

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

July 13, 2010

The Town Council of the Town of Carolina Beach met in regular session on July 13, 2010 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Joel Macon; Mayor Pro Tem (MPT) Pat Efird; Councilman Lonnie Lashley; Councilman Dan Wilcox and Councilman Bob Lewis. Also present was the Town Manager Tim Owens, Town Clerk Lynn Prusa, Finance Director Dawn Johnson and Town Attorney Steve Coggins.

Mayor Macon called the meeting to order.

INVOCATION

Pastor Ronnie Conner from Seaside Chapel opened in prayer.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the Pledge of Allegiance.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon and Chief Rorie recognized Chad Soward, Fire Engineer, for 5 years of service.

Mayor Macon and Gary Ferguson recognized Ed Parvin, Town Planner, for 5 years of service.

Mayor Macon and Chief Younginer recognized Jeff Harvey, Police Officer 1 for 5 years of service. They also recognized Sgt. Chris Spivey for 10 years of service.

ADOPT THE AGENDA

Councilman Wilcox made a motion to adopt the agenda with a change to Item #12b, moving it to Item #20a, as presented by the town clerk. MOTION CARRIED UNANIMOUSLY.

CAROLINA BEACH COMMITTEE REPORTS

None were presented this evening.

PUBLIC DISCUSSION

There were no public comments at this time.

UPDATE THE PARKS AND RECREATION DEPARTMENT REGARDING UPCOMING RECREATION ACTIVITIES

Mayor Macon made a motion to table this item until the August 10, 2010 meeting at 6:30 p.m. or soon thereafter. **MOTION CARRIED UNANIMOUSLY.**

UPDATE BY PARKS AND RECREATION DEPARTMENT REGARDING MOVING FORWARD WITH STAFFING OF THE CAROLINA BEACH SKATE PARK AND ON OTHER RECOMMENDATIONS FOR THE FUTURE OPERATION OF THE SKATE PARK

Mayor Macon made a motion to table this item until the August 10, 2010 meeting or soon thereafter. **MOTION CARRIED UNANIMOUSLY.**

DISCUSSION AND DIRECTION ON PROCEEDING WITH SELECTING A VENDOR FROM THE RFPs RECEIVED FOR A CAROLINA BEACH MANAGEMENT, ORGANIZATIONAL AND EFFICIENCY STUDY

The town manager presented this item. He said they received about 8 bids to undergo a management, organizational and efficiency study. The prices range from about \$17,000 to close to \$70,000. Council expressed interest in possibly pursuing this and moving forward on this type of study. He would recommend, since it is a little complicated and we need to better define and understand our expectations, scope and deliverables, that they consider holding an August workshop to go over the RFP that was sent out. Council received copies of the proposals and will be given a copy of the RFP.

Mayor Macon made a motion to add the efficiency study to the special meeting agenda to be held on August 9, 2010 at 10:00 a.m. **MOTION CARRIED UNANIMOUSLY.**

FREEMAN PARK COMMITTEE UPDATE

Chief Younginer presented this item. He said the committee held a meeting at which the town manager attended. They originally met quarterly and talked about meeting monthly again on the fourth Thursday of every month in the police training room at 7:00 p.m. There were 8 people on the committee and there are now 5 and they need to appoint 3 people. They are going to work on the charter and update some of those issues that were done to begin with on what their mission is.

The town manager said they did agree to meet monthly instead of quarterly. He recommended that they not appoint members but there are 2 members tonight that Council has a copy of their applications and they could be appointed tonight, leaving 1

vacancy. They did talk about looking at their charge, a work list of items that they may want to work on along with some other items. Once everyone is appointed, staff needs to look at assigning new terms and make sure they are staggered and updated. Right now the members are: Fred Grady, Rick Rogge, Lincoln Hill, Bill Freeman and Ruby Freeman. John Batson and Dave Tilley resigned so tonight's appointments would appoint these two.

ADOPT THE CONSENT AGENDA

Councilman Wilcox made a motion to approve the consent agenda less Item #12b as follows:

Approval of the minutes:

Regular Meeting	June 8, 2010
Regular Meeting Con't	
From 6/8/10	June 22, 2010

Authorize town manager to apply for a Coastal Recreational Fishing License Grant.

Approve application requesting reimbursement from the TDA.

Adopt Resolution No. 10-1021A (Exhibit 1), Governor's Highway Safety Program.

Adopt Proclamation No. 10-1020 (Exhibit 2) increasing the public's knowledge and awareness of the risk of Lyme Disease.

Set a public hearing date for August 10, 2010 at 7:30 p.m., or soon thereafter, to consider creating a new use and standards for rental of small motorized vehicles (i.e., golf carts, scooters, and mopeds). This amendment will likely impact the CBD and HB zoning districts.

Set a public hearing date for August 10, 2010 at 7:30 p.m., or soon thereafter, to consider a request to amend the Zoning Ordinance, Article 17 Site Plan Requirements and Approvals, to redesign site plan requirements for all uses (i.e., businesses, homes, additions, etc.) These amendments will apply to all zoning districts and may be modified/expanded during meeting deliberations.

Set a public hearing date for August 10, 2010 at 7:30 p.m., or soon thereafter, to consider amending Article 3 Zoning District Regulations "Permissible Use Table", to include allowances for shopping centers and multi use facilities and to redefine both uses in Article 23 definitions.

MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to move ahead to Item #17, new business, since it is not 7:30 p.m. and too early for the public hearings. **MOTION CARRIED UNANIMOUSLY.**

COMMITTEE APPOINTMENTS

FREEMAN PARK COMMITTEE

Councilman Wilcox made a motion to appoint Hope Combs to the Freeman Park Committee. **MOTION CARRIED UNANIMOUSLY.**

Councilman Lewis made a motion to appoint Tom Bridges to the Freeman Park Committee. **MOTION CARRIED UNANIMOUSLY.**

POLICE ADVISORY COMMITTEE

Councilman Lewis made a motion to appoint Mark Terrell to the Police Advisory Committee. **MOTION CARRIED UNANIMOUSLY.**

ARTS AND ACTIVITIES COMMITTEE

Councilman Lashley made a motion to appoint Michal Oliver to the Arts and Activities Committee. **MOTION CARRIED UNANIMOUSLY.**

REQUEST TO CONSIDER HOLDING A WORKSHOP TO DISCUSS PLANS FOR MOVING FORWARD WITH THE RENOVATION AND POSSIBLE EXPANSION OF THE CAROLINA BEACH FIRE DEPARTMENT

The town manager presented this item. He said they are at a point where staff feels they can have a workshop on the future plans of the Carolina Beach Fire Department. They are looking at both the renovation and expansion of the fire department at some point. Architect Greg Reynolds has done some planning work and they need to take a look at them, see if they meet our needs and decide on an action to move forward or not. He recommends August 24, 2010 at 9:00 a.m. to noon at the fire department.

Council agreed.

REQUEST FOR POSITION CLASSIFICATION FOR FIRE LIEUTENANT/ASSISTANT FIRE SHIFT LEADER

Fire Chief Rorie presented this item. He said the fire department has developed something they refer to as a career development program. He showed on the overhead a listing of the members with training standards for each position giving the expectations and responsibilities members have to meet. He wanted Council to see this so that when he goes over the next two agenda items they will see the connection of what they are trying to accomplish. What is before them is the classification of an assistant fire chief

leader or lieutenant. When they first met in the budget workshops, he made a concept in terms of what they needed to do this year to continue to move this forward. He believes in incrementing and doesn't think they should make a lot of changes at one time but little changes as they move forward with the grand master plan. One of the things he talked about was one team, one organization. What he wants to show, through the organizational chart, are some of the issues they are having and how they can try to blend those and create a functional team. First and foremost they are what is referred to as a combination fire department so they have different classes of employees. They have full-time employees, part-time employees, and pay per call or volunteer positions. Some of the barriers they face with a combination fire department are personnel policy issues that need to be addressed, looking at the town's personnel policies, how does each one fit into the categories and how do they streamline and make sure they are equitable across the board. Another barrier is FLSA standards. We have to apply overtime rules where the fire department and the police department are the only ones who have their own chapter in the Fair Labor Standards Act. Another one is the perception of duties and responsibilities across the board for all of the members and differentials in terms of our training standards. He showed what represents all of the full-time positions, part-time positions in our resident firefighter program and then the volunteers or pay per call. He is trying to accomplish, with this classification, is to implement across the board the career development program but, in doing so, have it to where the personnel have a plan for succession so if he loses a captain he has someone who has been trained and pre-qualified and internal to step up into that position as captain so he doesn't have to advertise outside and has a hiring pool internally. Another thing he is trying to accomplish because of the FLSA regulations, all those positions get paid an hourly rate and applies whether they come back to calls, whether they take and come back to training, they get an additional pay raise involved with that. This issue cleans that up and makes it consistent across the board and so they do not have to deal with it on the FLSA side. On the other side everybody here gets compensated on a pay per call basis. In last year's budget they approved a different pay variable based on their rank and position and the responsibilities they carry in the fire department. On one side there are no minimum performance standards as it relates to job callback, but on this side, in order to be a member of our PPC, they have to make 35% of our full alarms and complete 9 hours of training per month. We have training standards on one side but we don't have minimum callback percentages that they have to meet to participate in supplemental retirement so there is a disconnect from one side of the house to the other side and we need to provide these opportunities for these things to be blended into a functional team. Again - one team, one organization. The objective is to ensure all of the staff is working in conjunction with each other to provide and meet our mission objectives. We want our organization to prevent harm to our citizens, those who live, visit or work in our community and our environment. We need to connect these across the board so these positions have rank, role, and responsibility from bottom to the top. Currently there is not a position on this side for lieutenant or assistant fire shift leader so if that captain is off he would end up with either a part-timer or a fire engineer calling the shots and, since they don't have callback requirements, the average response of our membership is 40% and that means he is missing half of his officers at any given time on the fire ground. This would give him a couple more officers and, when they come back to call, they can build a command team

and help move forward with that. One of the problems you face with a combination fire department is those different standards. We need to worry about callback for two reasons: there is an expectation on this part, minimum performance standards, and we need to have the minimum performance standards on this side of the house as well. But, also, if you look at these officers, he can't tell you at any given time which ones will show up because they don't know if they will be available so he wants to make sure these are available to build his command. He is referring to calls beyond the regular shift. The benefits of trying to establish this classification is a crossover work schedule where they can work on both sides of the house. He mentioned the job callback responsibilities, the other part of this if you look at it in terms of it is a vertical line, it allows him to establish company officers and company responsibilities. Each one of these positions, across the board, will have programs management responsibilities. He has mentioned the ability to build our command team, also, in those program responsibilities is decentralized management from the top. He spends an enormous amount of time dealing with the pagers when he has people who can be assigned that responsibility and allow them to deal with it. He is trying to get those program responsibilities into the hands of officers. He also mentioned succession planning. He thinks it is critical to look at it - who is in house, what are they doing to prepare for the next step, having them in those positions so it creates a learning curve so he has an internal pool to hire from when they do promotions or hiring the fire engineers. This position is a classification for lieutenant and it is to clean up those things from FLSA, one team, one organization, build a command team on the fire ground and have it to where everybody is collectively engaged in meeting the mission. He is requesting Council's approval for the job classification of lieutenant and assistant fire shift leader. This was calculated in the budget workshop and is already in there.

Councilman Lewis made a motion to approve the job classification of fire lieutenant/assistant fire shift leader at salary grade 16. MOTION CARRIED UNANIMOUSLY.

REQUEST FOR POSITION CLASSIFICATION FOR RESERVE FIRE SPECIALIST

Fire Chief Rorie presented this item. He said they have part-timers in place now working under a job description of fire engineer or whatever it may be. We have verbiage in our town policy that says a part-timer must be compensated at the same rate as a full-timer if they are fulfilling the same responsibilities. Our part-time positions do not fulfill the same responsibilities in that they don't have program management responsibilities. All this does is establish that classification for our reserve fire specialists. Basically it identifies our part-timers by job classification, sets their salary range at a grade 5 and then allows for an adjustment and they can fill any position from fire fighter, fire engineer up to the rank of lieutenant. This makes sure they can set their pay rate, that's variable, that keeps all those things in line and equitable across both sides of the house.

Mayor Macon made a motion to classify and establish the position of reserve fire officer with a salary grade of 5 within the Town of Carolina Beach Position Classification Pay Plan. MOTION CARRIED UNANIMOUSLY.

REQUEST FOR APPROVAL TO APPLY FOR A COASTAL RECREATIONAL FISHING LICENSE GRANT TO ASSIST IN PURCHASING 236 CAROLINA BEACH AVENUE NORTH FOR THE CAROLINA BEACH OCEAN-TO-SOUND ACCESS PARK AND FUTURE SITE FOR THE NC AQUARIUM PIER AT CAROLINA BEACH

The town manager presented this item. He said this item was 12b on the agenda that was moved to 20a. He is seeking approval to apply for a grant to purchase 236 Carolina Beach Avenue North. He showed the different tracts involved in this on an overhead map. They have since applied for several different grants in this location. The value they are placing on that parcel is \$389,896. They are not seeking any type of match. The town would have to match for this. They are hoping that will come through another grant with 234 Carolina Beach Avenue North. They have assigned values to these parcels and these are based on more of an internal document that was used through some of the closings that happened. There are different values up and down the board from appraisals to assessed values from the county, etc., but these values are something the banks agreed to take for those properties and as we, hopefully, get grants we can take those off the books and reduce the debt service on these properties. 309 Carolina Beach Avenue North is the only one we own outright at this point, the rest are owned by CBP3, Inc. The grant is from the North Carolina Marine Resources Fund, better known as the Coastal Recreational Fishing License Fund. The grant request is for 236 Carolina Beach Avenue North for \$389,896 and the match would hopefully be coming from another grant at \$1,172,335. He gave Council another copy as he wanted to change some of the things after the town attorney looked at it and these were items 3 and 4 under now, therefore, be it resolved that. He added some clarification so they wouldn't think we are building the pier or having to do all the permitting for it. He is requesting Council consider allowing staff to move forward on the grant and adopt Resolution No. 10-1021. He also said the grant writer helped with this request.

Mayor Macon made a motion to move forward with the grant application and approve Resolution No. 10-1021 (Exhibit 3). MOTION CARRIED UNANIMOUSLY.

CLOSED SESSION

Mayor Macon made a motion to go into closed session to discuss real estate in compliance with [NCGS 143-318.11(a)5]. MOTION CARRIED UNANIMOUSLY.

The town attorney informed Council that the General Assembly on July 9, 2010 unanimously passed Session Law 2010-73 Section II which is known to the town as our proposed Harbor Act which makes clear that the town has jurisdiction over the various areas of Myrtle Grove Sound and the municipal marina and yacht basin. It further authorizes the appointment of a harbor master that did not exist before and empowers the

town to go forward and make the necessary improvements as per the Harbor Management Plan and that has been approved in the town's Land Use Plan.

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

Mayor Macon made a motion to request that the CBP3 convey 234 and 236 Carolina Beach Avenue North to the state or town, as appropriate, subject to obtaining requisite grants and lender and other approvals. MOTION CARRIED UNANIMOUSLY.

Councilman Lashley said that prior to going into closed session Leroy Franks gave him a letter for Council to read. He will give it to the town clerk to make copies and give to Council.

PUBLIC HEARING - CONSIDER ADOPTION OF AN ASSESSMENT RESOLUTION FOR THE INSTALLATION OF WATER AND SEWER LINES WITHIN THE WILMINGTON BEACH SUBDIVISION FOR TWENTY-SIX VACANT PROPERTIES

The town manager presented this item. He said at the last meeting there was a public hearing and requested staff to move forward on this project. The difference between this is that there was a preliminary resolution that was adopted and they were required to notify property owners affected by this proposal. That has been done. Attached are the certified copy and supporting documentation for that. Staff is following the general statutes for assessing properties. They anticipate the cost to be about \$205,000 when complete for the extension of water and sewer for 26 vacant lots. He showed the lots affected on a map. They are currently all vacant properties and have no water and sewer. The assessment wouldn't actually come until everything has been tallied and they know the cost. Then the assessment bills will be sent out to these property owners. This assessment varies mainly in one regard in that you are basically saying the Town Council of the Town of Carolina Beach hereby directs that the project as described within this resolution be undertaken. You would be directing staff to move forward on this project and set the terms of the assessment. We need to consider holding a public hearing and the other action would be to discuss and consider the adoption of Resolution No. 10-1023.

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

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

Mayor Macon made a motion to adopt Resolution No. 10-1023 (Exhibit 4) and move forward with the assessments. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING - PUBLIC INFORMATION SESSION TO DISCUSS AND APPROVE A RESOLUTION FOR THE TOWN TO SEEK LOAN FUNDS FROM USDA FOR THE WILMINGTON BEACH STREET IMPROVEMENT PROJECT

The town manager presented this item. He said they have been through a process to get into a position to hopefully borrow funding for the Wilmington Beach project. They don't anticipate the cost to be more than \$4.2 million and is stated in the resolution not to exceed that amount. They also went out for RFPs from a variety of banks and received some better rates and a longer term than he anticipated and is a little torn as to whether he wants to go the route of the USDA loan or one of the other loans. The best rate they received was through Bank of America at 15 years for 3.433%. BB&T quoted 15 years at 3.97% and 20 years at 4.47%. The USDA loan is 20 years at 4% and they may be able to go 25 years at 4%. There is a lot of paperwork involved with USDA, the application process was pretty intense and probably created some expenditures that normally some of these other avenues wouldn't. That said, he would like to move forward with Resolution No. 10-1022 which authorizes the mayor and town clerk to execute documents and move forward on the USDA loan but he wants to have a chance to talk with the finance director which route they need to take. Right now he is torn between the 15 year loan and the USDA loan. If they are within the ballpark, to him it would be wiser to take the Bank of America loan because you are paying less interest over the long term. He needs to get some numbers together for the USDA and determine what the best route is. Between the different quotes they got they are talking about \$30,000 -\$40,000 difference in what you are paying yearly. It's something they will have to look at. He will have to make a decision pretty quickly which to go with. They need to hold a public hearing on this resolution and decide whether to adopt it.

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

Tom Saverese, 101 Lighthouse Drive, asked the town manager if they took the longer term loan with Bank of America and do you have the potential to pay the loan down faster and is there a penalty involved? Does he know that at this point?

The town manager said that with the USDA, no, they can pay that loan off quicker and he anticipates doing that. He does not know the answer for some of the other quotes they got, primarily Bank of America, because they just got the quotes the other day.

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

Mayor Macon made a motion to approve Resolution No. 10-1022 (Exhibit 4).

Councilman Lashley said there is a statement that this may not start for 6 or 8 months, are they talking about waiting that long before they start paving the roads.

The town manager said they have to do several things. With the USDA loan it takes a little while for them to go through Washington to get the appropriation, it will take at least 3-4 months. They have to go to the LGC and then bid the project. Even going through either one of these terms, if they go with conventional installment purchase, it may be 4-6 months. It will be a little longer if they go through the USDA. It is his intent to start the project this fiscal year.

Mayor Macon called for a vote. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING - CONSIDER AMENDING CHAPTER 8 “OUTDOOR PERFORMANCES AND EVENTS” TO ACCOMPLISH THE FOLLOWING: (1) STREAMLINE THE REQUIREMENTS FOR REGULATING THESE EVENTS, AND (2) ADD AN ALLOWANCE FOR TEMPORARY PRIVATE EVENTS, SUCH AS WEDDINGS, REUNIONS, RECEPTIONS, CORPORATE EVENTS AND SIMILAR ACTIVITIES ON BOTH VACANT AND DEVELOPED LOTS IN COMMERCIAL ZONING DISTRICTS (HB, CBD, MB-1, MX AND T-1) IN CAROLINA BEACH

The planning director presented this item. Mr. Ferguson said before them is an amendment to their outdoor performances and events. March 2008 is when they adopted this ordinance and there was not one in place before that. There are two changes being proposed. The first one Councilman Lewis is sponsoring a major part of this proposal and that has to do with expanding the allowances for timing of these outdoor performances and events and the second one has to do with how it is currently operating which hasn't been in the best light. We saw it a little bit cumbersome and we grouped together a bunch of types of events and we weren't sure whether we were expecting everybody to come through and get such permits. So now, under this proposal, we are trying to make it a little bit clearer as to who is going to be responsible for obtaining a permit for an outdoor performance and event. This is a rewrite as well as what Councilman Lewis has recommended he would like to see happen. The purpose of regulating outdoor performances and events is to minimize any competition between these activities and those of our permanent, seasonal, and year-round businesses; alert our public safety officials about what is occurring on a site; minimize any potential adverse impact of events; and encourage activities and events that are charitable in nature. Types of events: This is where we get into some distinctions that the current ordinance doesn't really address. (1) Private events. An activity designed to accommodate “invitation only” events such as weddings, reunions, corporate assemblies or other similar activities. (2) Private property. Improved or unimproved property currently used for and/or designated by zoning for commercial purposes. This is what Councilman Lewis is speaking to as well. (3) Public events. Fairs, festivals, musical concerts, sporting events, tournaments, contests, promotional events or other types of performances or events. This is what Council typically has come before them - at Freeman Park, the lake, skateboard park, etc. (4) Public property. Public lands or facilities such as at the beach or Parks and Recreation Center. Those are the four categories of different types of events. Limitations on event durations and locations: Private events on private property and public events on private property, the two types of events that are going to be required to get permits, shall

be limited to twelve events per calendar year with each event lasting no longer than two days. This is a staff recommendation. Currently we have a minor event which is 6 events no longer than 5 days each (30 days total) and a major event or single event lasting 5 to 30 days. Councilman Lewis' proposal was 30 events (30 days). Staff's proposal is 12 events no longer than 2 days each (24 days total). Submittal requirements for a permit: Crowd control procedures; traffic and parking control; provisions for collection and disposal of solid wastes; and site plan showing where things are going to be located on the property. Staff recommendation: The 2007 Land Use Plan does not speak directly to special events, this is a town code amendment and not a zoning amendment. Balancing the allowance for special events that don't compete with brick and mortar is a concern for the town. Staff has limited the duration for events on private property from what Councilman Lewis requested (30 events) down to 12 events lasting no longer than 2 days each which gives a potential total of 24 days. Planning and Zoning Commission recommendation: This came before Planning and Zoning Commission last Thursday evening and their recommendation was for unlimited number of private events on private property limited to CBD, HB, MB-1 only. Also, in the ordinance itself there is language in there that speaks to signage. The ordinance says the sign has to go up the day of the event and taken down the day of the event. The commission thought it would be more appropriate to allow a sign one day before the event and one day after the event.

Councilman Wilcox asked what is the purpose for a sign to be up one day after the event? The planning director said to give them time to take it down.

MPT Efird asked, on private property if she has a cocktail party for 150 does she have to get a permit? The planning director said no. In the ordinance they try to provide two exceptions to this permit. The first exception would be for non-profit groups - church, charities, etc. Regarding private events on private property that are located in a residential zoning district, informal events such as a birthday party, and that is not something they are trying to regulate. Not all activities or outdoor events are going to require a permit. There are also instances where the town manager is going to be authorizing permits that are private, people want to come in and go on the beach, for example, on a public piece of property and have a wedding. They received a request like that today. That is something the town manager addresses. Larger events on public property are issues that come to Council. Usually the manager is aware of what is going on and Council usually gives him direction about how they want it to be managed and maintained, questions and answers of the applicant, etc.

Councilman Lewis said the whole premise here is that they approve a lot of private events on public property with no real costs to the private person who is holding the event. We have people who own private property today, undeveloped land because of economic conditions, and his concern is that person can't do anything with that property. The reason he is recommending this is that the City of Wilmington, Wrightsville Beach, other communities around us are allowing individual property owners who have undeveloped land have private parties or events in those areas and they have an application process. His concern is that they burden themselves on the application process and some language in here it talks about the town manager making the approval.

He thinks the application process could be extremely streamlined through electronic formats to where everybody could get this thing done in a 7-10 day process so that a person could actually organize something, get it up and running and know they could have an event, start to advertise or send out invitations for that event. The limitation of 12 - that is probably the least amount. He thinks Wrightsville Beach has an unlimited number, Wilmington has like 30 or 60 - 12 events using 24 days he thinks is a very minimal amount. His concern is that they treat everybody fairly so no matter who is investing in the property. He has talked to three different people who want to have different types of events on their property and want to create themselves a little business. That is where he is heading with this.

Councilman Wilcox asked if there has been any discussion about what type of events might not be permitted. The planning director said the way the ordinance is structured they are looking at the invitational type of event. You wouldn't be picking up a newspaper, for example, and saying you would go to this event. It would have to be something with a personal invitation such as a reunion, wedding, etc., not something you sell tickets to. That is not a private or by invitation event.

Councilman Lewis said they have approved those in the past for use of public property. It's a real concern he has regarding telling the person who owns the private property they can come talk to us about the public property but you can't do it on private property.

The planning director said, just to make clear, they are talking about private on private unlimited, that is what P&Z has recommended. Private on public property is going to be controlled through the manager and Council. Any other types of permits or public events that are going to be happening on private property, that's where you get an advertisement in the newspaper, come down to my parking lot or establishment, we're going to have a band playing or what have you. The P&Z Commission recommended that we stick with 12 events for that type of activity.

Councilman Lewis said right now they have a gentleman who wants to do a volleyball tournament on private property which is a 6 day event so that wouldn't qualify because it's not a 2 day event.

The planning director said he could come to Council and request their approval to have this event.

Councilman Lashley said that as a town they are in the parking business, can people use their private property to have a parking lot and charge? The planning director said yes, if it's in a commercial zone and it's a commercial parking lot there are standards in our zoning ordinance to allow that use. The use that is generating the need for parking is going to have to have available parking for the use.

Councilman Wilcox asked of the 12 public events on private property, what type of events are those? The planning director said that is up to the discretion of the manager and we'll see what is coming through.

Councilman Lashley asked if he read there is a fee for this? The planning director said they are looking at a fee of \$100 regardless of the number of people attending the event - public event on private property, not private event on private property, because it may entail some of the police, fire department, that type of use. The fee structure wasn't recommended by P&Z Commission, that is something Council should make a determination about what the fee should be.

Mayor Macon asked if there are police officers involved, wouldn't they be required to pay for them? The town manager said it would depend on the size of the event. If it is too big they might recommend they hire 3 police officers and have somebody make a trash patrol, etc. Some of his biggest concerns would be if you had a private lot next to a condo complex or single-family or something like that and are continually having events, that would be his concern. He knows there are noise ordinances that regulate noise and control but just every weekend, 12 weekends would be his concern.

Councilman Wilcox asked if there is a point at which he would defer something to Council?

The town manager said not if it falls under this ordinance. Obviously there are some things that might arise that he may not want to sign off on and may hold off on and take it to Council to clarify the ordinance.

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

Brett Keeler, 310 Columbia Avenue, said one of the things with the planning director's presentation is the competition with brick and mortar. The property owner pays property taxes and the valuation of property is down in the CBD, MB and HB - most of the buildings aren't valued at much so they pay their taxes on that. With the events that are proposed, the weddings, the corporate functions, people aren't going to book their weddings or corporate functions on a piece of sand with no infrastructure and not improved at all so he thinks that the unimproved and just the lot competing against the Marriott for weddings or the Hilton, when it's built, that's not going to happen. The private lot in the CBD or HB or MB would have to be improved and, instead of having the empty lot that we have now, it will be improved with landscaping, decking, bathroom facilities that would adhere to Health Department standards. The other thing, with public on private property with 12 events that are concurrently running to 24, you have the old Food Lion place that the movie theater just went out and then you have Jubilee Park which are expansive areas - 7 acres for Jubilee Park and 5.5 acres for Food Lion. The 12 events, is that going to be limited to the private individual or to the property? Right there we're talking about Mr. Alliston's volleyball tournament of 6 days and that wipes out half of Jubilee Park's rentable for public events and will be burdensome on the person who is renting it out because Jubilee Park is going to say if they want to rent it out, here is what our carrying costs are so you have to pay \$30,000 to rent it out for those 6 days, \$5,000 per day because we need to make enough to cover our carrying costs. He thinks

12 events per property on private properties is restrictive. Wrightsville Beach's ordinance only covers public property mainly because most of their private property is developed. Wilmington is 60 days and at that point all you have to do is fill out a special use permit and someone from the town staff goes to make sure that the landscaping, driveways, gravel just meets code and then you are able to do more than 65 events and public events. New Hanover County is unlimited. The caveat with the extra police, New Hanover County and Wilmington there is a caveat that for every 250 people you have to hire an outside police presence whether it be county, local police or a bonded security company. In Carolina Beach he believes it is \$28.50 an hour with a minimum of 4 hours. Right now the ordinance, as it is currently constructed, is very restrictive. We had an opportunity about 2 ½ months ago with an agent that we work with that had a traveling Cirque de Soleil type big tent that could accommodate about 1,200 people per show for 9 shows and there were a couple of those properties, one of which he mentioned, that could have handled that kind of inflow. But the time line and the amount of time we would have had to spend going through the permitting process would have been 12-15 hours of town meetings, etc., where everything was inclusive on effect that we were pre-selling tickets these guys were going to come into town, we were going to drop the bathrooms, drop the big tent, he thinks site build would start 3 days before but it wasn't worth the time to do that and that would have been last weekend. He heard that it was a little bit lower key because it was after the July 4th weekend. He was down in Gulf Shores for the 42,000 Jimmy Buffet concert and they were able to utilize their public beach strand partnered with private beaches and private companies that were all intermingled. It was a government/private enterprise to try to stimulate tourism economy. Those are things we could possibly do but, right now, the ordinance doesn't allow for those things. We have Freeman Park, we do have a beach strand. Hopefully, through renourishment, maybe it will become a little bit bigger than 12 feet. He thinks this ordinance as P&Z recommendations should be streamlined, make it a little easier but not too easy for somebody to come in here because when you have a lot of no's, as are in the current ordinance, somebody is just going to take a look at it and move to Wilmington, Wrightsville Beach or New Hanover County.

Shannon Brodeur, 314 Columbia Avenue, said she thinks the proposed ordinance to allow the use of people's land is a really creative, wonderful idea she thinks the town needs. She thinks there are a lot of empty lots in Carolina Beach and when people come here and see the for sale signs all over the place it doesn't really add to the ambience so using them to create events, she thinks 12 is a little limited, excessively limiting. She also thinks that the idea that you can only put up a sign a day before the event doesn't really help the event. As a person who owns a business, she would welcome this and doesn't really see it as competition. She thinks it would bring customers into her store and give people a better perception of Carolina Beach and a better overall experience. She would be for it. She thinks Brett summed it up really well with everything he had to say and agrees with him.

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

The town manager said he had one comment. These are, in his opinion, for temporary events. To start building permanent structures, permanent decking and bathrooms you start to get into a permanent situation in his opinion and then you get into uses, primary vs. accessory. To him this is, if you want to have an event you can bring in a tent, you can bring in a stage that can be removed, you can bring in those types of things. This is what this is for. If you start building permanent structures, then you start getting into uses and that is his interpretation of what they are looking at tonight.

Councilman Wilcox asked about the question of who is being charged with the event. It goes to the property, he assumes. The planning director said yes, the site. He said there are a couple of things he would like, as a clarification, on page 10 of the actual ordinance. The town manager has recommended a slight change under the last sentence where it says about the \$1 million dollar insurance policy, he is recommending after the word policy "or greater" naming the town, instead of primary insured, additional insured. In addition, and kind of as an afterthought, you might want to talk about this, may not, and that is should there any hours of operation or limitation of hours on this. None are specified in this.

Mayor Macon said he definitely thinks that if someone is doing an event a sign one day before is a little short. If a Cirque de Soleil type thing was coming in and a big tent was going up, he would definitely think that like a week beforehand putting a temporary sign up would benefit and give them a day or two after to take the sign down. The point is, if it's good events and events that are important to the town and help enhance tourism, you want those events to be successful. He doesn't know about the 12 events, 2 days each.

The planning director said that is a staff recommendation.

Mayor Macon said those are his issues. He doesn't see a problem with it if something is coming up a week ahead of time a sign going up letting people know what is going on.

The town manager said the way Wilmington addresses some of these things, if there was a circus or carnival they would allow 14 days, they allow it in certain districts. If there is an outdoor bazaar - 3 days; agricultural related products, farmer's market...

Councilman Wilcox said what the planning director is saying anything beyond 2 days can come before Council for approval, it's not a denial. We do that all the time.

Mayor Macon said but then you get into timelines.

The town manager said they didn't address any of these larger events for a larger duration. This is what Wilmington does and they can go back and amend this if Council wishes to and take them as a model ordinance but they are looking at real temporary events, temporary durations on private and public property. As an example, the whole volleyball tournament doesn't fit into this. Obviously we give a special permission somehow and work with them to make it happen. We would have to call a special town meeting at this point.

Councilman Lewis said if he is the private property owner and having a private or public event, why is he required to have a \$1 million dollar insurance policy. He would assume he had his own insurance policy. The town is not indemnified any which way if it is on his own property, right? It says here, "In addition, applicants may be required to take out a one million dollar (\$1,000,000.00) insurance policy naming the town as primary insured."

The town manager said he only sees that as being on public property.

Councilman Lewis said he agreed with that. He said from the beginning his recommendation was 30 days or combination of 30 days or 30 events, your total combination of 30 days usage over a 1 year period. So you could have five 6 days events or thirty 1 day events and he thinks the application should be something reasonable. He will say that when he has made applications in his business, the review process is done very quickly, and sometimes it has been within a day. He sees where he is saying it could be up to 30 days review but, typically you guys are really fast. A storm or something could happen so he doesn't really have a problem with that duration time.

Councilman Wilcox said he thinks the Mayor hit it for him, we want good events and he thinks that is where they have to try and craft an ordinance that allows people to use their property, he's all for that but the objective is to have good events. He thinks the question opens itself up when, say if Brett said they have a piece of property down there and wants to do an event and they are going to be in charge of that event, to him there is more ownership in that event than if someone comes along and says they want to rent your property and we want to do an event. We open the door some abuse here when they allow these things but he is of the mindset that he doesn't want to punish all the people who are trying to do something good to potentially protect something that may or may not happen. He is generally in favor of this and is also in agreement that the sign could be permitted to go a little earlier and he thinks that 30 days or 30 events sounds reasonable. If they do it and it gets abused, then it is probably something that won't last. We encourage people not to abuse the intent of it.

Councilman Lewis made a motion to adopt Ordinance No. 10-840 (Exhibit 6) with the inclusion to allow 30 days or 30 events up to 30 days, the application fee be set at \$25.00, and change the signage to 7 days prior and 2 days after the event.

The planning director said the permit would be all inclusive including a sign permit that allows for a large sign size, around 100 sq. ft.

The town manager said the fee would be per event.

Councilman Wilcox questioned whether the fee would be fair for the town as well.

Mayor Macon suggested \$50 and it would include the sign.

Councilman Lashley said to create a form for people to fill out with what to do.

The planning director said they have one that gives them help with what we are expecting.

Councilman Lewis amended his motion to charge \$50 for the application fee to include signage per event.

Councilman Wilcox said he had one other question, what they have done, 30 days or 30 events someone can come out and have a 30 day event?

The planning director said yes. He asked if they are talking private event on private property or does it matter? Is this a public event on private property? Is that 30 days, 30 events, is that applied to both instances?

Councilman Wilcox said private on private was unlimited. He understood the 30 days was for public on private.

Councilman Lewis agreed.

Mayor Macon called for a vote on the motion with the amendment. **MOTION CARRIED UNANIMOUSLY.**

PUBLIC HEARING - CONSIDER AN ORDINANCE TO AMEND THE TOWN CODE, CHAPTER 8 LICENSE AND BUSINESS REGULATIONS TO ALLOW FOR ENTERTAINMENT AND OTHER SERVICE RELATED ACTIVITIES ON TOWN CONTROLLED PROPERTY INCLUDING, BUT NOT LIMITED TO STREETS, SIDEWALKS, THE BOARDWALK AND BEACHES

The planning director presented this item. He said that at the last Council meeting on June 22, 2010 the Council adopted an ordinance regulating busking or outdoor performers. With that ordinance they also included an additional ordinance for Council's consideration which allows for business expansion - the allowance for folks to take their business from inside and put it outside the building, with certain limitations. What is before them is an ordinance which resembles what they were looking at the meeting on June 22nd but it has been beefed up a bit and includes language from our outdoor performances or busking language they put in at that meeting. So they borrowed some of that language and put it into this business expansion allowance so that folks who have their businesses on the boardwalk, not on the sidewalk, we're talking about business expansion, not on sidewalks. Right now we allow 3 things to happen on town property, on the boardwalk and on the sidewalk. On the boardwalk we allow people to show their goods and display of items. We also allow people to have outdoor cafes and some signs, sandwich boards on the boardwalk and in the CBD with a permit. So with that, what you will find as a proposed ordinance is language that governs business expansion where we really don't have one now. It only applies to the boardwalk and not to sidewalks, only because our sidewalks are 8 feet wide at their maximum width in most cases, and the

boardwalk is 20 feet wide when you include the 2 feet of the center of the boardwalk.

Councilman Wilcox said staff is suggesting they adopt an ordinance within a zoning district that only applies to specific places within the zoning district so it is not a zoning district-wide ordinance?

The planning director said yes, it doesn't apply to the entire CBD, it only applies to the boardwalk. This is not a zoning allowance, this is a town code allowance. Staff brought this because of what is happening at Mary's, every time we turn around it's, "Well, we're not busking, this is a business expansion." So, with a business expansion proposal, what they wanted to bring to Council was whether they wanted to allow businesses to go from the inside of the store to the outside on public property. Public property is just that and is meant for the public's use and enjoyment and he doesn't think it is there for everybody to make money off of public resources. Cafes are a different kind of story, they add to the character and ambience of the town that he thinks is great. On the other hand, when people start using our public space for private gain it takes on a different complexion beyond cafes. When you start putting more of your wares out on a limited area, it starts cluttering up and then you start limiting the use of what those facilities were meant for. With that said he needs to say that he doesn't think staff is supportive of the ordinance but the manager directed them to bring this to Council for their consideration and he felt it needed to be placed in front of them.

Councilman Wilcox said that some areas are a little bit unclear to him. On the first page where it talks about business expansion it says, "Outdoor allowance to perform activities and services that are only offered within the interior business of the same establishment." He is not sure what that means. If you have a guitar player outside playing the guitar, does there have to be a guitar player inside, does he have to be also performing inside? If you sell guitars inside, does that allow someone perform outside playing the guitar? He is unclear.

The planning director said he thinks, on the latter example, that is what they are looking at. If they are selling guitars on the inside, if they are doing henna tattoos on the inside can they take the henna tattoo chair and stick it on the outside and give tattoos on the outside? That's an example. He thinks if you are doing art on the inside, if you are selling art and there is an artist inside and he wants to bring his stuff on the outside on the boardwalk and show people how the art is actually created, that would be another example. But it has to be some relationship between what is happening on the inside and what is happening on the outside.

Councilman Wilcox said what he is saying is that anyone with any activity on the inside can drag it on to the sidewalk and do it on the outside.

The planning director said right. Again, it is going to follow the same regulations that we have on the boardwalk now for such things as outdoor cafes and display of goods. It is going to be minimized to that amount of space for access.

Councilman Wilcox said you are going to have people out there making hotdogs and donuts and, if ALE allowed, have a temporary bar set up outside on the town property.

The planning director said he thinks he is hitting on some of the concerns.

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

Tom Savarese, 101 Lighthouse Drive, said he doesn't see where setting up a bar or hotdogs outside would even fall within the realm of the health code. Some of the parallels you are drawing or oppositions...

Councilman Wilcox said you can sell hotdogs outside. You're under the Health Department but you can still sell hotdogs outside, it's a different issue. You are only required to have a commercial facility that services your outdoor activity. If you serve hotdogs, you're required to have a commercial kitchen, refrigeration area that is a home base for that. That is a different issue. That is a health permit vs. whether the town will allow that activity or not.

The town manager said that in the event that it didn't meet Health Department codes or ALE codes, obviously you wouldn't, those would supersede zoning.

Councilman Wilcox said they purposely don't have any boardwalk vending permits so, theoretically, someone could pull vending carts up in front of businesses, if that is what they are doing, or some relationship to the inside of their business and bring it outside.

Councilman Lewis said that right now the Island Ice Factory has a cart in and could put the cart right in front of his place if he wanted to, outside.

Mr. Savarese said in Wilmington, he can't remember the name of the mall, but they had the carts inside and could take them outside because it's the cart that's approved. It didn't matter where it was as long as it was within that zone. He doesn't see what that has to do with music, somebody playing the guitar.

Councilman Wilcox said he only point was if you allow business expansion, you have to think about all the different types of businesses that are going to take advantage of that allowance, you're not specifically saying it's just for guitars.

Mr. Savarese said it's already in existence, they have shirts out there on the sidewalk and they put out wooden platforms and are serving out there.

Councilman Wilcox said his only point was is that when you open up the door, under this ordinance, anybody who is doing anything on the inside can take it outside regardless of what it is and we don't even know what all those potential uses are.

The town manager said that brings up another point. If you're selling t-shirts on the inside and somebody's cousin wants to have a part of that business now, they might be able to pull a cart outside and sell t-shirts. There is no interrelationship between what happens inside and where the money passes through vs. maybe what happens outside.

Councilman Wilcox said he has some questions about that as follow-up.

Mr. Savarese said so there doesn't have to be anybody eating in the restaurant, they can eat outside so if the guitar player plays inside, he can play outside, no?

Councilman Wilcox said he has some questions and that is the reason why this needs consideration. There is a difference between a person that is doing something inside their facility, maybe they are doing some kind of ceramics and they want to take that outside and do ceramics. To him that is different than a person saying they have some kind of art, they sell different items in their store and they are going to allow people who aren't associated with the business to come and set up in front of their store whether they are open or not, he doesn't see any guidelines for that in here. Is it an extension of the business or is it a different business and he is just not seeing some of that information in here.

Mr. Savarese said if they paint and they have their paintings in there and they want to show people how they paint or do beading or whatever, they could sit outside and do that. But he doesn't understand what the difference is between a bead assembler and a painter that could do it inside, does it outside, and a person who plays music inside can't come outside.

Councilman Wilcox said that is one distinction but he doesn't see the distinction between that and other possibilities in here is his point.

Mr. Savarese said the only other possibility was a musician.

Councilman Wilcox said another possibility is you could allow anybody to do anything in front of your business, whether it related to you or not.

Mr. Savarese said no, he thought it had to be related to the business.

Rick Roggee, Spartanburg Avenue, said he has been to a lot of town where they have outdoor concessions or outdoor functions that were related to a business inside and done very well and quite impressive. He thinks they have a little different scenario and would urge Council to be very careful in that the boardwalk is really busy again and the sidewalks are wonderfully filled with people. If we now put out some kind of ordinance to permit all those shop owners to come outside, the boardwalk is already full. He is not sure there is room to accommodate it.

Brett Keeler, 310 Columbia Avenue, wanted to echo what Rick said. With the Blackhorn Bar and Kitchen they have asked the town to be able to put a hotdog cart out there, which you can do. You get the cart permitted by New Hanover County and you can roll it out there or you can just set up a table and have pre-packaged hotdogs or sandwiches or anything out there. He thinks the big problem is because of the hard work that has been done to get people down to the boardwalk is the problem that if you extend the business out there is the queuing of the lines and the backup. If people go down there and they can't get through, then they are not going to come back. Whatever your product is or your advertisement, you need to be able to get them into your store. Using private land is a lot different than using public land and we are talking about using public land. The differentiation between what he thinks what is being proposed today and the sidewalk cafes and having the merchandise out is the fact that the point of sale is inside. The point of sale is not outside. There is no queuing of lines outside, it's all in the 3 ½ foot area. He will gladly take advantage of it and have a hotdog cart out there or have their tenants that are currently operating the Blackhorn operate something out there to sell food because that is a captive audience that doesn't have to come inside you can catch without having to put on a shirt or shoes but queuing of lines and selling on public property may not be the best way to go about it.

Shannon Brodeur, one of the owners of Mary's, said she is there to ask for some relief. Since she has opened this business in April, it's been a really stressful time. She is an art administrator and represents artists, that's what Mary's is. They represent performing artists and visual artists, both emerging and professionally evolved. It's named Mary's so that it was something that wasn't named after me so she could represent all artists of all ages. She thinks Mary's speaks to that - the grandmother, the mother, the child. Just like she has an 8 year old visual artist, yes, she has some young emerging artists. She wants to live in a town that would allow this kind of thing. She wants to live in a town and have a business and raise her children that would allow more outdoor activity on the boardwalk. Yes, a lot of work has been done. When she started in April there were tumbleweeds rolling through the boardwalk and 9 months of the year that is what is going on. It was Mary's intent to definitely be part of the tourism and be part of what attracts tourists to this town as well as work with the residents. There have been a lot of issues brought up about this and she thinks there is a way they can all work together and make sure everybody's needs are met. By design, there are two businesses on the boardwalk whom she loves and love that they're there but, by design, their lines stand outside of their businesses and they collect money inside their business. That's what the café does. Their customers are given a bill. She loves their food, she goes there. She takes payment from the artists inside the store. She pays retail taxes, has a privilege license, has liability insurance. Yes, it is a public sidewalk. She is part of that public who is asking them to help represent what she is doing. She votes for you and wants their help. She even asked to keep the busking issue and the merchandising issue separate, and she has done that. On June 25th she had a 13 year old drummer outside the store who is here visiting from Charlotte. Jonathan is a resident and he is not the only example of the kinds of musicians that she does put on at Mary's. They have people come here, and they have a great experience and love what she is doing. When they want to participate on a moment's notice and she hears them play and they want to sit outside and play a hand drum, if

that's that 13 year old's first solo performance, she's proud to do that and stand outside and make sure there is crowd control and that they are only using up 2 or 3 feet of space. She brought videos tonight of several of the performances if they care to watch them or they can watch them in their recess. They are 3 and 4 minutes long apiece. Whenever they do have performers outside, they don't constitute what is known as a crowd. She believes her lawyer sent a letter addressing that specific issue. When there are neighbor concerns - Leann has been in her business once. She has met her once and requested her wishes, amplification was too loud for her and she honored that and turned it down. There have been many times along the boardwalk trying to hold a conversation and the noises from the rides, and she and Dan Wilcox were trying to put on, he's trying to give her a PA lesson and talked over it. We want those rides and want that noise, it does bring people. They want the lines at Britt's Donuts. She loves it when the Britt's Donut line is up to her door on a Saturday morning. Fourth of July weekend, yes, the boardwalk is packed. Does she think there is a time for performances and a time not for performances? Absolutely, there's a lot that goes on at the gazebo. During those times if a performer really wants to play, they can play inside. Her goal is what they are going to do with this space and how business owners can begin to thrive more than 3 months a year. She can't eat by only working 3 months a year. She doesn't think any of the business owners on the boardwalk should only make money 3 months a year. She has a business and is here to make money and there is nothing wrong doing that. The arts don't just have to be non-profit. Fayetteville is a good example. Five years ago if somebody said let's go to downtown Fayetteville what would your perception be? The same thing Carolina Beach had. Now we're downtown Fayetteville. The arts council is there. She is applying for a grant and will have to drive up there. She is looking forward to the drive. There are artists outside, there are musicians playing. They're turning their main street into a nice, wonderful main street. She doesn't think that the cultural performing/visual arts mean that they attract negative ilk. She read an article written in 1997 on Americans for the arts. All Mary's is is a simple little art boutique and it's wholesome. They do have kids come in, that's why they have so many of them play. She is not going to send them away. In addition to that, cultural tourists are generally characterized as upscale and willing to spend money per day and wanting new travel experience with higher income level, more education, longer trip duration, etc. She is one of those people, that's what she looks for and why she came up with the idea of Mary's. She doesn't want to go to Wal-Mart. She would love to be able to sell mass produced products where all she has to do is pick up a phone and order it. She does have to represent the artists and she believes those she represents give a good name to Mary's, even the young ones who have to be told to put on a belt or wear a shirt, she doesn't think that is a bad experience for them to learn how to be business people and that it's a legitimate industry. She is asking tonight to help them make some guidelines where she can move forward and not have the police come any longer and interrupt the emerging artists that are playing out front. She hasn't been putting them outside since June 25th because it's not the perception she wants from people. She doesn't want anybody under the age of 18 to have to interact with the police and end up with a record because they played an instrument. She would like them to consider times of day. She doesn't see any reason why a performance has to be past 9:00. She doesn't have them play past 9:00, that still allows hours for shopping afterwards. By them the kids need to start moving off the

boardwalk and so does she by 10:00. Fourth of July weekend they had a Declaration of Independence speaking and it did benefit. Lonnie Lashley they would like for him actually someday to get the basketball court built. There are kids out there who want to play basketball. We have a lot of talent in this town, skateboarders, basketballers, surfers. Let's honor that and give them a place to go. That's all she wanted for Mary's. If anybody wants them to come play at their place she is sure they would be happy to do that. Lonnie, this is for you. It was raised from a reading of the Declaration of Independence on the Fourth of July weekend. She thinks it was a good thing for the public to see.

Councilman Lashley said, in addressing her donation, that he feels it is unethical and cannot accept that donation for the kids or for a basketball court. We have an issue here and we need to address the issue if they are going to allow her or her performers to play in front on her business. He thinks it is very unethical for him to accept something that has been donated in a tip jar which they don't approve of or feels that this Council does. They do have some non-profit organizations and one that is close to his heart is the Help Center so they may want to give that to them. He does appreciate the visibility of a future basketball court and thinks that all of Council agrees with that and they will have it some day. He thanked her.

Ms. Brodeur said she understood and would make sure the Help Center gets the donation.

Teresa Highman, Canal Drive, said she has performed at Mary's. A friend of hers also makes the drums that have been played in front. These drums are for sale in her shop and they are trying to start some workshops in dance classes in her shop. Any of those things that are done there, point of sale, is inside Mary's and it's sponsored by Mary's. She has over 40 years experience studying all forms of dance and is looking forward to what she can offer. When she performed outside, she took up about the space of a flower pot and it was up against the building. They are trying to be proper, show and promote what they do. When she teaches she is trying to help women of all ages and body types learn to have some self esteem and have a place to go where it's good for them. It's exercise. Mary's is conducive to that because of the activity on the boardwalk and because it is private. The drums and the dance classes all would be going through point of sale inside the building. She personally never puts out a tip jar or made any tips on it. It was more or less entertaining. In Wilmington you can rent a spot on the boardwalk where you can perform and it's by permit. You are assigned a spot and hours when you can and cannot be there. They might want to consider that as well.

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

Councilman Wilcox asked the planning director what the privilege license for Mary's was issued for.

The planning director said he believed it was for retail women's accessories.

Councilman Wilcox said they have adopted a performance permit that allows people to be assigned locations and there are 4 locations where they can go do that and the whole pretense of when this originally came around was to provide places for these young folks to perform or for these artists to perform and he thinks they have done that. He is also one of those people who likes to go to other towns and see different kinds of cool activities outside. We have a very unique little structure down at the boardwalk, it's not like Savannah, Charleston or Asheville. Those are much bigger, larger areas and much more spread out. Maybe they can accommodate those things a little bit better than we can but what kind of bothers him more about it, it's still under this whole pretense. The comment was just made kids come in there and they want to perform so we let them perform. Well, that is not what the privilege license was issued for and he is still confused about how they would even apply any of this where it says performing activities and services that are offered only within the interior of the business. He doesn't know how those services are being performed inside for all those different people. Do they all perform inside or does just one have to perform inside and then they can all perform outside or if they sell a guitar inside does it mean anybody can play the guitar outside? He doesn't know what it means by people go through the point of sale inside, he thought it was just performances. He doesn't know if people are paying for those performances or what? Another thing that concerns him, he would expect that a business owner if they were going to extend any activity out in front of their business would have a certain level of responsibility and he thinks that typically is the case. What concerns him is when you are basically subcontracting that space and he thinks they have seen that down at the boardwalk before and it has been problematic and he has seen what appears to him to be that activity at this same location. He has been there some nights a little later with the music and looked over there and he can't always tell if they are open or not but there was at least one or two occasions it looked like the store was closed but there was someone outside with a table showing some kind of art or activities and they certainly weren't causing any problems but were they a subcontractor, were they an extension of that business? They had that little place down at the corner that Elvis had. First it was a little beer garden, then the windows were open out front and they were selling henna tattoos and lemonade and all kinds of other things and he doesn't think what he has read here that they have any way of identifying what is being asked for and he still thinks what they have done by providing a place for these people to perform is what was asked for and that's what they did. Unless this ordinance were written differently, he doesn't think this is something he could vote on tonight and feel good about it. He is not saying there is nothing he could vote on but there are so many specifics that this doesn't cover which makes it all unenforceable. It concerns him.

Mayor Macon said he is a little confused too about something that was said but he can understand the guy making the drums and the drums are for sale inside. He's in town and is making an appearance to display the drums that he makes and give a performance. He can understand that. Somebody from the Netherlands here visiting and doesn't have a product in the shop performing, he doesn't understand that. That is where he gets confused. He understands if you have Jimmy Buffett CDs inside and Jimmy Buffett comes to town and he wants to stand out in front of your place, he understands that but, once again, if it's not connected to the store he is confused with that. He doesn't have a

problem with certain aspects of it is what he is saying.

Councilman Lewis said he thinks Mary's is a really kind of unique business model, probably we haven't run across this before and makes it probably a little more difficult to work. He was all for identifying locations so any busker could go out there and busk and he thinks they identified those. Anybody could go out there and perform, it doesn't have to be a busker. A person could perform in any of those locations and he felt pretty good about that. The only concern he has is that he is always strong about every business being treated fairly across the board. When he walks along the boardwalk, he likes what is going on and thinks it's great. He has been down there and heard some of these people play and seen some people doing some other things but he also walks through and sees places with t-shirts sticking way out into the walkway, he sees bike rentals sticking way out in the bike rental area, he sees a big giant ice cream cone sticking way out in front of someone's ice cream business, sidewalk cafes that have been there for quite a period of time, he used to see people doing tattoos on a little deck out there, guess they don't do that anymore. We have agreed to say we're going to let these businesses do this but these other businesses can't do something. A good example would be, he was kidding about the sweepstakes, but somebody putting a game of chance outside if he's a sweepstakes person until December 1st. His biggest concern there is if a person is outside is causing problems for the business next door because of sound, noise, all the things we can cover under the ordinances we have, he thinks we need to enforce those. He sees no problem with somebody moving a presentation outside of their business if it doesn't interfere with anybody else. If it meets everything else that we do on a daily basis, is that any different than a person selling t-shirts out there? Probably not because he has seen people backup around those t-shirts, knock people over, backup, do different things. But it could then open up the door for Frank's to sit out there and have pizzas out there, buy your pizza right here. It could open up the door for other things. He doesn't think that would be an area where you could busk. If somebody wants to go out there and perform at a low level without any amplification, he could see that going on but he couldn't see anybody busking out there. There shouldn't be any sign or tips out there because no one else has a sign or tips out there, none of the other businesses that we allow that on the boardwalk.

Councilman Wilcox said he kind of agrees with him. He doesn't have a heartache that she has the same privileges as everybody else has in retail business to put her goods outside and display them. That's different than performances. She is now all of a sudden some kind of talent agent. I guess, is that what Mary's has become but that is not what their privilege license is for. This is where you start to lose me. Are you representing all of these people? Do you have contracts with all of these people? Do they perform inside? That's what it says, they have to be doing this activity inside. We're right back in the same situation. He doesn't think anybody is treating anyone differently here. There is no one else performing outside, period. By not allowing performances outside here, we're actually treating this business the same. Anybody who has goods inside and wants to display them is allowed to do that just like this business is. Maybe there is something he can wrap his mind around in the future but it would have to be a lot more specific than this because this, to him, just opens the door to go right back to where they were. He still does not understand, as much discussion as they have had, the relationship between this

business and the artists and how that somehow is something that should be anybody that comes along and wants to perform should be able to do that and it falls under the business. He doesn't see the connection.

The planning director said he agrees and thinks he is right, there are some holes in this. Some of these it's just a general assumption when they were going into this ordinance and trying to create these definitions, business expansion. Obviously what they are looking for is a strong connection between inside and outside and that was the motivation behind this definition we're speaking about but he can understand Councilman Wilcox's point. It is one of those things that is hard to consider all venues of this type of activity. They were looking at surfboards at Sand Barz if they wanted to go out there and shape a surfboard on the boardwalk, would that be something they would say okay to? That is troublesome to some extent. But to have merchandise out there for display only, he thinks that is perfectly appropriate as long as they are not exceeding the amount of clearance space they are allowed to have. He doesn't disagree with anything Council said about the need, if they want to continue, if they want us to work on the definitions here they will be happy to do that but he is concerned about being able to close all the loopholes.

Councilman Lashley said he is not sure why they even have this ordinance in front of them. At the last meeting on the 22nd they gave guidance to this owner and it was you could play at 3 different places. Jonathan asked for a fourth place and they agreed to that. There are 4 places you can perform. We don't need this ordinance. If they don't understand that this Council does not want musicians out front with a tip jar then they need to listen to us a little longer because that is what they are preaching here. We don't need this ordinance.

Councilman Wilcox said he doesn't think it would be long before you'd have guitar players out in front of all these businesses and, of course, they're going to have their tip jars out. It's not sitting well with him. He agrees with Councilman Lashley, they provided places for them to perform and he thinks suffices the performance end of it. They are able to display their goods under our current ordinance and that suffices the display of goods part of it.

MPT Efird said she agrees with Councilman Lashley. We tried and she thought we had made it clear and plain what we wished to do.

Mayor Macon said he sort of disagrees because he thinks they handled the busking but it was like two separate issues, the expansion in front of your business and what the limitations are expanding in front of the business vs. the busking. The busking is a separate issue to him and was treated as a separate issue.

Councilman Wilcox said what they asked for when they came up for the busking was the opportunity to allow people to be able to perform and that is what the performance ordinance allowed.

Mayor Macon said he understands that but, once again, if you wouldn't mind allowing Shannon back up to the microphone, he has a couple of questions. He guesses what he is trying to say is because he is confused as to some of her comments. He understands she sells those drums in her store, the guy wants to give a performance to help sell his drums. He doesn't see a problem with that but she also mentions somebody is in town and they want to perform in front of her place and then she is talking about representing artists. How does that deal with...?

Ms. Brodeur said she had met the young man the night before at performing arts night, got the release form signed, which is a separate activity for Mary's, met his parents. Later on they had come into the store and purchased a drum that evening, after we had gotten to know each other the night before so she had a chance to hear the gentleman perform already. Later on the next day when they came into the store on Saturday evening, they don't open until about 5:00 and, by the way, we are open until between 10:00 and midnight. Our store does look a little empty because we have one little window so sometimes it is hard to tell whether or not we are in there but we are if there is an artist out front. Back to the drummer, there seems to be a lot of misunderstanding about what she does.

Mayor Macon said he is asking her to help them help her because he understands certain aspects of what she wants to do but then he doesn't understand some of the other things she is talking about.

Ms. Brodeur said she is not a talent agent, she represents artists. She doesn't see them as entertainers; that's not what she does. As far as she is concerned, what she does do in the store and, yes, she does have contracts with the performers she chooses to represent. She doesn't represent every single performer. She represents the ones that she chooses to represent and once she has a contract with them, then she is willing to put them out front. Those things need to be in place.

Councilman Wilcox asked if she could tell them what represent means.

Ms. Brodeur said sure. Represent, as far as the emerging artists, would it be easier if she used a visual artist for an example? With the young artists, for example, which seems to be mostly what we are talking about, when some of them first come to her she works with them, like you have to play through a song. Can you do that? Can you do four sets of fifteen minutes? She listens to them play and makes sure they can play out front and these are things you need to know before you play out front. Just like if you are going to hang a piece of artwork, it needs to be ready to hang. So in coaching them and getting them ready because they are young unlike Jimmy Buffett who she would love to show outside her store. That's not going to happen. She is not that level of an art represented. Once she has discovered that she thinks somebody is talented, as far as a young person goes, it becomes a conversation with their parents, they're are under 18. Generally it's their parents who approach her in looking to, for example with the drum boy and he's under age, what else can they do with him above and beyond Mary's. She does look to get them other places to play.

Councilman Wilcox said he wanted to back up a little, he is totally confused. What does representing mean? When she accepts that to represent them, are you booking them, are you charging a fee when they play someplace, are you charging them a fee? What is representing them mean? Are you selling their service in some way, shape or form?

Ms. Brodeur said she does try and promote them in other ways above and beyond Mary's actual, physical location. In the case of Jonathan, for example, it has been since April getting him ready to be able to go out and have other performances. His first big debut will be the farmer's market. It's not a paid gig. He gets his tips. Getting him to a point where he could play for 4 hours in public and represent the Arts and Activities Committee, the farmer's market in a professional took time. So, it's a lot like real estate, sometimes it's a longer term investment before she is going to see that pay off. In the mean time she does look for what she can do for them within the structure of her store. Where else can they go and play? Can they play your birthday party?

Councilman Wilcox asked if she could tell him how her representation for them is part of her service. Are you charging them? Are you booking them? Are you taking a percentage of their tips? Are you taking a percentage of their fees? How are they related to her business, that's the question?

Ms. Brodeur said she does take a percentage. In the case of the children who are under 18, there is a law that says 15% of what they make must go into a trust fund for them. As far as their tips go, like the visual artists, she has the same contract with them. As far as them getting tips, if it's easier for you she can say that she takes them but she doesn't. they don't make enough money for her to warrant that off of \$10 or \$15. Is it something that she wants her visual artists to know? No, but they're going to now and, because she does take a percentage from them in exchange for her part in their representation. She is an artist also so see it that way.

Councilman Wilcox said when someone sits out in front of her place that doesn't have a tip jar out, how is she taking a percentage from them?

Ms. Brodeur said there is no percentage to take at that time. What she gets from them is, say Jonathan someday books a gig at Myrtle Beach, years down the line, she has a contract with him and his family that is written up by her lawyer, because she is not a lawyer, to represent him. Because the laws exist the way they are, 15% of that gig would automatically go into a trust fund for him. His parents like that, they view it as a savings account that he or his parents can't touch. Understanding that law and coming to Council for the rights is part of what art administrators do. You can go to school to get a PHD, she is still paying off the BA student loans. You can look up and read, if it helps, what art administrator's do. They deal with the business side of the arts. They deal with taxes which she does quarterly. They deal with the business side of the arts so the artists can be the artists so that they can create. They don't always understand that they need a business card. They don't always understand that they need an artist statement or a bio or a brochure or have a website. Those are things that she works on the emerging artist.

She is always happy when she gets to work with the ones that are more advanced. They come with that. It gives her a chance to point out how they package their stuff. This is something for them to work towards.

Mayor Macon said what he is trying to figure out is, okay, you have some art hanging in her shop and so that artist, it's going to be a special event on Saturday night and that artist is actually going to sit out front and let people observe how they do their paintings.

Ms. Brodeur said the ones who are willing to, yes.

Mayor Macon said yes, that's what he is saying. He can understand that but he doesn't see Jonathan, what is she selling of his that is inside the building?

Ms. Brodeur said his service and his ability to go and play for somebody else. Inside her store she has a sign that says if you would like to hire Jonathan Graves for your parties, please e-mail, please call. Those are things they try and make happen. She has only been open since April. That is as long as she has been doing this at Mary's. Jonathan doesn't make a guitar so she understands how that is different from a gentleman who makes the drum and also plays it. He's a crossover. Sometimes he plays with Jonathan. Sometimes they collaborate.

Mayor Macon said what she is basically saying is that if she has an artist outside her place she has a contract with them and part of her services that she offers the public through her business is his services to play at whatever event they feel he would be suited for.

Ms. Brodeur said yes. He played at Blackhorn's one afternoon for lunch for tips only. That is about the level he is at right now, getting paid and gigs would come later. Would she like to be the kind of friend that attracts Jimmy Buffett, not in 400 sq. ft. That's not what she is doing.

Mayor Macon said his point is that if Jimmy Buffett CDs are for sale...

Ms. Brodeur said like Lethal Injection she sells their CDs and other merchandise of theirs. She tells people when they are playing she will put it on Facebook whether or not they are playing at her establishment or making any money out of it. Some of what she gets from the service artists is their service. Some nights when Jonathan is playing in the store she gets to enjoy his music and so do the people and for that time being, that's what she gets out of it. Some of the artists don't want tips, some of the artists do want tips. She is fine with either. As far as payment goes, those go through her books. She has a credit card machine and a cash register ringing them up and make sure that she pays her sales tax. Any other income that would come from gigs, to use entertainment terminology, if he gets booked at the Kennedy Center, they have an agreement in writing, a contractual agreement, that shows she gets a percentage of that.

Councilman Wilcox said if you have somebody out there that is taking tips and they are giving you a percentage of the tips, you ring that up as a part of her business, right? Ms. Brodeur said yes.

Councilman Wilcox said anybody that shows up that wants to give her part of their tips can basically play out in front of her place. Ms. Brodeur said no.

Councilman Wilcox said unless she wants to represent them. Ms. Brodeur said right. That is why she stood up for the busking ordinance and did treat it as a separate thing, that if somebody wanted to be able to play they didn't need Mary's to be able to necessarily say I like you, I don't like you. Like if she likes country music or don't. She had a wonderful visual artist contact her recently. She thought her art was wonderfully talented but it was way too dark for what Mary's brand could represent. She told her that and said perhaps she wasn't the person to best represent her to best sell her work and recommended the art field downtown - the same thing with the visual artists. She says no a lot and it doesn't necessarily have to do with whether or not they are talented. It's can she do her job, can she represent them. Has she taken on a lot of performing artists? No. She doesn't know that she can fully represent them the way that they need to be in the same way that she can for the visual artists. She has a lot more visual artists than she does performing artists. She has a poet and she hasn't let him read outside either. He would like to do a poetry night on Tuesday nights. Would she like to let him read outside on Sunday mornings? It's very family friendly stuff. He's published, had successful art shows out front, people like to meet him. She thinks it would go well with coffee and donuts. Has she done that yet? No.

Mayor Macon said he's published so if you sell his books inside then...

Ms. Brodeur said she does sell his books inside. Mayor Macon said that's what he is saying. It would be like a book signing performance situation. Ms. Brodeur said he is releasing a new book and he would like to come to the store and do a book signing. As it stands right now, that would have to be done inside the store.

Councilman Wilcox said it is his understanding that is currently not allowed but that is something that he would, like the Mayor, think would be an exception if it were handled properly and not distorted but this is all over the map. He's sorry but he cannot make the connection between the fact that she might run something through a credit card with the fact that that is an extension of her business. That is basically anybody that wants to come up there and the reason they're coming there is for the purposes of performing out front not to offer a service in her business or not to offer a product in her business.

Ms. Brodeur said she is sorry but she disagrees. They come to her so she can represent them. Councilman Wilcox said they can disagree. He is saying he can't make the connection from her perspective.

Ms. Brodeur asked if he would like to watch the video where he can see people do what they do inside, outside and then maybe that would help. She understands that the arts are all over the map, they're not a science. She gets that. She understands that there aren't a lot of businesses that exist like hers. She didn't want to compete with everybody in town. She did want to be different.

Councilman Wilcox said he supposes they can play inside her business as much as they want even though it's a retail privilege license. He guesses she could modify that. You can do what everybody else does inside their business and you're allowed to put goods outside your business.

Ms. Brodeur said that is what she has been doing unless, like on June 8th she was told that she could continue doing what she was doing until there was an amendment to say that she couldn't. So on June 25th she thought it was okay to put a drummer outside that she had a contract with. Does she have a contract with every performing artist that comes in the store? No. If she doesn't have a contract with them, do they still come in the store? Yes. Just because she doesn't represent them doesn't mean they don't want to come to Mary's.

Councilman Lewis asked her if she has considered putting a table with just merchandise out there that would books of the poet, samples of dancing, samples of the CDs she sells from whatever musician it might be where the real performers are either inside or one of the four designated areas we already identified. Ms. Brodeur said they do that whenever we have somebody to attend the tables. Unfortunately, occasionally things tend to get lifted and then you go running after the people on the boardwalk. We are hoping that happens a little less. It has happened to her neighbors. But, yes, they have done that kind of thing. Regularly on Thursday nights, Jillian who is a painter, will come and her goods are on display and sometimes she will demonstrate how she does her paintings. Whether or not she will end up with a wet painting afterwards, sometimes it goes back in her own collection, sometimes she consigns it within her location. It's as much of a benefit for Jillian to be seen. She is an emerging artist trying to promote her work. One of the things they need to understand about Mary's is she doesn't have exclusivity with her artists. As an artist she thinks they get to be represented in as many places as they can. She has often sought gallery representation in and around the Wilmington area and they want 50%. She is a painter. Does she think it's okay for somebody to take 50% and require an exclusivity contract with her and expect that her work is going to sit on the wall and sell? No, she doesn't think that is okay. She thinks gallery owners close for those reasons. That is why she did Mary's as an art boutique. She wasn't trying to be elitist about it. She doesn't require exclusivity of the artists. Some of her artists are in 6 and 7 stores. The only thing she asks is that she stays price competitive. Same thing with the services so that she is not charging more than another location.

Councilman Wilcox said so, for the guitar players she is representing when they go play someplace else and play, they're allowed to do that without paying her a commission?

Ms. Brodeur said that is why picking and choosing who she is going to decide to work with and cultivating those relationships affects that.

Councilman Wilcox said you make no money on those people, they're able to go out and play for anybody else without having to pay you anything?

Ms. Brodeur said if they want to be so dishonest as to have those kinds of business practices, those aren't the kinds of people she would be doing business with.

MPT Efird said the issue here is the fact that sitting outside doing an art thing and the difference is the collection of money. That is the issue here.

Mayor Macon said that is one of the issues.

Councilman Wilcox said part of it is the musical performances popping up in front of every storefront with people out there playing that have no relationship to the business of any substance.

The town manager said also, at this point all they allow is racks of clothing, signs and cafes. We don't really allow, at this point, somebody to go out and perform. What we're talking about is a constant use.

Mayor Macon said his point is there are certain aspects of what she is wanting to do, he understands the guy that makes the drums and they sell the drums there or the painter that paints.

Councilman Wilcox said there is a difference between demonstrating the drums and we had this conversation. He told Shannon and told her one time if the guy is displaying drums and had them out there and was standing out there and explaining to people and every once in a while he played a little bit on the drum to show what they sound like, that would be one thing, but when you're out there having a little musical fest with the drums and hula dancers, that's a little bit different thing. It seems like it just keeps getting taken to the next level and next level.

Ms. Brodeur said she is sorry it appears she is trying to get to the next level. She is really just trying to extend her business. She thinks this amendment to this ordinance involves more than just her business. It's for the inclusion of things like art demonstrations or air brushing or caricatures or hair braiding. Those aren't things that she represents so those aren't things she would be doing. Does she want to see people be able to do them on the boardwalk during times that work for everybody? Yes, she would love to see that. Are they going to have to pay for those items inside the store, yes. Should you have to be a hair salon to have hair braiding. Her daughter loves to get her hair braided when she goes away.

Councilman Wilcox said according to this if you are not doing hair braiding inside the store and it's not one of the services you offer then, basically what you are doing is saying a subcontractor can come across and they are basically renting the town space from you. That is part of the problem he has with it. You are using the town space for other purposes other than what, even the narrowest definition, is being proposed.

Ms. Brodeur said she understands it's a public sidewalk that's why everybody gets to use the public sidewalks. We have to consider everybody not just the ice cream cone but also her. Councilman Wilcox said they did. Nobody else has subcontractors out in front of their building. Ms. Brodeur said no one else represents the arts. She needs room to be able to do it and she understands if you don't want it but she is asking if there is a way they can come together and work it out so if a business should want to have hair braiding outside of their store because it complements their store, is that possible they could work out a way to do that? This ordinance is about more than just Mary's.

Councilman Wilcox said those are the issues he has problems with, a subcontractor hair braider showing up for some businesses totally unrelated, that is exactly the problem he has.

Ms. Brodeur said wouldn't it be necessary for that business to have a contract with that person? Just like if you have a construction company and I subcontract somebody out to do the floors. If the floors aren't done, it's her problem. She still has to answer for that. Mary's still has to answer for that. That's why she is picky about who she represents.

Councilman Wilcox said they want people to be successful in their business and therefore they want them to be able to use public property outside to display their goods not to turn around and rent that space to someone else as a subcontractor. That is his personal opinion.

Mayor Macon asked if she sees that distinction. Ms. Brodeur said she does see that distinction and that's why she thinks that maybe they won't solve this tonight but coming together and figuring out some guidelines for how can the public property be used in a way that benefits everybody and we can coexist together. For example, like, she is not going to have a performance on Thursday night for fireworks, she is more likely to have Jillian out front because she is quiet. In April, when there is absolutely nobody else open, she would be more likely to have an acoustic guitar player out front, midweek, when nothing is going on. She understands that they don't want to trust that they are all going to get along and be considerate and that there aren't any rules to guide them because what if somebody else comes along and isn't as considerate. She understands that. She is asking if they can make a wave for this to be able to happen on the boardwalk? She understands if she can't. She won't be thrilled about it but, also, don't know how long Mary's will be able to stay where it is which will probably make some people really thrilled. In her meeting with Tim Owens yesterday she asked him where in Carolina Beach would she be able to do this? Where would it be allowed for her to extend her business outside and properly spotlight the performing artists that she does represent, like all four of them right now? Is there a place that it can be done or is it there is just no

place in Carolina Beach's commercial district where it would be okay.

The town manager said it could conceivably be done on private property as long as it is shown on a site plan and it is an allowed use and noise violations aren't happening and that type of thing.

Councilman Wilcox said so there are other locations and buildings where that would be possible.

Ms. Brodeur said yeah, just not on the boardwalk. She, as a business owner, chose the boardwalk...

Councilman Wilcox said it wouldn't be allowed out in front on Lake Park Blvd. for other reasons, because of the size of the sidewalk and a lot of other situations out there.

Ms. Brodeur said well just like we have rules for skateboarding and that is kind of intermediate scrutiny of the law as far as level of concern goes. When it comes to public sidewalks though, you can have excessive scrutiny of the law which is usually reserved for places where there are cemeteries and hospitals and areas of quiet. The boardwalk is an area that is proven to be noisy so to say that some noise is okay in some instances and it's not okay in others is selective enforcement. So she is just asking for everybody to coexist together and let's find a way to do that. She doesn't like coming to them every month but they are her Council and this is where it should be done, in front of them asking how they can work it out. If the bottom line is the answer is no, then the answer is no and then she makes her decisions for her life and her business accordingly. Sometimes we can't control the universe.

Council Wilcox said if she was to request a text amendment that was more specific to this and something that was enforceable or something he would certainly be glad to take another look at something. What he sees right here he can't vote for.

The town attorney requested to ask a follow-up question to something he brought up to ask Ms. Brodeur. He said he would like to return to a question that Councilman Wilcox asked her earlier and to try to explain to Council, as best as she can, that in every instance when someone performs a musical instrument outside her business and this is part of her business plan, where she has actually done it or not. What is the relationship between that performer and her business? Can you say to Council what that is categorically?

Ms. Brodeur said she represents the arts, performers are the arts. That's what they are, they are performing artists. She gets the same degree that a musician gets, a Bachelor of Fine Arts.

The town attorney said in every instance she represents them. If somebody came up to her and said in each instance, what is it that shows to him that she represents them? What would she point them to? Ms. Brodeur said her resume.

The town attorney asked if she would be able to point them to a contract that is signed by them? Ms. Brodeur said yes and their parents if they are under 18. The town attorney said then no one would be performing outside her business unless there is a signed contract. Ms. Brodeur said absolutely.

The town attorney said that is part of what she markets Mary's as. Ms. Brodeur said a representation of the arts, yes.

The town attorney asked her if she advertises on Facebook or any other medium that this is the kind of service that she offers? Ms. Brodeur said yes.

The town attorney said, let's say if I have a child or if I am a performer, I can find out and know that if I come to you I can sign a contract with you and, the hope is, then that that is a service that I do and as part of that, if I pass her criteria, then as part and parcel of that I would get to perform in front of your store in some instances. Is that right? Ms. Brodeur said as long as the town approves of it. The town attorney said right, assuming that. Ms. Brodeur said yes. The town attorney said but that's part of what it is.

And then your store also sells tangible goods, right? Ms. Brodeur said yes. The town attorney asked if some of these are consigned to her? Ms. Brodeur said some are consigned, some are commissioned some are bought at wholesale prices, some she makes a percentage off of. Her contracts with the visual artists vary. The town attorney said as something that is tangible, something you can see, feel, touch it, hold it in your hand, if it's sold you obviously make some money on that. Ms. Brodeur said yes and the artists do to.

The town attorney said ultimately, under her contract that she has in writing with her performers, they perform and receive compensation from it whether it's from tips or whether it's from somebody paying for the performance or what not, under your contract you're entitled to some financial payment to Mary's for that. Is that right? Ms. Brodeur said that is what the contract says that they agree to, yes.

The town attorney thanked her.

Mayor Macon thanked Shannon and said he guessed they would have to keep trying to pound something out.

Ms. Brodeur thanked Council for their time.

NON-AGENDA ITEMS

MPT Efirid said since a lot of people are not here that have been calling her the last 2 weeks and seen her at various places and asked her why she voted to screw up the roads and she would like for them to know that we started years ago on a master plan that they have been trying to implement for years. We finally got a start in hiring a consultant, who is very good, and came to them with a lot of good ideas. They met many times,

citizens of Carolina Beach were there, we had work sessions, we had open houses and there was not much disagreement about this plan. Then they talked to the engineers and then voted to do it and she voted to do it. She can't say she is real happy with the way things have gone with the traffic situation. July 4th was a nightmare. It was a little bit better this weekend but she is really not sure what they can do. Hopefully, she wants these people to understand that she didn't just sit here and say lets do the road because we had time planning, people had input and she is sorry they all did not come and have some input into this. Everybody was sent out a questionnaire. A lot of them came back and they were all positive so she is really getting tired of getting blamed for the road.

The town manager said some of the things he is continuing to do is try to get some more traffic counts and we've got a Memorial Day count. He is going to look for a normal, summer day count to take a look at. We also still haven't given up on the idea of having some directional signage to direct folks to Dow Road in the event that it does back up. The backups are normally Saturday 4:00 to 8:00, 9:00, 10:00 sometimes so that is 4 or 5 hours 4 months out of the year that it is backed up. He is not happy with it either. He witnessed it Saturday and every other day just like anybody else. We can continue to look at it. He has seen DOT out here on weekends. He is not happy with the backups either and thought it would flow a little better.

Councilman Wilcox said we don't have any more problems; we just have some different problems. We changed from 4 lanes to 3 lanes and now we have different problems to deal with. He thinks people are discounting the fact that over the last two years we are putting a lot more people on this beach which is adding to the traffic situation so it is just not easy to compare something to three years ago. We were begging for people to come here and now we've got probably more people than we can handle in some instances. He talked to the traffic engineer out here the other day and he said they are having difficulty with the exiting traffic because every time they get the sequence on the light going then you have all the traffic lined up coming down Canal Road that is turning there and that is causing a problem. So they are still working on it, trying to figure out a way to sequence it. He thinks they just need to take what they have and work as hard as they can to make it as good as we can make it. We have 14 or 16 summer weekends a year. If you add all those weekends up, including the holidays, it's like 31 days a year and he is one of those people who think if we can a change that benefits the town the other 333 days a year and we have these amenities that we want and we have the wider sidewalks and we have pedestrian and bicycle traffic and we have a downtown that is more functional and more attractive and something that is overall better for the community then he is not going to let the other 333 days a year drive his decision.

The town manager said they have yet to complete the bike lane paintings. He is not exactly sure why they left town. He talked to the person who was in charge of that and he was going to check to find out when they were coming back to do that. Most of the signage isn't up, which will help out a little bit.

Commissioner Wilcox said they need something at the end of the bike lane to stop people from...

Commissioner Lewis said he biggest concern is the bike lane in northbound traffic. Southbound traffic is moving pretty well. If you look at Freeman Park, this had to be the best 4th of July for Freeman Park because he talked to a lot of people. They didn't have much backup at Canal, people got in there, the police did a great job, and they got those wreckers up there. It seemed to work great. It's just now northbound on 421 coming up from Kure Beach. Everybody that came up told him about it, every business person he has talked to told him it hurt their business. Joe Coen told him nobody is coming up for his ice cream. There are people out there saying they feel they are losing customers because people aren't going to sit through traffic for 45 minutes to come up to the businesses here from Kure Beach or Ft. Fisher.

Councilman Wilcox said it was also said that we are losing people because they waited 30-60 minutes to get into a restaurant. He thought that was what they wanted. Three years ago they were begging for clients, now it's a bad thing. We continue to work on it.

Councilman Lewis said the owner of Island Florals is moving out of town and she said the reason is clearly related to the amusements and the abuses going on behind her business. She has had people camping out in sleeping bags there. Four people told him they have been back there and said the people camping there are urinating all the time and they have to go back there every morning and wash it out. There is trash everywhere, he has been back there in the last week twice. You've got some of those operators yelling at people as they come in there. The rear entrance is getting blocked. When the beer trucks come in they decide to go down the alley so they block the whole alley. No delivery trucks can get in there for any of those businesses back there. The ride operators just seem to be rude to all their customers so she, for one, is moving off the island. She could have renewed her lease but decided she just can't handle this. We put restrictions, supposedly, from planning and zoning on those people, the amusements, and nobody seems to be abiding by them. They did put a couple of bathrooms back there for the operators. He can't believe operators can just take a sleeping bag and sleep back there behind businesses. She said she talked to planning and zoning and the police chief.

The town manager said they can talk to the owner of the amusements. He has never heard any of this, this is the first he has heard of it. He will talk to the owner and he is usually pretty responsible.

Councilman Wilcox said as far as the delivery trucks back there, there's an easement back there that has been respected. They only have a certain amount of space. They have enjoyed the use of the parking lot ...

Councilman Lewis said she said she has had no cooperation and is taking her business elsewhere.

Councilman Wilcox said he heard a totally different story, that she was leaving because of the traffic.

The town manager said if she would like to call him and let them know who she talked to and when and he will try to follow up on it.

Councilman Wilcox said he doesn't want to see any business leave. If they have a problem they can address, they want to address it but if they don't tell us about it.

Councilman Lewis said there are some problems back there, cleanliness in the back area there, trash all over the plants in the back of their units. People are eating back there and throwing paper. He thought the amusement operator would at least clean it up.

The town manager said he said he was going to clean it up every evening afterwards and throughout the day, public and private property.

Councilman Wilcox said, regarding the easement, they probably shouldn't be on that easement at all, not use it for a staging area or dressing area or any of that kind of stuff because that is for the business people back there.

The town manager said he would take a look at it.

Mayor Macon said that particular business has been a fixture down here for a long time and she has done a really nice job and she will be missed.

ADJOURNMENT

There being no further business, **MPT Efirid made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____