

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

July 10, 2007

The Town Council of the Town of Carolina Beach met in regular session on July 10, 2007 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, Bill Clark; Mayor Pro Tem (MPT), Alan Gilbert; Councilwoman, Pat Efird; Councilman, Jerry Johnson; and Councilman Joel Macon. Also present was Town Manager, Tim Owens; and Town Clerk, Lynn N. Prusa.

Mayor Clark called the meeting to order.

INVOCATION

Mayor Clark read two verses from the Gospel of James first chapter.

PLEDGE OF ALLEGIANCE

Mayor Clark led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

The following were presented as additions/changes to the agenda:

Item #5 – Discussion and Presentation of Proposed Vending Ordinance - List of current vendors in town

Item #10 – Select Vendor & Future Process for Master Development Plan and Budget Amendment - Additional information concerning proposals submitted for a Master Development Plan

Item #11 – Consider Closing a Portion of CBAN - Updated materials for road closure request; updated order for street closure; updated recombination plat; changes made due to staff request

Item #15 – Consider Amending the Zoning Ordinance, Art. 2 Zoning Districts and Maps; Art. 3 Zoning District Regulations; Art. 12 Development Standards for Particular Uses and Art. 16 PUD – Minutes of April meeting in which a public hearing was held on the PUD and requiring a minimum of 2 acres; Copy of proposed PUD language limiting the PUD to a 2 acre minimum; Presentation by planning director with performance residential language attached

Item #23 – Lifeguards at Freeman Park – Freeman Park cost analysis; Prior year revenue

Item #29 – Vending Just Beachy – Criteria for vending application; narrative for Just Beachy & Application

Item #30 – Non-Agenda Items – Discuss proposed policy for submittal of letters for the record concerning legislative hearings and issues before Town Council

Mayor Pro Tem Gilbert made a motion to adopt the agenda with changes. MOTION CARRIED UNANIMOUSLY.

INTRODUCE NEW EMPLOYEES

At this time, Operations Director Steve Pagley introduced John Meeds our new Waste Water Treatment Plant Maintenance Worker.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Clark recognized the following employees: Tim Mattingly, Construction Specialist with 5 years of service; Bill Raymond, Waste Water Treatment Plant Superintendent with 10 years of service; Police Sgt. Chris Chafin with 10 years of service, and Ted Lashley, Parks & Recreation Director with 15 years of service.

PUBLIC DISCUSSION (Five minutes time limit per person)

Eva McClearn of 7214 North Carolina Highway 210, Rocky Point, NC 28457 said she rode her horse, Freedom, to Carolina Beach on July 4, 2007 to intentionally violate Ordinance 3-5. I don't believe that any one specific town should be able to have the right to say riding your horse is illegal. I've ridden on Wrightsville Beach, Topsail Island, down through Wilmington, and many other towns. Carolina Beach doesn't have a horse problem so there is no reason you can't ride your horse. Nobody even really wants to ride on Carolina Beach. We just don't want to be told that we're not allowed to. I've never been in any kind of trouble with the law before. I just wanted the Carolina Beach residents to get their right back and then we'll go away. My nine year old sister said that the town is like children. She's right if no one stops and stands up for what they believe

in what is to stop the town from (in audible). Now more and more people are becoming aware of the injustice taking place and they too think the ordinance is unfair and they are ready to take a stand themselves. I make a motion to repeal Ordinance 3-5.

Chris Lutterloah, Jr., Desperado Horse Farm, 7214 Highway 210, is here tonight to support Eva McClearn's request to repeal Ordinance 3-5 that forbids horses in the corporate town limits of Carolina Beach, NC. He said you don't need Ordinance 3-5. It will only cause you unneeded grief. We are proud of Eva McClearn.

April Karr, 7214 North Carolina Highway 210 of Rowdy Farm is Eva's mom. She said I'm supportive of what my daughter is here trying to accomplish tonight. We know that there's not a horse problem on Carolina Beach. The Ordinance 3-5 is unnecessary and troubling because it's oppressive. It doesn't need to go any further. I think the ordinance needs to be repealed so that we can move on.

Leroy Franks, 908 Canal Drive, said he would like to get a response on two questions. Judge Jolly ruled on 2/28/2007 that Mr. Ron Mariello of Arcadius Investors cannot build, sell, or acquire more property. The Town Council extended the Arcadius CUP with Mr. Mariello who could not be the legal representative with Arcadius North Carolina. After the decision from the Judge, this CUP was extended three months and that time has passed. Why has this CUP not been rescinded?

My second question is if my memory serves me correctly I believe the current Land Use Plan states that for every condo unit built a single family home is to be constructed. Why hasn't this been enforced? You can answer me now or you can publish it in the paper but the public would like to know.

Mayor Clark asked the town manager to look at the requests and we will respond later.

Lonnie Lashley of 102 Florida Avenue, Carolina Beach said he wanted to talk about lifeguards, although he noticed it was on the agenda. He thanked Officer Charles Smith from the Police Department on the job he is doing with our 26 lifeguards, the young men and women who put their life at risk on a daily basis. I commend them and the job they are doing teaching our youth the training of the lifeguard for the future. I did read in a local magazine where during Memorial Day Weekend they had 84 rescues; that is like 30 per day. That's putting their life on the line and that is saving lives. I think that is very important to all of us.

I am here to talk about lifeguards on the north end. I think we have a stretch of land that is about a mile long and we are without lifeguards. I think we need lifeguards in that location. We have an individual on the panel that was a lifeguard back in the 60's or 70's and certainly that individual is well aware of lifesaving and hopefully this Council is. I'd also like to compliment Alan Gilbert. I know Alan has at times helped people at the beach to save their lives. It is very important that we have surfers, individuals, and anyone that will help us at this beach to save a life; that is a plus to this town and tourism. We currently have 15 lifeguard stands; that's a quote from a lifeguard who I asked that

question. I would recommend as a quick fix if you start from the south end of Carolina Beach and you come to your first lifeguard stand if you spread maybe another 200 or 300 yards between the first and the second one and do that all the way to the north end by that time you may have a few lifeguard stands available to put out at the north end. Alan and I have talked about this a few times, not only do I think we need lifeguards at the north end but we probably need some more at Carolina Beach. We've had 84 people on just a weekend that we had to rescue. Normally on any week even probably on any day we have more people at the north end than we have at the remainder of the beach. That's just a quote from me and you can size that up.

I'd like to talk about the tourism fund now. If you look at our current 2008 budget we're 10 days into it now, the tourism fund has three revenues that will generate \$1,375,000. Of those three revenues, the number one is room occupancy tax and it is 37%. We have Mr. Maynard sitting over here whose hotel was just approved. It's 191 more rooms that will put money toward the room occupancy tax. Second and the most important one as far as I'm concerned at 36% is Freeman Park. The third is our parking fees. Let's go back to the second one, Freeman Park. It's been in existence for either three or four years. What I remember is that each year it has generated over \$400,000 towards our tourism fund. What is the purpose of the tourism fund? If you read it right in your own budget, the very first thing it says is provide lifeguards and the second is renourishing our beach of course, which is very important to all of us. But the very first thing it talks about is lifeguards. So here again I harp let's have lifeguards out at the north end. I believe swimmers personally are playing a fools game when they go to the north end and want to swim. I think they really are playing Russian Roulette.

A few quotes I have heard from the panel through the paper is that back in the 60's and 70's when someone was a lifeguard we had lifeguards only at the Central Business District. That was back in the 60's and 70's, we're in 2007 and we certainly have more people roaming our beaches. Another thing is what other beaches do. Alan and I have talked. What do they do at Nags Head and Holden Beach? They don't have lifeguards. Quite frankly, that doesn't bother me. This is the beach I'm concerned with and I think we as a Council and as a town should be in the forefront making decisions about lifeguards not be followers of some other beach but be leaders in what we need at this beach. I think that's very important.

Mayor Pro Tem Gilbert had a comment about the folks who came to speak about the horses. I had a conversation with the North Carolina Equestrian Association about the economic benefits and I would like this Council to put it on their agenda at some point when we can have a discussion. With respect to the equestrian community, there are a lot of economic benefits for trails, beach rides in the off-season, and things like that. They showed that in their data. I wasn't here when Ordinance 3-5 was put in place. I'm sure there was some emotion with respect to that but I would like to have it formally on the agenda to have a discussion and talk about the merits of having it or not having it. I would like to extend that out and thank Eva for coming tonight. Mayor Clark asked Mr. Owens to take care of that.

CONSENT AGENDA

Councilwoman Efirm made a motion to approve the items on the consent agenda, as follows:

Approval of the Minutes

Regular Meeting

May 8, 2007

Requests for the following budget amendments and transfers:

On June 13, 2007 the town manager provided information to you regarding the NCDOT enhancement project. The purpose of his presentation was to let you know that the original North End Pedestrian Project has been changed to the an enhancement project that could include the installation of lighting and landscaping on the west side of Snow's Cut bridge to the Dow Road intersection. I have attached a copy of the Manager's initial memo for your review.

The total amount of the grant is \$264,400 with \$52,880 being provided by the Town. We need to reflect this grant and our matching portion in the 2007/2008 budget. Therefore, we need to amend the budget as follows increase revenue account number 253870.00-Grant-NCDOT in the amount of \$211,520, increase revenue account number 253900.00-Appropriated Fund Balance in the amount of \$52,880 and increase expenditure line item 256300.77-Grant NCDOT Entryway Project. This action requires Council's approval.

The manager has requested that the payments made for the Carolina Sands Drainage Project, which are currently charged to the Water and Sewer Fund now be paid from the General Fund. This does not have an effect on the totals for the overall budget.

The budget will now reflect the Carolina Sands payment coming from account 104100.80-Legislative Carolina Sands Loan in the amount of \$325,000 whereas before the line item reflected that this account was a transfer to the Stormwater Department in the Water/Sewer Fund. In the Water/Sewer fund I will decrease revenue account 303990.10-T/F from the General Fund in the amount of \$325,000 and also decrease account 309000.74-Stormwater Capital Projects in the same amount.

Set a public hearing date for August 14, 2007 at 7:30 p.m. or soon thereafter for a request for a conditional use permit for a restaurant at 6A N. Lake Park Blvd.

Set a public hearing date for August 14, 2007 at 7:30 p.m. or soon thereafter for a request to have a major modification of a conditional use permit for a restaurant located at 15 Carolina Beach Avenue North.

Set a public hearing date for August 14, 2007 at 7:30 p.m. or soon thereafter to consider an amendment to the Code of Ordinances, Chapter 8 Licenses and Business Regulations to allow for pedicab/rickshaws.

Set a public hearing date for August 14, 2007 at 7:30 p.m. or soon thereafter to consider an amendment to the Zoning Ordinance, Article 14 Conditional Use Permit Approval Process to put a timeframe of up to one year on CUP extensions, and extend the CUP void date from one year to two years.

Set a public hearing date for August 14, 2007 at 7:30 p.m. or soon thereafter to consider amending the Zoning Ordinance, Article 11.7 Additional Regulations/Provisions (a) Political Candidacy Signs.

Set a public hearing date for August 14, 2007 at 7:30 p.m. or soon thereafter to consider amending the Zoning Ordinance, Article 3.9.1 Dimensional Standards for Lots and Principle Structures to add table footnote (1) to the conservation zone to clarify that a portion of the conservation zone around the lake is part of the 45 foot height overlay zone.

Set a public hearing date for August 14, 2007 at 7:30 p.m. or soon thereafter to consider the Zoning Map to move the boundary of the 45' height overlay zone from a portion of a parcel recently rezoned to HB (215 Winner Ave – PIN 313010-47-4006-000).

MOTION CARRIED UNANIMOUSLY

DISCUSSION AND PRESENTATION OF PROPOSED VENDING ORDINANCE

Mr. Owens said he doesn't have a proposed ordinance to present tonight. After he talked with David Owens, he thinks there is a little more flexibility in how we regulate vending. He will bring something back at the next meeting.

Councilman Johnson made a motion to table the discussion and presentation of the proposed vending ordinance to August 14, 2007. MOTION CARRIED UNANIMOUSLY.

SELECT VENDOR AND FUTURE PROCESS FOR MASTER DEVELOPMENT PLAN AND BUDGET AMENDMENT

Mr. Owens began with an overview of what has taken place to date and the process that he and Council went through in the selection process.

We interviewed six contractors and from this group, we made two selections: Peter J. Smith and Associates and The Lawrence Group. Mr. Owens said he called four to six references for each group. Peter J. Smith and Associates received all glowing reviews.

The Lawrence Group received positive and some negative remarks. The costs for both were basically the same. Mr. Owens recommended Peter J. Smith and Associates.

If Council chooses to go forward with Peter J. Smith and Associates, I recommend that you instruct the finance officer to set aside a line item in the amount of \$125,000 from the reserve fund of the tourism fund.

Peter J. Smith and the Lawrence Group gave us copies of their professional services agreement. Whoever is the selected contractor, it is suggested that our attorney look at it and make sure everything we need is in there.

He added that an intriguing thing about Peter J. Smith and Company, they have made a living by working solely on municipal plans and most of that come from the north.

Councilman Johnson made a motion to select the vendor Peter J. Smith, authorize staff to amend the budget amount of \$125,000, and pre-authorize the staff to execute the contract documents upon review by the town attorney. MOTION CARRIED UNANIMOUSLY.

AWARD BID FOR SAND DEBRIS REMOVAL, SIFTING AND BERM REPLACEMENT

Barry Johnson, the presenter, said performing debris removal and management is part of our preparedness and prevention program following “events”.

Eight contractors made a bid for the sand contract. The lowest overall bidder was IED, Inc. and this is a turn key project for removal, sifting and return to the beach for a round trip cost of \$11.95 per cubic yard. They have been in the disastrous recovery business since 1993-1994. They recently performed work in Washington Parish, Louisiana following Hurricane Katrina. They did \$64.7M of debris removal. They have come with a range from acceptable to glowing recommendations.

Councilwoman Efirm made a motion to award the contract to IED, Inc., in the amount of \$11.95 per cubic yard. MOTION CARRIED UNANIMOUSLY.

AWARD BID FOR VEGETATIVE AND C&D (CONSTRUCTION & DEMOLITION) REMOVAL

Barry Johnson said there was a difference of 6 cents per cubic yard from one bid to the next, which was lower than last year. Phillips & Jordan is the recommended company being the lowest overall bidder for the vegetative and C&D removal. They will pick up, haul, and carry the material to the Dow Road complex for eventual pick up by the county for final disposal. They are one of the top two or three players in the disaster recovery business. They were the major contractor following the Twin Towers event doing the

on-site cleaning. They were one of the three contractors in New Orleans following Hurricane Katrina. They have glowing recommendations.

Councilwoman Efirm made a motion to award the contract to Phillips & Jordan in the amount of \$15.30 per cubic yard. MOTION CARRIED UNANIMOUSLY.

REQUEST TO EXTEND A CONDITIONAL USE PERMIT FOR SEAVIEW PROPERTIES, LOCATED AT 608 CAROLINA BEACH AVENUE SOUTH

Mr. Owens informed Council that this item is a request to extend the CUP for 608 Carolina Beach Avenue South. The original CUP was approved in February 2005. In January 2007, it was extended to August 2007. This is a request for an additional 6 months. If Council extends it for that amount of time, it should be February 8, 2008 in order to keep it in line with the original approval date.

Councilman Macon made a motion to approve the extension to February 8, 2008. MOTION CARRIED UNANIMOUSLY.

LIFEGUARDS AT FREEMAN PARK

There are several elements and a lot of different items that need to be explored when examining the possibility of placing lifeguards at Freeman Park, Mr. Owens stated. He then went through the pros and cons regarding this issue.

Cost analysis for Freeman Park: In 2005, we generated approximately \$433,000. It's usually split between yearly permit sales and gate receipts. In 2006, we generated almost \$513,000 and again it was fairly evenly split between permit sales and pay station with permit sales being a little more. In 2007, at the end of June we are at \$338,000. We're a little ahead of schedule of 2006. I estimated \$400,000 coming in. The total estimated cost is \$425,000; however, there are some unaccountable expenditures.

Chief Younginer said there were 28 events and 45 patients for Freeman Park. It goes from rip rescues to missing persons to burns, a near drowning, and one drowning. We have 14 stands on the regular part of the beach, 27 lifeguards, and there are usually 13 or so at a time. Instead of putting stands on Freeman Park, we recommend having mobile patrols on ATV's and have them move around where the people are. We would have a total of six Friday through Sunday; and on the weekdays, we would have three. If you want to do something for the rest of the year, we can have a quick fix. We can add four guards, 1 ATV, and a truck. We will also need the associated equipment like radios. We have given three options: a) towers; b) roving patrol; c) "quick fix".

Mr. Owens recommended that if we decide to move forward with one of the options, he wanted Council to consider changing the \$40 rate to \$50, which would give additional revenue. He also has concerns about rushing into this for the remainder of this year.

Councilman Macon made a motion to go with Option C. Mayor Pro Tem Gilbert asked Ocean Rescue to use their discretion regarding what equipment they needed. MOTION CARRIED UNANIMOUSLY.

Mr. Owens said they can reevaluate after the season and come back in December and discuss revenues and fees and Council may then want to go with another Option at that time. We have enough revenue now and fix it down the line.

RECESS

Mayor Clark called for a 10 minute break.

After a short recess, Mayor Clark called the meeting back to order.

CONSIDER CLOSING A PORTION OF CAROLINA BEACH AVENUE NORTH FROM THE INTERSECTION OF HARPER AVENUE AND CAROLINA BEACH AVENUE NORTH EXTENDING 170' NORTH

Mr. Owens opened by reviewing Planning and Zoning's concerns and mentioned they did not send forward a positive or negative recommendation. He also went through some concerns that he has. His main concern is if this project doesn't get built, there remains some form of an easement.

Tom Johnson, Ward and Smith, made some clarifications. The round-about is on public property and we can make adjustments on it. One adjustment is the center portion of the round-about could be driven upon by emergency vehicles. We provided sufficient back out room underneath the hotel. There is a provision for the traffic moving smoothly. There are three parts in addressing Mr. Owens' main concern. The biggest part is the final plat. We are trying to find some way to preserve the town's interest while the new improvements for the relocation of Carolina Beach Avenue North, sidewalks, and parking spaces were completed. After consulting with concerned parties of the project and the town, we decided to have a recorded plat showing the new improvements and showing a temporary easement along the existing Carolina Beach Avenue North until the relocated portion is complete. An additional modification will be to have a line of credit in place to guarantee the completion of all improvements including the parking spaces in the ingress/egress portion. If these improvements were not completed by the developer, then the town would have the money to make sure they are completed to the town's satisfaction.

The other portions are the actual street closing order, which provides for the details in terms of the temporary easement, and the recording of the final plat. Both of these items will be recorded in the Register of Deeds along with the street closing plat.

Mr. Johnson clarified that the ingress/egress easement and parking easement is a permanent easement. There will also be a note that will include language that the easements would include access, utility, and drainage easements, road improvements, and sidewalks.

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

Jack Lynch, 1515 S. Lake Park Blvd., stated he really liked what the developer proposed on the easements and congratulated the attorneys for working that out. He said, I also respect Mr. Maynard for putting his money where his mouth is. A letter of credit in favor of the town means the town can call that letter of credit and the bank will send you the money. The town is well protected with the temporary easements that will go away once the project is developed. I hope you will approve this project. It will really help the Boardwalk, our town, the economy, and it will help give us some jobs. I think it's a wonderful project and I am excited about it.

Leroy Franks, 908 Canal Drive, does not condone giving public property to enhance the developer's bank account. Previous examples are the street in front of the Marriott Hotel, the same street that Town Council promised to turn back to public use and they almost gave away a town parking lot for the Arcadius project. This is an unnecessary closing of public property and endangers the safety and welfare of the residents and public in general in the following ways:

1. Carolina Beach Avenue North is at a higher elevation than Canal Drive and the residents of Canal Drive depend on Carolina Beach Avenue North for ingress and egress to their property and emergency services during salt water flooding. Please see the letter in the Island Gazette dated 7/4/2004. Ms. Johnson states she may seek legal action on this ground and if so I will join her case.
2. There is not enough room to allow the fire department to access the other residents and buildings in this area. The fire chief said in his opinion he can do this but the fire chief has not laid out this area in question or given a demonstration that this can actually be accomplished like a real professional would.

He said, Town Council should realize that the residents are not happy with tax increases and your yes vote on this issue will cost election votes.

Duke Hagestrom, 920 Riptide Lane, first wanted to commend the town, the attorneys, and the developer for working out the easement approach and putting together the line of credit. That showed a lot of foresight and will obviously help protect this town if something does happen.

I want to point out that I spend a lot of time at this intersection and I do not believe the way it is currently structured that it is a safe intersection. People backing out going west, people backing out heading north, taxis, police officers, handicap spots, bicycles, pedestrians, it's a mess right in that area the way it is now. It's not well marked. I think the plan the developer has brought to the table in conjunction with the folks from the town is a much better plan. I think it is going to address the safety concerns. I have stared down that road for many a day sending bicycles out into that traffic and watching those cars on the right backing out together at the same time; I've seen many collisions. I've seen a nice sideswipe and somebody take off and the police officers did a great job of going and catching them. It's not safe the way it is now. I think the new approach is a lot better. If folks need to get out of the north end and Carolina Beach Avenue North has a higher elevation than Canal, then drive down Carolina Beach Avenue North. It is a rerouting not an actual closure. The part that you get to where you actually cut over at that point the elevation is no longer an issue so I'm not really sure what that issue was about the elevation and the salt water. Bottom line I think this is the right way to handle this. Even if the project doesn't happen, building the easements and the road routing the way it is proposed would actually be a big enhancement to what we have right now.

Ann Bowman, 1335 Bridge Barrier Road, Suite 6, said with all due respect to Mr. Franks, I think that our fire chief is extremely professional; and if he says that we can do it, we probably can do it. The reason I am saying that is because I was disappointed that no one got up to thank the town for the wonderful fireworks that we had on the 4th of July. I had my scanner with me that night and I was in the very thick of the crowd that was on the beach. People were crowded around me simply because they were interested in hearing all the chit-chat between Brian and his staff that night. He made sure we had spotters up on the roof of the Marriott because of the wind. He made sure that the wooden boardwalk was totally closed and vacant before the fireworks could start. I would like to say thank you to the town for the fireworks and I would like to thank this Council in advance for any of the yes votes that you will get for this road closure.

Lynn Denne, 100 N. 7th Street, stated that she is not against this project. I think that room occupancy tax and what that does for the island is a good thing but I do have a couple concerns that I would like some answers to. I'm concerned about the closure and what kind of precedence we would be setting for future development should you approve this. I'm concerned will this new road have a traffic light at it. The area that we have now is quite visible. It's a large intersection. I would like to know how many accidents we have had there. I have lived here permanently since 1979 and I have never witnessed one. I'm not saying that moving the road is a bad idea but I would like to know how that affects pedestrian traffic and bicyclists. Are we going to have a traffic light there? I drive a big vehicle and if this road is anything like the other side roads that go in between Canal and Carolina Beach Avenue North then I have trouble with my van turning the corners there. It's not a good situation. I am concerned about the traffic flow there. I'm concerned about the flooding. There's a crowded area at the docks during the influx of tourists. It's quite crowded in the marina area and this location that we're talking about relocating is currently a large easement for that traffic flow problem to the north end. I just have a few questions and I would just like those answered.

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

Terry Snow, registered professional engineer with Wilbur Smith & Associates, said they did a traffic impact analysis so he answered the questions raised by Ms. Denne. With regard to the traffic signal, the existing traffic signal at Harper and Canal will remain. There's not a recommendation for a new traffic signal at the relocated Carolina Beach Avenue North. The reason is it wouldn't warrant a traffic signal. With regard to pedestrian safety, at the recommended existing intersection, we are recommending that pedestrian signals be located. You would also have high visibility pavement markings. There is very much a focus in this project development to enhance public safety through pedestrian safety as well as vehicle safety and traffic operations. It is my professional opinion that pedestrian safety and traffic mobility is actually going to work much better under the proposed plan than under the current roadway configuration.

With regard to Ms. Denne's question about accidents, Chief Younginer said he has been here three years and has witnessed two accidents. It is not a high accident intersection; it's a high volume of walking traffic and it's a bad intersection the way everybody backs out, although he wonders why there aren't more accidents there. Chief Younginer's take on this is not as a road closure but a re-location. The intersection we have there is pretty bad. I avoid that if at all possible unless I'm going straight there to park and spend some time at the boardwalk. Looking how it is relocated and the width of the roads that are left there, it's not going to be a problem for us.

Councilman Macon made a motion to adopt Ordinance No. 07-692 closing a portion of Carolina Beach Avenue North from the intersection of Harper Avenue and Carolina Beach Avenue North extending 170' north (Exhibit 1). MOTION CARRIED 3-2 (WITH MAYOR PRO TEM GILBERT AND COUNCILMAN JOHNSON VOTING NO.)

CONSIDER A REQUEST TO MODIFY A CONDITIONAL USE PERMIT FOR A RESTAURANT LOCATED AT 304 N. LAKE PARK BLVD.

Before the presentation was made Tim Owens and Jeremy Hardison were sworn in.

Mr. Hardison said this is a modification to an existing CUP for a restaurant. The modification is to increase the seating for Cook's Dog House which is in the Central Business District. The original CUP you have attached for your view. The applicant would like to increase the seating from 18 seats to 30 seats.

For parking the applicant has eight approved parking places on his site. They are proposing an additional space for a total of nine parking places. The modification from 18 to 30 seats increases the parking requirement to ten spaces. The applicant is asking that the additional parking space as a result of the modification be waived. Under Article 7 of the ordinance: "Where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500

feet of the use.” Pointing to the overhead, Mr. Hardison said I have a red radius around the 500 feet of the property in the center. There is public parking within that radius.

Mr. Parvin said, before you, you have the required findings, specific standards, general conditions, staff recommendations, planning and zoning’s decision, and the consistency with the Land Use Plan.

I will answer any questions that you may have.

Councilman Johnson said I didn’t see in our packet, just out of curiosity, adding 12 seats and I didn’t see in the sketch that was attached where those 12 seats were being added. Mayor Pro Tem Gilbert added, I didn’t see that either. It’s kind of like 24 seats. Councilman Johnson asked, are they inside or outside? Mr. Hardison replied, there being a total of 20 seats inside and 10 outside is my understanding and the applicant is here. Mr. Owens added, that’s shown on the site plan. It only shows one outdoor picnic table and I believe there are probably two out there if I’m not mistaken. Mayor Pro Tem Gilbert said on the Moore’s Drafting Service second page. Mr. Owens directed Council to the correct page. He said the floor plan drawing shows three tables that say “new” and there are four chairs around each one and they show the window seating and counter seating. That’s where the 20 are. Mr. Owens said, that doesn’t show it I guess. Councilman Johnson said all I was seeing was 28. I saw two outside tables but I was just curious. Mayor Pro Tem Gilbert said we had this discussion about indoor seating/outdoor seating. I think you and I had that discussion that if somebody puts some tables outside but I couldn’t count the total. I couldn’t find the seats for the total they were asking for on any of the drawings. Mr. Hardison replied I believe in the drawing that you had there’s 20 seats inside. Mayor Pro Tem Gilbert said that’s right. Then Mr. Hardison said the rest of the 10 to make it the 30 were going to be outside seats around the round tables. Mayor Pro Tem Gilbert said okay.

Councilman Johnson asked, so he’s asking for the waiver of one parking space? Is that correct? Mr. Hardison replied that is correct. He’s able to provide nine parking spaces on-site and he needs ten. Councilman Johnson said I would say under staff recommendations then that we need to add that our standard new parking waiver needs to be signed even though it’s just for that one space as a condition. Mr. Hardison replied yes, sir.

Mayor Clark asked if there were any more questions for Jeremy. Since there were none, Mayor Clark thanked Jeremy.

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

Mayor Clark asked Dr. Cook if he would like to present anything; and if he would, he needed to be sworn in. Dr. J. L. Cook was sworn in at this time.

Good afternoon, I’m Dr. J. L. Cook. I’m the President of the North Carolina College of Theology. My son Timothy Cook wanted to open the little restaurant. He graduated from Liberty University this year and he wants to open up a chain of them up and down the

coast as far up as Swansboro all the way down to Southport. We helped him with this first. We invested about \$60,000 to help him get started. He's trying hard. He's just a young man. I'd appreciate it if you would help us. We've already paid one \$500 chair that was back before it was changed to add another stool in there. He's having a hard time to do this but we're asking you to help us with this. I'd appreciate anything you can do. I'd also like to ask you to waive to help him with the chairs. The cost of each chair which is going to be about...if you do help us is going to be about \$5,000. He's trying hard right now to buy a house over here and trying to get things going so anything you can do I'd appreciate it and I appreciate your time.

Mayor Clark asked if there was anyone who would like to speak in favor or against this conditional use permit.

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

Councilwoman Efirm said can I make a motion. Mayor Clark asked if there was any discussion. Mayor Pro Tem Gilbert said increasing seating from 18 seats to 30 seats, inside you're really just increasing two seats, 18 seats to 30, so there's 20 inside. I was trying to count outside and I'm kind of curious because I'm just a little confused on outdoor seating. There's just been discussions; I've seen restaurants go in and people put a bunch chairs outside and I don't know...Mr. Owens interjected currently in our budget the outdoor seating, if somebody proposes new seating, I want to say it was \$30 per seat or something like that, if you propose outdoor seating. I think when it originally went in it was supposed to be outdoor seating... Steve Pagley, Operations Director said he was given a conditional use permit for outdoor seating. The town clerk told Mr. Pagley he needed to be sworn in at which time he came up to be sworn in. Mr. Pagley said I'm going to try to remember what happened here. He originally had 18 seats and the original CUP he was supposed to have 12 outside. Mayor Pro Tem Gilbert asked are we going back to Generations. Mr. Pagley said yes. Mayor Pro Tem Gilbert said so Generations had a conditional use permit and then they got it modified. Mr. Pagley said what Mr. Cook did was when he came in he wanted to add one more seat, so he paid \$500 to add one more seat inside. He already had 10 outside and he had 7 inside and he wanted to add one so that is where he got up to 18. Now he wants to add 12 more seats inside. Mr. Pagley asked him if he understood. Mayor Pro Tem Gilbert said not really, but okay. Councilman Johnson wanted to know how many seats inside were there originally. Mr. Pagley said 7. Mayor Pro Tem Gilbert's response was okay. Councilman Johnson clarified so he's added one... Mr. Pagley said he added one when he opened up. Councilman Johnson said so now he's adding 12. Mr. Pagley said he would like to add 12 inside. Mayor Pro Tem Gilbert states okay 12 inside and we changed that so they come under the new fee schedule so that would be \$250 per seat and that includes the facility fee. Mr. Pagley responds that's right, total. Mayor Pro Tem Gilbert said okay \$250 and now there's outdoor seating; that's a different fee. Mr. Pagley clarified he's always had the outdoor seating. Mayor Pro Tem Gilbert said he's had that already, so this is 12 indoor seats. Mr. Pagley said that's all he wants to add.

Councilwoman Efirm made a motion to approve the modification for the conditional use permit subject to meeting all 7 required findings, all 4 general conditions, all 6 staff

recommendations as outlined in the memo dated June 27, 2007, the parking waiver to be signed by applicant for 1 space; and it is consistent with the Land Use Plan:

REQUIRED FINDINGS:

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.

STAFF RECOMMENDATIONS:

The proposal as presented has not received any negative comments from the Technical Review Committee. Restaurant proposals are allowed with the approval of a Conditional Use Permit in Central Business District. Staff recommends approval of the Conditional Use Permit subject to required findings above and the following conditions:

- 1) Seating shall be limited to 30 seats.
- 2) No sale of alcoholic beverages will be permitted for this site.
- 3) A sign permit must be obtained for any change in signage or any new signs proposed on the property.
- 4) All permits required by Federal, State, and Local Agencies including the Health Department must be submitted prior to Certificate of Occupancy.
- 5) Any modifications to this proposal (as deemed significant by the Director of Planning or his designee) will require new application for conditional use permit.
- 6) Refuse collection agency that will be used must be included on final site plan. The refuse collection site must be enclosed on three sides.

MOTION CARRIED UNANIMOUSLY.

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A RESTAURANT LOCATED AT 414 RISLEY ROAD

After Mr. Hardison and Mr. Owens were sworn in, Mr Hardison stated the applicant is proposing to develop a 1427 sq. ft. structure located at 414 Risley Road to accommodate a restaurant. The property is currently undeveloped. As you can see in this aerial photo, the property size is approximately 11,820 sq. ft.

The property is located in the Highway Business District (HB). Restaurants are allowed by conditional use permits in Highway Business. We'll pull up a site plan of the proposal.

Zoning Setbacks	Front	Rear	East Side	West Side
HB required	30	20	7.5	7.5
provided	33.7	20	15	50.07

Lot Coverage	
HB maximum	60%
provided	12%

The restaurant is proposed to be open all year. A dumpster is provided on the rear of the building in the southwest corner located here. Right here is an access easement and I'll zoom in a little bit more closer on the structure of the property.

They are providing a landscape "A" buffer which is 5' all the way around with a fence.

They are providing 14 parking spaces, which are along the perimeters that you can see on the outline. The surface of the parking lot is to demonstrate that they are not going to pave it. It's an alternative stormwater paver. He plans to maintain the stormwater on site.

The building will be sprinkled. No upgrades into the water or sewer lines were required by the fire or operations department. Based off the 14 parking spaces, the applicant is proposing 42 seats with dining to be here (points) and he will be proposing some covered screened porch dining outside as well.

Mr. Hardison said, before you is the CAMA Land Use Plan consistency statement, the TRC comments, the required findings, the specific standards, and staff recommendations.

With the use of the overhead projector, Mr. Hardison showed some photos of the site. This is looking at the access easement off of Risley Road straight onto the property

behind Palms. This is the site looking towards Lake Park Blvd. There is currently a mobile home off of Lake Park Blvd. This is looking off Risley Road. There are two single family homes that are currently under construction now. This is looking to the rear of the property off the existing fence and beyond this fence is Bertram Drive. This is looking back towards Risley Road from the property and Palms sits here on the right. This is a shot from Bertram Drive. Behind this buffer and fence is where the site is proposed. This is looking towards the neighborhood off of Lake Park Blvd. Councilman Johnson said are you talking about another landscape buffer on the other side and Mr. Hardison said correct and there will be an additional 5' within ...you can see the existing trees and buffer that's there now. This is looking towards Lake Park Blvd. The project will be located towards here on the left. It will not have any access off of Bertram Drive. The access is off the easement off of Risley Road. This is just kind of a shot looking straight off of Bertram. You can see the fence and you can see the shrubbery that exists. There's another shot, you can see the Palms in the background. There building is going to be right beside the Palms.

Mr. Hardison said, I will answer any questions that you may have.

Councilwoman Efirm asked, is this the one that's right behind the Taj Mahal (referring to The Palms). Mr. Hardison replied, The Palms is located right here. It's The Palms lot and here is Lake Park Blvd.

Mayor Pro Tem Gilbert asked, did you say there's an easement. Mr. Hardison said there's currently an easement that is associated with this property right here, which is a vacant wooded lot.

Mayor Clark wanted to know what P&Z's recommendation was. Mr. Hardison said it was recommended unanimously for approval.

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

Mayor Clark requested the applicant and anyone else who would like to speak to be sworn in. At this time the following people were sworn in: Neil Johnson, Ron Jessup, Michele Connet, and George Connet.

The applicant didn't feel he had anything to add. Mayor Clark asked if there were any questions for the applicant.

Councilman Johnson had a quick question, but before he asked it, he told the applicant he might want to introduce himself to the public.

Next to speak was the applicant, Ron Jessup of 8803 Shipwatch Drive. Councilman Johnson said can you point out where your other properties are, and Mr. Jessup did. Councilman Johnson said you have two or three buildings right now. Mr. Jessup replied two buildings and two more getting ready to start.

Mayor Pro Tem Gilbert asked, were those the houses and Mr. Jessup said yes. Mr. Jessup continued by saying that originally this piece of property was split and with the zoning we made up kind of a bootleg through there if you will. We reconfigured the property for four residential. In that reconfiguration, we paved Risley Road, extended water and sewer, and a fire hydrant as part of that conditional use for that four lot subdivision. So the access is all off Risley Road Mayor Pro Tem Gilbert asked. Mr. Jessup responded yes. Mayor Pro Tem Gilbert continued those addresses are part of the 400 block. Mr. Jessup answered 404, 406, 402, and 408.

Councilman Macon asked, why is a sign located at the back of the property? Is that what that is in the corner? Mr. Jessup answered, the reason being is there's visual from Lake Park Blvd. and we're hoping to of course pull traffic off of Lake Park as they come into Carolina Beach. That's a TRC recommendation. I originally asked for it to be on the building and there was some ordinance or code somewhere that did not allow for that and that was there recommendation. Councilman Macon said they're not going to allow it on that particular side of the building. Don't you think it would be better where the entrance is to the restaurant? Mr. Jessup commented we've asked for a directional on Risley.

Councilman Johnson asked, did they allow that? Mr. Jessup said yes, they did allow a directional. In regards to putting a sign on the building because the building is going to be visible from Lake Park, there was an ordinance, regulation, or something that did not allow that.

Mr. Owens said I'm not aware of any ordinance. I haven't looked at my ordinance - I know you can do a free-standing sign. There are just some criteria about setbacks. That free-standing sign would meet the specific requirements of our ordinance. Building signage you can have up to - help me out Jeremy. Jeremy said you can have one attached sign and one free-standing sign. You could have a directional 2x2 sign directing that this is the location; kind of like a little drive-thru McDonald's has or something. Mr. Owens said so building signage would be allowed. I'm not sure what you had in mind originally. You can't do obviously a roof sign. It would have to be below roof eave. Mr. Hardison added roof signage is not allowed by the ordinance but you can have a sign that is attached to the building. Mr. Owens said I think that's probably what he was proposing to begin with a roof sign. Mr. Jessup said that was what we originally asked for because of the landscaping buffer that we are going to be required to do. That would give us visibility from Lake Park. Mayor Clark thanked Ron.

At this time, Mayor Clark opened up the floor for those who wished to speak in favor of granting this conditional use permit.

Since no one came forward, Mayor Clark opened up the floor to those who wished to speak in opposition of granting this conditional use permit. He also requested speakers to hold their time frame to three to five minutes.

Neil Johnson with Network Real Estate Property Management said, we're the property manager for Port Side Village, which is the subdivision that their only entrance and exit is Bertram Drive. We have four concerns about the proposal of this restaurant. The main is the signage, which appears that one of the Council members has already raised an issue about. The sign being placed on that back corner, directly at the fence, which if I looked at the document correctly proposes a 25' sign. It will imply to the general public that they would pull in on Bertram Drive to get to that restaurant. That's the only entrance and exit to Port Side Village. It's a cul-de-sac community and this community is extremely concerned about added traffic that will be coming into their subdivision, driving around trying to find this restaurant that they just saw a 25' sign for, and creating just an enormous amount of traffic that doesn't belong in that subdivision. Moving the sign is what we really want to happen. We don't want it there at the fence. It's just going to cause a safety factor for that community. There are children out there. There's people with pets that walk their dogs through the community and extra traffic that doesn't even need to be in that subdivision is just going to be a hassle because the sign will imply you pull in here on Bertram Drive to get to this restaurant, whereas it should properly be on Risley Drive where you actually turn into that restaurant.

The second issue that my community has is the amount of parking that's proposed. It's a 42 seat restaurant with only 14 parking spaces. If you then factor in the employees that would need to be parking there with the customers that will house up to 42 seats, it just doesn't seem like that's a sufficient amount of parking for the number of seats that restaurant will hold.

A third issue is that the fence that you saw in the pictures that Jeremy had where you're looking down Bertram and there's a fence here with a shrubbery and a buffer there, that fence is Port Side Village's fence and that shrubbery is theirs. From the photos, it appeared it was a massive and enormous amount of shrubbery. Once you get past one big tree it's just standard little bushes there; their concerned with the amount of shrubbery and buffer that will be on their side. I know it's a 5' section and there's a certain amount of canopy trees, some shrub that's been proposed that they can have there as a buffer but the community would like to see a significantly larger amount of shrubbery or buffer between that fence area which is right at their street and where the proposed restaurant will be.

The fourth issue is that being Bertram Drive is the only way to access 47 lots in a community that only a few...in fact only one owner in that subdivision I know received a written notification that this was going on because they fell within that radius from the point out and everyone else in the subdivision was outside of that radius. When they got their notification, they asked other people did you get this and they said no, we didn't. When you looked at the notification radius they're the only home that fell into it but Bertram Drive clearly fell right in the middle of the radius. We feel like all 47 lot owners should have been notified when that entrance is their only way in and out of the property and that entrance would be possibly the entrance that everyone would try to take trying to gain access to a restaurant because of where the signage is located. These were our main points on that.

George Connet, 1321 Cabo Court, said look at the placement of your sign. It runs down Bertram Drive and they are going to come in there. It's a given. Now you have a safety factor. They have to come back out on 421. They are going to make a right turn and then make the first traffic light to make a U-turn to get back to where they were going. That's going to put a lot of traffic out on 421. I think the sign, if they are going to put this up, should be back here on Risley Road at their entrance. You're looking at a sign going 25' in the air and they are going to come right down Bertram Road here.

The other thing I have a problem with you got beer and wine sales. We're talking about a restaurant and nobody brings up beer and wine. I think you're going to wind up selling more beer and wine than you are hamburgers and hot dogs. The restaurant situated behind the Palms you can't see it. I don't know why anybody wants to put one there anyway. It's legal and I understand that. It's in Highway Business; but I just don't understand with beer and wine. If you're going to approve this restaurant, I would like to see it without the beer and wine permits.

The next question I have is how many seats inside, how many seats outside. We haven't been able to get that information out of Town Hall. We could hardly get any information out of here, so I question what we're going to have here. Now the noise, it says no live entertainment. How about amplified music? I'm sure that's going to happen. You've got three sides of this restaurant sitting on residential. You got one side which is the Palms and that's Highway Business. Now you're going to drop this little restaurant right in the middle and you're going to mix this drinking with these houses and they're going to be 47 in ours and there's going to be, the gentleman just said what four more, that's going to create a real mess and a lot of uneasy evenings.

Michele Connet, 1321 Cabo Court, reiterated some of the items. I don't have a problem with a restaurant being there because it is Highway Business and I totally understand that. My main concern is the signage. There is a mobile home that's here right now (points at the overhead map). You might be able to see a sign from here right now but eventually that's probably not going to be there because that is zoned Highway Business. That property at some point will be some sort of business. Again, you're going to have a lot of traffic in this neighborhood that's all cul-de-sacs. There are a lot of kids running around. It's a big safety factor to have all these people these tourists in particular that don't even know where Risley Road is. They don't know how to find this restaurant. They're not just going to come here but they're going to be driving the whole neighborhood trying to figure out how to access that restaurant. That is a big concern. Pointing to the aerial, Ms. Connet said when you cut across here outside this road to go this way you're actually cutting across three or four lanes of traffic to get up to where the Food Lion traffic light is to turn around and come back. If you're coming down Dow Road and you have a great eye view down Risley Road, you can certainly see a sign that's there. I don't know if there's any way feasible to have some sort of a signage on the road pointing people in that direction. I think that's a reasonable scenario.

When we did sit with the Town Hall and asked for just a few bits of information that has been given in the past in regards to restaurants there was no narrative, no seating plan, no sample menu, nothing of that sort. That's a concern that I have as well. But the main thing that we are very concerned about is why they would place a sign there (points to overhead map), the front of the restaurant is here, and the access to the restaurant is over here.

Mayor Clark asked if anyone else wanted to speak to oppose this conditional use permit. Since there were no others opposed to this, Mayor Clark told Mr. Jessup that he had an opportunity for rebuttal.

Mr. Jessup said in regards to the beer and wine comment, we basically want to be a PT's, Dixie Grill, Hamburger Joe's type of establishment. That also answers the menu question hopefully. You guys have probably all been there.

In regards to the signage, we just want to try to get some attention on Lake Park. That's something that we would be willing to look at, move, and try to accommodate as much as possible. I do think it's important that we try - tourists come into town, they could see the sign. It would be important to try and establish a business there. The building would be somewhat visible but there again you won't know what it is unless you can see a sign. I do think it would be successful over time regardless of whether there was a big sign there or not, word of mouth. Obviously, we need to have it up and profitable as quickly as possible.

Concerning the traffic - I understand in talking to the neighbor that lives in the mobile home, there's a traffic issue there already from the Palms. People miss the Palms exit, go to his place, and turn around. That's something I don't know if it can be addressed there at the corner of Risley. The way Risley and I can't remember the name of the little secondary road that comes in there and you have Dow Road come across that little intersection over time is going to need something addressed there. As it is now, I don't really know that there's anything regardless of where we put the sign, there's going to be people that miss that street, go somewhere down the road, turn around, and come back. That's kind of the nature of the beast.

Councilman Johnson asked Mr. Jessup if he or staff looked at or investigated the possibility of putting a sign out at the entrance off of Lake Park Blvd. onto Risley Road on the north side of Risley. Mr. Owens interjected that is private property. Councilman Johnson said I thought there was a right-of-way owned by either us or DOT. Mr. Owens said we could do that but I don't think we want to get into putting signs on our right-of-way. Mayor Pro Tem Gilbert said there's a big precedence doing something like that and Mr. Owens agreed by saying a huge precedence. Mr. Owens said he went back and looked at our ordinance and said he couldn't see where it would address it. Normally what he has is an easement going to his property. I think we were originally concerned about an off-premise sign because he doesn't have ownership of that property. I think he was opened to possibly placing a sign there. I think if Council directs him to do so as

part of a condition he'd probably be willing to do that. Mr. Jessup said yes, we're open to placing the sign.

Mr. Jessup said in regards to seating, there'll be no outdoor seating. It's going to be a screened porch, which I understand in talking to fire it's basically considered inside; about half and half, a porch inside and then seating in a little dining area there.

Councilman Johnson wanted to know about the free standing sign being where the directional sign is coming in off of Risley Road. Mr. Jessup replied we wouldn't be opposed to that. Mr. Owens offered where he has it now meets the intent of our ordinance specifically; but if he's open to that condition, I think you can place that condition. Councilman Johnson said to do the free standing sign. Mr. Owens said to do it about the same place where the directional sign is. Councilman Johnson commented it looks like a lot more people would see it being at the stop lights and at that intersection there looking down.

Mayor Clark thanked Mr. Jessup who replied thank you for your time.

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

Mayor Clark asked if there is any further discussion. Councilman Johnson asked if we have a cover letter. He said I'm trying to make sure I get the right one here because Jeremy revised it. Mr. Owens said he gave you a new Item #13 if you take a look at that. He showed what it looks like. It's revised with specific standards 1-7, general conditions 1-4, staff recommendations 1-11. Councilman Johnson said so the condition numbers have not changed. Mr. Owens response was unless you want to add something with regard to that sign and likewise you find that it's consistent with the Land Use Plan.

Councilman Johnson made a motion to approve the CUP for a restaurant located at 414 Risley Road based on required findings 1-7, general conditions 1-4, staff recommendations 1-11 adding condition #12 to relocate the free standing sign to where the directional sign is located now off of Risley Road entering the project:

REQUIRED FINDINGS:

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.

STAFF RECOMMENDATIONS:

The proposal as presented has not received any negative comments from Stormwater and Operations, Fire and Inspections. Restaurant proposals are allowed with the approval of a Conditional Use Permit in Highway Business zoned properties. Staff recommends approval of the Conditional Use Permit subject to required findings above and the following conditions:

- 1) Seating shall be limited to 42 seats.
- 2) Sign permits must be obtained for all signs proposed on the property.
- 3) All permits required by Federal, State, and Local Agencies including the Health Department must be submitted prior to Certificate of Occupancy.
- 4) Any modifications to this proposal (as deemed significant by the Director of Planning or his designee) will require new application for conditional use permit.
- 5) Grease trap will have to be approved by the Town of Carolina Beach prior to Certificate of Occupancy for restaurant use.
- 6) Refuse collection agency that will be used must be included on final site plan. The refuse collection site must be enclosed on three sides and remain closed and secured during inactivity.
- 7) Type A buffer yard shall be provided on all sides of the property with a 6' fence having 80% opacity.
- 8) The easement shall be upgraded to 24' with a swale on the side of the driveway.
- 9) Shall meet the 2006 North Carolina Fire Prevention Code
- 10) Upgrade the onsite handicap parking space to be van accessible
- 11) The parking surface shall be approved by Operations prior to issuance of a permit
- 12) Relocate the free standing sign to where the directional sign is located now off of Risley Road entering the project

Mayor Pro Tem Gilbert said I forgot to mention, there was a question about not being adequate parking. They have other parking on-site and we're not giving any waivers to the 14 parking. I had a hard time counting here but was that what we require 14 and they have 14. Mr. Hardison said correct. It was really how much parking they could get on-site; it was going to limit their seats that they could have. They wondered whether they could get 14 parking spaces, which they do have and they meet our standard, so that's where the 42 seats come in place. Mayor Pro Tem Gilbert's response was okay, then the employees. Mr. Hardison said our ordinance doesn't really address employee parking for restaurants. That's something that if

Council desires in the future we could look into a text amendment. Mayor Pro Tem Gilbert continued, so right now in the spirit of our ordinance as it's written right now we're applied all these other restaurants and it's basically... Mr. Hardison interjected, it's just based off of for every three seats you have one parking space. Mr. Owens added our ordinance does speak to retail and employees and a lot of other uses but restaurants it does not. I took a look at that today. Mayor Pro Tem Gilbert said it might be worth considering in the future and having P&Z look at that. I'm sorry I apologize for not asking that earlier.

Mayor Clark said just one more question. Did we do proper notification here do you think? Mr. Owens replied I believe we did. We did post it on both Bertram and on Risley. I know there's some question as to whether all 47 homeowners have to be notified. Jeremy and I took a look at who was notified to begin with at the P&Z level. There was a lesser number of folks notified and me dealing with it directly when I became involved with this project I said let's hit a larger radius of folks. We feel like we've hit all the adjacent property owners. This kind of just shows you who was notified. That was all I had. The areas that are bold faced are the ones that were basically notified.

Mayor Clark said motion on the floor, anymore questions.

MOTION CARRIED UNANIMOUSLY.

CONSIDER A REQUEST TO REZONE 501 RISLEY ROAD FROM HB TO R2 (PIN 313118-30-7324-000)

Mr. Hardison stated this is a request to rezone a portion of the property that you see in the highlighted blue area from Highway Business to R2, which is the area that is clear here (depicting with the overhead). Currently no structures exist on the property to be rezoned. In this picture, there was formally a mobile home but that has been removed. To the north across from Risley Road, there is a single family home. Across the street of Risley is currently the vacant lot with the easement to the restaurant that was in Item 13. Behind off of Lake Park Blvd. is Marshall Gardens and to the south is vacant land.

TRC requested that Planning and Zoning recommend to Town Council that the area be rezoned from Highway Business to R2. We took into consideration the size of the tract. It's 14,457 square feet according to the tax records and it is consistent with R2 zoning. The surrounding use complies with the land use plan and the property is contiguous with R2 zoning as it is across the street.

Below are the differences in the R2 and Highway Business and the relationship between the newly allowed uses and previously allowed uses between Highway Business and R2.

- 1. The impact of the zoning decision on the landowner, the immediate neighbors, and the surrounding community:**

Dimensional Standards for Lots and Principal Structures, Other Districts

Zoning District	Primary Permitted Uses	Min. Lot Size	Min. Lot Width	Min. Front Yard	Min. Rear Yard	Min. Side Yards	Max. Density	Max. Height	Max. Lot Coverage
R-2	Single-Family	7,000 sq.ft.	70 ft.	25 ft.	10 ft.	7.5 ft.	6.2 units/acre	45 ft. ¹	40%
HB	Highway Commercial	10,000 sq.ft.	100 ft.	30 ft.	20 ft.	10 ft.	NA	50 ft.	60%

Table Footnotes:

1. Portions of this district may be located in an Overlay District as shown on the Town’s official zoning map and listed as part of Section 3.9.1. Maximum height of this district may be different than listed.
2. See Article 3.9(9) Yard Requirements for structures exceeding maximum height regulations.
3. Front yard setback is fifty (50) feet if abutting a major thoroughfare.

2. The relationship between the newly allowed uses and the previously allowed uses:

HB, Highway Business District

Purpose. This district is established to accommodate businesses oriented toward the motoring public and which require a high volume of traffic. In many cases, businesses in the HB district serve the entire community and beyond. For the most part, they are located on major thoroughfares so that they can be conveniently reached by automobile and to avoid sending heavy automobile traffic through smaller streets or residential areas. Certain wholesale activities are also permitted in HB district.

R-2, Residential District (Two-Family Dwellings)

Purpose. Purpose. The R-2 district is established to provide for moderate density single-family residential use and other compatible uses. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district.

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

Since the owner of 501 Risley Road was not able to attend due to his age and being severely disabled, his grandson Max Weavel represented him. Mr. Weavel said his grandfather has lived on this property for over 32 years and wants it to remain as a residential property after he passes away. That’s the main reason he has asked for it to be changed.

Faye Brock of Century 21 Brock and Associates, represents the seller. She said we feel that all the land around it would be served also as a community to have it rezoned back as R2. He lived in it for many, many years and the trailer was just moved off recently and we would appreciate your consideration.

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

Councilman Johnson made a motion to adopt Ordinance No. 07-693 (Exhibit 2) and in accordance with the provisions of NCGS 160A-383, the Town Council does hereby find and determine that the adoption of the ordinance amendment is consistent with the goals and objectives of the adopted Land Use Plan and other long range goals. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE ZONING ORDINANCE ARTICLE 2, ZONING DISTRICTS AND MAPS; ARTICLE 3 ZONING DISTRICT REGULATIONS; ARTICLE 12 DEVELOPMENT STANDARDS FOR PARTICULAR USES; AND ARTICLE 16 PLANNED UNIT DEVELOPMENT TO ADDRESS MULTI-FAMILY ZONING DISTRICTS AND PLANNED UNIT DEVELOPMENT AMENDMENTS

Mr. Owens told Council the Planning Board looked at this item again and they were satisfied with their original recommendation, which would limit planned unit developments to two acres.

He informed Council that he included in their packet the minutes of the April meeting in which this was heard. The motion was to postpone this item until the planning department brings a performance residential or something of that nature to not restrict development and it carried 3-2. Also included was a copy of Article 16, which were the proposed changes at the time of the public hearing essentially there is a minimum of two contiguous acres. There were some other items that came into play like striking this from the R1B zoning district. I have also given you a copy of what used to be the performance residential that was repealed at some point. It is my understanding that the PUD took the place of the performance residential. We are seeking direction. I don't know if we need to have a public hearing tonight. If the Council wishes to go to the two acre minimum in your planned unit development, then we can advertise for a public hearing at the August meeting.

I am accustomed to a PUD acting as a larger tract but we don't have any larger tracts in Carolina Beach. I fairly comfortable with the way it is being administered now. We don't have a lot of planned unit developments come up.

If Council wants to move forward with a two acre minimum, we can advertise for a public hearing at the August meeting or we can continue to do business as we have with the current PUD language.

Councilman Johnson made a motion to set a public hearing date for August 14, 2007 to consider adopting the PUD language as sent forward by P&Z. MOTION CARRIED 4-1 (WITH COUNCILMAN MACON VOTING NO).

CONSIDER AMENDING THE ZONING ORDINANCE, ARTICLE 18 NON-CONFORMING USES AND STRUCTURES BY DEFINING WHEN AND HOW SUCH USES AND STRUCTURES CAN BE REPAIRED AND/OR REPLACED

(RECOMMEND TABLING TO AUGUST 14, 2007 AT 7:30 P.M. OR SOON THEREAFTER)

Mr. Owens said this was sent back and will go to P&Z on Thursday, July 11, 2007.

Mayor Pro Tem Gilbert made a motion to table consider amending the Zoning Ordinance, Article 18 Non-Conforming Uses and Structures by defining when and how such uses and structures can be repaired and/or replaced to August 14, 2007 at 7:30 p.m. or soon thereafter. MOTION CARRIED UNANIMOUSLY.

TABLED FROM JUNE – CONSIDER A REQUEST TO AMEND THE ZONING ORDINANCE, ARTICLE 3.9 DIMENSIONAL STANDARDS FOR VARIOUS ZONING DISTRICTS TO PROHIBIT CANTILEVERING OVER THE CAROLINA BEACH BUILDING LINE

Mr. Hardison informed Council that although this is already in our Code of Ordinances, we would like to put it in our Zoning Ordinance to give it more teeth. This is a proposal to preclude any placement of structures over the Carolina Beach Building Line, particularly allowing cantilevering. In the Zoning Ordinance under Article 3(10), it would state no individual or privately owned structure or man-made surface shall encroach over the Carolina Beach Building Line. Allowed exceptions are limited to (1) beach crossovers, (2) piers and (3) sand fencing permitted under CAMA regulations. Mr. Hardison showed on the overhead the line that was established in 1963 by the Army Corps and adopted by the Town of Carolina Beach as the Building Line.

Mr. Owens added, hopefully this language will clarify what is allowed. There was interpretation that cantilevering can be over the building setback line. This language will pertain to private individuals not the public realm.

Mayor Pro Tem Gilbert made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

Ann Bowman, 1335 Bridge Barrier Road, Suite 6, doesn't believe we should offer any cantilevering over the building line either, and that she agrees wholeheartedly. She then asked the fire chief if this could be a fire hazard and his reply was no.

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

Councilman Macon made a motion to approve the provisions of the NCGS 160A-383, the Town Council does hereby find and determine that the adoption of the following ordinance amendment is consistent with the goals and objectives of the adopted Land Use Plan and other long range goals. MOTION CARRIED UNANIMOUSLY.

**Councilman Macon made a motion to adopt Ordinance No. 07-694 (Exhibit 3).
MOTION CARRIED UNANIMOUSLY.**

TABLED FROM JUNE – CONSIDER AMENDING THE ZONING ORDINANCE, DEFINITION(S) AND/OR DESIGNATIONS(S) OF WHAT CONSTITUTES THE “START OF” OR WHAT IS “ACTUAL” CONSTRUCTION TO INCLUDE CONSIDERATION OF CONSTRUCTION OF INFRASTRUCTURE AS WELL AS BUILDINGS AND STRUCTURES

Mr. Hardison informed Council that tonight we would like to make consistent with each other the definition of “actual” construction that is in Article 23 and the definition of “start of” construction which is in our Flood Damage Prevention Ordinance. “Start of” construction, which is a guideline that FEMA has a definition of, is language we would like to adopt and put in our Zoning Ordinance under Article 23. Under Article 14.11 Permit Voidance we would like to replace “commencement” with “start of” construction just to be in line with the definition.

Mayor Pro Tem Gilbert made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

Since no one came forward at this time, Councilman Johnson made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson made a motion for approval in accordance with the provisions of the NCGS 160A-383, the Town Council does hereby find and determine that the adoption of the following ordinance amendment is consistent with the goals and objectives of the adopted Land Use Plan and other long range plans. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson made a motion to adopt Ordinance No. 07-695 (Exhibit 4) with the insertion of “including underground utilities-water, sewer, storm drain, and electrical” after the words “stage of excavation” in Article 23.3 Definitions. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE ZONING ORDINANCE, ARTICLE 3.9 DIMENSIONAL STANDARDS FOR THE VARIOUS ZONING DISTRICTS – (9) EXCEPTIONS TO HEIGHT REQUIREMENTS (APPLICANT WITHDREW REQUEST – PUBLIC HEARING WILL NOT BE HELD)

The applicant withdrew the request; therefore, a public hearing was not held.

CONSIDER REQUEST TO EXTEND WASTE INDUSTRIES CURRENT CONTRACT TO JUNE 30, 2010

Mr. Owens stated this is a request to extend our service contract with Waste Industries from June 30, 2008 to June 30, 2010. In return, they will forego the 2.7% COLA that is proposed this year, which equates to approximately a \$30,000 per year savings. The current contract does not have a fuel surcharge and that estimates to probably a savings of \$50,000 a year. They have provided good service and given some services above and beyond what they have to along with making some donations which benefits the town.

Randy Gainey, General Manager for Waste Industries, told Council they have been here a while and he believes they have done a pretty good job, and would like to have the opportunity to keep working for the town. It helps them on cash flow which provides them the ability to buy new trucks and equipment. This is the main part of offering the extended contract. They also provide two roll-off storage containers and a self-contained trash compactor for the Recreation Department.

Councilman Macon made a motion to extend the contract two years with Waste Industries. MOTION CARRIED UNANIMOUSLY.

CONSIDER BUDGET AMENDMENT AND FEE ADJUSTMENT FOR WASTE COLLECTION FEES

Mr. Owens said after the budget was adopted, we found out there was going to be an increase in tipping fees to \$3 per ton. We estimated that was going to cost us anywhere from \$100,000 to \$120,000 difference. After looking at the estimates and what kind of revenue comes in and what expenditures go out, we are actually covering our costs and will be covering our costs again this year. We had a surplus of revenue coming in and that money has to go somewhere so there is some credit shortfall in our budget this upcoming year from \$100,000 to \$120,000. We are seeking how you want to handle this. We can raise fees to offset the cost that is being imposed upon us, we can wait until the end of the year and try to absorb it in the existing budget, or we can allocate some of our fund balance to offset the \$120,000 shortfall.

After some discussion by Council, no action was taken.

CONSIDER AN AMENDMENT TO PERSONNEL POLICY CONCERNING INSURANCE ELIGIBILITY FOR ACTIVE EMPLOYEES IN RECEIPT OF MEDICARE

Sarah Archibald, Human Resources Officer, presented a request to amend the Personnel Policy language for employee benefits. She said we would like active employees who are retired military in receipt of Tricare and who have previously elected not to take the town's group health insurance and who at age 65 become eligible for Medicare to be reimbursed for their Medicare and Tricare supplemental insurance not exceeding the amount paid for a standard employee under our group health insurance. We have one

employee who can retire but chooses not to so he is no longer eligible for our group insurance; we are trying to extend the same benefit to him as we do our standard employees.

Councilwoman Efird made a motion to amend the Personnel Policy as presented. MOTION CARRIED UNANIMOUSLY.

CONSIDER ADOPTING AN ORDINANCE ESTABLISHING A CAPITAL PROJECT FUND FOR \$3 MILLION GALLON GROUND STORAGE TANK AND WELL

Dawn Johnson, Finance Director, said at your last meeting you approved a reimbursement resolution for our \$3 million gallon storage tank, pumps, and new well 15H that we will be working on in the next budget year. We need to set that up in a separate capital project fund to facilitate the project, since it will be an on-going project that will probably last more than a budget year.

Mayor Pro Tem Gilbert made a motion to approve Ordinance No. 07-691 (Exhibit 5). MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE TOWN CODE, CHAPTER 4, BUILDING AND BUILDING REGULATIONS, ARTICLE VII ABANDONED STRUCTURES

Mr. Owens said we are trying to enforce some abandoned structure situations that we have in the Central Business District. The buildings we have across from the Cabana are one of the situations.

After reading our abandoned structure ordinance, we found that it didn't apply as well as we would like it to. On the first page of Ordinance No. 07-696 regarding abandoned structures it says "any non-residential structure found to be in violation" and we would like you to consider striking "non-residential" and say "any structure found to be in violation".

At this time, Al Clyburn, Town Attorney, asked Council to look at Ordinance No. 07-696 Section 4-164. He was concerned about the language that speaks to the cost of bringing the structure up to code where it reads "can be made at a reasonable cost". Subsection 2 also uses this "reasonable cost" standard. The concern is the vagueness of what a reasonable cost is. The Minimal Housing Code uses a percentage. If the cost is not greater than 50% of the value of the structure, 50% is the triggering language. It seems it would be easier to enforce if we have clear language. The recommendation is to substitute the words "reasonable cost" with "a cost not greater than 50% of the present value of the structure" in Sections 1 and 2.

Mr. Owens clarified this is not part of our Zoning Code so you can adopt these changes now or we can hold a public hearing.

Councilman Macon made a motion to adopt Ordinance No. 07-696 (Exhibit 6) with the change to substitute the words “reasonable cost” with “a cost not greater than 50% of the present value of the structure” in Sections 1 and 2. MOTION CARRIED UNANIMOUSLY.

Councilman Macon said in the Senate there is a bill pending where you can adopt non-residential maintenance code. In other words, what they are looking at doing is where you have a minimum housing code you can have the same type of standards applied to commercial buildings, which in the past when I was a building inspector and code enforcement officer the problem was you would want a commercial building to be painted or maintained to a minimal standard and you could not do that. He asked Mr. Owens to keep an eye on that as well as a bill pending in the House which is for chronic violators for vegetation. When you have somebody that’s a chronic violator like the weed and refuse ordinance, instead of having to go through the notification every time you just do it. Mr. Owens is going to watch for those.

VENDING – JUST BEACHY

Mr. Owens said this is a request by the Golden’s to vend along the beach strand.

Mr. Golden said they would like to extend their ice cream vending operation to include the ocean front of Carolina Beach. We’ve serviced Freeman Park for over three years and we feel we have provided a great service. Our customers have asked us to increase to the beach strand. We thought we obtained a permit earlier this year to do that; however, after a couple of days on that beach strand, we found out that we didn’t. I’ve spent over \$20,000 on equipment to expand our operation, which has been money wasted if we cannot secure the permit. We would like to run one gator and we want to do ice cream and drinks. There won’t be a generator on these gators so there won’t be any noise.

Councilman Macon made a motion to approve the request by Just Beachy to vend along the beach strand. MOTION FAILED 2-3 (MAYOR CLARK, MAYOR PRO TEM GILBERT, AND COUNCILMAN JOHNSON VOTED NO) NON-AGENDA ITEMS

Councilman Macon was concerned that there was an anonymous letter read in a Council meeting and he thinks if a letter is read it should be attached to a name and address. I think we should adopt a policy on that and one was presented. Mr. Owens said the policy was written to recommend how Council addresses reading letters at a legislative hearing.

Councilman Macon made a motion to adopt a Council policy dealing with anonymous letters. MOTION FAILED 2-3 (WITH MAYOR CLARK, MAYOR PRO TEM GILBERT, AND COUNCILMAN JOHNSON VOTING NO)

***REQUEST FOR CLOSED SESSION TO DISCUSS A LEGAL MATTER
[NCGS 143-318.11(a)(3)]***

**Mayor Clark made a motion to go into closed session to discuss a legal matter
NCGS 143-318.11(a)(3). MOTION CARRIED UNANIMOUSLY.**

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

ADJOURNMENT

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

Respectfully submitted,

Lynn N. Prusa
Town Clerk

APPROVED: _____