

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

**January 13, 2009**

The Town Council of the Town of Carolina Beach met in regular session on January 13, 2009 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Joel Macon; Mayor Pro Tem (MPT) Dan Wilcox; Councilwoman Pat Efird; and Councilman Alan Gilbert. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa. Councilman Jerry Johnson was absent due to sickness.

Mayor Macon called the meeting to order.

**INVOCATION**

Pastor Pasedag from the Alliance Church opened in prayer.

**PLEDGE OF ALLEGIANCE**

Mayor Macon led everyone in the Pledge of Allegiance.

**CHANGES TO THE AGENDA**

**Councilman Gilbert made a motion to adopt the agenda with the addition of Items 7(a) a presentation by Cape Fear Soccer League, and 7(b) a presentation and special recognition of Grant Colip for achievement in science. MOTION CARRIED UNANIMOUSLY.**

**Mayor Macon made a motion to excuse Councilman Johnson who is out sick. MOTION CARRIED UNANIMOUSLY.**

**TOWN AUDITOR, CLEMENT GOODSON, CPA, ANNUAL AUDIT REPORT FOR 2007-2008**

Clement Goodson reviewed the audit report which ended June 30, 2008. He stated the town received the highest level of opinion in the Independent Auditor's Report in Section 1, which is their opinion on the town's financial statement which means the town adhered to all the accounting principals, no violations of state statutes and everything was in accordance with the generally accepted accounting principals. The second section has the Management Discussion and Analysis on pages 3 through 11. This is where the management of the town or the town's staff reviews the operations for the year, presents

a lot of highlights, a lot of things that you did, a lot of things that were accomplished during the year and would like for Council to review that at some point in time. The next section of the audit report is the basic financial statements and he would like to go over with them 3 or 4 pages here tonight to hit the highlights for the year and to let them know how they stand as of June 30<sup>th</sup>. He requested them to turn to page 13, Statement of Net Assets, which includes all the net assets and all the liabilities the town has as of June 30<sup>th</sup>. It is segregated into two categories, one for governmental activities which is primarily your general fund. The other section is the business type activities which is your water and sewer fund and the tourism fund combined. As of June 30<sup>th</sup> on the general fund we had \$4,024,304.00 cash in the bank. We had other assets there of about \$500,000.00 so the total current assets were \$4,521,332.00. In fixed assets, which includes land, buildings, fire trucks, vehicles, equipment in the general category, we had \$11,306,408.00. Our total liabilities are \$4,883,506.00 leaving net assets in the governmental activities of \$10,944,000.00. That's an increase over last year by \$91,000.00. In the business type activities, we had cash in the bank of \$4,008,000.00. We had accounts receivable of \$752,000.00 leaving a total of current assets of \$4,760,734.00. The plant and equipment was \$21,360,666.00 leaving total assets of \$26,121,400.00. We had total liabilities there of \$7,402,000.00 leaving net assets of \$19,921,771.00. Page 14 is our Statement of Activities and this schedule, primarily, let's you see what it costs you to do business in your various parts of government. The first column is expenses and then we have some program revenues that are allocated to each one of those but over about the fifth column we see governmental activities which shows the net cost of running each one of those. The general government had a net cost of \$2,043,000.00, public safety was \$2,940,000.00, transportation was \$249,000.00, fleet was \$199,000.00, environmental protection was \$928,000.00, culture and recreations \$430,000.00, and interest on the long term debt was \$180,000.00. Down at the bottom you can see the revenues that are applicable to those expenditures which cover those categories - property taxes \$4,287,000.00, other taxes, which is primarily sales tax, is \$1,837,000.00 and we have some other revenues there. So the net change in our assets for the year on the general fund was \$91,074.00. For the business activity fund, we actually had a decrease for the year of \$200,287.00. If you will turn to page 15, we talk a lot in governmental accounting about fund balances and page 15 is our balance sheet. Basically what it does is converts the town's financial statement to a very current cash basis. So the only items that are included on here is your cash in the bank and any accounts receivable that we are going to receive within 60 days of the end of the year. So we had total assets in the general fund of \$4,454,000.00, liabilities are \$386,000.00 leaving us a fund balance of \$4,068,174.00 and as of June 30<sup>th</sup> we had designated some of the money there, but you had unreserved fund balance at that point of \$3,198,000.00. If you will turn to page 18, page 18 is a comparison of your actual amount compared to your budgeted amount for the year and your budgeted revenues for the year was \$7,803,000.00. You actually collected \$7,796,000.00. That was only \$6,000 short of your budget for the year and thinks that was very good. Your budgeted expenditures were \$8,330,000.00. You only spent \$7,679,000.00 so that was a positive there of like \$651,000.00 for the year. We had originally planned to spend of the fund balance

\$542,000.00 of the year but we didn't actually end up spending any of the fund balance. You actually increased by \$101,000.00 for the year. So that was good in the general fund where we had originally anticipated that we were going to spend \$500,000.00 of your fund balance, we increased it by \$100,000.00 by the end of the year. Lastly, if you will turn to page 20, these are the revenues and expenditures of your two enterprise funds - the water and sewer fund and the tourism fund, and you can see there for the year in the water and sewer fund we had total revenues of \$3,900,000.00, expenditures of \$3,861,000.00. We had some other income and expenses there of a net of \$46,000.00. While it was small, we did have an increase of \$694.00 in the water and sewer fund for last year. Our tourism fund, we actually transferred some money out of there during the year, so the net decrease in the tourism fund for the year was \$200,000.00 but that still left you a balance of \$3,108,000.00. Overall, the town's records are in great shape. The fund balances are still very good and the percentages are very high compared to what you need to have. Overall, he thinks it was a very good year for the town considering all of the economic circumstances that everyone has faced this past year.

***REQUEST BY SEAN COOK AND JASON MORGAN TO HOLD FIRST ANNUAL "TRY FOR RY" TRIATHLON EVENT ON APRIL 18, 2009 IN CAROLINA BEACH***

Sean Cook, 2 N. Lake Park Blvd., and Jason Morgan, 903 Lowry Court, Wilmington, presented this item. Mr. Cook said they are requesting to hold this event, which will be April 18, 2009, the Saturday morning of the Pleasure Island annual Chowder Cook-Off which begins at 11:00 a.m. They would like the triathlon to begin at 9:15 a.m. They are asking for permission to block off Cape Fear Blvd. to the Hamlet beach access to through traffic and the reasoning for that is that they would like to use the Hamlet parking lot for our registration and for cars to be able to come down Hamlet, drop off their kayaks and their bikes and then drive down Carolina Beach Avenue S. and try to funnel them to the Harper parking lot at that point. He spoke to Chief Younginer and Chief Rorie and Brian and pretty much has everybody on board with them to help out along the way. They would like to use the Hamlet lot exclusively from 6:30 a.m. until roughly 11:00 a.m. that morning and wrap up everything by 11:00 to 11:30 a.m. They are working somewhat in conjunction with the Chamber of Commerce. Everyone who participates gets a free ticket to the Chowder Cook-Off at which they will hand out the trophies. It is a two mile, family fun event. They will transfer over at Hamlet to kayaks and that makes Hamlet very important. Hamlet is the easiest and safest place to get to. They have the required insurance with Eastern Underwriters.

**Mayor Macon made a motion to approve the event and request that staff work with the event sponsors for employee presence and provide free parking in the CBD on this day during the triathlon at the Hamlet lot. MOTION CARRIED UNANIMOUSLY.**

***REQUEST BY EMILIE SWEARINGEN TO HOLD SPECIAL OLYMPICS POLAR PLUNGE ON FEBRUARY 21, 2009***

Emily Swearingen, 830 Cuttercourt, Kure Beach, made presentation as representative of the Special Olympics Polar Plunge Advisory Committee. She believes one of their volunteers has been in touch with the town about the details but they wanted to make an official request as far as using the gazebo area and blocking off Cape Fear Blvd. for the SunCoast Cruisers and having free parking up there just like they have for the past three years. The event will be Saturday, February 21<sup>st</sup> starting at 1:00 p.m. with the plunge at 3:00 p.m. They are officially requesting that the Mayor and any other Council members to take the plunge. The town manager is going to plunge and they would like any family and friends to participate. They would also love to see the Police Department put a team together or have the Fire Department challenge the Kure Beach Fire Department. The Mayor of Kure Beach has volunteered and has already raised \$500. The entry fee is \$50 for adults and \$25 for students. They have a lot of youth groups participating. They are encouraging the entire community to become involved. Last year they raised about \$50,000 all of which goes to activities for the special athletes. Mayor Macon said he would be there.

**Mayor Macon made a motion to approve the town gazebo for vendors and request that Cape Fear Blvd. be blocked off from 9:00 a.m. to 3:00 p.m. for the SunCoast Cruisers to display their cars and signage for parking be dispersed in the appropriate areas for free parking. MOTION CARRIED UNANIMOUSLY.**

***PRESENTATION BY THE CAPE FEAR SOCCER ASSOCIATION***

Peter Broadley, Executive Director with the Cape Fear Soccer Association, 6726 Millens Drive, Wilmington, presented this item. He said they provide opportunities for young people and adults in the area to play soccer at their own skill level. They are a non-profit organization and submit annual audits which are available to anyone and have a very good working relationship with the city and county. Each year they have 14 members on the board of directors. They provide recreation, challenge, academy and classic levels of play with paid coaches for travel teams. There are 3,000+ participants in the recreational level and adult soccer. Possible partnership opportunities for Carolina Beach and Pleasure Island are enhancing existing programs, generating revenue, partnering with other communities and an opportunity to affiliate with NCYSA. Tournament revenues: Seaside Classic in May generated \$5 million plus of tourism dollars in 2008; developing fields will facilitate more usage for tournaments and league play; Pleasure Island hotels will be placed on the preferred housing list. He reviewed the four yearly tournaments which bring in a large number of teams from out of town. For spring 2009 they would like to assess benefits of using Carolina Beach fields for the May 2009 Seaside Soccer Classic Tournament; negotiate competitive room rates with Pleasure Island hotels and offer help with soccer programs to establish locations for facilities. Fall 2009 they would like to enhance programs on the island; identify satellite office location and develop detailed action plans for a recreation program if they were asked to do so. Benefits

would include “on island” soccer for local residents; incremental revenue for local businesses; leverage of expertise of CFSA with 100% full support of staff. Their goal is to enhance opportunities for anyone to play soccer, young people to adults and would like to be able to help in any way they can.

**Councilman Gilbert made a motion to go forward and consider the opportunities for the tournaments and give staff direction to talk to Cape Fear Soccer and their organization about facilitating on island soccer and the benefits of it to enhance our present program.**

After some discussion, **Councilman Gilbert amended his motion to direct staff to follow up with Cape Fear Soccer for establishing a partnership with the tournaments and consider putting out a RFP in the future.**

MPT Wilcox suggested getting feedback from the other group as to what you are proposing and make sure no one is stepping on anyone’s toes.

Mayor Macon asked Mike Bennet with Pleasure Island Soccer Association if he would like to comment.

Mike Bennet, 609 Columbia Avenue, said he was caught off guard by the presentation and was a little shocked and hasn’t had time to put forth a little history about Pleasure Island Soccer and their roots here. They have serviced this community for 17 years. He is the executive director and continues to work with all volunteers, business owners and residents on the island and across the bridge. It promotes a good soccer program and youth program for the entire community. To possibly be undermined by another soccer organization that may or may not benefit the children, which is the ultimate goal here, not necessarily a business venture. Keeping their eyes on the focus of how this will benefit the children first and foremost. If it is a revenue generating entity or proposition that could be one that could be coordinated through the Chamber as well as Council but to have that be the primary focus of entertaining any other organization coming in and taking up already limited field space they have to work with, which has been an ongoing issue for many years that he has been working with Parks and Recreation Department diligently to get those fields in a proper condition to enhance the experience for kids would be kind of an insult, quite frankly, without involving Pleasure Island Soccer and the fact that the presentation was on the agenda without any prior notice to anyone on the board or himself is disappointing. Their main purpose for going to Veteran’s Park was to meet the demand of the youth and families in the area and to supply a year-round program. In doing that, leaving the fields available at Mike Chapel Park for the baseball/softball program. He is a strong proponent of other youth activities, not just one sport and in keeping with promoting multiple sports, making that available to all the island residents and the community, we decided to go ahead and move and not create any sort of turf war between baseball and softball. In doing that, through their growth and popularity, they didn’t have enough goals to accommodate moving to two venues. They didn’t have the space or the goals to exclusively use Mike Chapel Park this past fall. The fields cannot sustain that type of wear and tear with the number of kids they have in the

program. Just over 400 were involved in the program this past spring. Now that they do have field space at Veteran's Park and they have been working with Parks and Rec to grade some clay over the fields and reseed that, which is what they were in desperate need of, a good seeding and maintenance program of those fields, they will be able to move back and play games here as well this spring and forever more.

Tim Owens clarified what the RFP would be, one of the items would be tournaments, one would be men and women's league soccer, could be summer or indoor soccer, soccer in general. It would be a fairly open ended RFP, what can you bring to Carolina Beach in general and how does that affect Pleasure Island.

Mayor Macon called for a vote on the amended motion by Councilman Gilbert.  
**MOTION CARRIED 3-1 WITH COUNCILWOMAN EFIRD VOTING NO.**

### ***SPECIAL RECOGNITION OF GRANT COLIP FOR ACHIEVEMENT IN SCIENCE***

Tim Owens introduced Grant Colip, an 11 year old sixth grader but was in the fifth grade when he did his project. He has been doing science fairs since he was in kindergarten and received a State Honorable Mention for his bird nest boxes vs. gourds project last year. This year he received an EPA award at the State Science and Engineering Fair of NC 2008 competition and went through his elementary school through New Hanover County Science Fair competition and the Southeast Regional Science Fair competition all the way to the state.

Grant Colip spoke about his project. He said he noticed the dune grasses and wanted to find out which dune grass would help better retain grasses, sea oats or bitter panicum. With the help of John Nelms, and he would like to give thanks to him for helping him, with his greenhouse helped him plant bitter panicum and sea oat seedlings and once they both got old enough and more mature, they moved them to two test sites. They went out to the sites about once a month to monitor them and he thought the sea oats would be better because you always see them in the magazines and it just looks prettier. They tracked it on a graph and he saw there was no change in the beginning because the bitter panicum wasn't mature enough to move to the beach until later. At first the sea oats went down but then it started but the bitter panicum just shot up. In the end the bitter panicum did a better job of retaining the dunes. In conclusion, his hypothesis was incorrect and the bitter panicum is the better one to plant even though it looks like a weed but it does a better job of retaining the dunes. So, choose bitter panicum is you're going to retain the dunes.

On behalf of the Council, Mayor Macon presented a certificate of recognition for his achievements in science. Mayor Macon also thanked John Nelms for his help with the project.

***REQUEST FROM PLEASURE ISLAND CHAMBER OF COMMERCE FOR FUNDING THE MOVIES AND FIREWORKS PROGRAM FOR FY 09/10 AND PRESENTATION OF OTHER UPCOMING CHAMBER EVENTS***

Duke Hagestrom made the presentation. He is requesting funding for the summer programs - fireworks on July 3<sup>rd</sup> - \$8,000 and weekly fireworks on Thursdays - \$32,600, for a total of \$40,600 (including clean up); movies on Sunday nights - \$16,500 (includes licensing fees and movie vendor) and other events to include the Beach Music Festival, Chowder Cook-Off and the Seafood Blues & Jazz Festival using the room occupancy tax funds. Requested funds total \$64,600, same as last year.

Councilman Gilbert suggested that the Chamber go to New Hanover County Commissioners to ask for support since over 50% of the chamber membership is in the county.

**Councilwoman Efirm made a motion to approve the funds for \$64,600 for fireworks, movies and other festival events. MOTION CARRIED UNANIMOUSLY.**

**Councilman Gilbert made a motion that, prior to closing off the street that the Council be able to review the street closing plan for the Beach Music Festival.**

Mr. Owens said they have been meeting regarding that, if they do close off the street they will come back with a plan. They are looking at going back out on the beach. Either way they will come back with some plan.

**Councilman Gilbert withdrew his motion.**

***INTRODUCE NEW EMPLOYEES***

Gene Gurganious, Director of Utilities, introduced Aaron Thompson, Utility Maintenance Worker.

***RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE***

The following employees were recognized for 5 years of service: Rick Icenhower, General Maintenance Worker Environmental Division, and Justin Maurice, Chief Water Plant Operator.

***CAROLINA BEACH COMMITTEE REPORTS***

Tom Campbell, speaking on behalf of Alan Pacek, who is sick, for the Business and Economic Development Committee, gave a report. He listed the members of the committee: Alan Pacek, Chairman; Mike Kirkbride, Vice-Chairman; Tom Campbell,

Secretary; Johnny Davis, Jack Lynch, Al Olivolo, and Leeann Pierce. Meetings take place on the second and fourth Friday of each month in the Police Training Room, unless it is occupied then they would meet in the Council Chambers. Everyone is invited to attend. They were established one year ago and adopted the slogan, "Carolina Beach - Open for Business". They have successfully helped several small businesses make plans to open in the 2009 season. Their goal for 2009 is to continue to explore ways to make Carolina Beach a more business friendly community. They welcome all input to make them more successful.

### ***PUBLIC DISCUSSION***

Brenda Armes spoke on lights and rundown buildings. She stated that part of the boardwalk was lit up at Christmas and asked Council to consider lighting all the palm trees along the front walkway and the gazebo for next Christmas at no cost other than providing the plugging system to light them up. They have a small committee who has a lot of lights and a lot of effort they are willing to put into this and they feel it is an enhancement for the CBD of the boardwalk area. She is concerned about the permit and building that is deteriorating across from her business. She said it has been like that for 2 years. This is on the oceanfront and nothing has been done. The town needs to make him do something or tear it down. An empty lot looks better than what is there now.

MPT Wilcox agreed and said he was told a few months ago that the permit was reactivated and reissued and he assumed they would start work on it but they haven't. Regarding the lights, he said the Boardwalk Makeover Group has included that as part of this year's improvements as well - lighting palm trees, buildings and things of that nature and maybe they could get together on that issue and coordinate it. They will be having their second meeting next Wednesday in the Police Training Room at 1:00 p.m. and he invited Ms. Armes to attend.

Mayor Macon said he will try to find out what is going on with the building on the boardwalk and get back in touch with her.

Jennifer Paige, 610 Atlanta Avenue, said she is an artist and she has lived in Carolina Beach for 15 years. She introduced Matt Doyle from Creative Wilmington Non-Profit. Mr. Doyle is the director of an arts organization that promotes art in the area. She has a BFA in fine art with a major in print making and the event they are proposing has been done in large cities and universities. They would like to hold a public art making event where artists will carve 4' x 8' wood cuts and then they will get a paving compactor and roll over these and print them in the street. She is requesting permission to do this on May 16<sup>th</sup> on the east block of Cape Fear Blvd. between Woody Hewett and Lake Park Blvd. The street would need to be closed from 7:00 a.m. to 7:00 p.m. to have time to setup, breakdown and print all day. There would be a reception to follow from about 4:00 to 7:00 p.m. at Le Soliel. They would like to set up a tent at the FEMA lot on the corner. They feel this would be a very positive, cultural and educational experience and would draw people from all over.

**Councilwoman Efird made a motion to allow the steamroller woodblock paint making event on May 16<sup>th</sup> at Cape Fear Blvd., Carolina Beach.**

Councilman Gilbert said they will be helping to host the event and don't expect to take any funds or anything for this, just volunteering some space and asked if Council would like him to recuse himself. Mayor Macon said that is not an issue.

Tim Owens asked them to work with staff.

**MOTION CARRIED UNANIMOUSLY.**

***ADOPT THE CONSENT AGENDA***

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

Approval of the Minutes:

Regular Meeting	December 9, 2008
Special Meeting & Con't Meeting from 12/9/08	December 15, 2008

Set a public hearing date for February 10, 2009 at 7:30 p.m., or soon thereafter, to amend Section 3.9.2 of the Zoning Ordinance to allow for more than one story in accessory structures in residential zoning districts.

Set a public hearing date for February 10, 2009 at 7:30 p.m., or soon thereafter, to consider amending the quorum requirements for the Planning and Zoning Commission.

Adopt Resolution No. 09-950 (Exhibit 1) approving financing with BB&T Bank for the purchase of a 2008 Rosenbauer 101' Platform Fire Truck.

Notification of line item budget transfers in the Fire Department.

**MOTION CARRIED UNANIMOUSLY.**

***Request by Applicant to Table to 2/10/09 - CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT LOCATED AT 800 CANAL DRIVE AND 801 CAROLINA BEACH AVENUE NORTH (PIN 313007-68.5794.000, 313007-68-7700.000)***

**Mayor Macon made a motion to table item until the next Council meeting, February 10, 2009 at 7:30 p.m. or soon thereafter. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER LOCATING OUTDOOR BASKETBALL COURTS ON TOWN PROPERTY IN THE VACANT LOT IN THE AREA OF 7<sup>TH</sup> STREET AND BEHIND THE CAROLINA BEACH MUNICIPAL ADMINISTRATION BUILDING, 1121 N. LAKE PARK BLVD., DESCRIBED AS (PIN: 313006-39-2370.000)***

Ted Lashley presented this item. This is a request to consider construction of an outdoor basketball court to be located on municipal property in the vacant lot in the area of 7<sup>th</sup> Street behind the Carolina Beach Municipal Building. As discussed at the November meeting, they looked at several different locations such as McDonald Park, Carolina Beach Lake, the parking lot here, Mike Chapel Park and came to a consensus with Council, staff and the Recreation Committee that the best location for the court is at 7<sup>th</sup> Street. It is near the Recreation Center which can be used to offset some practice time for the basketball leagues. They are going with the high school court dimensions, 84' in length, 54' in width with two main and four side goals. The project will also include some fencing along 7<sup>th</sup> Avenue and the parking lot for safety reasons to keep basketballs from rolling out and little kids from running out in the street. At a future date they would like to include a tot lot and playground equipment in the area. Maybe do that in two phases, do the outdoor basketball and then work on the tot lot in the next year's budget or look for funds in this year's budget. There is funding in the Capital Improvement Program this year for this project in the amount of \$20,000. This is also a project that was brought up by a committee and committee approved it, approved the location and it is also a project that was highly mentioned in our Parks Master Plan that the public would like to see outdoor basketball. He feels it will be a great addition to the Recreation Center. They are jammed with just one basketball court during basketball season and this will give an optional area for practice. They feel this is the optimal layout to include more area for a tot lot and play area but it could be changed or adjusted as needed.

Tim Owens said this is to approve the location, but it would have to come back for final approval. The \$20,000 that was in the budget is pretty accurate but could be a little more.

Karen Kirk, 163 Old Mariner's Way, said she is the one who sent the e-mail and she appreciates Councilman Gilbert and Tim Owens responding and answering her questions. She thanked everyone for continuing to think about how to increase recreation activities in our town. Just like the presentation from the Chamber, they want this town to be attractive to people and everyone who lives here and comes here to have a good time. One of the things that she thinks her neighborhood is thinking about as they think about this potential proposal is, yes, this is a highway business zoned area back here but since it abuts next to a residential district, they want to see if they can come to some agreements about what would make it good for them and the town. The basketball court is going to right in the line of sight of her front porch and will impact her. She would like to insure in her own head that the area of this highway business district, the way it's zoned, is that it could potentially be sort of used as a public park or a public recreation site. One of her reasons for asking that question was because, she doesn't mind living next to a recreation center that is member driven. She is a member and attends classes and loves the membership option over there. She was kind of hoping that the membership option would extend to these basketball courts as well. That gives her neighborhood a little bit

of assurance of who is going to frequent and use those basketball courts. She understands that if it is a publicly zoned kind of area for a park or recreation center, you might not be able to do that. That was one question she had. A second question was about the lighting. Mr. Lashley may remember that when the spotlight went up on top of the building over here that she called a number of times because that light shines directly in her living room and the rest of her house and it is quite bright and they asked if it could be turned off at a reasonable hour and right now it is being turned off between 11:00 and 11:30 p.m. which is not unreasonable but if there were lights potentially being put up around these basketball courts, that would be concerning to them, especially in later hours of summer or early hours of winter. She would love to hear about the lighting. The third point was about the noise, obviously, and they will definitely be watching closely to hear how that decibel noise level correlates to the drilling of the basketball and that kind of thing. But even more than that, since they are a residential neighborhood with a lot of young children, how an assertive athlete could potentially get louder and rowdier and potentially use language and that kind of thing. They are concerned about that. She pointed out Councilman Gilbert's response is that one of the things he brought up was the tot lot that could go along with the basketball courts. For her purposes, that would be attractive. She is a child psychologist and is all about things for younger kids and if that is part of the planning if the basketball courts do go up, then she feels they would have a little bit more assurance that it would be a family friendly place to be, if that playground was right next to it. She hopes they are also thinking about trash receptacles to ensure there would be no trash around the back of their homes. If there is going to be a fence, is it going to be locked at a certain hour. One of her concerns is what happens to the oversight and management of that basketball court after the recreation center closes, especially when they close early on a Saturday and Sunday. Who is going to be around but Chief Younginer for them to call and say they are still over there at all hours. The final thing is, she is noticing in this picture, they do enjoy some of that tree barrier against their fence and wonders if that is something that could potentially be put there to help as a sound buffer. The grove of trees across 7<sup>th</sup> Street that is part of the Carolina Beach State Park, seriously acts like a sound bouncer. They can sit on their front porch and hear everything that happens at the recreation center, in the parking lot and everybody on the opposite side of the street from them and they are concerned about that sound issue from the basketball court as well. Those are her points.

Paul Feldon, 102 Old Mariner's, said that with the problems they had several years ago, he is surprised they are revisiting this again. It is zoned correctly this time. It wasn't zoned last time when the skate park was coming through but the fact of the matter is, you are going to be in violation of the noise. He has been testing today at his lab in Raleigh and at 80' bouncing a basketball you're going to be in violation. This is one thing to think about. Second of all, we're in a recession, cutting budgets and for someone to come up and say now let's spend \$20,000+ on a basketball court, he finds irresponsible for the board to even consider it. Next, you have a piece of property there that is probably valued at \$500,000 to \$600,000 and there are better uses for that - new senior center, bringing it over here. He said this would be a perfect neighbor for a neighborhood. Another example would be our library. No disrespect but it is terrible. We should take a look at it and be ashamed. As a former college athlete, he believes in

sports but the fact of the matter is to be fiscally responsible and provide something that everyone on the island is going to use. The senior citizens who could use this new senior center and those that pay taxes over the years to build this island and they pay everyone's salaries. On his board of directors is Senator Tony Rand and he was speaking to him about this and asked why in the world anyone would think about doing this and how long the recession is going to last. This is the man who has probably the most knowledgeable aspect of what is going on and he said he didn't know if it is 12 months, 18 months or 2 years but you are going to be looking for money. Regarding the people on this island, there are foreclosures, people losing their jobs and to sit there and say let's build a basketball court, he thinks is ridiculous. There are 33 homes in Old Mariner's Way. They pay a lot of taxes and he would like rather than to hear someone say they were there first, they are part of this community. When he built his house and bought anything inside his house, he used Carolina Beach businesses. This is his community and he would like to see the board maybe use other alternatives to take this basketball court. Why not put it in the park next to the skate park. All the things they said about the skate park turned out to be correct, they problems you are having. If you put that skate park behind his house, other than there would have been a lawsuit and it would have been closed right now, it's the same thing with this right here. He has no intentions of this basketball court taking away the quiet use of his property. That is a serious problem but when you're asking for a 15% cut across the board here and with a recession coming up, crime goes up when a recession comes along and to sit there and cut the police budget or anybody's budget he feels they should take a very hard look at what you are doing. It is not responsible at all. If the economy turns around and you start having more taxes, he will be the first to line up and say to expand the gym. Let's put two courts in there to use all year round but to put one out that will have limited use, at these economic times, he thinks they should look at very carefully. If it turns into a lawsuit, that is something you better factor in also because you will have to defend it.

Jim Carlson, 120 Old Mariner's Way, represents the homeowner's association board. He has polled several other property owners in there and they all concur with the previous two speakers. They have some concerns. He specifically is concerned about the drone of the basketball bouncing and interrupting all of the neighborhood's quiet enjoyment of the property.

Britt Arnick, 180 Old Mariner's Way, said he likes basketball like everybody else, but being 50' away from the court he doesn't want to hear the bouncing all day long. He works at 3:00 a.m. in the morning so he has to go to bed at 8:00 p.m. at night and he is sure they will be out there playing basketball at that time. He feels this is just a poor location and feels the skate park would be a lot better location.

MPT Wilcox concurs with the comments about the budget issue and does not know how he feels about the basketball court right now because there is no information here. Nothing about the hours of operation, whether there will be lights, any type of noise buffer. There is nothing in this package. He would be interested in hearing what is in this package so he could make a decision.

Mr. Owens said they could make recommendations. He was hoping Council would kind of enlighten staff as to what the hours would be. He will go out on a limb and say he doesn't personally, necessarily like to see lighting there. He would rather see the tot lot closer to the residences. If they decide to do it here, he would rather see maybe some Leland cypress or something like that to hopefully block out some sound. There would be a fence around the basketball court but that is primarily because of safety issues. The same would be for the tot lot. We don't have a budget yet but he is guessing \$40,000 to \$50,000 with the tot lot. There is appropriate, existing parking there. If they went forward with it, that is how he would see it going.

Councilman Gilbert said he has listened to our teen committee on their desire for a basketball court near the recreation center to help supplement some of the practice times. Looking at the plan he thinks they can orient it away from the homes, but put in a buffer. They live on a small island and there are not a lot of places for basketball courts. If they want the basketball court to get used, then they put it near the recreation center where the kids who have asked for it and the committee who supports it would like to see it. With respect to funding, we have had a capitol improvement program for many years. There was a percentage of property tax dollars, he can't quote exactly how much, but for a number of years, maybe 6, that a basketball court has been on the wish list and there is property tax dollars for all those years, pennies from that were diverted and that's where the funding is coming from. You could say times are tough but these folks have been asking for a basketball court for a very, very long time and he thinks after they get the budget done and they look at it and there is not room for \$20,000 to \$30,000 for a basketball court, then he thinks that is where they go. He would like to give staff direction from Council to go forward with considering how much it is going to cost and how do you implement the tot lot so we can give direction to go forward with fencing and buffers. You come with a package come budget time and we can say yes or no on it. He thinks they have done a lot of that anyway. He would say no on lighting. There is going to be a fence around it so, hours of operation in the winter when it gets dark around 5:00 p.m. that things would cease. In the summer it gets dark around 9:00 p.m., maybe that is a consideration. If people are using the basketball court in the summer at 9:00 p.m. and it becomes a problem and we have to implement hours of operation, then we consider it then. He doesn't think they should put hours of operation on it now on the front end of it. Let's keep it open, see if people use it and if it becomes a problem, then we regulate the operation of it. There are a lot of things we could use that for but, cost-wise and near future, these folks have wanted a basketball court for a long time and he would like to support the committee who has asked us to go forward with it. He supports the tot lot and the basketball court. He understands the concerns on the noise but he feels they can create a buffer that will give you a better view and maybe cut down on the noise.

Councilwoman Efird said they have had so much trouble with the skate park and if we are going to do this near a residential area that we put a lot of thought into it. We still haven't solved the problems with the skate park so to take on another project right now like this - she is a little bit leery.

Mayor Macon asked Chief Younginer how the skate park is going. Mayor Macon said he saw the schedule for our folks to go out there, in conjunction with the police department and the parks and recreation department, to keep an eye on it.

Chief Younginer said the rowdiness has gotten a lot better with more regulation and parks and recreation has done more of that than anyone else, tried to do that purposefully. We have gone back to a cycle of them not wearing helmets and things again so we are going back out there on a regular basis trying to get them back into that. We haven't had any violence or things like that going on. There have been no calls from neighbors other than about the helmets.

Mayor Macon said he would like to see a better orientation. The further away the basketball court from the subdivision, the better. He doesn't think it needs to be lit up, playing during daylight hours is fine, with a limit on time to start in the mornings. He thinks it can be controlled with it being right at the parks and recreation and the police department being right there. His concern is not so much the basketball as the cars backed up with the boom boxes going out of the back of vehicles while they listen to music. That is where your problem is going to be.

Councilman Gilbert said he would like to see some discussion at budget time, if you can get something to Council where it is shovel ready. They have some funds over at New Hanover County they have been sitting on.

**Councilman Gilbert made a motion to give staff direction to come up with details that they can more functionally budget and then bring it back for another public hearing with more functional details on it and get something done in the near future.**

MPT Wilcox said he has no problem working through the details and putting some type of proposal together but he needs to see the proposal before he would feel comfortable with it and make sure the neighbors' concerns are taken into consideration as best as possible and still have concerns about the budget. If we need practice areas, maybe we should be talking to the elementary school about using their courts. He is not sure if they are or can be used.

Mayor Macon said he would like to see an attractive fence, something that would complement the area rather than a chain link fence.

Councilman Gilbert suggested possible landscaping around the fence as well.

**MOTION CARRIED 3-1 WITH COUNCILWOMAN EFIRD VOTING NO.**

***CONSIDER AMENDING THE TOWN'S VENDING ORDINANCE TO ALLOW FOR AN ADDITIONAL BEACH VENDOR***

Jeremy Hardison made the presentation. He stated that the applicants, Marshall and Kelly Cooper, are requesting an amendment to the town Code of Ordinances that would increase the number of vending allowances on the municipal beach strand from two vendors to three vendors. They would like to operate a pushcart on the beach but before that takes place, they would like to change the current vending licenses of two on the municipal beach strand. Vending permits in the area requested have been issued to others who have made requests to Town Council, one of which expires in January 2009 and the other expires June 2009. Council reviewed policies on vending in October of 2007 at which time they codified the policies for vending saying that the number of vending licenses is restricted to three different areas of the town - two on the municipal beach strand, four at Freeman Park and five in the town limits. At this same meeting, Council also voted to put a sunset clause on vending for December 31, 2010. After this date all current vending permits will expire giving the town the opportunity to re-evaluate its vending options. Vending is not specifically addressed in the Land Use Plan. The proposed location is 106 Carolina Beach Avenue N., Jupiter Jacks, which will be moving out and the applicant's will be moving in and selling the same service.

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

Matt Wilson, 6317 Brandy Street, said he wondered why there weren't vendors going up and down the beach and he applied for a permit last week and was informed that the town only allows two. The primary area he was interested in working is Harper Avenue to Salt Marsh, on the ocean, possibly selling sodas, water, ice cream, hot dogs. He was not aware of the brick and mortar rule. He just learned about that this evening. His other concern was that staff told him you cannot run a hot dog cart on the boardwalk unless you had a business on the boardwalk. He asks that Council reconsider that. From 10:00 p.m. he thinks most of the businesses and restaurants are closed and he would propose setting up a hot dog cart from 10:00 p.m. to maybe 2:00 a.m. to service some of the bar traffic that goes through that area because he thinks most kitchens close in that area between 9:00 p.m. and 10:00 p.m.

Tom Campbell, 314-1 Columbia Avenue, said he believed limiting the number of beach vendors to two is punitive to our beach and the goal we are trying to accomplish here being a tourist area. He feels that we should be putting more services down where the tourists are. To require someone to have to gather all the kids up, get all the blankets up, travel up to the boardwalk to buy a snow cone or something like that and then have to go all the way back to the beach is punitive to them. If they are not given that opportunity, he believes they will choose another destination in the future. He is in support of this vending text amendment that would at least give us another vendor on the beach.

Marshall Cooper and his wife thanked the Mayor and staff for meeting with them, also Gail McClosky and Duke Hagestrom with the Chamber for their help. They are requesting Council to consider the text amendment favorably for them as the service they will provide beachgoers will be a benefit to tourists and locals alike and they plan to be ambassadors to other businesses as well.

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

Councilman Gilbert said he doesn't understand the reference of 160A and 170A in our vending ordinance which regulate solicitation campaigns, flea markets and itinerant merchants, the latter being an established retail store in the county who transports an inventory of goods to a building, vacant lot or other location and who, at that location, displays the goods for sale and sells the goods for retail, etc. He asked how are we using a peddling a soliciting ordinance where the general statute is very clear of what a city may by ordinance do and what we are doing is specifically opposite. We are regulating brick and mortar businesses with respect to Duke Hagestrom and Shawn Cook. He doesn't understand how we can use this general statute to apply here. He can see we should have the peddling and soliciting ordinance for the more transient operations but it should free Mr. Hagestrom and Mr. Cook to operate under another ordinance. He is confused reading this where he doesn't think it applies to a brick and mortar business and that is where he would like the attorney to weigh in and help him understand how they can apply this general statute to our brick and mortar businesses when they don't fall within that definition.

Brenda Armes said the guy who doesn't have a place of business cannot sell hot dogs. He has to have facilities that fall under the Health Department rules and regulations. That is mandatory. He has to have dishwashing facilities and he has to have a location. This is mandatory for any type of food. Ice cream, that sort of thing, falls under the Department of Agriculture. So you have rules and regulations and guidelines through your state already and New Hanover County. Each one of us is graded by the Health Department or the Agricultural Department. They come in and inspect our places and in order to do any type of food, it is mandatory for you to be inspected by the Health Department.

Mayor Macon said he may have a cart situation, they have special, specific ordinance for that, and he may have a place in another location but not on the island.

Steve Coggins, Town Attorney, stated that the enabling statute to which Councilman Gilbert refers to does limit itself to itinerant merchants and peddlers, that sort of thing, empowering the town to regulate that kind of activity that is defined there. There is a specific exemption with respect to those businesses that have a physical location from which 90% of their revenues come from that close by, physical location. He suspects that looking at that particular state statute in the definition of what is an itinerant merchant and what is a peddler and the exemptions about that is what has driven a lot of what is in this present ordinance that you have that deals with vending. What is unique about it is

that all of the activity that takes place, as he reads this ordinance, is on recreational areas that is owned either by the state or is owned by the town. There is a separate authority that the town has to regulate uses and conduct in recreation areas under 160A-350 which is Recreation Enabling Act. So there is additional statutory power that goes with that. A speaker just raised a great point about that there are various rules that are to be applied by the state itself as opposed to the town, and that is a separate matter. Some of this material is within the province of the State of North Carolina to enforce and some of which they have actually delegated to towns with respect to regulating activities that take place within the public trust. It is actually worthwhile taking a look that, unlike a lot of areas, there are places on, as he understands it, Carolina Beach that is actually titled in the name of the Town of Carolina Beach by virtue of the old building line. There are places that are actually titled in the name of the State of North Carolina by virtue of that same statute and then you have the areas of the public trust all of which fall within the definition of recreational areas in the separate enabling statute conferred upon the town by the General Assembly to regulate activities within, if you would, your parks and your public places that are used for recreational activities. Are there any specific guidelines within those? No there is not.

Councilman Gilbert said the attorney is probably talking about the lake. He said our ordinance allows to vend on public and private property, this is peddling and soliciting so, what his question is, he doesn't understand our ordinance that we have enacted here, but what he doesn't understand is, Duke owns his business, brick and mortar, and he can walk out to a corner and solicit bikes or maybe not at his brick and mortar store. It may not be on the beachfront but it may be on a corner, private, public, whatever lot, so where he is confused is how does 160A apply to that application? He is not asking about public parks or anything like that. What he is asking is he doesn't understand how we can apply our peddling and soliciting license to Duke Hagestrom.

MPT Wilcox said he understood Councilman Gilberts concerns but this is not what was on the agenda and he recommended that this be put on the agenda for another time and go ahead with what was advertised for tonight's agenda.

Councilman Gilbert said his question is that we don't have the power to do this because the general statute doesn't give us the power to tell him that he has to meet our peddling and soliciting ordinance.

MPT Wilcox said if we are doing it wrong, we have been doing it wrong for a long time and what we are dealing with here is a request to allow additional vendors so he thinks we need to address that and then we need to take this issue up, if the ordinance isn't consistent with state statute, we have some other concerns and he thinks we need to take that up at another time.

Councilman Gilbert agreed.

Mayor Macon agreed with the town manager and feels they have the right to regulate, we don't have to and that statute covers it if we don't but if we choose to we can add additional regulations for access to certain areas of the town.

Steve Coggins said that what they are empowered to do, regarding regulation of this activity regardless of its location, is in fact defined in 160A-278 that refers you therefore to all the many provisions within Chapter 66 of the North Carolina General Statutes. When you peruse, and that is the statute that deals specifically with peddlers, itinerant merchants, especially markets, when you peruse those statutes it appears that your ordinances were written with them in mind, their various exemptions, their exceptions, that sort of thing. Is there a case law that is on point that defines what is the scope of the activity of a municipality in this area? No, there is not.

Councilman Gilbert asked if 160A/170A and 66250 is written around transient merchants, itinerant merchants, peddlers and that.

Mr. Coggins said that is the definition that is used, but Chapter 66 goes on to provide other provisions as well.

Councilman Gilbert said he would like some consideration in the future when they go back and look at this ordinance and ask that they look at it from an attorney's perspective, how they can apply this on our brick and mortar businesses.

Mayor Macon said we need to deal with it once and for all because he feels the sunset clause may have some issues and it may be done away with. Councilman Gilbert made a good suggestion that maybe we look at allowing some flexibility and maybe, if you have a brick and mortar, there are certain things you are allowed to do. Even then you are still vending on public rights-of-way and public property.

Councilman Gilbert said that is a separate issue with maybe a separate ordinance and there may be general statutes that support us to do that but not 160A/170A.

**MPT Wilcox made a motion to approve the text amendment, based on the applicant's request, to expand it to 3 vendors at this time and move forward with addressing these vending issues.**

Mayor Macon said he has received phone calls from more than one brick and mortar business who is going to come back and we will have to advertise it again. He asked if they want to do it incrementally and have to advertise each time or put a bigger cap on it that would allow us time to deal with the issue at hand. MPT Wilcox said it was only advertised to change from 2 to 3 but if we can go outside the advertisement then we can remove the limit as far as he is concerned and then take it up at another time. There was some discussion about it, and it seemed to be the general consensus that it could be amended according to the way it was advertised.

**MPT Wilcox changed his motion to remove the limit entirely on the vendors for the strand area and would like to see the Business Committee and Arts and Activities Committee jointly meet with the Chamber, vendors and Boardwalk Makeover people and go over issues and somebody from staff to facilitate that meeting and then bring those recommendations back to modify the vending ordinance before the sunset clause is up (*Exhibit 2*). **MOTION CARRIED 3-1 WITH COUNCILMAN GILBERT VOTING NO.****

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

Mayor Macon called the meeting back to order.

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

Ed Parvin presented. He said they met on this item last month where several questions were brought up. He has identified 8 questions Council had. The town manager and staff met with the town attorney and agreed upon the changes. He said a vested right is when a land owner and his invested money had gone through an approval process for a site specific development plan, that gives him a longer time frame to start the project. If there are changes to the zoning ordinance then they will not have to meet those changes during that time frame. He reviewed the 8 questions:

1. Limitation on statutory vesting: General Statute said it is between 2 and 5 years, our ordinance is for 5 years but can be limited to 2, 3, 4 or 5.

2. Types of vesting: There are several different types of vesting - building permit has 6 months with a certain amount of time before the next inspection to keep the permit active; zoning permit, a site specific development permit like being discussed tonight is 2 to 5 years; conditional use permit (CUP) is 2 years with an allowance for 1 additional year; common law vesting which is a little more complex based on the investment you made on your property.

3. Does approval of a site specific development plan restart the clock for a CUP? Yes it does because you are approving a new CUP and site specific development plan or you could be approving a new permitted use with the site specific development plan. The key there is you are approving it under the current code so, once it comes back if there are any changes to the zoning ordinance, it is going to have to meet that current code.

4. Conditional use permit vs. site specific development plan: A conditional use is a type of use. A site specific development plan is a type of site plan that applies to permitted and conditional uses.

5. Site plan vs. site specific development plan: A site plan is required for all of our uses and a site specific development plan is a site plan with additional criteria in order to receive a larger vested period.

6. Beginning of vesting for a site specific development plan? That starts on the date approved by the Town Council.

7. Why is a site specific development plan located in Article 17? We left it there because it is a type of site plan so there are site plan requirements and then a separate type which is site specific development plan. This may or may not be moved during a reorganization of the zoning ordinance.

8. Should we develop a separate process for considering site specific development plans? We decided that this is the way that all of the communities in North Carolina have done it. There are some that did create a separate process when a permitted use asked for a site specific development plan but the majority used a CUP process to get additional years for a site specific development plan.

Those were the questions that staff had from the last meeting and there were some minor changes to accommodate those questions in the ordinance.

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

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

**Councilwoman Efird made a motion to adopt Ordinance No. 09-773 (*Exhibit 3*). MOTION CARRIED UNANIMOUSLY.**

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

Tim Owens presented this item. He said this was discussed at the last meeting about having a public hearing and coming back with a revised ordinance. They don't have the revised ordinance yet but can open up the public hearing to comments on some of the proposals. They have discussed how many folks get charged reconnect fees which is about 18 to 20 and most times we work with them if they are going to be late. We recently reduced our cut-off amount to \$50 following each event. The memo has a recommendation that we could go to if Council wishes to proceed, go to a 40 day threshold. We're trying to make it so that our staffing, etc. pan out similar to what they do now. After looking at it, he has given them an addendum to the original memo

making it closer to 54 days. That would put your cut-off time about the same time the following month. The potential difference in bad debt would be roughly \$40 so there is a current situation now where your bill could be outstanding for the 26 day current cut-off period. If you were to skip town and we don't go through a debt setoff or something like that, the potential debt is \$163.58. That's just the standard customer who only meets the minimum. If we decide to go to a later timeframe, 54 days, the total due if they were to skip town and we didn't do other collection measures, would be \$206.72 so there is a little bit of difference in the potential loss of revenue. He reviewed a bill layout with an example of a current balance of \$61.39 and a previous balance of \$61.39. If there is a previous balance, the bill could say water disconnected 2/26/09 if previous balance is unpaid so someone could come back and pay the previous balance up until 54 - 56 days later. He feels it is complex and if there are any real technical billing questions, we could always wait until our budget meeting and have our billing staff come in and talk about it. We are limited in space with our formula and forms to be able to explain to our customers. That is the down side to our billing and software. His recommendation is that they continue to stay at the 26 days but if we did want to go further we could extend that out to 54 days for people to pay that first bill. There were some questions regarding second notices, which we can do but our current billing situation, from what he understands, they would probably get close to 500 to 1,000 notices that would go out. These 18 to 20 people a month who would pay their bill or get a reconnect fee are after whittling it down to folks who are already cut-off. The only way you could really do it is to query the system for anybody overdue. Those are things we can do if Council wants to go that route and can be implemented fairly soon or, if Council has some real technical billing type questions, we can wait until meetings later in February or March.

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

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

**Councilman Gilbert made a motion to go forward with extending payment time to 54 days. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER AMENDING CODE OF ORDINANCES, CHAPTER 6 HARBOR AND MARINA, SECTION 6-16 TOILET AND SHOWER FACILITIES ON BOATS, PROHIBITING DISCHARGE IN JURISDICTIONAL WATERS OF THE TOWN***

Chief Younginer made the presentation and said this is part of our clean water and part of the marina items that were brought up earlier by Captain Bartley.

Mayor Macon said to the audience that the town is talking about designating a no discharge zone in our areas that are under the control of the town so that people are not dumping the waste fluids from their boats into the water.

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

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

**Councilwoman Efirm made a motion to adopt Ordinance No. 09-774 (Exhibit 4). MOTION CARRIED UNANIMOUSLY.**

***CONSIDER MODIFYING THE METHOD OF CALCULATING WATER AND SEWER IMPACT FEES FOR RESTAURANTS***

Mayor Macon pointed out that he currently owns a business and has a CUP for a restaurant that is currently looking at expanding where they are at with some additional restaurant type facilities and asked to be excused on this matter.

**Councilman Gilbert made a motion to excuse Mayor Macon from voting on this issue. MOTION CARRIED UNANIMOUSLY.**

Ed Parvin made the presentation. He said planning staff conducted a study with a goal to find an equitable method for charging water and sewer impact fees that doesn't depend on seating. It is difficult for restaurants to anticipate the total seating when they come in for approval. Gross floor area is very objective, they will know what their fees are going to be and that is from the restaurant side of it. From the staff side of it, enforcement is difficult as seating continuously changes especially for a tourism community like Carolina Beach. Seating is definitely going to change from summer to winter months. The purpose for the impact fees in general is to recover the cost associated with system capacity development. There are generally two calculations: 1) system buy-in which is paying a proportionate rate as other customers have paid or an 2) incremental cost which is a fee based on the incremental cost to expand system capacity to serve your new users. Basis for the fees at Carolina Beach were made by utilizing other communities with similar characteristics to the Town of Carolina Beach to come up with the current impact fees. Credit is given, outlined in the budget, for prior uses such as the Hilton where the Ocean Plaza was so they were given credit for all the different uses that were existing in those businesses. To convert they used three different methods. Conversion #1 looked at a change that we had just made converting parking requirements from 1 space per 3 seats to 1 space per 110 sq. ft. of gross floor area (GFA). Since impact fees are \$250 per seat now and the average restaurant has 3 seats per 110 sq. ft. then the cost would be  $\$250 \times 3 = \$750$  or \$750 per 110 sq. ft. Conversion #2 we took a sample from Carolina Beach which was 11 existing restaurants looking at the current impact fees paid based on if they all paid \$250 per seat knowing they may or may not have paid that due to changes in fee amounts and then dividing that by the GFA x 110 giving an average paid of \$596 per 110 sq. ft. Conversion #3 utilized the average home of 3 bedrooms. This size home paid \$4,500 and based on the average amount paid by the 11 restaurants and the 3 bedroom home you can determine the percentage restaurants pay above what a 3 bedroom home

would pay which would convert to \$540 per 110 sq. ft. So they came up with 3 methods and 3 different costs. The goal was not to increase or decrease but to convert over to an equitable conversion using something other than seats and we were looking at square footage. They took their write-up to the Operations Advisory Committee and they recommended staff's recommendation which was to utilize the average of the three which came out to \$629 per 110 sq. ft. of GFA or \$208 per 110 sq. ft. of GFA for outside seating. Using the parking standards he converted it to 100 square feet the fees would be \$572 inside or \$190 outside. The Operations and Advisory Committee liked using the 110 square feet because they liked using it for parking. They took it to Planning and Zoning as well. Outdoor seating was based on a 4 month season and P&Z thought it should be based on a 3 month season and converted to \$90 but they still recommended that we keep the average of the three methods which was \$629 per 110 sq. ft. of GFA.

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

MPT Wilcox asked if anyone would like to speak.

Brett Keeler, 615 Carolina Beach Avenue N., representing Blackhorn Bar and Kitchen and the restaurant they will be building in front of the Marriott, Tortuga. He said they have had a problem with seating because business fluctuates. Regarding the 3 month vs. 4 month season, they might use the seats in December but there is not the people or business here to charge the businesses for year round. The \$500 fee used when they first moved here 4 years ago was arbitrary and Council thought that was too high so it was split down the middle so where did that \$500 per seat come from? He thinks the highest seat between Wilmington, Kure Beach and Wrightsville Beach was \$15. It's a big barrier for where we want businesses to come here. With the packet that he saw, he thinks the highest that he was for 100 seat restaurant was \$25,000. If a chain restaurant wants to come in here, aren't we going to get more in taxes long-term than \$25,000 that is going to take them and go over to Monkey Junction? Ed, in his presentation, said new customers. An existing building that is retrofitted doesn't get any allowances so new construction is charged just the same as somebody that wants to go into the building next door. What is the difference between existing building and new construction? We were credited with \$2,400 based on the fact that somebody thought that we had 2 water closets in the building when it was a retail store. Actually we had 3 water closets because there was 1 upstairs in an apartment. When was that taken from? If you talk about inflation, \$2,400 in 1982 does not relate to \$2,400 present day value. In the conversion sheet where Ed came up with \$596 per seat, that doesn't equate because he saw on the line with the Blackhorn that we paid \$32,000. He knows from their books that they paid around \$40,000 so that was incorrect information in there. With Tortuga, we are going to have to put in an 8" line down Carolina Beach Avenue S. From talking to staff, it is going to cost us about \$60,000 to do that for our fire and we are not going to get credit for that. Based on whatever fees are put in place after your decision, whether it is for that 300 seat restaurant, which is 5,000 sq. ft., were not going to get any rebate or credit for the \$60,000 in infrastructure improvements that we are doing. When we talk about outdoor seating, how do you measure that GFA? In the plans for Tortuga, there are under areas,

different beach areas, different sand areas. Who says were going to use all of it for seating, so how does that get calculated? He thinks there are a lot of problems from the competitive standpoint. We're not sitting good if we do this \$621 for 110 sq. ft. He loves the 110 sq. ft. because a lot of headaches would be gotten rid of if you know how much you have to pay when you come in here and not based upon seats you're paying premium dollars to buy.

Tom Campbell, 314-1 Columbia Avenue, said it is his opinion since other municipalities in our area use the cost per seat to calculate the fees that we should be no different. He thinks the fact that Dominos pays no impact fees because they don't have seats is an anomaly. He thinks the restaurant owner wants to know what his fees are going to be and he needs to be in charge or in control of how he configures his restaurant whether it be tight seating or loose seating. He thinks the number of seats is significant and the best way to calculate it. If we look at the other communities in the area, he has some data that they looked at earlier in the year in 2008, Kure Beach is charging around \$115 a seat, Wilmington is around \$106 a seat and Wrightsville Beach is around \$5 or \$10 a seat. How that equates to us is hard to say because he knows our water requirements and our availability is different than those communities. However, he thinks that we need to stick with the per seat calculation and need to drop our per seat calculation from \$250 to at least \$130 to be more competitive if we are really going to be business friendly.

Greg Reynolds, 711 Canal Drive, said he just wanted to address the exterior seats. The reason Planning and Zoning went to \$90 had a lot to do with the fact that that is equivalent to what the fees are today. It's \$30 per seat so 3 seats are equivalent fo 110 sq. ft., we didn't want the number to go up. You see from this \$208, what an exterior seat costs today, we felt like that was the wrong direction. We really want to get the fees down so we'll get new businesses in here. That was the disparaging part of that. He likes not counting seats, Planning and Zoning doesn't have the staff to count seats. Let's go with the square footage rule, let's find one we all agree with that way we're out of the seat counting business. People can take seats out and put them in and we won't have the problems we've had in the past.

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

MPT Wilcox said he would like to see more examples and maybe take some existing restaurants and some proposed restaurants and look at some exterior and interior examples and compare them to the \$250 per seat to the square footage approach and maybe some recommendations from the Business Advisory Committee and staff for what would be an appropriate base value would be.

Staff will come back with some examples of a diverse set of restaurants, fast food as well as regular sit down types, and show examples of what would be the conversion fee if someone were to come in today and say they want to build this anew and what would that be vs. what we would be charging on a per seat basis and show Council what the differences would be.

**Councilwoman Efird made a motion to table this item to the February Council meeting. MOTION CARRIED UNANIMOUSLY.**

Staff will need to re-advertise the fee portion of it.

### ***SAFE ROUTES TO SCHOOL GRANT APPLICATION***

Ed Parvin presented. He said staff presented the Safe Routes to School Program grant to Council last month. Tonight they are asking Council to adopt a resolution so they can move forward with this application. He gave a brief overview. The goals are to encourage and enable students to walk or bike to school, promote health and safety and reduce traffic, pollution and fuel consumption. The grant can provide assistance in project management between \$100,000 and \$300,000 for infrastructure improvements such as sidewalks and multi-use paths. It will cover up to 100% of the project costs. The grant requires no match but encourages it. The benefits are little cost to community, safe routes for non-motorized transportation, promotes health and safety of the community, improved infrastructure and increased interconnectivity within the community. The project is going to be around the Carolina Beach Elementary School but connecting to other areas throughout the town, a crossing point with a refuge island, and a multi-use path along Harper Avenue and Clarendon. The project cost is \$387,381. The grant is only for \$300,000 so the town will have to pay \$87,381. He showed an overhead of the proposed project.

Tim Owens said they have been working on this for a couple of years. They have met with the Parent Teacher Organization, have done surveys, some of the planning was based on some of those surveys, and we did a distribution map. They were trying to pick up the most folks that we could at that time who were living in Carolina Beach for them to be able to traverse to school safely. There are secondary impacts here that also are considered when they start looking at this grant such as how does it tie in to other parks, other bicycle facilities and one of the main goals was just to complete that grid system around the school as well as try to get people from further distances to the school. There is another part of this too, we did receive and did talk to DOT today and, as far as we're concerned today, we are still going forward with the refuge island and the sidewalk addition that was also some of the Safe Routes to School money and the other was discretionary funds. He put \$40,000 in his memo and it was \$87,381 as a match.

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

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

**Councilwoman Efird made a motion to adopt Resolution No. 09-952 (*Exhibit 5*). MOTION CARRIED UNANIMOUSLY.**

***REVIEW PARKING MANAGEMENT CONTRACT WITH LANIER PARKING, CONSIDER A BUDGET AMENDMENT FOR PARKING SERVICES FOR THE REMAINDER OF FY 08/09 BUDGET AND CONSIDER SETTING A DATE FOR A WORKSHOP TO DISCUSS THE MANAGEMENT OF PARKING IN CAROLINA BEACH WITH LANIER PARKING***

Tim Owens made the presentation. He said they talked at the last meeting about moving forward with a parking contractor. They did start on time, January 5<sup>th</sup> was their first day. The benefits of the management style contract allows running the operation a little easier, no flat fee but charged for the services provided. We can save some money and we decided not to open the office as much as normal in January because traffic and calls won't be there. We can change that in either direction if we decide to. The total cost projected is under \$220,000. One of the things we need to do this year is amend our tourism budget. He is taking this from the Tourism Budget reserve fund in the amount of \$60,000 and placing it in line item 25-570-015 if we want to continue further. The other item he suggests to Council to consider is maybe a 2 hour joint workshop with Lanier Parking to talk about how we want to manage our parking and our facilities. He suggests March 9<sup>th</sup>, which is the Monday prior to Council meeting, if that is convenient for folks. He has included a copy of the contract. There was some question about the insurance and their insurance amount. He thinks they have \$1 million dollars in here but they have more than that and he needs to get them to amend that. He also included what they anticipate their expenditures to be. He will have to adjust the income side of the Tourism Fund budget as well and should be a wash.

Council agreed to have the meeting with Lanier Parking on March 9<sup>th</sup> at 9:00 a.m.

**MPT Wilcox made a motion to amend the Tourism Budget for the \$60,000 in the town manager's memo. MOTION CARRIED UNANIMOUSLY.**

Staff will advertise the meeting as a special meeting.

***REQUEST FROM DUKE HAGESTROM, OWNER OF WHEEL FUN RENTALS, TO EXTEND A CONTRACT TO RENT PADDLE BOATS AT THE CAROLINA BEACH LAKE AND CONSIDER A COMMERCIAL LEASE WITH WHEEL FUN RENTAL FOR THE LAKE LOCATION***

Tim Owens presented. He said they considered this request at their last meeting and they did advertise for a commercial lease. Mr. Hagestrom was requesting 3 years with 2 year renewals to operate paddle boat rentals at the lake. Mr. Hagestrom has operated for 5 years at the lake with this business. He does share a portion of the proceeds with the town which has totaled approximately \$25,000 for that period. He has received a lot of support with about 40 e-mails and also had some concerns about the operation. He reviewed the concerns. One of the concerns revolves around the deed, a 1951 deed on the property, and there is a reversionary clause on the deed itself. His understanding is

the park needs to remain open for a park use or public use. He would entertain any comments from the Town Attorney. He thinks the operation, as it now stands, is a public park and he doesn't think they are in violation of the deed. The next question that was asked was the paddle boat use is a commercial use that is in violation of the current zoning (conservation). When this was approved, it was approved as a recreational concession. Arguments could be made either way whether it is or is not a use or concession or vending. He thinks a recreational concession is probably permissible in most parks. If the town wanted to entertain having someone who did pony rides or yoga lessons, etc., he thinks you could go to that person and negotiate a contract and some kind of lease. He thinks you could do that. In a conservation zone you could consider a paddle boat use and parks, for that matter. You could consider amending your conservation zone or consider a Conservation 2 in this lake area that would encompass all the uses that are out there, playgrounds, paddle boats, etc. The other item would be to possibly consider this as a marina dock and/or pier. That is allowed, it's a conditional use in the conservation zone. In this instance paddle boats would be ancillary use of the pier use. There is no concession ordinance, nothing that regulates concessions. It is something the town does allowing it as a service provided. This biggest question is if this is an appropriate use for what is going on. The most conservative approach, if Council feels the use is a good one, would be to go through a conditional use process and consider it a pier situation. You could also consider making some changes to the conservation zone or rezoning to Conservation 2; that is probably the more conservative approach. You'll have a public hearing with public input but that takes some time. He thinks the easiest approach, they need to ask the attorney his opinion, would be to continue it as a recreational concession. It was approved as a recreational concession in 2004. The question is whether the town feels it is a good use, has there been some benefit to the town with the paddle boats and the operation there. If the answer is yes then there are ways to approve it. If no, then you just deny the request to continue a contract. He doesn't know that he would recommend longer than a 2 year contract, feels that is ample time. He knows Mr. Hagestrom may want to do more than 2 years because you would have to invest in the pier and gazebo there and maybe some new boats. He feels 2 years is fair, in his opinion, and they can revisit it in 2 years. Mr. Hagestrom has a presentation as well.

Steve Coggins said they have a draft of the contract which was drafted prior to any concerns that were raised since the time the contract was drafted.

Mr. Owens said they were considering this a lease situation, he thinks the attorney was but they were kind of changing gears a little bit. He can't see us putting too many terms in there that probably aren't already spelled out in here. He thinks they just need to decide on the length of the operation, if they want to do that and any other conditions you might want to propose on it. He thinks something more formal about when we can actually provide water in the lake. Those things are just normal contract language. They are allowed now as a conditional use, a change which was recently approved.

Gary Ferguson said under public utilities facilities, under Article 12.2, there is a provision there that speaks to the fact that they are allowed as a permitted use.

Mr. Owens said that needs to be amended too, and it needs to be clearer.

Mr. Coggins said they are talking about the regulation of activity by the town and the exercise of its police powers. He doesn't see this as a zoning decision. A lot of intellectual and emotional energy has been spent on looking at uses and zoning and whatnot. The town is specifically empowered by the legislature to issue appropriate regulations for recreational areas and for parks and separate statutory authority for the regulation of businesses. All this falls within the scope of that. Our own zoning ordinance states that it is subservient to other more specific aspects of your town ordinances that regulate various activities, whether it has to deal with streets or speeding or public health issues, etc. and this is the type of category you are talking about here. You are specifically empowered by the Boating Act, Chapter 75a, in which local law enforcement is empowered to enforce the laws of the state regarding the use of watercraft on any body of water within the town. He thinks it really is simpler than we've been struggling with.

Duke Hagestrom made his presentation. He said they opened the concession in spring of 2004, they were renewed twice and have operated successfully for the past 5 years. They made a significant capital investment in the dock, gazebo and paddle boats. It was a large investment which is why their business model was based on a long term relationship with the town. More than 30,000 people have used their equipment on the lake. They are proposing to continue to pay 12% in royalties which has totaled more than \$25,000 to date. They are locally owned and operated. Rental rates haven't changed in 5 years and they plan to keep them the same for several more years. They offer a membership pass for locals/members of the rec center. They carry the required amount of insurance and supplement with an extensive risk management program. There has not been a safety issue in 5 years. Highlights about the contract: They are asking for a renewal of 3 years for the same service as an incentive to continue to invest in product facilities and advertising; adding a termination clause for non-performance; a clause to indicate that the town cannot guarantee water levels, etc. They did get a few letters of support, including one from the President and CEO of the Cape Fear Convention and Visitor's Bureau. There were others too who sent a bunch of e-mails. It is supported by many groups, i.e. Bethany Elementary School as well as corporate groups. They believe Wheel Fun Rentals products and services will serve to enhance the guest experience here. If Council agrees that the paddle boats are a good use and should be allowed at Lake Park, they hope they say yes. Is the town allowed to operate a public park in a conservation zone? Yes, they have examples. Is the town allowed to engage in contracts to offer services and amenities at its parks - yoga, soccer, baseball, etc.? They believe the answer to that is yes. Hopefully they will take that into consideration and please consider approving the paddle boats. He knows this is not a public hearing but there are a few people who have indicated they would like to express their support.

The town's Parks and Recreation Director, Ted Lashley, thanked Duke for all the things he does with the kids and kids' programs. H said a lot of the stuff they couldn't do without his help, his bicycles and paddle boats. He has been here since their service was

initiated and Duke has done a wonderful job running the operation and the Town of Carolina Beach Recreation Department fully supports the renewal of his contract as well as our Parks and Recreation Advisory Committee.

Tom Campbell, 314-1 Columbia Avenue, said he thinks the Town Council shouldn't be looking at this 2 or 3 years. We should insist that he do 5 years instead of going backwards and only giving him 2. We'll go with the 3, but 5 is what we should be shooting for.

Mike Kirkbride, 417 Marina Street, said he thinks for a park setting the opportunity to have a service that provides no admissions, no damage to the water quality to the lake and provides recreation is an awesome combination. If we had that standard throughout the island, we would be a much better place. He would appreciate Council voting in favor of it and extending it for at least 3 years.

Brenda Armes, 616 Sumter Avenue, said Duke should be allowed to continue his business as long as he wants it there. They do such a great job.

Dennis Hagestrom, 709 Carolina Sands, said he is Duke's father. They have 10 grandchildren and their parents who really enjoy coming down here and they always mention they like to do the paddle boats, go to Britt's Donuts and he is here to support him in anything he does.

Wes Moore, 508 Carolina Sands Drive, is here to support Duke and Tracey and the lake and thinks it is a good family operation. It's always clean and is a good use for the lake.

Michelle Connet, 1321 Cabot Court, thinks it is phenomenal to have the paddle boats there. She knows there was a meeting where they had done a questionnaire and interviewed a lot of tourists that come down here and what they are looking for. One of the things they are looking for is just to come down and have peace of mind and chill out and paddle boats are a phenomenal place to do that. It is a tremendous asset to the island and she thinks 3 years and no less.

Bill Baum, 923 Coastwalk Lane, wanted to reiterate what all the other people have said. He doesn't see how it doesn't fit in with the park. It's an asset, it's non-polluting, and it's exercise. He has been there when the kids from the schools come and how much fun they have and it is a big asset for the Carolina Beach community.

Greg Reynolds, 711 Canal Drive, said he would like to see more than 3 years, he would like to see 5 years to 10 years. He has made a capital investment in this town. He grew up with paddle boats and it is one of the last things for he and his daughter to do. He hopes they do at least 3 years. He would like to see 5 or 10 because it is one of the few things left to do on the island for families.

**Councilwoman Efirm made a motion to approve a 3 year contract for the paddle boat operation subject to review and approval by the town attorney and town manager. MOTION CARRIED UNANIMOUSLY.**

***REQUEST TO JOIN A CONSORTIUM OF COASTAL TOWN TO SEEK CHANGES TO STATE LAW THAT WOULD ALLOW TERMINAL STRUCTURES ADJACENT TO INLETS***

Tim Owens presented this item. He said there is a move to create a consortium. At this point, the NCBIWA will be the main administrator, they are coordinating everything. Harry Simmons will probably do a lot of the work, he is not getting paid to do the legwork and he will be the central clearing house. Any funding placed in this consortium will have to go to a municipality where they will do their standard process to approve the costs. He discussed why NCBIWA would want to undertake this endeavor and it is mainly the cost. Their budget is not large enough and they prefer to do it this way. There is a charge to encourage each town and county to actively support and to fully understand new terminal structure legislation when it returns for the long session in early 09. There have been a number of towns that have signed on which he reviewed. He gave Council some information that he was provided from Harry Simmons about the benefits of terminal groins/terminal structures. Terminal structures are supposed to hold the ends of the islands together next to inlets so there is less impact on erosion. There is some significant erosion going on at the north end. He is not saying the terminal groin would be right for the north end but it could be a solution to the amount of times we have to put sand there. There is another school of thought that says when you do a terminal groin it starves the little drift sand down the beach. He gave them some papers that would be anti terminal groin signed by a number of PhD's, etc. who say terminal groins aren't good for North Carolina. So there are two different schools of thought. The request is to go forth with the consortium.

**MPT Wilcox made a motion to accept the town manager's recommendation in the amount of \$2,500 to contribute to the consortium for this lobbyist group to petition for coastal towns to have the option of doing groins and include the adoption of Resolution 09-948 (*Exhibit 6*).**

Councilman Gilbert reiterated that this is a very sensitive issue and he would hate to see Carolina Beach give up any of its political clout and at \$2,500, if there is a council member who wants to offer that then, the members who vote for this maybe pool their personal funds because he would hate to take taxpayers funds out of the tourism funds to put toward such a controversial issue.

MPT Wilcox asked for it to be on record that he takes issue with Mr. Gilbert's characterization that this becomes a personal issue because he happens to disagree and wants to put the rest of the council members on the spot with regard to personal donations. There have been a lot of controversial projects before this board and previous

boards and he has never heard him make that recommendation made before, especially if it was something he was in favor for. His is on the record and mine is on the record.

Councilman Gilbert said they weren't given information about the opposing side of it. He researched the issue, it is extremely controversial. Tim got information from a lobby group with the support of it and it was given to us this week and he went out of his way to look at both sides of the issue and thinks they will give up some political clout. There are a lot of folks who have some challenges with it and they are in our community.

**MOTION CARRIED 3-1 WITH COUNCILMAN GILBERT VOTING NO.**

***CONSIDER AWARDING A BID TO FREEMAN LANDSCAPING FOR THE COMPLETION OF THE TOWN'S ENTRYWAY CORRIDOR BEAUTIFICATION PROJECT (NCDOT ENHANCEMENT GRANT)***

Tim Owens presented this item. He said they accepted bids for an NCDOT Enhancement Grant which was changed to an Entryway Project. The town held a pre-bid meeting. There were about 5 interested parties but only 1 submitted a bid on the project. They believe it was probably the bid bond requirement; some who wanted to bid were smaller parties. Freeman Landscaping used B&K Coastal Contractor in order to do the bid bond. It was a significant amount of the cost, about 10%. It is budgeted this year and the total project was not to exceed \$264,400, which was the grant amount. Permitting and design will be about \$30,000. The bid amount was roughly \$203,000 and will probably have some room for some upgrades. He showed overheads of the project. He said they did try to deaden some of the sound as there were some concerns from Pleasure Cay. They wished they had a few more bidders. They are recommending approval of B&K Coastal, LLC in the amount of \$202,784.15. He said that DOT is scaling back on a lot of their projects and will talk about that in a little bit. He did talk to Debbie Oliver Vick who is the administrator of these enhancement funds and she said that, at this point, they are still on go with the funding. He said the irrigation was over designed and thinks they will be able to scale back on that. They should be able to move forward fairly quickly and have it in before summertime if Council approves it.

**Mayor Macon made a motion to adopt Resolution No. 09-953 (*Exhibit 7*) awarding the contract to B&K Coastal, LLC. MOTION CARRIED UNANIMOUSLY.**

Mr. Owens said there were 2 grants that were placed on hold until July and he talked to someone today about them and whether they would continue to be placed on hold or we wouldn't see those again and they didn't have a good answer. The \$50,000 Island Women Grant that they applied for is placed on hold until July and he hopes it will be reauthorized then.

***REQUEST BY MARSHALL AND KELLY COOPER TO VEND ON THE MUNICIPAL BEACH STRAND***

The town's Zoning Administrator, Jeremy Hardison, presented. He said the applicants, Marshall and Kelly Cooper, are requesting a proposal to conduct vending on the municipal beach strand. They would like to operate one pushcart on the municipal beach strand. The vending hours would be from 10:30 a.m. to 5:30 p.m. from March through October. They will be selling frozen products - Italian ice, bottled water, etc. The vending permit would be good for 1 year. After that time the license will become null and void unless reevaluated and approved by Town Council at the applicants request and according to the ordinance. Currently the ordinance is unlimited for allowance of vendors for the beachfront. The business will be located at 106 Carolina Beach Avenue N. and is called the Island Ice Factory. They will store the cart when it is not being used inside the store. There is a sunset clause in the ordinance on all vending activity that will expire December 31, 2010.

Marshall Cooper gave his presentation. He thanked everyone for their help. He said they are requesting permission from the Town of Carolina Beach to sell their products as a mobile vendor on the municipal beach strand. They are going to be specializing in homemade Italian water ice, gelato and sorbetto. The retail shop is located at 106 Carolina Beach Avenue N. On the beach they will only be vending the water ice not the gelatto, etc. because of the dairy reasons. They plan to be available to vend at sporting events, private parties, etc. They were advised by the committee to talk about the creation of jobs and so forth. They are a member of the PI Chamber of Commerce. They have a large investment in their business/equipment/upfit. He outlined their beach vending operation: 10:30 a.m. to sunset; Easter through Labor Day weekend; prices are from \$2 - \$7 with the \$7 product being their souvenir Koozie which can be refilled at discounted prices; pushcart will be stored at the retail shop; no dairy or bacteria; litter reduction program and workers will be trained to police the area around the pushcart; no music; "family-friendly" dress code; ambassadors of the community. He reviewed their business background and showed pictures of business, pushcarts, and products.

**Mayor Macon made a motion to approve the vending license for the Island Ice Factory up until the current deadline of the sunset clause of December 31, 2010 making sure the approval is based on the current vending time allowed by ordinance and all the other requirements. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER REQUEST BY DUKE INNOVATIVE SERVICES, LLC TO REVIEW VENDING PERMIT TO VEND ON THE MUNICIPAL BEACH STRAND***

Jeremy Hardison made presentation and said this is a similar request to vend for 2 years to operate a pushcart on the municipal beach strand. The vending will occur 7 days a week and will follow the ordinance from 6:00 a.m. to sunset. In February of 2006 the applicant was approved to vend under Wheel Fun Rentals as an extension of his business located at 107 Carolina Beach Avenue N. The vending is set to expire this month. His

cart will be stored at the store. There are an unlimited number of vendors that can be allowed. The applicant is asking to continue his license under the ordinance. If determined by Town Council that a significant capital investment and equipment or as required in order to operate the vending operation, the Town Council may approve a vending license for up to 2 years.

Duke Hagestrom made his presentation. They are asking to continue and renew their existing vending permit. They are asking for 2 years because they are going to have to get a new cart and showed a picture of it. After 3 years they discovered the following factors: provide a quality product, which he showed; need for correct equipment, very difficult for pushcarts; good staffing; consistency. He showed pictures of products - icees, water, Snickers candy bars and sunscreen. They propose to continue to provide quality products and services to enhance the beach and guest experience. He respectfully requested that Council consider giving them an opportunity to keep it going for 2 more years.

**Councilwoman Efird made a motion to approve a vending permit for Duke Innovative Services, LLC on the municipal beach strand until December 31, 2010. MOTION CARRIED UNANIMOUSLY.**

***APPOINTMENT TO FIREMAN'S RELIEF FUND BOARD***

**Mayor Macon made a motion to reappoint Robert Weeks for a 2 year term beginning January 1, 2009. MOTION CARRIED UNANIMOUSLY.**

***APPOINTMENT TO POLICE ADVISORY COMMITTEE***

**Mayor Macon made a motion to appoint Alicia LaChance to fill the unexpired term on the Police Advisory Committee. MOTION CARRIED UNANIMOUSLY.**

***APPOINTMENT TO THE PLANNING AND ZONING COMMISSION***

**Mayor Macon made a motion to appoint Betsy McQuillen to serve a 3 year term as a member of the Planning and Zoning Commission. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER APPROVING PRE-APPLICATION SUBMITTAL FOR FY 2009/2010 CAMA GRANT***

Tim Owens said this is to extend parking in two areas. They are going to purchase land, hopefully near Sandpiper, and we are going to apply for another grant to extend parking on both Texas and Tennessee.

**Councilman Gilbert made a motion to adopt Resolution No. 09-951 (*Exhibit 8*).  
**MOTION CARRIED UNANIMOUSLY.****

***APPROVAL OF RESOLUTIONS FOR GRANT APPLICATIONS TO THE CLEAN  
WATER MANAGEMENT TRUST FUND***

**Councilman Gilbert made a motion to approve Resolution No. 09-956 (*Exhibit 9*)  
Clean Water Trust Fund Grants. **MOTION CARRIED UNANIMOUSLY.****

***ADJOURNMENT***

**Councilwoman Efirid made a motion to adjourn. **MOTION CARRIED  
UNANIMOUSLY.****

Respectfully submitted,

Lynn N. Prusa  
Town Clerk

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