the date they wanted.

Mr. Owens said they kind of fixed that, he thinks they talk about the start of construction now and have adopted a new definition of what is start of construction.

Councilman Gilbert said he doesn't know how you can say you have 2 years vested rights in a CUP and then have a different document that has some level of charge to vested rights. When he tries to read this, that is what was confusing because you talk about a

document but then you reference general statutes with respect to a CUP that has 2 years vested rights.

Mr. Owens said he doesn't think it can be. He thinks it's got to be the same document that was proposed in your CUP 2 years ago. You can't come in, in his opinion, and now throw another document out there without a major modification or minor modification to your CUP and say now this is what approved as a vesting.

Councilman Gilbert said, in reading this and looking at those items in (2), he's just trying to understand this.

Mr. Owens said they talked about this for a while. We do need a vesting rights ordinance. We are required by the general statutes to have one and we should have had one since 2005.

Councilman Gilbert said there is some ambiguity in this document because you use the term document that sets the time at its approval and we're talking about two different documents or permits. That's his input.

Mr. Parvin said it will be a site specific development plan. If you look at (b) or (c) number (8), it will be a site plan that defines, on the site plan, "Approval of the site specific development plan establishes the vested right under G.S. 160A-385.1. Unless terminated at an earlier date, the vested right shall be valid until (date)." That has to be on there, when they are asking for a vesting for a site specific development plan and they will come through with the CUP process, but they will have to include that on their site specific development plan that we're looking at.

Councilman Gilbert said, so we hear a CUP, we approve the CUP. A condition for that CUP is that they bring a site specific development plan. What if they don't bring it for 3 years? You're saying this site specific development plan is required at the time of the CUP. Staff agreed. Councilman Gilbert said that has always been in our ordinance but it has never been applied.

Mr. Parvin said they bring a site plan for the CUP for 2 years but they have never brought a site specific development plan with these criteria.

Mr. Coggins said to refer to, if you would, you are also being asked in this amendment to add definitions to your zoning ordinance, in Article 23.3 which is critical to your understanding of what this is. There is a specific definition of a site development plan. It provides that it is to be presented and subject to all the provisions of Article 14 regarding the CUP process. The CUP in and of itself would contain the site development plan.

Councilman Gilbert said our ordinance, the way it is written, refers the site development plan and it goes to the planned unit development discussion language where site development plans are administrated through our ordinance and it gets convoluted from there. So you are saying you changed that with this. The CUP process always contended

you had site specific plan but it got kind of absorbed in the ordinance.

Mr. Parvin said you get 2 years with the plan that you are approved for today under a CUP but, if you are going through that process or just coming before you and want site specific development plan for vesting then you can come with that project. You have to meet these criteria and one of them is you have to define on your plan that asking for a site specific development plan and then you can ask for up to 5 years.

MPT Wilcox said it has to be done within the original CUP or is that something you can get a CUP assuming you have 2 years of vested rights and then a year later realize it is going to take a little longer than expected, do you then come back with a site specific plan looking for 1 to 5 years vested rights.

Mr. Parvin said you have to come through a conditional use process again.

MPT Wilcox said if you don't do it the first time, you have to come back to a CUP process to trigger the additional vested rights. They're coming before us now to ask for extensions, right? Staff agreed.

Mr. Parvin said this would give them another option instead of coming for an extension, they could say we want a conditional use and we have developed a site specific development plan that we think meets all the criteria. You could look at the plan and say, if you are doing this and you can put time frames on it that you want a certain thing, maybe you want the utilities by year two. You can put conditions like that on it.

MPT Wilcox asked what if someone gets a CUP, assuming they are going to do the project within two year, a year goes by, they come back and go through another CUP process with a site specific plan and looking for vested rights for 5 years. Is it 5 years from the time they ask for? Does that give them the first year plus another 5 years or is it 5 years total? Have they already consumed one of their 5 years at that point in time?

Mr. Parvin said that at that point they would have, if there is no major modifications to their permit, it's the same permit, then they would have 4 years because it is a maximum of 5 years.

MPT Wilcox said so they wait until the end of that process and come at the end of that 2 years and they only have 3 years left. Staff agreed.

Mr. Ferguson said he just wants to make clear that when someone comes in with an application for vested rights, it will be put right on the face of the site plan. It could be a permitted use. It could be they want to build a single-family house and they realize the zoning laws are going to change in the town and they are going to come in, potentially, he has never seen it happen but it is very possible it could happen and ask for a vested right to build their single-family house which would follow the CUP process and give them a vesting of up to 5 years to build that single-family house. Right on the face of that plan is going to be is a stamp on it saying this is a site specific development plan. It is no

longer a permitted use, it becomes automatically a conditional use and this Council will then hear that conditional use and Planning and Zoning will make a recommendation on it. What he is trying to make clear to Council is the fact that when you ask for a site specific development plan approval and that vested right that goes with it, they are locked together. It is something that is in and by itself. If someone comes in with a CUP and they say after 2 years they want to ask for a site specific development plan approval, they can take that same plan, as long as zoning conforms to their approvals, they can go ahead and do that.

MPT Wilcox said it doesn't have to be a CUP. Somebody could come before an existing zoning situation and say they want to build this configuration, it's allowed in the zoning ordinance then. If they provide a site specific plan, can they get vested rights to build that even if the zoning ordinance changes?

Mr. Ferguson said yes as long as Council approves it. It can't be a permitted use, it's going to automatically trigger a conditional use.

MPT Wilcox asked, if it is a permitted use right now and he comes and wants to get a permit to build something and is worried because he is hearing on the street that they are going to change the ordinance and he comes in for that permitted use and brings a site specific plan and get vested rights for that project. Staff agreed.

Councilman Gilbert said he thinks what Mr. Parvin is saying is confusing to him because what you are taking is something out of a general statute that allows the town to administrate CUPs and special use permits and in that it talks about phasing, that is when it talks about vesting and site specific plans and he thinks in our ordinance it actually says that, he doesn't know if it is Article 17, but it goes to the site specific plans. It just seems like your interpretation is a little different because either the general statutes allows to vest a CUP but he doesn't think you are extending or changing that CUP when you are talking about site development. He agrees with Mr. Ferguson that it is all one thing, with respect to the CUP. Us granting the CUP doesn't kick off that 2 years, it is the approval of that site specific plan as he interprets it through our ordinance and the general statute. So he is a little confused about how you are talking about extending something 4 years.

MPT Wilcox said he thought a CUP came with 2 years vested rights.

Mr. Parvin said the 2 years starts the day you get the approval.

MPT Wilcox said okay, you have a 2 year vested right that starts the day the CUP is approved. Staff agreed. MPT Wilcox said in order to get anymore than that they have to go through the CUP process again and bring back a site specific development plan requesting additional period of vested rights. Staff agreed.

Councilman Gilbert asked if they are saying they fixed the ordinance from the Arcadius problem, you fixed it because the problem was that there was no determination when

their vested rights started because of the phase development said site specific plan that they never gave you during the process. So you fixed something then.

Mr. Parvin said this fixes it because when Arcadius came through we didn't have anything for site specific development plan and phase development plan. We are adding that now, that is what this vesting ordinance does.

Councilman Gilbert said staff is saying that vested rights starts the day of the CUP. We haven't fixed anything until today. How was it fixed before when you were referencing MPT Wilcox's questions. You said that vested rights start the day the CUP is issued and he thinks through our procedures it references the specific plan being approved. He argues that vested rights did not start the day this Council approved it, it is when they completed the CUP process with that site specific plan. That is in our ordinance and has been in our ordinance.

Mr. Ferguson said that is only good for 2 years and he thinks that what Mr. Parvin is saying is the fact that Arcadius, as the example, had extensions and extensions and there was no vested right associated with that except the vested right that goes with the CUP and the vested right that the Council extended to them. What staff is trying to do is establish a legal mechanism to make certain that they know exactly the length of time that they are going to be good for. After 5 years expires, they are going to have to come back and ask for another vested right and the Council, because zoning might change, the rules of the town might change, state law might change, they are not going to be able to get that vested right.

Councilman Johnson asked what happens after 5 years. Mr. Ferguson said there will be no more extensions. They have to come back through the process again and then they check zoning and make sure everything is compliant. Mayor Macon said it eliminates the writing of a letter saying they want to extend their CUP and we decide on it but it's not ... Mr. Ferguson said that Council may extend it for 2 years or up to 5, you can choose based on the complexity of the project. Like Arcadius, obviously that was a huge project so you might want to give them 5 years.

Mr. Owens said the normal CUP process is 2 years with a 1 year extension is what we have now.

Councilman Johnson said, if he is understanding it correctly and what he was saying earlier about the date, is that the 5 years of vested rights maximum will go from the date of the original CUP approval. Is that correct?

Mr. Ferguson said the original CUP approval if it had on that original CUP site plan, this is a site specific development plan. Yes, you are correct. That is a CUP and it is good for 2 years with an extension for 1.

MPT Wilcox said what if they come back a year later and they didn't have a site specific plan when they got the approval, they let a year run out, they come back, now they have a site specific plan ...

Mr. Ferguson said they start the process under a site specific development plan. Their old CUP is dead. They start all over again. That is their choice. They probably would have let it go for another year and then ask this Council to grant a year's extension on it instead of going through this whole process again and getting more years.

Mayor Macon said it encourages them to move forward. Staff agreed.

Councilman Gilbert said the language you are presenting is part of the general statute with respect to CUP's and special permits and it goes in, he can't quote it verbatim, but it talks about all these things, site specific development plans in the CUP process. He asked if he is right. It looks like you get vested twice on the same project. You get vested once with the CUP and then you get vested again because the CUP process requires a site specific plan, you're telling me you get vested again.

Mr. Owens said if we have issues and have some concerns he would say they could have the public hearing, we could delay action on it and investigate some of these things if that is what Council wants to do.

Mr. Parvin said it is very similar to Wilmington's which is by the School of Government considered the model for vested rights.

Councilman Gilbert said that Wilmington does it different than us.

Mr. Parvin said we reference the process for conditional use and he thinks that is what is confusing to Councilman Gilbert if he is hearing him correctly.

Councilman Gilbert said Wilmington uses conditional zoning to a large degree and he thinks this might work with conditional zoning and a site specific plan but when you are talking about CUP's and our process, the last 4 years that he has been doing it, it really details how it is done. If you are using Wilmington as a model, maybe it works using site specific because they use conditional zoning. It's good to know what model you use.

Mr. Parvin said that Wilmington is one of them. He included all of the ones they looked at, of course they looked at more than that but Knightdale, Wilmington, Atlantic Beach and a couple more but not all of them have the conditional zoning.

Steve Coggins directed Council's attention to the attached proposed ordinance, specifically on pages 8 and 9, and looking at (d) (1) and (d) (5), those are the two particular ones that talk about the duration with the vested right. (d) (1) provided that the "Town Council may provide that rights shall be vested for two (2) but not exceeding five (5) years...". A minor point to Mr. Parvin in that he believes his presentation when it

first started he thinks it said 1 to, he can't recall how many years. Mr. Parvin said 1 to 5. Mr. Coggins said he reads this as 2. Mr. Parvin said 2 to 5 is what they wrote in the ordinance, there is the flexibility if they wanted to do 1, he thinks they could.

Mr. Coggins said he thinks, he is not sure that's ... but that is another matter. Let's suppose hypothetically, initially, Council in its wisdom chooses to grant 5 years under (d) (1). Then you go to (d) (5) five years later and it says, "Town Council may vote to extend the site specific development plan for up to but not exceeding five (5) years without going back through the approval process." He is not clear if that means a total of 10 years. Mr. Parvin said no, it doesn't. The statutory vesting only allows you 5 years and that is pretty clear in the general statutes.

Councilman Gilbert asked whether it is also clear that the general statute says it starts at 2 years and that's why we changed it in the first place from 1 to 2? Mr. Parvin said he didn't think so. He thinks you can do 1 year, correct him if he is wrong, he thinks you can do 1, 2, 3, 4 or 5. You can give them vesting for any period. MPT Wilcox said up to but not exceeding.

Councilman Gilbert said it used to be on the form for the CUPs it said 1 year. Our former planning director saw that and referenced the general statute and said you couldn't do it for 1 year, it has to be 2 years because that is what the general statute says.

Mr. Coggins said the NCGS says, "A right which has been vested as provided in this section shall remain vested for a period of 2 years."

Councilman Gilbert said he doesn't understand how we go back to 1. That's where the CUP and you're in the statute that he remembers of what kicks it off and if it was phased then the site development plan was used for each of those phases at that approval because you may not have a site development plan for phase II and phase III.

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

There being no public comment, **MPT Wilcox made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson suggested that the town attorney get with staff because of issues he raised such as (d) (5).

Mayor Macon made a motion to continue this item to the January meeting. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING CHAPTER 3 ANIMALS AND FOWL, SECTION 3-5 RIDING, LEADING OR DRIVING ANIMALS ON SIDEWALKS, BOARDWALK, ROADS OR BEACHES, SECTION (C) CONCERNING HORSE WASTE AT FREEMAN PARK

Chief Younginer made presentation. He said the Freeman Park Committee made a recommendation about the horse ordinance and had it scheduled for a public hearing tonight. He will represent what they said and at the end of that he will recommend against making that change. There are horses allowed at Freeman Park but right now we don't get a lot. There was an incident where there were some horses up there and one horse dropped too much. Some of it was picked up and some wasn't and there were a couple of people from the Freeman Park Committee that were out there. He couldn't find any 911 calls that they got but if they had they would have gone up there and taken care of it. They have four guys dedicated to Freeman Park. What they recommended was to have any horses that went onto Freeman Park have to have a bag attached to their rear to catch any waste that might fall. He said he would take it forward. He talked to a few people who own horses and one person said if that happens she won't bring her horses down because the bag might spook her horses and that would be a bigger problem than the horse waste. He would recommend that they not change this ordinance and leave it like it is. He would hope they could take care of it on a case by case basis. If someone does drop some horse waste and they don't catch it or see it then they will make arrangements to have it picked up and he will pass that on to the committee.

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

Mary Ann Mangiacapre of 7201 Pompano Lane said she would suggest giving them a litter ticket if it was excessive. If you are going to do it for the horses then you should do it for the dog population as well. The bags work on the horses that are trained. She feels it is a waste of a 911 call.

MPT Wilcox said he guesses the committee's concern is that they would not always catch the person to give them a ticket. They are trying to prevent the act.

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

Councilwoman Efird made a motion to deny Ordinance No. 08-771.

Councilman Gilbert said he was one of the ones who wanted to allow horses out there so he had some calls from the folks who were concerned but he hasn't had anyone call, except for people who are stewards down there or have certain connections with Freeman Park personally. Those are the only people that called him. He has not had any general

complaints on the horses and he appreciates the Chief keeping an eye out down there. He agrees that you really can't discriminate. You would have to do it with the dogs.

MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE PROCEDURES AND FEES FOR THE DISCONNECTION OF WATER/SEWER SERVICE TO CUSTOMERS AS REQUIRED IN CAROLINA BEACH CODE OF ORDINANCES, CHAPTER 16 UTILITIES AND THE CAROLINA BEACH FY 08/09 BUDGET, SCHEDULE OF FEES

Tim Owens made the presentation. He said this was heard at the Council's September meeting and there was some concern about when we cut off and how we cut off utilities. There was also some concern about the fee that we charge for utility cut-offs. From what he understands, for over 20 years we have had the same procedure to cut off utilities. We did amend our fee schedules at some point a couple of years back and we went to something that he thinks could be considered fairly excessive. He has given Council a copy of what a month looks like. In general there are only about 18 reconnect fees that are paid. There are a lot of cut-offs on the list but generally only about 18 folks who actually pay the reconnect fee. There are about 3,800 accounts with about ½ percent of folks who receive a cut-off or have to pay a reconnect fee. Over the course of the year there are 216 disconnects out of 45,600 transactions. So there are not a whole lot of reconnect fees that are taking place. We do look at each individual case when folks come and say they were out of town for months and they just didn't see it. Generally we are pretty receptive to folks who have a legitimate issue and we will waive the reconnection fee. Particularly if they don't have a long history of reconnect fees every month. We do not cut off on Fridays or holidays. We generally do not cut off in December at all because of how things fall. On top of that there is a penalty fee. Generally we do not generate a whole lot of revenue from the 5% penalty either. What we will see in the budget probably is that there are some old accounts that are the majority of that 5% fee and we need to remedy that. Our reconnect fees and penalties generate about \$30,000 a year. The water and sewer utility budget is \$4,514,000 so it is not a big percentage of our revenue generated from reconnect fees nor 5% penalty. He doesn't believe it is a big concern. The procedures for cutting off have been in place for 20 some years and people seem to be accustomed to them and they seem to have worked for all that time. We did discontinue the second notice. There was some concern about what is on the actual bill itself, when we will cut off, what does it say and he has since fixed that on the bill. Sometimes that goes away if we want to advertise for whatever we might advertise on that water bill because there is only so much room and so many lines on that bill. We would have to change our whole way of doing things and sending bills out if we were going to make that a permanent fixture on the water bill. If folks can't pay their water bill on time or have other issues like their out of town a lot, we do provide options where they could go through automatic withdrawals from their bank accounts so we do provide that option. They did approve an \$80 first time cut-off charge and \$120 every subsequent time after that at one point in a prior budget. There is also a \$25 charge for after hour

cut-offs. He is recommending that Council consider a \$40 first occurrence and have a \$60 charge for every time thereafter. That has a little disincentive for folks to maybe let it happen only once. Generally there has always been a \$25 fee for cut-ons after hours. What this results in is approximately about a \$10,000 loss in revenue so the budget will possibly have to be amended or just see how things happen at the end of the year. With regard to this part he does recommend a public hearing on the fee part itself. Regarding the procedures, our utility ordinance is a mess. He is as guilty as anybody else. We have probably been using the budget to manage what the ordinance says and he has not had the chance to revise that whole ordinance. It is a lengthy process. That is what he hoped to get back to Council this time but when he really started looking into it, he doesn't know when that ordinance was adopted but it has probably been many decades and the budgets have changed and processes have changed. Most of it relates to how we charge and what we charge and that can be cleaned up. He plans on bringing that back to them. As he said, there is a lot of bad debt in our Water and Sewer Department which they are going to bring back to Council at another time with some discussion of only allowing property owners to apply for water and sewer accounts. We did that in the past. If you want to remedy bad debt, that would be one way to do it. He is not recommending they do it but it is one way to remedy some of that bad debt and make sure those bills are paid in a timely manner. Bills go out before the last day of the prior month and is due on the 15th and the 26th is when you get cut off. That is generally the process and it works well for us with regard to billing and when we go out and read, etc. If you change the process, then we have to figure out billing. For instance, if you wanted to go 30 days instead of 25, generally the 26th day our billing clerks would be dealing with cut-ons/cut-offs and reconnects and dealing with that for a few days and, hopefully, that would slow down prior to the end of the billing day which would be the 29th, 30th or 31st. If we go to the last day of the month then they will have to be dealing with reconnects as well as actual billing. He would be concerned about that.

MPT Wilcox asked, for clarification, if they are being asked to take action on the fee and the billing procedure, not on it being in the owner's name.

Mr. Owens said if you want to do that you can. He doesn't think they can require every owner ... If he is a new renter then he thinks they can require that owner to come in and now provide that utility but it would be difficult if you already have a renter in place and say they have to go get the owner to do that. He is not really recommending that. The other two are part of the action.

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

Tom Campbell, 314-1 Columbia Avenue, his curiosity is that the second notice is discontinued and he imagines that would have increased the revenue because some people just forgot to pay their bill so they would get hit with the \$80 first time cut-off fee. How much did we save by discontinuing the second notice? (Council said \$10,000.) So we had a lot of people waiting between the 15th and the 25th to pay because we didn't send second notices out, a lot of people must not have paid their bill on time.

Mr. Owens said they were waiting for that to show up in the mail and decide to pay.

Mr. Campbell said that was what his clarification was. He was thinking a remedy might be bringing back the second notice instead of lowering the fee. The fee is important, you don't want to let people off the hook or lower the fee necessarily. It sounds like it's a wash.

Councilman Gilbert said the problem is they snuck in half of the fee under the guise - for years it was \$40 and then there was an interpretation of a reconnect fee so the processing fee was \$40 and then a reconnect fee of \$40 or \$45. Someone read that in the ordinance and they kind of snuck that in the budget. Then it was combined at one point, so that is how it all came together. If you look in 2003/2004, the total reconnection fee revenues were only \$6,000. In 2007/2008 it's \$21,000. So somebody in Operations a light went off and saw it as a revenue opportunity and they combined all that stuff. Then they tiered second, third and fourth penalties up to \$120.

Mr. Owens said in 2005 he thinks they were trying to simplify it but they also raised it. In 2005 there were about six different tiers. It started at \$45 and went up to \$85. We are actually rolling back the fee, if we decide to do this, probably cheaper than many years ago.

MPT Wilcox said he thinks the fee structure is fair to the citizens even in consideration that there are habitual abusers.

Mr. Campbell said his final question would be, of the \$21,000 to \$30,000 revenue in the last calendar year that we received for late fees, how much of that was first offenders that didn't repeat? Mr. Owens said he didn't have that data. Is there a need for another second notice or some form of second notice?

Mike Kirkbride, 417 Marina Street, said he just had a tenant that just went through this process. He was away for a month. He would like to know how many people, even though they set up their bill paying, he came back and found that his water had been disconnected, his mail had been collected by the post office and there was no bill in it and he had gone a month and it had been disconnected. He would like to see some kind of first offender grace or some set up. He has never missed a bill.

Mr. Owens said he thinks generally there is, he thinks they give some latitude. There are a lot of habitual folks.

Mr. Kirkbride said he is not talking about habitual folks. He just saw his tenant's anger and that is not good for the town.

MPT Wilcox said everyone that he knows of who has been a first offender has come up to the town and they have waived that. Everybody might not know about that and may just pay the bill and not come up and asked.

Mayor Macon said, to a certain extent, there is only so much handholding the government can do. It gets to a point of where it starts costing everyone else money.

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

Councilman Gilbert said he had an observation. Of your example, you have a breakdown of 482 counts on your cutoff list. For that month that you saw 482, 81 were turned off. Of that only a fourth of those, 22, paid the connection fee. Mr. Owens said the other ones are still off. With 36 paying within a week of the cutoff, 22 paid the connection fees. 13 reconnect fees were waived due to unique circumstances so it looks like there are certainly percentages there.

Mr. Owens said you don't always come back in to get your water turned on. There is a lot of that where the water gets cut off and you get a reconnect fee and you don't cut it on for 4 months or whatever. That is where you see a lot of that. They would end up paying the reconnect fee, the penalty and their monthly fee. They keep accruing interest on the 5% and also the reconnect fee and bill would have to be paid before the water is turned back on. Some folks they work with on giving them time to pay.

Councilman Gilbert said he looks at it as more of a customer service issue and when we stopped that second notice, he thinks that was a trigger for most folks to recognize they need to pay the bill. He perceives it by looking at the numbers here and listening to people and the complaints he has gotten. With respect to the \$80, we can work with that but with respect to changing the billing procedure, we have to modify the ordinance to do that, is what you are saying. Mr. Owens said we should. In the past we have not but we should.

Councilman Gilbert said he doesn't know that an additional \$20 is a disincentive. The challenges these people are going through and it looks like a civil penalty we're applying. He doesn't think an ordinance should be doing that or this - that is his opinion. If it costs someone \$40 to go out there and turn it back on, then it should be \$40 or whatever it costs, then that is what we should be charging. Why don't we figure out exactly what it costs to reconnect the water. Mr. Owens said he cannot give an exact number. Some would say they are on payroll anyway, we don't need to charge anything. There is the amount of time. There is the billing, the sending out people, the cutting on, etc.

Councilman Gilbert said let's say it's \$40. Staff agreed that was fair. Councilman Gilbert said even if it is your eighth time, he doesn't see that you charge them \$120 or that it is tiered up to \$60 or something like that. It might cut into the revenue but we tripled our revenue in 3 years by a penalty. Staff said that the last couple of years they doubled it. Councilman Gilbert said he does not think it is in the spirit of good customer service. With respect to the billing cycle, he thinks they should consider a 30 day cycle. They get the bill at the end of the month, they don't pay it and by the 15th they're on the cutoff list and it's done by the 26th. He thinks they can save money by not having to send

out another reminder but, if they pushed the disconnect notice to their next bill, so from the 26th when it would normally be cut off, they get a bill within 4-5 days. In that bill it has that their water will be disconnected and you choose the date, the 15th or the 26th with respect to your software, so at least they get another notice in their current bill and they know that they have by the 15th or 26th to actually make amends with that bill and then their water is not cut off. So you are able to get a second notice in their next bill, you don't have any additional costs in sending that bill out and you have happy customers.

Dawn Johnson, Finance Officer, said she did not think the town would be happy in the end. Like she said at the last meeting they had discussing this, there are a lot of transient renters here and we, as a town, have to stay on top of those transient renters and we lose money from those transient renters not paying. If you let that go into a second month, the potential for losing those additional monies that they have built up for the water usage, will be gone because we have no way of tracking it.

Councilman Gilbert recommended making it \$50 but we need some flexibility.

Ms. Johnson said they give customers flexibility. If they are having a problem not being able to pay their bill by a certain time, they are allowed to call us, which they have many customers who call every month and say they can't pay by a certain time and are allowed to pay at another time but they have to take the initiative to do that. We do work with customers. The simplest way to accomplish what you want is to go back to having the second notice. They don't have a problem with changing the fees for the reconnection but changing the billing cycles creates a big problem not that you can't get the software but, from a standpoint of revenues for the town, it will create a problem for collecting revenues for the transient renters.

Mayor Macon said he likes Councilman Gilbert's plan as well but if the transient customer is a problem then when we institute the plan, then we institute a policy that the water bill is in the property owner's name.

MPT Wilcox said he agrees with the \$50 fee and he is all for customer service but there is a balance and it has been proven that if you extend that period of time, the town loses money, that is disrespectful to the other taxpayers. The time period to pay the bill is adequate, especially given the fact that when the transients leave we don't get the revenue.

Mr. Owens said the billing cycle they have now works. We have not tried the other billing cycle, they are just projecting what the problems could be which are multiple bills accumulating on folks, it may affect when meters are read, also when bills go out and reconnecting. They read meters for the prior month about mid-month and if you extend it you will have issues there. You are paying in arrears too. If he comes and gets his water hooked up, has a whole month of water and our guys go out and read it and you don't pay until the 26th so you have used almost 2 months worth of water and then he splits town.

Councilman Gilbert says he is saying to stick to the same cycle. You are reading the meters at the same time, you're not changing that. All he is saying is, you are sending a bill out, instead of cutting it off on that bill, they get their new bill with all the new meter readings on it that shows that they owe this amount now. You are not changing the process but just extending the date when you are cutting it off.

Mayor Macon said there is a hole in the theory. You have a deposit so if a guy comes in here, gets a water bill and leaves after 2 months and he got 2 months of free water but he really didn't because you have a deposit.

Ms. Johnson said you have a deposit that wouldn't generally cover that period of time. She thinks the deposit is \$125 now but, considering water usage, their consumption with more used during the summer, you could be talking about a 2 month bill or more. She is telling them the problems they have now with transients and if you are going to give people an extra 15 days, that's another 15 days of consumption.

MPT Wilcox thinks that type of billing will be very confusing.

Councilman Johnson agrees with changing the fee to \$50 without tiering but he has mixed emotions on the billing cycle. He thinks the people need a little bit more time but if it is causing problems for our billing department, he doesn't know what the costs are there or if the Town Manager can provide those costs.

Mr. Owens said not unless he knows where they are going.

Councilman Gilbert made a motion they go forward and change that fee by adjusting the budget to \$50 and not increment it up with second offenses. Also pursue evaluating changing the ordinance to a longer cycle where their cutoff notice will be in the next bill, extending it to 30 days and then come back with a recommendation on that in January and tell them what you can do with the disconnect notice in the next bill but implement the fee change now. MOTION CARRIED UNANIMOUSLY.

CONSIDER THE PROPOSED PLEASURE ISLAND GREENWAY PROJECT

This item was presented by Michael Kirkbride on behalf of the Greenway Team with the request for Council to approve their recommendation with taking a route forward for funding and whatever the next process might be. They went over some of this the last time in brief form. They are looking at making a path from the north end to the south end from both boat launches. One of the things available is the donation of a continuous strip of land from the military, which is a key issue. A key feature is how the greenway path connects our island in the form of connecting our children, safe routes to schools, parks, beaches, playgrounds and gives an alternative of using a car by families. It also provides safe exercise. The cost for the Carolina Beach portion of the latest plan, based on the previous path in front of the state park, the three mile section will be about \$287,875

which is based on the 2006 figures it cost the town to do that project. If based on what Wilmington estimates at \$50 a linear foot, the project would cost about \$500,000. He thinks the latter is probably high. The portion along Snow's Cut is pretty much ready for paving as it is. The cost would probably be somewhere in the middle. The estimate of cost to maintain per mile is about \$1,600 and that includes the trail in front of the park and around the lake. Another option is to have it maintained by one person with an RFP. Managing the trail could be done by volunteer trail keepers, use of an adopt a trail program, or local bicycle group maintenance. The trail could increase property values with a strong impact on those properties as viewed at other developments. A major impact could be a stimulus to our economy as a key amenity and could receive a big return on the investment. A factor in paying for the path would be in how to create a project that has the same enticing return on investments that Wilmington's Riverwalk has. State and federal grants are available, county bonds for parks and recreation, and charitable donations. He showed an overhead of the plan which begins at the Snow's Cut boat launch, where the Commander of the Corps of Engineers has given them the nod to move the fence section in order to move the path off the fence line through the trees and a better view of the waterway. Part of the route is to widen it to 50 feet where the path would go through and would need gravel and the fence moved. Then it would go all the way to Barrier Road where some park and ride features could be put in. They propose to cross down Harper on the south side and bring the path down 8th Street and sharing the road because of the safety aspects and connection to the town, parks and school. When you get to the ballparks, going down Sumter and getting on the Henniker's ditch path until you get to Spartanburg and come down Spartanburg and follow the fire cut around the retention pond of Carolina Sands. The path proceeds along the fire lane down to Alabama and would like to be a part of the process of the retention ponds there. One of the things they tried to incorporate with this plan is connectivity with the town by using the lake section, using Harper as a main feeder route into the boardwalk area, using some of the cross streets in town, using Cape Fear and using Clarendon. There are other connecting streets such as Ocean and Alabama also. It also connects with the state park which would increase it to 6 miles. They are trying to hug the fire line which is what the Army wants.

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

Steve Mangiacapre, 7201 Pompano Lane, Vice-President Cape Fear Cyclists, said he is amazed at the proposal. In Wilmington they created the Blue Clay Bike Park and it was like pulling teeth to get it going. They have 208 acres of county park and since they opened in February, they have had over 15,000 visitors. They have a sign in sheet so the numbers are going to vary. They have had people from out of town, tourists, 300-500 people on record. Anytime you bring cycling into a town, people will come in from all over. The more places you have to ride, the more revenue is going to be generated. This project is a win win situation but the plan is phenomenal and he applauds him

Donna Moffit, Director of the Aquarium, 900 Loggerhead Road, Kure Beach. She is here to support the concept of connecting the island from the north to the south. She thinks

the outline of where it might go is the optimal outline because we want to get people into nature and the areas where they can see wildlife and experience a natural part of the island. She knows they are talking about the Carolina Beach portion and they definitely support that. They can't wait until the whole path is in all the way to the aquarium. They already have their path in place and they are waiting to just get connected to the rest of the island. She is hoping Council will be able to support what was presented this evening.

Mike Kirkbride asked all those who are in support of the path to stand. Almost everyone in the room stood.

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

Mr. Owens said he would like to see folks encourage DOT to fund the bicycle plan they have applied for, the pedestrian/bicycle plan, and anyone who has any connections to lobby for that. That will help us to define the plan, layout action steps and look at more of the feasibility of it. This is very eligible for grants and sees it helping this plan. What needs to happen is to determine the priority areas and go after those priorities. Do it in phases.

Mayor Macon said he thinks the first thing they need to do is get an estimate.

Mr. Kirkbride said Sunny Point has given them the nod if they get agreement from the respective towns to offer the fire lane. To the extent that they have stayed within that and we know we are getting retention ponds so, probably our part is simpler than Kure Beach's just because they don't have much intrusion into the fire lane. They would like a resolution they could take to New Hanover approving of the concept and attach a copy of this plan which would create a 12' bike pathway.

Councilman Gilbert said a place where he could help is maybe looking at the DOT and if there is any discretionary funds. He would like to see some level of connectivity with the residents over the bridge with respect to having safe pedestrian/bicycling transit over the bridge and what we can do to rehab on the bridge as part of the scope and connecting to Wilmington and their greenway and may open us up to more funds. As this resolution goes forward and refine this aspect of it that there is a consideration for it and would like to see someone from the town assigned as a steward to start getting this moving forward.

Mr. Owens said he thinks the planning, surveying and permitting is probably not included in the \$50 Wilmington cost.

Councilman Gilbert made a motion that the scope of the Greenway Project include connectivity across the bridge and rehab and retrofit of the bridge and the resolution showing support for the projected path and that Carolina Beach is supportive of the initiative going forward. MOTION CARRIED UNANIMOUSLY.

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

CONSIDER ADOPTING A RESOLUTION TO RENEW A LEASE WITH PLEASURE ISLAND CHAMBER FOR OFFICE SPACE FOR A PERIOD OF TWO YEARS

Tim Owens said they have given Council a new lease that was drafted by their attorneys which says there will be a \$250 per month fee for the Pleasure Island Chamber. It is a more encompassing lease. They did advertise it for 10 days prior to which is what you are required to do for a two year lease. Council's direction at the last meeting was to go ahead and enter into a 2 year lease with Pleasure Island Chamber of Commerce.

Councilman Johnson feels we should consider a COLA 4% increase every year.

Mayor Macon made a motion to approve the 2 year lease as is. MOTION CARRIED 4-1 WITH COUNCILMAN JOHNSON VOTING NO.

REQUEST BY ROCKFORD PARTNERS FOR CUP EXTENSION AT 406, 408, 410 CANAL DRIVE (PID #08818-015-004-000; 08818-015-003-000; 08818-015-003-001)

Ed Parvin made the presentation. He said that Rockford Partners was approved for a CUP in December 2006 and they are looking for a 1 year extension of that CUP. They did pull a building permit for the foundation in November 2006. The last inspection was January 18, 2007 so that permit has expired. If they do get an extension, the foundation and any permitted activities, which is just the foundation, will have to be finalized. There was no final issued for the foundation so they would have to have an engineer seal meeting the current building code.

Mayor Macon made a motion to extend the CUP for Rockford Partners for 1 year. MOTION CARRIED UNANIMOUSLY.

ADOPT A RESOLUTION AUTHORIZING EXECUTION AND FILE APPLICATIONS FOR OBTAINING FEDERAL FINANCIAL ASSISTANCE TO UPDATE THE TOWN'S COMMUNITY BASED HAZARD MITIGATION PLAN

Jeremy Hardison gave the presentation. He said in order to qualify for certain disaster assistance, a local government must adopt a hazard mitigation plan that meets the federal and state guidelines. The plan must be updated and re-approved by FEMA every 5 years and we are now in that updating mode as our last plan was approved in 2003 and is set to expire in 2009. To qualify for those funds the plan must remain in compliance. For assistance with the plan staff has applied to NCEM/FEMA for funding under the Hazard Mitigation Assistance Grant. Before any grants can be executed Council has to adopt a

resolution that the Primary (Town Manager) and Secondary Agent (Planning Director) can authorize to execute and file applications for federal and state assistance. This is a 25% matching grant with a maximum amount awarded of \$20,000. Staff salaries for time worked can count against this match.

Mayor Macon made a motion to adopt Resolution No. 08-943 (*Exhibit 4*) to authorize staff to execute and file applications for financial assistance to update the Town's Community-Based Hazard Mitigation Plan. MOTION CARRIED UNANIMOUSLY.

APPOINTMENTS TO MASTER DEVELOPMENT PLAN IMPLEMENTATION COMMITTEE

Council considered the following applicants: Ellen Sheridan, Michael Daniel McLaughlin and Andrew Pasedag.

Councilman Johnson made a motion to approve the three applicants to the Master Development Plan Implementation Committee.

Councilman would like to make sure to send the scope to all of the applicants of the committee and to help implement the plan and not reinvent the plan.

MOTION CARRIED UNANIMOUSLY.

REQUEST FOR BUDGET AMENDMENT FOR MOTOROLA RADIO EXCHANGE

Chief Younginer presented this item. Chief Younginer said this is a town program. They have been working on it for over two years and it came together very quickly at the end and couldn't budget for it because of that. When the county spent the \$8 million dollars to upgrade the Motorola system and we went digital, that caused some negotiations between cellular phone companies and radio companies over frequencies. The cellular phone companies have to purchase radios back from government entities, towns, police departments that will not work on the system anymore. Those are the old LTS radios that we have 35 of still in inventory. They will have to furnish us a new radio to replace those. The only problem, the new radio valued at \$3,000 is not going to work when we receive it and in order to function we will have to purchase the flash for each radio at a cost of \$660 each for a total of \$23,275. They will replace them regardless. It is also much better if they come from the factory already flashed for everything you want instead of going back in there. The value of the radios will be \$105,000. They plan to do this in January.

Mayor Macon made a motion to take \$23,275 from the General Fund balance to allow for flashes to be done at the factory for the new town radios. MOTION CARRIED UNANIMOUSLY.

DISCUSSION CONCERNING LETTER AND SURVEY TO CENTRAL BUSINESS DISTRICT (CBD) PROPERTY OWNERS REGARDING THE MASTER DEVELOPMENT PROCESS AND PROPOSAL FROM PETER J. SMITH AND COMPANY TO ASSIST WITH THE REDEVELOPMENT OF THE CORE CBD

The town manager presented this item. Mr. Owens presented a letter to Council that he said will go out to everyone who owns property in the CBD which states what our intentions are to go ahead and try to implement the Master Development Plan (MDP). We also talked about sending out a questionnaire and seeing how eager folks are to move forward on the MDP or not. He is seeking any comments they may have, if not, he plans to send it out by the end of the week and try to get them back into our hands and tallied by the January meeting. As far as the other part of this, he would recommend they go forward and get these surveys back and then they can talk about the other part of this MDP proposal.

Councilman Johnson said his only comment is on the questionnaire, under phone number where it is asked if it is convenient for you to make meetings, he would like to change it to would you attend meetings held. He feels we need a strong response from these people.

Councilman Gilbert suggested adding contact name, physical address and name of business.

Mr. Owens said his intent was to carry them around to the shops and property owners. He could have a box to check if they are owner or tenant. The letters will go out by the end of the week.

REVIEW REQUEST FOR PROPOSALS FOR PARKING MANAGEMENT SERVICES AND THE POSSIBLE AWARD OF A BID

Mr. Owens presented this item. He said they met with the current contractor Central Parking and are going to try to get with them and get a closeout plan going. It would be nice if they had a vendor on board prior to that so they can get with Central Parking and make sure they closeout. It already went over what our current conditions are. He gave an analysis of Lanier Parking Solutions and said what he thought the positives and negatives are of the bid. His recommendation, at this point is that they consider hiring Lanier Parking services for an amount not to exceed \$220,000 and that Council allow him to sit down with the management of Lanier Parking and explore the management style contract parking option which they could then bring back to Council once they have finalized the plan. He would like to get them moving thinking about the parking service. They can sit down and negotiate the management style contract which one of the benefits would be that they would not be obligated to a monthly fee like they would be under a flat fee scenario. If they want to change things or the number of hours or add more staff or what have you, they can do that. Some of the other ones like McLaurin Parking was

probably his second option and were around \$222,000. They probably could do it for around \$194,800 but it would be a scaled down, 7 month version which would give not as much enforcement to the end months. They are proposing a 12 month manager. His third option is Park Rite. He doesn't think they have enough experience with municipal governments and are also kind of heavy on the incentives part of this. Lanier had an incentive based portion but he doesn't anticipate the town reaching those incentives. If we do, that's wonderful but he thinks they have talked about increasing our revenues. Central Parking came in with a base bid as well as Freeman Park hours. They were probably the lowest overall bidder but came in after the bid process. This is a service and we can choose any of these people. We wanted to make sure to go through a process to get some equity in the bidding process. He gave the board a copy of what it would cost to go in-house at \$218,000. There are some pros and cons to that and, he feels mostly cons. Somebody would have to manage it and we don't know a whole lot about parking enforcement, equipment or any of that. He last example would be standard parking. He tried to prepare them evenly even though sometimes the bids weren't as even as they could be. He tried to give all the information that he could. The spreadsheet was prepared by Mr. Diggs and shows some of the things that go into the parking program. We could do it for as cheap as \$198,000 and on up to \$254,000 depending on what is included in the contract. One of the things they didn't bid was the maintenance part of it. They do some maintenance that Central Parking does now. He has no idea of the extent of the maintenance they do. He does know if a pay box does go down they would normally repair that if they can. We own the actual pay boxes and meters, all of the equipment and, as far as he knows, we do not owe anything on that. Overall he felt that Lanier wasn't the lowest bidder but was the most responsible bidder.

Mayor Macon made a motion to ask the town manager to continue to meet and negotiate with Lanier Parking to engage their services as vendor for our parking enforcement and seek the management fee contract. MOTION CARRIED UNANIMOUSLY.

CAMA ACCESS GRANT OPPORTUNITIES

Ed Parvin presented this item. He said CAMA grants are going to be due very soon. You can use the grants for public access points to enhance what we have now and would be a 25% match or we could look at some land acquisition where we would have a 15% match. The first round of applications will be due January 30, 2009 and if we make it past the first submittal we will have an invitation for a second submittal February 27th which will be due April 17th. The last two years, 2007 we had upgrades to the bathroom facilities on Cape Fear Blvd. and 2008 we had some upgrades on Cape Fear Blvd. to include parking in the center and on the side with sidewalks and some landscaping. In 2009 we are looking at upgrading some existing sites or purchase of lands so staff has looked at a couple around town. One location is on Florida Avenue where a house burned down. It is a pretty large tract and they are asking \$1.8 million dollars. It is located in a residential neighborhood, 210 feet of water frontage with deep water and opportunities for some dockage and picnic areas/parking, etc. for the land. The second

site was Delaware at the street end. There is a property next door to that which could be purchased for \$1.2 million dollars. This property could be for bathroom, transient slips, canoe/kayak launch, possibly for our police boat, laundry facilities for transient boat slips in the mooring field, recreation equipment storage for Parks and Rec in the existing building and there could be some parking (20+/- spaces) or picnic area there. He thinks the tax value is around \$800,000 and was purchased a couple of years ago for \$400,000. Properties are appraised for the grants to be possible. Our right-of-way is 40 feet. With the lot there you would have 100 feet of frontage on the water. You have an existing dock and building there. Another option would be Texas Avenue and Bowfin looking at putting parking on Bowfin, a Port-a-Potty on the access point, landscaping/paving for the parking on Bowfin, a sidewalk going from Bowfin to Texas and fencing along the parking lot area. The approximate cost would be about \$65,000 for installing those. Also on the Texas site there is some properties to the north of the street end that are for sale with about 75 feet of frontage on the water, 200 feet in depth, 150 feet across and are for sale now, splitting the two lots, \$899,000 for one and \$699,000 for the other. Tennessee is a similar project with parking as well along both ends with bathroom, landscaping and sidewalk for the oceanfront access. Tennessee is a little bit different. Texas has the 90 foot right-of-way vs. the 50 foot so it gives a little bit more room for the sidewalk. Bowfin is a 50 foot. There probably isn't any parking along Tennessee. The parking they are looking at is down on Bowfin with the sidewalk coming down to the access point. They took it to the Harbor Commission who met last week and they have been really focused in looking at the street ends on Canal so they wanted to have that as an option as well. They still had a lot of questions about the land acquisitions. Some of the Canal Street ends are in our Harbor Management Plan that they have been looking at. Some of the ones they were looking at were Seahorse, Sandpiper is one we actually have in our boating infrastructure - the Big P Grant that we got to put in a dinghy dock. Property on the north was for sale but was sold. The property on the south was approved for a triplex and is still vacant but not for sale. They are hoping to tie in at least, if we don't have any other property, with the mooring field there. Mayor Macon suggested contacting the adjoining property owner to the south and see if they might be interested. Staff said they could do that. Sand Dollar and a couple of others may or may not. He and Curt talked about going out with the Harbor Commission in January and looking at these a little closer. Some have good potential and some have adjacent properties that access onto the street end and might not be ideal for upgrades. Sandpiper is probably one of the best ones because it does have that parking lot behind it. Those are the five options they are looking at. Again, we can apply for as many as we want. Usually you are going to be limited to around \$600,000 for one grant although there are several million available.

Mr. Owens said they are just looking for priority. They are going to come back in January. There is a draft resolution in there and they will bring a more firm document back. They are seeking input. To him the Tennessee Avenue and Texas Avenue are fairly no brainers and that is getting you 40 beach access parking spaces for relatively small amounts of money and are pretty good projects. He thinks that Florida and Delaware could be a good one to and provide different monies from different pots.

Mayor Macon agrees that would be a nice place to tie in but it is so far up to get to any of the town whereas if you came around to where our existing parking lot is near the Cupboard Grocery, that is a much better spot. Anything on Florida Avenue has been vehemently opposed in the past and all of those people still live there.

Mr. Parvin said he was looking for Council's top three for staff to focus on. They are looking to move forward to get some of the engineering done on those they are going to move forward with. They will bring back the resolution but January 30th will be the deadline and they are hoping to get a jump start on it.

Council recommended options 3, 4 and 5 and look into the Sandpiper lot.

CONSIDER SETTING A JOINT WORKSHOP WITH THE BUDGET COMMITTEE IN EARLY JANUARY

Tim Owens said there has been some discussion about possibly having a joint workshop. He is proposing two dates and they are both Mondays. One is the 5th and the other is the 12th and are before the Council meeting.

Council agreed on January 12, 2009 at 6:30 p.m.

Staff will send out a notification and e-mail the Budget Committee.

CONSIDER SETTING A WORKSHOP IN DECEMBER TO REVIEW REQUEST FOR PROPOSALS FOR A FIRE APPARATUS AND FOLLOW-UP ON PRIOR FIRE DEPARTMENT WORKSHOP MEETING

Fire Chief Rorie presented this item. He said they need to set a meeting date to review what proposals or bids come in. Bid opening is on December 11th at 4:00 p.m. and they are expecting anywhere from 8 to 32 bids. On December 12th, 13th, and 14th they will be going through the bid review process. They are requesting a meeting to review and make that recommendation either on the 15th, 16th, or 17th. As a matter of preference and time, if it could be the 16th and 17th or the 17th, that would be better. All of that could be for naught if the recommendation is for a demonstrator and so they could carry that forward to the next Council meeting as far as the award in January. They have to award the bid, seek the financing, execute contract for new apparatus by December 31st. Council requested some stuff about benefits, that was also included in the agenda but that could be put off.

The finance director said she can give the bank a week to come up with some financing options but it is the holidays and she is assuming they can get it back to her in a week.

Council agreed to a special meeting on December 15, 2008 at 4:00 p.m. at the Town Hall.

CONSIDER SETTING AN ADDITIONAL PUBLIC HEARING ON A SAFE ROUTES TO SCHOOL GRANT APPLICATION FOR THE JANUARY TOWN COUNCIL MEETING

The town's planning intern, Adam Short presented. He stated this is a Safe Routes to School Grant with a due date on January 30th. They could adopt a resolution tonight or sometime in January but it needs to be done prior the application process. Safe Routes to School is administered by the NCDOT with the idea to motivate kids to walk and bike to school and promote safe travel to and from school. It facilitates the planning process and usually provide a representative from DOT to help administer the program. The goals of the program are: encourage and enable students to walk and bike to school, promote health and safety, reduce traffic pollution and fuel consumption which are achieved by infrastructure and non-infrastructure improvements. The grant provides assistance in management, between \$100,000 and \$300,000 for infrastructure improvements and does provide 100% of project costs. There is no match required. Benefits also include better sidewalks and improved inner connectivity of existing sidewalks. Our project calls for new sidewalks in the residential districts adjacent to Carolina Beach Elementary School. There is a crossing point currently that is going in on Atlanta crossing Lake Park Blvd. That has already been funded but this project will tie into that. There will be a multi-use path on Harper connecting to Dow Road. The approximated cost of this project is about \$288,000 and requires adoption of resolution by Town Council.

Mr. Owens said they have had a multitude of public hearings and he would recommend scheduling a public hearing for the January meeting. They can advertise that and adopt the resolution then and they can add numbers in there as well.

Mayor Macon made a motion to set a public hearing date for January for the Safe Routes School Program. MOTION CARRIED UNANIMOUSLY.

REVIEW PERMITTED USE FOR NEW ABC STORE LOCATED AT EXISTING SITE ON LAKE PARK BLVD.

Jeremy Hardison said this is an information item and it does not require any action. This project is permitted by right and it has been reviewed by TRC. The applicant wants to demolish the existing building and construct a new store in front of it. The existing building was built in 1984 for restaurant use at the time. The ABC took over in 1993 and the new building will be twice the size of the existing building because of added demand. He showed the site plan. The ABC board would like the existing store to remain open with a fence erected separating that store and the construction site and materials. They will have several parking spaces open during construction process. One of the comments TRC had in review jointly with Wilmington traffic planner was how close the driveway was to Lake Park Blvd. entrance. Staff recommended for them to maybe do away with it or relocate it. He shared the revised plan with Council. They want to try to remain open as much as possible but there may be about 2 weeks where they will have to close for

transition. He said that staff, in the future, would like to keep Council informed of any major projects going on in town.

CONSIDER APPROVAL OF A RESOLUTION TO APPLY FOR A WATER RESOURCES GRANT FOR FUNDS TO ASSIST IN CLEANING THE CAROLINA BEACH LAKE

Tim Owens presented this item. He said they have looked at the lake and applied for grants and they are going to try again. He did talk to John Sutherland about applying for a grant. They are asking for a \$400,000 match to a \$1 million dollar project. He will talk to Mr. Sutherland a little further whether he includes that as part of a grant or he wants to do it as a line item but he is going to try to lower our amount as part of our match and then maybe he can seek a line item in his line item budget to help as well. This, hopefully, will be a worst case scenario and what they will have to do tonight is to consider adopting the resolution to apply for the grant.

Mayor Macon made a motion to adopt a resolution to apply for a grant for Carolina Beach lake (*Exhibit 5*). MOTION CARRIED UNANIMOUSLY.

CONSIDER ADOPTING A RESOLUTION FOR PUBLIC ACCESS GRANT CONTRACT FOR CAPE FEAR BLVD. ACCESS ENHANCEMENT PROJECT

Councilman Gilbert made a motion to approve Resolution 08-944 (*Exhibit 6*) authorizing local government execution of a public access grant contract. MOTION CARRIED UNANIMOUSLY.

Tim Owens said that Councilman Gilbert had a couple of things he wanted to bring to Council's attention.

Councilman Gilbert said at their breakfast meeting he had presented three items for consideration. One is legislation that would allow us to pass an ordinance to require motor vehicles to stop for pedestrians crossing the street, very similar to Ocean City with the signage and that. Number two was a legislative position on using room occupancy tax monies for lifeguards and also a memo of clarity or position on using room occupancy tax funds for crossover and inlet maintenance. He was at a County Commissioner meeting where Rep. McComas made a commitment to work with the beaches concerning crossover and inlet maintenance with respect to room occupancy tax. He is not sure how we are going to do that but it might be a memo of some sort from the legislator saying that it is okay to do that. Those were the three items he brought. He thinks he made a motion at that meeting that it come forward as a resolution to Council so we can get it on the legislator's agenda if we supported those initiatives.

Tim Owens said he and Councilman Gilbert can draft a letter to send to our senator and state representatives concerning legislation for one and three: ordinance for vehicles to yield to pedestrians and use of room occupancy tax funds for crossover and inlet maintenance. He would also like to include in the letter some reference to the lake grant they are applying for.

NON-AGENDA ITEMS

Steve Coggins said that extensive work that has taken place, with respect to the proposed amendments that were passed on setback and beach fill community regulations by the Coastal Resources Commission in consequence of the breakfast meeting we had with certain legislators and with the approval of Council, he did attend meetings in Raleigh at the offices of New Hanover elected representatives there and with their legislative council and discussed the particular problems as to how these proposed regulations threaten the viability of the Master Development Plan. In response to that, as fate would have it, the Revised Rules Commission met the very next day and he was strongly advised, on behalf of the town, to attend that meeting at which time he found out that the Revised Rules Commission did in fact authorize those CRC regulations to go forth. That triggered then immediately the necessity of getting together object letters to these rules so that these rules are now subject to legislative review as opposed to simply regulatory approval by the Coastal Resources Commission. That places a burden then on the town setting forth its case to the particular members of the legislature and, most importantly, their council and also with their key staff members of Division of Coastal Management who are willing to meet with us, including the Director of the Division of Coastal Management, Mr. Gregson and Dr. Jeff Warren who is a policy maker within that is primarily responsible for these regulations. This is on a fast track because if something is not resolved say, during the time period between January 28th and March 4th, these regulations are going to go forth and he strongly suspects that a good deal of your Master Development Plan is not going to be worth the paper it is written on. It would be well for your Master Development Plan Committee, in his judgment, that you have appointed, to put them on a faster track and put them in touch with him and others who are critically interested in the outcome of this matter and to either come to a negotiated agreement as to regulations that will protect Carolina Beach and its Master Development Plan given its uniqueness as the only truly viable dense urban oceanfront community in the state. He would also be remiss in not letting you know that there has been a consortium that has been formed by communities in the CAMA counties that are dissatisfied with the responsiveness of CRC with respect to regulations that allow them and how to deal with inlet management and preservation of the beaches and renourishment. There is a considerable lobbying effort that goes on to propose certain regulations and statutes that would significantly tie the towns' hands and how to deal with the situation, in particular at Carolina Beach Inlet and at Snow's Cut. The thought that this consortium, ranging in communities from Kill Devil Hills all the way down to Bald Head Island, is that they would come together with an interlocal agreement formed for the purposes of getting input with the legislature in conjunction with counsel for already Town of Ocean Isle Beach and of Figure Eight Island so that beach communities will be able to have more

flexibility in how they deal with inlet stabilization and beach renourishment efforts. It was of primary concern that, at a recent regional meeting that was attended and he believes our Planning Director Mr. Ferguson was there, in addition to concerns that we have about regulations, it was pointed out at this meeting that Carolina Beach Inlet was deemed by the science panels and DCM staff as one of the most unstable of the inlets, that Carolina Beach has received more beach renourishment than any other community in the state. It has had 37 since 1965. It was also pointed out that there is very little available sand that is offshore. The only sand that was going to be available is actually within the inlet itself where it is taken back in to estuarine areas and whether or not that sand is going to be available. They have conducted the vulnerability indices or index that indicates in the region around Carolina Beach Inlet is among the highest of the vulnerability areas. What that points to then is that long term policy goals of certain regulators within DCM will have a vested interest in preventing Carolina Beach from taking steps to stabilize Carolina Beach Inlet and, therefore, also get the most benefit from whatever renourishment projects we are able to obtain. Our situation is significantly different, as you know, from Wrightsville Beach which has a perpetual funding source. Ours expires with the Corps in 2012. The regulatory framework that will exist that will allow beach renourishment is probably going to be significantly different in 2012 and, so, your single lot developments are going hand in hand. It is his strong recommendation that the town join in this proposed interlocal agreement among approximately 15 to 20 of these CAMA communities in an effort to state the case with the legislature of the need for alternative methods that allow for inlet stabilization and access to sand so that we can proceed forward to protect the beaches and proceed forward with our Master Development Plan. Currently, it is his recommendation that your town attorney receive as much help as possible from other resources available to the town to fast track come up with some modifications to these proposed regulations that would allow Carolina Beach to obtain beach fill community status, get an appropriate vegetation line and exempted in such a way that the setbacks are not done in such a way that unreasonably undermine the various alternatives of your Master Development Plan. These developments that are going on at these levels of which he is talking about is going to render, basically, useless a lot of effort that has gone on over the past couple of years.

MPT Wilcox said, to follow up on what he is saying, NC Byways meetings at which he and Mayor Macon attended various parts of, the end of the first evening they were all invited up to a suite to talk about the counties interlocal agreement and lobbying the legislation to do, allow terminal structures, to allow specifically for renourishing beaches. Apparently they have gone before legislation last year looking for a power program for Figure Eight and decided that this is essential all up and down the North Carolina coast.

Mr. Coggins said it was regrettably labeled the Figure Eight Bill. The members of the consortium propose that each community try to contribute somewhere around \$15,000 towards this effort and he feels that would be a wise investment. There are a number of groups that have made this their number one priority in opposition to this, even though that particular bill you were talking about passed the Senate 48 to 2 and the votes were there in the House for it to pass with 70% of the votes. The Speaker of the House did not allow it to go onto the floor. It is coming up again and is going to be a furiously

contested situation. Parallel with this track, however, is the situation with these regulations on setbacks and what it takes to become a beach fill community. You put these two together and you literally have a confluence of regulations at the statewide level that can undermine the vision of what Carolina Beach wants to be.

MPT Wilcox said, based on the guidelines that they have in place for availability of funds and fill materials, it doesn't seem that anyone can meet those requirements, much less Carolina Beach.

Mr. Coggins said an argument could be made, however, different signals are being sent by DCM to different communities and that ambiguity is something he thinks is not fair to your staff, to many committees that work hard on doing the planning and greater clarity is absolutely needed. We need the acting now. Things are going to start happening at a furious pace at the end of January and unless you act now it will be too late.

Mr. Owens said we will have to do it at staff level, bring Gregson down and Jeff Warren and talk to them at first to find out what this actually means.

Mr. Coggins said he also wants them to be proactive, not merely ask them what does this mean. He wants to propose them something we need for it to say and that is where your attorney is requesting help from staff or committee or whatever and, also, to make sure that we are reflecting the will of council. We now have the attention of significant leadership within the General Assembly regarding the Town of Carolina Beach's opposition to this. Given that we have attracted that attention, it would be well that our efforts be of a high quality basis that warrants that attention less we would pay a severe price when the time comes when we need to go back to the well to drink again. He thinks we should join the consortium and, at the same time, we need to propose specific regulatory verbiage, have that on the table and sent to representatives of DCM as well as our legislators and getting feedback from them and then meet with those regulators to see if we can negotiate an outcome that would not require any of our elected representatives to have to propose a bill that specifically disapproves of the regulations that have just been passed. He would rather not ask any representative to expend their political capital on that if it is not necessary to do so. But, he cautioned that if we do not receive the kind of clarity or exemptions that we need, it is, in his judgment, worthwhile to ask our elected representatives to make that kind of bill introduction.

Mr. Owens said, what he is hearing is that he and the town attorney, with the help of the Planning Director, propose some language that they think the Raleigh staff will support or that our legislators will support and do it in a way that works for the Town of Carolina Beach. He is not well informed about the consortium and does not know exactly what the charge is and can only trust the town attorney.

Mayor Macon said they have a meeting Monday at 4:00 p.m. and maybe they could do a little research on that.

Mr. Coggins would not recommend doing any investment until the mission and structure of the consortium has been formed. At least ten communities have elected to do this and contribute to it in the amounts mentioned. Everybody is waiting on the key players putting this thing together to see what it is going to look like and how it is structured, who is in charge. A resolution of intent would be very helpful. North Carolina Beach and Inlet Waterway Association has a broader constituency than what is concerned with what this is and they are working very hard in the background but they don't purport to be the sole representative of the 20 CAMA counties with respect to this particular issue. Not all of the 20 CAMA counties are member of the association nor does the association want to spend all of their capital on this issue.

Mr. Coggins said he thinks a resolution in favor of our proceeding forward with interest of joining the consortium would be appropriate.

Mayor Macon said that sounds good. Let's let the town manager check it out and maybe we can have something ready for Monday when we meet. He said anything the town attorney might need or if he needs him to travel to Raleigh to let him know.

Mr. Owens said he is e-mailing the ports and waterways, the county level, and we are trying to get a dual path for what we need to do with the beach renourishment situation on their agenda, make it a high priority. He has talked to Rick Catlin about it. He and Gary Ferguson have met with Rick. So they are trying to get it on the agenda in the forefront and make some decision as to how we need to proceed. Whether we need to go it alone or continue down the federal path.

Mayor Macon mentioned that the seal was fixed by one of the employees.

The town clerk, said she sent Council an e-mail about the upcoming 2009 Annual Congressional City Conference to be held in Washington, D.C. March 14th through the 18th. You still have time to decide. The deadline is early February. Council will take a look at it.

Mayor Macon said he attended the Pleasure Island Chamber dinner and they received a plaque for our continued dedication and support in all events sponsored by the Pleasure Island Chamber of Commerce and they really appreciate the town working with them on their events and the efforts of the town employees for these events. He also has a letter that is being requested of us to send to Senator Burr's office in Washington, D.C. supporting a private company who is reaching out to a possible master developer. Senator Burr's office wanted confirmation that the town supports the possibility of a master developer being brought in to Carolina Beach even if it was brought in through a private individual.

**MPT Wilcox made a motion to recess the meeting until Monday at 4:00 p.m.
MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____