

**MINUTES OF THE RECESSED MEETING
OF FEBRUARY 12, 2008 OF THE TOWN COUNCIL
TOWN OF CAROLINA BEACH**

February 21, 2008

The Town Council of the Town of Carolina Beach reconvened on February 21, 2008 at 5:00 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor, Joel Macon; Mayor Pro Tem (MPT), Dan Wilcox; Councilwoman, Pat Efird; Councilman, Jerry Johnson; and Councilman, Alan Gilbert. Also present were Town Manager, Tim Owens and Town Clerk, Lynn Prusa.

Mayor Macon called the meeting to order.

APPEAL OF FEES BY PARADISE ISLAND, VII, LLC

William Wright, Attorney for Paradise Island, VII, LLC, said they are seeking a refund of part of the fees that were paid when the Conditional Use Permit (CUP) amendment was granted back in August of 2007. His clients paid the fines, were assessed fees at the old rate after the new rate had passed which was double what the new rate was, and they are looking for the difference in the fines. Secondly, for your consideration and discretion whether they would be allowed under the Small Business Incentive Plan to pay those fees over time. Tim Owens presented information relating to the appeal for Council to look over. Mayor Macon asked if there were any questions about the town manager's memo dated February 18, 2008.

The town attorney asked for a minute with Mr. Wright before making remarks. Mayor Macon agreed and Council moved on to Item #21.

APPOINTMENTS TO PARKS AND RECREATIONS COMMITTEE

Ted Lashley said there are four appointments. The terms of Wanda Barbour, Kendal Doetsch and Scott Weber have expired. Also need to fill Bill Furjanic's appointment.

Councilwoman Efird made a motion to reappoint Kendal Doetsch, Wanda Barbour and Scott Weber. MOTION CARRIED UNANIMOUSLY.

MPT Wilcox made a motion to appoint Eileen Goldgeier. MOTION CARRIED UNANIMOUSLY.

Mayor Macon said they are still talking, so let's move along to the next item.

CONSIDER ADOPTING A RESOLUTION OF INTENT TO CLOSE A PORTION OF BLANCHE AVENUE

Jeremy Hardison presented the resolution of intent to close a portion of Blanche Avenue. He presented a map on overhead showing the property. The applicant has five lots that they want to possibly reconfigure into seven lots which would go through a subdivision process, but there is not a definite plan. They wish to close a 50' x 115" portion of the southern end of Blanche Avenue which is unimproved. At one time there were 6 to 7 mobile homes located there which have been moved and the area is vacant. Mr. Hardison said there are utilities going down the right of way of Blanche Avenue and Operations has requested a 30' easement.

Mayor Macon made a motion to adopt the Resolution of Intent to close a portion of Blanche Avenue, Resolution No. 08-914 (Exhibit 1) with a change in the date under number 2 to be changed to April 8, 2008. MOTION CARRIED UNANIMOUSLY.

Mayor Macon said they are now finished so we'll go back to Item #20.

Al Clyburn, Town Attorney, said he reviewed the minutes of August 14, 2007 revealed that the applicant's version of the facts is that they had received permission to add 8 additional seats to the facility and on June 3, 2007 they held a soft opening for friends and family, 60-70 people, to show the new additions and renovations. On June 4, 2007 they had a public opening and the attendance was full to capacity and they made a business decision that they wanted to be able to handle that many people. They immediately began work to install an additional 42 seats to the program. They confess that between June 3 and June 8, 2008 that they did not come to Town Hall, they did not notify anyone there of their new plan but during that time they did install 42 seats to the facility. Staff discovered the new seats and reported to them that this type of an addition would constitute a major modification and they would have to come back before Council and ask permission for a major modification to be able to have this type of an addition to their facility. That the position of the applicant at that point in time was that they would go ahead and pay the \$500 per seat if they can just do that and be done with the process. They were told no, they would be required to come back to Council and ask for permission through the CUP process to have that number of additional seats. Their version of the events is that they immediately put that process into play and that it took from June 8, 2007 until August 14, 2007 to go through the various steps of the process to get back in front of the Council for a major modification. On August 14, 2007 Council heard their request for a major modification and granted their request but one of the conditions was that, in addition to the \$50 per day fine which was levied for the 42 seats from June 3, 2007 to August 14, 2007 they would be required to pay the \$500 per seat fee as that impact fee existed prior to July 1, 2007. On July 1, 2007 the impact fee decreased from \$500 per seat to \$250 per seat. Their argument, as he understands it, is that in that they had paid the penalty, i.e. the \$50 per seat fee for the number of days between June 18, 2007 and August 13, 2007 - they've paid the penalty and they are not asking for that back but they are saying that because they were permitted after July 1, 2007 that they should be charged by the July 1, 2007 rate, not the June 30, 2007 rate. The dispute totals

\$9, 680. In his conversation with Mr. Wright earlier in the week he told him he did not have authority from Council to make this proposal but would his client consider a rebate of 50% of that amount he would be glad to take that to Council and see what their feelings would be as a resolution and he was informed this evening that they would not accept that as a resolution of this dispute. Mr. Clyburn does not think this is a legal dispute in that what the town has done was not arbitrary or capricious. He can see very clearly how the town analyzed the issue and did what they did. He said you could argue either side of this dispute, on one side of the coin there are those who would say that they added those seats without the town's permission or advising the town of their plan, without going through a major modification process and they got the benefit of those seats from June 8, 2007 until July 1, 2007, that is when the impact hit and the town was well within their discretion to request that the impact fees be based on the June 8th rate. There are those who would say that they have paid their penalty for having those seats from June 3, 2007 until June 30, 2007 and they are not asking for that penalty back and because their permit did not go through until after July 1, 2007, the impact fee should be set at the July 1, 2007 rate. This is one of those times when he cannot give the town clear guidance, he feels it should be whatever they think is the right thing to do. If you refuse to refund the full amount or only half of the amount and they want to go to court over that amount, that is their right and they can deal with it that way.

Mayor Macon said that there was a statute quoted at an earlier meeting regarding fees being charged in arrears like that. Mr. Wright said he referenced a couple of cases; Covington vs. City of Rockingham where facility fees were neither taxes nor assessments but instead rents for the benefits of the use of the service and the other was the Highpoint case where if you penalize someone for an assessment then that money needs to go to the schools and it could be taken away from the town. Council said these are impact fees. Mr. Wright said the discussions during the town meeting was that this was to penalize them for doing it at that time. Councilman Gilbert said he did not agree with that because at the June meeting they agreed to pay the fees, at some point they agreed to pay the full fees. His understanding from talking with the client was they went in and said if you will give us the seats we'll pay the fees right now and they said no, you have to go through the process. Councilman Gilbert said they had that discussion, they offered to pay for those seats at the current rate and he couldn't accept that because he would have been acknowledging that he was letting that happen. Mayor Macon said it would be like paying for a major modification without going through the major modification process. Councilman Gilbert stated he could have said you need to take them out right now and stood there with the police but he couldn't acknowledge it by taking that money.

Councilman Gilbert made a motion to return \$4,500, half of the fees.

MPT Wilcox said when these folks came before Council for a CUP modification, Council had a right to approve or deny that modification. They chose to approve it and he agrees with Tim Owens and the town attorney that this is probably more about good policy than about the legalities of it. He thinks the conditional use process was used to penalize them for something that they had already been charged for so, at that time maybe the decision should have been made if they were going to charge them \$500 per seat then they

shouldn't have charged them the penalty, but that is not what happened. From a policy perspective he has a problem with the way it was handled, doesn't send the right message to anyone else who wants to do business in this town. **MPT Wilcox said he would like to make a motion to amend Councilman Gilbert's motion to refund the amount requested. Councilman Gilbert said on a point of order he cannot make a motion to contradict my motion. The town attorney said Council needs to vote on Councilman Gilbert's motion. Councilman Gilbert said his motion was to refund \$4,500. Councilman Johnson said that halve would be \$4,840. Councilman Gilbert said okay, for \$4,850. MPT Wilcox withdrew his motion.**

Councilman Johnson said that based on what the attorney said in outlining the circumstances that the client has acknowledged and was willing to pay the \$500 if they could have back then so they had acknowledged they shouldn't have done what they had done and with regard to what MPT Wilcox was saying about the process that in fairness to both parties that a 50% reduction is fair. Mayor Macon said he remembers the meeting well and was very unhappy with Black Horn and felt it was not the right way to conduct business by the applicant but he does feel it was in the form of a punishment and that was how he looked at it when he was a part of it at the time.

Mayor Macon called for a vote. MOTION DENIED 2-3 (MAYOR MACON, MPT WILCOX AND COUNCILWOMAN EFIRD VOTED NO).

MPT Wilcox made a motion to refund \$9,680. MOTION CARRIED 3-2 (COUNCILMAN JOHNSON AND COUNCILMAN GILBERT VOTED NO).

Mr. Wright said there is one other matter about the small business incentive plan and they would be glad to provide documents. He knows that the town manager had a report that he provided Council. If the town were to consider it, if there was an additional hearing that needed to be had, they would be glad to provide documentation demonstrating the amount of the improvement to help with the town's decision on that. Councilman Gilbert said it is not a small business incentive plan, a part of the economic incentive plan does have a caveat for a small business but it is not a small business investment plan or economic development plan by design.

Councilman Gilbert made a motion to not approve refunding the \$30,500 and follow the town manager's recommendation.

His premise is if the organization should become insolvent tomorrow the \$30,500 is gone and it is counterintuitive that they would loan back money at an interest rate that was higher than when they gave it to us in the first place. Mr. Wright said they were not requesting the \$30,500, it was the impact fees for the additional seats, the \$9,500 plus the \$7,000 which is roughly \$16,000. Tim Owens said it is a Council policy, his opinion is that this should have been set up in the beginning. It is not for continued expansion. The policy and different guidelines equates to that. You're supposed to hold a public hearing up front, everyone agrees with the proposal and that it is an economic incentive situation. Factors that evaluate the project, whether it's needed or not, the amount of capital

investment, the type of services to be provided, employee type benefits. Then there is a written performance agreement that would manage the whole thing, it is really set for something initially. So, if in 2005 when they came to renovate this thing and they knew they were going to do \$500,000 of capital, it's all done at that time. Other policies he has seen too are usually done on the forefront, have the tax assessor come out and give the value and at the end the tax assessor comes back and says it is now worth this amount. He gave Council a copy of the policy and summarized the main policies in his memo. His take on it was that it was for original investment and that was why he made the recommendation he did. He's not debating whether they are at \$500,000 or not now, they may be he doesn't have any data that says that they would be, no evidence has been submitted. He did look at how much they said their building permits were worth and they said when they applied for them over the course of three different time, \$206,000 or \$209,000. He also looked at the tax value which was \$262,242 and probably did not take into account the last renovation. Renovations are usually \$50 to \$75 dollars a square foot, he used \$100 a square foot and came up with \$472,000. He estimated the size of the building at 4,720 s.f. He does not feel we should be in the business of refunding fees. Mr. Wright said they would be utilizing this money for an expansion of additional parking, landscaping and upgrading the business, making the restaurant nicer, not necessarily adding space but capital upgrades to the interior. Councilman Gilbert withdrew his motion and asked if they could table it until the March 11, 2008 meeting. MPT Wilcox said there is no reason to consider it unless they have evidence they have reached the \$500,000 threshold. Mr. Keeler said they have their insurance policy which is \$1,050,000 so if you are basing on what the assessed tax value is, obviously they have done the infrastructure improvements and upgrades to the business amounting to more than \$500,000 based on the tax value of the building then it is \$800,000. He said they were never asked for that information, staff tried to compile it on their own, contractors were asked about how much money they spent but they were never asked for this information or permission to contact their contractors. He said he was fine with it being tabled and will present whatever evidence Council feels is necessary. Councilman Gilbert said he asked that Council review the ten points of this basically revitalization economic incentive policy and use it as a barometer for this. He feels they are misstating calling this a small business incentive program.

Mayor Macon called for a vote. MOTION CARRIED UNANIMOUSLY.

Tim Owens said the capital investment is what was the building, how much was it worth and how much capital have you put into it, not necessarily chairs and things you can take out of it, it's not televisions on the wall. To him it's the capital part of it that is going to stay whether this owner owns it or shuts it down. There are other things such as how many people are employed, how many Carolina Beach people are employed, what kind of training has been done and things of that nature. Mr. Owens said he has given a copy of this memo to Mr. Wright and his applicant. Mr. Wright said he would and they would try to address each one of those in a packet they will submit to them prior to the meeting.

DISCUSSION AND DIRECTION FROM THE TOWN COUNCIL TO CONSIDER COMPLETING A PRE-ENGINEERING AND FEASIBILITY STUDY FOR ADDITIONAL TRANSIENT BOATING FACILITIES AT THE CAROLINA BEACH MARINA

Tim Owens said there is a possible opportunity to expand the transient slips. He looked at two methods, one is in the packet before Council and they might have to go out there to look at it, the other involves a feasibility analysis by Criser, Troutman, Tanner Consulting Engineers. The cost for the consulting engineers to do it is \$2,500 and the town would have to do engineering, permitting and things of that nature. The other packet is something that Mr. Winner drew up which shows a deck which used to be a restaurant. The idea is to cut that deck back, relocate existing utilities and put in a floating dock system. Mr. Winner is going to move some pilings over for one of his boats and then use that whole area in there as slips. There are roughly 12 to 13 slips there of various sizes. This is one alternative. What would be required here is virtually nothing, it would require dredging. The prison team could construct the docks with Mr. Skippy Winner supervising. They are up against several things such as permitting, doesn't think you can dredge out there after about April 15th, but he wanted to try to get the permitting under way if possible whether Mr. Winner does it or the consulting engineers. There is only one transient slip at the marina now. Mayor Macon said he is not sure if Mr. Winner's construction is licensed or not and that would need to be checked. Councilman Gilbert wanted to know what would be the return of the investment of these slips for \$86,017. Mr. Owens said it would depend on if the town received the grant, how long it takes to permit it and do it. As transient day slips there would be no return. Eventually the area would have to be dredged anyway if Council decides to move forward with the project. He is not proposing new bulk heading, the docking can be reused if the large project is done. Worst case scenario is that the permitting money would be lost. MPT Wilcox feels it is impractical due to the small size. Councilman Johnson said one of the purposes would be to allow dinghies from sailboats to tie up instead of using a large slip. Mr. Owens said the cost of the docks would probably be half because of using prison labor so it probably would be \$50,000. If he moves forward with the permitting then they will be that much further along. Councilman Gilbert suggested going ahead with the permitting and then working with MPT Wilcox and Councilman Johnson on designing slip layout. Mr. Owen said the feasibility study was considered in the event that Mr. Winner can't handle the permitting.

Councilman Gilbert made a motion to give the town manager direction to go forward with the permitting process and bring back to Council the formal amount for construction. MOTION CARRIED UNANIMOUSLY.

DISCUSSION AND DIRECTION CONCERNING A PROPOSAL FROM MARLOWE AND COMPANY TO SEEK FEDERAL FUNDING FOR A VARIETY OF TOWN PROJECTS

Tim Owens presented a proposal from Marlowe and Company for services related to seeking federal funding for a number of town projects. He said it was also possible to do it through the federal representatives too. He is not recommending Council do this now but they should keep this as an option for the future if the town does start implementing the master plan. Mr. Owens said we are not far enough along on any of the projects or determined what projects are to be done to hire them. Council and staff decided on March 14, 2008 at 10:00 am for the workshop goal setting meeting. Mayor Macon recommended tabling this item until another more pertinent time.

DISCUSSION REGARDING TIF FINANCING IN CENTRAL BUSINESS DISTRICT

Tim Owens said he and Dawn Johnson, Finance Director, and Councilman Wilcox met with someone today to discuss TIF financing. He is not very familiar with it, has heard good and bad experiences with TIF financing. He would be happy to get more information for Council if they wish. He could invite someone from the Institute of Government, some banking personnel and someone from New Hanover County - could help them as well. He will provide Council an article on it from the Institute of Government. It is used to basically implement public projects through projected revenues received from development to finance street improvements, streetscape, water and sewer possibly, etc. Council and staff will decide in March when they want to meet in April.

NON-AGENDA ITEMS

Tim Owens said there was a scheduled meeting today with Sunny Point, our operations director, and Brian Cox, Town Engineer. He wanted to give them an overview of issues that needed to be addressed in the future but they had an emergency come up and were unable to continue the meeting. They did meet briefly about the lake, discussed it with John Sullivan, Water Resources, who does a lot of grant programs and is very optimistic. Staff is hopeful that they might get something together within the next few months to apply for a grant that would include reshaping the lake, new pump system and maybe some other items.

The town manager said he also got a lease agreement from Joseph Middleton for a building on the Boardwalk the town has leased in the past, for \$300 a month. This could provide a location for the intern program, possibly the boardwalk makeover group, lifeguards, etc.

Staff said he is meeting on March 18, 2008 at 9:30 am with a lot of the permitting agencies at Town Hall to discuss the lake and Wilmington Beach. Mayor Macon said they met with CORE where they shed some light on situations Council was unsure of and they would like to get that particular individual along with EWQ perhaps they can fix some of the problems the town has.

Ted Lashley said he, the town manager and Lani Thompson, Recreation Program Superintendent, met with Karen Thompson, Associate Director, UNCW Career Center, and discussed the internship program. Job descriptions were sent to her today, they want to use recreation students as they get credit for classes to do programs here. To pay two interns for a 12 week season it would cost \$8,400. That would include workman's comp and payroll taxes. It would be very cost effective compared to a full-time employee and would be a good addition to what the town is trying to do at the Boardwalk.

Gary Ferguson said that staff will be providing Council with a recommendation concerning quasi-judicial for Planning and Zoning Commission. They feel a little uncomfortable with that approach. He has given a draft to the town attorney for review to make sure the options for Council are legal and legitimate. This will be presented at the March 11, 2008 Council meeting.

Councilman Gilbert said we have been trying to put together a citizens advisory committee on the MPO with the 21st Century Transportation Initiative and we had one applicant who happens to be on the Police Advisory Board and will probably make that appointment.

He also said there was a request to Alan Pope with regard to 421 paving and that they were at about 36% with respect to habitability. Road has not been paved in 24 years. The town manager said he received written notice that the rehab is scheduled for 2009 and he will have to coordinate a lot of infrastructure with DOT before paving takes place. Staff will be advised probably around the end of the year how funding will be done.

MPT Wilcox gave update about the trolley system, getting it back down to Carolina Beach and Kure Beach. They have a detailed plan on having a trolley at the ferry area so that people coming from Southport to visit the aquarium can park their cars on the other side, ride the ferry and use the trolley here for transportation. They would like to have more ferries, have an express trolley that runs between Kure Beach and Carolina Beach and probably another trolley in the evenings, same shuttle used at the Aquarium. Three more trolleys have been purchased in anticipation of doing this.

Mayor Macon made a motion to go into closed session to discuss attorney, client and real estate and personnel matter [NCGS 143-318.11(a)3, 5, and 6. MOTION CARRIED UNANIMOUSLY.

A motion was made by Mayor Macon to return to open session. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

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

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____