

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

January 12, 2010

The Town Council of the Town of Carolina Beach met in regular session on January 12, 2010 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Joel Macon; Mayor Pro Tem (MPT) Pat Efird; Councilman Dan Wilcox, Councilman Lonnie Lashley, Councilman Bob Lewis. Also present was the Town Manager Tim Owens, Town Clerk Lynn Prusa, Finance Director Dawn Johnson, and Town Attorney Steve Coggins.

Mayor Macon called the meeting to order.

INVOCATION

Mayor Macon led the invocation.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

Mayor Macon made a motion to adopt the agenda with changes as presented by the town clerk. MOTION CARRIED UNANIMOUSLY.

REQUEST BY EMILIE SWEARINGEN TO HOLD SPECIAL OLYMPICS POLAR PLUNGE ON FEBRUARY 20, 2010 IN CAROLINA BEACH

Emilie Swearingen said she is requesting the use of the gazebo area, blocking off Cape Fear Blvd. for the SunCoast Cruisers and having free parking as they have in past years for Special Olympics Polar Plunge. The event will be held on Saturday, February 20th starting at 11:00 a.m. with music, silent auction, costume contest, DJ, food, art and more with the plunge at 3:00. She said that last year the Special Olympics raised \$40,000 but was down from previous years due to, she assumed, the economy. She invited Council and the town manager to plunge this year. She also encourage the police officers and firemen to participate in this year's event. Ms. Swearingen mentioned that the Town of

Kure Beach may be challenging Carolina Beach. Council should be there by 2:00 p.m. and the rest of the community to come at 11:00 a.m. She thanked the Treehouse and other businesses for helping out.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon and Gene Gurganious recognized Gerry McKeen, Utility Maintenance Worker, Waste Water Collection, for 5 years of service.

Mayor Macon and Chief Younginer recognized Chris Latham, Police Officer II, Police Department for 10 years of service.

CAROLINA BEACH COMMITTEE REPORTS

Randy Simon, 1410 Snapper Lane, congratulated Councilmen Lewis and Lashley on their election. He spoke on behalf of the Harbor Commission concerning the floating dock at the lower west corner of the marina for the public and implementation of a mooring field. He wants to bring awareness to Council that the commission is trying to establish these two entities. They have been trying to do more advertising that Carolina Beach is a boating community. Their next meeting will be January 27th at 6:30 p.m. to try to get contract bids for material for floating docks. This is the last hurdle. The Town Manager said he has received bids back from 5-7 contractors. They will do an open process and bid award, hopefully by the first week of February. It will be pushing summer for the mooring field but they need a CAMA major permit and an engineering firm to get back with Ed Parvin to draw a better plan for CAMA and said the best case scenario will be to get something in the ground by the end of summer.

Randy Simon, spoke on behalf of the Police Advisory Board. He said they met last night and had a good turnout. Their program was about sex offender registry awareness. They entertained people from the Boardwalk Makeover Group about laws of Carolina Beach and Chief Younginer addressed their issues and discussed them for about 2 ½ hours. These were legitimate issues of concerns but not complaints and they also offered remedies. He hopes Council will support part-time officer in prime season. They meet the first Monday of every month. Councilman Lashley asked if they discussed skate parks and Mr. Simon said they had multiple discussions about the skateboard park. They would like to work more closely in 2010 with Parks and Rec to come up with ideas and seek more resources.

PUBLIC DISCUSSION

Jeannie Mintz, 205 Georgia Avenue, with Saving Animals During Disasters, thanked Council and the town for their backing of the Salty Paws Festival. It was a huge success.

She feels they have started something and has heard good comments. They want to have it again October 16th, with a rain date on October 17th, around the lake. Mayor Macon thanked her and her crowd because it was a phenomenal and fun festival. Next year, instead of around the picnic benches, they want to go further around the lake. They had 60 vendors last year and this year they expect more. Alligators are supposed to hibernate by September 15th so that shouldn't be a problem but they need to keep that in mind because of dogs and children.

Concerning another matter, Ms. Mintz said the Friends of Felines say that cats on the island are becoming a problem. Friends of Felines, Saving Animals, and Pleasure Island Paws are out of money. They are the only ones that have a disaster trailer. They are the first to give free dog food. She asked Council for \$2,500 to fix 71 cats and get their ears tipped. This money will be used for cats on the island. They will ask Kure Beach for the same thing. Mayor Macon asked her to put the request for funds in writing for the town manager. He also asked if they were a non-profit organization and Ms. Mintz said yes. Others in attendance with Ms. Mintz presented Council with statistical information about the astronomical cat population. Councilman Wilcox said they could set up a fundraiser booth in conjunction with the Boardwalk Makeover Group fundraisers, Tuesday night is family night. The town manager said he will put it on the February agenda for approval once he receives the letter. Dr. Deb Donovan, with Carolina Beach Animal Hospital, also gave statistics. She said that Dr. Cottrell couldn't be here tonight. Jerry Kennedy, 1001 Carolina Beach Avenue N., also spoke in support of this cause.

Jeri Graham, 1306 Snapper Lane, said she wanted to make sure that Council was aware that she was appointed by the Governor to sit on the Veteran's Affairs Commission representing this congressional district. She went to her first meeting yesterday in Raleigh. She is very honored to represent this district. Mayor Macon and members of Council congratulated Ms. Graham on the appointment.

ADOPT THE CONSENT AGENDA

MPT Efirm made a motion to approve the consent agenda as follows:

Approval of the minutes:

Special Meeting	October 13, 2009
Regular Meeting	December 8, 2009
Special Meeting	December 17, 2009

Requests for budget transfers:

Parks and Recreation Dept

Transfer \$4,700 from line item #10-620-055 (athletic programs) to line item #10-620-075 (capital projects under \$10,000) to cover the cost of purchasing a new

scoreboard and controllers for the Recreation Center gymnasium.

Public Works

Transfer \$550.80 from line item #105800.33 to line item #105800.25.

Transfer \$26,767 from the General Fund Unappropriated Fund Balance to Streetscape Improvements, line item #104100.48.

Adopt Resolution No. 10-1002 (Exhibit 1) authorizing the fire chief to dispose of the surplus radios through private exchange in accordance with NCGS 160A: Article 12.

Adopt Resolution No. 10-1003 (Exhibit 2) authorizing the fire chief to dispose of the 1985 Grumman Aerial through private exchange in accordance with NCGS 160A: Article 12.

Appointment to the Fireman's Relief Board: Reappoint Dee Kirkbride for a two year term beginning on 1/1/10 and ending 12/31/11 as required by NCGS 58-84-30.

Appointment to Parks and Recreation Committee: Appoint Ms. Daffney Winchip to fill Mr. Lonnie Lashley's unexpired term.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING AND DISCUSSION ON THE IMPROVEMENTS AND ASSESSMENTS REGARDING THE WILMINGTON BEACH STREET PAVING AND DRAINAGE PROJECT

Tim Owens presented this item. He said this project has been on the drawing board since about 2005. There is an assessment roll process that was undertaken that same year. Since then they have been going through the permitting process and we are finally there. A public hearing was held a while back and two workshops that were well attended to talk about more of the formal stuff - what driveways/ditches will look like, etc. Tonight's public hearing is to give people some input into the process as well. There will be a number of other processes as we go through our LGC application regarding the financing, so there will be some other opportunities as well. He is looking for direction tonight. He will go through a presentation which Council saw at another time. The Wilmington Beach project started at about 2005 when they started talking about paving the roads and draining at Wilmington Beach. The town had to revise the estimated project cost which was considered in 2005 and estimate it to be about \$4.1 million dollars (slide shows breakdown). In 2005, the Council at that time decided they would give residents 7 years to pay for the assessment at 6% per year interest. It was basically a 2/3 - 1/3 split which would take out sidewalks and intersections as part of that project. For assessment purposes, you are looking at \$3.6 million dollars the town would pay for the intersections and sidewalks portion of it. He did a breakdown estimate on what they feel like, given

the conservative cost estimate, what they believe the cost could be per year for a resident that was assessed. Obviously if it was a duplex, that property would split the costs. Basically, at 2/3 of the total amount (\$3.6 million dollars), you are looking at roughly \$2.4 million dollars. If you divide that by 467 lots, our estimated number of lots there, you are looking at an assessment without interest of about \$739 per year. If you add interest in and you pay yearly, you are looking at about \$1,050 as the estimate for the assessment. The town sponsored portion of the project, as he mentioned, they added back in intersections and sidewalks, the town's portion of the project that they would undertake funding would be the \$1.7 million dollars, roughly. They discussed some of the fiscal impacts, because you can stagger these assessments out at different times and people pay at different times as well, he was very conservative on the anticipated collection amount but he did anticipate a little less than half being collected each year. And if that was the case, and the costs were the case as far as the estimates go, you could potentially see a tax burden or we would have to find somewhere in the existing budget to fund that amount. He is estimating, if we can receive a 20 year loan, you are looking at having to make up an estimated \$106,000 during the first year of the project that the debt service comes due. And it could be as much a little more than $\frac{3}{4}$ of a penny in tax increase given the revaluation process which will occur in a couple of years. If we look at a 15 year loan, you are looking at about the same, $\frac{3}{4}$ of a penny to a penny, and the estimated debt service that we would have to cover would be about \$166,000. At this point, every penny of tax that we collect if deduct out the folks who don't pay their taxes on time, it's roughly about \$230,000 what we collect on one penny of tax given our current valuation of about \$2.45 billion dollars. This is an opportunity for folks to voice their concerns or pleasure with the project. It has been going on for some time and there were a lot of different things the town heard at our meetings. You will hear some discussion about sidewalks on every east/west street; about moving a sidewalk from one side to the other; about curb and gutter; about doing it and not doing the project; providing more financing; keeping it the same - you'll hear a bunch of different items. One of the things that the Council did not consider, they considered it but it was not approved in 2005, was an incentive to pay up front and one of the things he is asking tonight is to consider reducing the total cost of the project by \$500 if they pay up front within 60 days. That would basically reduce the interest as well as give you a little reduction on the total cost of the project if you pay within 60 days. So he is asking Council to consider that. It would put a little burden on the town but will also help our cash flow and allow us to manage our debt service a little better. One of the other things they will have to decide shortly, which was discovered in the last couple of weeks, is that there are a few sections that don't necessarily have sewer and water service at this point so they need to determine how they put that in. At this point he is not sure of an assessment process they can use but, for the most part those folks in that area were assessed at some point in roughly 2002/2003. At this point there is really not an assessment roll or process they can go through without people petitioning for water/sewer. He pointed out the area without water and sewer. If the town does the work and pays for the materials, he estimates the cost to be roughly \$100,000. At this point he is not prepared to make any kind of recommendation. He believes it will spur some economic growth with some impact fees that are paid when homes are built there that will help offset the cost of it. So there are some benefits of going ahead and putting that

in. The other option would be to just leave those properties out of the equation. We have come this far and gotten permitting, he would prefer to move forward at some point. He will have to come back with a recommendation. The 467 properties, the roads there are in different states of repair - some are gravel, some are not even cleared, some are dirt streets.

Councilman Lewis asked if the lots without water and sewer are undeveloped and the Town Manager said yes.

Councilman Wilcox said, regarding the town manager's model and everyone not paying on time and possible tax increase - if the payment was better than expected, are you suggesting the tax increase would not be necessary if all payments came in on a reasonable schedule?

The town manager said maybe not in the early years because you would have that revenue in the bank that you could be paying the debt service on and then later years out as maybe we would gain more ad valorem tax.

Councilman Wilcox said the loan for the bank doesn't have to be a full term of the assessment, it could be shorter up front.

The town manager said it could. They could do one of two things, they can pay down the debt service which relieves our burden and they will reprogram the loan - that's advantageous depending on the interest rates, we could do something like that; or we could just set that money aside, draw what little bit of interest we would draw, pay debt service over 10 years with it and then reprogram the loan at a later date. There are different options.

Councilman Wilcox asked the town manager to take a pointer and show where the sidewalks are proposed to go and any other particulars so everyone has the same information.

Mr. Owens said there were a couple of things he wanted to point out, and this is a mapping error (indicating with pointer), there are a couple of lots in here that are missing from the equation. They are included as part of the project and for some reason he didn't have the updated copy. The sidewalks they are considering at this point are: south side of Tennessee up to this point, also considered Ocean. At this point the plans show one on the north side going up to roughly this point. He told the engineer that if they are going to consider it, we need to go all the way up, in his opinion. The other one would be on the north side of Alabama. One of the things he has heard is why not do every cross street. They are also planning some high visibility crosswalks at some of the larger areas as well, hopefully coming within the next 6 months to a year, hopefully before summer. The current project has just shallow swales and no curb and gutter at this point, only sidewalks where shown. In talking with the engineers, they feel like the extra cost for the sidewalks would be anywhere from \$150,000 to \$200,000 additional that the town would have to undertake if they decide to go forward with it. The changing of the permitting

and adding the sidewalks shouldn't be a big problem. The problem could come later with curb and gutter, in his opinion, and getting permits changed. Also, you are looking at having to tie into different areas, so that could be challenging. He doesn't have a good answer for the curb and gutter request.

Councilman Wilcox asked if the ponds are being put in to handle the impervious surface of the roads only?

Mr. Owens said it also includes the properties. The town was required to treat this as if they were developing a subdivision. They built two roughly 3 acre ponds and all the drainage from one area will go to Greenville, including a little bit of Carolina Sands. There is a stormwater lift station there where it will be piped up to the retention pond and then the other part will break and go over by the Alabama water tank.

Councilman Lashley asked if this proposal is still stating that they can pay whenever they want to pay instead of us debting them on a yearly basis to pay their debt for that year?

The finance director said they can pay monthly, however they want to, they are just required to make an annual payment.

Councilman Lashley asked if they could make just a \$200 payment on an annual basis?

Ms. Johnson said no. If the town is assessing for 7 years - then 1/7 of that each year. They can also pay up front with no interest. The town will be sending out the bills and be collecting.

Councilman Wilcox said they received some letters about sidewalks and there was a brief discussion at the Council meeting the other day about the distance off the roads, etc. and asked if the Town Manager talked to the engineers about that.

Mr. Owens said there was some discussion. A curb and gutter would allow you to pull it flush with the back of the curb. It will range somewhere between 12 to 15 feet. The design speeds and traffic volume has everything to do with where that location goes. That is a safety requirement by DOT.

Councilman Wilcox asked if that design changes if you have curb and gutter.

Mr. Owens said yes because there is less chance that you can hop the curb and run over pedestrians. If you are going to have this type of scenario without curb and gutter, there are certain widths and it is based on speed and traffic volume.

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

Shirley Fraley, 407 North Carolina Avenue, said she wanted to talk about tarring the road. She lives on the corner of Bonita and North Carolina Avenue. She has a drain pipe that goes across the road there. The pipe was torn apart when they did the road and she came to the town and told them they need to put a drain in there because she has a big ditch on the side of her yard. They said they shot it and put that pipe in but that pipe sits way above the road, almost to the top of the road, so no water can drain up hill and it would have to drain up hill. She was wondering what they will do about that before they tar the road. That could be a problem that needs to be corrected. Mayor Macon said that any drainage work that would need to be done would be done when the road is paved. She gave Gene Gurganious her address and phone number and he will keep an eye on it. She thanked the town for responding so quickly to her requests for gravel or dirt on her road. She asked what the stormwater charge on the water bill is used for. Mayor Macon said that several years ago they had a federal unfunded mandate which is to control and deal with storm water, first 1 ½" of a rainstorm so that we can treat it because of certain conditions that we met and when this was placed upon us by the federal government, we created the stormwater fee which pays for these improvements. The stormwater department was created to handle and enforce the mandate. There have been leaps and bounds that have been made in that department as far as handling stormwater and dealing with flooding issues and they continue to work on a daily basis. This includes maintenance of existing ditches, catch basins and things of that nature. Ms. Fraley said in the Wilmington area they have some rock and gravel and stuff like that and one light post about every 4-6 houses. They haven't asked for very much in the area and wondered if some of that money couldn't be used to help pay for that road or the town to help pay for some of that. They haven't gotten much for their taxes down there. Mayor Macon said the town voted in 2005 to take on 1/3 of the cost as well as full cost on intersections and sidewalks.

Tom Bridges, 600 Ocean Blvd., showed a map on the overhead where the sidewalk will be adjacent to his house which is about 33 feet (also showed a side view) and it concerns him. If there is a curb, it will be closer. This is only a problem on Ocean because it is a state maintained road so they are the ones with the requirement for it to be so far away. There is 17 ½ feet from the nearest part of the road, a 5 foot wide sidewalk which makes it 22 ½ feet. His property line is at the fence. With a vertical curb it can get much closer. He showed another example further down the street on the north side of Ocean where the line is very close to that house. He doesn't know where they are going to park. Part of the problem on the northern side is that there are 21 homes on that side of the street as opposed to 17 on the other side. There is also a disproportionate amount of houses of the older style that are not necessarily set back as far and don't have pilings so that you can drive under there so they have less options for parking. On the southern side and there is not a house that would have a problem or as much of a problem as the northern side. His home and the other home are the ones that are most affected and is representative of several up and down there that will be compromised. As he understands it from the town manager, the only reason it's on the northern side is because it was going to join in with the sidewalk from Sea Grove. It could easily be shifted to the other side. His concern is the 17 ½ feet from the edge of the road and then a 5 foot wide sidewalk. That is just a massive amount of distance from that side of the road and he is greatly concerned about

that. He really doesn't have any other place to park because the side road is Mackerel and that is going to be paved. He would have to cut down a bunch of trees and lose the curb appeal of the home totally. When he put the plants in front of the fence, someone from the town came out and said it would be a really long time before sidewalks were installed.

Carol Bridges, 600 Ocean Blvd., said she too is concerned about the sidewalk. What will happen for their family is that they will pay between \$5,000 and \$7,000 for a road they never use because it is a side road and their house faces Ocean and they will lose their parking with the current proposal with no really good options for alternative parking. The only benefit they will receive is she will have to clean their porch a little less often. That is not a good tradeoff. They are in favor of the paving project and feel sidewalks with curbing would be a marvelous thing and would take care their problem if they left the sidewalk on their side of Ocean Blvd. It would make if far enough away from the homes and they could still park. Without curbing they could move it to the other side and they would be very grateful. She is concerned about the funding and wants to talk about the Powell Bill and money given to the town. She showed on overhead, for the years 2000 to 2009, the total of the monies that were collected by our town from the Powell Bill funding based on the mileage of roads, paved or unpaved, and is roughly 40.5 miles. It is a lot of money that has been collected and she knows a good bit of it has been spent. The bottom half shows how much of the money from the top figures has been generated by just the unpaved roads in Wilmington Beach, only the 3.43 miles of unpaved roads at Wilmington Beach since Wilmington Beach was annexed. She is sure the town turned in all of the mileage of roads and she doesn't know how much that total package has been generated from Wilmington Beach. The town has enjoyed monies from Wilmington Beach for 10 years now. But just from that 3.43 miles of unpaved roads from the years 2000 to 2009, the town has collected \$58,686.61. She assumes the figures for the whole area would be a great deal more than that. She was wondering if perhaps some of this money could be used to offset the assessment. She feels the assessments are high. She likes the town manager's idea of giving some benefit to those who pay up front. There are those who can't pay up front. She thinks the town has some monies that could be used and doesn't think the monies that have been generated from the mileage of Wilmington Beach have been returned to Wilmington Beach. She knows they don't have to be and the town can decide to use them wherever they want to. As of October 1, 2009, according to Betsy Williams at the Powell Bill and the state, she said the town has turned in the figure \$574,939.39 as being in their coffers. That is what you haven't spent. She understands they have probably spent some of that since then but surely a good bit of that is left. Could some of it be used for this project? Remember that part of that money has been generated by the mileage that was added on in 2000 from this area. She also has a question concerning the general statutes mentioned in the Annexation Bill No. 1190. When the Wilmington Beach area was annexed in 2000, the document she pulled off the internet 5 years ago from the state said, "this is an act to annex a tract to the Town of Carolina Beach and to allow street assessments without petition in that tract". This area was annexed with a different set of rules than the rest of the town, that you could assess 100% if you wanted to with no petition and she doesn't know why that was. She has asked questions of several people and no one has given her a concrete answer. Does

anyone here know exactly why that little provision was in there when that area was annexed?

The town manager said the attorney is looking at it now. His opinion of it, in 1973 the General Assembly basically allowed the town to assess for streets and sidewalks and didn't really give any guidance as to what to charge or not charge but just said you can do it and don't need to petition. The way he understands this thing, they are exempt from, and they give a General Statute's reference. In other words, there is a process you go through and the town is exempt from that process and reverts back to their charter and the General Assembly Act that was done in 1973. That is his interpretation of it. The town can basically go in and put streets and sidewalks and assess without having to acquire a petition or that 50% be paid by the town and 50% paid by the homeowner.

Ms. Bridges said it made reference to General Statute 160A-217 which is labeled petitions for streets or sidewalks improvements and this annexation referenced that general statute which basically states, and this is the general guideline for the State of North Carolina and what most towns and cities go by, that citizens cannot be assessed more than 50%. That is not including the intersections. She knows the town manager mentioned the thing for 1973 that Calvin Peck found 5 years ago that mentioned something about all that being thrown out and you could do whatever all over the town. On the second page of this document, Section 1b reads, "the provisions of General Statute 160A-217 do not apply to the Town of Carolina Beach as to special assessments for street improvements in the area annexed by this section", meaning the Wilmington Beach area. It goes on to say, "this subsection does not affect the applicability to the Town of Carolina Beach of other provisions of Article 10 of Chapter 160A of the General Statutes", which she and her husband looked at and it sounds like what that is saying that they put in this other general statute that's good for the whole state just to say it doesn't apply to Wilmington Beach because, for some reason, it was annexed without those guidelines but that's good for the rest of the town. This was in the year 2000 and would probably circumvent the 1973 thing that we have. If that is true that that is what it is saying, that Wilmington Beach can be assessed without petition and whatever amount you want to but the rest of the town is under the guidelines of the 50% rule, and, what she gathers from 5 years ago, is our Town Council is trying to make it more equitable so that Wilmington Beach is not charged more than anybody else would be. If this is true, it looks like maybe they might need to offer 50% instead of 1/3. She's not sure but feels that a lawyer should look into it.

Mayor Macon said if you add curb and gutters, the cost goes up and the town is accepting 1/3 of the cost. On the Powell Bill monies, if you look at the unpaved streets and the maintenance and rock that is put out there, that is a significant cost to maintain those streets all year. The Powell Bill money for years was used to buy equipment. They don't do that anymore. He has complained numerous times about buying equipment and not using it to repave the existing roads they have. He asked Brian how far \$178,200 of pavement would go today? That is how much Powell Bill they get a year, \$178,000 - \$200,000.

The town manager said it doesn't go far, basically patches potholes and a few bigger projects.

Mayor Macon said that number is used every year to patch and pave certain areas.

Mr. Bridges said what she was hoping was that since that money, and that's just a teensy bit, that \$58,000, just the unpaved part over 10 years, and if you projected the next 7 years it would just keep increasing and you could keep using the money that's generated by that area, put back in that area. It makes sense to her.

Sandy Cox, 309 Davis Road, Kure Beach, owns a lot on North Carolina Avenue, would like to reiterate what Ms. Bridges said. Considering that we have incurred a 43% increase over the last 5 years that this project has been pending at no fault of the homeowners, it is only fair that some consideration be given by the town to bring these numbers closer to the original numbers they were given. In addition, the increased Powell Bill money brought in with the annexation of this area, has never been used to pave any of our roads that we're now being assessed for. Carol talked about the statute of 160a-217.1 that states that a town cannot give an assessment for more than 50% of the project. Unfortunately, the Wilmington Beach annexation was an exception to this statute. This exception seems an unfair burden to be placed on only a small population of the State of North Carolina. It would be fair to the citizens of Carolina Beach if this Council would consider using the guidelines set forth for the rest of the state. At the very least, under North Carolina Statute 160a-226.1, the Council can authorize a discount of up to 30% off assessments if they are paved before the expiration of 30 days from the date of when the notice is published of confirmation of assessment. This would be a huge incentive to collect a large sum of money up front for the project and lower the total interest to be paid by the town on the loan as well as assist homeowners in lowering the financial burden being placed on them. She would like for them to take that into consideration when they talk about funding this project. Also, she would like to say she is for the project, overall, and would like to see sidewalks and curbs and gutters come in because she thinks, given the improvements the town is making, that would be right on track with everything that is being done. She asked about when the town manager brought up about the water and sewer that has not been placed in some of the areas, that they are going to put the streets in, they all paid originally an assessment to have water and sewer put in when they were annexed. She wants to be certain that that will not become part of this project and be reconfigured in, that they will be paying for the water and sewer of areas that were not taken care of as of this point because she knows that the numbers here are not the end numbers they are going to get. She understands that the project has to go up for bid and wants to be certain that they are paying their fair share for something they have already paid for and it won't be incorporated into the overall project.

Mr. Owens said the water and sewer is not part of this project. He hasn't made a recommendation yet but it would be coming from our water and sewer fund.

Christy Demarie, 1509 Snapper Lane, said she appreciates what the town and Council does and has done. They have owned this property for some time. When they bought the property it had a tax value of about \$80,000. She doesn't need to tell them what the tax value is today but asks Council to consider the financial burden on the residents in this area, particularly those who have lived there for some time. They paid in 2002 or 2003 for the placement of sewer and water to our property. It just so happens that on Snapper Lane where the town put that was right smack dab in the middle of Snapper Lane. She doesn't want to have to pay again through any type of assessment to have the town move it to the right-of-way for a road to go there and that is not just affecting her but everybody who lives along Snapper Lane because they didn't dictate where those facilities were placed. Just consider the financial burden on the residents who have lived there for some time. She and her husband made the decision to develop their property so, not only have they given the town revenue from taxes but paid a pretty hefty assessment for a building permit and she thinks the town needs to consider the financial burden that this is placing on the residents.

Mayor Macon said the county installed the water and sewer.

Randy Simon, 1410 Snapper Lane, said he has spoken to Council and the Mayor many times on this subject during his service on the Operational Advisory Board. Gene and Brian and our town manager will attest to his attempts to get information and getting services provided for the people of Wilmington Beach. It is time to do something now for this project that is the most important thing. Since 2000 and the inception of the annexation, the promises made to the people for services and also, through the wisdom of Town Council back in 2005 who voted unanimously to go ahead with the project. The figures were sent in, established, the fees, the assessments, but, obviously, with everybody's knowledge of the economy and what have you and the inflation, a lot has changed since 2005 to 2010 where we stand before you today. With that being said, obviously the new assessments on the properties mentioned earlier, the increases and the insurances for our island area and with the storm drain assessments and what have you, costs have gone up and services have been diminished to try to offset but the longer we wait, inflation takes over and we end up with the problem we have today paying more money for less objects such as sidewalks, gutters, curbing and what have you on our roadways. Again, as he has sat on the Operational Advisory Board for years now, it is time to look out for these people. He understands where the town is paying the 1/3 and the people paying 2/3 but, in essence, particularly the residents/landowners of the Wilmington Beach area, they are paying 2/3. You mentioned the town's money, well, that's the fact of them paying also to that amount of revenue so they are actually paying more than 2/3. He has not heard anyone say not to do it, which is great, but they are just trying to get some kind of relief by voicing their opinions of what has transpired over these last 9-10 years. Please take into whatever consideration you can to help offset the financial burden of the people at Wilmington Beach. But, again, it's time to do something now for those people.

Mayor Macon said, for those who don't understand why the process took so long, there were permits that were required by Corps of Engineers and the Division of Water Quality

and it took that long to get those permits. We just received the final permits this past fall. What they basically did was that those two agencies treated this project like we were a developer building a brand new subdivision so the restrictions were fairly difficult and was a long, drawn out process.

Renee Hendricks, Charlotte, NC, owns property on North Carolina Avenue, she knows it's not your fault the taxes going up but she knows for a fact that their area was taxed higher than the other R-1 zones. It's like a different formula. It's like we're paying more taxes in our area than another part of Carolina Beach.

Mayor Macon said the tax rate is the same.

Mr. Owens thinks what she is trying to say is there does appear to be a higher increase in the property values in this area than some of the other areas, like Carolina Sands. He is not sure what the rationale was. There is some disparity between some of the properties within Wilmington Beach as to how they were assessed.

Mayor Macon said that would be the county and they set the value of your property and most of it is based on sales that have happened in that area and would be beyond the town's control.

Ms. Hendricks said it is like they are putting more money into the pot but nothing is coming back to us on the roads

Councilman Wilcox said the same situation exists for homes on the ocean. They pay a lot more taxes. It's the same tax rate as you pay but they pay a lot more taxes because the home is a higher value. That's why everybody pays the same rate based on the assessments.

Ms. Hendricks said for her R-1 zone they are getting charged, say \$185. Then you have another R-1 zone at Carolina Beach and theirs is less than \$100.

Councilman Wilcox said it doesn't have anything to do with the zoning - it has to do with the value of the properties in the area compared to other values.

Mayor Macon said it also square footage, condition and a lot of other issues that make your assessment what it is according to the tax department in New Hanover County.

Ms. Hendricks said she feels it's not fair the way it is right now because there are some properties that are paying higher tax values than other properties that are getting the roads also that got overlooked during the last assessment. She just wants to make sure that is not going to happen with the roads.

Councilman Wilcox said if there is a problem with the tax assessment, you have to dispute that with the county.

Ms. Hendricks said the water and sewer issue, there are some places that have no water and sewer, right? Don't you need water and sewer before you put a road in? The Town Manager already said something about getting it from another fund. We had to pay for our water and sewer. Since it's not going to be tacked onto this bill or whatever you want to call it, who is going to pay for that water and sewer?

Mayor Macon said it would be assessed based on the footage.

The town manager said he hasn't made a recommendation. They may have to petition to put in water and sewer or we can put it in for them. Those are the two choices.

Councilman Wilcox said her assessment for the street project, this is the same for every lot, it's not based on the value of the lot.

Ms. Hendricks said she just wanted to make sure everybody is paying the same amount.

Mayor Macon said that would be the case based on footage.

Ms. Hendricks said also they would not have to pay for water and sewer since they already had to pay for it once, right? Mayor Macon said right.

Ms. Hendricks said if Council more or less gives water and sewer over here, we're going to get something, right?

Mayor Macon said that 15 years ago in a part of Carolina Beach that had been developed and had been part of Carolina Beach since it has been around, he built a house. It didn't have a sewer line in front of it. He had to pay to run that sewer line to his house.

Councilman Wilcox said all new construction pays for their sewer too. The Town Manager can't give her an answer now but he guesses part of his hesitation about those other lots, we don't know what they have paid for. They may have paid for something that has not been installed yet but everybody is paying for their sewer and water.

The town manager said they have to find out if the county assessed them first, and if they didn't assess them, they will have to make a decision on whether we want to use our water and sewer fund to put the water and sewer in for them or not do part of the project or asked them to petition.

Ms. Hendricks said if they don't have water and sewer and if they haven't paid for it, isn't it going to cut their costs down from clearing the trees. She doesn't have a road. She just wants where it has been dug up, where water and sewer got put in, a little swamp area. So we have to pay for the construction to pull up the trees and clear the path for the water and sewer and stuff they put in. Will that go to that bill or come to this bill?

Mayor Macon said whatever costs associated with the installation of that water and sewer would be assessed to that piece of property.

Ms. Hendricks said so that means it will be taken off the road project.

The town manager said they would have to clear these roadways anyway. We probably would put it as part of the road project. We would go in as staff, potentially, and put the water and sewer in and then the contractor would come back in and do the work. It is not anticipated that they would do any extra clearing and grubbing for the water project.

Ms. Hendricks said wouldn't you have to do that before you put the roads in? Water and sewer goes before roads, right? That could save us some money too, right?

Rick Rogge, Spartanburg Avenue, thanked Council and staff for all the work that's been done to take very old promises and bring them to the point where they will become a reality. The amount of work that has already been done to put the stormwater ponds in and the work that is being done in preparation for the next phase of putting in the roads, the drainage and everything is very large. He agrees with some of the previous comments, especially about being so happy that we are finally going to get pavement down there. That's wonderful. It's good for the town and property owners. He applauded the concept of an incentive to encourage people to pay in advance. The town is looking at a large undertaking in financing this project and, typically in anything of this size, there are people who are unable or unwilling to pay on a timely basis. It's rather disturbing in looking at some of the numbers that the people who pay on time would also be paying an extra fee to cover the people who didn't pay on time. That was his understanding of the papers that were sent out by the town. He applauds the concept of getting people to try to pay early, which will help the town substantially in their cash flow, or substantially reducing that debt right off. Also, it would give someone an incentive to pay that early, if they could. Typically, when a project like this happens, when a property transfers ownership, at that transfer of ownership this debt on each lot would have to be paid in full and he believes that is the way it is set up at this time. Is that correct? Mr. Owens said yes. Mr. Rogge said so hopefully, lots and houses will be sold and every time that happens the whole amount that is owed to the town gets paid off. He looks forward to, hopefully come into the town a little quicker than anticipated, but properly preparing ourselves for things not to happen as optimistically as we want them to. He would like to encourage the incentive concept to help the town with the financing of a project of this size. The original proposal included curb and sidewalks for the entire area and is now not being included. Our zoning says that all new roads built by developers must be paved, must have curb and must have sidewalks. What is the intent of the law? He believes it is to raise the standards for the future of Carolina Beach. How can the town require curbing and sidewalks and not follow it's own law and not follow it's intent of that law? He hears that a couple of the biggest reasons for eliminating the curb and sidewalks is one it's a permitting problem. He does not believe this to be true. He spoke with the engineer and he said the permitting is not really an issue at all. Another is that the cost is a reason to eliminate the sidewalks. He doesn't think the cost is a reason to eliminate the sidewalks but a reason to complete the job. At this time, costs will never be lower than anytime in the future to do this work. Current economic status is such the contractors are doing a lot more for a lot less money and the financing hasn't

been this cheap in decades. The town is at a fork in the road. They ask that Council take the high road. Curb and sidewalks, per DOT, and common sense are safer. Our town has been doing a great job promoting our business areas for a better future. Our neighborhoods need to be a part of that better future. The increase in value for the town and the property values vs. the small increase he believes is a no brainer. Please have this project proceed as fast as possible. Please put curb and sidewalks in.

Sandy Cox asked where the land is that they did not pay for water and sewer and they don't have to assess to that later and they're not in on our roads, paying for our roads. She did not understand who owns that land and why they weren't put in a position that they were to put in sewer and water at that time so they would be paying for part of this.

Mayor Macon said if the road is put in front of their property, they will be assessed just like you are and, it would be his opinion, if the water and sewer was put in that they would also be assessed.

Mr. Owens said that the same engineering firm that did this plan did the water and sewer plan for the whole, entire area and that was for the county and he thought that was put in but when he went back to his records he found it was not. His guess is there were probably some wetland issues or some other kind of issue and that is why they didn't put those in. He doesn't know if they have already paid for it. He will have to research the county's records.

Ms. Cox asked if those people pay taxes and the town manager said yes.

Mr. Owens showed the area involved which would not be paid for out of this fund.

Ms. Cox said she understood, back in 2000 when this first started, that the town was going to pay 50% of the roads. What changed that?

The town manager said someone said at a meeting that it went from 50%, that the town wasn't going to pay for any of it and then the final decision on the assessment roll was 2/3 - 1/3. So it has been different things. The final decision was done in 2005. When that assessment roll went through a process and that was the final determination.

Ms. Cox said she thought they might find some grants or something to help out with this project of tarring the road through the state. They are giving out everything else so why wouldn't they help us with this road.

The town manager said he certainly would have hoped that they could have but we are in an area that is economically not challenged like other areas so that puts a burden on us trying to get grants. They did receive federal stimulus funding to do about \$3.4 million dollars worth of stormwater in this area.

Ms. Cox asked if that was used for the ponds and was told yes. She asked how much money was left out of that.

Mr. Owens said none to do the roadway. That was not part of the funding and cannot be used for roadways and will be turned in back to the federal government.

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

Councilman Wilcox said the proposal was to put in the ponds which are sized to handle the stormwater on the streets and on the lots but the proposal is also to charge owners a regular stormwater fee when they build a house. They have two ways they do storm water. You can either pay a fee, which is based on the percent of coverage or you can put in your stormwater system. Is that an option on these lots? Mr. Owens said not apparently. Councilman Wilcox said that was his concern then and his concern now is if you build a house and put in a stormwater system, which is an option to most other citizens or anybody whose lot will manage it. You might be able to do it for \$4,000 - \$6,000. If you pay the stormwater fee, it's going to cost you \$275 per percent, around \$10,000 or \$11,000. So, one of his concerns is - he'd like to look at that because that seems to him that we're not giving them another option. The stormwater has already been paid for and he doesn't have a problem charging a stormwater fee because that stormwater fee can then go to pay the stormwater pond if they do not have to put stormwater in. But, he has a concern about them having only one option which is to pay the top amount.

Mr. Owens said that is actually going to be on February's agenda. They're going to talk about that and another item. The rationale behind why they did what they did is there was \$2.8 million dollars worth of stimulus funding. Half of it was no interest, basically a grant. The other half was a no interest loan. So it would take 140 new homes at \$10,000 to pay for the other half of that, which is a no interest loan for 20 years. If we don't charge impact fees or fees to treat that stormwater, then there is another burden the rest of the taxpayers have to take on. If they treat it on site, you are going to be treating it twice potentially. That is why they did what they did with the ordinance. They will talk about that at the February meeting. They can have another public hearing if they want to.

Councilman Wilcox said that is still a concern of his. The sidewalks on Ocean are done by DOT as it is a state owned road. The sidewalks there that are 17 feet back, they're all within the right-of-way. The town manager agreed. The sidewalks on the other streets, if it's a safety issue and you don't have curb and gutter and they have to be 17 feet from the road, how are you going to put them 17 feet from the road on the other streets if you don't have the same right-of-way there?

Mr. Owens said they are a 50 foot right-of-way. He is not sure what our engineer called for but can probably get the plans and find out. They would try to push them to the farthest limits too in case they wanted to widen the road or put in parallel parking or what have you. Most of the other ones are 50 foot right-of-ways. DOT mandates a certain design on their roadways. Our roadways we can be more flexible. It might not be what DOT would recommend but it will be of a lesser standard. It could be closer to the

street. He will have to look at the plan. He doesn't know what the proposal is on the 50 foot right-of-ways.

Councilman Wilcox said he is still interested in getting with Brian and finding out if 17 feet is an absolute and then how do we treat the other streets. He understands why it is supposed to go there on a state road and that it is in the right-of-way and all that but he would still like to have a real answer to that.

The town manager said Brian has been trying to talk to the DOT guys but hasn't gotten a firm answer. They did e-mail him the standards and that was their interpretation of the standards.

Councilman Wilcox said it is surprising to him to think that you can have a sidewalk right behind a curb and the equivalent to that in safety factor is 17 feet away if you don't have the curb seems unrealistic. The other thing is the 50% assessment, he guesses we're going to look into that with regard to the language in the statutes.

Mr. Owens said to him it is pretty clear that we can assess no one or 1/3, 2/3 or 50% - he thinks that is up to them.

Councilman Wilcox said he did not read that portion of the statute that said something about you could assess but then it didn't preclude other parts of that statute which identified the 50%.

The town manager said his interpretation is that in 1973 they got the allowance to assess properties for sidewalks and streets and it didn't say you had to go through a petition or a 50% cost share. That is what would supersede that statement because it says you don't have to follow 16A-whatever and that is where they get into you have to have a petition and you have to match 50%.

Councilman Wilcox asked the Mr. Owens if he had what it would cost for curb and gutter.

Mr. Owens said he does not know. He has not done curb and gutter. Some of his concerns with curb and gutter are the permitting factor and the cost. You're only paving roads in these areas, so now do you come back and put retrofit and put curb in these areas and down Alabama, etc. You can't assess for that part of the project. His guess would be \$30 a linear foot, so \$1,500 per property times 467, approximately \$1 million dollars.

Councilman Wilcox said, regarding the Powell Bill and the \$58,000 over 10 years, he doesn't know how much of it is spent for filling and grading, gravel out there but certainly a portion of it was. That Powell Bill doesn't do a lot of paving, it's mostly for maintenance and the future Powell Bill, after it's paved, would then be there to maintain those roads that are paved so there wouldn't be really anything there that you can apply either.

Mr. Owens said he probably misquoted on what that cost would be and thinks it would be significantly more. When they were in Carolina Sands at that point, it seems like it was right around \$500,000 just for Carolina Sands. He thinks it would be more if you do all of the Wilmington Beach area.

Mayor Macon said the Powell Bill says you can purchase equipment which they stopped doing over 6-8 years ago.

Mr. Owens said that since he has been here they have pushed more towards using it for resurfacing. They have bought some signs and things like that but have been trying to wean themselves off of that.

Councilman Wilcox asked how many of the 467 lots are unimproved.

The town manager pointed to the blue lots minus some map issues. There are some with structures, he doesn't know how many there are without homes.

Councilman Wilcox said they could go look at the stormwater situation, how many of them are left that would contribute to the stormwater for you to offset ...

The town manager said he and the Planning Director talked about it. He would say there are 467 lot, maybe half and half as a guess.

Mayor Macon said there are other areas affected by the stormwater.

Mr. Owens said there are secondary impacts of doing that project. It would be the lake and cleaning up the outfall that comes up to Alabama. He would like direction on what Council wants to do. Do we want to have another public hearing, do we want to move forward with this project? He can come back with some of the other items such as the cost for curb and gutter, for sidewalk. His estimate on the sidewalk will be an extra \$175,000 and that is pretty firm if they did sidewalks. They still haven't gotten through the permitting issue, they might say no, but he thinks they will be fine with the sidewalks. Do we want to give an incentive to property owners and how much would that incentive be? There was a 30% thrown out with the impact that the town would have to pay an additional \$700,000 towards the cost of the project if everyone took advantage of it, which they won't. The other one was a \$500 reduction with an impact to the town of \$230,000 if everyone took advantage of it, all 467 lot owners.

Mayor Macon said the key here is there is a lot of people here who might not be able to make another meeting, someone drove from Charlotte to be here tonight. If you are willing to do an incentive, the difference is if it's \$500 and everyone does it at once it's \$230,000; if it's 30% and everyone took advantage of it it's \$700,000+. While that helps us on the interest side, in the long run it doesn't really help those who can't afford to take advantage of that 30% up front.

Mr. Owens said the other item he heard from the public hearing is, what is the percentage? Is it going to continue to 2/3 or 1/3 or half and half or us pay for all of it? The ramifications of that are, if we start changing, and he would have to get Steve's opinion on it, we may have to go through the assessment roll process again and that would be a concern because we would have to go through this process all over again that we did back in 2005.

Mayor Macon said he was pretty comfortable with the 1/3 situation but what he would like to figure out tonight is what that incentive should be. Whether it be the \$500 incentive or the 30% or somewhere in between where we met in the middle on that.

Councilman Wilcox said rather than do numbers like that we could agree, at a minimum, we're looking at \$500 and if the town manager comes up with some other magic formula that is greater than that for the next meeting we can discuss then.

Mr. Owens agreed. He doesn't know what the impact to the budget would be without talking to the finance director.

Councilman Lashley said \$500 sounds great to him. We decided 4 years ago it was going to be 2/3 and 1/3 and doesn't see why we should be changing it at this point.

Councilman Lashley made a motion for a \$500 incentive to be given to the property owners. MOTION CARRIED UNANIMOUSLY.

Mr. Owens said, with regard to sidewalks, he feels it is a good idea to have sidewalks on the east/west streets that way somebody in the middle of the block can go either way and hit a sidewalk. The distance factor, they can get with Brian and get some more clarification on whether they can fix that or not. He doesn't feel that they can on Ocean. They will have to get together and decide, again, why they decided to do it on the north side as opposed to the south side of Ocean. Either way, somebody's property is going to be impacted, somebody's right-of-way in front of their property is going to be impacted. There are utilities there they have to think about, ditches, etc. He will get some clarification on it. He is in favor of sidewalks.

Mayor Macon asked to be notified if it is something different than 17 feet so he can let Mr. Bridges know.

The town manager said he will come back with options and with curb and gutter cost estimates and whether it is something that would be permitted. He feels he has enough direction now. He thinks they are proceeding with the 2/3 - 1/3 cost. At this point, there is a \$500 reduction in the cost and we can move forward. The intent is to get to a point where they can bid it out and hopefully go forward with construction by summer time.

Mayor Macon said he feels proceeding with the project is where they need to go unless someone on Council feels differently.

MPT Efird feels they have waited long enough.

Councilman Wilcox said he would ask the town manager, since the question was asked by a couple of people in the audience that you look at the 1973 issue.

The town attorney said it is his opinion already is that the 2000 local act preempts and governs and prevails over any prior general statute and it does so specifically by its own terms and also in the order in which things were passed. In other words, for whatever reason, the passage of this local law in 2000, by its very expressed terms, prevails over any general statute in existence in 2000, let alone 1973 and supports the action before us.

Mr. Owens said we don't have to set another public hearing, unless they want to, because there will be other public hearings when they start getting into the LGC. When he comes back with the information it will be open for discussion.

Mayor Macon made a motion to take a 5 minute break. MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to excuse MPT Efird as she was not feeling well. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING TO CONSIDER A REQUEST FOR A PLANNED UNIT DEVELOPMENT TO ALLOW A SINGLE FAMILY HOUSE AND POOL IN CONJUNCTION WITH THE EXISTING DUPLEX LOCATED AT 1418 CANAL DRIVE (PIN R08807-021-004-000) AND 205 PERIWINKLE (PIN R08807-021-000)

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

Ed Parvin made the presentation. He said this is a Planned Unit Development (PUD) proposal for a single-family home. The duplex is already in place. The applicant is James Dixon. There are a couple of options for this property. One option is he could build a single-family home on the existing lot. The footprint would be a little unusual, 20' x 45' or 900 square feet or he could go the route they are going tonight with the PUD and combine the duplex and smaller lot to do the PUD and get a little bit better footprint. He gets a 35' x 30' footprint and can put in the pool, with some landscaping required, and then both properties will have access to the pool because both properties will be combined with a common area for all three units. There are some open space requirements - the pool, landscaping, side setback area counts for that. 25% is required and there is a little over 50% being provided. Type A landscape buffer is being provided around the perimeter. Because this is a PUD, the front will actually be on Canal Drive and that will add to his side so it will be 12 ½' along Periwinkle for the new house. Vehicles will back out onto Periwinkle as they typically do for single-family homes. There is typically no sidewalk, curb and gutter in this area and he is asking not to put that in and can't be treated as required or part of our type A buffer, but that can be waived and he is asking to be waived the larger trees that just don't fit in well on the north end area.

One of the things he pointed out in this presentation is the Session Law 406 that was recently adopted by the General Assembly for all development approvals there is a time window that permits are frozen so, when this permit is issued and any development permit is issued by the towns state the time doesn't start running until January 11th so on the conditional use permit (CUP) he will have until 2013 for his 2 years and will then have an opportunity to come back for a one year extension to 2014. He showed pictures of the site where the single-family home is being proposed and the duplex that fronts on Canal Drive, as well as the perspective on Carolina Beach Avenue N. regarding the 12 ½' where the new single-family house would be in line with other homes.

Jim Dixon, 1406 Carolina Beach Avenue N., said the main thing he was trying to do here was to get away from a 20' x 45' footprint and bring it into something that would fit better on the lot, which was the 30' x 35'. In conjunction with that, putting the pool between the existing duplex and the house, doing the landscaping which will be very similar to projects done in the past - a lot of palm trees and native bushes/plants. He would like to start as soon as he can.

Councilman Wilcox asked, regarding his request for relief on landscaping, canopy trees, is to keep the roof structure away from the driveway?

Mr. Dixon said that is correct. They will be using the same types of things as before - numerous palm trees, etc.

Councilman Lashley said the swimming pool, that's the beach access there, what are you doing as far as safety concerns for children.

Mr. Dixon said anytime you do a pool like that you have certain requirements including the fence that goes around it and has to be lockable and so on. Those guidelines are already put in place by the county and town. The height is 4 feet above the wood or concrete walkway.

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

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

Mr. Oakes made a clarification in that the Planning and Zoning Commission did review this and recommended approval and it does meet the 7 specific conditions found in Article 14 with conditional use provisions as well as the 4 general conditions and is consistent with the land use plan.

Councilman Wilcox said, under planning recommendations where it says a minimum of 6 foot wide concrete area around the pool shall be maintained. He would prefer it said the walkway around the pool shall be in conformance with the Health Department and building code requirements rather than specifying what it is. Also, where it says the pool

house cannot be in the 6 foot walkway area that it say the pool house cannot be in the required walkway area.

Councilman Wilcox made a motion to approve this, to include the changes as stated, based on specific standards 1-7, general conditions 1-4, TRC conditions items 1-15 identified in the grant order, grant relief from sidewalks, curb and gutters, and relief from providing canopy trees near areas designated, as follows:

1. It is the Town Council's conclusion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted and approved by the issuance of the conditional use permit.
2. It is the Town Council's conclusion that the use meets all required conditions and specifications.
3. It is the Town Council's conclusion that the use will not substantially injure the value of adjoining or abutting property.
4. It is the Town Council's conclusion 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.

THEREFORE, because the Town Council concludes that all general and specific conditions precedent to issuance of a Conditional Use Permit have been satisfied, **IT IS ORDERED** that the application for the issuance of a Conditional Use Permit by **James Dixon** be **GRANTED**, subject to the following conditions:

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. Flood Certification must be presented prior to issuance of a building permit.
5. Prior to Certificate of Occupancy, an architect or engineer must confirm the structure's height does not exceed fifty (50) feet.
6. 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 three (3) required parking spaces for the single family home.
7. 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.
8. All structures must be designed to meet minimum NC Fire Prevention Code. Approval letter must be submitted prior to Certificate of Occupancy.
9. 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.
10. 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.
11. 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.
12. All lots (duplex, pool, single family house) shall be combined by a recombination plat which has been reviewed and signed by the Town of Carolina Beach Planning Department, and recorded with the NHC Register of Deeds Office prior to the issuance of a building permit.
13. Water and sewer taps shall come off of the existing 8" sewer and 6" water lines on Periwinkle.
14. Appeals permit voidance, and modifications shall be subject article 14 of the zoning ordinance.
15. The following allowances/waivers shall apply to this project: Periwinkle may be used as the side yard; vehicles may back out on Periwinkle and Canal; no sidewalks, curbs and gutters are required and; no canopy trees are required.
16. The site plan corresponding to this approval was designed by Coastal Design dated 10/20/09 and stamped received by the Town of Carolina Beach on 11/1/2009.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING TO CONSIDER A REQUEST FOR A MODIFICATION TO THE CONDITIONAL USE PERMIT FOR THE LAST RESORT LOCATED AT 600 N. LAKE PARK BLVD. (PIN 313011-56-1811-000) AND 602 N. LAKE PARK BLVD. (PIN 313011-56-1815-001). THE APPLICANT IS REQUESTING TO EXPAND THE OUTDOOR SEATING AREA, REDESIGN THE PARKING AND CREATE A PERMANENT CANOPY OVER THE DECK AREA

Mayor Macon made a motion to recuse Councilman Lewis from this portion of the meeting. MOTION CARRIED UNANIMOUSLY.

The following were sworn in: Ed Parvin, Tim Owens, Gary Ferguson, Nancy Reis, and Kimberly Lewis.

Ed Parvin presented. He said this is a request by the Last Resort, Nancy Reis, to expand the outdoor area and make modifications. There is a little over 800 square feet of expansion of the outdoor area, which is a major modification. They are also looking to redesign the parking and allowing for the temporary canopy over the deck area. He showed the original site plan that was approved with the building, outdoor deck area and parking area. They are expanding, they have the deck area seen on the last slide and

expanding their use to this area here (identified on overhead) will be outdoor seating. Parking has been redesigned a little, instead of 6 parking spaces they will be down to 4 which is allowed by some amendments to our ordinance several months ago. Site summary: they are in the flood zone, this is the beginning of the highway business district, their lot coverage will be at 30%, parking spaces are required to be 4, and their loading plan will occur prior to business hours and in the parking area as it has normally occurred. Landscaping, curb and gutter was not required on the original CUP and they are asking for it to be waived as well tonight. TRC, planning staff and P&Z all recommended approval and that it is consistent with the specific standards and general conditions and the land use plan. There are 4 conditions on the grant order: the temporary canopy must be maintained in accordance with building, flood, and fire regulations; major changes would have to come back through the CUP process; site plan goes with this approval; and then the requested waivers. P&Z heard this in December and unanimously recommended approval. He showed several pictures of the site.

Councilman Wilcox asked about discussion between the fire chief and the tenant if it is going to be there over 180 days and staff said it has been taken care of and everyone is happy. He also asked about clarifying the right-of-way locations along Lake Park and whether that has been done.

The planning director said it is important for both the town and the applicant to make certain they know where the right-of-way is. Ed showed some pictures. They don't want future issues springing up. Councilman Lewis and he have spoken briefly about this past summer and he complied. The right-of-way is strange in this area only because it takes a direct hit east, it goes eastward about 30-40 feet, a picture was shown denoting the right-of-way. It is confusing because the right-of-way is generally linear and straight. In this particular case the DOT acquired that portion of the right-of-way through there. They tried to research it and couldn't find a whole lot of information about it. That is the only thing they would like to do is perhaps, if the applicant would be kind enough, it put some kind of markers on the ground or some identifiable feature based on the information that his designer, Greg Reynolds, presented to staff to avoid any kind of future concerns from adjacent property owners or anyone who might have an issue with it. They would make that a recommendation.

Councilman Wilcox asked if that is for the purpose of making sure their fence and facility stays outside the right-of-way and staff said yes.

Kim Lewis, 670 Carolina Beach Avenue N., Vice-President of Last Resort, and Nancy Reis, President of Last Resort, 670 St. Joseph Street. Ms. Lewis reviewed the history. She said they took over the corporation of The Last Resort a year ago and since they purchased it there have been a series of issues. Those issues have been dealing with the Planning and Zoning Department as to the use of their property. The reason for bringing it up today is because recently there have been a series of people who have come to their bar, in the paper and publicly have said The Last Resort is not in compliance with their CUP. She thinks it is very important that people understand publicly, from their point of view, they feel they are in compliance with their CUP. The reason they are here today is

because Planning and Zoning have come to them on numerous occasions on things such as our sign, wanting to put a sign on the side of our building, our banners, the way we use our seating in our location, didn't really care for the fence we put up, the tent, an outside area, our parking. What she is saying is, that as a new business owner coming to the town, it has been very frustrating for us to be opening a new business or buying an existing corporation in the town. It's not very business friendly. They have experienced this over and over, had many meeting with the town. The Mayor has been at several meetings at her request. She thinks it is important for a couple of reasons that she wanted to bring this up and why they continue to say they are in compliance. First of all, she doesn't know if everybody really knows this but, back in 2003, the Council created a new zoning ordinance to make all bars and taverns in the Town of Carolina Beach have a CUP in order to operate a bar or tavern. As time went, the town tried to enforce this new CUP for bars and taverns, the owners of which created a petition against it saying that many of the things that were in there were vague, could create a business to be singled out, hassled, told how to use their business area and things like this. In fact, it came to a point where a group of bar and tavern owners actually filed a lawsuit in superior court against the Town of Carolina Beach and, in fact, that lawsuit was settled out of court and she believes the bar and tavern owners won a substantial amount of money for each one of them.

Mayor Macon said he doesn't recall that and he was here at that time. The ordinance was changed.

Ms. Lewis said okay and, just so you know, as a review of that it was really also all around the fact that all bars and taverns were being required to have a CUP and in that CUP, the town told them that if they did not comply and get a CUP that they needed to cease operation of business. Many of those bar and tavern owners decided that they were not going to comply with that and refused to comply with that. The Last Resort corporation opened in 2005. At that time on the books was still the fact as a bar and tavern you had to have a CUP in order to open and operate your business. The owner, Dave Bilitto actually applied for the CUP and she thinks there was only one other bar and tavern that opened during that time frame which is no longer open. In 2007 the town could not enforce the fact that none of the bar and tavern owners came forward to apply for a CUP, therefore they had two options: (1) make them shut down or, (2) change the ordinance. At that point, there was a new hearing with the Council, the ordinance was changed and it was decided that bar and tavern owners did not have to have a CUP, only if they choose to because in that it cited that it was too easy to be singled out. That was the exact words of that. The only bar and tavern in this town that has a CUP is The Last Resort and what they have been going through and experiencing since the day that they opened is the exact reason that those other bars and taverns decided not to get one because what happens is that it allows Planning and Zoning and enforcement officers to come in and tell you how you are going to use your space and your seating and how you are going to serve your people and how you are going to put up your fence and all of these types of things. Well, just for the record, we have a permit for a tent, we had permits for our banners, we put up a sign on the side of our building because it was the only way we could put it up was to paint it on the side. We were not allowed to put a

sign on the side of our building based on what we were told by Zoning and Planning and they complied with that but that's not what they wanted to do. The fence around the building actually, in the original CUP stated that there should be a fence around the building. In fact, that is actually an ALE law that, in an outdoor area, people who are drinking must be in a contained area. What really makes it very difficult for us and has been very frustrating for them all along is the fact that not only do we have one site plan, we actually have 3 or 4 site plans and, quite frankly, not one of those site plans has every really been in compliance. So, what we did, after a lot of frustration, we had Greg Reynolds create a new site plan and feel it is a good working plan. She is telling them all this stuff today and she knows they are not talking about CUP's today, but she knows they have this coming up and she wanted them to clearly understand that this CUP that is focused just on bars and taverns is very frustrating for them. It actually puts them in an unfair business competitive advantage because other bars and taverns in the town can have fences, tents, signs, banners, as many seats as they want, people standing outside in front of their place that is not in a contained area with a fence. Basically they can do whatever they want. The Last Resort even closes down their music early to be nice neighbors and there are other bars and taverns in the area that have their music right up until 1:00 a.m. and some of their customers have actually gotten up and gone over there. This is what she wanted to cover right now. They are here today because we have been required by the Zoning and Planning Department to ask for these additional changes to their CUP, not because they wanted to. It has cost them a lot of extra money over the last 6-7 months to do all the different things they needed to do to be able to get here today. She wanted to say all of this publicly because a lot of very slanderous remarks that have been made in the public over the last year and from their customers, The Last Resort is the only bar and tavern in this town that has a CUP. She just wanted to point that out.

Councilman Wilcox said he wanted to address something she said, for clarification purposes, when she said something about the other ones may or may not have to have CUP's, did not have to have CUP's - those were already in existence when they passed the ordinance and that is part of that whole lawsuit situation so the ordinance was passed so anything thereafter would have to have those CUP's.

Ms. Lewis said that was not changed until 2007 when the new ordinance was placed on bars and taverns.

The town manager said that in early 2000 there was an ordinance adopted that was intended to help try to regulate bars and clean up bars. It all related to bars, it only addressed non-conforming situations. This bar, before you owned it, basically was required it to have a CUP because it was a newer bar. What was done with the original ordinance has nothing to do with this situation. If another new bar were to come in right beside you or in front of you, they would have to come through a CUP process. We have a table of permitted uses, you're either permitted or conditional and, in this instance, bars are conditional uses so it really has nothing to do ...

Mayor Macon said what she needs to understand is that the ordinance she is talking about was dealing with existing bars. What they were trying to do was clean up the boardwalk

and cause some of these facilities that were deemed undesirable to shut down. He feels she is doing apples and oranges here.

Ms. Lewis said the other point about that is that at the same time after this happened there was a new ordinance placed that if you were a bar or restaurant, you got a permitted use, and if you did not meet some of the town ordinances then you went on to a CUP. Some of those things would be 3 citations from the ALE, fights, noise ordinance violations, and if you had those things, then you would be placed on a CUP. There are a lot of bars and restaurants here that had those things happen and they were not put on a CUP.

Councilman Wilcox said that is not really how it goes either.

The town manager said the existing bars and restaurants can't just put a banner up because they don't have a CUP. If they hang a banner up, we have to enforce it. If they go outside and put chairs in the right-of-way, we have to enforce it. If they do these other things, we also have to enforce that too. There are permit processes that would require them to come back, even if they are non-conforming. Some of that stuff he wanted to clarify, they have to come back and get permits to do things as well.

Mayor Macon said they do allow the outdoor seating on the sidewalk. If you are eating and sitting at the table, you are allowed to consume a beverage but, technically, they are not supposed to be standing outside the bar on the sidewalk, drinking.

Ms. Lewis said she hears what they are saying. She just wants them to understand that, as a new business opening up in this town, it is not very business friendly and, quite frankly, they have often wondered why they did it because of all the frustration and everything they had to go through.

Nancy Reis said, as the president of The Last Resort, she is very frustrated about how their business and their shareholders have been treated by the Planning and Zoning Department. Most towns are encouraged for new business and Planning and Zoning will work with them to help these businesses become successful. They have found the opposite to be very true with the local Planning and Zoning Department. They are charged fees for things that others are not charged for. They feel they have been singled out for certain conditions resulting in our plan to extend our area as noted. They also feel though that all the situations they have come up across in the last few months have really prevented them from doing what they had wanted to do months ago. It is very frustrating when they see other businesses who are doing things that they would like to do and they are doing them with no penalties, no attention to them, and they have seen it with their own eyes and have taken pictures of other establishments, with their seating and things like that, and they are just beating their heads against the wall because it is so frustrating. Also, working with the Town of Carolina Beach is not easy in allowing some businesses to have a CUP while others do not have one, clearly creates an unfair business advantage for The Last Resort. Additionally, it support singling out because other businesses can do what they want but the Planning and Zoning Department tells The Last Resort how they can run their business and what they can and cannot do with their business. There are

also some points she would like to bring up about their business, The Last Resort, since they have taken ownership. The business has not had one police incident recorded since inception in 2005. The business has not had one noise ordinance violation in all the years of operation. Shareholders ensure that live, outdoor music is reserved to weekend nights and music is contracted to end before midnight. The Last Resort is made up of over 1,000 members with over 300 Carolina Beach residents as active members. The average demographic of our members customer base is in the average range of age of 30 to 75 years old. The business sets the standard as far as club operation with numerous member functions, communications, events and fundraising activities. The business is involved in our local community, supporting local charities and participating in events like Christmas by the Sea. The shareholders of The Last Resort, and our club members, have been recognized for their generous fundraising activities and contributions to local charities and, in 2009, their members raised over \$10,000 in charitable donations. The shareholders and members of their club also volunteer with projects on the boardwalk. Many of their local members and guests choose to walk or ride bicycles to the club decreasing local traffic and congestion in the area. The business is within 500 feet of public parking which is required.

Councilman Wilcox said he is sorry they are frustrated because they work hard to be business friendly. He is not aware of all the details, their interactions with the planning department. He has found that they have tried to work with businesses too and he is not sure what all the particulars are but he does see The Last Resort trying to put in an effort over there and improve that facility and that business. He thinks it is a nice place to go and he appreciates that. But, all they can do here tonight, it's a quasi-judicial hearing, is deal with the facts and deal with what is before them.

Ms. Reis said they understand that and appreciate that. They got it off of their chest publicly because they have been slandered publicly a lot of times and they think it is important that people understand where they are coming from, what they have done and that they have worked very hard to work with the town and do everything they needed to do.

Councilman Wilcox said he thinks, not that there is any excuse, obviously things don't get enforced in any town, but you are in a very high visibility location with some people around you who pay attention to everything you are doing.

Mayor Macon said that is definitely an issue and he doesn't necessarily agree with everything they have said. In their meetings he has been very poignant about that. He thinks there are some misconceptions that they do have about the CUP, the process, what's happened and gone on before. As he mentioned when they did meet, you got caught up in a change of guard and interpretations that were a change of guard and these things happen and it's unfortunate. You guys have done a fantastic job with that place and are an asset to the community. You are running a professional establishment and are an asset to this town which is tourism driven. For you guys to not have your facility he thinks would be a great loss to the Town of Carolina Beach but he still disagrees with them on some of their points.

Councilman Wilcox asked if this CUP goes a long way to help with some of the issues? You are addressing a lot of the issues that they have had discussions with planning department about, right?

Ms. Reis said they have finally come to this point in resolve, right now, with Planning and Zoning after many meetings and being told they can't do this and can't do that. They have actually brought pictures to them of other businesses like theirs that are doing exactly the same they have been told, "We're not talking to them, we're talking to you." So it's very frustrating. All they are asking is to be treated the same and fairly like all other businesses. You guys have laws in place and that those laws should not be interpreted by someone else as to the way they think it should be. It is what it is. We always hear, "Well we interpret this and we interpret that."

Mayor Macon said he has been in enforcement his entire life and that is what it is, it's interpretation of whatever law is passed. It's unfortunate but that is just the way life is.

Mr. Owens said he has been involved a little bit with it too since about May and they have been very patient, since May, here it is January, to help them through the process. He thinks the planning department has acted very professionally and has had an even hand this whole time.

Mayor Macon said he doesn't like what they have to say sometimes, either.

Councilman Wilcox said he has a couple of questions. He understands the curb and gutter situation, the relief from that. The planting he understands, it's all asphalt and cement, but it says in here a couple of times that you are dealing with DOT on a landscaping issue. What does that entail?

Ms. Reis said they are not dealing with DOT on a landscaping issue.

Councilman Wilcox said it says in a couple of places that Ms. Reis has informed staff that she is working with NCDOT to approve some landscaping in the right-of-way surrounding the property. It says that in 2 or 3 places.

Ms. Lewis said there were comments that we do something in that area.

Councilman Wilcox said the relief from the landscaping ordinance buffer doesn't have anything to do with that right-of-way. It's just that your fence is along that line and there is no area for landscaping.

Ms. Lewis said there is no grass. They lease the building, they don't own it and can't rip up the cement or gravel. There is no place to do that. They do have palm trees around the side and planter boxes and have done what they are able to do to beautify the area.

Ms. Reis said that we do additional landscaping or add plants and things like that from the fence within their area. But what that would do is obstruct the walkway into the entrance of the bar.

Councilman Wilcox said that is where buffers are required to go. Here is his only suggestion and he understands the nature of that problem, he won't make this a part of a motion but asks, if that relief is granted, that you take a look at how the Boardwalk Makeover did the fixed planters, maybe make some a little wider and put a couple out there. They're not going to go anywhere in a storm. The greens and flowers in that make a huge difference in appeal and you are on the main entryway coming into the town. That might be something you could do since you're not disturbing any asphalt and would be a win, win for everybody. Ms. Reis said since they will be moving the fences around, they could probably look into that and look at different options.

Councilman Lashley said he thinks they are great business owners and that is what they want in this town. Seven years ago he walked into the little Castaways, it was called, and he only had one beer and walked out, he and his wife. They never did return and didn't want to. Now, it's a great place with what you have done and are doing in the future. He enjoyed the "Step Up for Soldiers", the fundraiser you had making over \$10,000 in 2009 and encourages other businesses to do the same thing. You are a model for what should be done. He is not happy with what has happened to them in the planning department but that is something he is not going to address. He is glad they haven't had any violations. He has talked with the Police Chief at times about music down the street. You don't have any problems like that. He likes it because of the age that goes there. He likes a bar himself that is to an older group, like Old Salty's, that's one of his primary places. He enjoys those 2 or 3 places on the beach and encourages them to continue to do what they are doing and keep smiling.

Ms. Lewis said they can get a permit for a tent for 180 days but she thinks their original request was to have the tent, the canopy, up longer. She wants to make sure she understands where they are on the tent.

The planning director said that was a question he thinks the fire chief has an issue with. Planning only has an issue only from the point of setbacks. A structure, if it's over 30" in height, if it's permanent, it should respect the front, side and rear yard setbacks. Obviously, the front yard it being met on this particular property. The rear yard is basically at zero and the side yards are at zero too. So, we were challenged because this is a very unique type site and you don't see many of these types of operations in the town or any town, quite honestly. They had to look through it for a variety of issues. They weren't picking on them or go after them. They had a legitimate complaint from an adjacent property owner who said this is what they are doing. Is planning going to take a look at this or are you not? He thinks, from where that individual stood, they had an obligation to go ahead and look at the CUP. He is sorry they have but one CUP for bars,

he thought they had at least one other one in the town. Nevertheless, it is what it is and they attempted to work as best they could with them to try and resolved this issue. His problem is, the characterization of the planning department being non customer friendly he thinks is really off the mark. You look at the advantages that they are taking advantage of right now that they otherwise wouldn't have if planning and zoning department did not on its own initiative, forward amendments to this Council and our Planning and Zoning Commission to change rules to make it happen. They were limited to 22 seats in this establishment. That's what it was until they came back from the planning department and so no, let's not get into the seat police, let's start looking at gross floor area so they can put in as many seats as they want in the area designated. They also then turned around to how they could reduce the impact fees for those seats. We advanced that. It wasn't through the Council, the Planning and Zoning Commission, it actually wasn't even from the Town Manager. It was staff driven. He thinks those are just two examples. Signs, they turned around and amended the sign regulation for businesses in town. Before it was one sign per building. Staff tried to make it better for them. Parking, Ed brought it up in his presentation. Look at the parking allowances now if you are within 500 feet of a public parking lot, then you don't have to provide parking for your outdoor seats. That would have killed them, right now, if that provision was not in place. The things he has just mentioned are staff generated. This is not coming from the business community or the Economic Development Committee. It is coming from the Planning Department staff on their own initiative. Maybe he is speaking to high of themselves but he thinks that Council has applauded these efforts. We're being slammed, to a certain extent, tonight for not being business friendly and, from where he sits, it's a disconnect. He doesn't get that. He thinks they have been. Unfortunately they are under a CUP. They have actually changed CUP's in town so that restaurants at least do not have to go through a CUP process if the Council wishes to change and have bars have no CUP's, staff can work on that for them but they thought it important to make these inroads to try to make it more business friendly. He thinks, from where he sits and pats himself on the back maybe, they have done a lot of good things for the town to make it a more business friendly environment.

Councilman Wilcox said he thinks staff has brought them a lot of stuff and they have approved a lot of stuff that has improved a lot of things for everybody in town with regard to businesses. Again, there are some things going on here that he is not privy to but, in general, we certainly are business friendly and a lot of things have been adopted to follow through with that. He would like to get an answer on the tent.

The planning director said it is 180 days and thinks the fire chief said if it goes beyond 180 days - they asked originally under their permit that they wanted a permanent tent. And then that's the question that started surfacing, if it's permanent, do they have to meet the setbacks?

Councilman Wilcox asked if the 180 days is an ordinance issue, a fire code issue, is it the Fire Chief's preference?

The Fire Chief, Jonathon Rorie, was sworn in. Chief Rorie stated the fire code does say

180 days but one of the things it does not regulate is the common sense approach. So, what he is looking at is the fact that we are unique in that we have this kind of shoulder season that evolves and so his position has been, what is the difference between 180 and 181 days. So, if it is a little bit over 180, that is where he is looking at it.

Mr. Owens said the primary concern was, obviously, the setbacks. It does not meet rear yard setbacks or side yard setbacks. If it is permanent, then you can't put it there. If it is temporary, which is 180 days, then you can probably do it.

Councilman Wilcox said he is trying to distinguish between fire code or if 180 days in our ordinance is somehow magically permanent or temporary. He understands that 180 days is a fire code issue but is there something in the ordinance that says anything after 180 days becomes a permanent structure?

Mr. Ferguson said the flood ordinance. It would have to be elevated and all this other stuff and we don't want to get into that. He doesn't want to make them elevate a tent simply because they'll meet the flood zone requirement.

Mayor Macon said you can put a gazebo in the flood zone. Are you saying that an open air gazebo would have to be elevated to the flood?

Mr. Owens said he thinks he was using that as a benchmark of what is permanent and what is not permanent.

The planning director said they have used the flood ordinance as a start of construction, what's permanent, what's temporary. The flood ordinance is part of our code of ordinances. That was the number that we thought would be considered a temporary use if it was 180 days or less and the language comes from the flood ordinance, in part.

Mayor Macon said he is going beyond that. He is saying that if it is an open structure and there is nothing there, there is no flood issue.

Councilman Wilcox said the planning director is not calling it a flood issue. He's saying they are looking to the flood ordinance for the standards with regard to what is a permanent and non permanent structure. (Mr. Ferguson agreed.) What he is getting to is this is an extremely challenging site, they all know that, and they work hard with other sites but at the same time they have to follow the fire code.

Chief Rorie said it is a unique situation on this site and he is not sitting there with a time clock.

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

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

Councilman Wilcox made a motion to approve the application based on specific conditions 1-7, general conditions 1-4, based on the request from the applicant to be relieved of sidewalks, curbs and gutters, based on the relief of the typical landscaping type A landscape buffer and recognizing they have submitted an off-site loading plan, TRC recommendations, planning recommendations, operations, building and fire, 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;**

Vehicles can enter/exit the property off of LPBN or St. Joseph St. The parking design allows for patrons to avoid backing onto either street.

Pedestrian/bicycle access: Located on the northern edge of the CBD, pedestrians can easily access the site. According to the owners a large number of their patrons are either on foot or bicycle. The owners are considering the installation of a bicycle rack to accommodate their patrons. TRC encouraged this addition.

- (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;**

When originally approved parking for bars and taverns was based on seating. The original CUP grant order limits the Last Resort to 22 seats which required 6 parking spaces (1 parking spaces per 4 seats). Ten (10) seats were proposed to be inside while the remaining twelve (12) could be on the deck area.

Currently Eating and Drinking Establishments require 1 parking space per 110 square feet of Indoor Gross Floor Area. No parking shall be required for outdoor GFA if the establishment is located within 500 feet of a public parking lot. Since the Last Resort is within 500 feet of the Weeks public parking lot (unpaved parking lot beside Blackburn's Seafood), parking is calculated based on the Indoor Gross Floor Area (GFA) only. There are 420 sq. ft. of indoor GFA. When 420 feet of indoor GFA is divided by 110 parking is calculated as 3.8 or 4 parking spaces. Four parking spaces are shown on the site plan (see [appendix 5](#)).

For the HB zoning district where buildings are less than 15,000 sq. ft., the loading requirements may be waived based on approval of a loading plan. Loading plans submitted by applicants in all districts shall address the following:

- (a) Time loading will take place*

Loading takes place in afternoon – before 4 pm (opening)

(b) Approximate size of truck used for loading

The truck size is equal to or less than the size of the parking area.

(c) Duration of loading period

5-10 min loading time

(d) Location of the loading area

Loading/unloading takes place in the parking lot.

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

Roll-away dumpsters are located on the east side of the building and are enclosed on all four sides.

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

No changes are proposed and no recommendations have been made to upgrade utilities. Typically the largest fees are storm water and water/sewer impact fees. According to Brian Stanberry, Director of Public Works, no additional storm water fees will be required for the site. Water and Sewer impact will be credited for the site as determined by Gene Gurganiou, Director of Public Utilities. Impact fees are calculated at \$175 per 110 square feet of indoor GFA and \$90 per 110 square feet of outdoor GFA. Based on this calculation the current business would have been required to pay:

<i>INDOOR GFA:</i>	<i>420 sq. ft. / 110 = 3.8 X \$175</i>	<i>=</i>	<i>\$665</i>
<i>OUTDOOR GFA:</i>	<i>320 sq. ft / 110 = 2.9 X \$90</i>	<i>=</i>	<i>\$261</i>
		<i>Total</i>	<i>\$926</i>

With the expanded outdoor GFA:

<i>OUTDOOR GFA:</i>	<i>1,182 sq. ft. / 110 = 10.7 X \$90</i>	<i>=</i>	<i>\$963 - \$261(existing outdoor GFA) = \$702</i>
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If you go back to a prior use of retail (tanning salon) that had one bathroom open to the public the impact was \$2,250. Based on this, the site has already paid a higher rate and would not owe any additional fees.

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

No landscaping was required for the original conditional use permit. Ms. Reis is requesting to waive the Type "A" buffer yard required for this property. Ms. Reis has informed staff that she is working with NCDOT to approve some landscaping in the right-of-way surrounding 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 changes are proposed to the on-site signage. Any additional signs will require a permit.

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

There is no green space on the lot. Ms. Reis has indicated on her application that she is working with the NCDOT to enhance the landscaping in the right-of-ways surrounding the property.

General Conditions:

1. It is the Town Council's conclusion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted and approved by the issuance of the conditional use permit.
2. It is the Town Council's conclusion that the use meets all required conditions and specifications.
3. It is the Town Council's conclusion that the use will not substantially injure the value of adjoining or abutting property.
4. It is the Town Council's conclusion 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.

Town Council concludes that all general and specific conditions precedent to issuance of a Conditional Use Permit has been satisfied, the application for the issuance of a Conditional Use Permit is granted, subject to the following conditions:

1. The temporary canopy and all fencing shall be designed to meet minimum all relevant codes such as building, fire, and flood regulations. Approval letter must be submitted prior to Certificate of Occupancy.
2. 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.
3. The site plan corresponding to this approval was designed by Reynold's Architecture Corporation dated December 29, 2009 and stamped received by the Town of Carolina Beach on December 29, 2009.
4. Waivers are granted for landscaping, loading space requirements, sidewalks, curb, and gutter.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING TO CONSIDER AMENDING APPENDIX A, ARTICLE 3.8-1 TABLE OF PERMITTED USES; ARTICLE 12.2 DEVELOPMENT STANDARDS FOR PARTICULAR USES; ARTICLE 19 ADMINISTRATION, ENFORCEMENT AND REVIEW, ARTICLE 21 ZONING ORDINANCE TEXT AMENDMENTS AND ARTICLE 23 DEFINITIONS; AND AMEND THE TOWN CODE CHAPTER 4 AND 10. THE PURPOSE OF THIS AMENDMENT IS TO CONSIDER REDESIGNING THE ZONING ORDINANCE'S CODE ENFORCEMENT PROCESS. CHANGES

THAT ALLOW THIS USE (CBD; T-1; MX; NB; I-1; HB AND MB-1). CHANGES TO THE ENFORCEMENT PROVISIONS WILL BE APPLICABLE THROUGHOUT CAROLINA BEACH AND WILL APPLY TO ALL ZONING SITUATIONS

Ed Parvin presented. He said this is an item they are bringing back for eating or drinking establishments that was on the agenda a couple of months ago and they didn't get to it. They are looking to clarify a few areas of this part of the ordinance. The original goal a couple of years ago when they looked at this was to make restaurants permitted by right. In the original ordinance they were trying to do that but they didn't identify all the different types of eateries in town, coffee shop was a good one. So, what they did was they came back with a new category, specialty restaurant, had some problems with specialty restaurants. They went back to Planning and Zoning Commission and they looked at it, why not just identify all the different types of eateries we have at Carolina Beach and define those for our zoning ordinance. That is what they have done. They went back and added in all the different types - donut shops, coffee shops, sandwich shops and they think if you have an eatery or any type of eating or drinking establishment, they have identified those types for Carolina Beach. Next, they wanted to clarify/simplify the ordinance. There was a place in the ordinance where the standards were listed twice for when a CUP did kick in, so they have limited that. Outdoor entertainment, they have clarified that. The ordinance now just references you to that part of the town code, when you need a special event permit and, if you want it to be permanent, you would have to come back for staff to look at impacts like parking, water and sewer impact fees, those types of things. The final thing they looked - originally they were looking at putting some regulatory language, regulations, enforcement provisions in Article 12.2 which is where the majority of these standards are placed. Instead of doing that, the Town Attorney's idea was to put them where they belong in administrative and enforcement in Article 19 and just leave these regulations for restaurants only. So that is what they are trying to do. They are trying to remove some of those enforcement provisions from 12.2 and that is where he is going to turn most of this over to the attorney because he has done quite a rewrite for Article 19, 21 and a couple of other sections of our Town Code to get the enforcement provisions in there. He turned the presentation over to the town attorney.

Mr. Coggins said our book of ordinances simply does not give the public or the town all of the host of remedies that the legislature says you can have should you so choose to have them. It is simply through the progression of how our code of ordinances have come into being, how it has evolved, but, the fact is, both the public, staff and those who have permits are handicapped by the fact that the town hasn't adopted all the procedures to be available to it for enforcing our zoning ordinances that we are allowed, by law, to do. We have a full range of civil remedies that are available to enforce our ordinances. We have the ability to have it in our ordinances that you can do things on an informal, low key basis. Not everything has to be a federal lawsuit, for instance. We have all sorts of things that are available such as having a public nuisance statute. We don't really have a public nuisance statute, which surprised him. Virtually every municipality or county that he has ever dealt with before has had one. We have Chapter 10 called offenses which has some narrow things in it but not a public nuisance statute per se. We don't

have a procedure in place where someone can actually complain, in writing, to our officials, say who they are, say what the problem is and, therefore under that, staff is obligated to act on that written complaint. He is talking about zoning violations that do not have to do with the building code. Given the Mayor's expertise, he knows that state law requires that complaints regarding the building code itself, that complaint is by law is entitled by law to be confidential. Constitutionally, code Section 1-6 says that every violation of Carolina Beach's ordinances is a crime and that raises all sorts of issues about the right to confront witnesses against you and other due process considerations. Involved from the very start, the holder of the permit and the person complaining, that is, if someone has a complaint about someone with a permit, get them together with the person in charge right from the very beginning. What a novel idea that if you have a problem with somebody you end up talking to that person as opposed to things being done anonymously and having to drag whole departments of the town, wasting resources, the official is given express power to get them together and try to work out a resolution that accommodates everyone concerned without violating the terms of ordinances or the permit involved. On the other hand, the appropriate staff person, the official, can deal with a full range of zoning enforcement problems, which he calls situations and conditions, he gets that right out of the statutes. What they are talking about here again, they're not talking about the entire code, they are talking about how do they enforce our zoning ordinances. The way the book is set up, which is mostly Appendix A Zoning, and also provisions of the code which actually refers to the zoning ordinances in places, and, vice versa. It can be a real challenge tracking it but those are the zoning issues they are talking about and doing these enforcement mechanisms. And when he says violations of approvals, why is he using that word? Because, under your zoning statutes you have licenses, permits, CUP's, variances and there are some things where authorization is given even verbally in a casual conversation. That's an approval. And, meaning somebody is using their property and behaving in a certain way, with the authorization of the town, the town can enforce those approvals. The person who has the approval needs to know they have a right to that approval and how to guard the guards, when the time comes. The public that is affected by that approval needs to have a right to be heard about it. What they are trying to do is balance that. There is no specific provision that gives the officials, other than the building permit situation, to issue an actual order to comply with an ordinance that is expressly in violation. We have the ability that, if the work needs to be done, to bring the situation into compliance to post a performance bond. That is not set forth anywhere in our ordinances. It needs to be clear that you give notice of the violation to tell the person precisely what is the problem, precisely what is the ordinance or the provision of the approval that they are in violation, what they have to do to bring it into compliance. In the course of that you can pursue these informal procedures and resolve it that way. If the holder of the permit doesn't want to comply or wants to challenge it for whatever reason, they do the appeal. Or, if they don't do anything at all, what then happens? You can then take sanctions to enforce your law. That includes the imposition of civil penalties, imposing liens for the expenses that the town would incur in order to bring the situation into compliance to fix the violation particularly imposing those liens right away for those that are dangerous to the public. Then, here's a protection that the official can move to revoke any particular approval. Note that this particular sanction is not something staff can do on its own. It must move

for the revocation which is an additional procedural protection for the holder of that permit. The town in the situation where someone is violating or refuses to comply can have a lawsuit filed against them where the town can seek an order of abatement or injunction, it can seek actual damages for its expenses, the imposition of any civil penalties to impose and execute any liens and, in the appropriate case, get law enforcement involved and charge them with a misdemeanor. The public nuisance statute is easily done. It simply sets forth that it defines a public nuisance as one of the situations and conditions that an official can investigate and be deemed in violation of our ordinances. He borrows the language right out of our statutes which says anything that is dangerous to the public safety and health. That can be different things to different people so what are the safeguards on that? You need the public nuisance language so that you can immediately use civil remedies that are available to abate that nuisance and also to take advantage of this new chronic violator statute that was just passed by the general assembly which had finally gotten to the point that if there is a business that say, 3 or more times in a calendar year, at some point, the notice time is over a year and you are able to just go ahead and act and do something. This allows you to be able to do that. How do you protect the accused in this situation? Who guards the guards? There is lots of notice provisions set forth within the rewrite. It makes it possible that everything does have to end up again in an expensive, procedural battle. Staff cannot revoke approval, only the reviewing agency can actually do the revocation. There are broad appeal provisions from staff decision orders. Then provide quasi-review of the staff decision orders if there has been a violation. This is an important point he wants to make sure is understood. They are talking only about enforcement issues. They are not talking about granting permits, about denying permits, or about extending permits. They are talking about enforcing the approvals or enforcing ordinances. He is suggesting to Council to consider that the body that would be the agency, that guards the guards, would be the Board of Adjustment whose entire function is to sit as a quasi-judicial body. The protection of who is guarding the guards, who provides appropriate due process for the permit holder, who also allows members of the public who want to be heard on the matter would be the Board of Adjustment who conducts things strictly in accordance with the procedures that have just been tightened up is passed by a legislature that came into effect January 1st of this year regarding the taking of evidence, the cross examination of witnesses, the building of a record, etc. Then and only then, once that Board of Adjustment makes its decision. Who is it accountable to? It is accountable then to judicial review based on record before it under the procedures and as modified by the General Assembly. He is suggesting that Council is busy enough on the quasi-judicial procedures are before it on the approval or denial or the modifications of the extensions of permits. He is not sure Council feels the need to be involved in the quasi-judicial functions of enforcing permit approval or enforcing ordinance situations. It is simply his suggestion. If it is Council's desire that Council be the body that sits this, they can go back and do a rewrite on that. Keep in mind that the statutes have given Council the power to delegate virtually any function to the Board of Adjustment. The only thing that you can't delegate to them is the power to zone property or change zoning. You can delegate to them virtually everything else. So the procedures are available for the public to complain and be heard at the earlier stage. They can be involved in informal resolutions, they are given notice of hearings. They can invoke the quasi-judicial review,

they can go to court if they have standing as defined by the statutes. The question of standing is borrowed right out of our general statutes that is put into the rewrite. That is a basic overview. To protect the holder of the permit, give staff tools that the legislature says they should be able to have, protect, also, the public. There is an attempt to balance all of those and to do so in a fair way. The statute is long but, nonetheless, he thinks comprehensible, readable and gives staff the guidance it needs, gives the holders who want to have permits - he thinks they would find it business friendly because it is easy to look and see what it is that you need to do and how to respond and protect your rights, and the same thing for the public.

Councilman Wilcox asked if they are making a decision on Article 19 tonight.

Mr. Owens said he believes they have to re-advertise this portion of the meeting. The town attorney said he recommends that.

Councilman Wilcox asked if Council opts to be the quasi-judicial board that deals with CUP violations and such, enforcement issues lets say, and someone comes to us and we handle it. Does that applicant still have the right to go to the Board of Adjustment is they are not please with the findings? Mr. Coggins said no. They would then go directly to court.

Councilman Wilcox asked when this portion would come back the Council. The zoning director said the items are linked together, what Ed spoke to earlier tonight about restaurants and drinking and eating establishments, the idea being that we had a lot of enforcement mechanisms built into Article 12.2, which is the enforcement of certain provisions of the Zoning Ordinance that are permitted uses. The concern is that if we approve that part of it, talking about the change, getting away from specialty shops, getting into different types of eateries - if we approve that, then it is going to leave a big hole, at least in the town attorney's mind and staff's mind about how we are going to go through the enforcement of it because it is awkward the way it is. He thinks staff is at fault for this in part because they put enforcement provisions right in Article 12 as opposed to Article 19. And he thinks Council is saying that we ought to look at Article 19 as being the most logical place to put this stuff and that makes perfectly good sense. They are on the same page. If you are going to consider doing this, you can have another public hearing on it or consider it at the next meeting at the end of the month.

Councilman Wilcox asked if we advertised for Article 19. Mr. Coggins said he thinks what they don't have is Article 14 which he thinks is one of the provisions comfortable, if for no other reason that he is proposing changes to Article 14 to make sure that Article 14, on conditional use permits, is consistent with it. That is, as you know, modifications to a conditional use permit come back to Council. He wants to make it clear, say there is a very clear violation of a conditional use permit and, in the meantime, staff decides that there needs to be some interim things done to rectify the situation. That is something that goes to the Board of Adjustment. That is not deemed to be a major modification, for instance, under Article 14. That is a typical example. The planning director is quite right about what he said but he wants Council to understand that these amendments that he is

proposing for Article 19, 21 and 14 - it's like he has given them the core of the erector set. From now on you can pass any additional article of your zoning ordinance and all these articles will plug in to these enforcement mechanisms for now and future generations. You are building a new enforcement foundation which the entire zoning code leads right into. You look at one place to find out what you do to enforce our zoning laws.

Mr. Owens said he thinks the key here is, they can re-advertise, but are they on the right track?

Councilman Wilcox said he thinks they are. He just went back and read the agenda and it does say Article 19 but he missed that so he wasn't thinking they were taking any action on this draft tonight but if they need to be done part and parcel, he guesses they can finish discussing everything.

Mr. Owens said his biggest question is does the Council want to consider the Board of Adjustment as their enforcement tool and do they want to require citizens to have to file a written complaint and go through that process? Staff is looking for guidance so they can re-advertise.

Councilman Wilcox said his preference, for the time being if they are going to do this new ordinance, that Council would look at the enforcement issues for CUP's that Council has issued if that is the question.

Mr. Coggins said yes and the way you deal with that is under our general statutes, for instance, Mr. Ferguson pointed out that many CUP's provide conditions that if are in violation expressly says you can go to Council. That's true but the statute also says that Council can delegate that to the Board of Adjustment.

Councilman Wilcox said he understands that but, in a perfect world, the Board of Adjustment would use finding of fact and everything would be right up and down, just like Council would. Neither one of them always do it perfectly. But, it seems to him that if Council is issuing CUP's, knew the conditions they placed on purposes for that, and have a bigger overview on the greater impact to the community on those types of issues, with regard to health and safety, etc., that they would, at least for this point in time, he would personally feel more comfortable if those CUP's came back to Council for enforcement.

Mr. Coggins said he understands and he is not disagreeing but his counterpoint is that there is some authority for the effect that approvals that are received through the quasi-judicial process are entitled to more due process protections. He is suggesting that to Council that it is very difficult to be a legislative member and be out there in the community and know your concerns and then, at one moment, to put on the black robe and make a decision in a vacuum based solely on the evidence that is presented before you. It is quasi-judicial for the approval of a CUP or its denial but even that process can't help but consider matters outside the records because of the fact that you consider

everything that went before P&Z and is said at P&Z and what staff says and makes a recommendation, etc. It's a good system but it's not a pure judicial system. When you are talking about enforcement that has legal ramifications where you can take a right away or restrict in a way, gives a higher burden and, therefore, there is greater pressure then to ensure that outside influences don't play a roll in the enforcement decision. One place he is coming from is that he is trying to protect Council from that kind of situation. Although Councilman Wilcox's point is well made in the sense that nobody knows better than Council what the conditions were and why they were put there and the entire context of the entire zoning scheme. He understands that too.

Councilman Wilcox said he appreciates him trying to protect Council and the town by extension but his concern is to also give that due process to the applicant the best due process they can give him. He would like to make a correction for the record that he personally doesn't accept any recommendations from P&Z or consider them when he is making a quasi-judicial decision until they start filing a quasi-judicial process. He would like to think about the questions the Town Attorney asked for a while.

The town attorney said he has tried to provide Council a list of bullet points that go along and hit the highlights and also a list of problematic parts of the existing code and ordinances. In other words, why go to the trouble because there are a list of problems and, at the very end, is a list of every single provision that he was able to find in our code that deals with penalties and how it is impacted with these problems he addressed earlier of unfortunate ways some things are worded - even the Constitutional implications that are raised by that.

Councilman Wilcox said he guessed the whole specialty restaurant thing we just couldn't wrap out minds around?

Mr. Ferguson said he thinks there were some criticisms leveled against it because everybody had a different interpretation of what a specialty restaurant was. About 5 or 6 months ago, the question arose again. What are we doing with specialty restaurants and then staff came back with an overview of what Planning and Zoning Commission suggested. They said maybe it wasn't broken to begin with. Maybe we need to go back and look at donut shops and hamburger stands, etc., just keep it simple. Staff kind of brought that to Council and he thought he heard them say that was pretty good and you kind of liked that idea, let's name them specifically. I know we've changed over the course of several months and they would be glad to revisit anything Council would like for them to do.

Councilman Wilcox said he did like the idea of specialty restaurants. He thinks were it kind of fell apart was what everybody considered a specialty restaurant, what the details were that surrounded a specialty restaurant. That's fine. On page 3 where it says specialty restaurants, we're proposing to abandon that. I guess your point is anything here that you don't identify - hotdogs would fall into a sandwich shop, tacos sandwich shop, salads...

Mr. Ferguson said that a limited service type restaurant would fit into the sandwich shop category they feel and wouldn't have to have a kitchen.

Councilman Wilcox said so we have other places to put some of that stuff that he just said that doesn't put it into the requirement of a kitchen if it's not needed. Staff agreed. On page 1 of the ordinance outline, where it talks about the ordinance, in the first place where it talks about eating and drinking establishments he would like to make a suggestion that they make a change there. It talks about eating and/or drinking establishments are family oriented business. He thinks families do go to restaurants and stuff but that is a statement of fact and seems a little out of place to him. He thinks it should just say eating and/or drinking establishments cater to the public. You might have a particular eating and/or drinking establishment that doesn't cater to families so we don't want that to come back and be a criteria later on for somebody to get an application or permit. Down a little further on that same page under standards for all eating and drinking establishments, number 3, "shall be sufficiently staffed to control unruly patrons and maintain order on the premises and, when necessary, must swear out arrest warrants." Who determines when it is necessary? What does that mean?

Mr. Ferguson said they had similar language under the conditional use provisions and they wanted to just have some opportunity to put the burden on management to take care of the problem in their restaurant or drinking establishment.

Councilman Wilcox asked if there was something they could put that would be more meaningful than that? Staff said they could reconsider it again.

The town attorney said, when they are looking at that, make it consistent with how they define that word "official", the acting official in Article 19.

Councilman Wilcox said he's not an attorney but can you tell a business owner they have to take a warrant out on somebody. He doesn't think you can but, if you can't, then you probably shouldn't have it in there and maybe that is something we can look at. He understands the spirit of it.

The planning director suggested just putting "shall be sufficiently staffed to control unruly patrons."

Councilman Wilcox just wants staff to take a look at it and if we can't legally require them to do it we probably shouldn't have it in there and if we can legally require them, we ought to have it fixed to some person and some criteria.

Councilman Lewis said he has an issue with number 2, talking about having a person-in-charge on duty at all times and clearly display the name of the person-in-charge in a prominent place. There is probably not one business, restaurant, eatery or bar that adheres to that at all.

Councilman Wilcox said if you serve alcohol it's an ALE requirement.

Councilman Lewis said all you have to do is have a person-in-charge, you don't have to have the name of the person-in-charge in a prominent place. The person in charge of the whole facility, not the person-in-charge that day. The person-in-charge that day could be anybody. The person in charge of the business is what is up there.

Councilman Wilcox said he thinks you are required to have it posted. We can check on that. Staff will check with ALE. Item 4, "Shall keep interior and exterior of structure in good repair, clean and well maintained." This one has him confused because we don't have an ARB board and he doesn't know what clean means, unless it's a code violation or a health or safety issue, he's not sure what maintained means or who would make those determinations. He understands the intent.

Mr. Ferguson said that often times that kind of language is typical zoning kind of language. For example, signs and stuff like that. They say it has to be in good repair, maintained. Have we enforced those provisions - probably not unless it becomes a nuisance which the attorney kind of spoke to.

Councilman Wilcox said it is so subjective and does it really do us any good? Maybe we could put an intent statement in there vs. something that is a standard.

Mr. Coggins said perhaps reference it under the requirements with the health department.

Councilman Wilcox said, under item, "Excluding bar/taverns all eating and/or drinking establishments shall provide the Town with a menu having a food and/or non-alcoholic beverage as the primary business." Is this proposed to be provided at the application point or some point during the operation? Staff said at the application process. Councilman Wilcox said all the rest of this stuff are development standards, standards for all eating and drinking establishments. Are they standards for ongoing operations, most of them appear to be, or are they standards for obtaining a permit?

Mr. Parvin said there are some that were for ongoing operations but these were standards for when you come in to get a permit, this is what they need to give staff and what they will be held to.

Councilman Wilcox asked if they keep copies of all those menus over the years and have them submit changes?

Mr. Parvin said it was basically to say this is what they are serving and the menu showing what we are serving. He thinks ABC Board requires all restaurants, if you are not a standing restaurant, you have to submit something similar to that.

Councilman Wilcox asked that they make that say at the time of application so that it is clear. Staff agreed. Councilman Wilcox said, under item 9, outdoor areas, item b in the

new language talks about outdoor artificial lighting. It says, "Outdoor artificial lighting fixtures shall be designed and positioned so that the point source of light or any reflective surface from a light fixture is not directly visible from adjacent properties...". He said it is impossible not to have a reflection not directly visible from everywhere because that is the nature of a reflection. Is there some standard you want to put on that? When you point a light at a building to light it, that creates a reflection. You don't have any control over that reflection.

Mr. Ferguson said he thinks the interest is probably the fixture itself, the bulb. That is what they are trying to guard against. That causes the true glare and the offensiveness of the light.

Mr. Parvin said he would agree. The point was for the light fixture itself, it would be shielded so, the reflection, they could take that part out.

Councilman Wilcox said number 10, "The determination of a kitchen shall be made by the Director of Planning and Development or his/her designee." What does that mean?

Mr. Ferguson said if someone comes in with a microwave and a hotplate, does that constitute a kitchen? He doesn't know if the Health Department determines what constitutes a kitchen. The distinctions they were trying to make was someone coming in under the guise of being a full-standard restaurant with a hotplate and microwave being a kitchen. That is what they were trying to guard against.

Councilman Wilcox asked if they were making that determination based on the health department requirements for a kitchen.

Mr. Ferguson said they can put the health department down if that is what they prefer, to make that determination.

Councilman Wilcox said, where there is clear cut stuff, the health department tells you what is a kitchen and what isn't. He doesn't think we need to be making a different interpretation. Staff agreed. Councilman Wilcox said item 10(b)2 he has always had a problem with. If the property is inside the CBD and surrounded by CBD zoning properties on all sides but has a depth no less than 100 feet, this condition shall apply. He knows they have looked at this before and he doesn't think he was in agreement with it before because if you're in the CBD, you're in the CBD and this is almost like creating a separate overlay district where you can't do something inside the CBD when everybody else can do it inside the CBD and we already have a buffer district. He will leave that to Council to decide but he never liked that one.

Mr. Parvin said the original it was if you were having any outdoor service area, then you had to get a CUP and they looked at it and said there should be some break given to the CBD area so that is when they went back and added that in there. Maybe you want to take outdoor areas out all together.

Councilman Wilcox said if we didn't have a buffer zone between CBD and residential areas, he would understand that, but the intent of the buffer zone is to provide that space so he has never really understood why we want to treat the 100 feet inside the CBD differently. That is his personal opinion.

Councilman Lashley said if you had permitted use of restaurants, in general, what would be the violations that they would make them have to have a CUP.

Mr. Parvin said, under (b), if you meet any of those then you have to have a conditional use.

Councilman Wilcox said this determines what gets permitted without a conditional use or what triggers a conditional use.

Mr. Parvin said this was written under the previous board. You may disagree with some of these or staff can make changes.

Councilman Wilcox said that is not the end of the world as long as they are not denied for it. It's more of a staff issue, he guesses. Under (c) Standards for Bars and Taverns, there are a couple of wordings he thinks could be worded a little better. Where it says, "contribute to the downgrading of the surrounding areas...", he thinks it could say, "have a substantial, negative impact on..." would read better. Then they get into the next item in that paragraph which is the 200 foot rule and, by the way, he thinks staff is doing a great job combining all of this and getting to the ordinances and everything and that is why he wants to make sure he is going over these issues because he wants to get this out and, hopefully, this will be the last time they have to deal with it for a while. But, if he is going to have to look at other items in this ordinance, he thinks they need to deal with the 200 foot issue, as unpopular and politically sensitive as it might be, it's a problem. We need to talk to the Town Attorney and follow his advice on that he believes.

Mayor Macon said, you mean we have an ordinance that is an illegal ordinance?

Councilman Wilcox said that would be his point. Under (d) Provisions Construed as Consistent with State Law, if you read this it tells you that we have to deal with that issue. The items all pretty much tell you, "not to be interpreted or construed as imposing requirements different from those that are imposed by the State of North Carolina."

Mr. Ferguson said if they take out the distance requirements, should they also perhaps leave in the language that the town attorney has bolded on page 4. In other words, if staff addressed the distance requirement, 100 foot bar to bar separations in the CBD and the 200 feet in other locations, if they took that distance language out of there but still left items 1-4.

Councilman Wilcox said he doesn't have a problem with items 1-4 but they automatically conflict with something else they have going on. He feels as long as they don't conflict with Article 19 but he doesn't know about that. Under Article 23, Definitions, first paragraph, second sentence where it says, "sale of foods, frozen desserts, or beverages...". Do they mean non-alcoholic beverages or alcoholic and non-alcoholic? Mr. Parvin said both.

Councilman Wilcox asked if they would say both because there are other places in this ordinance where they use the term beverages implies non-alcoholic and then other places you specify alcoholic beverages. That would clear that up.

Mayor Macon said he has seen a coffee shop has to get a CUP because they might be able to one day sell alcohol.

Mr. Parvin said he doesn't want to make them back peddle but, on page 3 (b), based on that comment, 4 and 5, those are when you have to get CUP's for when you are selling alcohol.

Councilman Wilcox said he understands that. He was just trying to make it consistent with other - this is the definition, it's not part of the standards. He is trying to make sure the definition is clear that when he is looking at what defines an eating or drinking establishment it says, "whose principal business is the sale of foods, frozen desserts, or beverages...", it may not be an issue but it just struck him.

Mayor Macon said he has seen it be an issue. That particular coffee shop is no longer in business but they were made to get a CUP when they were an allowed use because of the possibility that one day they could sell alcohol.

Councilman Wilcox said he may be a little disjointed on a couple of these items. He hasn't really thought through how it affects other places. It just struck him that they might want to make it clear. The paragraph underneath that: Bars and taverns, third to the last sentence, "establishments may exceed the normal operating hours of a restaurant or similar establishment." What does that mean? What are the normal operating hours of a restaurant?

The planning director said typically not 2:00 a.m.

Councilman Wilcox said McDonald's is a restaurant and they stay open all night. We are using a benchmark for something that doesn't exist. The hours of operation for these establishments is fixed by the ALE, isn't it, if it's a drinking establishment? Or the town ordinance if it's not a drinking establishment. So the only items we are dealing with, where it says bars and taverns, the hours are fixed by the ALE.

The planning director said they can take out the hours. You can stay open past 2:00 a.m. if you don't serve alcohol.

Councilman Wilcox said there is no such thing as normal hours of a restaurant so he doesn't know how you compare it with that. Under item 3 under definitions where it talks about a limited service restaurant is the example where it says, "Limited service restaurants shall have a kitchen." What if a limited service restaurant is one that serves pre-packaged food. Where do we fit that animal. The Grind used to serve foods that were made by other people and other people can still do that, whether it be pre-made sandwiches or soups, hotdogs if they are pre-made in a different kitchen. Where do we fit that establishment? If it is not limited service, does it now go into do we have to create a new designation?

Mr. Parvin said it would be like a sandwich shop but he thinks they are taking that kitchen out so we can just take the kitchen out of the definitions.

Councilman Wilcox said the problem is, if you look at sandwich shops, sandwich shops may provide a kitchen. You say maybe because it depends on whether you use pre-prepared food or they are preparing their food.

Mr. Parvin said he thinks they want to take the kitchen stuff out.

Councilman Wilcox said it seems to him that the Health Department determines when the kitchen is required. There is a lot of redundancy about may/shall require kitchens and we may be able to clean that up. These establishments already have standards they have to meet. He is not going to go through everyone of those but maybe staff could take a look at that. Staff agreed. Councilman Wilcox said, under item 9, Article 19 where the last part of it talks about, "when a proposal for an eating and/or drinking establishment is submitted that does not fit under an existing category then the applicant may apply for a text amendment or appeal the decision to the board of adjustment." He doesn't have a problem with that, he read it differently the first time.

Councilman Lashley said he feels we should take care of the 100 feet thing in the CBD. He doesn't like that.

Mr. Ferguson said they have been talking about this, they are pre-empted by ABC Commission in terms of establishing a separation between taverns. We are not allowed to do that, basically. We can have a separation distance between taverns and residential dwellings, between taverns and churches, etc., but tavern to tavern has issues with the 14th Amendment to the Constitution and it also has issues with the ABC Commission whereby, if one person establishes a tavern, that precludes someone else from establishing a tavern in the same zoning district. That's the concern he guesses, where they have a right by zoning to have it. Zones are established by district and they have a variety of uses and if one person has that use, the questions becomes why can't another person have that same use in that same zoning district. And it makes perfectly legal sense. Their issues have been one of secondary impacts and that is why the ordinance was created in 2003 to start this ball rolling to try and reduce the number of taverns that we had on the boardwalk. That was the effort and it worked fairly well but now we are at a point where we don't want to come hard up against the law right now and say, do we

want to challenge this or not. It was brought to staff's attention by the attorney and by Councilman Wilcox who said they need to rethink this and look at it again. That is why it is back on our plate again.

Staff will bring back changes for this item as mentioned by Councilman Wilcox.

Councilman Wilcox made a motion to set a public hearing for February to deal with this item as it was advertised before to include all the provisions subsequent to the amendment. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING TO RECONSIDER A ZONING AMENDMENT TO ARTICLE 7.1(D) OFF STREET PARKING SCHEDULE CONCERNING PARKING REQUIREMENTS FOR OUTDOOR SEATING AREAS ASSOCIATED WITH EATING AND/OR DRINKING ESTABLISHMENTS. CURRENTLY NO PARKING IS REQUIRED FOR OUTDOOR AREAS LOCATED WITHIN 500 FEET OF A PUBLIC PARKING LOT AND A 50% REDUCTION IN THE PARKING REQUIREMENT APPLIED TO OUTDOOR AREA IF THE ESTABLISHMENT IS NOT WITHIN 500 FEET OF A PUBLIC PARKING LOT. THIS ALLOWANCE APPLIED TO ALL ZONING DISTRICTS AND ALLOW EATING AND/OR DRINKING ESTABLISHMENTS (CBD, T-1, MX, NB, I-1, HB, AND MB-1)

Mr. Ferguson presented this item. This is the issue concerning an amendment that was brought to the Town Council back in March.

Mayor Macon said that the Planning and Zoning Commission approved it and they had one councilmember who had a lot of heartburn and wanted it brought back. He is no longer here.

Mr. Ferguson said they took it to Planning and Zoning, however, and they did recommend one change and you can see it in some of the language that Mr. Parvin just presented. It speaks to the issue of types of uses, eating and drinking establishments, is originally how they had the ordinance amended. Now they say eating and/or drinking establishments to make it very clear that they are not just talking about places to eat. We are not talking about places to drink as well and we have an ordinance to accomplish that.

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

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

Councilman Wilcox made a motion to adopt Ordinance No. 10-816 (Exhibit 3) including the change made by Planning and Zoning Commission to add "or" into the table for the number of required parking spaces and that it is in general conformity with the Land Use Plan. MOTION CARRIED UNANIMOUSLY.

CONSIDER TABLING PUBLIC HEARING TO 2/9/10 AT 7:30 P.M. - REQUEST TO AMEND CAROLINA BEACH CODE OF ORDINANCES, CHAPTER 16 UTILITIES; SECTION 16-3 SEPARATE METERS, REQUIRING SEPARATE METERS FOR IRRIGATION

Councilman Wilcox made a motion to table this item to February 9, 2010. MOTION CARRIED UNANIMOUSLY.

RENOVATION OF FIELDS AT MIKE CHAPPELL PARK

Duke Hagestrom made presentation on behalf of the Parks and Recreation Committee. They have been working to come up with a plan for redesigning Mike Chappell Park. Their goal is to offer the best recreation opportunity for the broadest number of people. To that end they are proposing to shift the park from a baseball centered park to a multi-use park maximizing green space, updating the facilities. Not only was this a work of the committee, and Lonnie Lashley was a part of that as well, it is also the result of public input as well. They had 2 public meetings. He said this is in keeping with the spirit of the Parks and Rec master plan. The number two item, based on priority, was for Mike Chappell Park improvements. It's the flagship outdoor facility for the Town of Carolina Beach and there were suggestions given in the master plan and many of those suggestions are also included in the proposal brought back to Council this evening. Highlights of the design include: (1) remove clay from 3 underutilized baseball fields, re-sod, and remove unnecessary fencing and accessories; (2) northern baseball fields become one large open space that can accommodate a full, adult lacrosse, football, soccer, etc., field or multiple youth fields; (3) southern baseball field becomes a green space that can accommodate multiple youth fields for lacrosse, football, soccer, etc.; (4) maximize the remaining baseball/softball field and amenities to encompass various age/ability levels (from t-ball to adult softball) and they would make some improvements to that - seating, scoreboard, lighting, improve clay and sod in the field; (5) create a paved basketball court adjacent to the existing sand volleyball court; (6) develop a walking trail surrounding the park with fitness stations; (7) build an additional covered shelter; (8) execute repairs to existing lights/structures; (9) retain dog park facilities; (10) retain and improve children's playground facilities; (11) update the restroom facilities; and (12) focus on an ongoing maintenance program. They got some quotes on what it would cost to do a lot of these improvements. Getting the fields re-sodded and getting rid of the clay, they are looking at between \$10,000 to \$15,000; paved basketball court, including goals - \$12,000; multi-purpose trail (paving only) - \$50,000 to \$60,000; covered shelter - \$14,000 to \$18,000; light repairs - \$2,000 to \$3,000; retain dog park facilities - internal; playground improvements - \$2,000 to \$5,000; update restroom facilities - \$50,000 to \$60,000; and ongoing maintenance - \$15,000. Most of those are a one time expense, except for ongoing maintenance, with a total project cost of \$155,000 to \$188,000. Some ideas for funding the project: the Town General Fund and Parks budget; Town Capital

Improvement Program (CIP); county parks bond; Part F Grant; NC DOT Grant (multi-purpose path); NH County Parks Bond Fund; the Golden Leaf Foundation and explore other grant and funding options. They recommend that they move forward with items that fit within the current budget such as sodding, etc.; look to Council to determine funding priority for items outside the current budget and decide on funding allocation and, once they have that knowledge, they can work on securing grants/funding for items outside the town's funding allocation. The Town Manager had a great idea as a part of this program, they could actually designate a community workday at the park so when they go to pull out the clay and do the re-sodding, it will be a great opportunity to get the community involved in moving the fences and getting things organized out there.

Councilman Wilcox asked what the surface is for the multi-purpose trail.

Mr. Hagestrom said the quote they got is for asphalt.

Councilman Wilcox asked if they considered doing something like crushed granite or something like that that packs down good, is semi-impervious and is not as offensive as asphalt.

Mr. Hagestrom said they are open to other things. The main goal would be as wide as they can get it. There are a couple of spots where it is tight coming around the curves.

Ted Lashley said he was trying to tie into his DOT grant for bicycles and comprehensive planning grant, which he will be talking about in a minute, and they are going to require asphalt. To get the grant they will have to call it a bicycle path. It could be a multi-use path but their grant money is strictly for bicycles. DOT will require a width of probably 8 feet. It would not have to necessarily be wider for multi-use and doesn't feel it will be a problem. He already has the grant.

The town manager said there is \$15,000 in park upgrades. There are some things he think they can do this year. Mainly, if they wanted to try to improve the surface, the grass area. He thinks they can hire someone to come in and spray/aerate. They can do that with the existing budget and probably make some of the upgrades to the lighting. Some of the bigger items we don't have budgeted yet and we can consider them during the budget process and come back with budget adjustments. Some of these things will have to be approved formally by Sunny Point. He doesn't think they will worry about moving things around per se.

Councilman Wilcox said they haven't bought off on our parks master plan. They still have to buy off individually when we implement those items, right?

The town manager said yes. They have shown them along the way that these were some of the things they wanted to do. We're even in the process of trying to get some approval for some other expansion of the park area. We are going to submit a site plan to them and let them look at maybe some additional ball fields and so forth. There are some things they can do if this is the direction Council wants to go. There are some other

things they might want to consider at the budget process and program them in as capital improvements or, if they are more urgent, then we can come back with a budget

adjustment. Council asked for them to prioritize where they want to spend the \$15,000. He will bring something back in February for them to consider.

BATHROOM FACILITIES AT THE WILDLIFE BOAT RAMP

Mr. Owens said this is something that was requested of the town and he agrees. There are no bathroom facilities at the Wildlife ramp. He is looking for Council to appropriate \$2,500 from the Tourism Fund, the Reserve Fund, to put in 2 port-a-johns, one handicapped accessible, and one not handicapped accessible, and some screening. They would service those on normal rounds where they do other facilities.

Councilman Lashley made a motion to approve appropriation of \$2,500 from the Tourism Fund to put in 2 port-a-johns, one ADA handicapped accessible. MOTION CARRIED UNANIMOUSLY.

BUDGET DISCUSSION, GOAL/PRIORITY SETTING WORKSHOP AND DEPARTMENT HEAD BUDGET PRESENTATIONS

Mr. Owens presented an outline for our budget expectations for the coming budget year. He recommends Council consider setting a goal setting workshop on February 9th. He has provided a copy of a survey they have used in the past to help them move forward in their thoughts and will be giving them a summary of a lot of the projects they are working on, have thought about or are in the planning stages to prioritize. Eventually they will have a meeting with the department heads on March 2nd but will talk about it at the February regular meeting. Normally they have 2 workshops, 2 in April and 2 in May, if necessary, and then advertise for a public hearing. They will also have another public hearing in March to start the ball rolling for the public to come in and talk about the budget.

Council agreed to meet on February 8th at 5:30 p.m. for the workshop with a light dinner.

RECYCLING PROGRAM GRANT AND CARTS

Mr. Owens said they met with Randy Gainey with Waste Industries. Staff is asking Council to allow them to consider applying for a grant to get larger bins for recycling. Right now they use 18 gallon bins and they are looking to get, potentially, 65 bins. The downside is there won't be an additional charge this year to do that but there will be an additional charge on the base rate for recycling if you want to go to a larger container. It is \$2.75 more a month than what the standard container is now. We can absorb it this year. They will try to implement it before summer if Council wants to or wait until after

summer. They want to go ahead and apply for the grant now. They can have a public hearing in February to talk about the additional charge and going to larger carts but the urgency now is to try to go ahead and get the grant in the process. They also talked to Mr. Gainey about is potentially putting 2 larger containers out for recycling. One would be the north end. There is an additional charge for that. It's about \$9,600 a year to have one of those facilities and have it hauled out occasionally. They are also looking maybe at Town Hall to put an additional large container where you can do some recycling here in the parking lot. Additionally, they have heard they need to be recycling at the boardwalk and some of the beach access facilities. We are proposing to do that at some of the larger beach accesses as a trial run. Some of the concerns of public space recycling - if it's the least bit contaminated, there are surcharges/additional charges for the town. There are a lot of positives too.

Councilman Wilcox suggested discussing this during the budget meeting and see where they are on other issues.

Mr. Owens said that Waste Industries is still going to do this but the town will probably miss the opportunity to get a grant to help offset some of the costs for the first year. It may not be available later. Council recommended going ahead and applying for the grant.

CONSIDER REPLACING TOWN LIGHTING ALONG LAKE PARK BLVD.

Mr. Owens said they could have the opportunity to upgrade our lighting. We have the old fiberglass, brown lighting. He is trying to work with DOT so they can do it before resurfacing. The brown lighting is antiquated, there are no parts for it. They have taken out whole sections to salvage parts for other areas. Some of the conduit, in order to save money and resources, would have to be run down the DOT right-of-way. He thinks they can do it with their staff if we get about a month's notice and get it done before March 15th, basically the conduit. We would have a contractor to take out all the other lighting. They estimate the operating cost at about \$30 per light for the brown lights. We can totally switch over to something similar to the lake for about \$40-\$42 per month. They would want a 10 year contract. He is not promising he will be able to do this. The up front cost would be roughly \$100,000-\$125,000 and they would have to set a budget for that now. The resurfacing part of it is estimated at about \$50,000. The conduit Progress Energy will provide. There would be some cutting of sidewalks where those pedestals would have to go. There is a lot of work that would have to be done between now and March 15th, including some permitting, and they are going to try to keep in it house to do it quickly. We have surveys and can do the plans relatively quickly. There are roughly 80 lights. The maintenance and upkeep would all be Progress Energy. They would also have electrical outlets up top to plug in Christmas lights into and the light would be a lot brighter that what is there now. The need is to go in and put conduit it. We would take out all our other lighting, put conduit in and wait until, hopefully a few months down the road, they can start coming back and feeding the conduit and putting up the poles. The bulk of the up front cost is to cut the road and resurface it back and cut sidewalks so they

can come in and drop their foundations and patch that sidewalk back.

Mayor Macon made a motion to set a budget for \$125,000 to replace the lighting on Lake Park Blvd. MOTION CARRIED UNANIMOUSLY.

SET A WORKSHOP MEETING WITH PETER J. SMITH FOR FEBRUARY 4, 2020 AT 9:00 A.M.

Mr. Owens said they are trying to finalize the Streetscaping Plan. He will get a copy of it to Council tomorrow.

Council agreed to the workshop meeting on February 4th at 9:00 a.m.

NCDOT COMPREHENSIVE BIKEWAY PLANNING GRANT CONTRACT

The Director of Parks and Recreation, Ted Lashley, presented this item. He said they were awarded, in 2009, the NCDOT Comprehensive Bikeway Planning Grant with a total project cost of \$25,000; \$5,000 town match and \$20,000 grant award. They have gone through the RFP process with 8 that came in from around the state and 1 from New Jersey. They chose their top 3 - McKim & Creed, Haden Stanziale, and Withers & Ravenel. It is his recommendation they award this project contract to McKim & Creed. He has worked with them before, the Parks and Rec Trust Fund project at the lake, our NCDOT T21 trail by the state park and they understand where they are trying to go with the Parks and Recreation master plan and master development plan. He is seeking their approval for him to prepare a contract with McKim & Creed to be sent to DOT for their approval. Once they get their approval, they can start on this project.

Mayor Macon made a motion to award the contract to McKim & Creed for the bikeway planning grant. MOTION CARRIED UNANIMOUSLY.

CONSIDER HIRING A FIRM TO SEEK FUNDING FOR TOWN PROJECTS

Mr. Owens presented this item. He said last year they did hire a firm to seek some federal funding for some projects and this year is probably more important than last because of the pier project. There are two proposals he has. One from Howard Marlowe with Marlowe and Company who, for a stipend of \$2,250 or \$27,000 per year, would help the town do the necessary things to solidify some federal funding. There is no guarantee. The other one is from Steve Dye with McAllister & Quinn, who they worked with last year. There would be really no charge for service other than if they did some copying or taxi fees. If we had a project over \$250,000 make it to committee and get through them, then there would be a stipend of \$5,000 a month to be in charge until such time that it went to law and signed by the president and, at that point, the total charge for

the year would be \$66,000 and you could pay all at once or \$5,000 a month. The Town Manager and Mayor, or another Council member, may have to go to Washington at some point soon to meet with federal officials.

Councilman Lewis made a motion to hire McAllister & Quinn to identify opportunities for us in federal government. MOTION CARRIED UNANIMOUSLY.

CLEAN WATER MANAGEMENT TRUST FUND GRANT APPLICATION AND RESOLUTION

The Town Manager said that is another grant proposal that he wants to go ahead and submit. The total grant amount that you can get is \$500,000 with a \$285,000 match. He is proposing they do some more sampling which would be before and after and would be paid for under our match and then take the rest and try to implement some of these stormwater measures. He is looking for adoption of the resolution.

Mayor Macon made a motion to adopt the Resolution 10-1004 (Exhibit 4) for a grant application. MOTION CARRIED UNANIMOUSLY.

FREEMAN PARK TASK FORCE AND STAFF RECOMMENDATIONS FOR FREEMAN PARK AND THE BOARDWALK

Mr. Owens said they are trying to come up with an action plan. They had a task force formed and met one time. They have not reconvened. They need some direction as to what Council would like to do on some of the things they could do on the boardwalk and Freeman Park, come back with some recommendations or solutions for some of the concerns for all these different items whether it be part-time staff, different enforcement, different ordinances and come up with an action plan for the summer.

Councilman Wilcox made a motion to thank the task force members for volunteering and to suspend the task force and to ask the police chief, fire chief and the town manager to address the issues of concern and interact with the existing Freeman Park Committee and/or the Police Advisory Committee and come back to Council with those recommendations. MOTION CARRIED UNANIMOUSLY.

NON-AGENDA ITEMS

Bob Bell said he would like Planning and Zoning or the town to look at the sign ordinance again or reevaluate all the options in the sign ordinance, in particular, going back to the banner issue, putting some teeth into enforcement and hopefully make it easier to enforce. He would like to give an opportunity for businesses and re-look at the sign ordinance. Councilman Wilcox said there was some discussion at the Business and Economic meeting that they might want to look at certain parts of it. He doesn't know if

they want to garner some public participation like they did for the vendor thing and then take it to P&Z or staff. The planning director said he thinks Mr. Bell has an issue with what staff is considered to be a sign and what isn't considered to be a sign, in part. His question is whether Council wants them to open up the door and reevaluate the entire sign regulations or look at the situation Mr. Bell finds himself in relative to this particular type of sign allowance which is kind of an animated sign. It's a human being dressed up like a slice of pizza and the question is, do we want to provide allowances or look at the whole sign ordinance more comprehensively? Mayor Macon said there are a lot of new things that are coming out sign-wise, technology-wise, that aren't really addressed in our ordinance either that probably need to be looked at. Mr. Bell said he would send information on some of the items.

Councilman Wilcox said he has not read the initial charge for the Freeman Park Committee but, generally speaking, they were charged with helping to get the park up and running, setting rules, identifying issues, etc., and now, perhaps charged with something directly related with Freeman Park. He would like to see them refocus that committee and have them do their own assessment of what they think their charge is, what is it they are doing or want to do, maybe write new goals and objectives for them based on where they are now to stay in existence.

Mayor Macon made a motion to go into closed session to discuss real estate and attorney/client matters in compliance with NCGS 143-318.11(a) 3 and 5. MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to return to open session. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

There being no further business, Mayor Macon made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____