

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

January 8, 2008

The Town Council of the Town of Carolina Beach met in regular session on January 8, 2008 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor, Joel Macon; Mayor Pro Tem, Dan Wilcox, Councilwoman, Pat Efirm; Councilman, Alan Gilbert; and Councilman, Jerry Johnson. Also present was the following appointed staff: Town Manager, Tim Owens; Town Attorney, Al Clyburn; Finance Director, Dawn Johnson, and Town Clerk, Lynn Prusa.

Mayor Macon called the meeting to order.

INVOCATION

Mayor Macon opened the meeting in prayer.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

Councilwoman Gilbert made a motion to adopt the agenda with the following changes: Delete and table from the agenda Items 10-13, 31, 32, 28, 29, 30. Also include the following changes as presented: Amend Item #8(b) Request for Budget Amendments by deleting the portion of this request concerning the fleet maintenance budget amendment and consider only the legislative department's request for a budget amendment. Add Item #8(g) to adopt Resolution No. 08-908, confirming the volunteer fire department of the Town of Carolina Beach as an agency of the town. Adoption of this resolution is a formality that is required for inspections. Item #21 Consider Amending the Code of Ordinance, Concerning Horse Regulations: Chapter 3, Animal and Fowl, Section 3-5; and Chapter 11 Parks and Recreation, Article IV Freeman Park, Concerning Horses and Fires by considering in the ordinance a proposed Option C. Also, on the cover memo under "Action" (4) change the last word "campfires" to "horses." Item #24 Request to Extend a Conditional Use Permit for 817 Canal Drive – table this item to February 12, 2008 at 7:30 p.m. or soon thereafter. Item #19 Considering Amending the Code of Ordinance Chapter 11 Parks and Recreation, to Include a New Article V Parks Ordinance and Sec. 11-42(c) Liability of Users – by replacing the attached

proposed Ordinance No. 08-713 with the ordinance in your packet. Item #25 Request by Jean Turner for a Change in Policy Regarding Cut-Off of an Existing Water Service - move Item #25 to new Item #9(a). Items #28, 29, 30 Appointments to Committees - include additional applications for various boards in packet for consideration. Item #37 Clean Water Management Trust Fund – consider adopting proposed Resolution No. 08-909.

After discussion, Councilman Gilbert amended his motion concerning the appointments, to consider the appointments to the Planning and Zoning Commission and the Board of Adjustment this evening and to table the other appointments to the next scheduled meeting, including Item #28 discussion concerning the role and procedures of Budget Committee and make appointments. MOTION CARRIED 3-2 (MAYOR MACON AND MAYOR PRO TEM WILCOX VOTED NO).

RECOGNITION OF EMPLOYEES FOR YEARS OF SERVICE

The Director of Planning and Development, Gary Ferguson, recognized the town's Zoning Administrator, Jeremy Hardison, for 5 years of service.

INTRODUCE NEW EMPLOYEES

There were no employees to introduce at this time.

PUBLIC DISCUSSION

Ms. Janet Otton, 507 Peninsula Drive, thanked Council for the opportunity tonight to address the Council. Her issue is concerning the noise in their development on Peninsula Drive just off of 421 in the area of Peninsula Drive and Lewis Drive. Ever since the installation of the traffic light by the Food Lion the noise in that area has increased and we have addressed the town manager and Council about this before and we keep being bounced back between them and DOT and they don't want to deal with us on our level. When a vehicle comes to a stop and reaccelerates to go back over the bridge causes a lot of noise and it doesn't seem as loud at the intersection as it does when it travels down Lewis and Peninsula and it is very agitating. We are hoping that this may be incorporated into the beautification project at the entranceway and could there be some kind of berm that we see all up and down 421 be built in that non-vegetative area right there along that flat part of 421 along Snow's Cut Bridge on the eastern side at the turn around on 421 off of Access Road. She asked, could the town work with DOT to work into the entranceway project and decorate it with some shrubbery and trees so we can have some relief from the noise. The town manager said he talked to DOT and she is right, they want touch it since it is already there. He invited her to come in and take a

look at their plan in the atrium. She asked Mr. Owens to come down into the neighborhood to experience it. Mr. Owens said he would be glad to.

Next to speak was Emily Swearingen, of 830 Cutter Court, Kure Beach, said she is here tonight representing the Special Olympics and the Polar Plunge Program to be held on February 16th. She invited the Mayor and Council and the fire department to form a team to plunge together. Mayor Macon said he would be glad to participate.

Also, they have spring games in April and they are always looking for volunteers to help with that. It is held at UNCW and we usually have about 400 athletes and 200 volunteers to help with that. She invited anyone to come out and help with that event as well.

CONSENT AGENDA

A motion was made by Councilman Gilbert to approve the consent agenda, as follows:

Approval of the Minutes: November 13, 2007 and December 11, 2007.

Appropriate monies from the fund balance #103990.00 in the amount of \$1,500 and place them in the donation account #104100.70 for a donation to the Help Center that was appropriated for in FY 2006/2007 Budget, but never dispersed.

Transfer \$912.84 from account #105650.02 (fleet maintenance salaries) into account #105650.03 (fleet maintenance overtime). These monies are needed to cover an existing deficit in the line item.

Adopt Resolution No. 08-907 (*Exhibit 1*) establishing a policy for cessation of special separation allowance payments to retired law enforcement officers.

Adopt Resolution No. 08-906 (*Exhibit 2*) authorizing property exchange for police/lifeguard radios.

Adopt Resolution No. 08-908 (*Exhibit 3*) confirming the volunteer fire department of the Town of Carolina Beach as an agency of the town.

Set a public hearing date for February 12, 2008 at 7:30 p.m. or soon thereafter to consider the following:

- 1. Adopting a Parks Master Plan.**
- 2. Amending Appendix A Zoning, Article 11 Sign and Handbill Regulations, Section 11.4(c) Permitted Signs**

MOTION CARRIED UNANIMOUSLY

DISCUSSION AND POSSIBLE ACTION CONCERNING COASTAL RESOURCES COMMISSION SETBACK RULES

The town manager said that during the November meeting they talked about some changes to some CRC rules such as changes to the static vegetation line, increased oceanfront setbacks and elimination of ability to cantilever over the oceanfront setback. These are all things being contemplated by the CRC at the end of January. Because of some of the comments they may be of tweaking the language and probably will not adopt the language in January and they may reopen the public hearing.

The town manager presented information to Council about the issues including the pros and cons. He gave them three options to consider: (1) Invite the DCM staff to make a presentation, (2) adopt a resolution addressing the Council's position, or (3) write a letter to CRC addressing the board's position.

Council seemed to be in general agreement that they are not opposed to the entire package as written; however there were concerns expressed about the static line. Council would like to invite the DCM staff to make a formal present about the changes in February.

Councilman Gilbert made a motion to send a letter to DCM stating that we've reviewed portions of it and need more direction on content and we have some concerns about some of the content. MOTION CARRIED UNANIMOUSLY.

REQUEST FROM MS. JEAN TURNER FOR A CHANGE IN POLICY REGARDING CUT-OFF OF AN EXISTING WATER SERVICE

Ms. Jean Turner stated that she is here this evening representing her mother, Elsie Bigsby. Ms. Turner recommended that Council consider changing the town's policy to include a cut on/cut off fee or consider minimum usage for service not being used.

The town manager said the policy has been in effect for quite some time and the reason why we need that steady flow of income coming in and that it is based on year round usage. He presented comparisons to other towns but did not include Kure Beach or Wilmington.

Councilman Gilbert brought to Ms. Turner's attention the Homestead Act and recommended that she find out if her mother qualifies. He wondered if a resident qualifies for the Homestead Act could that be considered for mitigating and cutting off that service. He asked if anyone knew how many people qualify for it. The town's Finance Officer, Dawn Johnson, said the county reports about 24. MPT Wilcox asked if any of those 24 are getting relief. Mrs. Johnson said that she doesn't know. The town manager said they can try to come up with something.

Mr. Fredrick Fisher of 1504 Drill Shell Lane in Carolina Beach said why not consider another alternative, which is what CP&L uses, not on quantity of water but time of use.

Ms. Turner thanked Council for their consideration.

MPT Wilcox said he is in favor of Councilman Gilbert and we should take a look at it and he is in favor of anytime we have hardship situations or with seniors.

Also, MPT Wilcox said, concerning a similar matter he has had a number of calls from businesses owners and they have complained that they may be taking up 3 spaces and have 1 business but they are paying 3 water bills. He would like the staff to take a look at that too.

GOALS AND PRIORITIES OF THE BOARDWALK GROUP

Mr. Adam Higgins and Mr. Mike Kirkbride presented a plan for the Boardwalk Makeover 2008. Mr. Higgins said they are excited to present this tonight. There are a lot of energetic people interested. Mr. Kirkbride said the makeover concept is to focus on what we are considering to be the family room of the town and there are people from all over taking part of this makeover theme. He said they are looking for advertisements to promote it such as palm trees, plants, and chairs for the Boardwalk. They would like a grand opening this summer for the makeover project. Mr. Higgins said they want to get everybody involved in this effort. It is the heart and soul of the Central Business District. The Boardwalk Makeover concept is about restoring it to what it was and returning some of the nostalgia and fun back to it and make it a source of pride. There are things we can do right now as a town to get it started so people can see change. Once we improve the image then we can highlight it again. He presented some of the plans for the makeover. There are some deficiencies, but there are some things that can easily be addressed. They are proposing things such as new berm curves with palms, creating areas below the palms with seating. Some of these smaller items could be bought by citizens. Other ideas are painting the light posts with decorative flags, painting vacant walls with murals, etc. They will be offering some of the businesses opportunities and they will be asking the town to give them some leeway to do things such as paint walls with murals. They also talked about staining/painting the walkways, putting in planters with seating at each lamp post, painting with a decorative theme throughout the Boardwalk, make an entrance to the Boardwalk with directional signage. Some of the challenges they are facing is addressing some of the unused areas such as vacant lots and making them more aesthetically pleasing. They see this as an ongoing project, but these are some of the things they would like to do in 2008.

MPT Wilcox said he feels the Boardwalk belongs to part of this whole town and is part of our community. He feels the town should set the bar and identify this as a jewel of the community and an asset. They would like to get some support from Council to go forward with much needed renovations. He thinks every administration had reasons why they didn't invest any money down there, but what we are looking at is what he called

soft changes and what can make a big improvement. The group has looked at short term and long term items and they are looking at what can be accomplished by the summer. MPT said the response has been overwhelming. We have had the representative from PG Paints and Port-a-Paints offer to donate all the paint for staining the walkway. We have had builders and developers offer to donate money, equipment and manpower. The Island Women are excited about the landscaping projects. The idea is that it can be tied into a theme and we can get some publicity about it, and that we are opening the Boardwalk to a different look somewhere about May of this year. It is a very exciting concept and it something that we need to do to improve our tourism and give the people something to do. These guys touched on a few things but there are a lot of other things that fall in the short term categories such as recreation, police presence, meeting with department heads and such. MPT Wilcox said he is hoping that Council can get behind this concept. We are looking at the cost estimates as if we are not receiving any funds from anybody. If we do everything that we are talking about doing by this season we are looking at \$75,000 and we feel confident that we can probably raise half of that privately with donations. The Chamber has stepped up and said they will donate some lights, etc. He asked Council to make a commitment to get behind this movement to revitalize the Boardwalk and get behind the things and do the things necessary to make this happen, such as policies and ordinances to deal with this faster, funding and attitude. He asked Council to agree to provide some initial funding in the amount of \$37,500 to be appropriated and managed by the town manager and give us time to finalize these designs and start appropriating funding and determine what our resources are.

Mayor Macon said one of things that he is encouraging this Council to do is all work together. He has been working with Councilman Gilbert about some things that he will be talking about later. Also, he hopes Council will allow him to appoint them to be liaisons to certain departments. We are all taking big steps to help our community. MPT Wilcox has taken that and multiplied it by a million helping to facilitate this situation. He asked MPT if that is in the form of a motion for the \$37,500.

MPT Wilcox made a motion to approve initial funding in the amount of \$37,500 to get started on Boardwalk improvements, and if we don't meet that goal of meeting have of that privately we may be back to see you.

Councilman Gilbert asked if you are doing fund raising who do we write the check out to? MPT Wilcox said that is one of the things that will need to be established. We've talked to a couple of people, the Chamber has a non-profit group, and there was a Boardwalk Owners Association that still has an active fund, so we don't know yet. As soon as they get funding from Council they will figure out a central clearing house for the donations.

Councilman Gilbert said there was a non-profit that was established from a town committee and he believes there was \$10,000 given to that LLC and he believes that as recent as a year ago those folks were still meeting. MPT said that is one of the groups. He has talked to them and they are trying to meet with their attorneys and figure all of that out.

Councilman Gilbert said his only hesitation is that he talked to a group of people at the lake that wants to do a Friends of the Lake and go out and raise funds to dredge the lake. He asked what is the extent of the border of this and what is the limit of this. MPT said obviously a lot of emphasis is on the Boardwalk but some will extend into the CBD and the funding will determine how far back we go and next season we will go further back into the CBD, so it is an overall plan. We cannot bite off the whole chunk before this season.

Councilman Gilbert made a motion to amend MPT Wilcox's motion to draw the funds completely from the TDA Fund. Mr. Owens said he is not exactly sure they will fund all of it and he hasn't explored that, but he is not 100% positive that the ROT funds would come back. Mayor Macon said he doesn't know if you can amend his motion, you would have to ask him to rescind his motion. Councilman Gilbert said you may want to ask the town clerk about parliamentary procedure, but he believes his motion is in order. Mayor Pro Tem Wilcox said with respect to money he doesn't care how we get it. If the town manager tells me if I amend my motion you can make happen what Councilman Gilbert wants to do, I think if we fund it from the General Fund and you work hard to get everything we can from the TDA that is all that we were going to get from them originally. I don't care how it happens. Councilman Gilbert said the rule of procedure is, and you may want to check with the town clerk, there is a motion on the floor and I can make a motion to amend it and we vote on my amendment to the motion and then we vote on his motion as amended. I'm just going with Robert Rule's of Order and procedures manuals that the town clerk has shared with me. Mayor Macon asked the town attorney for clarification. The town clerk said she believes that is right, but not positive. MPT Wilcox said he is alright with that point of order he feels that it doesn't make any sense to make a motion for something that is not available to us. The town manager said he isn't positive that it is available and most of those TDA funds are budgeted in our tourism fund so every time you budget it for something else it takes away from that. Obviously we can try to seek those funds back. Councilman Gilbert said we are getting ready to go into a budget period and we are under the microscope with respect to reducing our General Fund. He would like to consider the TDA Funds as the primary source of this revenue and if it has a limit on it and it is finite then we are going to have to budget the Tourism Fund with respect to the TDA. He is asking, if we are going to make a motion for \$37,000 for a specific area of the town that definitely needs it while other parts of the town will be impacted by that spending. He wants to make sure that the first pot that we go to is that. The town manager said that is fine basically we have to authorize the General Fund first and then ask for reimbursement. The finance director said you could just take it out of the Tourism Fund fund balance. MPT Wilcox said his only concern is that we commit to this project I think we need to commit to it and not by what is available in TDA funds. We have recently funded a \$200,000 Skate Park and we are getting ready to fund a \$265,000 entrance beautification program and there is a number of other things that could be added to that list and all the while our Boardwalk and our CBD has set without any funding for anything substantial in the last 20 years and we need to step up to the plate. The manager said the finance officer's point was good, so it could come from the Tourism Fund instead of the General Fund so you could amend your motion if you wish.

MPT Wilcox said I'll amend my motion to request that the Town Council approve funding from the Tourism Fund for \$37,500 for initial funding for the Boardwalk Makeover Program. The town manager said and we will seek funds from the TDA or ROT to reimburse that fund. Councilman Gilbert said that MPT Wilcox made a good point, he said that the town is getting ready to fund \$265,000 for beautification and that's grant money. The town manager said all but \$52,000, I think. MPT Gilbert is there any possibility that we can move that beautification down into the CBD since it abuts the 421 corridor. The town manager said the grant is 4-5 years old and he thinks it is a great idea, but normally it has to be in the DOT right-of-way.

Mayor Macon asked for all in favor of the amended motion made by Councilman Gilbert. MOTION DENIED (MAYOR MACON, MAYOR PRO TEM WILCOX, AND COUNCILWOMAN EFIRD VOTED NO.)

Mayor Macon then called for a voted on Mayor Pro Tem Wilcox's amended motion to use the money from the Tourism Fund and seek the reimbursement from the ROT. MOTION CARRIED UNANIMOUSLY.

Mayor Macon asked everyone to keep up the good work. We really appreciate all the time and effort of the volunteers. Especially thank you to all of the artists and people who are going to donate items. It is greatly appreciated. It has taken this catalyst of Dan to make this happen for our town and he thanked him too. MPT Wilcox said it takes the whole Council and you just spoke.

APPOINTMENTS TO PLANNING AND ZONING COMMISSION AND BOARD OF ADJUSTMENT

The town's Planning and Development Director, Gary Ferguson, said we currently have two openings on the Planning and Zoning Commission. The current chairman of that committee, John Keith, has expressed an interest in being reappointed.

Councilman Gilbert said in consideration of both boards/committees, he asked if we could expedite things if he made the motion to waive the service requirement and to waive the policy for 2 consecutive terms because they have exceeded their term limit. Mayor Macon said in the future he would like to take another look at the Council policy concerning that. **MOTION CARRIED UNANIMOUSLY.**

MPT Wilcox made a motion to appoint Greg Reynolds to the Planning and Zoning Commission. Mayor Macon asked if there are any comments. Councilman Gilbert said that he can support Mr. Greg Reynolds. Mr. Keith has spent a very long time studying our ordinances and we would be well served if we appointed Mr. Keith to the Board of Adjustment. The town manager said we have a problem with quorum and I understand that Mr. Keith is available. Mayor Macon said there is a motion on the table and he called for a vote. **MOTION CARRIED UNANIMOUSLY.** MPT Wilcox said John Keith has been on the Planning Board for 20+ years and he has an impeccable record and

he thanked Mr. Keith for his time and service. Mayor Macon agreed. He also welcomed Greg Reynolds to the Planning and Zoning Commission.

Councilman Gilbert made a motion to appoint John Keith and Rick Rogge as an alternate to the Board of Adjustment. MPT Wilcox asked if Mr. Rogge is filling the alternate position, and Mr. Ferguson said that is correct. So, we still need one full time. **Councilman Gilbert amended his motion to appoint LeAnn Pierce as a full time member to the Board of Adjustment. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon called for a 5 minute recess.

Following a short break, Mayor Macon called the meeting back to order.

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A HOTEL, FAIRFIELD INN, LOCATED AT: 1 CAPE FEAR BLVD (PIN #313015-54-4836-000), 5 CAPE FEAR BLVD (PIN #313015-54-5877-000), 8 CAPE FEAR BLVD (PIN #313015-55-5014-000), 45 CAPE FEAR BLVD (PIN #313011-55-4065-000), 1 CAROLINA BEACH AVE S (PIN #313015-54-5992-000), 9 CAROLINA BEACH AVE S (PIN 313015-54-5778-000), 102 CAPE FEAR BLVD (PIN #313011-55-3038-000)

Before this public hearing began, Mayor Macon asked the town attorney to give a brief explanation of the conditional use permit process.

Mr. Clyburn said certainly Mr. Mayor. He began by stating, members of Council and friends on a conditional use permit application this Council sits as a quasi-judicial court of law. What that means is that you are receiving evidence and you are going to consider evidence that is being presented to you. You will make certain findings and you will issue a decision based on the evidence that is presented to you tonight. The procedure will be that the applicant will make a presentation. Those who are inclined to speak in favor of the project or the application will have an opportunity to speak. Those who oppose the application will have an opportunity to speak. That will be as part of a public hearing. You will close the public hearing. Town Council will have an opportunity to deliberate or discuss the evidence that's been presented and then you will make a decision based on the evidence that's been presented to you tonight.

I will say that the next item on your agenda, Item #15, is a request that you consider adopting a street closing order. While it may be associated with this application, it is a different and a separate item to be taken up by the Council. Whether you close or not close a street cannot be tied to the project. The project has to stand or fall on its own merits. There may be some who are here to talk about the road closure issue. I would recommend that they wait until Item #15 comes before the Council for those comments.

Mayor Macon thanked Mr. Clyburn and then asked who is going to be present this item. Gary Ferguson, Director of Planning and Development, said Mr. Mayor I'm going to present. I didn't know if we want to go through a swearing in process first. Mayor

Macon said yes whoever is going to present needs to be sworn in and Councilman Wilcox said and whoever is going to speak. Mayor Macon said there's going to be a lot of people who are going to speak and he asked the town clerk if she wanted to do them all now. Mr. Owens interjected let's do the staff first, then the "for", and then the "against". Mayor Macon stated okay we will do it in that order. At this time, Tim Owens, Gary Ferguson, Ed Parvin, Leroy Franks, and Charles Eaves were sworn in. Mayor Macon said while they are getting ready, everyone that wants to speak for the project, please come up and be sworn in including the presenters for the Fairfield. He then announced anyone wishing to speak against the hotel, please come up and be sworn in. A male in the audience said if you're not sure until after you hear it and Mayor Macon said just come up and be sworn in at this point. As people were being sworn in Mayor Macon said anyone else that thinks they might want to have something to say during the public hearing please come up and be sworn in. The following were sworn in: Attorney Tom Johnson, Lynne Denne, Frederick Fisher, Donna Gurganious, Don Bosco, Alan Pacek, Birdie Clark, Anthony Nobilio, Michelle Swart, and Caroline Meeks.

Mr. Ferguson said this is a request for a conditional use permit application. The applicants are Tidewater Property Acquisitions, Inc. and Carolina Beach Land Holdings. Their proposal is to build a suite hotel, 115 feet tall, with 90 rooms. The current proposal is for a Fairfield Inn which is a Marriott product. The project would tie into the existing Boardwalk area and to the Marriott Hotel pool deck through pedestrian connections.

In order for this project to proceed, the town must agree to close a portion of several rights-of-ways. He then showed an aerial view. After adjusting the lighting, he said this kind of shows you the aerial view of the property. This is the Marriott right here. This is the site right here where the hotel itself will be constructed. Adjacent to it, this building is not present right now but that will become a surface parking lot holding 28 vehicles. This is a town piece of property here called the FEMA lot for the lack of a better definition of it. Right behind that will be an 18 car parking lot. This is obviously Cape Fear Blvd. This is Carolina Beach Avenue South, north and south. So you get an idea of about where it's located.

This is the site plan in its entirety. Kind of starting off at the ocean, you'll see this is the area where the applicant is proposing to do some landscaping improvements starting from the east and moving west. What he is going to be planting is palm trees basically 7½' on centers across the frontage of the Boardwalk through this area here. He is also going to put in native grasses to stabilize it through here. You can see that there's a 14' paver material that's going to be put in here which will be capable of supporting vehicles and it will be widened. It's going to be 14' wide in this 20' right-of-way. There's also a connection from the proposed swimming pool here to come to the Boardwalk as well. This swimming pool and the Marriott swimming pool will be tied together. This is actually the Marriott. There will be about 11' 4" separation between these two structures right here, that is the proposed Fairfield Inn and the Marriott. This parking lot here will serve directly obviously the Marriott. As you can see these arrows indicate that this is going to be a one-way circulation through this parking area. This canopy will be approximately 14½' tall to allow larger trucks to pass underneath of it and the parking

continues down through here. Right here is a line that shows you, this line right through here, is the flood line. This is called the V-Zone up through here which is a coastal high hazard zone which requires specific types of construction to occur and this is the AE Zone which is the 100 year flood plane. Back here is the Sterling Mall which is an older blue building sitting back here. Again this is one of the FEMA lots. This is the proposed 28 car parking lot, a service parking lot, and the 18 car parking lot here.

As was mentioned earlier, there is a proposal to remove some right-of-ways. The right-of-ways just as an aside will be this area through here which is Carolina Beach Avenue South, 20.4' of Cape Fear Blvd. through this area right in here and this piece of unnamed right-of-way which is 20' in width right here. That kind of gives you an overall idea of what's going on this site.

It's going to be an 11 story building. The first level is going to be at the ground level. That's the entry way coming in. It's a little over 1600 sq. ft. The first floor will be the lobby area and that's 7383 sq. ft. Each floor will contain approximately 6081 sq. ft. and the total building size will be 70,646 sq. ft. The footprint of the area, the building itself, will be 8,589 sq. ft. That is where the building will actually sit on the beach. I'm including this and it was in the site plan earlier, it shows you the height of it and I'm drawing attention to this particular area right...if you'll note, there is a 50' height limit and there is a 115' height limit. There it is right there. The building, portions of it, will go to 115'. This portion will go only to 50'. I'm bringing that out because right where you see that red triangle area right here, this is a boundary line between two land classifications. This classification according to the future land use map that the town recently adopted in '07 designates this area as a maximum of 50' in height. This area beyond that down in this area here you can go to 115' in height. The way I showed the building earlier you can see that they are going to respect these two different height requirements. The 115' will be in the C2 Commercial Classification and the 50' or less than 50' will be in the Boardwalk area.

This is a layout of the first floor when you come in and actually it's the lobby area when you come in to the structure. This is the front desk here. These are stairs and elevators that take you up. There is a fitness room here and there's a breakfast nook in here. It kind of gives you the layout of what the lobby area will look like.

This is how each of the rooms will be developed. I'll show you the next slide and it will give you a little bit better of an idea of how these rooms will fall out. This is going to be considered a king room with a king bed here. You'll notice there's also a sleeper sofa here. At the Planning and Zoning Commission meeting, there was a concern about how many people can actually sleep in these rooms or how big these rooms will be. You will see right in here in all of these rooms there's an opening. In speaking with the zoning administrator, it's his opinion that these do constitute one sleeping room even though you are having a king, two queens, and these sleeper sofas. This last rendition just shows you where a vending machine operation could occur as most hotels have.

This is simply just a topography map showing what the elevations are of the property. The grade is roughly around 7-7½ feet. It shows Cape Fear Blvd. You'll see Cape Fear Blvd. up in here and also it shows water and sewer lines on the property as well.

Concerning Zoning and Land Use - the site in which the building will be constructed has a total square footage of 31,138 sq. ft. Parking lot 1 is roughly 10,000 sq. ft. Number 2 parking is 7,000 sq. ft; that's the one holding 18 cars. The hotel is a conditional use in the Central Business District. There are no lot coverage regulations and there are no setbacks regulations as well. The recently adopted 2007 Land Use Plan restricts this site to a maximum height of 115' in the C2 as I mentioned earlier and a maximum height of only 50' in the Boardwalk. From the plans that we've received, they appear to be respecting those height requirements. I should mention too that the 115' is a conditional use and that condition is predicated on the Council granting the building to be able to go a height of 115'; that's the maximum height. A portion of this structure as I mentioned earlier will be in the 50' zone but it will also be less than 50' in height.

The required parking for this site is 90 spaces; they are providing 86. They are asking for a waiver of 4 spaces.

Two loading spaces are also required for the property; they are 12x45 and they will need to ask for a waiver from those two loading berths as well. It is my understanding historically that when the Council is reviewing plans for the Central Business District that on occasion they have waived the loading requirements. We will be processing or presenting to you later on this evening a proposal to address the loading requirements in the Central Business District only and the ability if you wish to go ahead and waive similar types of loading berth requirements just for the Central Business District.

Concerning Landscaping - because it is in the Central Business District, it's a buffer yard E which requires sidewalks and an under story tree every 50 linear feet. They will need to provide that.

Concerning Stormwater and Infrastructure - the applicant's plan is to maintain as much storm water on-site as possible with the remaining being placed into the Town's system. Existing water and sewer lines shall be upgraded in accordance with the Operations Department.

Concerning Hotel Amenities – there will be an outdoor swimming pool to the east of the structure. As I noted earlier, the hotel will have direct access to the boardwalk and the use of the boardwalk facilities and entertainment.

Concerning Land Use Plan Consistency - in staff's opinion, the project is in general, and I emphasize the word general, conformity with the Land Use Plan that was adopted October 23rd by the Council and certified by the CRC on November 29, 2007.

Ed Parvin our Senior Planner will be presenting directly right after this in comparison of items in the Land Use Plan that support and items that don't support this particular

project so you get a balanced understanding. Any Land Use Plan obviously has a variety of policies in it; some aren't always in harmony with the other ones. So what Ed is going to do is just simply give you an overview in a minute about what's going on with the policies that were recently adopted.

Concerning Notifications – you'll see December 17th signs were posted, adjacent letters were sent out December 18th, and it was advertised in the Island Gazette on the 19th and the 26th.

There are basically 7 standards for any CUP to be approved and these are basic. Ingress and egress as to be satisfied, off-street parking and loading areas where required have to be taken into account, refuge and service areas must also be provided, utilities of course, screening and buffering must also happen, a sign and sign plan must be submitted, and all required yards must be properly managed.

There are also 4 general conditions that go with any conditional use permit: That the use will not materially endanger the public health or safety; that the use meets all required conditions and specifications; that the use will not substantially injure the value of adjacent properties; and that the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is located and in general conformity with the Land Use Plan and its policies. The reason why I'm reading that out a little bit more clearly is simply because this is where the Planning & Zoning Commission had some heartburn and they rejected or denied the plan based on Item #4 here.

The Technical Review Committee reviewed this on October 22nd and the TRC recommended that this project move forward to P&Z with modifications and additions.

Actually Planning & Zoning looked at this proposal three times, first November 8th. At the November 8th meeting, they requested the applicant to provide instead of surface parking to provide a parking garage, to increase pedestrian connectivity, provide land donations for the lost of public rights-of-ways, and more detailed information on their site plan.

They also set up a special meeting which was on November 14th and again they reviewed the plan. They noted they wanted to see names and structures of adjoining properties within 150' of the site, they wanted to show topography information which was shown later, show water and sewer lines, which I indicated they have shown now, provide a traffic impact analysis, which has been performed, appraisal of town property rights-of-ways, that has not been completed, show access from the pool area to the Boardwalk, they have now included that as part of their plan, show distance between the Marriott and the Fairfield which has been met the distance is 11.4', improve pedestrian access and landscaping on the northern parking lot next to Cape Fear Blvd. Lastly they wanted to review the plan again.

At the December 13th meeting, they reviewed the site plan and unanimously recommended denial based again on that condition #4, that the location and character of the use if developed according to the plan as submitted and approved will not be in harmony with the area in which it's located and will not be in general conformity with the Land Use Plan policies.

In summary, they felt that this project was not consistent with the newly adopted 2007 Land Use Plan. I think their real reservation and speaking for them I think every member of the board was somewhat supportive of this the issue really focused on the donation, if you will, of the rights-of-ways by the town to the developer to make this happen. That's what I felt like their general opposition to the plan was. They felt like this plan could in fact help energize the downtown revitalization effort on the Boardwalk.

The staff recommendations - we haven't received any negative comments about this. Hotels are allowed with the approval of the conditional use permit. Staff recommends that if Council is considering approving this that we add these conditions. These next conditions are specific to the Fairfield Inn and Suites project itself: it has to be no greater than 90 rooms and also that they need a waiver of 4 parking spaces in order to make this work; no private party ownership of any rooms will be permitted; final site plan must include cross-section of paving detail and indicate on the plan areas to be paved; refuse collection is going to be carried but they have to have a plan for that and who's going to be providing refuse collection; the current refuse collection site will be maintained under a joint use by the Marriott and the Fairfield collectively; all items listed in the zoning ordinance particularly Chapter 17a 1-13 and 17b 11 need to be provided on the site plan, there are some omissions in that information; building height shall be limited, as I said earlier, to a maximum of 115' in the C2 land classification area and no greater than 50' in the boardwalk area. The applicant must also...the project shall permit and construct and dedicate to the town a 12" water line from Hamlet to Harper Avenue. Also any newly constructed improvements the sidewalks, streets, landscaping, the existing Boardwalk area, and other public areas shall require a separate detailed plan which the Council must review and approve. The hotel shall have direct access to the boardwalk as shown as it was shown in your plan and future elevated Boardwalk to promote the use of the boardwalk facilities and entertainment. Any changes to the Marriott property to include structural, ingress, egress, or other as a result of this project will be reviewed separately from this application. Again, Condition #11 is that the conditional use permit shall be contingent upon the Town of Carolina Beach approving the closure of portions of Carolina Beach Avenue South, Cape Fear Blvd., and one alley way as submitted with the application. A third party expert opinion (Wilmington MPO) shall be obtained for the implementation of a new traffic configuration if the traffic impact study demonstrates there is a problem with traffic as a result of the construction of the hotel. Also 13, DOT will be consulted if there are potential traffic impacts on Lake Park Blvd. at the intersection of Cape Fear intersection. The drive out on Cape Fear parking lot will need to be expanded. There are some issues with that. Like I said, they've made some of the surface parking areas one-way and the one-way drive out widths can be 15' as opposed to 24'. Two loading berths are required for this site and the Council in considering this should be providing a waiver if you're supportive of it. There's also a note on the plan

called Note A and Condition 16 says we would like for that note to be deleted. That note basically says that you can make a modification to the footprint of the building and in order to make a modification to the footprint of the building the Town Council needs to review it as well as P&Z to make that substantive change to it. Seventeen - construction of the project is contingent upon a town engineer's positive assessment of the town's ability to adequately provide sewer treatment and sewage collection. Eighteen also speaks of the same issue concerning water-the construction of the project is contingent upon the town engineer's positive assessment; the town's ability to adequately provide ample water in the event that either the town or the state determines that the town's water supply is inadequate to the project the applicant may be required to make upgrades to the system.

Getting into what is typically and generally most conditions associated with conditional use permits at this point; however, I would like to stop for a second and add two additional specific conditions to this conditional use permit that unfortunately I apologize are not in your packets. The first one is that as a continuing condition of the approval of the site the applicant will remain in compliance with the Zoning Ordinance and the CUP approval. What this basically says is that they have to maintain compliance with what the Council approves as well as the Zoning Ordinance. This offers you if you wish the opportunity to a public hearing process to revoke the permit if you find that they're in violation of any of the conditions associated with it.

Lastly that the applicant will sign an agreement drafted by the town attorney that addresses the granting of any town right-of-ways reverting back to the town should the conditional use permit expire and not be extended by the Town Council. In other words, I'm trying to get some handle I guess on if the applicant does not build the hotel we would like some assurance that these rights-of-ways that potentially could be given up will revert back to the town and the town attorney could potentially draw up an agreement to address that.

Again we're into the general conditions for pretty much all CUPs. You have to have a stormwater plan submitted, a driveway permit has to be authorized by the town, copies of federal and state approvals have to be submitted prior to the issuance of a building permit, no structure or equipment of any description shall be erected or otherwise located outside the footprint of the proposed structures, flood certification has to be provided prior to obtaining a building permit or certificate of occupancy architect and engineer must certify the structures height both at the 50' and at the 115' requirements, the number and types of vegetation shall be included on a final plan for this Council's review, all structures must be designed and meet NFPA approved fire sprinkler systems and meet the North Carolina Fire Prevention Code, a sign permit must be obtained as well, maintenance of permanent open spaces must be addressed, certification shall be provided that all improvements including but not limited to paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved. Twelve-prior to the issuance of a building permit a plan that includes a grading schedule and construction schedule shall be approved by the Technical Review Committee. Prior to the issuance of a building permit all approval letters and final site plans shall be

submitted for the town's review. Major changes to approved plans must come back and be reviewed by Town Council. Water meters must be located in accordance with specifications of the Operations Department. A scaled drawing needs to be presented which shows all properties and all improvements within 150' of the site. Prior to the issuance of a building permit a recombination plat as to be presented to the town so that we can look at that and sign off on it and have that plat recorded. Sidewalks, curbs, and gutters shall be installed according to Article 8 of the town's regulations as well as meet American's With Disabilities Act. TRC shall review all traffic study recommendations from the traffic impact analysis to insure that they're incorporated into the final site plan for construction. Obviously they have to meet our lightening requirements for the town.

These are just some aerial pictures of the property. This is kind of the FEMA Lot that I mentioned earlier. Just to the west of this and over in this area here is the 18 car parking area. This is looking in a southwesterly direction from Cape Fear Blvd. at Sterling Mall. This is a vacant lot next to Dale's store which is on the right hand side. This is the 28 car parking lot which will be a surface parking lot on the north side of Cape Fear Blvd. This is looking from east to west and this is that 20' area where access to the beach will be provided from the swimming pool to the Boardwalk. This is a yellow building that sits and will perhaps continue to sit directly in front of the hotel and the golf course is located also in the line of sight of the hotel. This is looking from west to east with the Marriott on the far right and this is the site plan.

At this time, I'd like to have Ed perhaps to give an overview of the policy implications of this relative to the Land Use Plan. Mr. Owens interjected, Gary can I mention two items; these are specific conditions that you went over. Item #7 mentioned a 2" line and I don't believe that's in existence any more so I think we can strike that one sentence. The other item is that one of your conditions that you brought up mentioned and I would like for the board to consider is you talked about the expiration of the CUP or when it becomes void for the properties reverting back to the town I'd like to also add possibly in the event that the permit is revoked for just cause and through the public hearing process to that condition as well.

Mayor Pro Tem Wilcox questioned, just for clarity, one of the special conditions you mentioned that you wanted to add had to do with a public hearing to revoke the CUP if they weren't staying in compliance. Don't we already have a process on the books to do that? Mr. Ferguson answered, we have a process but I think the way we've been handling it, I believe and I'll look at Jeremy and Ed for this, but I think we basically go after a fining process. It's a civil citation process. For example, if the applicant were to violate our sign regulation for example, that would trigger a citation of \$50 a day for any violations of our sign regulations. Unfortunately, that often times doesn't result in compliance. Mayor Pro Tem Wilcox said as our understand it this board has the right to revoke a CUP at any point in time if they're not following conditions. Is that not the fact? Mr. Owens answered if they're not following a conditional use permit like say they build something else on site or don't build it according to the plan in the evening one night or something like that you can...what Gary is mentioning is sign violations or zoning violations that normally I don't...Mayor Pro Tem Gilbert asked more minor

items? And that wouldn't cover that? I just want to know for my knowledge; I don't like to duplicate a requirement if we have one that exists already. Mr. Owens said I think it's in there; we duplicated a lot of requirements really in our conditions that we think are necessary to put in that CUP and spell it out. Mayor Pro Tem Wilcox replied okay, thanks.

Mr. Parvin opened with Mayor, Council good evening. As Mr. Ferguson alluded to earlier we did find that the proposal was in general conformity with the Land Use Plan and I'm going to go through some of our policy statements.

This first slide shows you how our policy section starts off, which is basically the core goals for the town. The two that stand out that are relevant for this project were A and B, revitalize the local economy and make it sustainable; obviously, it will be adding to the tax base there; and B enhance and promote family-oriented business and services.

Under Management Topics which is how our policies are organized we have the emphasis in that area on infrastructure and stormwater. You will see those frequently in the policies that I am going to go over. I think that's going to be important because with the Marriott project with the comment at the bottom we did not get all the easements that we needed at that time so this development is giving us the opportunity to acquire all those easements as well as the easements and put in the infrastructure needed for this project. So that's a plus on that aspect.

The first set of policies that I thought was relevant, and I'm just going to point out the highlights of this, is:

Number 22 where it says reinforces the community's existing commercial areas and protects existing residential areas from inappropriately designed and scaled non-residential development basically I think that you will see the potential neutral negative comment on there. I think this is really addressing when you have a larger or any kind of commercial development abutting another use, maybe not quite as intense, you'd have some kind of buffer in between there. The mitigation action here will be following our landscaping guidelines which developers are...although they're all in the CBD they do have landscaping requirements that Gary was talking about earlier in the Type E buffer and then the landscaping on and around the parking lots.

Number 26 basically you'll see these phrases a lot. I think if you look at it, it talks about the resort market niche, family-oriented business and year-round residency, something that is talked about in the Land Use Plan. I have 4 comments down there about how they impact those. Revitalization obviously they are changing the vacant lot to a 90 room hotel. It is revitalizing in the CBD which is where we want to see some commercial growth. You can see how it promotes our vision statement with the resort market niche. It will have the stormwater plans; the big thing that comes out. You will see over and over in your policy so the stormwater and upgrades to infrastructure are two important aspects.

Under the potential negative comments in there you've got your stormwater infrastructure also evacuation time is something that has to be looked at. That's something we look at from the fire, police, planning, operations, and manager point of view. Every May we do a re-evaluation of our emergency response and reentry plan.

Then we go onto #28. Again some of the key phrases in here you have your pedestrian oriented. #29 talks about architectural design and coastal community atmosphere. I think right now it's pretty subjective about what that architectural design is going to be. We are in a master development plan process now, which should either make it a little more objective or clarify what those features will be. They do have some renderings of what their project will look like or is proposed to look like. Your next policy talks about height. The planning director talked about this a little bit. They are going to respect the height limits in the Commercial 2 and in the boardwalk areas. We're looking at the possible negative impacts same as you see in most of the policies. You look at your water and sewer impact, your emergency evacuation routes, and abilities to get people on and off the island

Moving on to Development and Infrastructure, I think some of the highlights here would be open space, pedestrian facilities, interconnectivity, and on-site retention of stormwater. Pedestrian friendly comes out, landscaping, sidewalks on street fronts and rear parking yard. So you kind of see the same things coming up over and over again in 37.

Number 41 the policy is talking about looking at some alternate surfaces besides impervious surfaces; looking at some types of pervious for surface parking lots and then innovative ways to limit on-site parking. In the CBD, there is ability to waive some parking and I think that policy is really...actually we have an amendment later tonight that will address some of that.

Councilman Gilbert asked Ed to go back and address the first sentence in #37. It's not highlighted there. It looks like you kind of picked and choosed here. How do you feel about the natural and scenic resources? Mr. Parvin explained you see that a lot too, natural and scenic resources and preserving your views and vistas in the town, providing landscaping areas, and interconnectivity with other developments. It's kind of subjective and really it's kind of a catch all type of policy which is how the Land Use Plan is really written. You have some policies that just say hey we want to look at this a little more (*note: inaudible*). They are doing a lot of those things as far as scenic views and vistas. You're preserving some of those with...you have some open areas with the 20' right-of-way they were providing on the north. Then you have some that you might say they are taking away from providing a private hotel where it was some public land. Councilman Gilbert asked what exercise do you use, 37 is a good example so what exercise do you use to say it's in general conformity with policy 37. I will share with what I had to do and read all a hundred and something policies. Scale of 1-10 started with a 10 if it was subjective or objective I kind of narrowed it down. So 110 would be 100% and 1 would

be 10% or 1% on how you looked at it. When you looked at these and said, are you saying that 37 is in general conformity with the Land Use Plan with respect to this project or are you saying a certain percentage of it is? Mr. Parvin replied I'd say it's really up to Council to determine. I mean you can put a number on it if you want to put...if you put a number on it you would probably want to put some objective criteria to weight that number. Councilman Gilbert said yes, I mean you got 8 for and 8 against fundamentally. I mean you can argue either way. So now you've weighted it and you said okay is there one mitigating one that if the project respected that now it would put it over to general conformity. Did you guys use any exercise to say...your department has come out and said this is in general conformity. Did you use any process to weight it and say there are 8 for there are 8 against, how do I weight it? Mr. Parvin stated I think we looked at...we made an analysis of all of them and then you look at all of them and say okay it meets this one but then there's some...if there's some activities that need to be done to mitigate the negative parts of it. That's what we were trying to do. Councilman Gilbert said okay. Mr. Parvin said I'll go back to the height. It meets the height but obviously you're going to have some negative impacts with the height. So we were looking at okay how do you mitigate those and that's where we talked about make sure it meets the building and flood codes, re-evaluation of our emergency management planning, and requiring the upgrades for water and sewer. I think we look at the policies and then say okay there are positives there and there are also negatives and are they going to be able to address the negatives. Sometimes they can and sometimes they can't. That's how we looked at it. I think you can keep going further and further into those policies and have a scale 1-10 but that's as far as we went with it as far as looking at mitigation and yes or no. Councilman Gilbert said okay, that helps.

Mr. Parvin continued, number 45 is an interesting policy. It's one that basically requires that if you're creating any kind of commercial use in the Business District that you provide off-street parking for the public in addition to our parking standards. We can't legally require a development to do more than our parking standards. I think what the real intent of this number 45 is asking the town to do a re-evaluation of our parking standards and look at maybe there are in some cases it should be more stringent or more lenient but requiring additional parking on top of parking we already have is not something we can legally do. Number 47 and 48 goes back to your water and sewer upgrades. For both of those, the developer is providing upgrades in both water and sewer. Number 50 talks about landscaping and making sure they are indigenous to the area. We do have a list of landscaping that we require you use something indigenous and we work with New Hanover County Cooperative Extension in coming up with that list. When they put in their landscaping, it will have to come from that list or be approved by planning. As far as the streetscape, they will have to do the Type E which will be consistent throughout the Central Business District.

I tried to pick all the ones that were relevant out. A lot of them seemed to reiterate the same things about stormwater management which was a big concern in the Land Use Plan. Stormwater runoff comes up in 79 and 81 and then it talks more about it in 81b about using some pervious and semi-pervious materials.

Number 86 a through c is just general statements about promoting new development in the Central Business District. With the promotion, you also have some potential negative impacts with your infrastructure. We've been talking about infrastructure stormwater, water, and sewer capacity and we put there follow our policy 63 and 66 calling for upgrades and the developer will be doing those upgrades that the town is requiring them to do for water and sewer.

Number 87 you see this is Local Concerns: Economic and Community Growth and Development-You see the same terms again promoting family-oriented businesses, entertainment, and amusements. Again a potential negative increasing infrastructure demands; you keep seeing that pop-up again and again in all these policies.

Those are the policies we identified as staff. Looking at the Commercial 2 as a whole, which is the land classification area where most of this project falls, you can look at really what the Land Use Plan really calls for in these areas. And I think as far as pedestrian-oriented it comes out a lot; you see commercial lodging falls under something that this area is asking for, so I think it meets it there. Pedestrian and bicycle accessibility-I think they have some ideas for connecting that to the town center to other parts of the town with this project. The applicant is probably going to speak more to that as well.

Some of the other things are architectural style and traditional building appearance. It's still for staff very subjective; we didn't really know how to go "yes" or "no" for that one. I think a lot of that will come out more when we have that Master Development Plan process.

One hundred and fifteen foot building heights is another one that pops out but most of those meet just by meeting our ordinance.

The other area is future characteristics of the boardwalk, which there is a lot of ambiguity here as far as the Land Use Plan. Most of it is just asking for a lower profile and meeting that 50' height requirement and keeping the pedestrian-oriented nature.

That's all I have from the Land Use Plan if you have any questions for me.

Councilman Gilbert said Ed go back to #45. You mentioned something about our ordinance and something being legal. Do the general statutes require that our ordinances support our comprehensive plan which is the Land Use Plan? Ed questioned our ordinances with...Councilman Gilbert reiterated the general statute requires that our Zoning Ordinances be written to support our comprehensive plan, our Land Use Plan. Are you saying that 45 makes our ordinance illegal? Mr. Parvin answered I'm saying that our ordinance doesn't require...if you read the literal verbiage of #45 then we would have to require any development in the Central Business District to provide additional parking on what our ordinance...Councilman Gilbert stated no, it says new residential or commercial high density. We have defined commercial high density so when you say

any development I think you're in error. Mr. Parvin replied okay. Councilman Gilbert continued if you apply this to commercial high density. So are you saying that our ordinance doesn't support 45? Mr. Parvin answered yes I mean our ordinance does not require you to do this. The next question asked by Councilman Gilbert was do the general statues require that our ordinance support 45? Mr. Parvin said based on what you say I guess you just had a quote from the general statues so...Mr. Ferguson clarified I think we have to keep in mind and this isn't just...my thought is that this plan was just adopted and what it is it's a guideline; it's a guideline for what the town's going to do over the next five years and as a result I think the staff at the direction of the Council will obviously work on amendments to our Zoning Ordinance to in fact accommodate the point that you're making right now. We will put conditions. I'm a little surprised that when we look at our hotel regulations, we don't have specific standards that address hotels as we do for example gas stations or other types of uses. In some of our conditional uses, we have specific standards and if we wish, if it's the Board's desire, we could easily come in and put in regulations that address exactly what you're speaking to which addresses Policy 45 which would say basically that if you're in the Central Business District and you're high intensity use not only are you going to have to provide one parking space for example for every unit you're going to have to put in 1.5 or 2 but I don't think we're there yet. I mean I think is this in conformity with it? Well I think Ed answered it, no; but I think this is a work in progress so to speak. I think that's what this document represents at least to me. Councilman Gilbert said thanks.

Mayor Macon said thank you Ed. However, Councilman Gilbert said I have one more question for Ed. Councilman Gilbert asked, did you do this presentation at the three occasions that this was presented to P&Z? Mr. Parvin answered no we had our...I don't know if we had that presentation but we had a key down, it didn't list all these policies but it listed general conformity and then we listed some of the policies. I can probably find that presentation to show you which one. Councilman Gilbert said I read all the minutes and I just couldn't find any of this, so you're saying at the three meetings this was not presented. Mr. Parvin replied no. Councilman Gilbert thanked Mr. Parvin.

Mayor Macon asked if there were any more questions. Councilman Johnson had a question for Mr. Ferguson. He wanted a clarification on the plan. If you want to pull up the overall map...hotel. As Mr. Ferguson looked through the slides, Councilman Johnson said right there. The 20' right-of-way on the north side...Mr. Ferguson said this one or this one...Councilman Johnson said right, that's one...those pavers are going across what looks like to me the current existing concrete boardwalk up across the berm, will CAMA allow us to build there. Mr. Owens said I think it's more of a representation. Anything that they do on our property will have to come back for approval either through this Board...Councilman Johnson asked so this may or may not...Mr. Owens said this is all just generic just showing what they're talking about doing. I mean in all reality we just talked about improving that area but probably before they'll get to improve it tonight. It's all general stuff and I think the condition was that they'd come back and present anything they want to do on public property.

Councilman Gilbert asked Jerry, did you have anything else? He started to reply and Mr. Owens interjected, I want to touch back on some of the consistencies stuff. I know when you're looking at a zoning change for instance it requires you to look at the Land Use Plan and say if it's consistent or inconsistent. That change can be inconsistent and you can approve it if you think it's in the public good, so I'm not sure how the general statutes read but I think Gary touched on a lot of it and he was saying that we adopted this Land Use Plan and then you catch your codes up to speed. Councilman Gilbert said in 2005 or 2006 it was changed. I guess it was 2005 when it was presented to me and whoever else was in Wilmington at the Hilton. It specifically had the general statute and I could probably dig it up but I think what it was saying was with respect to your comprehensive plan and in our case it's the Land Use Plan. The conundrum was we're changing the Land Use Plan and we know there are inconsistencies in our zoning but we had decided to do a unified development ordinance and that's when it would all get fixed. We didn't update our zoning in the interim of, hey we know this is all going to change but that was just the one thing that jumped at me blatantly in what Ed said, it was like well that was the one thing that probably we should have considered. Mr. Owens said we probably should have caught that maybe even through the Land Use Plan process to be honest with you. When we looked at it a little more closely, I went wow that's an interesting process. Councilman Gilbert said I mean it's compelling but I think we should have considered do we change the ordinance or do we edit this. I think it's compelling to require that in a challenged area.

My only other question, and I know Dan's probably got something, was can you show us an aerial, a picture, of the existing buildings and the existing accesses and take us through what you took us through on this. I'm having a hard time saying okay, where's the beach access for what you just pointed to. Do you have a satellite view, a look-down view, where you can take us through what you had done? Mr. Ferguson replied just the aerial that I showed you in the beginning of the presentation; that's the only aerial view I have of the property. It's somewhat visible; you can't really zoom in on these shots but this access to the beach is provided here and then the Marriott's access is down here. One of our P&Z members suggested strongly that the applicant also apply for a permit from CAMA to build an access to the beach down here so they wouldn't be traversing the boardwalk one way or the other in order just to get to the beach. Mr. Owens added there is one other access too in front of the (*note: inaudible*) building, which is the yellow-green building. There's one other access that goes out towards the beach. Councilman Johnson said that's what I thought. Councilman Gilbert said yeah it just seems like I'm missing something here you know looking at my drawings and looking at this. So you're saying you don't have a look down satellite view of this area where you could just walk us through and say here this is. Mr. Owens asked Mr. Ferguson to go back to his original. Mr. Owens said that should show what's actually beach access going out to the sand part of the beach. Councilman Gilbert responded okay. Mr. Ferguson explained this is the site right here. The area where the 20' right-of-way is coming in is right up in here between this building here and this building here. That's the access way to the boardwalk, this being the boardwalk right through here, the wooden boardwalk. This is the access to the Marriott. So this walkway right through here will be where the swimming pool is going to go right adjacent to and connected with the Marriott

swimming pool right here. Carolina Beach Avenue South right here and this is the portion of the right-of-way that's being proposed to be withdrawn right through here. This is the 20' access way that will be with pavers 14' wide through here. Councilman Gilbert questioned so when you use the term withdrawn that's the right-of-way we're considering closing. Mr. Ferguson's response was yes, sir. I don't know if I can give you anymore additional information about what's going on relative to the site plan. Again they're requesting at the next item on the agenda 20.4' of Cape Fear to be withdrawn as well as that little unnamed right-of-way through here and that portion of Carolina Beach Avenue South to there. Councilman Gilbert said this is much more helpful. Councilman Johnson said but currently there is a beach walkover in front of where the pool is going to be. Councilman Gilbert pointed and said right there? Councilman Johnson replied to the south. Mr. Owens stated there's one that goes up to the existing boardwalk but I don't think there's one that goes to the beach. I think the only one that goes to the beach is near the bathrooms and then he said in response to Mayor Pro Tem Wilcox there is one and Mayor Pro Tem Wilcox said no you have to turn and go over there...Mr. Owens continued yeah, or go either to the Marriott or where the bathrooms are.

Mayor Macon asked if there are any more questions for staff. **Since there were no more questions, Mayor Macon made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon asked if there was anyone who would like to speak in favor of the project. Several Council members reminded the Mayor that they needed to hear from the applicant. He apologized and then said the presentation was so long by staff I thought it was...Lynn, when did Tom get sworn in? Tom Johnson, the applicant's representative, said and they did a great job by the way and I appreciate staff going through this. Mr. Johnson had already been sworn in. We've been through this a lot up until now and they did a great job going through that. Mayor Macon asked can we crank up the lights and also said he appreciated the presentation from staff because it actually enabled the audience to see a lot of stuff that we see in our paperwork but does not get normally gone over in that manner so that everyone can see it. So with that...Mr. Johnson said and I agree that it was very helpful and I do want to reiterate that we're in agreement with the staff in terms of our plan being in general conformity and would adopt any of the recommendations. Of course, the plan and the application that we submitted we asked that it be submitted in support of this application.

I'm Tom Johnson and I'm with Ward and Smith. I'm here on behalf of the applicant. As was stated earlier and as you see here on the site plan, this is a proposal for a 90 room Fairfield Inn and Suites directly north of and adjacent to the current Courtyard by Marriott. This will be rooms with a continental style or actually a little above a continental style breakfast, a hot breakfast in the morning, as you saw in the breakfast area that was shown earlier on the site plan. It will share meeting facilities with the Marriott. At some point, we will be looking at a proposal to maybe expand those meeting facilities. We decided to go forward with this first and we'll come back to Council with any proposal to expand those meeting facilities.

As was stated earlier, the building itself is in the C2 district and it goes up to 115'. There is a small portion that is in the boardwalk area but we're adhering to the height limitations in both of those districts. As you can see and as has been discussed earlier, there will be some road or some rights-of-way and alleyways that will need to be closed as part of the project.

Now if I can get this to work. As you can see, here's the Marriott. We're asking about 20' of Cape Fear Blvd. to be closed, this portion of Carolina Beach Avenue South right here, and this portion of the 20' alleyway that goes to the beach. Now even though that's being closed and will be closed for the pool area, it will still be an open area for access from the patrons of the hotel to the boardwalk area. So that will be preserved as part of this project and we're also enhancing again with town approval and with any other approvals we need enhancing the 20' access way here to the north because that was discussed at P&Z. We came back with a plan to enhance that and to provide for emergency vehicle access so that is why that's being enhanced and improved to allow for that at the request of the fire and police departments in order to allow for better access in that location.

There was mention earlier and some questions and there indeed in any Land Use Plan you're going to have to weigh the objectives. Part of the objective is you want development and you want to bring that development in the community. You want to enhance the development that's already there. You want to enhance your Central Business District. Obviously if you're doing that, you can't preserve all the natural and scenic areas that you may have. Otherwise to the extreme you've got all natural and scenic and no development. This does a very good job of providing for the development that's needed for the Central Business District and allowing to preserve the natural areas. First of all and I'm glad to hear the Boardwalk group's presentation tonight because in advance of this project and even before the boardwalk group came up we had proposed to enhance the boardwalk area in this location as was discussed by staff right here to add some palm trees, native grasses, and things of that nature to dress it up because we wanted to do that for the town and as part of this project. In addition and prior to not really having anything to do with this application, the owner has agreed to this lot next to the Dale store to donate that to the town just to preserve his open space or for the town's use in that location. Again that's happening regardless of what happens here tonight with this conditional use permit. We are trying to do some things. Some initial plans we had tried to deal with this Cape Fear Blvd. area here. To deal with that and to leave this area open, we only proposed closing the 20' to make the project fit closer to the Marriott simply being the opportunity to preserve this vista to the ocean. We wanted to allow that to remain an open area.

In addition and I did mention this earlier but in addition we will be doing some enhancements to the center of Cape Fear Blvd. here. We talked to town staff. Certainly we want to do that in accordance with whatever the Master Plan may say or recommend with respect to that location. We've got in our plans to provide some landscaping there on Cape Fear Blvd.

In terms of parking and that was mentioned earlier, we are asking for the parking waiver of 4 spaces and that was at staff's request. Earlier on we had had the exact number of spaces we needed but staff wanted to enhance the buffering and the sidewalk areas so asked that we eliminate some of those parking spaces that they didn't really like the locations and where they were. We agreed to do that and of course we're providing the Type E landscape buffering around those parking lots.

In addition and we mentioned this at P&Z as well, there are no specific plans to do anything above those parking lots. Obviously we realize that there's some potential for some development above those parking lots in terms of either if additional parking is needed in the Central Business District some joint effort to provide a parking deck in either of those or both of those locations or to provide for commercial development whatever may be necessary to enhance the Central Business District. With the flood zone rules, it's hard to do anything at ground level anyway other than parking or something of that nature. We're providing the off-site parking that's necessary for the project but again allowing for the potential of future development above that in the (*note: inaudible*) space above those lots. Again, that's not part of this conditional use permit but it's certainly open for the future.

I think Council's been provided with some pretty direct benefits and there was a lot of discussion and really the only thing about the plan being in harmony, the only real negative at the Planning and Zoning Commission was the concern about closing these portions of these rights-of-way. Again, there are going to be some positive benefits that come to the town as a result of this project that will outweigh the closure of these rights-of-way. First of all and it was mentioned by staff, we're going to improve the water easement situation, the water line situation; that is improving something that was not there before with the Marriott that probably should have been addressed but we're agreeing to address that at this point. We are also willing to improve the portions in the Cape Fear Blvd. right-of-way right here. Again this is not traveled right-of-way but kind of a park area. We're providing funds to demolish that area, to provide any perimeter pavers or to dress that area up, and again to provide any landscaping for those areas that may be in accordance with the master plan of the town in that area. As I mentioned earlier, the center island and landscaping on Cape Fear Blvd. and that would include palm trees, native grasses, or any other approved plants as was mentioned earlier by town staff. We also propose Boardwalk landscaping improvements again toward the enhancement of the Boardwalk as was discussed at the meeting earlier tonight.

These are not additions but they are things that come with the development. You will get the fees obviously in connection with the building permit and the water and sewer impact fees. The total amount of all of that is an estimated amount of \$551,000 of benefit directly to the town. Employment-wise this project will provide 40 year 'round full time employees and 30 seasonal employees for a total of 70 employees. Tax impact: it's been split out by total on what I have, and I have split it out from what you have, and I just want to make sure you understand this. I've got the total local impact which includes real estate taxes, personal property taxes, sales taxes, room occupancy tax, and the sales tax impact resulting from the generation of additional business to businesses in the Town

of Carolina Beach. The total tax impact will be \$718,000. That includes some taxes on an annual basis that will go to New Hanover County, not specifically to the Town of Carolina Beach admittedly so but that's still tax impact to the community. The direct amount that comes to Carolina Beach has been estimated and in working with staff it came up to figures that estimated on an annual basis of between \$120,000 and \$150,000 basically; it would be direct impacts to the Town of Carolina Beach. That's the portion of the real estate, personal property taxes that come to the town, the sales tax portions that come to the town, and the room occupancy tax portion that comes to the town which would amount to approximately \$50,000 on an annual basis.

Traffic that was mentioned earlier; I do want to mention the specifics. I think you have a copy of the Wilbur Smith report that we submitted in terms of the traffic impact. At the intersection of Lake Park and Cape Fear Blvd., it is Wilbur Smith's opinion that it will still be a level of service A regardless of this project. It is a level service A and it will continue to be a level service A even with this project and those impacts.

In summary, and I do want to reserve some time for rebuttal later, we are asking for the waiver of the parking and the loading requirements. I know the loading requirements are further down on the agenda and I know that was discussed at planning and zoning and I heard that presentation there regarding how the Central Business District is dealing with the loading requirements but I do ask for waivers on those two specifically.

As was very ably mentioned by staff and I just briefly reiterate it here we meet the specifics and are in general conformity with the Land Use Plan. This project is in harmony with the area because we are building exactly adjacent to what's already there, which is just an expansion of an existing hotel facility to enhance the Central Business District which has been a goal of this Council. It brings people to the Central Business District; this is what you want to do. And again with the other things we're doing with respect to the rights-of-way, this development will more than on an annual basis and a one time basis compensate for the closing of any right-of-ways and it will certainly be an enhancement to the community.

I'll be glad to answer any questions now or answer any questions that you may have later. And again I'd like to have an opportunity to speak again once the public makes their comments.

Councilman Gilbert said I guess I'm clear on this proposed Fairfield Inn and Suites annual tax impact. What you presented is a total annual tax impact of \$718,000 but you were saying is the Carolina Beach revenue you would expect somewhere between \$120,000 or \$150,000. Mr. Johnson replied \$120,000 to \$150,000. Councilman Gilbert said okay. Mr. Johnson continued it's just a range we came up with because it's an estimate. It's kind of hard to split that out and we did it in working with Mr. Owens. We did it based upon some ratios or fractional shares from other projects and other times just in general how much comes in, so it has to be a range. It's not anything that's very precise. The local impact is precise based upon our projections in terms of the business and that includes the New Hanover County impacts as well which is not direct to

Carolina Beach. Councilman Gilbert said thanks. Mr. Johnson said it is on an annual basis so it's not a one time fee. Councilman Gilbert said right.

Councilman Johnson said in the previous P&Z meetings, P&Z, from the way I understand it by Gary's presentation, they had big concerns over several items not so much of an objection to the hotel but parking sites being used instead of prime location for business development and not a parking deck being built on your property where the hotel is proposed. Correct me if I'm wrong at one time when this project initiated there was a design for a schematic drawing that showed a parking deck is that not correct. Mr. Johnson replied yeah, at one time we did look at that and we looked very carefully at that. There were a couple of things that made it so that we could not do that very effectively and aesthetically pleasing. First of all a parking deck, no matter what you do, is a parking deck and you can try to dress it up but it's not very pleasing, so you're going to see from that that the design we had would have a parking deck right in front of the hotel which doesn't look very nice. But the other part of that are the restrictions because of height limitations and because of where this site sits between the Boardwalk area and the Central Business District area, you don't have a lot of room there. We were trying not only to squeeze it in between those two districts and meet the height requirements but also preserve the view you have at the end of Cape Fear Blvd. without encroaching into that vista. Once we started looking at that and adjusting the plan there just simply wasn't the room because with a parking deck you can't...it's hard to explain...when you've got a parking deck sitting there it looks like well you should be able to put the parking deck directly on top of the parking you have and be able to use all that parking but you've got to ramp up. You got to be able to meet building code requirements to not only ramp up but to be able to turn in that parking deck. That was the problem we were having. We just could not within that space meet the code requirements to be able to do the turn around and ramping necessary to provide a parking deck. Quite honestly, it just did not look very aesthetically pleasing on top of that but just structurally you can't do it. Councilman Johnson said right, I don't know if I could agree with you totally there. Anyway Mr. Miller I believe with the P&Z mentioned even the possibility of coinciding with the Marriott there since they're both owned by the same development group a parking deck over the Marriott property to help out with some of the parking and having a connectivity coming from the Marriott through the Fairfield and the Marriott would have another entrance way which they only have one now which I know is a little bit of a draw back. I know there's concern that the gravel lot that they use for overflow parking and they do have some big meetings and conventions there that that's there on a month to month basis; it's not owned by the town and it's not owned by Marriott, at least the last time I checked it wasn't. Did you all look at that? Mr. Johnson answered again we considered that but because of where you would have to put the parking deck in front of the hotels it again it does not work very well and you've got some elevation differences between the Marriott and the Fairfield Inn property. Now we did provide for some pedestrian connectivity here because of some comments from planning and zoning but it's...you've got to deal with those elevation differences if you're going to do it plus some other things you lose in terms of parking on the Marriott side as well as providing joint facilities. In fact, we had to work very hard to get the dumpster facility and get that in there. So we did consider that. We looked at that and it just would not work in the

scheme of what we have there. You've got right here...of course you got in between the meeting space area...at some point and it still shows it on this plan but we're looking at potentially adding an addition here to the meeting space. Of course, we've got to deal with the parking requirements on that. Because of that, we just didn't go forward with that at this point in terms of trying to analyze what works best for providing parking for any additional meeting space. But that's the other thing in that connectivity is that's where we're looking at doing that meeting space. Councilman Johnson said but that's more the reasons that I mentioned...when I read the minutes of the meeting mentioning the parking deck over the Marriott it sure sounded like a pretty good idea. I mean it's pretty well established and the majority of people that come down I mean you see it as soon as you come across the bridge and they're talking about a possible expansion. I don't know where there parking is going to come from. It's going to be interesting. Mr. Johnson replied right and we know we've got to deal with that in order to be able to do it, so that's why we're not going forward with it. Councilman Johnson said I know they're concerned over the closure of right-of-ways that the town had and you made the statement because they asked that could you come back with a better design and ideas concerning their concerns and you made the statement in I believe the November meeting that the commission may as well deny it and you can come forward at a later date with something different in design. Mr. Johnson said no that's not at all what I said; that's taken out of context. What I said was we cannot fit this project...the Planning and Zoning Commission was willing to fit the project only on the land that's owned and not encroaching any of the right-of-ways. My point was the project cannot go without closing those right-of-ways because there's not enough room, there's not enough space. I said so if you're going to just say you can't close the right-of-ways, then the project doesn't go forward because it doesn't have enough room. Councilman Johnson said well I'm just reading from the minutes that were recorded. Mr. Johnson said I haven't seen the minutes but that's the point I made. It wasn't that they might as well deny it, no. It was that if you're not going to allow the closing of the right-of-ways, there's not enough room to do the project. Councilman Johnson responded okay. That's all I got.

Councilman Gilbert said so these minutes that were provided to us are, are they inaccurate or...Mr. Johnson stated that's inaccurate. I did not say that. Again, I said that if the rights-of-way were not closed and allowed to revert to the adjacent property owners as by law provided that there would not be sufficient room for the project therefore planning and zoning might as well deny it because we aren't going to have room to do it. Councilman Johnson said exactly what you said was Mr. Johnson said he cannot do that because there is not enough room and it would take a total redesign of the project and he cannot do this by the December P&Z meeting or the January Council meeting. The commission may as well deny it and he can come forward at a later date with something different. That's what's in the minutes. Councilman Gilbert said I think he can go forward and what it says is, Mr. Rees says if the applicant leaves Carolina Beach Avenue South and its access open, then the commission can probably work with him. Mr. Johnson says he cannot do that because there is not enough room and it would take a total redesign of the project and he cannot do this by the December P&Z meeting or the January Council meeting. The commission, and this is still I assume Mr. Johnson, the commission may as well deny it and he can come forward at a later date with something

different. Mr. Keys asked if it would be possible to create another access point to replace the lost access pointing out a walkway area between the Marriott and the proposed Fairfield. Mr. Johnson replies that this is a creative solution he can work with. Then it goes on. That's pretty consistent with what you're saying. It was just a little bit out of context with what Commissioner Johnson...so we brought it back in but I think for me when I read this whole packet and all these minutes cannot do this by the December P&Z meeting or the January Council meeting. The commission may as well deny it and he can come forward at a later date with something different. I think that's what kind of stuck with me when I read all this. Mr. Johnson stated and I didn't mean to mislead P&Z and I don't mean to mislead you. The bottom line is we did look at that but there's just no way to make this...since that time it was looked at there's no way to make it feasible without doing that. And because of providing access between the two you open up other issues such as insurance issues and all that that we have a problem going right between those hotels because of the two pools we have side-by-side and we have to make those secure in order to meet our insurance requirements. That's a problem doing that because we did explore that and talked about that and we can't meet the insurance requirements for that. We've got to close those off.

MPT Wilcox said to Mr. Johnson that he had a couple of questions. He said first of all the presentation you're giving us tonight is what you want us to consider, right? Mr. Johnson responded yes. Mr. Wilcox continued, so what took on at P&Z is irrelevant at this point, this is what we're considering. Mr. Johnson said it's irrelevant at this point. He said that was their recommendation but this is my presentation; this is what we're presenting tonight. Councilman Gilbert added P&Z presented this and it's not ex parte because it's competent testimony because they're sworn in at P&Z right and this was in our packet. Mayor Pro Tem Wilcox responded I don't want to get into P&Z right now because I read through the minutes too and there are some problems with that procedure and I'd rather not go there right now. I think this is before Council and this is the application they have in front of us and we should be hearing and listening to this.

Al Clyburn, Town Attorney, commented that this is a de novo review by this Council to consider the evidence that you hear tonight. You're certainly free to consider the recommendation of P&Z but this is a de novo review of this application meaning you're hearing it for the first time.

Mayor Pro Tem Wilcox stated since the issue has been brought up and reading P&Z's recommendations and motions, they sight the general conditions that they denied the project on but they don't provide any basis for that, no evidence, nothing in the record regarding that so as much as I value having the P&Z and look forward to being able to rely on their recommendations if those basic principles aren't going to be followed then I have to make my decision based on what I'm hearing tonight.

Councilman Gilbert said well I understand that Tim cut them off when they were going to go into detail, from what I understand. Looking at this and listening to it, listening to the audio, when they made one of the recommendations to the general condition and it combines general condition 4 and when the reference was to the character and harmony

and then the end of the sentence and Land Use Plan you felt compelled to accept the Land Use Plan and not...you didn't require anything else. That's what I heard but I understand what Dan's saying but I think...Mr. Owens interjected generally if you deny...I mean Dan's correct in maybe we didn't do it procedurally correct at the P&Z and I didn't encourage them to do it procedurally correct; but generally what you do if you deny something, you'd have to state specific reasons and the competent evidence I guess that you're really are considering so it may not have been done correctly. There's some debate too. When Richard Ducker came in to talk about whether P&Z needs to be conditional use or quasi-judicial or not there's some debate whether it is ex parte communication or communication that you can consider. He said it's unclear basically. I think if Council wants to consider I believe...I think the attorney said that you can consider it.

Mayor Pro Tem Wilcox said what we're hearing tonight is what that applicant is presenting so I'd like to ask some questions about that application. Mr. Johnson said absolutely. Mayor Pro Tem Wilcox started with landscaping buffers. What's the width required for those landscaping buffers? Mr. Ferguson said there's no landscaping buffer without requiring a buffer yard E. Now there are...the two parking lots are going to have to satisfy two additional buffers. The 18 car parking lot, the less than 10,000 sq. ft. parking lot will be a buffer yard A I believe, 5 foot of buffer. The 28 car parking lot will require a 10' buffer along the street frontage as well as the 18 car parking, just along the street frontage. It's a streetscape requirement. Mayor Pro Tem Wilcox said I'm only concerned about the landscaping buffer on either side of the gazebo property. What is the landscaping buffer on the right side, on the south side? Mr. Ferguson's response was honestly they haven't given us a specific plan. They've shown what's going to be on private and what's going to be on public property in terms of landscaping but they haven't provided us with a detailed landscaping plan. Mr. Owens added I think it's real minimal. There's very minimal landscaping there between the parking area. Mayor Pro Tem Wilcox said that's not on the plan but they're asking for 20'. Mr. Johnson, he said, do you know how much of that is for landscaping? Does anybody? Mr. Johnson replied we were just going to provide the landscaping that the town requires, so we were going to come to the town. We had the sidewalks that we were providing and we increased these buffers during this process. We went ahead and increased what would be required. It will be a combination of the sidewalks and vegetation. Mayor Pro Tem Wilcox said I don't want to belabor that issue; but my point was is that on either side of that gazebo property is a parking lot, not a 50' building, not another use, so we don't need to be considering it at that point in time about if we need to...if we can reduce that landscaping buffer to maintain more town area then I think that's something that we could consider. Mr. Johnson's response was and that's fine. If the town wants to or can reduce that landscaping buffer, we have no problem with it; but we all along have been in favor of doing what landscaping and what improvements we could in that area to make it look nicer consistent to what the town wants. Mayor Pro Tem Wilcox stated you said before that the town wanted you to drop 4 parking spots and that's going to require you to get a parking waiver. Mr. Johnson replied right. Mayor Pro Tem Wilcox continued can you meet the ordinance without that request? Mr. Johnson questioned without the waiver. Mayor Pro Tem Wilcox said no without the request to where those parking lots were

legal (*note: inaudible*) those spaces. Mr. Johnson said we have those 4 extra spaces but they weren't very well configured. Mr. Owens added I don't think you'll be able to meet the front yard buffer if they don't have that. What they've done is if you look across the front of that property there was a parking area in that triangular shaped adjacent to the skate shop and there was a parking area in there. There is a pedestrian access that we own I believe we own the easement right beside the skate shop there that we wanted to connect into the existing sidewalk there and then the turning radius on the ones closest to the street and the buffer zone which is not sufficient in our opinion. Mr. Johnson said and that's what it came down to. I guess you know that...when we started talking about buffering and potential buffering but also more than anything to preserve pedestrian access in here we decided to drop those 4 spaces in consultation with staff. Mayor Pro Tem Wilcox replied okay.

He then said the items you have in here to bring to the town \$70,000 for park improvements, \$50,000 for Cape Fear, \$40,000 for landscaping and such...Mr. Johnson said right...Mayor Pro Tem Wilcox said your improvements to the park are broken out \$25,000 of it was demolition and \$45,000 of it were improvements it's look like, Mr. Johnson said right, he continued on those items you heard the boardwalk presentation earlier and one of the long term things, items that was not presented is to do some enhancement to that area and open up that park area and create an entertainment venue and things of that nature. Mr. Johnson replied sure. Mayor Pro Tem Wilcox asked would you be willing to provide those funds to the town to do as they see fit to improve those areas is that the intention. Mr. Johnson's reply was again if it's...and I'd have to discuss this again with my client to make sure but as long as it's consistent with the type of improvements we want to do here to enhance that area I think that's a possibility. We had all along in an agreement with Mr. Owens said that we weren't going to do any final improvements here until we saw the master plan and saw what the town wanted as part of the master plan. So that was kind of held in advance anyway until that happened. Either way it could happen. You could come up with a plan and we'd do it or donate the money. Mayor Pro Tem Wilcox commented I understand you'd want to do some of your own landscaping in front of the project; but then there's landscaping on the other side the town's talking about and you're talking about pavers and maybe we don't go to pavers there's \$30,000 in pavers. Those are funds that could be available to for the Boardwalk revitalization to do that area as well maybe some other things. Is that correct? Mr. Johnson answered true, that's correct. Mayor Pro Tem Wilcox said that's a fair statement. Mr. Johnson agreed that's a fair statement and the same with that center island landscaping. Again that was just a proposal we came up with but don't know what the master plan may say or recommend on that.

Mayor Pro Tem Wilcox questioned is there any plan for providing any connectivity from the gazebo area, the town hall center (*note: inaudible*) through the Marriott and over to those other buildings and businesses and such that are south of Cape Fear Blvd? Mr. Johnson said we've added pedestrian access here. Mayor Pro Tem Wilcox said so you have a pedestrian walkway that comes through and connects back through so the Marriott parking lot I assume. Mr. Johnson responded right. Mayor Pro Tem Wilcox continued and then from there you can get to the street that dead ends at the Marriott parking. Mr.

Johnson stated we didn't very effectively show that. Planning and Zoning asked us to come forward with a plan so it does show that on this plan right now to have that connectivity. We had to adjust the dumpster location and things like that but we did that.

The next question asked by Mayor Pro Tem Wilcox was you talked about the taxes and the reply from Mr. Johnson was yes. Mayor Pro Tem Wilcox said I heard some discussion a while back about some potential TIF financing. Is that something you guys have considered for this project? Mr. Johnson responded we've had discussions with some individuals in the area about possibly doing that. Certainly that could maybe work on some of the water and sewer improvements to make it more cost effective to do those improvements and certainly we're open to that. Obviously, that's a new financing method that really hasn't been available in North Carolina that is starting to be used and if the town's open to that, certainly I think the developer would be as well. Mayor Pro Tem Wilcox ended with okay, thanks.

Mr. Johnson asked if there were any other questions. Councilman Gilbert said with respect to the conditional use permit process did you or your clients ever consider any kind of downtown development using another means to go forward, development agreements. Did you look into...Mr. Johnson interjected we never had any discussions of development agreements. In this project and I'll tell you kind of where we are with it, we started in the fall and we've been trying to move ahead with approvals so that we can get approval so that we can get under construction so that it will be ready to be open next year. Any delay puts it back another year. So that's kind of in terms of our timeline. We went back and forth with town staff and made some adjustments and improvements so there really wasn't the need for any long term development agreements. Councilman Gilbert said is that what you're saying, you're negotiating with town staff? Mr. Johnson replied no, we were discussing with town staff the proposal. When it came forward, town staff came back with some recommendations as did TRC and we made those changes and recommendations. Planning and Zoning Commission made some suggestions so we made those suggested changes based upon their input. But usually a development agreement is on much larger pieces of property and phased development over a long period of time. This is a short term development. Development agreements usually contemplate 20 year phases and that sort of thing. If we don't own all the property, if we don't own the sufficient amount of acreage which we don't here, you can't even use a development agreement so that's why that's not even effective in this situation. Councilman Gilbert said so you're saying that a downtown development agreement per General Statute 160A.450(a)(3) may not have helped move this along faster. Mr. Johnson answered I don't see that it would have at all. I mean I really don't. I think in certain situations where you want to get some negotiations with the town and have some concessions in terms of allowing existing ordinances to apply for the long term on a phased development that makes a lot of sense for both parties and it gives the developer something to rely on going forward in the future, but in this instance with a short term relatively short term project where it's not including a revitalization of the whole downtown area, it doesn't make sense. Now could the Town of Carolina Beach come back with a downtown revitalization plan and create a district and do that, certainly that's an option that you have available but that's a longer term solution. This is a short

term solution. Councilman Gilbert said, okay. Mr. Johnson continued, and it's really consistent with where...with the approval of the hotel on the north end, with the Marriott existing, and this adjacent to the Marriott, it really does, as we've said before and it can become trite after a while, but you're anchoring the Central Business District with the rooms you need to bring the people to the Central Business District to enhance further development hopefully of the supporting services you need whether it be restaurants, stores, whatever it may be. But the people need to be there in order for you to have the patrons to help build that area.

Mayor Macon asked, what is the distance between the two buildings? Are you saying that was dictated by P&Z? Mr. Johnson said no, no, I didn't say that at all. I said...I didn't mean to imply that. P&Z had wanted us to look at whether we could put an access between there. What we did is the size of the site, the attempt to preserve the vista down Cape Fear Blvd. and preserve that area for the town, it limited our space we had so we had to squeeze it in there as well as we could given the size of the property we had. Some of our initial plans actually looked at going further into Cape Fear Blvd. and that just wasn't a very good thing to do in light of the town's desires to approve that view to the ocean down Cape Fear Blvd so that's why we pulled it back. Mayor Macon commented, so you basically got 11.3' in between the two buildings. Mr. Johnson responded right, we did. Mayor Macon said the 4' being I guess the property line that is part of this new project and the 7½' being the other property line. Mr. Johnson said right, exactly. And it is very tight no doubt but given the space constraints that's the best we could do and the height, you know got the combination of the space and height limits. Mayor Macon said so you're not looking at connecting the hotels in any sense other than through the pool. Mr. Johnson said other than through the pool area that's all we're looking at doing. So that would be the access between the two if they were going to use the meeting space at the Marriott you would go through the pool area.

Mayor Macon asked if there were any other questions. Mayor Pro Tem Wilcox had one last question. On the surface level parking to the south of the gazebo area, actually it probably applies to both more to the south because of the size of it, you're maintaining air rights for that; you have the ability to build something over that parking deck at your leisure, right? Mr. Johnson answered yes we have no restrictions on that. We're buying the property in fee simple which includes all the air rights above it. Mayor Pro Tem Wilcox continued so surface level parking there now doesn't necessarily relate to loss of economic development and the answer from Mr. Johnson was no. He said and in fact any development that goes in there is going to have to look at something underneath. The best thing you can utilize it for is parking generally because of the flood rules. Even under the Marriott, it's raised so it has to have a breakthrough area underneath. We've got the elevator access which we can have but beyond that it's a breakthrough area so the actual front desk and all that is on the first buildable level so it is elevated.

Councilman Gilbert said maybe, hopefully, one last question. Looking at this, is there any property closer to the ocean that could be built on at a height that would put you in the same situation you're in over at the Marriott now? Mr. Johnson said I had to defer somewhat I think it was...we got the Boardwalk area between the Central Business

District area. Councilman Gilbert continued is that the golf course that's right in front of their pool and there's another building. Is there anything of substance that could be built there that would impede or potentially disrupt there commerce there very similar to the challenges in front of the Marriott right there? Mr. Johnson offered again that question came up at P&Z. There's really not anything that can be effectively built because of the rules. Councilman Gilbert questioned there can't, nothing? Mr. Johnson said because of the height limits, because of the size limits; it's very...Gary can address it. Mr. Ferguson said CAMA's going to restrict you significantly in that area because you're in the setback area, so the problem is going to be you are going to be under the 50% demolition or improvement rule so you can't go beyond 50% of the value of the structure but could they incrementally come in and put something in there, I think the answer may be yes. I mean I think there may be an opportunity for I forget the gentleman's name who owns it, Zeko or something like that I'm talking about the yellow building, the small flat top yellow building. The town manager and I spoke about it. It was his opinion it would be a challenge in order to make that viable but I wouldn't say absolutely positively no. Mr. Owens added the Zeko building I think is a big challenge. The putt-putt portion...if you look at the 60' line goes from almost corner to corner. Mayor Pro Tem Wilcox asked is this the 60' line? Mr. Owens replied yes, sir it sure is, so you could build some kind of irregular shaped building and then you could put in front of the 60' line you could do decking, you could do pools and things of that nature that are allowed under CAMA. Mayor Pro Tem Wilcox asked wouldn't you have to provide stormwater? Mr. Owens answered stormwater you could do underneath or on site somehow. Mayor Pro Tem Wilcox asked behind the 60' line and Mr. Owens said yes. I mean you would have to figure out a way for infiltration. Mr. Johnson added you would have to be very creative to do anything and Mr. Owens agreed. Mayor Pro Tem Wilcox continued so this property right here, just in case everybody doesn't...that's the putt-putt, and it pretty much equally divided by the 60' line or most equally. Councilman Gilbert said so you could build something on that where Dan's got...Mayor Pro Tem Wilcox continued on this side right here that's almost undevelopable. Mr. Owens said and if you could cantilever over it, they allow that you could still do that, so there's potential there. Mayor Pro Tem Wilcox said and this is the Dow property and this is the lot that the applicant is donating to the town correct. Mr. Johnson said they have already been donated. Mayor Pro Tem Wilcox then said has been donated. Councilman Gilbert said so for that view or vista basically right now the town will...if this goes forward all but 20' of the existing Cape Fear end, the portion next to the Juanita Dale property, so the only thing that can impede that scenic view is if somebody puts potentially a 50' trapezoidal shaped building, I guess trapezoidal right on there so we almost got a scenic view and vista all the way right now. Mayor Pro Tem Wilcox commented this building because it's in a 60' can't meet its stormwater requirements so...Mr. Owens interjected I think there're really limited things you can do with that other than routine maintenance under 50%. Mr. Johnson we just wanted to preserve it and we didn't want to impede it at all. We didn't have control over those properties and what they may or may not do. Councilman Gilbert said but fundamentally that site line all the way down Cape Fear is relatively preserved. Is that kind of what you guys are trying to do there? Mr. Johnson responded yes, that's what we were trying to do because of comments we received in the community and input we wanted to try to preserve that. Councilman Gilbert said I'm done.

Mayor Macon asked if anyone else would like to speak. Mr. Johnson said thank you, and Mayor Macon's response was thank you.

Mayor Macon announced that we will now hear those speaking in favor of the project. If you want to move forward up to the microphone and state your name and address please.

My name is Lynn Denne. I live at 100 N. 7th Street. I didn't want to say that I was against the project so I signed up for the "for the project".

I was in attendance at all of those Planning and Zoning meetings in reference to this project. I have just one observation. You commented in the very beginning that this was quasi-judicial so we couldn't discuss anything about the closing of right-of-ways, etc. but we're actually discussing that now, so I don't know why we can't talk about that but in that vain, since everybody is...everyone sitting here has always promoted, campaigned on open government then I think maybe we need to look at as a town for our Planning and Zoning and also for our Town Council if this is correct not being quasi-judicial. We all hear the rumors circulating out here and this person knows that one and they say this and they say that but you're not supposed to talk about it and it's in the paper but you're not supposed to talk about it, so in the vain of having open government and not wasting Planning and Zoning's time, which I know you have a great appreciation for having sat on a Planning and Zoning Board and then coming to meetings and going well that was over in 5 minutes and we spent 4 hours on that and they didn't have all of the information maybe it's time we look at trying to change that so that we do really have open government so that all of us out here know what's going on and we're a little bit well versed before we even come here so we can have a little bit of an opinion and we can have a few questions. And by the way, I'm glad to see so many people here tonight. I wish this was the way it always was at all of our meetings.

An observation for me is we just are going to have to decide is the value of the land we want to give up or not want to give up whichever side you're on is the value of that property worth a hotel and what is your definition of revitalization. And I have a question. I'd like to know if this plan is one they specifically drafted for us on our piece of land or if this is kind of their cookie-cutter building that they've put in other coastal resorts and now they're trying to put it on our piece of land. I would like to know if they got creative, truly got creative, and tried to make this work on this piece of land. I do think we need to do something to revitalize the boardwalk as somebody who's personally have donated a lot of time myself to try to bring attention to the boardwalk through countless events. I'm thrilled at the presentation that took place here tonight. We do need to do some stuff down there but we need to decide whether what we're giving up is worth doing that and what our definition of revitalization is. We need to think about the money that we're spending for master plans and things like that. Maybe if we had a little more open government and a little more open communication and we were not so bound by rules of silence that aside from the people who are friends with people that are in the know everybody would have the ability to know and I think then we will really move forward and the people will feel like they really have a voice and there won't be a lot of

conflict. We won't feel like there are secret societies that some of us don't belong to. Thank you for your time.

Mayor Pro Tem Wilcox interrupted Ms. Denne asked Mayor Macon if the town attorney could address that question. Mr. Clyburn asked specifically which question. Ms. Denne responded quasi-judicial; the one you can answer. You can't answer the one about the footprint but the quasi-judicial one you can answer. Mr. Clyburn said yes, that is by North Carolina statute and by case law this Council really does preside as a quasi-judicial board when it hears a request for a conditional use permit. There seems to be a difference of opinion as to whether Planning and Zoning has to be a quasi-judicial proceeding. There have been some suggestions that you should treat it as a quasi-judicial proceeding so that those who come before Planning and Zoning are placed under oath and are sworn to give truthful testimony regarding what they have to offer as far as their opinions and information about projects that are before Planning and Zoning, but I don't believe it's required and this town has had some conversation about whether we should place witnesses under oath at the Planning and Zoning phase. We must place witnesses under oath when we're at a conditional use permit hearing. My opinion is that the opinion or the recommendation of Planning and Zoning is available to Town Council but Town Council's not bound by the recommendation of Planning and Zoning. Traditionally Planning and Zoning is set up as sort of a filter process. They're to hear the project from its inception and to ask questions and get information and then use that process to make a recommendation to the Town Council. By law when the Town Council hears a conditional use permit application, the Town Council is not really going to approve or not approve, they're not there to approve or disapprove what P&Z did they're there to form an opinion and make decisions based on what they've heard and that's really how the process is supposed to work. We can't eliminate the quasi-judicial nature of the process when Town Council hears an application for a conditional use permit. I think we can look at whether we have to treat P&Z as a quasi-judicial process. Ms. Denne said okay.

Councilman Gilbert mentioned, I think the alternative is we don't have to use the conditional use permit process. Some of that's considered outmoded; but if we use conditional zoning, zoning agreements for larger projects and looking at that then those can be legislative in nature and the citizens can negotiate or have a negotiator. It's reasonable that the town would have somebody negotiate for them and negotiate with the developer. So if you move away from the conditional use permit process and looked at conditional zoning, especially in our downtown, don't you agree that's legislative and we wouldn't have to act as quasi-judicial. Mr. Clyburn answered those appear to be legislative processes. Under our Zoning Ordinance, you have in your different zones you have uses of property that are permitted by right. You own the property; some uses are permitted by right. As the owner of the property, you're entitled to use the property in that particular way. We also have uses that are available by condition, by the conditional use permit process meaning the Town Council can approve your requested use but the Town Council can attach conditions on your proposed use of the property. That's the whole theory behind the conditional use permit process. Ms. Denne said, I just think that we need to somehow cut government some, get communication open better, so that the people...not everybody can come and spend 3 or 4 hours here at night. I mean I don't

know how many of you out there are like me that have had no dinner, that came from work, that are tired, that have been up since 5:00 this morning taking care of kids. Not everybody can come here to get educated and then count on the newspaper to deliver us what took place. So if you guys could talk about it out there openly with everybody and our Planning and Zoning could do that, then I think that we could cut some of this tension that has bound and gagged our town forever and kept us with our feet mired in the muck not moving forward. We just need to figure out how we're really going to move forward and communication's the key so we need to figure out how to do that. If we can change some zoning laws and stuff to do that, then that's what we need to do. Thank you.

Mayor Macon said next, state your name and address sir.

My name is Frederick Fisher. I live at 1504 Drill Shell Lane. In regard to what the lady said, as far as the town or anyone, you can't give up what you don't own, so really in a sense the town does not own the property that we're talking about. You do have certain regulatory (*note: in audible words*) over it. I speak today more for individual rights and the rights that our forefathers understood that if you amend and regulate businesses out of existence then you cannot use the property you have. The only way man can survive is to take his property and take it and use it for his betterment. So I would wish that...to the Councilman I admonish you not to amend people's rights to their property. The power to tax as we all know is a power to destroy. Far greater to that today the power to regulate destroys it much, much further. Thank you.

Mayor Macon asked if anyone else would like to speak in favor of the project. As someone came forward, he said state your name, address.

Mayor and members of Council my name's Donna Gurganious and I serve on the Pleasure Island Chamber of Commerce Board of Directors. Thanks for allowing me to speak this evening. I'm here as a Board member of the Pleasure Island Chamber of Commerce to speak in favor of the Fairfield Inn project proposed in our CBD. We stand before you tonight with an awesome opportunity before us to dramatically improve our Boardwalk area and CBD. We implore you to use good judgment and long range vision when looking at these plans. This project gives an opportunity for us to take what is currently vacant, empty property and turn it into income producing property for our town and residents to benefit from. These benefits come in the form of improved infrastructure, new fresh landscaping, job opportunities, and tax revenues. The participants in this project are not new to Carolina Beach. We are fortunate to have had the opportunity to work with the development group we have worked with in the past. We know the quality of work and the management to be top notch in this group. We also know the land owners that are willing to partner with them to make this successful. They are very active in our community and have a vested interest in seeing this project to fruition.

We ask tonight that you show your commitment to Carolina Beach, to the Boardwalk area, and to improving the economic growth in these areas and please say yes to this project.

Charles Eaves, 1311 S. Lake Park Blvd., Unit 31B, Carolina Beach. Mr. Eaves said he is has been an owner since 1984, a voter, taxpayer of Carolina Beach. Okay, the proposed hotel in the Central Business District does not have a nice restaurant for their guests. The Marriott has only 74 seating capacity in the restaurant and 144 rooms. If you have two persons in the rooms, this would be 288 persons at full capacity. Where are the 180 persons in the 90 room proposed Fairfield Inn going to eat? The Planning and Zoning Commission is right to turn down the proposed hotel as presented. Carolina Beach needs a year 'round hotel not a 12 week summer only establishment. A roof type restaurant with a beautiful ocean view would make the Fairfield Inn a major year 'round attraction.

On Saturday, December 29, 2007 at 6 a.m. in the morning, there were 87 cars in the Marriott parking lot. On Monday, December 31, 2007 at 7 a.m. in the morning, there were 114 cars in the Marriott parking lot of which 42 were out of state. Honorable Mayor and Council members ask this question, if the Marriott had no amenities, how many cars would have been in the parking lot? The Central Business District is the last oceanfront property suitable for a first class hotel with a nice restaurant. We must not fail the future of Carolina Beach.

I have been conducting interviews in Magnolia Green, Waterford, Westport, and Magnolia Creek. My company cleaned 62 houses to get them ready for Thanksgiving, Christmas, and New Year's parties, okay. I personally interviewed the 10 homeowners in these communities of the total number that we cleaned for the holidays. I asked them this question: If we had a rooftop restaurant or a nice ocean view restaurant, would you be willing to come to Carolina Beach on the weekends, not in the tourist season but during the winter? All 10 individuals, in other words my customers, answered yes.

I conclude and I hope we do build something of quality in the Central Business District. Thank you.

Mayor Macon said I guess we're in the no category at this point. Someone from the audience asked a question and Mayor Macon asked did you get sworn in. The person answered no. Mayor Macon proceeded to tell that person you need to step up and be sworn in.

Don Bosco was sworn in at this time. My name is Don Bosco. I live at 805 Settlers Lane in Kure Beach. I also own property in Carolina Beach and I own a restaurant Tuscan Grill.

I want to make a couple statements. Number 1 the Board has passed a couple other projects in town that were good projects and everything else but nobody's built them. Alright and they're all probably in limbo on whether they're going to be built or not. Now here you've got a company that's been here. They already did it. They built it. They did what they said they were going to do. They want to build this thing within the next year and have it open. This is something that should be taken in consideration and weighed in your decision on what you're doing.

The town like everybody talked about tonight, the Boardwalk committee and everything, we need stuff to be done in this town. It needs to be done quickly. I own a restaurant. We have lost three restaurants in the past two years. We need more restaurants in this town but we need to be able to get the people to come here. We need to be able to provide some kind of an atmosphere in this town that something's going to happen. Nothing's been happening for a couple of years; nothing's being built. We've been approving stuff and nobody's been doing it. These people are willing to do it and do it quickly. This should be taken into consideration with that. I think that's real important on making your decision with what you're doing now and we do need more restaurants in town. So that's the comment I really wanted to have. Thank you.

Mayor Macon asked if anyone else would like to speak for the project.

Hi. My name is Alan Pacek. I live at 101 Island Mimosa Lane. I've had the privilege of attending a couple of meetings here with the Boardwalk group. It's a diverse group of people. I've also had the privilege of attending Council and Planning and Zoning meetings and there definitely are divergent views, different views. What I've seen happen here in the last several weeks is a momentum has been building and people are starting to put aside their differences and looking at what they have in common.

Whenever I first heard about this hotel project, I was so very excited because a hotel on a beach community can be such an economic generator that it's a good thing. We have to make sure it's the highest and best use and there were a number of issues with connectivity, pedestrian orientation, and what might be happening because not all of the drawings were as specific as they are now and still they should be even more specific.

I've also had the somewhat fortunate experience of becoming a Pleasure Island Chamber of Commerce Board of Director and the Chamber of Commerce has enacted a new charity, a foundation to sustain all of Pleasure Island. Basically it's an economic development tool. With that in mind, we went to those developers and it seemed that one of the things in the apex, should it go or shouldn't it go, what are you getting and what are you giving up. It turned on right-of-ways that were public that were being asked to be given up. Whenever they were approached they basically said we'll give it to the town or we'll give it to you. However it takes we'd like to make this work and there was a piece of property that was in play that was not in play at P&Z and that came about as a result of just talking, so I think that some of Lynn Denne's comments have to be echoed. We do need more open government. We need to eliminate the adversarial relationship between developers and Town Council. You need to be stewards of our community but there are other avenues available and one of them is a foundation to act in your best interests and to see that maybe the master plan does something more than collect dust. One of the reasons that we've enacted to form this new foundation...it's called Pleasure Island Foundation for a Sustainable Community. Right now it's being chaired and run by the Executive Board of the Chamber of Commerce. It's to try to like bring various groups together and act as a vehicle to facilitate donations and to facilitate in a positive movement and to find trees be it for the boardwalk or Adirondack chairs for that same

area or to find a number of trees that have been outlined in the master plan so that we do end up having a boulevard stretching along Lake Park Blvd.

With that said, I think this project needs to move forward and I ask for your support. Thank you very much.

Mayor Macon wanted to know if anyone else was speaking for the project. Since no one came forward, he asked is there anyone speaking against the project.

Mr. Mayor, my name is Leroy Franks, 908 Canal Drive. Mr. Mayor and respected members of Council I am firmly against this project. Our (*note: inaudible words*) building director there or planning director stated that the two hotels would have a distance of 11' from them. The plans that were presented to Planning and Zoning and the plans that are on city hall files shows a distance of 7'. That is not enough space between those two hotels to allow the fire department sufficient space to operate in there unless we want to spend about 10½ -15 million dollars on fire equipment.

My second point has got to do with giving away public property because it blocks the public access to the beach itself. It should not be done. Mr. Johnson told you just five minutes ago, he said if they did not get that then they did not have enough property to build their project. Well I'm sorry. He can downsize his project if he wants to but he can build it on his property. He does not need public property.

I would like to request that Ms. Efird recuse herself from voting on this issue and the road closure the next item on the agenda because she is the agent of a property directly that will be affected by her decision tonight and I will present this photograph (*Exhibit 4*) (*note: inaudible words*) for sale by Beach Girls and whichever way she decides it could be a windfall profit for her client or herself. Councilwoman Efird said I should hope so. She said I don't stay in business for nothing.

Mr. Franks said that's all I've got for right this minute. I will address Item 15 in more detail.

Mayor Macon asked is there anyone else wishing to speak against the project.

Good evening. My name is Birdie Clark, 203 Florida Avenue. Excuse me 322 Florida Avenue. That's the old address before they changed it. I've been here long enough to be under address changes. I appreciate the opportunity to speak and all the time that was put in on this project, especially at Planning and Zoning. I really think they were asking good questions. They were looking out for us. I'm not here because...I'm like April. I signed up for one side or the other because I don't have a really strong adverse. There are a lot of good things; there's a lot of bad, there's some bad things. There's some concerns and I guess that's what I'm expressing now is my concerns.

One of my concerns is the master plan. We're real close to getting some idea of where that master plan was going. I know that it's going to be a while before we get something

absolute, definite but I would just like to see us wait just a little longer to see that this next meeting of the master plan what the direction is and we can be sure that this project is going to fit with what's going to be right adjacent to it. And we spent a lot of money, we spent a lot of time, there's been a lot of participation in that, and I'd like to see that get a chance. The thing is I realize that the developers need to get going on stuff but you know it goes back to like Mr. Pacek...I mean I don't know who...I mean I know...see Planning and Zoning, the Planning Department, everybody has a jump start on the rest of us. I'm chewing over these things for a long time. The developer's been in there, the attorney's been in there, they've been talking about stuff, we haven't had a clue what you have been talking about until now and it's just not enough time between a Planning and Zoning okay and then we've had much more time on this project and that's what I appreciate the fact that we've had time to look at. But I just...I mean I'm like Lynn I resent the fact that some people get pieces of this stuff before anybody else does and we all need to be able to get pieces of this thing you know and not just because we've got money invested in it. I got sweat equity invested in this whole community. I've had paint brushes in my hand down on that Boardwalk with Alan. I've been on my knees laying bricks in front of Duke Hagestrom's place. I've got sweat equity. I deserve to be able to know what is going to affect my future here, my children's future here, and my grandchildren's future here. So I want us to be able to figure something out because it's just really frustrating to be on the outside. I also realize that this project the decision is probably already made. I've been in front of this meeting since my daughter was 20...my daughter was 25 years old yesterday. She was in a stroller and I've been at P&Z meetings and Town Council meetings and guess what we've been talking about high buildings, density, infrastructure, yadda, yadda, so I've been around the block a few times and I care about this place. I really care about this place. So I just feel like my sweat equity counts for something. And Mr. Wilcox that was awesome, awesome what you said about the Boardwalk doesn't belong to the people that live there, that own it; it belongs to all of us. I want us to make sure that this deal that we're making is best for all of us; not just for the developer and I love the fact that we've straightened out the figures. The figures that were in the newspaper the \$700,000 figure. Thank you very much Mr. Johnson for breaking that down and straightening that out. That was very honest of you and made you not look like a used car dealer. Mrs. Clark continued, and so I guess what I'm asking is I'd like us to really, really look at this and make sure that it's...what we're getting the bank for our bucks, what we're giving away this property, and what we're giving away parking stuff. I got my questions about it. There are so many good things about it but I've got some real questions about it. I think there is a harmony issue as far as the Land Use Plan because we're not really sure what the harmony is yet until we get this master plan a little bit under handle. So I think there is an issue. I think P&Z was right about the harmony issue. So I guess what I'm asking is could we just really look at this and be sure. What is another...wait until we see this master plan play out a little bit and to be sure. Just be good stewards of what you're giving away essentially. It belongs to all of us and we've all got...we don't all have money in it but we've all got some kind of investment in it.

Thank you very much for your concern on this and listening to my concerns. There was applause and Mayor Macon said thanks Birdie. Mayor Macon also said and I would

argue that you do have money in it so I would make that argument. You pay taxes; you do have money in it.

Mr. Anthony Nobilio was sworn in. Mr. Nobilio said, I'm not going to beat a dead horse. I own property at 310-2 Spencer Farlow Drive. I've been in this area now for about 4 years and we really like Carolina Beach but it has...I'm not going to repeat...two issues I want to bring up. Number 1, Mrs. Efird if you have a vested interest in income coming into you from this property I think you need to get a decision from the attorney whether there is a conflict of interest and not laugh this gentleman off. And the other thing is the lady in the brown dress everything you said I'll just reiterate because it was great and I've only lived here 4 years so that's really all I had to say.

Mayor Macon said to Councilwoman Efird, do you want to speak to that. I don't think that this...this property that you have listed for sale is in the area but not part of this project if I'm not mistaken. Councilwoman Efird answered it's in the area but not part of the project.

Ms. Michelle Swart was sworn in. I'm Michelle Swart, 202 Lewis Drive. I'm not actually against the hotel. I like the idea of a hotel...just the way that they are proposing to implement it. My husband and I are new homeowners in Carolina Beach. We've had people speak that have been here forever. We bought a place in May and we've greatly enjoyed the whole beach town. One of our favorite activities is to ride our bicycles around town to see what's going on and get some exercise. We ride from our home, down St. Joseph Street toward the CBD in order to keep safely off Lake Park where you can die in the summer. We have to ride behind the Domino's Pizza, through Blackburn Brothers Seafood parking lot to get to the city docks. Our first time out we headed over to the Boardwalk area and we were so surprised to find that North Carolina Beach Avenue was blocked off at the Marriott or maybe it's South Carolina Beach Avenue but it was blocked off. We thought we were going to be able to go through back roads and get over to the lake and ride around but we couldn't. You can hardly even get a bicycle through there, so we had to go back onto Lake Park and have a hazardous ride over there.

I couldn't really imagine why the city allowed the Marriott to block the access in the first place. It allows the Marriott to have their own private enclave at the expense of local citizens safe access, so please don't allow them to block off more land for the Fairfield Inn. In fact really, it seems that it should be a condition of approval for the new Fairfield Inn that they open up the Marriott at least to pedestrian access if not...I don't suppose you could actually get car access back because you've already given it away but at least to pedestrian access. One Council member said it would be okay to block off more road and alleyways for the Fairfield Inn because there wasn't much pedestrian traffic there anyway. Well the reason there isn't a lot of pedestrian traffic there is that you can't get through there already so it's kind of already blocked off so let's take this opportunity to remedy the issue rather than making it worse. It's important to have public access not only on the boardwalk itself but also on the roads on the landward sides of the buildings, especially since bicycles are prohibited on the boardwalk. So please make sure that our access is prohibited. The Marriott so far I haven't really seen be such a great

improvement. They've been against things that other people want to do. They've tried to block off access and so they've kind of created just an enclave down there. I'd really not like to see the Fairfield Inn add to that and be able to segment themselves too. I ask love to have the hotel but let's find some way to preserve the public access. Thanks for your time. Mayor Macon said thank you. There was applause from the audience.

Mayor Macon asked for the next person. Ms. Caroline Meeks was sworn in. Good evening Mayor and Council I'm Caroline Meeks and I live at 206 Fayetteville. I'm not really against the development down in the CBD but my concern is also what was just stated and actually reiterated with connectivity between the boardwalk, the CBD, and then the lake. It's literally impossible to get through now and it seems like now it's going to be a little bit more obstructive. However, it was kind of glanced over that they have now added an access from the boardwalk to the rest of the CBD which is what we're really concerned with which is in front of the Marriott. I would just like to get a little bit more interpretation on how extensive that's going to be and how it's also going to connect hopefully to the lake area which I think is the problem that was just stated. I think that would certainly help in the whole project and the acceptability of it so maybe if they could just explain a little bit how that would be accomplished that would be helpful. Mayor Macon thanked Ms. Meeks.

The mayor asked if anyone else was wishing to speak. A female said I'm sorry I haven't been sworn in. Ms. Sue Bullock was then sworn in.

I'm Sue Bullock. I'm an interloper here. I'm from Wilmington. Some of you may remember me back when we did this a few years ago. I am here tonight on another mission. I am representing Rob and Julia Pruitt who are part owners in the putt-putt course and I was called by Rob yesterday asking if I would come down and find out what was going on because he hasn't had contact other than a notice that was sent recently about this hearing. My concern or my questions to you as Council and really there're questions because we really don't have any position on this is what kind of public access to putt-putt will be affected by this proposed building? Can anyone answer that for me? Mayor Pro Tem Wilcox said if you ask the questions the applicant will be able to come back up and answer those questions at the end. Ms. Bullock said okay, great. That would be their concern; and if the closure of a public access is going to impact the feasibility of that land to do business, then of course they would have concern with that. They are certainly not saying they are opposed to development on the Boardwalk, they welcome it; but if this is a direct impact on them, then they would request to be heard. Thank you.

Councilman Gilbert asked did you say that their only notification was a planning and zoning notification or do you know specifically what they received. Ms. Bullock said they have not had any contact with anyone now and I'm speaking for Julia and Rob Pruitt and they have another partner. One of the other partners may have. But they as deed holders received notification from planning and zoning but really have not had any contact for over a year and a half on this property. Councilman Gilbert said so the developer or nobody has contacted them in a year and a half. Ms. Bullock said not to my

knowledge has the developer...Councilman Gilbert interjected they'll answer that. Ms. Bullock said okay. It would be a question that they would raise.

Mr. Owens added just a point of clarification; we will have a public hearing on the actual road closing portion too that we can do a little more communication. Ms. Bullock said I didn't know whether to stand up now or...Mr. Owens assured her it's fine it's perfectly okay to do it now but we will also be able to get into a little more detail during the road closing. Ms. Bullock thanked Mr. Owens.

Mayor Pro Tem Wilcox asked Ms. Bullock is she is the same Sue Bullock that worked on the market study and she replied I am. He said it's nice to finally put a face to the document. She said I am thrilled to see you proceeding; 9/11 interrupted the last effort and from my other hat as doing market research and working with you years ago, I am thrilled to see you making the effort and moving forward with a new effort for the Boardwalk. Mayor Macon thanked Ms. Bullock.

Again, Mayor Macon asked if anyone else wished to speak.

Mayor Pro Tem Wilcox made a motion to close the public hearing. Mayor Macon said all in favor...at this time, Mr. Clyburn said I'm sorry Mr. Mayor you need to give the applicant...Mayor Macon said I'm sorry, I forgot again, I'm sorry. Mr. Clyburn said you've got some questions and some rebuttal to do.

Mr. Johnson said as far as notice requirements or anything like that, I guess we as it was dealt with, were part of the application process gave the information on adjacent property owners for notification whether it be for the conditional use permit or the road closing hearing so that was done. In terms of the...I don't know whether to discuss the access to the putt-putt now or on the road closing. It kind of works both ways but however you want me to do it. Mr. Owens replied I think you could do it either way. They do want to talk a little bit about the, I guess the sidewalks, somebody mention the sidewalk connection as well between the buildings. Mayor Macon added that's an issue.

Mr. Johnson response was we did do a pedestrian access between the two buildings here. We did make a modification of the plan. My understanding is this is still going to be open and this is putt-putt property so there's still access. Mayor Pro Tem Wilcox asked can you blow that up (referring to the overhead projection of the property) so we can see. Mr. Johnson said which part were you interested. Mayor Pro Tem Wilcox said the sidewalk. Is it 5'-6' sidewalk that goes all the way across through the Marriott? Where's the start? Where's the stop? What kind of connectivity does it provide? Mr. Johnson said it is not a large sidewalk. I think it was 4'; I mean 5'. It's just a very tight space. Mr. Johnson said it is right here. We had to adjust the dumpster area here and the landscaping in order to provide the access right here and it's pedestrian access. Mayor Macon said okay and that's nice but what about once you access into the Marriott. I mean do we have a way to cut through to the town parking lot over there. I don't recall that. I mean because I have some trouble...Mr. Johnson said I don't recall what that is there either...I don't think there is. Mayor Pro Tem Wilcox said you go out to the street... Someone said that's all private property and Mayor Pro Tem Wilcox repeated

private property. Mr. Owens said there could easily be though because I think it ends just...I mean there could easily be a way to do that I believe. Councilman Gilbert asked who's got the pointer that can show us what we're talking about. Mr. Johnson explained that you have to walk through the Marriott to get to the public parking lot. Mr. Owens asked would the applicant have any problem if we tried to create some more interconnectivity. Like I said if you're traveling across or in front of the Marriott going to our parking lot I think you can accomplish that by taking out a section and making...Mr. Johnson answered as long as we can meet buffering requirements and...Mayor Pro Tem Wilcox interjected are we talking about the lease parking lot. Mr. Owens said no we're talking about coming from I guess the Boardwalk area going around in front of the Marriott, through the old Woody Hewett intersection, and then hitting our Hamlet parking lot. Mayor Pro Tem Wilcox said okay. Mr. Owens continued right now there's a landscape isle or something there that you can't really...you got to walk over it basically. Mr. Johnson answered there's no problem with modifying that to accomplish...as long as we don't violate any buffering rules by removing any landscaping.

Councilman Gilbert said okay walk me through this Joel. Mayor Macon said I'm assuming what you're saying now is if you're riding a bicycle you have to come into the parking lot, come here...Mr. Johnson said right...and go this way, and traverse the other parking lot over here and then we would have...Mr. Johnson said we can change, if there's some bushes in the way I don't think that's an issue on the other side. Mayor Macon said it would be nice to be able to not have to go out onto 421 there to...Mr. Owens said it's going to be a grade issue probably. It could be a grade issue by that compacter because I know the grades are different. Mr. Johnson said that's some of the problem we have. We did that amount of connectivity...there was some discussion previously about (*note: inaudible words*) to the degree we can with the existing grade. There's not a problem working cooperatively...Mayor Macon said but if it weren't steps, if it was just a sidewalk that had some grade to it you could at least traverse it with a bicycle. Mr. Johnson agreed. He said but that was some of the struggle we had is just trying to fit that within the grade even there. Councilman Johnson asked is the sidewalk above Woody Hewett? Mr. Johnson responded I believe it is in that location. He has got a 7' grade mark right there and I don't know what...I don't know if on a topo map whether we could tell what the difference in elevation is. Mr. Ferguson replied about 3'; there's about 3 to 4' difference in elevation right there at the corner. Councilman Johnson said so that sidewalk is going to have a handrail. Mr. Johnson said well it will have to have whatever by code would be required. Mr. Johnson said I'll be glad to answer any other questions but...Mayor Pro Tem Wilcox said with the understanding that's not all your property over there; you'd do anything you can to enhance that connectivity. Mr. Johnson replied we'll be glad to enhance connectivity any way that we can and work cooperatively with others to do it. We did some relocation of the Boardwalk and that area and all that on the Marriott property, already we've done some of that. Mayor Macon said well I definitely agree because when I ride my bike and you want to ride up to the north end and around that loop which is a very nice ride you have to go out to 421 and that has its challenges. If there's a way we can cooperatively do it that's not a problem from our perspective with what we can try to work out on our

property to the degree there aren't any physical limitation replied Mr. Johnson. I would just stand on what I said earlier about meeting the general conformity with the conditions and we meet the specific conditions based upon the staff's presentation and our presentation. Councilman Gilbert asked Mr. Johnson are you going to address Leroy's question or concern about the 7' between the buildings. Mayor Macon said it is 11'. Mr. Johnson said it's about 11' and we'd have to meet whatever code issues. I mean the building code requires...Councilman Gilbert said so it's 11' and not 7'. Mr. Johnson replied 11'4" I believe. Mr. Ferguson added 11'4" and these are...Mayor Pro Tem Wilcox asked if it has to go through TRC. Mr. Johnson and Mr. Ferguson both replied, right. Mr. Johnson added and it already has been at TRC one time and we'll have to have a re-re-review. Councilman Gilbert said okay, so the actual distance is 11'4". Mr. Johnson reiterated 11'4" and then continued and of course we'll have all the sprinkler protection and all that that we're required to have in terms of fire issues that were mentioned. Mr. Johnson and Mayor Macon inquired are there any other questions. Mr. Johnson said I know there was a question about a restaurant. Again there won't be a full service but there will be a limited service breakfast facility in the Fairfield Inn, and you know that's the thing I mean you kind of walk the line do you provide another restaurant for more competition for your existing restaurants where other restaurants have failed or do you bring the people to it and allow others to provide the restaurant facilities. In this situation, we do still have restaurant facilities in the Marriott and there are others that are providing the service in the area. Mayor Macon asked any other questions. Since there were none, he thanked Mr. Johnson.

Mayor Macon said do we have a motion on the table. **Mayor Pro Tem Wilcox made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

At this time, Mayor Macon said to Councilwoman Efir you are welcome to ask Al...she's listed a piece of property in the general area of the restaurant...Mr. Clyburn said no. Mayor Macon said I'll entertain a motion.

Mr. Clyburn said Mr. Mayor let me just say on that question to abstain from voting, the Council member must have a direct financial interest in the project and if Ms. Efir does not have a direct financial interest in the project there's no basis for her to recuse herself from voting. Mayor Macon said thank you sir.

Mayor Pro Tem Wilcox said he would like to offer a couple of comments. Councilman Gilbert suggested it might be more appropriate to have the motion and then open it up for some deliberations or discussions. Mayor Pro Tem Wilcox said, motion before you discuss it? Mayor Macon said yes, usually you would make a motion and then we would discuss the motion. Mayor Pro Tem Wilcox replied okay. Is that what you want to do? Mayor Macon replied yes.

Mayor Pro Tem Wilcox said alright if we have to get to a motion to discuss the issue, I'll make a motion to... I don't have all the...Mayor Macon said put the new guy to work...Mayor Pro Tem Wilcox said I lost my place...I was looking for the other conditions. Mr. Owens pointed out that it was towards the end of your document, it starts

with...well it might be mid-way. It starts with general standards. Gary you want to bring up your presentation. He's got the general standards, then there are general conditions 1-4. Mayor Pro Tem Wilcox said part of it's up front but...Mr. Owens continued ...TRC recommendations. He can bring it up and then there are specific conditions; I think Gary added two additional specific conditions. I asked you to amend two of them. Mr. Ferguson said these are the 7 and you want the 7 general conditions. Mr. Owens said I think this is where he's trying to go to. Mayor Pro Tem Wilcox said it seems to be in different places here. Mr. Owens said it's after the neighborhood contacts if you see...like I said...Mayor Pro Tem Wilcox said I think I have it.

Mayor Pro Tem Wilcox made a motion to approve this project based on specific standards 1-7, general conditions 1-4, TRC recommendations, planning staff recommendations including parking and sidewalk landscaping, fire, operations, staff recommendations 1-39, including two additional motions that the planning director added, which is the applicant will continue to adhere to the conditional use permit and the zoning requirements of the Town of Carolina Beach and secondly the separate agreement that the attorney would draw up that the applicant would sign basically attempting to verify that the rights-of-ways will be reverted back to the town if the CUP either expires or is revoked.

Mayor Macon asked if there was any discussion on the motion. Mayor Pro Tem Wilcox responded since I made the motion, I've got a couple of things I want to say. I know it's late folks and everybody wants to get out of here but this is an important project and I'd like to just give it a couple of minutes. I know that decisions of this type are always controversial and no matter what I do tonight there's going to be half you folks that aren't pleased but I look at my responsibility to do what I think is right for the town in the long term and based on a number of criteria.

My original concerns for the project were connectivity which while they may not be able to make it perfect it appears they can create some connectivity. The issue we're going to be hearing which was the right-of-way road closing, and I'm encouraged to see that they've donated property to the town that makes me feel better could make me feel better when we get to it. Other than that as I look at it, they meet pretty much every ordinance except for a couple of parking spot waivers that the town has asked them to do. We could require them to have a restaurant. We could require them to have a parking garage but our ordinance doesn't require them to do that and we can't require them to do something our ordinance doesn't require. Most restaurants in hotels are lost leaders and most of the public doesn't use them anyway. I like the idea of them sending...routing business down to the small mom and pop restaurants on the Boardwalk that will I think stimulate the revitalization down there.

The project brings \$1,269,000 in impact fees. In taxes, and those taxes, seven hundred and change of those will be paid every year. Two hundred and ten thousand dollars of that is room occupancy funds which we need. (*note: inaudible wording*) on its own warrants approval of the project. But to deny that these are substantial and on-going funds for the town would be kind of to deny the obvious.

They're willing to provide some of the improvements directly to the town for some of the improvements that we're looking at doing and the long term plan for the gazebo area and some entertainment structures down there.

Public access has been talked about on the Land Use Plan. Public access as I understand it means more than a physical pathway that leads from one place down to another place. The Land Use Plan talks about public access and public access includes the ability to bring more people down to the oceanfront to enjoy the amenities. So if you've got a couple structures sitting down there and retail structures 5 or 10 people use those and nobody spends the night in them if you replace those structures with 100' room hotel by virtue of that you're creating more public access. You're creating the ability for people to come down and access those views, access those resources, and enjoy our oceanfront. If you have a pathway that leads outside of that hotel like this plan does, it leads down to the ocean, instead of a small amount of people finding their way down that already blocked off right-of-way to the ocean on a daily basis now you've got 200 people, 250 people in a hotel that'll use that access a couple times a day. So you might have 300-400 trips through that access versus 20 or 30. So public access I think this meets the definition of increasing public access and we also have the ability to enhance our other public access to make up for anything we feel we've lost in foot traffic access. As much as I'm looking forward to the master plan, I don't think it's within our ability to delay a due process because a master plan might become available in February or March or whenever. I think the plan is in general conformity with the Land Use Plan. General conformity does not mean consistent. It means in general conformity. It means it meets some of it, doesn't meet some of it, and we have to weigh all of it. Everybody knows where I stand on this. Those are my issues.

Mayor Macon asked if anyone else had anything to say. Councilman Gilbert asked Councilman Johnson if he had anything to say and Mr. Johnson said no. Councilman Gilbert said I guess really the comments that I have are more towards how our one size fits all zoning, our conditional use permit process has really let us down. It takes all the power from the people to be able to negotiate this and it puts it more into a political balance than it does anything else.

I think if you look at the Marriott, there're probably two or three things that the Marriott could have done to really be magnificent, outstanding project. There was nobody in the town at that time negotiating for the citizen and accesses were cut off and it was really a tragedy to the entrance to the Central Business District and it probably did more because if you look at the businesses adjacent to the Marriott very few survived or thrived. With that lack of negotiation in the conditional use permit process, we gave away Woody Hewett or at least access to it. We didn't have even rights to run a water line on that so we didn't have anybody negotiating for us. I think when you look at the conditional use permit process and the quasi-judicial...I had citizens coming up to me wanting to know my opinion, I had media calling me wanting to know my opinion and I think what this has done, I think staff are the only people that were negotiating this or had any kind of power to negotiate this and it did take the power from the people. I'll challenge all the Council people up here to be really honest on their communications with the developers

because I'm going to be honest right now. Before this conditional use permit application was put in, I was invited by a friend of mine to meet with the developers of this project with the idea that I could help negotiate some things, that I could make a difference. Then I learned pretty quickly of what was going on probably in the process. My guess is that everybody up here on this board had an opportunity probably to talk to those developers, or were invited to, probably were given some kind of general idea of what do you want, what do you want for the Boardwalk. I think what it came down to is that was the polling of this Council to figure out what they could barely get by with and I think what this conditional use permit process has done is very similar to what the Marriott process did. It allows us to strive to some level of mediocrity and I think that's what this is. I think a hotel in that location is a benefit but I think a hotel with the features and benefits that will help Carolina Beach be an advantage over its competition. I think what we're doing is considering giving up right-of-ways. I think you can look at these from all different angles and I've tried to. I looked at it as worth giving up a right-of-way and accesses, will it benefit the Boardwalk, and I think we're just a few features short of doing that. I think without the restaurants, without parking...what you're doing with your parking lots in this case you have two parking lots that are on the surface of where we used to have traditional businesses.

With respect to character and harmony, I look at economic character and harmony and sure you have air rights but at this point right now there's no commercial going in there; you do have a hotel. What I've looked at is the Marriott was a benefit; I think it was probably two levels short of having an access, probably handling parking better to be an outstanding one.

I think I'd like to ask this Council, planning and zoning staff, and our attorney to look at this conditional use permit process and I'll challenge you there's better ways to do it. I think we really let an opportunity slip by not looking at these developers, looking at the town, and anybody else that would want to throw in on a downtown development. You got grant funds again, downtown development we have ordinances and our general statute 158.71, 160.80, 457, 168, 458, there's also general statutes that allow for development agreements with respect to large developments and you mentioned 25 acres. Well it's never been challenged that a high rise hotel with the impact on infrastructure wouldn't be considered the same type of density. That hasn't been challenged so there's no case history that says you can't do it. I think we've missed a tremendous opportunity to have a 10 when it comes to hotels, features, benefits, advantages I think we've missed. I'd like to ask this Council to look inward and say on a scale of 1 to 10 what is this project. Look at the parking, look at the amenities, looking at basically giving away right-of-ways and I'll challenge you it's probably a 2 or 3. Good luck on a 5.

With respect to the Land Use Plan, it's a tipping point. If you could have figured out 45, I think you would have been gold in respect to the Land Use Plan. I think the Land Use Plan, basically you're almost there with a couple of concessions.

I'd ask everybody here to look at this process, ask these Council members if you're friends with them or associated with them changed the process. The process is flawed.

Nobody's negotiating for you. It's not going to happen in the conditional use permit because Tim Owens, the town planning director, these people aren't negotiating for you. They don't have the power to do it; they can't do it. I would say look at your alternatives and innovate before you're really going to be represented. So if this project's a 5 what would make it a 10? Let's ask them to make it a 10 and let's be proud of something and stop settling for some level of mediocrity. Thanks.

Mayor Pro Tem Wilcox said in closing, with due respect to Mr. Gilbert's comments, we have an application before us and we have current ordinances in place and current CUP regulations in place and that's what I have to base my decision on and that's what I've done.

Mayor Macon asked Council if anyone else would like to comment.

Councilman Gilbert made a motion to amend Mayor Pro Tem Wilcox's motion to ask the developer to strongly try to open up Woody Hewett access to pedestrian and bicycle access as a minimum.

Mayor Macon asked, do you want to include working with the Marriott?

Councilman Gilbert continued, working with the Marriott to do everything in their power...Mayor Pro Tem Wilcox asked which access we're talking about? Councilman Gilbert answered the one Joel pointed out to get in...Meeks...I'm sorry, Caroline, I'm very sorry about, Happy New Year, I haven't seen you in a while...I think there's considerations. I think whatever they can do to facilitate an even flow or access to the Boardwalk. I think that's probably the biggest challenge is they've created a compound in the Marriott, they're creating a compound in the Fairfield, and it's not inviting. I know they had security and safety issues in general but I think if we can get flow opened up there at minimum safety, bicycle...I would like to make that a condition and strongly recommend that they try to achieve some kind of access through those properties.

Mayor Pro Tem Wilcox said I agree with making that a condition to the extent that they can do it. They don't own all that property. They can work with the town and I got a feeling they'll jump through hoops to create that connectivity over there. I'd like to see that as well. So, if you're amending...I don't know how you handle this thing. Councilman Gilbert said you vote on my amendment and then we vote on yours.

Mayor Macon asked Councilman Johnson if he had anything to say. Councilman Johnson declined any comment. He then asked Councilwoman Efir. She replied we've been waiting a long time for something to happen at that Boardwalk. Nobody has come forth with anything except Mr. Maynard on the north end to even consider building anything on the Boardwalk. I think these developers I commend them for coming in here. They're not new to this area. I trust them and I am delighted to see them come in here and want to do something on that Boardwalk.

Mayor Macon said alright we have a motion on the table with an amendment to the motion. We will vote on Alan's amendment. **MOTION CARRIED UNANIMOUSLY.**

Now we'll vote on Dan's motion to approve the project with the conditions that were listed:

Specific standards. Applicant must make provisions for:

- (1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;
- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;
- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;
- (4) Utilities, with reference to locations, availability, and compatibility;
- (5) Screening and buffering with reference to type, dimensions, and character;
- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;

General conditions

- (1) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the C.U.P.;
- (2) That the use meets all required conditions and specifications;
- (3) That the use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
- (4) That the location and character of the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the Town Land Use Plan and Policies

Planning

- Show existing survey of the surrounding properties, location of buildings, show existing infrastructure and proposed.
- Adjacent property owners need to be placed on the final site plan
- Widths of names and adjacent ROW are needed on the final site plan
- All site dimensions shall be located on the final site plan
- Existing topography and final grades shall be submitted on the final site plan
- AEC lines need to be shown and labeled, along with the flood zone lines and designation
- Show all street, alleys, and sidewalks intended for public use on the final site plan
- # of stories # of rooms height of building, entrance and exits of building shall be designated on the final site plan. A room layout and room typical shall be provided with the final site plan.
- A proposed grading schedule shall be provided prior to any land disturbance
- All lot coverage and setbacks shall be shown on the final site plan

- Remove Airspace designation of the site plan. Airspace rights can be retained through deed provisions between the property owners.
- Show proposed Marriott addition on the site plan and if or how it will tie into the Fairfield site
- Separation between all buildings and improvements shall be shown on the final site plan

Parking, Sidewalks and Landscaping

- Sidewalks by the hotel does not meet sidewalk standards
- All parking spaces must be a minimum 9 X 18
- Look for the possibility of connecting parking lots and pedestrian walkways between Marriott and Fairfield Inn
- Show 2-way drive isle widths a minimum of 24' and one-way 15' on all parking areas. Show dimensions of the entrances to the parking lots
- Deed a portion of the lot adjacent to the Town of Carolina beach lot off of Canal to the Town
- All improvements to public property to be designed and approved by Town Council at a later date.
- Show any improvements planned for the gazebo park area by applicant
- Mark spaces as Fairfield only need to address parking pass system
- Show height clearance of the canopy in front of the building for emergency vehicles to pass under.
- Consider improving Town owned FEMA lot with landscaping and allowed improvements
- Install all sidewalks using MDP design guidelines
- Need bumper stops in areas where car overhang may impede on adjacent right-of ways
- Need road closure plat. Need to look at existing survey not sure why property in front of Dail to be closed. The property is shown to be landlocked
- Consider redesigning Cape Fear Blvd. per master development plan recommendations
- Parking required (90) 9 X 18 spaces 2 loading spaces if you can not meet need to ask for parking waver.
- Need landscaping plan per Article 8
- Show signage plan
- Submit a road closure application
- Conduct a traffic Impact analysis
- Traffic configuration should be reviewed by the Wilmington MPO after a complete site plan has been submitted.

Fire

- Type 1 construction
- Sprinklered
- Replace existing hydrant at Canal and Cape Fear
- Adjust landscaping at west corner so that a fire truck can access
- FDC to be approved by Fire Chief

Operations

- Stormwater plan will need to be approved prior to receiving a building permit with the majority of stormwater retained on-site
- Need to provide water, sewer, and electricity to park area either through conduit or by terminating any new improvements within the park square.
- Water and sewer improvements as needed a directed by the operations department
- All Water and Sewer permitting
- Install 12" from Hamlet to Harper with Interconnects as needed

- Waste water flow need permit to run through state (lift station #1)
- Show curb and gutter sections at all locations
- Site calculations site size, impervious %, stormwater calculations
- provide an easement for water line under former Woody Hewett Dr. across both Marriott and Fairfield sites.

STAFF RECOMMENDATIONS:

The proposal as presented has not received any negative comments from the Technical Review Committee. Hotels are allowed with the approval of a Conditional Use Permit for CBD zoned properties. Staff recommends the following conditions if the proposal is approved:

1. The storm water plan must be submitted prior to issuance of a building permit. The storm water system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
2. A driveway permit and construction authorization permit from the Town of Carolina Beach will be required before issuance of any land disturbing activity.
3. Copies of all federal and state approvals shall be submitted to the Town prior to the issuance of a building permit.
4. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint. All setbacks shall be maintained as presented. Any increase in building footprints shall constitute a major modification.
5. Flood Certification must be presented in accordance with the flood damage prevention ordinance. A floodplain permit shall be issued by the Town prior to any land disturbance activity as required by the Town's Floodplain Management Ordinance.
6. Prior to obtaining a building permit and prior to the Certificate of Occupancy, an architect or engineer must confirm the structure's height is consistent with the conditional use permit and must be measured in accordance with the Town Code.
7. Final project must be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. Final project must be designed to provide no less than 90 parking spaces for the hotel. Staff has recommended that spaces number 1, 20, 21 and 30 be removed to accommodate additional landscaping. In the event that these four spaces are waived by Town Council, the Town will allow public spaces to be used. Hotel is limited to no more than 90 suite hotel rooms.
8. No private party ownership of any room shall be permitted.
9. Final site plan must include cross-section of paving detail and indicate on plan areas to be paved.
10. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan. A landscaping plan shall be

- submitted prior to a building permit being issued in accordance with the Town Code.
11. Refuse collection agency that will be used must be included on final site plan. Before the issuance of a building permit, a letter of approval from the refuse collection agency stating the waste removal plan is adequate for this site must be provided. The current refuse collection site will be maintained and under joint use by the Marriott and the Fairfield Inn.
 12. All structures must be designed to meet NFPA approved Fire Sprinkler systems and meet minimum NC Fire Prevention Code. Approval letter must be submitted prior to Certificate of Occupancy.
 13. All items as listed in the zoning code Sections 17.5a 1-13 shall be submitted in writing and in 17.5b (11) shall be listed on the site plan.
 14. A sign permit must be obtained for any new signs located on the property.
 15. Maintenance of permanent open space parking, streets, drainage systems, utilities, and other such facilities-
 - All common facilities shall be maintained for their intended purpose as expressed in the approved final site plan. The method of providing for such maintenance shall be submitted prior to Certificate of Occupancy by one (1) or more of the following:
 - a. Public dedication to the Town, subject to the Town's formal acceptance of such facilities in its sole discretion.
 - b. Establishments of an association or nonprofit corporation of all individuals or corporations owning property within the mixed use development for the purpose of ensuring maintenance of common facilities.
 - c. Retention of ownership, control, and maintenance of common facilities by the developer or Fairfield.
 16. Certification shall be provided that all improvements, including but not limited to paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved by the Director of Planning or his designee prior to Certificate of Occupancy.
 17. Prior to issuance of building permit a plan that includes a grading schedule, and construction schedule shall be approved by the Technical Review Committee.
 18. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire.
 19. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in Article 14 of the zoning ordinance.
 20. Water meters must be located in accordance with specifications of the Operations Department.
 21. A scaled site plan must be submitted prior to issuance of a building permit. All drawings shall be prepared at a scale of 1" equals 50' or larger showing the site and all land within 150' of the site.

22. **Prior to issuance of a building permit a subdivision/recombination plat shall be signed recorded in accordance with Town Code. All easements shall be included on the plat. All easements shall be reviewed by TRC before being deeded to the Town. One full size copy of the map shall be submitted to the Department of Planning and Development that includes the map book and page number where the map was recorded at New Hanover County.**
23. **Sidewalks curb and gutter shall be installed in accordance with Article 8 of the zoning ordinance and shall be ADA compliant.**
24. **TRC shall review all traffic study recommendations from the TIA to ensure they are incorporated into the final site plan for construction.**
25. **Detailed plans of how the development is to tie into a future boardwalk and how the new development will construct their improvements adjacent to existing parcels/buildings shall be presented to the Town prior to the issuance of a building permit at the required TRC meeting.**
26. **Building height shall be determined as the distance measured from the highest appurtenance on the structure using the process for measuring height as set forth in the Town Code. Building height shall be limited to a maximum of 115 feet in the Commercial 2 Land Use Classification area. No structure can exceed 50 feet if it is located in the Boardwalk Classification Zone.**
27. **The project shall permit, construct and dedicate to the Town a 12 inch waterline from Hamlet Ave. to Harper Avenue. An easement shall be granted in all areas in which the waterline crosses private property. Interconnections to the existing 8 inch line and other lines shall be made per the direction of the Town's operations department. A 6 inch waterline or other size as determined by the Town's Operations department shall be installed and permitted in the Cape Fear Right-Way leading from Canal Drive towards the boardwalk area up to the intersection of Cape Fear/CBAS at the time the sidewalks are improved as directed by the Town's Operations Department with hydrant added at the end of the line and service lines provided to the future park site located in the Cape Fear right-of-way. The applicant will allow the Town to make other adequate upgrades at the time of construction of the 12 inch waterline along Canal and the old Woody Hewett right-of-way (new easement) to include sewer, water, stormwater or other utilities as deemed necessary by the Town. Sewer improvements shall be provided as directed by the Town's operations department.**
28. **Any newly constructed improvements to sidewalks, streetscape, landscaping, the existing boardwalk or other public areas shall require a separate detailed submittal to the Town Council for approval with these improvements being done as identified by the CBD master development plan or as directed by the Town Council. New sidewalks located in the boardwalk rights-of-way shall be constructed large enough and sturdy enough to withstand vehicle and emergency vehicle access to the adjacent boardwalk area.**
29. **The hotel shall have direct access to the boardwalk and future elevated boardwalk to promote the use of boardwalk facilities and entertainment.**
30. **Any changes to the Marriott property to include structural, ingress/egress, or other as a result of this project will be reviewed separately from this application.**
31. **The Conditional Use Permit shall be contingent upon the Town of Carolina Beach approving the closure of a portion of Carolina Beach Avenue South (CBAS), Cape Fear Blvd, and one alley way as submitted with the application. The applicant is responsible for the relocation of utilities and infrastructure located in the existing right-of-ways at the direction of the Town or other utility**

companies. The road improvements and utility relocation must be approved and accepted by the Town Council at a regularly scheduled Town Council meeting and require final as-builts, lien waivers, final permitting, and formal deeds of dedication along with any easements. This condition does not imply that the portion of right of way will be closed as requested. The remaining portion of Cape Fear (approximately 70 X 115) shall be deeded back to the Town of Carolina Beach (as approved by the Town Council in the separate road closing process). The process to close a portion will follow NCGS 160A-299 and will be acted upon by the Town Council separate of this conditional use permit. All road closing, recombination and deeding of property to the Town shall occur prior to the issuance of a building permit.

32. Lighting installation requirements.
- 1) Outdoor artificial lighting fixtures shall be designed and positioned so that:
 - a) The point source of light or any reflective surface from a light fixture is not directly visible from the beach.
 - b) Areas seaward of the frontal dune are not directly or indirectly illuminated and
 - c) Areas seaward of the frontal dune are not cumulatively illuminated.
 - d) All lighting shall be designed to eliminate any impact on sea turtle nesting
 - 2) All types of wall pack fixtures mounted on a vertical structure shall be full cutoff or fully shielded.
 - 3) Outdoor fixtures mounted on a building structure within direct line-of-sight of the beach are considered appropriately designed if they are completely shielded down light only fixtures or are recessed fixtures having low wattage (i.e. 50 watts or less) “bug” type bulbs and non-reflective interior surfaces. Other fixtures that have appropriate shields, louvers, or full-cutoff features may also be used if they are in compliance with subsections (1)(a), (b) and (c) above.
 - 4) All glass shall be tinted that is installed in all windows and doors of single or multi-story structures within line-of-sight of the beach.
 - 5) Outdoor artificial lighting from motorized vehicles shall be operated in a parked position so that the point source of light or any reflective surface from this light is not directly visible from the beach.
33. A 3rd party expert opinion (Wilmington MPO) shall be obtained if the implementation of any new traffic configuration or traffic related improvements are required by the TIA.
34. NCDOT will be consulted due to the potential traffic impact of the Lake Park/Cape Fear intersection.
35. The drive aisle on all parking lot will need to be expanded to 24 feet. All parking lots shall have a Type E buffer and 8% internal landscaping as required by the Town Code. Sidewalks and curb and gutter shall be installed adjacent to off-site parking areas as directed by the Town’s Operations Department.
36. Two loading berths, in accordance with the Town Code, will be provided on-site unless specifically waived by the Town Council after a text

amendment to the Town Code.

37. **Delete Plan Note A. If a change is proposed to the approved site plan, Planning Staff will have to make a determination if the change is a minor or major modification. Based on that determination, the applicant will have to follow the required approval procedure.**
38. **Construction of the project is contingent upon the Town engineer's positive assessment of the Town's ability to adequately provide sewer treatment and sewer collection for the project. In the event that either the Town or the State determines that the sewer collection and/or sewer treatment is inadequate for the project, the application may be required to make upgrades to the system.**
39. **Construction of the project is contingent upon the Town engineer's positive assessment of the Town's ability to adequately provide ample water supply. In the event that either the Town or the State determines that the Town's water supply is inadequate for the project, the applicant may be required to make upgrades to the system.**

MOTION CARRIED 3-2 (COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTED NO).

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

Mayor Macon called the meeting to order.

CONSIDER ADOPTING A STREET CLOSING ORDER FOR EASTERN END OF CAPE FEAR BLVD., A PORTION OF CAROLINA BEACH AVENUE SOUTH AND A PORTION OF A 20' RIGHT-OF-WAY OFF OF CAROLINA BEACH AVENUE SOUTH

Mr. Owens showed Council on the overhead the portions being requested for closing at this point. They include the eastern end of Cape Fear (10,530 sq. ft.), a portion of Carolina Beach Avenue South (3,750 sq. ft.), and an alley off of Carolina Beach Avenue South (1,063 sq. ft.). He also showed on the overhead a portion that will be deeded back to the town, which is 8,050 sq. ft. of the Cape Fear Avenue right-of-way. Mr. Owens said there was a discussion with David Lawrence with the Institute of Government and his opinion is that you can deed a portion of a right-of-way or close a portion of a right-of-way as opposed to coming in (*note: inaudible wording*) and then having to go back to deeding this all back.

The general statutes require a certain process to go through. We've been through the advertising procedures and it requires you to have a public hearing, 160A-299. In your deliberation and consideration, you would take into account the adjacent properties and whether you're hampering or limiting access. There is some indirect access limitations

that you may want to discuss or touch on. You have heard from someone representing one of the property owners. At this point, there is unimpeded access and he showed the area, which is using the existing Cape Fear right-of-way and alley and the existing Boardwalk area that parallels the ocean. There is some direct access. If the Council approves it, it will be eliminated. There will be continued access through the 20' access easement. In order to access two existing structures (and he pointed these structures out), you would have to go to the concrete boardwalk and over to the structures.

There is a road closing order that Attorney Tom Johnson has drafted and I recommend that you allow our Attorney Al Clyburn to look at it and make any modifications particularly that's going to be the only map deeded to the applicant. It is my recommendation that we consider the deeding of these right-of-ways in light of approving the Fairfield project. As mentioned before that, that area right there is 20.33'.

After some questions by Council, MPT Wilcox made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

Mr. Johnson said he mentioned in the Planning and Zoning Commission meeting and he wanted to mention it again, along the lines of what we just talked about, there has been talk about closing this road for our benefit but we own the underlying land anyway and it is used for access so it is not a complete ownership right that the town has in that. The town is just releasing the rights to use them as a right-of-way for the purpose of this project. I just wanted to point that out.

I don't know if this is the right time or whether you're for or against, I'm Sue Bullock again. I'm here representing the Pruitt's of putt-putt. What I would ask is that you do nothing that would impair or in anyway impact the access to this piece of property by removal of public property. I guess I'm here as a place holder asking you to take that into consideration and I will take that back to the Pruitt's. Thank you.

Councilman Gilbert said can you look at this? Can we move that where you could show the putt-putt property? Ms. Bullock pointed to an area and Councilman Gilbert said right there and she replied correct. Mr. Ferguson said in order to get to the putt-putt, you'll be coming down Carolina Beach Avenue South or North right here, coming up the 20' right-of-way, like this, and then up to the other stretch of that Boardwalk area and then over to the putt-putt. Ms. Bullock said as I see the problem would be in wheeled vehicle improvement or repairs to that property based on a 20' access way unless I read that wrong. Mr. Ferguson replied you're reading it correctly and she said alright. Mr. Ferguson continued, Carolina Beach Avenue South is 28' wide through here, so what you're going to be limited to is this access way here will then be removed. Ms. Bullock said correct. Mr. Ferguson said so your only form of access will be coming through here. Councilman Gilbert said she makes a good point that that's very tight because I know there's planters and things that go down the center of that at this point; it's hard for a vehicle to get through there. Is that what you're saying? Ms. Bullock replied if indeed this were a buildable lot and you are considering action on a static line of vegetation which means that the vegetation may move forward or backward and you close all public

access to it you have in fact closed the access and viability of that lot and that's what I am asking as the place holder. MPT Wilcox stated there is access all the way down the Boardwalk and three other outlets, and Ms. Bullock replied is that vehicular capable. He replied vehicles are on it everyday. Ms. Bullock added we would ask that you take that land in fee simple so you can assure a public access way. Mayor Macon pointed out that a benefit is the hotel that's going to be dumping out right at the putt-putt which Ms. Bullock did understand. MPT Wilcox showed several different ways traffic could get to the putt-putt area. Although Ms. Bullock understood that, she mentioned that putt-putt is not the highest and best use of that land as we all know, which MPT Wilcox agreed. However, she was asking Council to protect the public right-of-way to access that land.

Leroy Franks, 908 Canal Drive, said I along with a majority of the residents object to giving public property to serve the profit margin of a predatory developer. I offer evidence of the following items, two e-mails from Mr. D. A. Lewis and I'm giving these to you since he is unable to be here tonight to speak for himself. I can verify that the public is currently using this property. These photographs are all time, dated, stamped and these should be put in the file. It shows a mass of people (*Exhibit 5*).

These land give-aways accomplish the following: it blocks public access to the beach and the Boardwalk; it blocks access to private property within this area; it deprives the Boardwalk businesses of the only rational loading and unloading area required for the successful operation of any business that carries on, on the Boardwalk.

The map shown in the Island Gazette is confusing because the property used for putt-putt golf and the Old Irish Tavern property is not shown. The Island Gazette has quoted Mr. Macon and Ms. Efirid on several occasions that the town is a business and has to be run like one. Ladies and gentlemen Business 101 states you do not give your assets away.

Mayor Pro Tem Wilcox made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to adopt the proposed street closing Ordinance No. 08-714 with the change of only 20.33 feet on the southern side of Cape Fear Blvd. with the remaining portion as the town's right-of-way.

After some discussion, Mayor Macon rescinded his motion.

Mayor Macon made a motion to adopt the proposed street closing Ordinance No. 08-714 (*Exhibit 6*). MOTION CARRIED 3-2 (COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTED NO).

Councilman Gilbert made a motion to move up the item on the agenda concerning the Freeman Park discussion, that is Item 21. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE CODE OF ORDINANCES, CONCERNING HORSE REGULATIONS: CHAPTER 3, ANIMALS AND FOWL, SECTION 3-5; AND CHAPTER 11 PARKS AND RECREATION, ARTICLE IV FREEMAN PARK, CONCERNING HORSE AND FIRES

Mr. Owens stated before you is Ordinance No. 08-718. There is only an Option A and Option B but there should be Option C which was the original ordinance language that was in there before we changed it. This has to do with bonfires.

We deliberated in November; we didn't have a public hearing. At that time, it was changed to the Option B that you see which would only allow fires from November 1st to March 31st. That's a current ordinance. The ordinance before that was you could have campfires in fire pits from Marker 6 year round. Option A would be that you couldn't have them at all in Freeman Park. That is basically the proposal before you.

The other is horses. You heard and discussed it in November. It was decided that horses were not something we wanted in Freeman Park. There is an Ordinance No. 08-719 for your consideration.

Another item discussed and passed was that the yearly passes would go from \$40 to \$50 to help assist in the funding of the additional lifeguard service. We have started selling those passes for \$50.

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

Shirley Maney of 404 Oceana Way said I was noticing the pamphlet on Freeman Park, which some of us sort of call Freeman Campground. It lists wildlife. It's obsolete. We don't have any wildlife. I volunteer at the Aquarium ironically at the loggerhead turtle tank. I called today just to make sure of my facts. To their knowledge, there were no turtle nests on Freeman Park. One of the reasons is because the nesting season is from May 'til September. There are bonfires on the beach, campfires, whatever. I live across from it. I can see no self respecting turtle could come ashore and get through all the tents, the campers, the traffic and if they did manage to get to a sand dune when it turned around it couldn't see the moon. It's not going to get back to the ocean. At least from what I understand in November you said no campfires during those months. That at least would give the turtles a chance perhaps to come back. Shorebirds, nesting birds we don't have any of those either but that's not entirely the fault although the noise and congestion does have something to do with that because you now have a new member of the wildlife on the island and that is the red fox. You all may not realize it but when you go to bed at night there are foxes all over this town. They look like sort of a large or medium size dog. They carry rabies. The state park has had two cases in the past. All it would take is for some tourist to get bitten by a rabid fox.

Talking about horses on the beach, if I go up to the third floor and look out from May to September, the whole peninsula is full. You have the sand dunes and then you have a

line of traffic bumper to bumper. All night long, two, three, four o'clock in the morning there are cars; their lights are on. Then you have side-by-side tents and campers. In the daytime, there're children, all sorts of things, noise going on. Near the water you've got surf fishermen. I can't imagine where anybody would ride a horse. I grew up on a farm. I rode a horse and I do know that if some kid threw a wad of sand at a horse it could spook it and we could have an accident there. Who's going to get sued? Not the person riding the horse; Carolina Beach. The other is I don't even have to explain this. If a horse goes to the bathroom, it says...in the newspaper I read where the owner of the horse would get down and pick up the plop. If you know anything about the size of what a horse plops and it hits the water, I would really be amused to see how they manage to retrieve that. From what I understand the Freeman Park Council or whatever, which I understand consists of the owners of that original property who donated it to the Town of Carolina Beach to take care of it and people who care about it recommended no horses at all during the year and recommended no campfires at all during the year. I would like to say to me the logical minimum would be during turtle nesting season May to September let's just let the tourists have the beach and keep the bonfires, campfires, and the horses to maybe January or February that is logical.

Christy Jenkins, 213 Goldsboro Avenue, said I'm very glad that you're reconsidering the fires. In November I guess without the public hearing, it was changed from anything it's ever been and how I've ever used it and most people have ever used it as a camping place and some place to have a fire, have your family, be out there, and enjoy it. Last year, we had to start bringing fire barrels out there ourselves, no problem. I bring a fire barrel; I bought two. I love it out there. I know a lot of people who do who aren't here at midnight to say this but I mean the price is going up. I don't care. We've increased police out there to enforce these things. I don't know why they couldn't enforce do you have a barrel, yes, stay, you don't, put it out. I'm glad that you reopened it up and I just wanted to say that I would really like to keep fires out there. I think its part of camping, roasting marshmallows. I am here for a lot of people who aren't here and for myself to just ask that you overturn the decision that was made in November. I don't really think that it really does reflect the people who actually use the park. The people who buy those passes and spend that \$50 if it just becomes another beach that's like the rest of the beach why would we continue to buy those passes. It's cold out there at night; you're going to want a campfire to camp. .

This isn't what I came to talk about but I'll talk about it anyway. My name is Mary Dogan. I live at 1707 Carolina Beach Avenue North. I can walk up to the pier in three minutes and stand on that pier any day all summer, any night all summer and watch all the bonfires out there. Any self respecting turtle who would come ashore on that part of the island is just asking for it. Between the people, the headlights, the flashlights, the parties, and without a bonfire you're not going to have a successful nesting season on the north end. It's a lost cause but it is one of the last places in the whole country where people can have a nice, cheap beach vacation. They can go out there, pitch their tents, spend the night, have a campfire, and their kids can swim. Its fun, it's inexpensive, it's bringing tens of thousands of people onto this island every summer. While they may not be staying in a motel, they are eating, shopping at the grocery stores, the gift shops, going

to the boardwalk, buying a lot of beer, and if we let them they will buy a lot of firewood. I would encourage you to keep the north end friendly to the people that have been using it and let the user beware.

My name is Chris Lutterloah. I have Desperado Horse Farm. The beach is all of the people's beaches, whether it's a bonfire, a tent, or a fisherman, we can't start excluding folks. We all have a right to use that beach. Cars and our lifestyles today put out toxic fumes in our atmosphere so not allowing a horse to ride up and down the beach is not going to save our world. We are in favor of all horse people that use the beach for riding to clean up after their horse and it is possible. We carry saddlebags, we carry pooper scoopers, and we can take care of that. We ask you that you be fair to all of the people in your area.

Terry Hamm, Virginia Avenue, said I didn't intend to speak tonight but this is an interesting situation. I have no problem with people that have horses but I don't think the north end is the place for them. That's the only place on this island now that you can take your dog not on a leash and let your dogs run free. What's going to happen when a horse comes walking down the beach and there's a dog walking loose? If the dog's going to spook the horse, the horse's going to spook the dog, somebody's going to get run over.

The second part of it is where are they going to park these horse trailers? I live on Virginia Avenue and during the summertime cars are parked up and down our street in people's yards on the weekends. There's not a weekend that goes by that they're not illegally parked. Well if these horse trailers are on there, I'm going to be calling the police department every weekend because there's no room for that. There's a time and a place for everything; that beach is not a place for horses in my opinion. I hate to object to this guy but in New Hanover County, this is one little stretch of beach that people use. It's not a place for horses.

Gina Benton of 711 Columbia Avenue said she has been serving on the Freeman Park Committee since being appointed in September 2006. It's been my pleasure to serve with so many individuals who love the north end as I have for these past 25 years.

Last year changes were made to the Freeman Park Management Plan. The changes focused on resident and visitor safety and the preservation of the natural beach environment. These changes were approved as town ordinances by some of you and former elected officials. These changes included modifying Section 11-54 regarding campfires. It stated that beginning at Marker 6 and extending north to the end of the park, "small campfires" had to be contained within fire containers no greater than 3' wide. Each fire container was to be brought in and removed by the visitor. Only natural firewood was to be burned and each campfire was to be extinguished with water and removed. No trash or debris was to be buried or left in the sand. This ordinance sounded simple enough. However, I am here to personally witness to you that this ordinance has not been adhered to.

My family and I spent quite a bit of time on the north end from surfing to fishing to just plain being lazy; we traveled almost everyday from one end of Freeman Park to the other. What we saw this past year was disheartening. It was as if there wasn't any ordinance in regard to campfires. Certainly there are individuals who read the agreement that they signed in order to purchase the decal. They did have their small campfires and they had them within a container. They followed the rules but I would maintain that 70% of the others either would plead ignorance or just didn't care. Trash and debris spread throughout the beach. Fires, often large ones, were openly burning within the sand. We came upon several that were still smoldering from being buried. Now you might ask why the officers assigned to the north end weren't enforcing these town ordinances. I can assure you having seen them on the beach quite a bit that they were doing the best job that they possibly could do. I often saw several officers stopping at various camp sites to inform them about the ordinances; and according to the Freeman Park revenue breakdown, approximately \$17,000 worth of citations were written in 2007. As a taxpayer of Carolina Beach, I would much rather those police officers be focused on more serious issues going on up that north end than deciding whether someone had an appropriate campfire or not.

I researched the Internet for beaches that allow campfires to see if I could bring some new ideas to the Freeman Park Committee. I have to say that the information is very limited due to the fact that there are not many beach communities in the continental United States which allow both camping and campfires to occur. Keeping in mind that the National Park Service regulates much of the Outer Banks, some areas do allow fires to be burned below the mean high tide level or closest to the dune area. They are not allowed where vehicles or foot traffic occurs. In California, the National Park System regulates burning in areas like Ocean Beach, but in 2006 they considered outlawing fires on the beach for the same reasons that we considered it at our last Freeman Park Committee meeting, safety and environmental reasons. The difference is that Ocean Beach in California can permanently install fire pits. The Surfrider Foundation in California enlisted the aid of volunteers to help to keep those containers clean. We do not have the National Park Service. We do have a Surfrider Foundation that sent this information to me. In Marion County, California, fires must be cleared and the groups must be vacated by the end of the day depending on the season. The Freeman Park Committee, and let me assure you that we are always open to public input, originally voted to ban campfires altogether. At your last meeting in December, however, the majority of Council voted to limit the time for allowing campfires. While not in agreement, I found your idea to reflect a good compromise. Now I understand some of you want to change your ordinance back to the way it was.

After careful deliberation and conversation, I think the Freeman Park Committee made an excellent effort to look out for the safety of our visitors, our residents, and to try to preserve this wonderful asset we have in Carolina Beach. Now it's your decision once again; but before you vote, I'd like to ask you to first speak with the officers of Freeman Park. Ask them what is really going on. I know that I've seen Alan and Joel down there but you others how often do you spend at Freeman Park. Our Carolina Beach police

officers do. If you can't get them, you can always ask the chief. Get a first hand report of the action on the north end. Even though we don't get many kudos from the Star-News in the editorial dated December 12, 2007, you all were actually praised in your actions in December and they called it a smart safety move for the decisions that you made. I'm going to ask you as a resident, I do not speak for Freeman Park [Committee] tonight, that you continue with the smart safety move. Disallow campfires during the most populated season; allow them on the off season. We're going to have to do a whole lot with that beach rake coming up; a better job than what was done last year. To close on another note, the Freeman Park Committee was against the horses riding in the park.

Bobby McConville, 110 Sugarloaf Court, also spent some time on the Freeman Park Committee. Joel and Ms. Pat, you guys were part of the original administration that created the committee. It's an ad-hoc committee. I believe the committee was created to oversee placement of the management program for the north end. We were given specific instructions as to what our guidelines were, how often the park should be open, and what kind of things we were looking to accomplish as far as safety and control of what's going on out there.

I think over the course of the two to three years that committee met, it accomplished those goals. It provided police presence, lavatories, protection of private property with the fence, a management plan, helped get the rake, and set forth a plan with the turtle people as far as coming out and looking for turtle nests, and I am really not sure what points weren't hit as far as what needed to be accomplished. At this point looking back, knowing that the management plan was put in place, it's seems now the ad-hoc committee's charter has been fulfilled. I'm not really sure what else the committee's doing other than kind of over regulating what's already been regulated. If that's the committee you want, I think the town should make it clear that they don't have an ad-hoc committee to provide a management plan that you have a Freeman Park oversight committee to constantly over regulate what's already out there. There're rules that were set up and I think they're enforceable. I think that people do not need constant government supervision to keep themselves safe from themselves. The fire rings were put in place so that people can continue to have fires. I agree if you don't have a fire in a fire ring, write the ticket. Kick them out. It's real simple. Take their pass. I don't think that the few people that constantly break rules should destroy it for everybody else. There are thousands of people that go out there and they're not standing here right now. If everybody was so unhappy with what was going on out there, I don't know there would be anybody out there or they'd all be in here. Where does it end? This week we're talking about well we're going to crimp down more on fires, then next winter we're going to crimp down more on dogs, well we've already hit that one, alright so everything that the north end was and the original plans that were put into place are just slowly disintegrating away.

I find it extremely frustrating. I feel like I wasted all that time, we took all that energy, we started with nothing, a blackboard and we came up with what was implemented a year or so ago and every couple of months it's like someone's chirping in your ear about well this isn't really good. I agree you should ask the chief. The chief is out there; he's got

his guys out there. If he's got a beef with something, I think he should come and tell you guys and you should address it at that point. With all due respect you know I don't like campfires, the turtles, whenever you want to promote an agenda the elderly, children, someone tapped on children's safety or wildlife, birds and turtles...I'm not against any of those things; I like birds, turtles, and even children but my point is all the people continue to ask for is one mile of beach that they can have to do what's always been done out there in a safe way. I don't like getting tickets but if you're not following the rules get the ticket, kick them out, whatever. I don't think that disbanding, eliminating, or getting rid of is the answer; I don't think it's fair or right, why did we even bother? I think camping should be open up back to Section 2 instead of pushed all the way up to 6. That's why you've got so much contention up there. That would also relieve some of the pressure on the fires. A lot of people spent a lot of time doing what they had to do to get that done and everybody spent all this time so that we could put a plan together. We had a previous administration that's plucking away at it and I hope this new administration just stands up and says these are the rules, this is how we're going to do it, and if you don't like it there's another beach for you. If you continue to over regulate it, it's going to be like the rest of every other beach and nobody's going to come down there.

Councilman Gilbert made a motion to close the public hearing; however there was no vote.

Jenny Gilbert, 601 Atlanta Avenue, said at Fort Fisher everybody's out there hanging out underneath the trees, doing fires and stuff, they have a masonry brick container and it says bring all your ashes, hot coals, and dump it in there.

She also asked if horses were allowed at some point and are horses allowed in Carolina Beach at all in the State Park, Ft. Fisher, any of the trails? For me, it's like everybody's dream to a ride horse out on the beach but I didn't know...compromise if you could do it October 1st to April 1st. I know that's when the dogs are allowed off leashes. Dogs should be voice command and if they're not they should be kept on leashes.

Chris Lutterloah, Desperado Horse Farm, said horses are not allowed in the state park; it's a state thing. States parks do allow horses but they are designated areas like in the mountains or certain areas. This state park you cannot ride horses there. That might can be changed, I haven't looked into that. Horses have been allowed at the north end. We have rode horses without any accidents and an accident can happen anywhere or anytime. We don't want to regulate ordinances just because somebody might throw sand at a horse. If you're going to ride a horse at a public beach, you might want to ride a proven horse. Sand, trucks, and gun shots do not bother horses. I don't think the injury thing is a concern. I've rode horses on the north end of this beach since the 90's. I had my first citation in 1997 but there wasn't a law. They tried to use another ordinance but it didn't work. We continued to ride until '99. I'd like to see 3-5 totally repealed.

Gina Benton said if Mr. Lutterloah owns a business and rents horses and brings them out to ride on the beach how does that affect our business laws? Mr. Owens said that's under the proposed new ordinance which would allow riding but it wouldn't allow commercial.

Mayor Macon said there has been a motion to close the public hearing and he called for a vote. **MOTION CARRIED UNANIMOUSLY.**

Councilman Johnson made a motion to adopt Option B for Ordinance No. 08-718.

Some discussion occurred and Councilman Johnson rescinded his motion.

Mayor Macon made a motion to adopt Ordinance No. 08-718 (*Exhibit 7*), Option C, and make sure the police department understands that this is a safety issue, explore the ash container, and have the language “fully contained with a bottom” for clarification. **MOTION CARRIED 4-1 (COUNCILMAN JOHNSON VOTING NO).**

Mayor Macon made a motion to adopt Ordinance No. 08-719 (*Exhibit 8*) allowing horses from October 1st to March 31st. **MOTION CARRIED 3-2 (COUNCILWOMAN EFIRD AND COUNCILMAN JOHNSON VOTED NO).**

***CONSIDER AMENDING THE ZONING ORDINANCE ART. 18.2
NON-CONFORMING LOTS (G) REDUCTION OF REQUIRED LOT AREA WHEN
LOST TO SHORE EROSION***

Mr. Parvin stated this item was heard several times by the planning board over the summer and you heard it this fall and it was tabled until tonight’s meeting.

The positives and negatives of this amendment are:

1) Positive Planning implications – It would allow for a more uniformed streetscape. In the older areas of town it would allow for a structure to be placed further away from the ocean which could reduce damage or the loss of the structure. It’s pretty consistent with what we allow in other areas of town, on Myrtle Grove Sound, and Carolina Beach Avenue South where there’s an allowance for a reduction setback.

Negative Planning implications – The structures would now be placed closer to the roadway and could create a wall effect on either side. This is particularly true due to the size of the structures that are being built. Larger structures could potentially be built in the hazardous oceanfront areas.

You could have a reduced front yard setback based on existing home sites within 200’ is how the ordinance reads and there are 4 criteria that you have to meet within that 200’:

1. All the lots need to be in the same zoning district when calculating it.
2. All lots will need to front on the same side of the same street.

3. All the lots shall be considered as having the minimum required setback if the lot is vacant.
4. In no circumstance can you go over 50% of the front setback. Front setbacks for the majority of our ocean front lots are 20' with the exception of the multi-family area on the south end which has 10'.

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

Mary Dogan, 1707 Carolina Beach Avenue North, said she considered this particular issue has a lot to do with the four lots in the 1700 block that are ocean front. She was representing herself and 17 other homeowners in their section of the north end and they oppose any effort to change zoning on the ocean front which they see as an effort to do an end run around the permitting process.

She presented slides (*Exhibit 9*) while summarizing the history of the topic being discussed and included pictures of different areas of Carolina Beach Avenue South, where the lack of a 20' setback along this street resulted in an unattractive tunnel of buildings, constricted traffic and parking that often encroaches on the right-of-way during the season creating hazardous driving and walking. She also showed pictures of Carolina Beach Avenue North where the 20' setback exists. She said this was established to protect the property values, citizen safety and well-being, and character of Carolina Beach.

In conclusion, they were asking that the zoning amendments to allow ocean front construction with reduced set-backs based on homes that were "grandfathered" be denied.

Dee Kirkbride, 905 S. Ft. Fisher, clarified a few things about their north end property. The CAMA permit did deny a variance but we were asking for 29' into the 60'. Other than that, she feels this text amendment is about fairness and safety from their side. The CUP was denied but at the moment we can build on 1704, 1708, and 1710. We have a CAMA permit, which is being appealed, and a building permit. The cantilevering is the part that is being appealed. If that were to be ruled on, we still have 3,000 sq. ft. of buildable area. We are going to build something there. At 1708, we have the permits and the CAMA that was not appealed. The court overturned BOA and so now we can build on 1710. We really don't need this to go forward. I just think it's a matter of fairness. If almost all of the area in the whole town allows this, then everybody should have it or no one should have it.

When we talk about safety, why wouldn't it be a little bit safer if we went a little bit further into the setback and pushed away from the ocean? If we're so afraid of the ocean, it makes a little bit more sense to me.

I would say that we not limit just the Kirkbride's property and spot zone it, I'd like it to be approved and feel like we have fairness with all the other citizens.

John Lebenich who owns the property at 1705 Carolina Beach Avenue North said 14 years ago I bought my duplex. He said that Harry Oakes told him there could be no building across the street. He has been in that house that the Kirbride's own a half dozen times. The lots on the other side are non-conforming and in a high hazardous zone. There hasn't been anything built in that area because around hurricane times there are musical houses there. The one that is two doors from them ended up across the street slammed into another building and they put it back. The Kirkbride's built a house on the corner and the reason why there wasn't a house on the corner because a house went $\frac{3}{4}$ of a block and slammed into it. That is they kind of activity we have on the north end.

He mentioned again how he and others were told no building could take place on that lot and the one next to it, which is why they didn't buy it. I built my house and across the street from where they are proposing on building something they are talking about a substandard house that might be cantilevered and might have to go down 70'. You go down 3' on that corner and you hit water. There is nothing structurally there that is sound enough to hold a foundation and they are talking about building a 2½ story house. That's right in front of my house where at least two dozen times I was told that I and no one else was allowed to build on that property. Now things are changing. That thing is going to go during the first storm. If they can make some money on that thing that is what they are going to do and it's going to be at the safety of all the people across the street. That is not a place to build up there. I'm telling you right now that isn't going to be safe. I don't care what you try to build on that small piece of property, you try to go up with it you got a giant sail up there and 115 mph wind is going to knock the thing over and it's going to end up in my porch.

Justin Donaton of 920 Saltwater Lane thinks if there are 115 mph winds a lot more than just the first row oceanfront is going to be a little vulnerable on this beach. I think this comes down to an issue that certain owners want to protect their view and what they've been use to seeing. I would challenge anyone if they were given incorrect information by a real estate agent or by a town official 5, 10, 15 years ago that they need to hold that real estate or official accountable. I don't know who said what but that's something that potentially there is incorrect information out there and probably someone should look into.

Carolina Beach Avenue South got kind of painted as the sore thumb. I think Carolina Beach Avenue South is a great street. I think it's pretty. I walk my dog there all the time.

Mr. Kirkbride said the property line is 10'. That's one of the things we're not following. What we're asking for in terms of new construction is not only from edge of pavement 10' but an additional 20'. We're talking about 30' from this edge of pavement to the new construction part of this. These structures have setbacks of, I don't know the exact number but 5, 6, 4' from the property line and then an additional 10' to the edge of pavement. In terms of this text amendment what we're actually going to end up with at best on my particular lots would be something on the order of 10' to the edge of the property and then an additional probably, correct me if I'm wrong, did you do the

pictures for my lots in terms of what the average is suppose to be. Mr. Owens said you can only go to 50% so it would be 10 plus another 10. Mr. Kirkbride continued but it's something like 12, 13, or 14' so it will be 22' from the edge of pavement in this case. I think that's one thing we're neglecting to mention. In terms of fairness, we can't relate this to Carolina Beach Avenue South because their edge of pavement is actually at the property line so it's an entirely different scenario. We've got an additional 10'. I thought what was humorous in the discussion was they were concerned about landscaping. If one notices on this side of the street, which are the people who are opposed to this, there's no landscaping on their side until you get to our property at the corner. I'm providing pretty much the only landscaping on that block. Anything that I do build will be pretty as opposed to some of the structures on that side with no landscape. I'm surprised at the comment that we wouldn't have proper landscaping; we'll have great landscaping.

Coming back to the issue of the text amendment, I just see that if you look at ordinances in general, ordinances are designed to be somewhat fair. I see Carolina Beach Avenue South as having an ordinance that allows for setback relief due to erosion or due to the Carolina building line crossing over with the CAMA line and I see relief being given on Canal Drive to those properties for erosion purposes and then I see that these properties in particular are protected by a big (*note: inaudible words*) much like some of the sections on Canal. I see in terms of safety if you all were given a choice even though I have permits I'm not sure I'm going to change them but I see that moving closer to (*note: inaudible words*) would be safer. In the case of the lot I have permitted at 1704, what it would mean is I wouldn't have to cantilever. For that reason alone, I see that the text amendment will provide safer structures to be built in my case and it will make it somewhat fair with some of the other areas where that relief has been given.

Stephanie Gereluk, 1715 Carolina Beach Avenue North, said okay say they are allowed to build those homes. In a hurricane situation if they were damaged more than 50% would they be rebuilt? Mr. Owens replied yes, under our current ordinance they would be able to be rebuilt exactly the same. Ms. Gereluk said what about the next door neighbor? The reply by Mr. Owens again was yes. She commented all these houses would be able to be rebuilt now. Mr. Owens said under our current ordinance, yes. Ms. Gereluk said so things have changed because the man said he wasn't allowed to be rebuilding. Mr. Owens said it could be a CAMA issue but under our current non-conforming ordinance you can rebuild.

Keith Gereluk, 1715 Carolina Beach Avenue North, has been down here for about 5 years and he is not familiar with all the ins and outs of this Kirkbride deal. He said but I do know that at high tide now it's up about a foot on those rocks. It does go out. I've been in his yellow house and it's a nice house. You get in his living room and you're sitting there at the dining table you look out and all you see is water. The first blow that comes through there that whole house is going to come right back across the street because there's very little protection there. Stewart Bruner who owns the second house down has replaced his deck four times. His house did come across the street and sat in my front yard not since I've been here but he's picked it up and put it back. He's under the impression that he can never rebuild if there's more than 50% damage. Common sense

tells me why would you build in an area that you're going to stand a very good chance of having your property destroyed. I'm from the Midwest and when I bought down here...I've always heard well come down and live on the beach and you get a chance to redecorate every 10 years on an average. With that in mind, I'm not going to belabor the point but somewhere along the line, it would be nice if common sense prevailed.

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

Councilman Gilbert made a motion to not approve Ordinance No. 08-717. MOTION DENIED 2-3 (MAYOR MACON, MAYOR PRO TEM WILCOX, AND COUNCILWOMAN EFIRD VOTED NO).

Mayor Pro Tem Wilcox made a motion to approve Ordinance No. 08-717 (Exhibit 10).

Councilman Gilbert asked Mayor Pro Tem Wilcox if Mr. Olivolo, the applicant, was a customer of his. Did you build a house for him? MPT Wilcox replied yes. Councilman Gilbert then asked MPT Wilcox if he built a house for the Kirkbrides. MPT Wilcox said I built a house for the Kirkbrides in another location. Councilman Gilbert continued, so both the applicant and the Kirkbrides are your customers right. MPT Wilcox said any zoning change that's made in this town I've built some homes in this town...Councilman Gilbert said I just wanted to make sure it's on the record that's all.

MPT Wilcox made the comment to Councilman Gilbert suggesting that he might not want to vote on anything in the CBD from now on since you own a business down there.

Mayor Macon called for a vote. MOTION CARRIED 3-2 (COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTED NO).

Mayor Pro Tem Wilcox made a motion that this project is consistent with the Land Use Plan. MOTION CARRIED 3-2 (COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTED NO).

Councilman Gilbert made a motion to recess the meeting to January 23rd at 6:30 p.m. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____