

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

February 10, 2009

The Town Council of the Town of Carolina Beach met in regular session on February 10, 2009 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Pro Tem (MPT) Dan Wilcox; Councilwoman Pat Efird; Councilman Alan Gilbert; and Councilman Jerry Johnson. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

MPT Wilcox presided in the absence of Mayor Macon.

Councilman Gilbert made a motion to excuse Mayor Macon from the meeting. MOTION CARRIED UNANIMOUSLY.

INVOCATION AND PLEDGE OF ALLEGIANCE

Tom Campbell opened in prayer. Mr. Campbell also led everyone in reciting the Pledge of Allegiance.

ADOPT THE AGENDA

MPT Wilcox made a motion to adopt the agenda as presented. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Chief Younginer recognized Police Sgt. John Blodgett for 10 years of service.

Ted Lashley recognized Lani Thompson, Superintendent of Parks & Recreation Department, for 5 years of service with the town.

MPT Wilcox thanked the employees for their dedication to the town.

***PRESENT PROCLAMATION TO HUMAN RELATIONS COMMISSION
RECOGNIZING FEBRUARY 2009 AS HUMAN RELATIONS' MONTH***

Director of Human Relations, Carl Byrd, introduced Father Richard Elliott, Priest of St. Andrews on the Sound and new Vice-Chairman of the New Hanover County Human Relations Commission. Mr. Byrd asked MPT Wilcox to present the proclamation to

Father Elliott. MPT Wilcox read the proclamation. Father Elliott thanked the Town of Carolina Beach for their support and acknowledged Mr. Byrd and his staff for their work. Mr. Byrd thanked the town for their work and support with children.

Councilman Johnson made a motion to adopt Proclamation No. 09-959 recognizing February 2009 as Human Relations Month. MOTION CARRIED UNANIMOUSLY.

REQUEST BY BOB DRACH TO HOLD WILMINGTON WAVES BASKETBALL CLUB'S YOUTH TOURNAMENT IN CAROLINA BEACH ON APRIL 25-26, 2009

Mr. Drach was not present. MPT Wilcox said we may come back to item later.

PRESENTATION BY JOE DIBENEDETTO AND REPRESENTATIVES FROM STOP TITAN

Joe DiBenedetto made the presentation. He explained that coal fire burning plants emit mercury in the air. Titan wants to put the fourth largest plant in the country in New Hanover County and they want a permit to put 300 pounds of mercury into our environment. The NC Department of Health and Human Services has already identified 22 fish in our area on the mercury watch list. So we already have a serious problem. He wants to see the towns get involved. He asked Council to look over the information he sent them and take a stand. Currently, Titan is in the process of getting a draft air permit and asking for 263 pounds of mercury a year. The current fourth largest concrete plant in the country that Titan will overtake emits over 500 pounds of mercury. That means they will probably output more than they are asking for. If Titan gets this permit, they will be grandfathered in before the state changes regulations on coal burning plants due out in March/April timeframe. New standards will require them to reduce emissions by 80%. The plant would be located 20 miles upstream and will flow down through our river to Bald Head Island. He feels our revenue dollars could be impacted. He has information packets for anyone who is interested.

Councilman Johnson said, if Council agrees, he would recommend sending a letter to Representative Justice and Senator Boseman that they support the letter that they sent to the Department of Environmental and Natural Resources. Councilman Gilbert agreed with sending the letter and with slowing down the process and support giving more public hearings. Councilman Johnson doesn't feel this is taking a position. Tim Owens said he isn't sure that everyone, as far as the county officials go, are in agreement with the way our representatives may see it. He cautions that the county may feel a different way as they are the ones who thought this was a good venture and supported them financially and the zoning was in place. Councilman Johnson said he doesn't see the letter as taking a position for or against Titan but rather slowing up the process of issuing the air quality permit until they go through the whole process.

Councilman Johnson made a motion that we send a letter in support of Representative Justice's and Senator Bosemen's letter to the Department of Environmental and Natural Resources. MOTION CARRIED UNANIMOUSLY.

REQUEST BY BOB DRACH TO HOLD WILMINGTON WAVES BASKETBALL CLUB'S YOUTH TOURNAMENT IN CAROLINA BEACH ON APRIL 25-26, 2009

The town's Parks and Recreation Director, Ted Lashley, said they could present this item in the absence of Mr. Drach. With that he turned it over to the town's Parks and Recreation Superintendent, Lani Thompson. He said that Bob Drach is with the Wilmington Waves Basketball Association and US Basketball Association and they would like to have a 16+ team tournament here for youth basketball on April 25-26. They would like to use our facility for a few games. Other games will be dispersed at a few other gyms in the area. It would bring a few extra people down to the island for the weekend. Mr. Drach discussed with the town the liability insurance issues which they have covered. Mr. Thompson said it is okay with their department and Mr. Drach is seeking Council's approval. It would take place after the leagues are over and feels it would be a good thing for the town and local youth. They would also be making a donation to the Recreation Center for their use of the gym.

Councilman Gilbert made a motion to approve the Wilmington Waves Basketball Club request for utilizing the gym for the tournament subject to insurance requirements and any other requirements of the town. MOTION CARRIED UNANIMOUSLY.

PRESENTATION BY MIKE BENNETT CONCERNING PLEASURE ISLAND SOCCER ASSOCIATION

Mike Bennett, 609 Columbia Avenue, made the presentation (he gave a handout to Council). He stated that he spoke at the last Council meeting representing Pleasure Island Soccer Association (PISA) of which he is the Executive Director. After the September 13, 2008 Council meeting, there were some questions Council had that were brought up from some citizens of Carolina Beach, involved with the soccer league, concerning where the soccer league was playing, whether or not we were using the facilities down here or Veteran's Park. He is going to address some of those issues tonight, as well as some others that were brought up at the January 13, 2009 Council meeting. At that meeting some issues were brought up, not just about PISA, but a proposal was made from Cape Fear Soccer Association (CFSA) to utilize our one field we have here for tournaments and the potential financial profits that would have for the community, which he will contest later. The second issue was Cape Fear Soccer's proposal to further expand their soccer endeavors here in Carolina Beach with a full-fledged proposal for fall 2009 recreation program. He proceeded with the presentation (*Exhibit 1*). He is requesting that Council vote no to this and do not allow CFSA to use

the facilities at Carolina Beach and undermine PISA. He is also asking for Council's support in improving the facilities, not replacing the program, but providing service to the community they always have. He was offended and disappointed in the manner in which CFSA's presentation was snuck into the agenda through the support and endorsement of a council member who is involved with the organization. He is grateful that it led to an opportunity to fully explain and enlighten the community about PISA and their advantages.

Councilman Gilbert said there were a few questions from some of the residents about scheduled board meetings. He asked if the board meetings are open to the public and Mr. Bennett said yes. Mr. Bennett also said that criminal background checks are done on all the coaches at \$10 per coach. Councilman Gilbert asked if there is a process to work out problems or challenges with coaches. Mr. Bennett said the board reviews all complaints. They take all e-mails/complaints seriously about the treatment of their children. They listen to all of the evidence, they gather all of the information, ask questions and sometimes they suggest stepping down from coaching. Councilman Gilbert said he would like to address his accusation of sneaking someone in. He said that back in September or October they were berated by one of PISA's parents, coaches, sponsors about the town neglecting the fields. Going back last year, when parents started voicing their opinion, he tried to get CFSA, and whoever else, to come voice whatever opportunities there would be. When you moved the program off the island, his children have played and he thinks they have a wonderful program, they don't have any complaints about your recreation program, we were just going back and forth. It was great for them to see that you have your own soccer. They signed up and were surprised that you weren't playing on the island. He didn't have a problem with it because they spent most of their time playing off the island but the other parents who said they weren't going to play because it's not convenient and he respected that. He didn't sneak it on the agenda. It was for four months he had been asking to put it on but it hadn't worked out. They couldn't come or it wasn't convenient so he thought the better part of valor was not to schedule it. It wasn't sneaking. His initiative is for tournament soccer on the island. David Glover is a very good friend of his and comes here every year from Rocky Mount and used to stay on the island. He asked him why hadn't for the last few years and he said he just doesn't like the drive into town. They stay in town because it is just too hard to drive. So, he thought if they had some tournaments that had the potential to make \$5 million dollars and we could share in those revenues. The TDA shows that people spend less time on vacation because they spend more time going to soccer tournaments and those things so he thought, in our shoulder season, if they could bring basketball, as presented earlier, soccer, golf, whatever you can help sponsor around here, surfing, skateboarding, in the shoulder season. He apologized if Mr. Bennett considered that he snuck this in. He guaranteed him that his conversations with staff was to just put it on the agenda and if they don't show, it's no stress.

Mr. Bennett said he never said it was Councilman Gilbert. He just said it was snuck into the agenda.

Councilman Gilbert said Mr. Bennett stated that it was snuck into the agenda by a council member.

Mr. Bennett said now he knows who it was and thanked him for letting everyone know.

Councilman Gilbert said he made an accusation of a board member sneaking something in and he can tell him that, yes, his kids play in CFSA which is an adequate organization. They played in PISA, which is adequate. He just doesn't like taking his kids on and off the island. With respect to that he had a conversation with staff and they thought it was the best way to handle it because if it didn't work out where they weren't here, nobody was disappointed. They knew there would be some challenges and they figured, just like this basketball team coming, no stress.

Mr. Bennett said, first of all, the challenges are the facilities. The challenges are the fact that they have moved to a spring program for the first time mid year round, so there are adjustments. The third thing is, the announcement to move games off the island wasn't made until the board made the decision after all the registrations were in. If you are saying you didn't sign up with them because they weren't on the island, that decision wasn't made until all the registrations were in.

Councilman Gilbert said they signed up and then saw the schedule.

Mr. Bennett said the schedule wasn't out until after all the registrations were in. Your point was that you wanted to bring tournament revenue down here and they are sponsoring tournaments during the off season. We have two "Beat the Heat" tournaments, we have a spring sand soccer tournament, we have camps during the summer. As far as why people don't stay here, he has been around the soccer community a long time and with travel soccer a long time and knows that when you sign up for a tournament, you don't know where you are going to play. You don't know if you're going to be playing at Veteran's Park, Castle Hayne or across the river at Cape Fear Soccerplex. When people book their hotel rooms, they book it based on where they think they would like to enjoy and most of the time, that's at the beach. Folks don't mind maybe a 30 minute drive to a field venue if they can stay at the beach. So, people stay here anyway. The argument to say that this would be a financial windfall for the community if a bracket could use our one field, you already admitted they use our hotels that they use our hotels and restaurants anyway. That kind of nullifies that point.

Councilman Gilbert said he had another question, going back to how Council was kind of blindsided with this whole issue, is that they asked staff if they had any knowledge that the fields were in disrepair and staff didn't have any indication or didn't give any indication that they had any prior knowledge that the fields were in disrepair. For 16 years, he guesses there has been some level of adequacy for the program being played on the island. When he says on island, he means that the games are actually played on the island, not just administrated on the island. His challenge is that Council didn't know anything about it, staff, from the indications they got from them when they asked the

director and the manager if they knew anything about the condition of the fields was the reason that soccer was moved off the island and the answer from all of our directors and supervisors was no. He asked Margaret, went down there with the Mayor and looked at the fields. They looked at them and said, "Does it seem like there's a problem?" When they asked the question from a board perspective, the answers they got were they didn't know anything about it. That's when they reacted to it to figure something out.

Mr. Bennett said Councilman Gilbert reacted to it by recruiting CFSA to come in here and put on a presentation and undermine them rather than maybe e-mailing him or calling him. He just wanted to make it clear that the issue is that the fields have been a problem but since they have only been using them during one season, they have an extreme amount of wear and tear, then they would forget about them because they weren't using them the next season. Parks and Rec is very familiar with the fact that those fields are not in very good condition. If you did actually go out there with the Mayor or any other council member, maybe next time let them know and he will bring the head of North Carolina Turf Association out there and they can talk about how bad a condition those fields are in.

MPT Wilcox asked what or how would he see the use of our fields assuming they are in proper condition, how would they be integrated into their program? He understands that part of the reason they moved to Veteran field didn't have anything necessarily to do with the condition of the fields. It had to do with scheduling and parents having two children. He asked Mr. Bennett to explain that.

Mr. Bennett said that part of the reason they didn't come back all together last fall was the fact that the fields weren't in a playable condition. There is a layer of clay that was distributed from the infields and rye grass and the Bermuda grass hadn't grown in. He would say that 99% of the coaches and the parents would agree that you would trip over mounds of sand or fall on hard clay.

MPT Wilcox asked if the fields we have were in good condition and maintained in good condition, would they support your program?

Mr. Bennett said absolutely. As a matter of fact, even though they are not in the best of condition, they are working and talking with Parks and Rec and the baseball program to see what their needs are and whatever they can do to accommodate their program, again in the spring, they will work around their schedule and try to utilize whatever available field space there is.

MPT Wilcox asked if he has had some communication with the town, Parks and Rec, or somebody about addressing this issue and bringing the program back fully to Carolina Beach?

Mr. Bennett said absolutely. This was spoken at last week's Parks and Rec meeting.

Councilman Johnson asked Ted Lashley if Parks and Rec and the Parks and Rec Committee all working together and are they going to come back to us with some recommendations?

Mr. Lashley said they can get with Mr. Bennett and get some of his recommendations. He agreed with Mr. Bennett that when you play that many games on one small field like they have, the field does get into disrepair. We do have bare spots and he knows they have had irrigation and seeding and they are trying to get it ready. They have talked with Mr. Bennett and would be glad to work with him to get those fields in prime condition. He would love to have the staff to dedicate to that field all the time but he doesn't. He has one person who works outside and she has other areas to attend to also. They recognize the fields, especially with the amount of play it's been getting the last few years, and it doesn't have time to recover. They are working with Mr. Bennett - maybe some different types of grass. We do have irrigation. They are also looking down the road at reclaimed water irrigation from the plant and those types of ideas. He sees no problem with getting together with Mr. Bennett and working out a solution. They all want to do the best thing for the kids. It is not an adversarial position on their part or Mr. Bennett's part. The facilities are old, the park is old. They do fall in Sunny Point's venue also with trying to get new restrooms, so they have to visit that. They will do whatever it takes to get those fields up.

Councilwoman Efird commended Mr. Bennett and all the people that work with the soccer teams. All of the things she has heard have been great and it has given the children on this island something for them to do and it is one of the best programs they have ever had. It has been longstanding, it's been good and she supports us getting on the ball and getting it right so teams can be brought here to play.

MPT Wilcox said he appreciates Mr. Bennett's presentation because he has answered a lot of questions he had and he is not intimately familiar with that program other than he thinks he is doing a great job and it is nice to have this organization here right now and is affordable for the children and looks after the kids who live here now.

Councilman Gilbert said he would like to hear from Peter Broadley with CFSA. He also said his initiative is not to undermine any soccer program but to provide the best level of soccer for the kids. He has been in soccer for 40 years. He has seen the parents, the politics of it. If you think small town politics are bad, he knows what he is going through and appreciates what he does, taking this on, because it is a phenomenal responsibility. Either they love you or hate you and you don't get a lot of pats on the back. It is very similar to what they go through sitting on Council. He appreciates his program and wants to make sure that when he uses the term "undermine", he believes in competition and when his constituents come to him and say they really wish they had soccer where their 3 and 4 year old could play on the island, he listens to them. He looks at that being some opportunity out there. If a request for a proposal goes out to whomever and they want to provide, maybe there is a boutique soccer organization, a parent who is sitting out here that may want to step up where you did 16 years ago and run that boutique organization

and maybe only has island participants. He doesn't know. He asked Mr. Bennett to please not think he doesn't appreciate what you do and your coaches. We participated in your program, it was an awesome program but he was just driving across town so he figured they would get all the kids in the same program. He appreciates what Peter Broadley does. He feels they shouldn't put the kids in the middle of that tug of war. He is not trying to take over his soccer program or anything like that. He respects all the pressures and everything he does for his commitment to this community.

Councilman Gilbert made a motion to offer Peter Broadley with CFSA to come up and make comments.

MPT Wilcox said they are close to public discussion, they only have one item left on the agenda before public discussion which is the report from the committees and he would like to hear the reports from the committees and then they can open up for public discussion and anyone who would like to speak, on soccer or anything else, can do that at that time.

Councilman Gilbert withdrew his motion.

PRESENTATION BY MIKE KIRKBRIDE WITH THE BOARDWALK MAKEOVER GROUP CONCERNING FUNDS FOR EVENTS/PROJECTS AND PHASE II LANDSCAPE PROJECT

MPT Wilcox made a motion to table this item to the next regular meeting. MOTION CARRIED UNANIMOUSLY.

TOWN OF CAROLINA BEACH COMMITTEES' REPORTS

Ann Bowman, Chairman of the Operations Advisory Committee, submitted and read aloud her letter of resignation. MPT Wilcox thanked Ms. Bowman for her service and dedication and greatly appreciates all of her hard work. He regretfully accepts the resignation.

Tom Campbell, Business and Economic Development Committee, reminded the citizens that they meet the 2nd and 4th Friday of each month and invite everyone who would like to come out and share their wisdom as to how they can improve the business and economic stability of the town, especially those entrepreneurs who would like to start a new business in Carolina Beach. They would love to work with them on that.

Randy Simon, Chairman of the Police Advisory Committee, regrets that Travis Williams, for personal reasons, resigned. He would like to advertise for the open position. They meet the 1st Monday of every month, work very closely with the Police Department, specifically the Chief of Police, to examine any issues citizens have. He requested anyone who has a negative issue to come in and speak with them rather than advertising a

negative letter to Council or the newspaper. They are there to assist them and are the communication between the people, the Police Department and the Town Council. MPT Wilcox said, on behalf of the Council, to extend their appreciation to Mr. Williams for having served on the board. Mr. Simon also said they are working on a "National Night Out" which is a national program. They felt, as a committee, that they wanted to do a grassroots level and rather than just to have it on one night in August, to have a grassroots session for preceding months prior to August, possibly merging with the activities at the boardwalk, which they support greatly. Again, providing a community service, bringing awareness to our people the programs we have available, not only through our local Police Department but all agencies that provide services to our people. They also participate in fingerprinting our children at the Fall Festival at the elementary school, as well as anyone in the family. They make picture ID's with fingerprints which can be very beneficial.

PUBLIC DISCUSSION

Alicia LaChance, 102 Carolina Sands Drive, has been a resident of Carolina Beach for 6 years and been a part of the PISA program for 3 of those years. They have 3 children who play in that program. They have been very happy with the program up until this last fall season at which time a group of about 30 parents had a meeting with Mr. Bennett in the Parks and Recreation room. They voiced their concerns about soccer not being on the island, coach selection, team assignments and some other things. There were Kure Beach representatives there offering use of their facilities to be used. They have a great facility there that is not being utilized that they could use for practice. We have a representative from the Army Corps of Engineers willing to approach Ft. Fisher about the use of their facilities to not have the wear and tear. At the end of the meeting, those of us who were there were informed that we were, basically now that PISA has grown to over 400 children, the Pleasure Island children were only 34% and were no longer the majority. That was one of the reasons that play had been moved to Veteran's Park. The other was the fields. A group of us, there are about 8 on a panel that have looked at the fields, have met with Margaret. The fields are in terrible condition, Mr. Bennett is correct in that. They have lapsed and us, as a town should be ashamed. If we cannot take care of our own park facility, nobody else is going to. If I was coming in to buy a house now and I looked at our parks, I would not want to live here. Three years ago when I started the program and I could drive down Dow Road on a Saturday and see 500 people with their kids out playing soccer, this was the place I wanted to live. It is not appealing to me. The fields were barren this year and it was very sad. Veteran's Park fields are fantastic and beautiful. It's crowded. It's like going to a Hoggard vs. Ashley football game when you go in there because Cape Fear is on one side and we're on the other. Those fields take extensive play. They play adult league, the tournament leagues, clinics, PISA, they support soccer, Pop Warner and they also support the high school teams. They are being played on 6 days a week from afternoon until late in the evening with the adults and they can hold the wear and tear on those fields so whatever the engineer that designed those fields she thinks the town needs to bring in that individual to put our fields up to that standard. If we have those fields, which is basically sod, we can bring it back. Meeting

with Margaret, we walked over the fields, the fences need to be moved. Agreeing with Mr. Bennett, the fences are not where they need to be and we can gain a lot of playing space with the fencing but parking is still going to be a problem. In working with Mr. Bennett, there is a small group that would like to have some program on the island whether it be 50 children that want to play on the island. We have a group of volunteers that are willing to refurbish the concession stand that is falling apart. We have 8 sponsors right now that are willing to donate money. We have a gentleman that's willing to provide goals. The score manufacturer that supplies PISA has matched that price for a small league to start here on the island. If nobody can come to an agreement on whether the kids can come back and play here or the fields can get into condition. As of now the fields are not in any condition for anybody to play on them but there is a small boutique group that is out there with about 30 volunteers who are willing to provide their time, their money, to officiate, line the fields, run concession for fund raising, we have private donations, that are willing to bring it back and put that effort in that Mr. Bennett put in 16 years ago to bring it back as his program continues to expand and get larger and larger. That group is out there. She has the names of all those individuals, names of those who are willing to donate money and their time and their expertise in carpentry and plumbing to bring it back. If we as a town can put the money into it but, as of now, if we are not going to take care of our own green space then why would anybody want to be here or play on the island. First, we have to ask you to get somebody in there, re-line those fields, move those fences around and bring in some really nice sod, not just seed and maybe we can be back here in the fall and bring it into the community and bring all those people. As far as CFSA having a tournament, she thinks it's great. If we're not going to be using it as PISA and it's just sitting there, have the tournament, but she would really like to keep that as our community and you have a group of residents of Kure Beach and Carolina Beach willing to give that effort if that is a possibility.

Fred Crouch, 404 Sumter Avenue, he is the former operator of the Cottage Restaurant. He introduced their new tenant Peter, who has looked between Southport and Topsail Island to find a spot where he wanted to open a restaurant. Peter is going to be a wonderful addition in the restaurant community on this island. He comes to us from Oceanic Grill in Wrightsville Beach. Havana's is the name of his restaurant and Mr. Crouch looks forward to him opening which will be the first of March.

Randy Simon, 1410 Snapper Lane, expressed gratitude for the duties Ann Bowman has provided this town and her expertise will be greatly missed. He stated that he lives in the Wilmington Beach area and has a vested interest in living there and brings this topic up almost at each and every meeting. He is concerned with water quality, Mona Black Marina in particular. This issue is really starting to bother him. When the annexation took place in 2001, promises were made to people in that area for the basic necessities - police services, sewer services, paving streets, sidewalks and somehow along the line, the people have been forgotten especially when we talk about streets and sidewalks and storm drain issues. We have large ditches down there but the water does not flow. The water is stagnated, great for mosquitoes, snakes and rats but not to the people who live there. There are 250+ people who reside in the Wilmington Beach area. Those are families. Over 450 properties are in that area. Again, promises were made in 2001. Our

Town Council in September of 2005, people seated like yourselves and some of you are part of that, passed a resolution, presented by Councilman Lynch at that time, to go ahead and proceed with the paving of streets and sidewalks, storm drain issues, providing adequate drainage, curbing, gutters, collection basins for stormwater. That has not occurred. We still have approximately 4 miles of dirt roads on this island. He supports all the other venues. We have a skate park, landscaping operations in the near future, we're talking about having a pier. He supports all these venues but, please don't forget the people of Wilmington Beach. The other day he saw a lady trying to push a stroller with a small child on a gravel road with big rocks after a rain storm, many potholes filled with water, trying to get to the mailboxes at Ocean Blvd. because the US Postal Service refuses to send their vehicles on our dirt roads, particularly Snapper Lane, to deliver mail. They refuse. He has asked them personally why they won't deliver their mail and they say there are not sending their vehicles down those roads. With that being said, it's not just him saying their roads are in disrepair. Many times he has contacted Operations and they do respond, our Town Manager, he does respond, he has told them the roads are very bad. When you see a lady pushing a stroller and a vehicle drives by on potholes full of mud, that makes a very poor picture of our services that we have extended to the 250 families that live in the Wilmington Beach area. The resolution that he talked about was passed unanimously by Town Council in September 2005, fell by the wayside and it should not have been. Since then we have made grant applications for retention ponds to direct this water, we were not accepted. We have reapplied but the grants we applied for, we did not get and that was in conjunction with our town lake. We have made efforts but, since 2005, 4 years now and he has been told it is not going to happen any time in the next 1, 2 or even 3 years, the paving of roads, he thinks Town Council needs to really take, if they would, respect for the decisions of prior Town Councils. You sit and make the decision unanimously. Unless somebody presents a resolution to say that was wrong and rescinds it, then it should be respected and that is what he is asking them to do. Respect not only the people of Wilmington Beach but respect the decisions of Town Council prior to your sittings or you might have even been on that Town Council. The people of Wilmington Beach would like to have help, like to have adequate drainage, paved streets, sidewalks if they're available and can be put on at least some of the roads but, at least paving the road so maybe they can at least get their mail delivered to their residences. The people were notified. He has a copy of the Talk of the Town, official letter from the Town of Carolina Beach, expressing everything he has said as far as the preliminary assessment resolution. It was even established, down to the 6th percent, that the cost to the owners would be \$750 per lot extended over an 84 month period. Now the cost has more than doubled. In talking with Operations and the Town Manager, costs have escalated and there are feelings that we need to go back and have a public hearing because of the extraordinary costs. It's not only going to cost the homeowners in that area but also the taxpayers of all our citizens because the town, according to the resolution, is going to be paying for at least 50% of the cost. That extends to the taxpayers of the entire town, not just to the people of Wilmington Beach. If we come up with a new public hearing and the fear is put in of the astronomical cost, especially in the economical times that we are facing today, at what period of time will the cost get to such a high level that we say, yes, bite the bullet and go ahead a pave the streets which should have been done many years ago. The issue is going to be coming up and he wanted to get

his foot in the door first but he is asking Council to please respect the people and promises made starting back in 2001. That is 8 years with nothing around the corner and all they are asking is for the bare necessities.

MPT Wilcox said that two previous Councils did deal with this and he thinks everyone here on this Council, as far as he knows, and staff is committed to that resolution. Maybe it wasn't quite as much on the front burner in earlier days as it could have been, but, he knows that the problems with the wetlands and the Corps of Engineers and other agencies, as far as the permitting, were probably underestimated and we have been struggling with those for a long time. He knows that this Council and the town manager have made some strides, even in the last year, with regard to coming to agreements with those agencies and getting them back off some of the almost prohibitive restrictions that existed. Some of the other Council members might be able to speak to it better. It hasn't been forgotten and it is being worked on and the process is in motion. It is not just a function of not wanting to pay for it. It is a function of getting the permitting and meeting all the permitting requirements for the stormwater and the retainage fields and things of that nature.

Mr. Simon said that all the permits have now been obtained. Now the biggest mindset is, all of a sudden, the figure of over double the prices to everybody with the economical times we face. At what stage do we say does the figure have to get so high where we finally say we are going to do it. Normally prices don't go down. Unfortunately the price on his home at Wilmington Beach has gone down but the prices for paving roads, etc. have not. He understands that things are being done now. He has talked to Mayor Macon about this issue, he has been working on the permits with the Corps of Engineers but, in reality, we still face the monetary situation of bringing it back up, going to public hearing. What do the people say? They weren't really responsible when they were annexed to this delay now with \$750 per year for 7 years per property owner. That \$750 has gone to over \$2,000 now. To what level do we proceed before we say we're going to do it and bite the bullet on the high cost.

Councilman Gilbert said he would like to hear from the town manager because this predates him on the resolution but he thinks MPT Wilcox said it accurately that the resolution was very premature and the numbers in that resolution were taken from Carolina Sands and if that resolution was 2005, certainly construction costs have changed. What he would expect is that this is going to go back and we're going to have those public meetings to talk about what the numbers are today. He hasn't been updated on that for a while and would like to hear from the town manager.

Mr. Owens said that the state and federal agencies haven't backed off a thing so they have had to navigate around some of their requirements and, mainly the stormwater requirements have been the biggest challenge. The budget for this project included curb and gutter and the state agencies don't want curb and gutter. The budget also included sidewalks on every east/west route, we've scaled back on that also because of impervious surfaces. The biggest concern has been stormwater and mainly wetlands impacts. There were some impacts that happened even prior to the town taking over in that area that we

are still kind of paying for in this permitting process. There are some impacts from when water and sewer went in. The commitment at the time was a 1/3 - 2/3 split as far as cost goes with the residents paying 2/3 and it would be on a per lot basis. State law says that you can assess certain things and certain things you can't assess. The biggest cost increase at this point has been the requirement to dig 2 retention ponds and 2 stormwater lift stations and the pipe that carries it all the way back to the buffer zone. Those have been the biggest cost differences between what actually will get constructed and what goes out in the field or actually, what was proposed originally, what goes out in the field when we get to construction. The big benefits for doing the retention ponds are that a lot of the flow will go off of the lake which will lesson some concerns about flooding. Some of the water now that goes to an outfall in Kure Beach also will be somewhat eliminated. So there are some positives in doing the stormwater retention ponds. It has been an experience for him. He never anticipated the permitting would take this long and having to coordinate between these multiple, different levels of federal and state government that has taken so long. He thinks, at this point, they have spent about \$350,000 in permitting and engineering and it has been an adventure. He feels like, at some point, and this is going to be a recommendation to Council, because this project has been since 2005, he still feels like they need to go through a public process. They don't have to go through a public process but it has been so long they should do it to re-update folks on the project, let them know where we stand, what the costs are. As far as the permitting goes, we have all the permits. They are redesigning one lift station at this point that was on the corner of Texas and Snapper, our engineer is redesigning that. We still do not have the Sunny Point easements. Those plats have been in their hands for probably almost a year and he calls periodically to find where we are and has gotten a response back that they are almost there as far as signing off on those plats and he hopes there is not another wrinkle in the permit process by that but he can only trust that they will get those easements here shortly. It has been a long process. As far as continual maintenance of those roads, he used to live back there so he was aware that there were potholes and Brian will attest that he has asked him to make sure that every time it rains to get back there and take a look at those roads. We have graded them occasionally. The problem is that the base is so far gone that when it rains a lot, particularly in the winter time, it does rut more than typical. We do know there are some concerns there, he just hates to spend additional funds on top of the funds we are going to have to spend to resurface those roads and re-rock those roads so, we do grade occasionally. He understands it has been a long process. He feels like they are trying to do everything that they can to try to get a permit and we are almost there.

MPT Wilcox said that perhaps he misstated that the agencies haven't really backed off. Staff and the engineers probably deserve the credit. They have come up with creative ways to resolve the challenges that the agencies have put upon us and that is where the strides have been made. He asked the town manager when he would see this getting to a public forum.

Mr. Owens said he didn't really know. They have all the permits. They are just waiting on Sunny Point. Once they get the signoffs from Sunny Point, if they agree to allow us easements in the buffer zone for those two retention ponds, within a few months he

would say to go to the public process and notify all the residents being impacted by this project, reintroduce the project, the amount of money that they think it will cost to do the project and go through that process.

Mr. Simon said, in all fairness, Mr. Owens was not our town manager when this was initiated. There were dormant stages of time when this sat on the shelf with nothing being done. Recently he must commend not only Mr. Owens but Brian who he works closely with through Operations but, every rainstorm, without fail, creates potholes so as soon as it rains everything they have done is washed, which is an expense to the town. When these public hearings go, you mentioned the cost to the property owners - again, he emphasizes with the town sharing and you mentioned 1/3, 1/3, 1/3 but you bring all the formula into play that was voted on and passed in that resolution, it equates to approximately 50/50 in reality figures which affects all the taxpayers because when the town takes their portion, it's their money being spent. Again, the only thing he wants to close with - the promise was made back in 2001 to annexation, we're going to do this for you, come join our town and we did and here it is 8 years later and he is up there by himself just trying to get a little relief and help for the people of Wilmington Beach.

Brett Keeler, 310 Columbia Avenue, asked Council to look back into the amendment that was passed in September of the zoning ordinance that was pertaining to the permissible use of restaurants in the town, Ordinance No. 08-756 and Ordinance No. 08-769. They have a CUP and because of restaurants that are now coming in, they were partly to blame for this going through because they came back through for \$2,100 worth of CUP modifications worth of fees so they came back a couple of times. There are 31 provisions that are in what was afforded to him by Ed Parvin. There are a couple of caveats that basically thrust in the CUP that he sees all the time for restaurants that want to be a little bit outside of the box. One of them says that, "All outdoor entertainment shall obtain event permits." He enjoys going to the tiki bar in the summer and listening to live music outside. If Harbor Masters has that nice deck, hopefully he uses that this year, the Sea Witch opens back up, the question is do they have to go and get a special permit every time they want to have live music outside? And what is the cost to the applicant. Another one of the caveats that he sees is that it is necessary to restrict the hours of operation for the outdoor seating. That is kind of spot zoning as well. We have a noise ordinance town-wide and we have a noise ordinance in the CBD. That is pretty arbitrary for the staff to restrict hours of operation for outdoor seating. Another one of the provisions is for outdoor service area and/or outdoor entertainment area are proposed. If the property is inside the CBD and surrounded by CBD zoned properties on all sides by a depth of no less than 100 feet this should not apply. So we have a CBD that is zoned and it is abutted by T1, Highway Business, Marina Business and MX. They all pertain to business. Why do we have a buffer zone? There is no zoning overlay there so we are spot zoning within the CBD. There might as well be a CBD1 and a CBD2 - that 100 feet could be anywhere from 2 to 3 properties. One of the provisions is that it meets the definition of specialty restaurants. He can't find anywhere the definition of specialty restaurants. Does that mean ethnic, themed? What does that mean? A CUP shall be required if more than 15% of the restaurant gross square area is dedicated to accessory entertainment uses including dance floors, stages, live performances, disc jockey areas

and any other amplified entertainment. It doesn't say that the amplified entertainment has to be audio or visual - it just says amplified entertainment, so if we have TV's and we have NTN on our TV's, that's entertainment and it's amplified because it's going out. Does that kick it in? And it says any space planned for accessory entertainment purposes and/or dining areas where seats are moved to accommodate accessory entertainment shall count towards the area dedicated for the activities. So, if you have chairs out and you have a special event and you move the chairs for a dance floor. It doesn't say how long or how much of your operation business it takes up so that kicks it in because everybody has amplified entertainment if you have TV's around, it's more than 15% of your gross square footage. Very broad and ambiguous he thinks. He would ask Council to re-look at that because it seems there is a little bit of spot zoning and seems very arbitrary and ambiguous in some of the definitions and the lack thereof.

MPT Wilcox asked Mr. Keeler if he would submit those items in writing to the planning department. They can take a look at them and if they need to redefine something and bring it back to Council, they can make some recommendations.

Mr. Keeler said he would. He said he was looking into it to get rid of the CUP for the Blackhorn.

Councilman Gilbert said if there is an ordinance that a citizen or business owner wants to amend, the planning department will work with them on that.

Mr. Keeler said that if he wants to do that he would have to pay \$350 and likewise if they want to remove the CUP, they have to pay another \$350 as it is written right now.

Councilman Gilbert said it is reasonable to sit down with Planning and Zoning to qualify or clarify the ambiguity and if Planning and Zoning thinks it is a wordsmith issue then they could handle it.

MPT Wilcox said the reason he asked Mr. Keeler to submit it to staff was because it is a new ordinance and one he is sure is not perfect. It's a stepping stone. They are trying to get the point where it is a better tool for our town so, if you have input, give it to staff and they can give it to Planning and Zoning and take a look at it and bring it back to Council if there is something that needs to be changed.

Gary Ferguson said that staff has given Council a write-up on some of the issues that Mr. Keeler is addressing right now and he asks that they take a look at it. It is an FYI and gives a brief discussion on some of the issues that NC planners are experiencing relative to changing a use from a conditional use to a permitted use. The paper basically weighs out some of the issues and some of the things he thinks Brett is bringing up but also it speaks to what the law community says about the transitioning from a conditional use to a permitted use. Unfortunately where we find ourselves is that the planning folks in North Carolina are somewhat in disagreement with the attorney community in North Carolina about how we should handle these. So, we are a little bit at odds. He bows to the attorneys, obviously, because they are the law of the land. We do want to open that

up and we have given you a memo which we would be more than happy to discuss at length any of the issues that you might have with that memo because we just didn't want to surprise you all about saying that some of these conditions perhaps that they have placed on businesses under CUP's are really not enforceable now and they are hopeful there will be a mechanism or a way for us to bring those back to you for review that wouldn't harm the restaurant owners. In other words, it wouldn't be a fee or penalty just to come before you to get those conditions modified or removed.

MPT Wilcox said, for clarification, you are speaking to the fact that there are existing businesses that are under a CUP and we change the ordinance to make it a permissible use then, how do you deal with those existing businesses and what their requirements of their CUP were and make it all fair? Mr. Ferguson said that is correct.

Peter Broadley, 301 Enterprise Drive, Wilmington, Cape Fear Soccer Association (CFSA). He commended Mr. Bennett for the extensive research he has done for his presentation and congratulates him on the program he runs. He could see from the website the programs he offers and they are in no doubt that PISA is a cheaper program than CFSA and, apparently seems to do everything in relation to soccer better than CFSA. Mr. Broadley said he commends him for all the work he is doing and he will certainly carry that information back to our 2,005 members with CFSA. It is interesting he thinks how when a quality program in the area is able to do some things to raise the bar for others around and he thinks that is what is happening with the PISA program. He thinks it is great to see what is happening. He feels for the program from a standpoint of field space. The people at CFSA went through a similar situation, bearing in mind the size of the program with the county and the city, hence our arrangement with our fields out at the soccerplex on 421 and he would like to offer Mr. Bennett any help they can give in relation to working with the Council, the local community, with our expertise with relation to how we've been able to craft an arrangement with the city and the Council - it works very well in providing some funding for providing field space to the children and for the people that play on those fields. He has actually made recommendation or request that Mr. Bennett, if you would like to, could use the fields at the soccerplex. They haven't to this point. Those fields are available to the citizens of New Hanover County. They are beautiful fields. A little bit further out, obviously, to travel but those fields would be available to use at any time by request if the schedule allowed. He would certainly like to offer that help if we can do anything to help with the field situation. What is exciting for him is to see the dialogue that has been created from simply coming to the meeting last time and addressing the Council and raising some issues in relation to what they might be able to do to help the situation down here and in relation to bringing revenue to this particular area. Mr. Bennett quite rightly stated that people already stay on the island when they come to our tournaments but what he wanted to try to get across last time is that they are expanding their tournament program. They have some other offerings in the shoulder time of the year in November, for example, late August, where they might be able to provide some other opportunities for teams to come and stay here on the island at other times of the year and simply to ask that if people are playing soccer here on the island, they are going to stay here not only to eat and sleep but to pump gas and everything else that goes along with spending the whole weekend rather

than traveling back and forth to the city. That was really the intent of the presentation he gave last time in relation to that. The revenue, without question in relation to what could be generated from these tournaments, it certainly will help, he thinks, in providing some money that might be available to help develop the fields in this area and, again, any help and expertise they can give with that they would be very pleased to help in that situation. They have the expertise, they have a quality program, they have been in existence for a long, long time and anything they can do to help with the program down here or help to operate the program down here or be of assistance to the program down here for soccer and to further soccer in this area, that is what they are interested in and that was his intent for coming to the meeting last time. He thanked Council for their time and appreciates everything Mr. Bennett is doing for children and soccer in this area. He thinks it is wonderful. All he wants to do is try to bring that together, if they can, in this area and this community and come together as a soccer community so they can do it better for the kids in this area.

ADOPT THE CONSENT AGENDA

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

Approval of the minutes:

Special Meeting	January 12, 2009
Regular Meeting	January 13, 2009

Set a public hearing date for March 10, 2009 at 7:30 p.m., or soon thereafter, to request to amend Article 23.3 Definitions/Yard (1)(b) of Zoning Ordinance; change what constitutes front of the lot for corner lots.

Set a public hearing date for March 10, 2009 at 7:30 p.m., or soon thereafter, to amend the allowances for “town facilities” and “utilities”.

Set a public hearing date for March 10, 2009 at 7:30 p.m., or soon thereafter, to consider amending the Zoning Ordinance to address internal inconsistencies.

Set a public hearing date for March 10, 2009 at 7:30 p.m., or soon thereafter, to consider overall changes to Article 10; Fence Regulations of Zoning Ordinance.

Adopt Resolution No. 09-958 (Exhibit 2) declaring used and/or unusable SCBA equipment, as described in attachment A, as surplus and authorize Fire Chief to see to its disposal in accordance with NCGS 160A: Article 12.

Council was notified of the following budget transfers:

Legislative Department

Additional monies are needed in the legislative department's legal fees line item 104100.10 in the amount of \$75,888. The manager is asking that \$30,000 be transferred from account 104100.50 preplanning costs and that \$45,888 be appropriated from the fund balance account 103990.00, totaling \$75,888. These monies are to be placed into account 104100.10 legal fees.

Monies were paid for the town's portion of the annual MPO fee; therefore the town clerk is requesting that \$1,054 be transferred from account 104100.12 printing and publishing into account 104100.53 dues and subscriptions for these costs.

Executive Department

The manager asked for \$226 to be transferred from account 104200.75 capital projects less than \$10,000 into account 104200.61 tuition reimbursements due to the account being over.

Planning Department

The planning department needs to update the town's Hazard Mitigation Plan in this fiscal year. A grant is available; the total project cost is \$20,000 with the town's portion being \$5,000. Gary Ferguson is asking that \$5,000 be transferred from account number 104910.02 salaries into account 104910.45 contract services for the town's portion of this plan. We also need to amend the budget to reflect grant monies to be received; therefore we need to increase account 103590.01 Hazard Mitigation Grant in the amount of \$15,000 and increase account 104910.45 Contract Services in the same amount.

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT LOCATED AT 800 CANAL DRIVE AND 801 CAROLINA BEACH AVENUE NORTH (PIN 313007.68.5794.000, 313007.68.7700.000)

The following were sworn in by the town clerk: Ed Parvin, Tim Owens, Gary Ferguson, and James Dixon.

Ed Parvin made the presentation. He said this is a conditional use request for a planned unit development (PUD) on Oyster Shell Lane for 4 single family homes with up to 5 bedrooms each. The applicant is James Dixon. This is at the former site of Benson's Landing which was a 14 unit hotel. There are 4 parking spaces required for each. The parking is underneath with two parking places stacked under each building. It was recommended to have access off of Oyster Shell Lane to keep traffic off of the busier roads off Carolina Beach Avenue N. (CBAN) and Canal Drive. Sidewalks were

recommended by Planning and Zoning Commission to go across Oyster Shell Lane. Setbacks on this property were going to be reduced on the north side from 7 ½ feet required to 5 feet. If they were to be reduced, the Fire Chief put a condition on there that these buildings were to be sprinkled. This is a double frontage lot and there is also a reduction being asked for on the frontage on Canal and Carolina Beach Avenue N., which is 20 feet required, and they are asking for a reduction to 10 feet. The corner side is 12 ½ feet required, off of Oyster Shell, and they are asking it to be reduced to 10 feet. Those reductions are allowed under Article 16 for PUD's. He pointed out one note on the site plan, in the corner, for a site specific development plan. They were in discussions with the applicant about this allowance, unfortunately he had already been through the process with TRC and Planning and Zoning before we adopted the language so it was not reviewed under the criteria that was adopted recently. They have explained that to him. He is only able to get the two years under the CUP with the ability to extend for an additional year. He showed pictures of adjoining properties. There are water and sewer taps that have been installed by the applicant on Canal and CBAN. He is requesting to run water and sewer lines behind the homes. We were requiring the water and sewer line taps to be moved and run down Oyster Shell Lane. Applicant is asking to move away from staff's recommendation and move the water and sewer down the rear of the property lines. There is only one house that fronts on Oyster Shell Lane. Applicant's lot is vacant. There is another house on the corner of Oyster Shell and Canal to the south. There is approximately 18 feet of pavement and a 25 foot right-of-way. If there is a sidewalk, it will have to have easements for maintenance. The sidewalk was recommended at 4 feet.

Councilman Johnson asked about the 20 foot setback off Canal and CBAN but the building fronts on Oyster Shell.

Mr. Parvin said they will be accessed off Oyster Shell. The zoning frontage is off the narrowest side so the actual front, for zoning purposes, is calculated off of Canal and CBAN. It is considered, under our zoning ordinance, a double frontage lot. That whole Oyster Shell side is considered the corner side, which will be 12 ½ feet. Under a PUD, he would have to recombine all of these lots and it would be a townhouse type development. This is what he is proposing so he would own the land underneath and the rest of it would be limited to common area.

MPT Wilcox asked if staff worked with or has any input on these setback lines or is this proposed by the applicant entirely.

Mr. Parvin said the reduced setbacks were proposed by the applicant.

Councilman Johnson said the drawing does not show all of the reduced setbacks and asked if that was correct.

Mr. Parvin said that on the east side of the site drawing it is probably closest to the setback but there is a little bit of play. The closest he will be is addressed in Council's memo which is the reductions of 10 feet on Oyster Shell, down to 10 feet on both fronts and 5 feet on the rear. There is some play in the footprint of the houses so he could have

a little bit more room. The lot widens out when you get a little bit further to the west so he is a little bit further from that setback. He has a little bit more room to play with.

Councilman Johnson said that from what he has looked at on the drawing, he doesn't see why, as far as our requirements, stay 12 ½ feet back from the corner lot which would be Canal and Oyster Shell and CBAN and Oyster Shell.

Mr. Parvin said he could probably address it on most of the structures but on two it would be pretty tight.

MPT Wilcox said that, on the lines Councilman Johnson is talking about, you show a 10 foot setback on the east and west setbacks. You have 15 feet between both sets of buildings and you have a 10 foot walkway around the pool plus what appears to be another 5 or 6 feet. If you took 1 foot out of each of those, you could maintain a 12 foot minimum setback on the east and west setbacks and, the way the buildings are drawn, they look like they're almost 2 feet back from the front setback on Oyster Shell. It looks like with a little bit of work, at a minimum they may be able to maintain 12 feet.

Mr. Parvin said that is a good question for the applicant. He has several different designs he is looking at for these lots for the single family homes there. He was looking at having some flexibility in putting the different designs in those lots.

Councilman Johnson said the other concern he has is the reduction on Oyster Shell to a 10 foot.

Councilman Gilbert asked what the distance is from the existing home behind on their lot frontage to the street. Does that meet the 20 foot setback?

Mr. Parvin said it is an older structure and he does not know. It doesn't meet the side setbacks.

Councilman Gilbert feels it would be reasonable to line it up with that structure. It looks like this lot is a little askew. Is what the Fire Chief saying because that house is closer and they compromise the setback on the back, it must be sprinkled? Mr. Parvin said yes.

Councilman Johnson said, going back to Oyster Shell, we're talking about 10 feet to the front of the building off Oyster Shell. Is that right? Mr. Parvin said yes.

Councilman Johnson said his concern is, if you come south and go up some of the other streets where there is development on both sides, during the summer and even now there is a constant parking problem where people are out into the streets because those dwellings are not setback. And here we are getting ready to put in a dwelling. The average length of a compact car in a minimum 16-18 feet and we're talking about 10 feet. You are going to have people that will park and protruding into the street. He knows he has parking spaces underneath but people will park behind them and be sticking into the street. Ten feet will not allow you to park out there. That is his concern.

MPT Wilcox said the building is actually 40 feet deep so you have 36 feet for two parking spaces and another 4 feet, plus the driveway, so you do have a little more space there. The first vehicle in the driveway could actually be under the front of the building.

The applicant, Jim Dixon, 1406 Carolina Beach Avenue N., said he worked with staff on this project for some time. Originally, when they took the Benson's Hotel down, they had approval for two duplexes there. They had the permits and went ahead and put in the sewer and water in. The duplexes were going to be approximately 5,000 sq. ft. with 10 bedrooms in each duplex. Because of what has happened in the market the last few years, they didn't end up building those duplexes. There seems to be a lot more interest in single family than in more duplexes on the island. He spoke with the planning staff about doing something like this and it seemed like everyone thought it would be a good idea vs. more duplexes. The footprints you see are maximum footprints allowed by the town's definitions. He is not sure what exactly will end up there at this point, it will depend on what someone may want to build there. Those things may end up being smaller. Example: he is looking at a 30' x 30', 3 story footprint with 3 bedrooms so those could be reduced. In talking with staff, these were the maximum footprints you could use. They envision 4 single family homes there with a pool in between them, something in pastel colors, 2-3 stories. He is not exactly sure. He would like for it to be a positive for the town. He has worked very closely with the town over the last 6 years. He has built 6 duplexes and remodeled 3 apartments and built his own house. Their hopes are to get something moving that has been sitting for over 3 years and put something good for the people of Carolina Beach and a good way to get that property developed.

MPT Wilcox asked him what he thought about the idea of trying to maintain 12 feet around this property, could he pull in between the houses a foot and could you maintain 12 ½ feet on Oyster and 12 feet on the front and rear setback if that were a requirement?

Mr. Dixon said you may very well be able to. The requirements, the way it is setup and 15 feet in between them and that type of thing were requirements by the town. It is just a matter of can those be shortened up and maintain that? He doesn't know, he would think maybe so but it is just a matter of working with staff and Council and see if they can make something that will work for everybody.

MPT Wilcox said that for a PUD, as long as the fire chief gives his blessing, those distances between structures can be reduced. So, if that were something that were available, that might help that situation. The water and sewer line - what is the benefit of bringing that down behind the building? It seems to him there is only a 5 foot setback at one end of it and he doesn't know how you get a backhoe or any kind of equipment. Of course that would be his responsibility and it would be on his property. Is there a cost benefit?

Mr. Dixon said yes, there definitely is. They had already put in the water and sewer there. There are two water taps on CBAN and a third one that was there for Benson's as

well so there are three taps there that can actually serve. It is no different than doing a duplex and having two lines run to that one duplex vs. one running to the first house and one running to the second. It is the same way on the other side. They can run the lines as easily to those two houses as they can to a duplex and the sewer is set up the same way. An estimate of coming in there and putting water and sewer down Oyster Shell is probably an additional \$50,000 to do that and they already have the water and sewer lines in place at this time.

Councilman Gilbert said Mr. Parvin mentioned townhouse, are these going to be townhouses? Mr. Dixon said that is the designation.

Councilman Gilbert questioned whether the townhouses wouldn't need four separate water and sewer lines and taps. Mr. Owens said to be consistent the Kirkbride project up at the north end was required to put in water and sewer along the roadway. He is concerned on several fronts, mainly, if they are required to sprinkle he would assume there would probably need to be a 6" line running to them to provide that service, he could be wrong. Generally, they believe all of the services should be off of Oyster Shell and it should be a minimum 6" water line and 8" sewer line which is consistent with other projects they have done in the past.

Councilman Gilbert said there are a large number of duplexes that were built that would not qualify as townhouses because of the way the services were engineered and were engineered through economy. He questioned Mr. Dixon's existing services. Mr. Dixon said there are two taps on Canal, three taps on CBAN and four sewer taps that are in place. There are two on each end and an extra one on CBAN, which is a larger tap that was used for Benson's.

MPT Wilcox asked if the two on each end not be able to be used for the two houses on each end and the two houses in the middle come up Oyster Shell - was that ever discussed with Operations?

Mr. Owens said he thinks it is atypical, personally. These are four individual houses and, his opinion, there needs to be a 6" water line and 8" sewer line on Oyster Shell which would have to be permitted. If he does the services in the rear, that is not typical, and he would be responsible for all the services in the rear. In the front he would not be responsible for the line itself. He still would be responsible up until the meter, talking about water.

The town manager had a question for the fire chief.

The town's Fire Chief Jon Rorie, was sworn in by the town clerk.

Mr. Owens said the state frowns upon running lines long distances for services. His question is whether a ¾" or 1" service line can handle the sprinkle system for one of these units?

Chief Rorie said what he is talking about is 4 stories in height which would be equivalent to what is called a 13D system and, yes, a 1" service line would serve that. This would be a residential version of a sprinkler system with a quarter turn valve with an alarm and heads that flow 13 gallons per minute and is designed for only two heads. It can use either ¾" or 1" line.

Mr. Owens said there will be a sizable credit from the hotel and he would still prefer there be water and sewer line down Oyster Shell.

MPT Wilcox asked if TRC wants a 6" line or what would be adequate to service the fire suppression and potable water?

Mr. Owens said he wants to be consistent with what they have done with a similar project where there were two houses on a lot on Sea Oats. They required to extend a water and sewer line along Sea Oats - a normal 6" water line.

MPT Wilcox said no. There was a sewer line and a normal 1" water line which came from CBAN down the front of the property.

Mr. Owens said he stands corrected and apologized.

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

Christine Denner, 719 CBAN, was sworn in by the town clerk. She said they own two lots on Oyster Shell Lane across from the proposed development. They are excited that it is not going to be more duplexes. Single family houses are a great idea. They were at the planning meeting and she is still confused about why the 20 foot setbacks on CBAN and Canal need to be reduced to 10 feet. It seems that Mr. Dixon is not asking for certain housing, he said the houses could be smaller but then why is he asking for the setbacks to be reduced? She thinks the older house on CBAN is very close to CBAN on the east side but, once that house gets torn down and new ones built, is that 20 foot setback going to be required or will they allow that house to be built up on CBAN with a 10 foot setback? It seems to start a snowball effect because they won't be able to see to get out of their driveway if that other house is 10 feet in front of them.

MPT Wilcox said that the single family homes that might be non-conforming right now, that aren't 20 feet back, if they get replaced they will need to be 20 feet back. That would be required under the ordinance. What is being requested tonight is a PUD and under our PUD ordinance, 10 feet is allowed. So the applicant is asking for what is allowable under our ordinance, with Council's review, but 10 feet is allowed for special projects to try and bring unique projects that meet the spirit and character of the community. He is not asking for anything that is not available under the ordinance, with Council's discretion on whether to compromise those setbacks.

Councilman Gilbert said it is not set in stone and what he would expect is if there is a house adjacent to it, that you would respect those setbacks.

Ms. Denner said there is a new house on Canal with a 20 foot setback and on CBAN is an older house with one setback of only 5 feet.

Staff said the front setback of the older house is probably about 15 feet.

Ms. Denner said the other thing Planning brought up was whether the square footage requirements for the PUD were really figured out, whatever the requirements for a PUD, all of that just got reviewed. She remembers that was asked and she just wanted to make sure that had been done.

MPT Wilcox said they would still be required to meet the 40% lot coverage.

Gary Ferguson said there was more of an issue at Planning and Zoning about the actual size of the lot. He thinks when the applicant came forward, they were looking at a little over 15,000 sq. ft. and then they started working with some discrepancies in the survey work, it wasn't actually surveyed what they were looking at at Planning and Zoning. Planning and Zoning members said they wanted to see the actual survey to determine the actual square footage of the lot. On your site plan, it's being shown as 14,873 sq. ft. so that is the total square footage. The issue is really a density issue, could they come in and get three duplexes on this lot potentially and have six units vs. only two duplexes on this lot and end up with four units or could they come in with four single family houses. That is what we are talking about this evening, the four houses. The question at P&Z level was, what is the density of this development? What would it support? When the number 15,000 comes in R-1 zoning with 5,000 sq. ft. minimum lot size, you begin to look at it and say it's potentially three duplexes but when the actual number came in it was slightly less than 15,000 sq. ft. and would not accommodate three duplexes, only two.

David Higgins, 719 CBAN, was sworn in by the town clerk. His only concern that hasn't been addressed is that once this is passed, the property can be sold and put something in that is not under the goodwill of what is being asked for and it keeps being stated that maybe it will be smaller, we don't need to build that big, then why ask for the bigger setbacks. On the west side, those proposed footprints will fit within the existing setbacks. It is more the two buildings on the eastern part of the lot. Also, if it gets passed and someone comes along and maxes it out and it doesn't really fit and not under the idea that is being expressed.

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

Councilman Gilbert asked if the pool is considered an accessory structure. Mr. Ferguson said yes.

Councilman Gilbert asked if they put an accessory building in there, would it still be considered open space.

Mr. Ferguson said the only accessory building they are showing on it is a pool house and it is in the back corner. The pool counts as part of their required open space, which is 25% of a PUD and they are showing, with the pool and the pool counting as open space, 50%. They are above and beyond the minimum open space requirement. Pools are considered part of the open space because it is recreation.

MPT Wilcox said it is nice to see some single family houses come forward, they have been wanting to see those built on the island. He is a little concerned about the setbacks and would like to see, if it were to be approved, 12 foot setback on CBAN and Canal or 12 ½ feet, whatever would make it consistent with the corner setbacks and 12 ½ feet down Oyster Shell. It seems to him that the space you have between the homes and the pool that would be obtainable. He thinks the town manager's recommendation to run water and sewer down Oyster Shell is probably wise although he doubts it will need a 6" water main. He thinks he'd end up with whatever the standard requirements are there - 1" line for each unit and standard water and sewer which would be far less expensive. It looks like it could be a nice project. The reason they have PUD's available is to take pieces of property like this and try to do something unique with them.

Councilman Gilbert said what this looks like is that we are using a PUD to maximize every single buildable space on this lot - to put a lot of house on this lot and compromising the 20 feet. What would this look like if these were individual lots and would it actually be a better looking project if it wasn't a PUD and would you have more open space or what would it look like with respect to the surrounding houses that have been built. When you read the definition of a PUD, it just doesn't seem like this is the spirit of what our community or other communities have defined as a PUD.

Mr. Ferguson stated that the applicant said it pretty clearly, under our CUP requirements, you can shrink a building down, there's no problem with that but if you come in with a modest size building under a PUD because it's a CUP and you decide to grow it in any way, shape or form, height, width, length or whatever, you are going to have to come back and revisit this board again, as well as the Planning and Zoning Commission for an amendment to your CUP. He thinks the applicant, being prudent and saying he is going to try to get the maximum size he can get approved as long as it meets your minimum standards and that is exactly what he is doing. Do our standards need to be re-examined? Perhaps they do, as PUD's go. Right now he thinks the applicant is doing what most all of us would do. He is in a situation where he has a piece of property he's trying to maximize the use of and he is trying to show everyone he is meeting the rules while showing buildings the size he would like to build. If they shrink by the customers who are asking for them, that would be great but they can't grow. He feels that is what the applicant is trying to hedge his bet on, he thinks.

Councilman Gilbert said in looking at the compromises on the setbacks and just trying to make it work, that's his biggest challenge. We have setbacks for a reason and certainly PUD's are supposed to give us some flexibility but it seems like the PUD is being used as an alternative instead of by design.

MPT Wilcox said our PUD is pretty specific about what is allowed. One of the things this project brings to it because of the PUD is the pool, which you wouldn't be able to do with four single family homes. That's an amenity and good for the residents that live there and a nice feature. It bothers him that we would have an ordinance in place, like a PUD ordinance, that would allow certain setbacks and creative solutions to these types of developments and then every time one comes before us that we worry about the spirit of the PUD vs. what is actually in the ordinance and he thinks we need to be paying attention to what is in the ordinance because this is the conditional use hearing and we're supposed to be dealing with it as such. In his opinion, he meets the requirements in our PUD and that is what our PUD is there for.

Councilman Johnson made a motion to approve the CUP in accordance with General Conditions (1) through (4); TRC conditions 1 through 4; staff recommendations 1 through 21 with a provision that a four (4) foot sidewalk be installed along Oyster Shell Lane from Carolina Beach Avenue N. to Canal Drive; and with the condition that the setback off Canal Drive be 12 ½ feet, off Carolina Beach Avenue N. be 12 ½ feet, and off Oyster Shell Lane be 15 feet because you need more of a driveway there to make it safer for the street, as follows:

Specific standards. Applicant must make provisions for:

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

The on-site parking has been designed by the applicant to back out onto Oyster Shell Lane to keep vehicles from backing out on the more congested adjacent streets (Canal or CBAN).

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

Four 9' X 18' parking spaces are provided as illustrated on the applicant's site plan.

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

Roll aways will be utilized for each home.

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

Water and sewer lines were recommended by TRC to run along Oyster Shell Lane. Where water and sewer are not present the Town typically requires the developer to install the improvements. The applicant is requesting to utilize the existing water and sewer taps to run the utilities down the rear of the

property. If approved, the water and sewer lines that run along the rear of the property will service the two homes and pool in the center of the lot. The applicant plans to bury the power lines running along Oyster Shell.

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

The applicant is providing a 5' "Type A" landscape buffer yard around the property.

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

No signage is proposed for this site.

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

25% open space is required; 50% is being provided consisting of a pool to service the four units and landscaping around the pool and perimeter of the property. There is, however, a reduction in the minimum required yard. This reduction is allowed in the zoning ordinance for planned unit development proposals.

General conditions.

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

Single family homes are a desired use in the R-1 zoning district according to the 2007 Land Use Plan.

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

After review by TRC the plan has been determined to meet all conditions and specifications.

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

Single family homes built to densities of 15 units per acre or less continues to be a valued use in the area according to the 2007 Land Use Plan.

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

The proposal is in general conformity with the 2007 Land Use Plan. The desired Future Land Use of the Residential 1 area includes a predominance of single-family and duplex units. Building height will not exceed a 50' height maximum. Density will be moderate with a minimum of 5,000 square foot lots and around 8.7 units per acre, with up to 15 units per acre

allowed. Lot coverage will not be allowed to exceed 40%. Provision of infrastructure to undeveloped and un-served areas will be at the expense of the developer. New multi-family residential development shall be prohibited.

The Technical Review Committee reviewed this proposal at its October 20, 2008 scheduled meeting. The TRC recommended the project to be submitted to the Planning and Zoning Commission with the following comment:

Planning:

1. Four parking spaces required per unit. An illustration of the parking layout for the units shall be provided.
2. There is a requirement for 25% open space. The percentage provided shall be included for P&Z.
3. The reduction of setbacks should be requested in the narrative.
4. Sidewalks between driveways may be an option. Since the driveways are so wide very little additional paving would be required to accommodate a sidewalk. Oyster Shell consists of a 25' right-of-way with the street being paved at approximately 17.5 feet. The sidewalks would provide safer pedestrian access to the ocean, and sound.

Ops:

There is no water/sewer on Oyster Shell. There are two water and sewer connections available on Canal and two on CBAN. The swimming pool needs a tap to water and sewer. If utilities are placed in the rear, private water and sewer lines should be run along the side of the lot with separate taps for each house. The Town's maintenance would stop at the meter.

Fire: Residential sprinkler systems shall be installed if the 5' side setback is granted.

Police: No Comments.

STAFF RECOMMENDATIONS:

The proposal as presented has not received any negative comments from Storm water and Operations, Fire and Inspection. Residential planned unit developments are allowed with the approval of a Conditional Use Permit for R-1 zoned properties. Staff recommends the following conditions if the proposal is to be recommended for approval:

1. The storm water plan must be submitted prior to issuance of a building permit. The storm water system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
2. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of building permit.
3. Copies of all federal and state approvals shall be submitted to the Town prior to the issuance of a building permit.
4. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint. Any increase in building footprints shall constitute a major modification.
5. Flood Certification must be presented prior to issuance of a building permit.
6. Prior to Certificate of Occupancy, an architect or engineer must confirm the structure's height is consistent with the conditional use permit.
7. Final project must be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. Final project must be designed to provide the required 16 parking spaces.
8. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan.

9. Refuse collection agency that will be used must be included on final site plan. Before the issuance of a building permit, a letter of approval from the refuse collection agency stating the waste removal plan is adequate for this site.
10. All structures must be designed to meet NFPA approved Fire Sprinkler systems and meet minimum NC Fire Prevention Code. Approval letter must be submitted prior to Certificate of Occupancy.
11. A sign permit must be obtained for any new signs located on the property.
12. Maintenance of permanent open space parking, streets, drainage systems, utilities, and other such facilities. All common facilities shall be maintained for their intended purpose as expressed in the approved final site plan. The method of providing for such maintenance shall be submitted prior to Certificate of Occupancy by one (1) or more of the following:
 - a. Public dedication to the Town, subject to the Town's formal acceptance of such facilities in its sole discretion.
 - b. Establishments of an association or nonprofit corporation of all individuals or corporations owning property within the mixed use development for the purpose of ensuring maintenance of common facilities.
 - c. Retention of ownership, control, and maintenance of common facilities by the developer or Home Owner's Association.
13. Certification shall be provided that all improvements, including but not limited to, paving, drainage, stormwater, and landscaping, shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee prior to Certificate of Occupancy.
14. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
15. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire.
16. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the Planning and Zoning Commission in the same manner as outlined in Article 14 of the zoning ordinance.
17. Residential sprinkler systems shall be installed if reduced setbacks on the north side are utilized.
18. The lots shall be combined prior to issuance of a building permit.
19. A 4' sidewalk shall be installed along Oyster Shell Lane from CBAN to Canal Drive in compliance with ADA regulations and easements be granted to the Town for maintenance.
20. Driveway cuts shall be located on Oyster Shell Lane only.
21. The power line running along Oyster Shell from Canal to Carolina Beach Avenue North shall be moved underground.
22. That the setback off Canal Drive be 12 ½ feet, off Carolina Beach Avenue N. be 12 ½ feet, and off Oyster Shell Lane be 15 feet because you need more of a driveway there to make it safer for the street

Councilman Johnson said if the applicant runs the lines at the rear of the houses and they are sold to individual owners - under the PUD you have a landscaping buffer and it appears the landscaping, as close as some of these units could be to the property line, could be a hindrance to putting in the line. Is he wrong?

Mr. Owens said there would be two service lines, water and sewer, and would depend on the grade of the street. They would be covered under any restrictive covenants.

Councilman Johnson asked the attorney if the town would be liable for any inconvenience or whatever that a property owner could come back to us and ask why we would ever allow a person to do this. We have had some problems in the past.

Attorney Jason Kessler, filling in for the town attorney, said it is the common area, not individual lots.

MPT Wilcox said there are pros and cons to the location of water and sewer. If you put it in the back lot and don't have driveways running across it, you can get to it even if you have to take out some landscaping. If you put it in the front and you need to get to it, you're cutting up all the driveways.

Councilman Johnson said, as far as the setbacks, under the PUD it says to show just cause for this and the applicant, himself, has already stated in his testimony that these buildings could be reduced. As far as getting the 12 ½ feet off of CBAN and Canal Drive to meet our corner setbacks, he thinks, for a safety factor, we need that 15 driveway at a minimum off Oyster Shell also.

MPT Wilcox asked Councilman Johnson what his motion was regarding the utilities.

Councilman Johnson said that TRC had no comments about running them down Oyster Shell Lane.

Mr. Owens said he thinks the way they have shown it is the way they are proposing it and if that is what Council wishes, he is okay with it.

MPT Wilcox said that the two houses that are closest to Canal, because of the odd shape of the lot, could be shifted back easily to gain what is lost on the front of that 15 feet. The other two houses on CBAN might have to be modified a little bit based on Mr. Johnson's motion.

Mr. Dixon said that 15 feet would be more than the normal setback which is 12 ½ feet.

MPT Wilcox said he understands that but that is Mr. Johnson's motion.

Mr. Dixon said he doesn't know if he is thinking about this car situation, these are single family homes with enough room underneath them to put 4 cars. So, how often in a single family 3-5 bedroom home are you going to have more than 4 cars on your property. He very rarely has more than 4 cars on his property and it is even larger than that. He doesn't really know where that comes into play. You are talking about having 6 or more cars at one single family home. He doesn't know if he really sees that much.

Councilman Gilbert said if he had a 5 bedroom house at the beach, he knows his relatives would be coming from all over. He would expect that most of the town's condominiums and duplexes that have multiple bedrooms, you can see them in the summer and they're packed. We have had those discussions before.

Mr. Dixon said that was another thing they did from the outset, which he had no problems with at all, to let everything come onto Oyster Shell. That was for that reason so you are not backing out or pulling out onto CBAN or Canal Drive.

Councilman Gilbert said he thinks that is outstanding but it is a 5 bedroom house at the beach and, on average, in Carolina Beach we have 2.08 residents per residence and the majority of the houses are 3 bedroom. He said Mr. Dixon's observation was that maybe he could scale it down.

Mr. Dixon said he understood.

Mr. Owens said Council would be adding another condition, 22, to take care of the setbacks.

Councilman Gilbert said, with respect to a CUP and General Condition (4), he doesn't see how we can get around that 20 foot setback or, if it is 15 ½ feet with the house next door and then the other house on the other side is 20 feet back - is it in character or harmony with the area in which it is to be located, he would say even though this could be considered a good project with single family homes, the way it is presented here, again optimizing, and Mr. Ferguson put it well, you're optimizing it so you can have some flexibility but he doesn't see how they get beyond Condition (4). The setbacks are his biggest concern in the application with respect to the PUD and open space. He doesn't see how they get by Condition (4) with all those houses surrounding it and have a larger setback than 12 ½ feet.

MOTION CARRIED 3-1 WITH COUNCILMAN GILBERT VOTING NO.

MPT Wilcox made a motion for a 5 minute recess. MOTION CARRIED UNANIMOUSLY.

REQUEST TO AMEND SECTION 3.9.2 OF THE ZONING ORDINANCE TO ALLOW FOR MORE THAN ONE STORY IN ACCESSORY STRUCTURES IN RESIDENTIAL ZONING DISTRICTS

Jeremy Hardison presented this item. He stated that this is a request by the applicant to change the current one story height requirement for accessory structures to a 25 foot height for residential zones and in the MX zoning district. The current one story allowance that is in place now gives the homeowners flexibility to build taller accessory structures to accommodate larger vehicles such as RV's, boats, etc. The accessory structure located at 405 Hamlet Avenue is a 15 foot structure which was permitted and

illegally modified for a second story. It has a floor that was converted after the building final was issued. The applicant was given the choice to either modify the structure or come in for the process to change the ordinance. The applicant decided to go with the latter choice. Staff said no fees would be issued until this is remedied. He reviewed the permitting history of the project: contractor applied for the building permit to build a two story accessory structure at which time he was notified that was not allowed by our ordinance. He modified the plans, built the storage shed, it was inspected and finalized in August 2008. In September of 2008 it was noticed that work had been performed, steps were built, there was a door leading up to a second floor and another floor within the accessory structure. He showed an interior picture of the structure that shows the flooring. He reviewed the current ordinance and the history of the ordinance change restricting the height to 15 feet for accessory structures approved by Council in April 2005. He said one thing staff would like to do for maintenance for the ordinance is where it has 25% of the actual developed area, staff would like to change that to the principal building as they do not define actual developed area but they do define what a principal building is. Proportionate size, it can only be proportioned 25% of the principal building, the building footprint. Staff provided three options for Council to consider: (1) The current ordinance. (2) The applicant's request of a 25 foot height limit and you could continue to accommodate larger accessory structures and allow for accessible areas above the first floor. (3) An allowance for two story accessory structures but restricts their height to 15 feet. Staff recommends three changes to the ordinance: (1) A 15 foot height limit for all zones that allow accessory structures. (2) Change actual developed areas to principal building. (3) Adopting standards for accessory structures. He reviewed the proposed regulations for accessory structures: (1) The accessory structure must maintain a residential appearance and shall not produce impacts detrimental to adjacent properties as a result of traffic, noise, light, refuse, parking or other activities. (2) No accessory structure shall be occupied, leased, rented, or otherwise used for profit, income or for gain. (3) Accessory structure in residential districts shall not be used for any type of human habitation. (4) Accessory structures with any dimension greater than 12 feet must meet North Carolina Building Code. The reasons for recommendation: (1) consistent with the HB district and create a uniform height for all accessory structures. (2) It would be difficult to convert storage space to habitable space because of the 7 foot habitable space building code requirement. (3) Added height up to 25 feet could open the door to illegal improvements that would lead to increase density (upstairs apartment, mother-in-law quarters). (4) Allows homeowners a second floor for storage space in accessory structures. Planning and Zoning Commission's recommendation agreed with staff's recommendation with the following changes: (1) The accessory structure must maintain a residential appearance and shall not produce impacts detrimental to adjacent properties as a result of traffic, noise, light, refuse, parking or other activities. (2) (Changed staff's recommendation to read:) No accessory structure shall be occupied, leased, or rented. (3) Accessory structure in residential districts shall not be used for any type of human habitation. (Eliminated staff's recommendation number (4) regarding the building code.) Mr. Hardison showed various pictures of accessory structures of different heights. The land use consistency statement does not address accessory structures specifically. It does address density and scale of residential development as a key planning issue. The applicant's height proposal is consistent with the height policy but

may encourage and lead to increased density and is therefore not consistent with the plan.

Brian Askew, 405 Hamlet Avenue, said Mr. Hardison did a good job recapping the situation. He reiterated some of the points he brought up with Planning and Zoning. With respect to accessory structures, there seems to be some very specific definition around what an accessory structure is and how it is used, one that is subordinate to the primary structure, to be used in addition to not separate and apart from. He felt like the one story restriction had been applied to give dimensional definition to the structure. All of the other ordinances for anything built on the island have specific dimensional definitions with respect to height. This was the only thing he could find that didn't have any physical dimensional definition. It seemed like there was an opportunity to (1) consider a height requirement for accessory structures. He could have built a 40 foot silo in his back yard without objection. That would have been okay given the current ordinance. All he was trying to do in creating a second story, which is only 80 sq. ft. of headspace, is just to have a quiet place to sit and work in the afternoon when he is at home. It is never going to be a space that is going to be occupied. It seems that the one story was not so much to limit height but to reduce situations of occupancy. Creating a larger accessory structure would have helped him have a space more easily occupied. He could have built a structure that was twice as big dimensionally and split it in half. He feels like the one story is somewhat limiting and also opens the opportunity for someone to build an accessory structure that wouldn't necessarily be esthetically appealing alongside a smaller property.

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

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

Councilman Gilbert made a motion to approve Ordinance No. 09-775 (Exhibit 3) and that it is consistent with the objectives of the Land Use Plan and other long range plans. MOTION CARRIED UNANIMOUSLY.

Tim Owens suggested skipping over Items No. 15 and 16 since they are staff driven and that they take care of Items No. 17, 19, 20, 21, and 22 and then go back to the other items. Council agreed.

CONSIDER RENEWING A LEASE WITH THE FEDERAL POINT HISTORICAL SOCIETY TO CONTINUE TO OPERATE A MUSEUM LOCATED ADJACENT TO TOWN HALL

Tim Owens said Council is being asked to do a lease of 9 years maximum and instruct staff to advertise it in the paper and we will take this up again at the next meeting in March.

Councilman Gilbert made a motion to adopt Resolution No. 09-954 (Exhibit 4) and to advertise per general statutes and bring it back in March.

MPT Wilcox asked if we have a clause to get out of the lease if the town decides to do something with that property.

Mr. Owens said he thinks that is something the town attorney is working on and Council will probably have a draft of that lease when we come back to it. It will be a standard lease.

Don Snook, President of Federal Point Historical Preservation Society, presented this item. Also in attendance were Darlene and Leslie Bright, the founders of the Federal Point Historical Preservation Society. On behalf of the organization he thanked the town for the cooperation they have had with it for 10 years, at least, with respect to the site. The center contains a museum of Carolina Beach, Kure Beach, Wilmington Beach, Sea Breeze history and he invited everyone to come see what they have to offer. They look forward to a continuing relationship as they continue to celebrate the history of this area. They do maintain the museum and the book store, which is the subject of the lease re-establishment. They would very much like to continue to occupy it. In addition to the center and the book store, they publish a monthly newsletter, have monthly meetings which include articles and presentations from area historians, have field trips, fundraisers, have 22 business members and over 200 individual members, sponsor an essay contest for local 4th graders, and a collection of local memorabilia. Their mission is to preserve local history in all of its facets to include wartime history, surfing and the shag. They would appreciate their consideration.

MOTION CARRIED UNANIMOUSLY.

DISCUSSION AND UPDATE ON LITIGATION REGARDING HIGH COASTAL INSURANCE PREMIUMS

Kathleen Riley, Governmental Affairs Director for the Wilmington Regional Association of Realtors, made presentation. Stated she has been following this issue since the decision first came out in November and December. She provided a packet to Council with a brief explanation of what the rates are, the areas being affected and how this whole issue came about. She referred to the map put out by the Rate Bureau and depicts the 18 coastal counties. The 18 coastal counties covered under this plan are broken into two areas: (1) the beach area, which is east of the Intracoastal Waterway, and (2) the coastal area, which is the area west of the Intracoastal Waterway. The beach areas include areas 7 and 8 and the coastal areas are the remaining 52, 49, 48, etc. She referred to the NC Homeowners Rate Revision Breakdown by Territory chart and said the Rate Bureau puts out what is called a manual rate. It is a set insurance rate for the State of North Carolina and all 100 counties. The Commissioner and the Department of Insurance (DOI) can deviate from that rate and they have the power to order deviations above that manual rate and below it. She emphasized that these rates are insurance rates. This is absolutely

nothing to do with wind, hail and hurricanes. These are just the rates that are put out for all basic homeowner insurance across the state. You can see where she made yellow for the areas 52 and 8, which are the corresponding coastal area and beach area and, if you look under filed percentage, that is the percentage that the insurance company wanted to either increase or decrease the rates by but if you look at the ordered percentage, that is the actual percentage of the increase to take place. In Brunswick, Carteret, New Hanover, Onslow and Pender, territory 52, we got the highest rate increase of 29.8% on our homeowners insurance. If you look at Charlotte, Mecklenburg, Union and Gaston they got a -6% or a -4%. These are deviations that were ordered by the Commissioner and the DOI. These rates are lower. They actually decreased as opposed to the increases that we got. The vast discrepancy between the -6% and almost 30%, to her, was unfathomable. Not to mention a geographical inequity and absolutely no basis to do this from scientific evidence or anything else. These were decisions that were made by the DOI. Then, to add insult to injury, a total of 43 counties got a decrease. Why did the beach area get 17% and the coastal area get 29%? According to the DOI, she was told the beach areas already have a very high insurance rate and their attempt was to more level it out by upping all the coastal rates. They also said, "We had to raise these rates because the insurance companies came to them complaining that there is not enough money in the pot to pay off the claims that are coming in." If that is the case, why is anybody getting a decrease? Your backs are against the wall and you are asking the Commissioner to raise rates so you can have more money. What justifies a decrease in 43 counties? This is just basic homeowner rates, it gets worse. If you go to the first page, in addition to our basic homeowner rates, we have on the coast something wind and hail policies and we have something called the Beach Plan and the FAIR Plan. The Beach Plan and the FAIR Plan are the NC Joint Underwriters and the NC Insurance Underwriter Association and this is the coverage for wind and hail. What they do is use the insurance rate, increase and decrease, that the DOI puts out as a cue and they raise their wind and hail policy that rate. Not only that but they want to implement an additional surcharge of 15% to 25%. 25% on the Beach Plan full peril, which means if you have everything with some of your basic homeowner and wind and hail and a 15% surcharge, if you have wind and hail. If that is not enough, they want to implement a 2% surcharge per occurrence on damage on your home. This means that if you have a wind or hail storm come in on day one and the next day you sustain some more damage that is considered two occurrences. You have to pay two deductibles. They have not defined occurrence at this point. They want them to do that and will get to that in a minute. In addition to that, think about this, if you have a \$200,000 home in one of the 18 coastal counties and Joe Homeowner has a \$200,000 home in Charlotte. We get a windstorm, not a hurricane, come in and hit Charlotte and hit us and let's say if each home sustains \$5,000 worth of damage. If you live in an 18 coastal county, your deductible is \$4,000 and you get \$1,000 from your insurance company. If you live in Charlotte and your \$200,000 house sustains the same \$5,000 worth of damage, your deductible is \$1,000 and you get \$4,000 from your insurance company. This is what is happening and the reason she is so exhausted is because she has been giving this lecture, has been on the radio, has been everywhere because it is amazing what is happening to these 18 coastal counties and she is enraged. Not only as a homeowner but she represents the Association of Realtors. The real estate market is already hurting. People are having trouble even making their

mortgages and now they are going to hit. This is an industry that is already hurting and this is just knocking them back to their knees again with these exorbitant insurance rates. It is absolutely ludicrous but this is what is happening to us down here, right under our nose, and this decision was made - there were two decisions. The decision to implement the surcharges and deductibles was made on November 18th. First discussions of that were November 15th, so within three days that decision was made. The second decision to raise the overall rates, not the wind and hail but the first one she talked about on the chart, was made December 18th. So what happened as a result of that was Dare County decided to file a lawsuit and named in that lawsuit is Dare County, the Town of Nags Head, Starco Realty and Joe Garrity, ironically Joe Homeowner. There are four petitioners and what Dare County is trying to do and we're trying to do is get the momentum going up and down the coast to support them in this lawsuit. The counties, the separate municipalities, is what they are trying to do. If you look on the last page she handed out, now remember there is something like 15 or 16 motions filed here and for those of you who have ever been involved in litigation you know how the ping pong game is played, the last page is her attempt to sort of break down what the lawsuit is claiming and what relief they are claiming. What has been happening would take her an hour to go through all the litigation and she will be more than happy to answer any questions. She can always be contacted by going to the website and e-mailing her. What is important and why she is here today is that, so far, they have 9 counties and 10 separate municipalities joining in on this suit. New Hanover County joined in, Kure Beach joined in as an intervener as a separate municipality. She is encouraging Carolina Beach to join in as an intervener and a separate municipality as well. You can join in the lawsuit and you can support the lawsuit and you don't have to put any monies up front. If you want to support the lawsuit financially you can but you don't have to. She is asking Carolina Beach to join in as an intervener and support this lawsuit. There is also legislation which she will be more than happy to answer any questions you have on that as well but, for time sake, she wants them to really think about what is going on and supporting this suit as a separate municipality as an intervener.

Tim Owens said he spoke with Bobby Outten today and he felt pretty confident that he had 16 of the 18 counties on board, if not already at some point, differing rates of payment and some no payment. He thought that he would have at least 15 to 20 towns on board as well. He has given a list of those towns and those counties that he had at the time that he got this e-mail. He thinks there is still some discussions that our attorney had and even Bobby Outten didn't have a question, he's the county attorney for Dare County, about whether we would have standing in the case or not. That is still to be determined. He doesn't know what that means.

MPT Wilcox asked how you could not have standing if the ruling affected you.

Mr. Owens said he thinks it has to do with filing dates and timing of filing dates. He thinks we could be named. We may be kicked out if we are a named party to the lawsuit, that we may be kicked out and so may Dare County but it is just a matter of whoever wins the argument.

MPT Wilcox said that whether we have standing or not we could still support the effort, correct?

Mr. Owens said yes. We can do several things. He thinks some of the folks, he thinks that Dare County, we can ask to be a named party in the lawsuit. They would like to see us pitch in some funds but they said that is not necessary. At a minimum, we could do similar to what Wrightsville Beach has done which is to encourage the county to fight the battle for us, more or less, and encourage that the lawsuit go forward. He has given Council a resolution to that effect. Whether Council wishes to pitch in any funds, that is up to them. These are substantially high rates. The Commissioner of Insurance was on TV Saturday. He was talking about the beach plan, but Mr. Owens said he didn't have a chance to watch it. He will watch it when he goes home tonight. Those are basically his comments. He thinks this thing is moving forward and where it goes, he doesn't know.

Ms. Riley said that in North Carolina you have the North Carolina Administrative Procedures Act and, pretty much every state has it whereas if you have a complaint against a decision made by a state agency, you need to bring it before the Administrative Courts. A little analogous to worker's comp, it's a separate court system set up to hear disputes involving employer/employee relationships. The Administrative Courts are set up and the cases are heard by an administrative law judge to hear disputes brought forth by agency decisions and that was heard on January 28th in the Administrative Court in Wake County where the hearing officer, Bill Hale, ruled that there was lack of subject matter jurisdiction. So then it was kicked into Superior Court in Wake County. On Thursday, Keith Kapp with Williams Mullin, were arguing motions for stated decision in the Superior Court in Wake County and they are still waiting to hear that as well. It is a jurisdictional issue but it is also timing. There are a lot of little tiny things involved that they don't need to go into with that but, she also wants to add that in the legislative front, there is Senate Bill 6, which is sponsored by Julia Boseman, and House Bill 26. Those are the two bills addressing the issue and what they are both basically asking is for a stay of the rate increases and surcharges. What she doesn't like about in those two bills is that they want the insurance rate increase to not affect homes \$150,000 or less. She doesn't think putting a price on it is, in her opinion and as a realtor's opinion, is a good idea because of the housing prices. What if your house is \$151,000? The other thing about the bill is that it is only for primary residents so, people who have second homes here would not be protected. Give that a look as well. You can go to their website at wrar.com. She has a judicial tracker and a legislative tracker and you can press on the link and it will take you right to the Senate bill and the House bill as well as the latest decision on the lawsuit.

Councilman Gilbert asked where the governor comes out on this.

Ms. Riley said they have been trying - when she was talking to a group of people she was telling them they really have to make noise in all three branches of government, the executive, the legislative and the judicial through the lawsuit, and she got the feedback that the governor's office, and, trying to track down Wayne Goodman too, they're just kind of hands off. The only thing we can do is keep trying - e-mails, phone calls, letters,

everything you can do and there is power in numbers and one of the reasons why she wanted to encourage the municipalities to join in as an intervener is that she wants that judge, when he or she is making that decision, to look through the pages and pages of counties and municipalities that want a voice. We want to be heard and she thinks there is power in numbers and that is why it is important for everyone to join in. It is not just this issue. Down the road it will be another issue and we really need to take a stand as a coastal community and protect our homeowners and our real estate rights and property.

Mr. Owens said the resolution doesn't assign a dollar figure. He feels inclined, if we want to be named parties to at least foot a nominal amount of the cost. That is his opinion. He knows the county can speak on our behalf as well but Ms. Riley is looking for strength in numbers and it will say New Hanover County, Carolina Beach, Nags Head, what have you. He is not saying we have to give \$10,000. He would say a nominal amount.

Councilman Gilbert asked if we can join the lawsuit and, since we are coming up on budget, make it a part of budget.

Mr. Owens said we can pledge. We can ask to join the lawsuit and say we will re-examine a dollar amount at a later date

The town attorney said that part of the standing issues with the lawsuit is not just the timing of their filing it but it is whether or not if we join in now, do we relate back to when they filed it because we were under the same time limits as they were and that was part of the things he and Steve Coggins discussed before. He is not sure they came up with a clear answer on whether or not they would be able to.

Mr. Owens said it would affect any of these that are joining late.

Councilman Gilbert they could go ahead and put forward a resolution to join the lawsuit, we'll pledge at a later date the funds for it and then, if it gets kicked out, it gets kicked out. If New Hanover County tries to join, they're in the same situation. Maybe New Hanover County can have their own lawsuit or we can or whoever.

Ms. Riley said New Hanover County has joined and pledged \$10,000.

MPT Wilcox said he agrees with Councilman Gilbert but thinks we could participate in this financially whether we have standing or not, he guesses that is what he is suggesting because it is good for our citizens. It is in their best interest to prevent these higher rates.

Mr. Owens said he thinks they will figure out whether they have standing if they ask the named parties. We could either commit to a dollar number now or say we will commit to a dollar number at a later date. He thinks either way works. He thinks they probably would want a commitment now, Dare County would.

Councilman Johnson said they could adopt this resolution tonight to support, just like Wrightsville Beach did, the actions that are being taken by New Hanover County and then when we get into the budget and the attorneys get together, then we can determine whether we want to do a nominal amount.

Mr. Owens said he thinks they would definitely miss the time window to be asked to be a named party so you either ask to be a named party now or you just support New Hanover County in their efforts. Either way he thinks they would probably have it on record.

Councilman Gilbert said that in the spirit of the resolution that is what they are asking is to be a named party.

Mr. Owens said if that is what Council wants to do and then come back and talk about the funding part of it later.

Ms. Riley said the separate named intervener, the Town of Carolina Beach.

Councilman Gilbert made a motion to go forward with the resolution and ask to be a separate intervener. MOTION CARRIED UNANIMOUSLY.

REQUEST BY SUSAN COLLINS TO EXTEND A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 819 CANAL DRIVE FOR A TRIPLEX

Ed Parvin made presentation. He stated that the correct address is 819 Canal Drive, changed from 817 Canal Drive, due to a recent address change. He reviewed the history of this item which was originally approved as a conditional use permit (CUP) on February 14, 2006 for a triplex. Since then the ordinance has changed and now that size lot only allows a single family home or duplex. The original CUP was good for one year and the applicant could come back for multiple extensions every year thereafter. That changed in August 2007 which made a CUP good for two years and you could come back for one extension. They came back in February of 2008 after two years and asked for a one year extension, which was granted. It appears to staff, based on the current ordinance, that they cannot receive another extension.

Robert Collins, 614 Waynick, Wrightsville Beach, said he was in contact with the planning department and he was under the impression that two years was the original amount of the permit and from that point on it would be one year extensions available. Right or wrong, that is the way they proceeded on this. All of the engineering work and all of the design work and everything is done but the market conditions right now preclude us personally and socially from being able to do this. He came back at the two year point but he had been talking about it the whole two years that that is when he needed to come back and that was the information that he believed he was aware of. He got an extension in 2008 and it was the first time he was aware that he needed to get one.

Councilwoman Efird made a motion to extend the conditional use permit for one year to February 2010 using the old ordinance in this particular situation. MOTION CARRIED 3-1 WITH COUNCILMAN JOHNSON VOTING NO.

REQUEST BY LEANN PIERCE, NEW ORLEANS' SNOWBALLS, TO VEND IN THE CENTRAL BUSINESS DISTRICT (CBD)

Jeremy Hardison made presented. He said it is a request to consider operating a vending cart within the town limits, specifically the applicant would like to operate in the boardwalk area but without limiting that. The only exception would be that she could not operate on the oceanfront or the municipal beach strand. Proposed vending hours are from 9:00 a.m. to 11:00 p.m. but the ordinance limits the activity from 6:00 a.m. to sunset. If the applicant wants to extend those hours, she would have to come in and apply for a text amendment and go through that process. The vending will be an extension of New Orleans' Snowballs located at 7 Carolina Beach Avenue N. in the CBD which sells snowballs, popcorn, cotton candy and candy apples which will also be provided from the cart. The cart will be stored at the store when not in use. The vending permit will be good for one year at which time the license will become null and void unless re-evaluated and approved by Council. Current ordinance allows for five vendors in the area and currently there are none that have been approved with the exception of ice cream trucks which are exempt from that allowance. There is a sunset clause in the ordinance on all vending activity that will expire December 31, 2010 or as specified by Council in the approval process.

Councilwoman Efird made a motion to approve LeAnn Pierce's vending request within the town limits, add that to her privilege license and meet the requirements of the ordinance.

MPT Wilcox suggested that the legal question regarding that ordinance be put on the agenda for next month, a final opinion from the town attorney.

MPT Wilcox called for a vote. **MOTION CARRIED UNANIMOUSLY.**

REQUEST BY JAMES GOLDEN FOR PERMIT TO VEND AT FREEMAN PARK

Beth Golden said she runs the ice cream truck that goes on the north end. They already have a permit and she is not asking for a new one but it is set to expire March 2010 and the rest of the permits expire December 2010 and she is asking for hers to expire at the same time.

Councilman Gilbert made a motion to extend James Golden's vending permit to December 2010. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE QUORUM REQUIREMENTS FOR THE PLANNING AND ZONING COMMISSION

Ed Parvin presented. He said the number of board members on Planning and Zoning has changed a couple of times in the past. At one time it was a simple majority. There were nine members which made the majority five. Five is what is in the ordinance now. The board has been reduced to seven members but the ordinance never changed. There have been a couple of instances where they did not have a quorum, once recently and the other in 2005. Staff was looking at putting it down to four for the simple majority and Planning and Zoning suggested the ordinance state a simple majority without a number in case the board members change again. That is what staff is recommending, that the ordinance state that a quorum of the Planning and Zoning Commission shall be a simple majority.

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

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

Councilwoman Efird made a motion to adopt Ordinance 09-776 (Exhibit 5) and finds that it is consistent with the Land Use Plan. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE FEE STRUCTURE FOR RESTAURANTS OR OTHER COMMERCIAL DEVELOPMENT IN THE CENTRAL BUSINESS DISTRICT

Ed Parvin presented this item. He said this is a continuation from their discussion from last month. There were 7 or 8 questions staff heard then and they have tried to address those in their memo. Questions: (1) What did existing restaurants actually pay in impact fees? The original study included 11 restaurants and what they would have paid if it was \$250 per seat. He included what was actually paid or what the records showed. For some they did not have records. Table showed these fees. (2) What are the restaurant water and sewer impact fees charged by other communities in New Hanover County? Several of those fees have changed since the Town Manager's memo that is attached. Wilmington and New Hanover County no longer had their fees based on seating as they did prior to this. Now the Cape Fear Water and Sewer Authority has system development fees which is basically water and sewer impact fees and is based on meter size. Same thing with Wrightsville Beach. Kure Beach has a flat fee for all commercial developments, \$2,500 impact fee. (3) If fees were \$130 per seat, what would be the conversion to gross floor area? He thinks the \$130 per seat was around an average of what it looked like other communities were charging by what was brought up by someone's comments last meeting. The conversion would be \$360 per 110 sq. ft. of GFA. (4) How will this new fee impact existing restaurants? He said he basically had

four examples in the original memo which he wanted to simplify the conversion to GFA. Staff is recommending they only pay if they are adding on to their restaurant. There would be no conversion for all existing restaurants. (5) What types of incentives could we offer to encourage more restaurants to locate in the area? Staff listed a few - encourage CBD infill by waiving impact fees for restaurants, and not to charge for outside seating. (6) Are there any negatives to lowering or waiving impact fees for restaurants? It could be seen as not equitable to other uses or other restaurants who have had to pay them and there is also a loss of money to upgrade water and sewer which is the purpose of impact fees. (7) What would the impact fees cost at Tortugas if the fee was adopted as recommended by the Planning and Zoning Commission? Inside: \$629/GFA, outside: \$90/GFA with a total impact fee by square footage of \$15,914. Seating impact fee at \$250 per 140 seats would be \$35,000. That is assuming all the seating would be indoors. If some of the seats were outside, the \$35,000 would be a little lower.

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

Brett Keeler, 310 Columbia Avenue, stated that as Mr. Owens said the incentive on existing buildings, a problem with restaurants down in that area is that some of the buildings have been blighted so much that, with the 50% rule that we have on upgrading the buildings, it is tough to spend 50% on what those buildings are assessed at while bringing it up to code and then try to bring it up to Health Department standards, it is nearly impossible to do that. Trying to put a restaurant in one of those buildings down there, like the blue building that is being turned into a yoga center, to turn that into a restaurant would cost two times as much just to do the roof and flooring. He doesn't think that is a very good option. He like what the Business and Economic Development Committee recommended at \$130 per GFA, that is more equitable. The \$250 is half of an artificially high number. Another thing that hasn't been touched on is whether if you do infrastructure improvements, whether or not you get credit for that. Ed said 140 seats for Tortuga, he believes in the last CUP the seats were omitted because of the zoning changes so, 140 seats is not what we are going to have in there. We're probably going to have closer to 300. So 300 times \$250, that's \$75,000. That's not equitable. Also, with the outdoor area, he doesn't think that has been touched upon on what is constituted as usable space. For Tortuga there is a lot from the no build line back to where the structure is. How much are they going to be charged? He doesn't think there is a real answer, he hasn't seen the text because, with the transparency issue, it's not online and the public can't see it before this presentation which Kure Beach does a good job of and he would hope that Carolina Beach would put these things on line. He thinks Council should go with the recommendations of the Business and Economic Development Committee.

David Pierce, 701 N. Lake Park Blvd., said one of the comments that was just made was the challenges of the CBD. He is not in the CBD but he does face challenges as well. He owns Drifter's Reef Motel and is currently building a sports bar there and he would not, based on some of the conversations, be included in the incentive and he doesn't think that is equitable. He invests a lot of money in this town and has done a lot with his property

and would appreciate getting the same courtesy as everybody else gets. He has been here about 20 years and it's always about the boardwalk, which is a great thing and he's all for it but our shopping center is closed down now. There is a lot of stuff outside the boardwalk that needs to be brought up to standards. He would just ask that when you make these zoning decisions or incentives that you include the whole town because he is not in the CBD but has high challenges as well and he is trying to pay for a project. Tortuga's and all those guys are doing a great job and he appreciates it because it helps his business but on the same hand, he's right down the street in the city limits and he spends his money as well. He thinks planning staff has done a good job in trying to make it realistic. He thinks they need some incentives. He thinks our whole state is in disrepair, our economics, but he would like to see more incentives from the town because we are going to be hurting. Unless we do something, we're not going to have any businesses here or anywhere but we need to do what we can do to encourage restaurants. There are 100,000 people across the bridge will cross that bridge if we give them good restaurants and something to do down here. He asks that it not be limited to just the CBD. One of your negative factors on changing the seating was it not being fair to previous restaurant, he forgets which number it was, and as a business person timing is everything. He doesn't think they should use that as a negative. It's hard to get financing, it's hard to do anything right now and they need their help.

Greg Reynolds, 711 Canal Drive, said the incentive for existing buildings he agrees with but would not limit it to CBD. It has been sitting there empty and it's an eyesore and he would like to encourage something to come in there. We can make it look better. He guesses the economic impact of new construction we're not considering. If somebody wants to spend \$50,000 on an existing building, your tax base does certain things. If somebody wants to spend a million dollars on a brand new building, the economic impact of the contractors here, the construction workers here, all that is huge that we're just kind of ignoring. He doesn't think it is fair to only give a break to existing buildings. The economic impact on new construction is huge for a town and doesn't think we should be shortsighted on that. One big thing we never seem to look at, when you go to get a loan, good times and bad times, you cannot get a loan on impact fees. It's a one time cost and it's coming out of someone's pocket. So he thinks we should encourage new business. Right now if he was going to come to this island he would go to Kure Beach - \$2,500 and he's done. That has nothing to do with the reality of the situation - if you want to look for it you can go to the cheapest place to operate. He would like to encourage to not do the \$210 for the exterior seating. That is an increase of almost 2 ½ times what it is today. Today it is \$30 for an exterior seat, that is why P&Z did the \$90 for 3 seats for the 110 square feet. He would like to keep it equitable and keep it where it is. Bottom line is if you make it impossible for people to come here, you're not getting any return.

Bill Figured, 930 Riptide, said the island does need a bigger tax base and to give incentives and give the ability to other businesses that come in here and open here, as well as restaurants included, to give some kind of incentives would be a plus. The more businesses here, the more people will come here, the bigger your tax base gets, etc. He wasn't at the last meeting. He heard some of the figures that were being thrown around, the \$2,500 for Kure Beach, if you do the math, according to our \$250 per seat impact fee

equates to 19 seats. You show him someone who is going to build a restaurant with 19 seats. By comparison, a restaurant in Kure Beach equates to about \$12 -\$17 a seat. He thinks for Wilmington it's about \$35 per seat and the same for Wrightsville Beach. Everybody keeps hiding behind the impact fees. If he uses 500,000 gallons of water a month, he has to pay that fee and when he pays that fee he pays sewer and water and which also pays for usage on the pipes and system. We can't keep hiding behind everybody who comes in here with fees when they come to pull a permit or open a business just because we have infrastructure problems. We have to find that money somewhere else and we have to develop a program to address it. Our main concern is to get our tax base up and get businesses here. We are still double or triple the amount where we should be for the amount of population we have. Giving an incentive for rehabbing old businesses helps the CBD but it doesn't increase our tax base and probably doesn't fit in well with the plans of the guy who's going to open up a decent sized restaurant.

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

MPT Wilcox made a motion to adjust the fees to be an equivalent to \$150 per seat which might equate to \$410 GFA and \$90 GFA for outdoor seating, to change over to the gross square footage calculation but to base seating on \$90 GSF for outdoor seating and \$410 GSF for indoor seating which would equate to \$30 per seat for outdoors, under the old rate schedule, and, roughly, \$150 per seat for indoor. MOTION FAILED 2-2 WITH COUNCILMAN JOHNSON AND COUNCILMAN GILBERT VOTING NO.

PROGRESS AND UPDATE OF STREET ADDRESSING

Tim Owens said they are continuing on with the addressing.

Gary Ferguson said they are on the last section of the town. The CBD and HB have not been done yet, which is the last piece and they are in the process of finalizing it. Some people are going to have to change their addresses which will cause some difficulty and be a hardship on some folks. They hope to send out all the letters notifying people in the CBD by the 23rd of this month letting them know what changes have occurred and what will be happening down the road. Property owners will have until March 23rd to contact the town to let us know, after we send out notification, if they have a problem with their address we will be happy to resolve it. On April 1st the town will send notifications to all the following departments, both inside and outside the town, 911, fire and police, tax department, etc. There will be a map on line to show people what changes were made to the address system.

Mr. Owens said the final part of that will be to go out into the field and make sure people have actually changed their addresses.

INTRODUCTION OF PROPOSED NEW STORMWATER ORDINANCE FOR THE TOWN OF CAROLINA BEACH

Tim Owens presented. He said there is a draft stormwater ordinance in the packet. The engineering firm who helped us with it will be at the next meeting in March and staff would like to set a public hearing at that time for April. He asked Council to review the draft.

ANNOUNCEMENT TO UPDATE OUR 2008 HAZARD MITIGATION PLAN

Gary Ferguson presented. He stated we are due for an update on our Hazard Mitigation Plan. We have a \$20,000 grant in total. Actually it is \$15,000 and a \$5,000 contribution from the town. This is a mandatory update. It is absolutely necessary by FEMA for us to be eligible for reimbursement after a major event hits the town and we should have that into their hands no later than around March or April. We are really behind the eight ball on this and, as a result of that, we have suggested, with Council's approval, that we hire a consultant to help us do that. That would be Glen Harbeck Associates out of Wilmington. He has submitted a contract to us that fits within the budget and that is who we are recommending to do this. We're going to have the Planning and Zoning Commission as the lead agency and, as we did the first Hazard Mitigation Plan, we would like to use the department heads to help us through this and as fact finders of information we will have to put together as well as brainstorming about what we think are issues that need to be addressed relative to vulnerabilities the town could suffer from during any type of event.

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

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

Councilman Johnson made a motion to approve Glenn Harbeck Associates as the consultant to update the Hazard Mitigation Plan. MOTION CARRIED UNANIMOUSLY.

UPDATE ON TWO GRANTS RECEIVED FROM NCDOT AND PLACED ON HOLD DUE TO THE NCDOT BUDGET CRISIS

Tim Owens said these two grants have been placed on hold until July 1st. He is encouraging Council to allow him to write a letter to our Board of Representatives that we want to move forward on those two projects. One is the Carl Winner extension to the lane width there and the other one is the Island Women \$50,000 landscaping grant. Another bit of news is that we have to re-bid our entryway project due to some requirements that weren't met by the contractor. These things came to light later in some

of our discussions with DOT. We still hope to have that in before summertime or as close to June as possible. He would like for Council to allow him to write a letter to DOT requesting that we continue to be able to implement this project after July 1st.

Council agreed. Councilman Johnson said he would also like to have a letter sent to Senator Boseman who is on the appropriations subcommittee for transportation as well.

PROPOSED BREW THRU A PERMITTED USE LOCATED AT 910 N. LAKE PARK BLVD.

Tim Owens informed Council for informational purposes only that a Brew Thru is coming to town. This will be a retail drive-in facility to be built at 910 N. Lake Park Blvd.

REQUEST FOR TDA REIMBURSEMENT

Tim Owens said they are asking for reimbursements in the amount of \$28,620.16 from the TDA funds for the following: The breakdown of reimbursable expenses for the period of August 22, 2008 to December 31, 2008 is: Lifeguards and benefits \$27,013.20 and December 5th Christmas Parade \$1,606.96.

Councilman Gilbert made a motion to apply for TDA reimbursement funds.
MOTION CARRIED UNANIMOUSLY.

UPDATE ON APPRECIATION DINNER FOR BOARDWALK MAKEOVER GROUP

Tim Owens said an appreciation dinner will be held on Sunday, February 15th from 3:00 p.m. to 6:00 p.m., to be held at the Blackhorn Bar and Kitchen, in appreciation of the Boardwalk Makeover Group. It is in recognition of all those who participated on the improvements to the boardwalk as well as for those who may want to participate.

DISCUSSION OF UPCOMING BUDGET PROCESS, DETERMINE DATES FOR BUDGET WORKSHOPS AND SET A PUBLIC HEARING IN MARCH FOR A PRELIMINARY BUDGET HEARING

Council called a budget workshop meeting to be held on February 26, 2009 at 9:00 a.m. for the department heads to present their budgets to Council. The budget goals and priorities meeting will be held on March 5th beginning at 9:00 a.m. Mr. Owens will put a worksheet in their boxes which they can fill out as to what their goals and priorities are. He also requests to go ahead and set those meetings and to advertise for a budget public hearing on the regular Council meeting day which is March 10th. The meeting with Lanier Parking will be held on March 9th at 10:00 a.m.

DISCUSSION TO CONSIDER HIRING A FIRM TO ASSIST IN SUBMITTING AN APPLICATION FOR A STATIC VEGETATION LINE EXCEPTION TO THE NC DIVISION OF COASTAL MANAGEMNT AND AN OVERVIEW OF A SUBMITTAL FROM THE TOWN TO AMEND THE RECENTLY PROPOSED OCEANFRONT SETBACK RULES

Tim Owens said staff is trying to seek legislation to delay some of the static line vegetation requirements and oceanfront setbacks. He is asking Council to allow the town to enter into a contract, likely with CP&E. We need to go ahead and submit an application for static line exception and basically what that does is make things status quo with regard to setbacks. They will want to see a number of things and it will be a timely undertaking. He thinks Tom Jarrett and his firm, CP&E, will be doing the application for Wrightsville Beach, possibly, and he thought it would be appropriate to have similar application. He thinks it is very important they move forward on it. He estimates the cost to be as much as \$15,000 and he is asking the board to go ahead and appropriate some of the General Fund balance in the amount of \$15,000 to set a budget for this endeavor.

Councilman Gilbert made a motion to direct the town manager to go forward with the hiring of a firm for static line vegetation. MOTION CARRIED UNANIMOUSLY.

UPDATE ON PORT, WATERWAY AND BEACH COMMISSION MEETING

Tim Owens said he went to the Port, Waterway and Beach Commission meeting. The two topics of discussion were beach nourishment and considering change in room occupancy legislation. The beach nourishment item went fairly well and they understand our challenges and he thinks they support the Town of Carolina Beach. One thing he has asked to do is to make that a standing item on their agenda so, hopefully, that will keep on the forefront the room occupancy legislation change that would allow dredging to be used. He thinks, for the most part, most people were supportive but they were concerned about opening that legislation back up and then having other types of bills and things tagged on to it. So, they did not support that item. It did go forward to Boseman's office and McComas' office.

Councilman Gilbert would like to have a copy of the minutes when Danny McComas offered to help us with this and understand what he said. Rick Caitlin was at that meeting, the commissioners' meeting. Bill Clark was Mayor, he was there, etc. He would really like to figure out what he said so we can ask him what he meant.

Mr. Owens said okay. Most folks were supportive but were just concerned about reopening the legislation. We can continue to work on that one.

Mr. Owens added another item not on the agenda. He said he talked with McAllister & Quinn, they are a lobby firm, and he thinks what they propose is a pretty fair deal. A

copy is in their packet. He would like to move forward on something like this and, basically what it will require would be for us to sign a contract. The downfall or short side to this is we may have to pay for some expenses, any type of travel, etc. so there are some expenditures he is sure they will hopefully clear with him first. The other downside to it would be, from what he understands bills start getting introduced in June or July and then there is a \$5,000 per month retainer fee up until anywhere between September and December as to when a bill is actually approved. Maximum you will spend would be \$66,000 and we could get an appropriation for whatever projects we ask for. He has given them a copy of all the projects we have going on. There is some risk. He understands that if it makes it past the House or the Senate, typically it makes it into the project into a bill the President signs. Sometimes it's reduced. But, there may be some up front expenditures for it that we may lose out on but he thinks the positives outweigh the negatives. There have been some questions as to whether there will be appropriations or earmarks. Steve Dodd sent him some information that appropriations are still around. We have a lot of projects he feels are very viable. Streetscape improvements, the aquarium Carolina Beach project, a number of water and sewer projects that he thinks we can apply for. He would like to move forward with McAllister and Quinn.

MPT Wilcox made a motion to direct the town manager to move forward with McAllister and Quinn to pursue these projects and the dollar amount to be discussed at a later date. MOTION CARRIED UNANIMOUSLY.

MPT Wilcox made a motion to go into closed session to discuss legal and real estate matters in compliance with NCGS 143-318.11(a) 3 and 5. MOTION CARRIED UNANIMOUSLY.

A motion was made by Councilwoman Efird to return to open session. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

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

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____