

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

June 8, 2010

The Town Council of the Town of Carolina Beach met in regular session on June 8, 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 Keith Grogg of the Presbyterian Church opened the meeting in prayer.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

Councilman Wilcox made a motion to adopt the agenda with a change to Item #17 (submittal of information concerning award of auditing contract) and Item #20 submittal of additional applications to be considered for appointment to town committees, as presented by the town clerk. MOTION CARRIED UNANIMOUSLY.

PRESENTATION BY ERIN BRYAN-MILLUSH REGARDING NCDENR WATER QUALITY SAMPLING PROGRAMS FOR RECREATION SWIMMING IN NEW HANOVER COUNTY

Erin Bryan-Millush made presentation. She said the State of North Carolina has a water sampling program within New Hanover County to help protect swimmers from high levels of contamination. A person could have flu-like symptoms or possibly worse. She showed pictures of the sampling process which monitors for bacteria, which lives longer and is in places with higher salinity such as ocean beaches. There are two primary ways they issue advisories which are swimming advisories or swimming alerts. Swimming advisories are the worst of the two and include a press release and a sign on the beach. A swimming alert is a pending advisory and has no sign. To issue an advisory for a tier 1 beach, the standards are a lot less than for a tier 2 or 3 area. To rescind an advisory for any area, typically if they issue something on a single sample maximum exceedant,

which will last 24 hours, if they issue something for a tier 1 if it exceeds a monthly average, which they do for those, it will last for a minimum of a week. A swimming alert or pending advisory is based upon immediate re-samples. If that immediate re-sample comes back high then it becomes an advisory. They also have things they call precautionary advisories which do not require supporting data for those areas. They have permanent signs up at storm drains. They also have the discharging of flood waters onto the beach and have signs at those areas which will remain up and move along with the pipes until 24 hours after it ceases. Press releases are issued when this happens as well. The same thing will be done at dredge disposal areas where people swim during the off seasons. If there are collection system failures, a press release will be issued. The difference between wastewater and a precautionary blanket is when there is extensive flooding after a hurricane - this will cover numerous counties and they will reference from inlet to inlet. They will resample those areas until they get good results to lift the precautionary advisory through a press release saying it is safe to swim. The process of notification is initiated by contacting the town manager/council members and anyone who would want to be on the contact list. She will contact the town manager for any other persons who would want to be contacted. The next step is the press release which is sent to the town first before going to the media. They have issued swimming advisories during dry weather events from domestic animals defecating in wet sand areas which shows they do affect water quality. They have occasionally had to issue advisories in areas where there are not stormwater outfalls. People in general can be a pollution source. She handed out a list of monitoring sites for Council to look over and offer suggestions on those that might need more or less monitoring. Their website location can be reached through a Google search of North Carolina Recreational Water Quality Program where there is a link called testing sites which will pull up a map where you can zoom in. Areas that are green are not under advisory, red shows that it is. You can also look at the monitoring data. She is the point of contact for New Hanover County. There are 3 offices with the main office in Morehead City, where she is located, an office in Wilmington who do the monitoring from New River south, and a northern office in Nags Head.

PRESENTATION BY TY COBB AND REQUEST FOR PERMISSION TO USE PUBLIC PARKING LOT FOR THE GOT-EM-ON LIVE FISHING TOURNAMENT JULY 9-11, 2010

Chief Younginer, presenting for Ty Cobb, said their headquarters are always set up in the parking lot, along with the music, dancing, etc., and they are requesting the same thing that has been done for the last several years, to block off that parking lot for those couple of days, July 9-11.

MPT Efirm made a motion to allow the use of the parking lot for the Got-Em-On Live Fishing Tournament on July 9-11, 2010. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon and Brian Stanberry recognized Connie Lowe, Accounting Technician to the Operations Department, for 10 years of service.

PRESENTATION, DISCUSSION AND RECOMMENDATION FROM JOHNSON ENVIRONMENTAL FOR APPROVAL OF 2010 PAVING & ROAD REPAIR CONTRACT; 2010 SAND DEBRIS REMOVAL, SIFTING & PLACEMENT CONTRACT; AND 2010 PHASE II VEGETATIVE AND C&D REMOVAL CONTRACT

Barry Johnson, Johnson Environmental & Disaster Consulting Services, presented this item. He said bidding started at the end of March and finished up in April when they did a bid evaluation with 8 proposals. They ended up with some pretty good numbers, much better than in past years. The contractor they are recommending is G&H Construction and Paving out of Rocky Point. They have been doing work in the area for quite a while, are insured, meet the requested requirements, have a general contractor's license, appear to be fiscally responsible, references show they have been doing their job, have a bonding program but, generally the projects they would be doing for us would not be bonded. He and Brian Stanberry did a site inspection and feel their work meets or exceeds the quality of work they would like them to perform in town. They found them to be the lowest responsible bidder and that is how they came up with this recommendation.

Mayor Macon made a motion to award the bid for the paving and road repair contract to G&H Construction and Paving as presented (Exhibit 1). MOTION CARRIED UNANIMOUSLY.

Mr. Johnson said there was a similar procurement process for the sand debris removal, sifting and placement. They do this annually to assess and contract with a debris removal contractor for the specific duty of removing sand debris following disaster events. If sand is deposited on the roads or public right-of-way, private property, for example, private property owners will be responsible for getting their material to the public right-of-way where the contractor will pick it up. There has been an established temporary debris site for managing sand debris at the Freeman Park area where the contractor will then take that material and sift it to a 1" grain size and redeposit the material and shape it on the beach within the responsibility and the recommended areas that staff has determined to be the most needed location for the sand. They ended up with 12 bids for this project, which were very competitive - \$9 a cubic yard for turnkey for that primary contractor. DENR requires removal of debris before the sand is put back out. They found Bamaco, Inc. to be the lowest responsible bidder. FEMA and their new pilot recovery resource program recommends to obtain a second call contractor. There are some bonding requirements for the prime contractor when he shows up - a performance payment bond to get the job done. If he doesn't, they don't have to wait to go through the bonding process to get #2 in as he has already been selected. In the backup contractor they recommend Disaster Recovery Group and Tree Service. They found that both contractors have performed similar type work satisfactorily and all previous clients contacted would rehire them for similar services. The contract requires they begin work within 24 hours of notice to proceed.

Mayor Macon made a motion to award the bid to Bamaco, Inc. of Bunnell, FL for the sand debris removal, sifting and placement contract and the secondary award to Disaster Recovery Group and Tree Service as presented (Exhibit 2). MOTION CARRIED UNANIMOUSLY.

Mr. Johnson said that if a disaster event does come our way, it can also leave vegetative and C&D debris scattered throughout the community so they have gone out as well for a contractor to assist in that scope of services. This contractor will be responsible, under this contract, to pick up vegetative debris or C&D, take the material to our temporary debris management site, which has been approved through the State of North Carolina for temporary use, which will be behind the public works facility off of Dow Road. There are a few acres set off specifically for that service. The contractor will take the material to that location, keep the material sorted. Sorting will be the responsibility of the property owner, keeping his vegetative and C&D away from the same place but this contractor will make sure that when it is brought in that the two will be in separate areas because it will be managed, at that point, by the county contractor who will pick up the material and take it to its final site. These contracts are for load and haul only to that location and also for the management of said site under that same contractual rate. Tipping fees, the agreement is with the county to take the material to its final site and they would take a tipping fee portion. They recommend D&J Enterprises, Inc. of Auburn, AL for the primary award and Bamaco, Inc. for the second call contractor. They found both of these contractors to have performed satisfactorily in the past. D&J cleaned up the City of Wilmington after Fran and Bertha. They are in Haiti right now.

Mayor Macon made a motion to award the bid to D&J Enterprises, Inc. of Auburn, AL for the vegetative and C&D debris removal contract and the secondary award to Bamaco, Inc. of Bunnell, FL as presented (Exhibit 3). MOTION CARRIED UNANIMOUSLY.

EXPLANATION OF THE ISO/RESPONSE RATING CLASSIFICATION BY FIRE CHIEF JON RORIE

Chief Rorie said the last time they were rated was in 1984 and they were re-evaluated in March of 2010 over a 3 day period and he is quite pleased with the performance of the department and how they came out. The North Carolina Department of Insurance/Office of State Fire Marshal evaluates the response capabilities of the local fire department and they use that evaluation to help establish insurance rates and premiums for the home owners/property/business owners. Over that 3 day period they specifically look at 3 different categories - communications; the fire department and its equipment and operations; as well as water supply. The department improved in all areas and he would like to publicly announce, with regard to points improvements, they improved by 1 point in communications, 3 points in engine companies (which is the maximum), 2 points for ladder company, 3 points for the staffing program and 2 points for training. This is a significant improvement. Thanks to Gene and his group, they also improved 4 points in our water supply. The key to these 3 areas is that they have to be in balance so it takes all

of us to pull it off - our membership of volunteers, Council, community support. An example of community support, the fire department goes out and preplans over 500 buildings every year. That is a voluntary program for them to allow us, which impacts our ISO rating. What does this rating mean in terms of category? The rating ranges from a Class 1 fire department, which is the highest rating, to a Class 10 which means no recognized fire protection. The town received a Class 3 rating of which there are only 3% of fire departments in the State of North Carolina and roughly 5% of the fire departments out of 40,000 in the nation. It is a significant improvement and he thanked everyone for their support. He said insurance rates would take effect September 1st.

The town manager said this is a huge accomplishment. Mayor and Council thanked him and the department for all of their hard work.

CAROLINA BEACH COMMITTEE REPORTS

Elaine Stewart, chairman of the Arts and Activities Committee, gave an update. The farmer's market has operated for 7 weeks and 18 more to go. It has been very successful but they now have bicycles everywhere. It has already been addressed but she thinks they need bicycle racks. They are tying them up to the electric boxes and anything they can find. She thinks it is great because they are leaving their cars at home. The market is a really good thing for the locals and tourists. They did a trolley test on Memorial Day weekend. She thanked the Chamber of Commerce and Boardwalk Makeover for their help with funding. The Arts and Activities Committee also helped with funding and thanked all of those committees. They had 4 stops - Rec Center, Carolina Beach School, the lake and the gazebo at the boardwalk. She doesn't feel they marketed it correctly and people didn't take advantage of it. They had about 12 people ride it. She thinks the trolley is a good idea but will probably take a task force to sit down with the trolley company, look at what is on the island, and that is a whole other committee and project. She doesn't think they will do that for July 4th or Labor Day. The committee is taking on is performing arts at the gazebo on Fridays. They have a list of tentative dates on Fridays when there is nothing else going on at the gazebo. They will make it a timely thing for everyone as far as scheduling. The entertainers that would be there would have something out for donations and would be responsible for that. They do that at the farmer's market. Boardwalk Makeover will help them with sound equipment and chairs, which they appreciate. Arts and Activities will monitor those performing arts, amateurs will be included. Their next meeting will be on the fourth Wednesday of the month, June 23rd at 10:00 a.m. in the police training room.

Councilman Lashley said he appreciates receiving their minutes, they are very informative, and would like to see minutes from the other committees. Ms. Stewart said minutes are kept with the town clerk.

They also have some openings on the committee for which some people have applied and are much needed. The town clerk said that Item #20, the committee appointments, was recommended for the June 22nd meeting if Council decides to continue the meeting to that time. She asked if Ms. Stewart and Council wanted to make those appointments tonight.

Councilman Wilcox made a motion to move Item #20 from the June 22nd meeting to Item #10(a). MOTION CARRIED UNANIMOUSLY.

COMMITTEE APPOINTMENTS

Arts and Activities Committee:

Councilman Lewis made a motion to appoint April Sussman to the Arts and Activities Committee. MOTION CARRIED UNANIMOUSLY.

Councilman Lashley made a motion to appoint Teresa Worley to the Arts and Activities Committee. MOTION CARRIED UNANIMOUSLY.

Councilman Wilcox made a motion to appoint Shannon McAniff-Brodeur to the Arts and Activities Committee. MOTION CARRIED UNANIMOUSLY.

Tourism Marketing Advisory Committee:

Mayor Macon made a motion to appoint Amy Marie Johnson to the Tourism Marketing Advisory Committee. MOTION CARRIED UNANIMOUSLY.

PUBLIC DISCUSSION

Mac Montgomery, former Mayor of Kure Beach, said he has been working with the town manager as a volunteer and he has spoken with the Mayor and Council regarding the initiatives the town has taken. Part of it, which is subject to some criticism, is the action taken to acquire land out of bankruptcy, out of foreclosure, to partner with North Carolina Aquariums to build a pier in the future. He would like to comment on that and put to bed some nay saying he has heard and why he thinks it is going to be good, not only for Carolina Beach but for the county and state as well. He still serves on an advisory board for the North Carolina Coastal Federation, finished his service on the state legislative committee that dealt with offshore drilling, and serves on a committee for Congressman McIntyre. He feels they took a great step in initiative and this project of acquiring this land to build a pier is not going to rest entirely on the backs of the taxpayers of New Hanover County and Carolina Beach. He said that he honestly believes that. In the last 4 months the director of the Division of Coastal Management, board members from the North Carolina Parks and Recreation Trust Fund have visited, and visits are scheduled for the director of the National Heritage Trust Fund and the president of her board of trustees at the state level. They have had inquiries by the Clean Water Management Trust Fund and had staff members down here and he has been in contact with the chairman of the Clean Water Management Trust Fund about the project. There is a lot of support for the project. Is there any money today from the State of North Carolina? No. Will it come? Yes. He honestly believes that. He says that from having been through this for the past 4 years in his town, Kure Beach, and watching what is happening and the interest here. He gave a copy of a personal letter of endorsement from Senator Hagan that she wrote to the

chairman of the Parks and Recreation Trust Fund and that support was echoed by every member of our legislative committee in Raleigh and a copy of an article written by Jim Leutze, Chancellor Emeritus of UNCW, to the Metro Magazine which is distributed in Raleigh, Durham, Greensboro and the coast talking about the initiatives taken at the Town of Carolina Beach. A lot of people read this. People talk in positive terms about what is going on in the Town of Carolina Beach. He knows this is an issue some people are questioning how it will be paid for and should we buy land and then turn it over to the State of North Carolina. The State of North Carolina does not want your land from you as a gift. They will, however, come up with some money to buy those lots, either on a conservation easement or fee simple and that land will then reduce the debt, that land will belong under the control of the State of North Carolina for the aquarium or somebody and will reduce the overall debt of the Town of Carolina Beach they are on the line for. He knows it's a non-profit. It took somebody having the initiative to step forward and say they are going to start this process and, yes, you are on the hook for that but no one is ever going to get ahead unless you take the venture. He complimented Council on what is perceived statewide as a very, very positive project. He said if you can stay the course, you will see the benefits. There is a lot of interest as the town manager can tell you. You have a new ally who will come on board soon, the North Carolina Coastal Federation has agreed to come on board and support in an advisory capacity. It will cost nothing. They have 10,000 members in the State of North Carolina and will take this on as one of their projects they are in favor of and they feel this is a great opportunity for southeastern North Carolina. These are the types of allies were going to get. Not only are you going to get your legislators in Washington, McIntyre has already written a letter of support but you are going to get these organizations who will come behind. He asks they keep staying the course and keep a positive attitude. It will go forward. Kure Beach and Carolina Beach are two of the few communities who continually stress that this coast is for the people of North Carolina and not just for the few who can afford to buy a house or live in a gated community. When you sell that you have a very strong advocacy behind you. The mentioned agencies have come down and there are more coming in July. The town manager is in contact with the Division of Water Resources, the Natural Heritage Trust Fund, the Division of Coastal Management, Parks and Recreation Trust Fund, and a representative from the Department of Commerce has met with staff about what the commercial value of this project is toward economic development. There are a lot of people at the state level who want to help you succeed.

Shannon Eileen McAniff-Brodeur said she is here to talk about what is going on down at the boardwalk. She owns Mary's which is a store that represents different kinds of arts. She thanked the Boardwalk Makeover Group for making the boardwalk a place where she would want to open her business. She has lived in the area for the last 15 years and knows what the boardwalk has been through. She has lived in Carolina Beach for 3 years and complimented the town on the great job they did. Mary's represents local and regional artists, including performing artists. She represents writers, film makers, visual artists, jewelry makers, musicians, dancers, etc. She has a degree in art history and her thesis was on the importance of art in the community. She also has a degree in environmental science. It was not her intent to upset anyone putting performing artists outside her business. She would like to work with the town so she could continue with

that in a way that works for everybody, including her neighbors. She is asking for the town's help. Over the years she has worked with the African-American Dance Ensemble, spent 3 years with an NEA grant working with dancers and performing artists and visual artists in the community. She has worked with Dream Center for art education, domestic violence shelters, St. John's Museum, Louise Wells Cameron Museum, UNCW cultural arts and founded a committee for students there. She felt these were good things to do. She has owned one business prior to this and understands the need for compromises. She said there is a town ordinance on the boardwalk that allows merchandising of your goods and services outside of your store. It's not an exact formula about how much space you get. She thanked the town manager for a copy of the ordinance and for the meetings he has had with her, as well as other staff and Council members. She said however it appears that she is in a grey area. She feels the performing arts are an art and didn't want to get into an issue of splitting that hair. The ordinance doesn't say anything about the performing arts which are really a service and not a good or commodity or merchandise. It was her understanding that it wasn't against the law for them to perform outside the store and receive tip compensation for that. The term for what they do is called busking, not soliciting. There are many busking festivals and guilds in our country and many cities actually sponsor them. They bring in a lot of people to communities. That was her thinking in doing this and feels it would help attract business in the off season. Next week they plan a poetry reading. She does not want to compete with other performances at the gazebo. She is also considering workshops for various arts. She said these were all things she thought would put a positive light on Carolina Beach and is sorry for any negative press but, in an effort to defend what she wants to happen outside the store, she felt it was necessary. She would like to hear Council's concerns.

Councilman Lewis said he understands busking and doesn't have a problem with it and doesn't understand why we don't allow it.

Mayor Macon said it was on the public right-of-way, which was the main issue, and with a tip jar out there. He doesn't see a problem with art or the artists performing and he appreciates that she is seeing what else is going on in the boardwalk and work around those types of things. They are trying to create a certain family atmosphere at Carolina Beach and want to continue to promote that and have to be very careful with what is allowed and don't want to stop art. Had she come and asked, she would have been told no and that she needed to come to Council and they could have worked it all out with some type of compromise so that it could have fallen under something because it doesn't really fall under anything. We are at that point now and need to work together to try and work it out.

She apologized but did try to open the business according to what she read. She did not realize that if there is not a law that says you can, you can't.

Mayor Macon said she needs to work with staff so they can bring something before Council.

The town manager said they were looking at some ordinance that would allow for this type of activity potentially on the sidewalk. We have allowed things to go on at the gazebo that could be staged, probably even private property, if they wanted to. It's just a problem with the sidewalk, we don't allow other merchants to come out and start making sandwiches on the sidewalk or performing or any of that type of stuff. There are only certain things on the sidewalk that our ordinance allowed. He thinks originally it was classified as a sign. It just doesn't fit anywhere with what we do. There may be some free speech issues that our town attorney could address better and we may have to take it up at another meeting. It is up to Council as to what you want to do.

Councilman Wilcox said we can't make a decision that is contrary to our existing ordinance. He has asked the town attorney for some clarification on our ordinance as it applies to this situation, as well as any free speech issues. He is going to speak to us a little later on that and then we will have to take that information and lay it out.

Ms. McAniff-Brodeur said she also spoke to an attorney on interpretation of the law and she did have a letter sent to help clear up some of that. The lawyer said the ordinance does not really apply to what she is doing and she doesn't really constitute a safety issue or attract a large crowd. She is just asking to be able to attract the same crowds and feels it would be mutually beneficial, like the farmer's market. She works with a lot of young musicians and this is something other young people can relate to. Jonathan Graves is 15 years old, this is what he does for a living and he is not able to get another job. He did get a job at Blackhorn's when he was seen and someone from MTV is looking at him for a summer gig.

Councilman Wilcox said he understands her situation but this is not the board that makes the determination whether staff has interpreted something properly or not. That would be the Board of Adjustment. This board is the one where you bring an idea to the town that may or may not fit in the ordinance and you go through a process to bring that back to Council where this board can then decide whether they want to add it or tweak the ordinance or whatever they want to do with it. He is aware that information was made available to her a month or more ago to go through that process to have a text amendment which they probably would have already dealt with by now. If staff has said this is something that is not allowed in the ordinance, Council doesn't have the ability to make that determination.

Ms. McAniff-Brodeur said she was given the paperwork about a month ago to amend Article 1537, however, it is her understanding from her lawyer that if she were to be the one to fill out the application to amend that, then she is interfering with the right to free speech under the first and fourteenth amendment. So, it was advice that it was against the law for her to do that because busking is already protected under the federal constitution. So she did not fill it out and it is her understanding that she is not the best person suited to come up with the wording for that because she doesn't run the politics. It is her desire tonight to ask Council to make the amendment should it become necessary and that the wording that they choose and think best suits the community that they take that on.

Councilman Lewis said he would be glad to work with her on putting the text amendment together if the attorney doesn't come back with an answer. If the attorney comes back with an answer and says it is freedom of speech that covers that, he thinks it should be automatic to do whatever she wants. If the attorney says something else, he will get that information to her tomorrow.

The town manager said the attorney has done the work and has drafted an ordinance for her review and the manager has offered to help her with the language as well.

Ms. McAniff-Brodeur left a signed petition showing support for what they are doing and she does realize there are things to be taken into consideration like neighbors and safety.

John Graves, 8 S. Seventh Street, said he is here to show support for two different issues. He has 4 sons and they all love basketball. He plays in the rec league and coaches the youth group. He would like to show support in putting an outdoor court in Carolina Beach. They have a facility here but a lot of times there are a lot of older guys and the kids don't have a place to play.

Mr. Graves said the other issue is concerning the street performing. His 15 year old son Jonathan is involved in the issue of him performing out there and he would like to show support for him. His ability has increased over the years and he has a love of classic rock and roll and would like for people to hear him. He feels that is what busking is about. The way you can see if people think you are good or not good is by putting that tip jar out. He has watched him and he consistently averages about \$10 an hour and that is very good for somebody his age. Jobs are just not available right now. Older people are finding the jobs because they need them. This is a way for him to earn money. There are a lot of communities that support busking, such as Asheville. Boston was kind of doing the same thing Carolina Beach was doing, forcing the buskers away, and a U.S. circuit court judge required them to change, to stop the enforcement. They didn't have to change the wording of their policy, just the enforcement, stop the policemen from chasing them away. That was all that was done. Wilmington had an issue in 2008 where there was a busker that was ticketed and the judge required the attorneys to change the wording. He is there to support allowing buskers, street performers to come here. It's a great way for people to promote themselves.

Jonathan Graves, 8 S. Seventh Street, said that if people can go to the farmer's market with a tip box then why can't he? He doesn't see what the difference is between somebody going out there trying to sell their stuff and asking for a donation. What is the difference for him getting a donation for playing his guitar, providing a service? If people don't like it, he's not saying they have to give him money. They're giving him money on their own. Following his comments he gave a short performance.

Mike Pasternat, Cabana 214, said as a musician out of Raleigh he has recently relocated here and is trying to find work. He and Jonathan have collaborated with their music a lot and he feels that if they want to go down to the boardwalk and please people with playing their music - he doesn't hear anyone complaining with what they do. He feels they

should be able to play their music and make people have a better day just because they heard a song they like. Everyone is there to have a good time anyway. Even if you don't have a tip jar, people will just lay money in front of you. He feels they should be established in that.

Steve Shuttleworth, 808 Carolina Beach Avenue N., congratulated the fire department for a job well done. They have been to his house to put out a fire and they did a great job. He also congratulated the two young men who got up, for their courage to perform in front of Council and ask for the right to speak and play music. He doesn't understand why the town wouldn't let them do it. You are asking for volunteers for the Boardwalk Makeover to come down and help people face paint and you won't let those kids play guitar? He goes to communities all over the country where they have jugglers. They encourage them down there and we could have a lot of fun down there. We do stuff at the gazebo but these guys are just playing their guitars and you should let them do it. His real point to make during this public comment was he appreciates that they had the Mayor of Kure Beach come down and compliment them on what a great job they are doing on acquiring the pier, that still rubs him wrong. He went through a whole list of people coming down to visit. They've seen Tim, Dan and Joel and probably some of the other Council people. None of them have brought them a check or told them they will bring a check. The state is \$4 billion dollars upside down in their own budget. In the town's own write-up and staff report, it says the pier may have started in 2013 and for operations, maybe in 2015 alluding to the fact that there are no guarantees. You don't even have an agreement with the State of North Carolina Aquarium that says they will build the pier so you guys put the cart before the horse. That is his objection and you continue to pound on the fact that you are going to pay for it. The Mayor of Kure Beach says that's great, you're on the hook. No you're not. The taxpayers are on the hook. You are on the hook to figure out how to budget for it but all these people in here are on the hook to pay for it. His objection is that they went about it the wrong way. Yeah you had some public hearings but you didn't have a long, extended due diligence period and, as a licensed real estate broker for almost 30 years, in this market right now, bank owned properties have extended due diligence periods to allow you, Mr. Mayor, a plan to come up with what it is going to cost to buy, how you are going to pay for it, are you paying the right amount. By your own comparables, you paid twice as much per lot. You bought the Kirkbride lot for \$200,000, oceanfront, that you said you were going to use for access or parking. In your own write-up, you said you were going to use some of this pier property for new, improved beach access and kayak launch and maybe some other things. You paid \$400,000 per lot. That is what your own budget says. You can plus and minus some of these because 302 Carolina Beach is a double lot so you paid \$805,000 - cut it in half, \$400,000. 234 you can't really count because it has structures on it but 236, \$443,000. So you paid twice as much. His point is if they had had an extended period you do not have to continue down this road. He's all for the pier, it's a great idea. You don't any idea how to pay for it, no agreement with the state that you are going to get a pier. You have some letters of support, yes, politicians will write letters of support. Will they write you a check? Will the Mayor of Kure Beach write you a check? No. You have already been denied several different grant applications. You were denied those grant applications before you closed. They continue to come and they continue to say no.

The county has told them repeatedly they don't have the money in the parks department to fund this grant. The state doesn't have the money. When you have the Mayor of Kure Beach come in and say great, stick with it, the ship has sailed. Yes it has and he hopes it's not the Titanic and he's not paying for it.

Elaine Stewart said she had one thing to say regarding the state. If they can come up with \$1.5 million for an ABC store and she thinks they will come up with some money for the pier.

UPDATE ON THE ARRA STIMULUS FUNDING FOR SEWER REHAB WORK ON LAKE PARK BLVD. AND A REQUEST TO USE REMAINING FUNDS FOR SEWER REHAB WORK AT THE NORTH END OF CAROLINA BEACH

The town manager presented this item. He said they are finishing up on two ARRA projects, stimulus funding they received from federal government. One was the I/I project on Lake Park and also the retention ponds for Wilmington Beach. There will be, hopefully, \$185,000 remaining in the I/I part of the project which can be used for other projects. The money was ½ grant and ½ 20 year no interest loan so he feels it is imperative to use up all of the funding. Staff has identified some projects they have been talking about for some time, mainly at the north end of Carolina Beach. At Periwinkle Avenue there is a cast iron waterline which we would have to use our funds to correct and replace but it is part of some of the water quality issues at the north end. It's a small part of it but there is a bigger portion of this too they will probably have to get into at some point. There is some development on Periwinkle. Obviously some of those condos would be impacted. Other than that most of the access is off either Canal or CBAN. Staff is asking Council to (1) consider replacing the waterline and (2) consider replacing the sewer line that is there. Georgia Avenue is in disrepair as well. There are some point repairs and sewer rehab that needs to happen there. Then a sewer line repair on CBAN from Periwinkle Avenue to Salt Marsh. There is one 50' section of replacement, then there are some point repairs that need to be done and most of it will be on Lake Park Blvd. where they go to each manhole and align the sewer lines. It is in bad repair as well. The bigger picture of this is that we need to replace the cast iron waterline because that is what is causing a good portion of the water quality concerns heard about in the past. That is coming down the line, hopefully within a year or so. He is trying to wrap that into some other projects. The concerns - he is not sure when they would be able to mobilize and get moving. It is already mid June and could be mid July before they get to it because they are still wrapping up another project here and in Kure Beach. The concern would be that we're working in the summertime. There is going to be some disruption, hopefully minimal, particularly with the lining of the sewer pipes but there is going to be some fairly major disruption, particularly on Periwinkle. They will try to make some accommodations for the condos. Those are the projects most identified, and we have sent a camera in those areas and are working towards a bigger goal if they want to completely exhaust all of the ARRA funds. He is asking Council if they want to do this, instruct staff to use the remaining ARRA funds in the amount of \$185,000 for the projects mentioned as well as consider amending the budget and using some of the reserve funds from our water and sewer utility fund in the amount of \$250,000. The total project will be roughly

\$435,000. These are ballpark estimates.

Mayor Macon made a motion to approve the request to use those remaining ARRA funds for the sewer rehab work on the north end of Carolina Beach, including the transfer of \$250,000 from the reserve fund for a project total of \$435,000 to fix those items listed. MOTION CARRIED UNANIMOUSLY.

ADOPT THE CONSENT AGENDA

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

Approval of the minutes:

Special Meeting	February 8, 2010
Regular Meeting Con't	
From 4/13/10	April 27, 2010
Regular Meeting	May 11, 2010

Requests for budget transfers and amendments:

EXECUTIVE DEPARTMENT

Approve a budget amendment in the amount of \$2,000 from line item #104200.45 to line item #104200.14 to cover a shortfall in the travel and training account which will be used for the NCCMA Conference and Town Hall Day in June 2010.

The finance officer informed Council of the year-end budget transfers.

Instruct the town manager to send a notification letter to the Public Water Supply Section and authorize him to implement an Updated wellhead Protection Plan and any revisions necessary for plan approval.

Set a public hearing date for July 13, 2010 at 7:30 p.m., or soon thereafter, to amend the Code of Ordinances, Article 17 to redesign site plan requirements for all uses (i.e., business, 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 July 13, 2010 at 7:30 p.m., or soon thereafter, to amend the Code of Ordinances to create a new use and standards for rental of small motorized vehicles (i.e., golf carts, scooters, and mopeds).

Set a public hearing date for July 13, 2010 at 7:30 p.m., or soon thereafter, to amend the Code of Ordinances to create a new permitted use under Section 3.8-1 and standards Section 12.2 for "Temporary, Private (Invitational Only) Uses on Private, Improved or Unimproved Property" and which will apply to the following zoning districts: HB, CBD, MB-1, MX and T-1 as well as Section 7.1 Parking for this use.

Adopt Resolution No. 10-1017 (Exhibit 4) for authorization to apply for a water resources grant for acquisition of property for a pier project.

MOTION CARRIED UNANIMOUSLY.

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

PUBLIC HEARING - RECEIVE PUBLIC COMMENT ON THE PROPOSED FY 2010/2011 BUDGET AND CONSIDER THE ADOPTION OF THE PROPOSED BUDGET FOR FY 2010/2011

The town manager presentation this item. On May 26th he presented Council with the proposed FY 10/11 Budget, which is in compliance with the Budget Fiscal Control Act. The current financial status of the town is in relatively good shape given the current economic conditions. Prior years of eliminating expenditures, not refilling positions and conservative revenue estimating has allowed them to remain in good economic standing. New projects that are a part of this year's budget - the Wilmington Beach project and the park and pier debt service are driving the recommendation for a tax increase this fiscal year and are likely to cause budget issues in future years. So the tax increase and variety of other rate increases proposed this year were not sufficient enough to cover all needs this fiscal year. The budget process the next fiscal year will be just as challenging. The General Fund is approximately at 40%, our goal was 60% set by Council. The Tourism Fund is at 65% and the goal was 50% and the Utilities Fund is at about 91%. Budget actions during tough economic times, department heads submitted conservative budgets, revenue estimates were conservatively estimated, employees will not receive a COLA merit for the second, consecutive year. The town has eliminated approximately \$650,000 in employee salaries and benefits since 2006. Items were financed when necessary to eliminate one-time fiscal impact of capital items. During the budget process department heads give him their draft budgets in February, early March Council has a workshop with him and the department heads to review the budget. That is the first process they go through. Council has held 4 budget workshops to date, which is generally a little more than they normally take. This is the second budget public hearing. The proposed budget was delivered to Council May 26th and the budget proposal met or exceeded all statutory budget requirements as set forth in the general statutes. Summary of the proposed budget for all funds: The last workshop they had Council directed him to bring the budget back and some of the actions that he took are as follows: Balanced the General Fund budget at \$8,995,023. They reduced the ad valorem tax increase proposed from a high of \$.03/\$100 down to \$.01/\$100. The town's collection of sale tax has been reduced given that the town has not kept pace with the tax increase of other governmental finance entities. They included a portion of the Wilmington Beach Street and Drainage Project debt service at \$150,000. That debt service portion should pay for the majority of the debt service and allow us to get some revenue coming in from the assessments that will happen with that project. They reduced the Park/Pier debt service down from \$428,000 to \$220,000. It's an interest only loan for 3 years which they have yet to restructure that

loan and are currently working with BB&T to do that for CBP3. In return, we would make the interest only payments for 3 years after which a typical loan payment of around \$428,000 and probably a little closer to \$360,000. This was a level principal and interest and they are going to try to get that restructured as well. They reduced the General Fund - Fund Balance appropriation from \$200,000 to \$130,123. They increased the solid waste fee by \$2 per month for the standard single family and raised a similar portion of fee for commercial accounts. Basically our solid waste accounts were not paying for themselves and not breaking even. There was also a smaller percentage increase this year. Around 5% is what our increase is going to be this year. We needed to break even on that at a minimum. We increased the number of fees that the town currently charges for items in all funds, which is in our fee schedule in the budget document. The charges have been highlighted where they went up next to what the fee was for this fiscal year. Regarding the 91% of the Utilities Fund, we adopted 60% and the reason we're there is because for the past 2 fiscal years we have had debt service in our budget but we haven't done projects so that is why it is inflated they way it is. He would say that once they start getting under construction for some of these projects, like we did tonight in spending \$250,000 on some projects, we'll pay cash for it as opposed to financing it. Tourism Fund: Tourism Fund budget was balanced at \$1,931,700; conservatively increased revenue of Freeman Park due to the recent rate increase; and appropriated \$165,700 in Reserve Funds to balance the budget. Utility Fund: Balanced the Utilities Fund budget at \$4,693,681; proposed a \$1 increase in flat rate and \$1 increase in variable rate per 1,000 gallons; and they talked about increasing the Stormwater ERU fee from \$7 to \$9 to help dredge the lake, they have built up a little capital fund for that, as well as doing some of the Myrtle Grove Sound projects at the street ends; that increase reduced the Utilities Fund Balance Appropriation from around \$500,000 to \$311,811. All the proposals he has provided to Council, if they took a standard residential household, which is a \$500,000 home, the \$.1 tax increase would impact the household by \$50 over the course of the year. The water rate increase, if you used 5,000 gallons which is pretty standard for families, would be a \$36 increase. If they increase the stormwater fee, that would generate another \$24 per household. Solid waste fee of \$2 a month increase would impact the household by \$24 over the course of the year. The total impact of all proposed changes would be \$134 which is roughly \$2.58 a week. Another overview of our different funds, there are three different funds. The General Fund was just under \$9,000,000; Tourism Fund just under \$2,000,000; and our Enterprise Fund was at \$4,693,681 which shows the revenue and expenditures, basically we have to balance the budget. The total budget proposal is \$15,620,404. An historic review of past budgets shows that we have been relatively constant since 07/08. This year there was a slight jump and a fairly heavy jump in some instances which he will show where. The General Fund was \$791,000 more than last year, Tourism Fund was \$345,000 more, the Water/Sewer Fund was \$66,000 more so that has been relatively constant until this year. Some of the primary reasons for the General Fund budget increase were the Wilmington Beach debt service of \$150,000; park/pier debt service and costs associated with it was \$255,000; Carl Winner Project is offset by grant money but you still have to show it in your budget and that is \$100,000; FEMA Mitigation Grant has \$150,000 revenue coming in and expenditure going out so there is \$655,000 of the increase in the General Fund in those 4 items. There are other items such as the Fire Department expansion, increase in

mowing/landscaping contract, increase in health insurance, state retirement increase which was imposed if we want to stay in the state retirement system, Bike Planning Grant with revenue coming in and expenditure going out, and the Mike Chappel Park with \$30,000 to complete that. This shows the increase over last budget year. He gave an overview of the various funds. General Fund Revenues - primary revenue source is property tax then there are assorted fees, sales tax, and solid waste the latter being pretty much a breakeven endeavor. General Fund Expenditures - show by department where each department stands. The legislative department is the third highest mainly because a lot of the debt service is in there for the town hall, Carolina Sands, CBP3. Then there is the police department and environmental. Environmental is where we house our larger contract for the solid waste. Tourism Fund Revenues - Freeman Park pays the majority of the bills and there are other types of revenue we get from parking, ABC revenue, room occupancy tax, etc. Tourism Fund Expenditures - shows the 4 different departments within the Tourism Fund with beach maintenance being the largest. Utilities Fund - charges the customer for water/sewer and is the largest income producer of this fund. The different departments of the Utilities Fund and expenditures are utility administration which is usually where the debt service is placed. There aren't many employees in that department. Then there are wastewater treatment/wastewater collection, water system, water and sewer fleet and stormwater for the rest of the departments. Each year we do fund some capital projects and we fund existing debt service. These items are basically General Fund, existing debt or new debt service. There aren't a lot of things being paid off in the next fiscal year. Some things are new on this list. This shows you where our debt service is, both existing and not just new capital items. Tourism Fund, some are existing debt service and some new items. All are related to lifeguard, marina, beach maintenance, etc. Water and Sewer Fund, the first 5 of those items are the ones we are trying to get to construction - lift station no. 1, 3,000,000 gal. ground storage tank, the equabasin basin, new wells and upgrades, new waterlines and sewer rehab. Those are the ones we have loaded debt service into our fund and haven't yet gotten to construction yet. He fully anticipates lift station no. 1 and the equabasin to have begun shortly after summer. They will be taking bids very shortly then the other ones will follow. He showed some of the existing debt service, when the debt service was paid off and when some of the debt service will be retired. He showed some examples of things that are funded on a yearly basis because of the debt service or new capital items. Future budget concerns - we are experiencing some decline in revenue and increases in expenditures, health insurance, normal operating expenditures. We have a large amount of capital projects that will require debt service that we're looking at over the upcoming years. You have seen a list of projects that they want to get to completion. This could result in additional concerns as far as ad valorem tax increases and/or water and sewer rate increases in future years. We do have, he believes, a lower than typical fund balance in the General Fund. He knows it's at 40% but there are a lot of municipalities, particularly on coastal communities that have a lot larger fund balance than the town does and he would feel a little more safe if it was little higher. They have all put a lot of time and effort into the budget. He thanked Council for looking over it line item by line item and staff for producing what they have done. They have spent a lot of time looking at it, seeing what they can do without and what things they absolutely need. Council action tonight - he is recommending to open up the public hearing, close the public hearing and

then Council can ask questions or discussion. Then he would like for Council to consider adopting the Budget Ordinance No. 10-835 and the budget document in its entirety.

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

Jerry Jones, 707 Ocean Blvd., thanked everyone involved in this process. He said we are in tough economic times and tough decisions need to be made. This budget includes funding for a couple of major capital projects which will result in a higher property tax for all property owners in Carolina Beach. One of these projects include the Wilmington Beach paving project of which he is directly impacted by and wants to bring attention to a few facts that may have been glossed over. He is not opposed at all to the paving and the needed attention at Snapper Lane and a small portion of Tennessee Avenue. There are some areas where the postal service can't make it down the street. His property is not on either one of those. The problem he has is that a lot of the budget for this project is not directed towards the high density residential areas. A lot of people don't know and understand that bundled into this high priced project also includes the paving of large stretches of undeveloped areas where there is virtually no traffic and no dwellings. These areas include the proposed paving through what the Corps of Engineers designated as a wetlands area into almost 1/3 mile of undeveloped land where there are no dwellings at all. That is just on one street. This would possibly have made good sense at a time of higher prosperity for our island and if our budget had a surplus but not today during these economic times. Even though there are around 467 lots impacted by this high cost project, and in actuality we're not talking about 467 landowners, the numbers are much less. Outside of the streets that are in desperate need of attention where there are multiple dwellings/owners, in reality, one realty corporation owns a huge percentage of the undeveloped lots in the undeveloped areas that are being pushed so hard to be paved. He is still trying to figure out why, in these tough economic times and a depressed real estate market where there are an abundance of lots and homes that are not selling and could amount to a large number of properties going into foreclosure, the town is now making it a priority to spend millions from an under funded budget and add a higher property tax to every property owner in Carolina Beach to pave undeveloped areas through the wetland areas. Now is not the time. Speaking of the designated wetlands area, back in Feb. 2008, Mr. Brian Cox of Engineering Services told the town that the recommendation from the Corps of Engineers was to purchase this wetlands area and turn it into a conservation area. Instead of taking that advice, some members decided to push ahead with this project in these undeveloped areas and decided to spend \$80,000 for the rights to pave the wetlands areas. Again, why is this being pushed so hard? He has been told that one reason this whole project is being pushed for paving at one time and not just streets is because it will be cheaper in the long run than paving one street at a time as the town can really afford. Are we really making sense economically? When were these proposed paving costs drawn up? The NCDOT gives out a monthly report of the price of asphalt. A little over a year and a half ago the average price for a ton of asphalt was around \$800 per ton. This past month it was \$411 and dropping. It has been dropping consistently for several months and the trend is going that way. Two things drive the price of asphalt, one is demand and the other is oil/fuel. Two things have happened

recently. The demand has started slipping. We are on an artificial high as far as demand for paving and asphalt due to Obama's stimulus packages are coming to an end and the price will continue to drop. The price of oil almost 2 years ago was \$147 a barrel on the trade market and right now it is around the low \$70's. That trend is predicted to continue as the fuel category is not in good shape. If we go ahead with this deal the way it is set now, it's going to be a real sweet deal for the contractor but not for the Town of Carolina Beach or the taxpayers. Please review this. The prices are dropping and now is not the time. Why pay for something at a premium when all factors are showing they are trending down. He has been told that paving the Wilmington Beach area was promised back in 2000. The fact is that this is a promise that a lot of property owners in this area want or can afford. The demographics in this area have changed completely. We are not dealing with the same people as in the year 2000. When this project was announced in the year 2005, the assessment, at that time, was given at about \$3,400 per lot and this included curb, gutter, sidewalks, everything. Now everything has been stripped except the asphalt and we are talking \$7,000 per lot. This is not adding up. There are a lot of people suffering, this is a bad economy. These things need attention. We're all facing budgets and paving streets in undeveloped areas that are primarily owned by a corporation, that doesn't fit into his budget and he doesn't think it fits into a lot of other people's budgets. Please postpone or at least scale back the Wilmington Beach paving project. Right now if you take a look at the dirt roads down there, etc., there are only a couple of them that have a majority of dwellings. Mackerel Lane and also Sea Ray, you travel almost 1/3 of a mile where there is not a single dwelling and to pave it through swamplands and wetlands, why is this a priority? Let's put the priorities where they should be, let's postpone them for a while and divert some of this funding to where it should be. He looks at a support team for this town - police department, fire department, town employees, they're all driving this ship and he has always been told, "don't starve the horse that's pulling your cart" or you won't get very far. Talk about broken promises, they're not getting their merit raises, cost of living raises, bonuses and they keep being asked to do more and more with less. He would like to end with this: If anyone on this board presently handles or deals with rentals, vacation or full-time, has property listed presently or will be involved with any type of real estate transaction in the impacted area in the next several years, has to understand that whatever the outcome there will be a financial impact thus presenting a direct conflict of interest. If any of those listed are in fact true, he believes that a request to be excused from the overall decision or vote is in order. So he has to ask each one of you, are you involved and if you will be impacted?

Mayor Macon and Councilman Lewis said they are not involved in real estate and will not be impacted. MPT Efird said she is involved in real estate, such as it is.

Mr. Jones asked her if she has any rental property or possible listings or does she plan to sell anything within this impacted area in the future?

MPT Efird said she does not have any listings in that area nor has she had any but would be glad to get some.

Mr. Jones said that based on real estate she said this is a very depressed market right now.

Does she think adding \$.02 to the property tax when people look at the real estate here will be beneficial?

Council said the proposed property tax is \$.01.

Councilman Wilcox said he has never done any business back there and has no intention of doing any but if someone wants him to build a house back there he would be glad to do it. Is it possible that a lot of the reasons some of those lots don't have homes on them is because there are no roads back there?

Mr. Jones said it is pretty much the same situation you ran into when Sea Grove developers wanted to build at their property. They paved the roads to put it back there through the properties that they owned.

Councilman Wilcox said that is a subdivision. There is not a subdivision in this area. He could go out there and individually buy 10 lots but that does not make him a developer, it makes him an owner of 10 individual lots. He doesn't know who he is talking about or how many lots there are. He doesn't want to be comparing subdivisions with individual lots regardless of who owns them. What do they do with those properties out there?

Mr. Jones said he thinks it would be a lot more logical during these tough times when you are facing a budget to wait until some of those are actually developed where you have dwellings, people, vehicular traffic. It would make a lot more sense then to talk about paving a road then talking about paving dirt roads that go in front of no houses - undeveloped areas. This is prospective budgeting and, right now, we can't do it. \$7,000 and that is just his property. There is a gentleman who lives across the street from him who has 3 properties. He is 80+ years old and bought 2 of those properties for \$7,000 apiece. After New Hanover County threw in the new tax evaluation and with this tacked on he told him he probably would not be his neighbor much longer as he can't afford to keep it. He wanted to pass it along to his kids.

Councilman Wilcox said, on the contract issue, nothing has been contracted so anything before any contract we're let, bids would be revised and we certainly wouldn't want to pay ...

Mayor Macon said they are also dealing with annexation laws as well.

The town manager said it is 2010 and those are dirt roads in an up and coming resort town. The direction is that they need to pave them. They have all the permits. The bid pricing should hopefully be competitive and they have to move forward if the Council wants to do that. He doesn't know if they can do parts of it, how it would impact the permitting. It is Council's decision if they move forward on the whole project. He is moving forward on seeking funding. Some of the things they are doing is trying to get 20 year financing so the impacts aren't quite as bad. Obviously the property owners will still be responsible for the estimated \$5,000 assessment fee.

Mr. Jones said he understands up and coming resort area. There are a lot of things on his wish list too such as underground utilities. He wishes they could ask the properties owners there, one by one. Aside from Snapper Avenue, that needs to be paved. Do we want to see more foreclosures down there? That is a balancing act they have to look at. We are impacting this area. These guys aren't getting the funding they need and we're going to pave wetlands? He would like for them to drive down those dirt roads, cars getting stuck. He thanked the mayor for putting a dead end sign on Sea Ray because they were averaging 2 to 3 cars getting stuck. You need a 4 wheel drive to get down those roads. That area is wetlands and should be turned into wetlands. You are basically going to be paving through swamps and wetlands.

Linda Lashley, 1518 S. Lake Park Blvd., Unit 5A, said she would like to address any proposed increases in the budget, the two types of increases, optional and mandatory. Those that are optional, she supports, such as increase in fees for the north end or the recreation department, whatever is optional. Those that are mandatory she very much opposes, such as property taxes. People on social security have had no increases in their cost of living, there is a 9% unemployment rate and she thinks any expenditures by the town that are not totally mandatory, including any increases for pay or benefits for staff are just unwarranted. There are many ways to compensate people. They don't have to be monetary. To ask people to pay mandatory increases at this time is totally unconscionable.

Steve Shuttleworth, 808 Carolina Beach Avenue N., said he appreciated being asked to speak at the last budget workshop because he thinks that is where Council made some progress. He appreciates everything that staff and employees of Carolina Beach do but he will agree with the previous speaker that regrettably in this time of trouble and economic depression in this community and country, there are a lot of employees that are getting cut backs. Unfortunately we get to discuss, in a public forum, our employees. He is sorry that health benefits are going up, they may have to be cut. There are other communities around the country, to address their budget problems, that are closing one day a week. They are shutting departments down at 3:00, you get mandatory days off without compensation. He doesn't think the budget should be balanced on the backs of the employees. He doesn't there is necessarily a cost of living increase we can afford to give. He is not here to pick on staff because they do a tremendous job and are burdened with more and more work but they are also employed. Mr. Owens comment earlier on his slides showed there is an increase of \$134 a year. That's an increase, not the total liability and the way he put the slide up there makes it sound like a \$500,000 is taxed \$134, no, that's the increase to that particular household and that is based on an assessment, not the market value. There has been an incredible slide in market value compared to assessments, so, people who want to sell their property are finding out that it is worth a whole lot less than it is assessed for and you are taxing them on the assessed level, which they don't control. He would ask them to really look at the budget message the town manager gave them. It said, warning, don't keep doing this, we're running out of options, we're running out of reserves. We're taking more out of the reserves this year than we have in the past. You have added some capital projects. The other speaking who talked about Wilmington Beach had a good point and great approach. He knows the

budget has to be balanced by the end of the month and you may need to have a couple more workshops. You're close but there are some things you can take out of there and if you have a member of the public who suggests they re-look at the budget items for the Wilmington Beach, you don't even have them bid out yet but you budgeted \$150,000 to pay a debt service that you haven't negotiated yet. He doesn't think the budget is accurate. The budget has something in it that says \$35,000 will be paid for the insurance on the CBP3 property - is that offset with income on the insurance or is the town paying for that?

The town manager said \$57,000 of revenue is coming in from the ...

Mr. Shuttleworth said so you have \$250,000 in expenditures and another \$35,000 for insurance but the insurance is an offset but you haven't negotiated that yet with BB&T. The town manager said no. Mr. Shuttleworth said we are budgeting something, you're voting on something, you're asking to move forward on an ordinance that you don't have locked down on the CBP3 BB&T loan, you don't have locked down on your costs for the Wilmington Beach. This is not the way you run a budget. There are some variables in there. He knows they have made advances on the attorney's costs and he knows Mr. Coggins has been real workable with that but there are a lot of communities that have a lot less expense in legal bills. There was a suggestion made at one of the workshops to maybe reduce the contributions made to the Boardwalk Makeover. He knows that's a sacred cow but if we're asking the employees to go without a cost of living benefit, maybe the boardwalk owners need to have a property improvement district where they reach in their pocket and pay. There are other communities that have business improvement districts. The town is funding a business improvement district, maybe the business/property owners should be kicking in for that. Maybe you guys should all throw a hat out and take a portion of what the young man who was playing the guitar gets because he was raising \$10 an hour so maybe he could help fund it. The mayor made some comments at one of the workshops about the citizens having a budget workshop and had some great ideas but they weren't implemented but you had a citizen who just came up here and had some ideas. He thinks they need to keep working at it. He really appreciates the fact that they have gotten from a proposed \$.03 down to \$.01 but he thinks they still have some work to do and you have some time to do it. There are other options you can change and there are other cuts you can make. He thinks Mr. Lewis had some comments about maybe contracting out for parking, for landscaping. Are you really accurate on your income projections? Don't rush through it just because it has to be done by the end of the month and you have come up with a budget that now has a 10% increase. He doesn't understand. Everything else out there is depressed, prices are falling. You just heard your consultant up here saying that we got better than he expected costs. Multiple people bidding on a paving project for the town for cleanup projects and paving came in less than they thought and our budget went up almost 10%. The previous couple of years it was stagnant, we didn't get a COLA so he doesn't know why it went up there. We're not passing through hiring a bunch of new employees but the budget went up that much. You, as council, need to figure out why it went up 10% when everything else in the country is going down, including your paychecks.

Mike Kirkbride, 417 Marina Street, asked the town manager with regard to the portion of property taxes that we get from the owners, around \$4 million, that's really \$15 million that the taxpayer pays and \$10 million goes to New Hanover, right?

The town manager said he would have to do the math on it because he thinks the county is close to \$.60 he believes. We're at \$.175 and proposing \$.185.

Mr. Kirkbride said that is the part he doesn't get. He doesn't see how any town, he thinks there are very few towns in the country that operate on that setup where they get \$.30 on the property tax value in return for the services they offer. He thinks the town is way under budgeted in terms of what portion it gets for its property tax. He doesn't know how they should rectify that situation but it seems that if other towns faced that type of situation where the county gets 2/3's and we get 1/3 they would have all sorts of problems trying to fund their basic sustenance for all the projects that need to be done. We have extra projects. He sees them being a tourist mecca where we get a lot of things but we don't get much return from the county for at all. He doesn't know if they are doing anything to adjust that equation but it seem to fundamentally put them on the wrong foot.

Councilman Lewis said the difference is the county is paying for the school districts. In most towns where they have school district funding through property taxes, they are paying for the school district funding. They are saying that 60% of the county tax dollars are going to the school districts. You have to fund the schools some way. He understands their dilemma here. Clearly 1/3 may be low but he is more concerned about the split of sales tax dollars, occupancy tax dollars, which are directly related to tourism but, unfortunately, we are not getting our fair share of that for whatever reason.

Mr. Kirkbride said it seems the fair share is not there. If you are saying that 60% is needed to fund the school system...

Councilman Lewis said that is what they're using. He looked through the numbers there. Even the county, the county has decided to cut back significantly. All employees are taking 10 furlough days. That's a 5% reduction in pay.

Mr. Kirkbride said the county recently did a \$35 million dollar tax bond for parks and rec and we got \$200,000 out of that. Relative to what is being given back to us, on every level we are being shorted. Ultimately the citizens on the island are being burdened in a real undesirable way. A lot of adjustment in those areas could mean huge things and it might require partnering with Wrightsville and maybe Kure Beach to see if we can't adjust those numbers some. It just doesn't seem fair.

Councilman Lewis said the state rules on those things too, right?

The town manager said they are responsible for courts, sheriff's department, health department, social services, jails, schools and that is why their budgets are so high. He was a county manager so he has been on both sides of the equation. The sales tax, we do

probably get more benefit than some folks. They could change the formula on us and go to per capita as opposed to a tax rate or tax ad valorem so that would extremely impact our sales tax. You have to be careful what you ask for because it is all tied into together. Is their tax rate a fair tax rate? Maybe it is. County taxes, those are services that he might not use a whole lot of. People do but they are mandated by state to do social services, health department, all the different jails, courts - they are mandated to do that. That's an expensive proposition.

Councilman Lewis said they haven't reevaluated the properties down here and we're getting hit basically on assessed values. He talked to a couple of commissioners who said they were going to put it in the agenda next year but it doesn't mean they're going to do it. They are only required to do it every 8 years by state law so, most likely, you're not going to see that happen.

Councilman Wilcox said a good resolution would be to see the town get more of the county tax dollars back for some of our projects, which would go a long way, having a partnership a little bit more on some projects.

Mr. Kirkbride said they same with the parks and rec bonds, we haven't participated in much of the bond funding. He would appreciate looking into that too, maybe not this year but next year as we proceed.

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

Councilman Lewis said he had a number of budget items he would like to take a look at, some having to do with personnel, which he can talk about in executive session, or he can talk about just revenue from a standpoint of a couple of things. These are line items he requested so he has line item adjustments here. Just from a revenue line item adjustment, line item #25371000, revenues from Freeman Park, based on the increase in annual pass costs he thinks they really padded this thing without really looking at the projections here. He thinks they ought to add at least another \$50,000 of revenue, probably even higher than that, added on to the numbers calculated today. He ran through the numbers 15 different ways. The increases in annual pass costs are going to generate at least \$100,000 in increased revenues, probably around \$132,000. If we had exactly the same numbers as last year, it would actually be \$158,000. He took some numbers off from last year and we are probably looking at over \$100,000 in additional revenue and that is not packed into your number there. You packed in maybe around \$30,000 the way he looks at it. He would like to see them increase that revenue item by \$50,000 to make it more accurate. The next item would be #10-3325-000 increase in privilege license revenues, we're going to vote here this evening or talk about the privilege tax license for sweepstakes. You put in for \$22,000 which he thinks is very low. Based upon the numbers discussed by P&Z and joint committee from Council, the numbers look like it will generate, with the current number of devices, in excess of \$100,000 again. He would like to see them bring that up another \$50,000. He thinks they should put real numbers in. We are also increasing parks and recreation fees yet we never put in any allowance to

increase that. We basically used almost the same numbers as we did last year. This is line item #10-397002 parks and recreation fees. We are recommending and approving the increases in the budget we have but nothing to increase the revenue.

The town manager said he will see minimal increase, maybe \$5,000.

Councilman Lewis said he put in \$10,000. That is a total revenue increase of about \$110,000 right there. That gets us a little closer to the budget numbers right off the bat. If you did \$50,000, \$50,000 and \$10,000, that's \$110,000. Those are his numbers.

Councilman Wilcox said he doesn't know that he disagrees with him on Freeman Park but he thinks the problem with the sweepstakes is an unstable revenue source and you place the number too high and it goes away. He doesn't know what legislation is going to do. On July 1st it will be a revenue source.

Councilman Lewis said we are only looking at one budget year, right, starting on July 1st? All the new fees are July 1st, right?

The town manager said they are but they don't know what the general assembly is going to do. They may do something before July, they are still debating and deliberating. What he thinks he has given them, in his opinion, is an effective and responsible budget. They have looked at those numbers every which way. Some of the revenue streams are admittedly lower. The Freeman Park funds, he hopes they bring in \$50,000 or \$100,000 more but you could have a storm or whatever so he didn't want to go too heavy on those. Plus they don't know what the trends are going to be. What most folks will probably do is come in between January and the end of March. You will get some folks who will probably pay \$100 for a permit but he is not sure what the trends are, they don't have any trends for those. Privilege license revenue, once again, they don't know what the general assembly is going to do so he used existing monies plus another \$20,000 being conservative with his estimate. The rec fees, he was looking at what they generated last year vs. what he has in the budget and he doesn't think they will hit \$40,000.

Councilman Lewis said those are the revenue items but he has a bunch of numbers he couldn't come up right. When he went to the group insurance, which was really confusing. He looks at group insurance as being healthcare. He was at the meeting but most people on Council decided, because we are going to get a healthcare increase of 8%, keep the benefit's the same for employees. We're going to eat the 8%, which is about \$45,000 - \$50,000. As he looked at some of the numbers by line item and some were like 50% increases, some 32%, one 18%. Very few were 8% , but the current run rate today so he wondered why we would drop those numbers because he believes they are talking about another \$75,000 - \$80,000 in group insurance increases which he can't find where it is. Line item #10-420006, \$22,000 he adjusted by \$2,000.

The town manager said what he left in there was a 10% increase. That is what they forecasted so there is a 10% increase across the board in all insurances. So there is only 2%, he didn't adjust it for what is now 8%, he kept it at 10%.

Councilman Lewis said he could line item for line item, he can show the numbers. There are some that are 50%. Last year they were \$22,000, this year they are at \$40,000 for group insurance. It doesn't make any sense.

The town manager said there is probably an explanation for that.

Councilman Lewis said they have a line item #25-570019 for a parking attendant at Freeman Park for \$40,000.

The town manager said it's the Freeman Park ambassadors, those are the folks who basically man the front gates. The total contract for Lanier Parking is right around \$310,000 and it was all the parking as well as the ambassadors for Freeman Park which are generally 1 or 2 people who work for Lanier.

Councilman Lewis said the other things he has there - gas and diesel fuel, line item #10-565033, this year we are doing a run rate of about \$70,000, next year you are asking for \$100,000. It didn't make any sense. You have another line item of gas and fuel for \$100,000 and it looks like the run rate is at \$100,000. There is a \$25,000 difference. Gas prices are going down. The forecasts are that gas prices will continue to go down for the next 6 to 8 months. He doesn't understand why they have an increase.

The town manager said he is conservative with his budgeting and we have had \$200,000 over there for the past 5 years he has been doing budgets. Some years it has been over \$200,000, this year it may be less if gas goes down but he is not sure what it is going to do. He left it at \$200,000 and they are probably running about \$170,000 a year for gas. What will happen is, instead of spending that fund balance they have budgeted for \$130,000, that \$30,000 will drop down .

Councilman Lewis said he is trying to get to not having a tax increase. If he can find \$30,000 here, \$25,000 there, \$10,000 there and \$5,000 here you end up with the 1% and somebody doesn't have a tax increase but if you guys are going to fight, you're going to fight him on every little small issue. He will be glad to sit down and go through every one of these.

Mayor Macon asked if we are going to do 30 on the gas or 20 on the gas?

Councilman Lewis said he said a 25% reduction because this year they are running at about a \$70,000 run rate and then there is another line item for \$100,000 which is running about \$100,000.

The town manager said it would be a 25% of \$100,000 which is \$25,000.

Councilman Lewis said there are some areas of professional services he would like to reveal what these professional services are because they keep coming up with some big numbers. He understands they have some outsourcing of the parking but he thinks they

can save themselves some parking. If they revamp the parking department and they had the opportunity to collect in the backside of 2011, which would be April, May, and June, we might be able to save ourselves another \$30,000 in those months. Right now at \$330,000, Lanier Parking is making almost double the cost it would be to do it internally. They have an \$8 an hour person out there and charging us \$25 an hour. They have a full-time manager making \$60,000 to \$70,000 a year with benefits. They have to be making a profit so he says \$25,000 of \$330,000, that's their profit. That's \$150,000 right there. If he divides that over 4 quarters, and the biggest quarters are in the summer, he calculates they could reduce the budget by \$30,000 to \$40,000 a quarter very easily so he sees a \$30,000 savings just in parking if their contract is up the end of February. No matter which way you do it, he knows people don't agree with him bringing parking back in-house, he'll run the numbers and show them. He went out and found out how many people they have, they have their own separate building - they're collecting a million dollars of our money and charging us \$330,000 to do it. To him it's ridiculous.

Councilman Wilcox said he is confused about who is arguing with him about bringing parking back in-house. He thinks they have all talked about it.

Councilman Lewis said the town manager said it wouldn't save a dime or not sure they would save any money.

The town manager said he thinks they will save money. If they bring it back to this building that is \$1,200 a month.

Mayor Macon said the town manager will do whatever they ask him to do whether he likes it or not sometimes. They talked about bringing the parking revenue back but we can't do it until then but if you want to recognize the savings on that, the fire chief is working on a concept that is interesting.

Councilman Lashley said he is with Councilman Lewis and, hopefully, they can get a third person on Council to agree they don't want to raise taxes. He has voiced that a couple of times during these meetings. He pointed out page A15 which shows a fund balance starting in the year 2004 up to 2010 and we have not increased our fund reserve balance for the last 3 years. This year we increase it \$721,000. He thinks that's great but he wants to take some money out of the reserves to take care of this tax increase. If you look at the tourism fund we are beyond our percentages that other councils have addressed. We could take \$50,000 out of both the tourism fund and the enterprise fund, probably incorporate some of the changes that Councilman Lewis is identifying and come up with that \$230,000. In these economical times, we do not want to increase taxes. He thinks if they look at some of the things Councilman Lewis has addressed and look at the fund balances, and he was going to address the general fund - they just increased it \$721,000 from last year. We can take some more out of there. You decrease it from \$200,000 to \$130,000 this budget year, that's \$70,000 right there. We could just take the \$200,000 they recommended earlier and still have \$650,000 increase this year in that fund. We need to look hard at that and come up with no tax increase.

Councilman Wilcox said, just to be clear, he doesn't think there is anybody up there who wants a tax increase.

The town manager said his concern is that they did take on some debt service. They are doing the Wilmington Beach project. Those are two very large capital projects and his concern is that next year they will be facing some serious issues again. They started at \$.03 and got down to \$.01. If Council doesn't want to raise taxes, they can obviously figure out a way to do that whether they take from the general fund fund balance or tourism fund fund balance or cut out a few line items or add revenue.

Councilman Wilcox said Councilman Lewis was out of town during some of the last meetings and they made some pretty good progress at the last meeting, why don't they have one more budget workshop and bang these details out?

Councilman Lewis agreed.

The town manager said if they decide to do that they need to recess tonight's meeting to somewhere between now and June 22nd and he would also recommend continuing the public hearing until June 22nd.

Mayor Macon said he feels they should go ahead and hear Councilman Lewis' ideas that deal with personnel in closed session so they have this time to think about it. On the enterprise fund, he doesn't think they can necessarily take from to put in the general fund. There are some expenses that are associated with the water and sewer. You need to also understand that he is already pulling out of some of those fund balances to help balance the budget as well which were some of the suggestions that were there before.

Councilman Lashley said he understands that they are pulling from all three to balance our budget. We have \$4.6 million in the water and sewer reserve fund. We have almost \$2 million in our tourism fund reserve balance. We're talking about \$8 million or \$9 million dollars we have sitting in funds.

Councilman Lewis said, as he went through this, and he has talked to a number of different people including a couple of CFO's, as we start looking at dollars, the numbers for our parking revenues, we dump those into tourism yet those are really public lands that we're allowing people to park in and we charge parking for. Those dollars should really be in the general fund and the Freeman Park fund, because it is tourism only and that should stay in the tourism fund. Clearly parking should be a general fund. In researching this he found almost the same thing.

The town manager said not many folks have a tourism fund but it doesn't really matter where it comes from. A lot of people have a parking fund in general.

Councilman Lewis said that as we start to use those funds, there are restrictions on what we can use the tourism funds for.

The town manager said no, there are only restrictions on the room occupancy tax which has to be used for police protection, etc. Everything else you could co-mingle, tourism with the general fund, what have you. They just don't generally like to do that. They like them to be enterprise funds which means stand alone fund.

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

Councilman Wilcox made a motion to continue the public hearing until June 22, 2010 at 5:30 p.m., or soon thereafter. MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to hold a special meeting on June 21 at 9:00 a.m. to review the proposed Budget for FY 2010-2011. MOTION CARRIED UNANIMOUSLY.

Before moving on to the next item, Mayor Macon allowed Frances Walters to speak as she had requested the mayor to allow her to speak during the public discussion and was left out because she was not told to sign up.

Frances Walters, 912 Colonial Circle, addressed the new traffic pattern. Her opinion is that they need to do something with it and get it back to where it belongs. People are having a hard time getting through there. Her other item is regarding the trash can in the back of her property which is less than 12 feet from her back door. She has asked, gone through every route there is except come before Council. She has had all of Council over there except Lonnie Lashley and Bob Lewis about it. She has put up with it but not anymore. Somebody has to do something about this stinking trash can. The town manager knows what she is talking about as he has been over there. It has to stop, what can she do to get it stopped?

Councilman Wilcox said what they have is a residential property backed up to a highway business property that happens to be a restaurant and they have their dumpster there. They have asked them to check it and make sure it is clean and neat.

The town manager said that at the time it met our ordinances and was approved by our planning staff in 1998. It is fairly clean, it's a dumpster, and the guy serves seafood. They have asked if he would consider moving it, he's not sure they can force him to move it now that it has been approved. There could be some cooperation between the neighbors where they both fund half of it but he doesn't know there is anything they can do. He thinks the Health Dept. has been out there. He and the mayor met with Mr. Bowman last year and suggested he spray some kind chemical around it to lessen the smell.

Mayor Macon will go by there tomorrow.

Ms. Walters said this has to stop. Somebody needs to find a way to relieve this problem. You don't put up with the animals that come to that stinking place. You can't even walk out your back door. Come over, you can't stand there.

Councilmen Lewis and Lashley agreed to go over there the next day at 1:00 p.m. and will talk to Mr. Bowman.

Ms. Walters asked if they had a town ordinance or anything that can stop this or do we need to put something in effect to get some relief to get this trash can moved?

Councilman Wilcox said he would like to think that the owner of the property would work with her and the town to create a way to solve the problem which was his hope the last time they talked but, apparently that hasn't happened.

The town manager said there is ample room at the location to move it.

Councilman Lewis asked if the town attorney wrote a text amendment with regard to outdoor amusement, in reference to Mary's.

The town attorney said he has drafted a proposed ordinance for Council's consideration that is in two parts.

Mayor Macon requested they move on to the CUP request by the church.

PUBLIC HEARING - REQUEST FOR A CONDITIONAL USE PERMIT TO EXPAND THE EXISTING PRESBYTERIAN CHURCH AND ASSOCIATED PARKING LOT LOCATED AT 1209 N. LAKE PARK BLVD. (PIN 3130-39-2577.000) AND 804 GLEN AVENUE (PIN 3130-39-0531.000). THE BUILDING EXPANSION WILL ACCOMMODATE A FELLOWSHIP HALL; CLASSROOM AND OFFICE SPACE; AND A KITCHEN AREA, ALL OF WHICH ARE LOCATED AT THE BACK OF THE EXISTING CHURCH.

Ed Parvin, Tim Owens, Shane Lippard, and Gary Ferguson were sworn in by the town clerk.

Ed Parvin, Senior Planner, presented this item. He said this is a proposal for the expansion of the Presbyterian Church. In the packet there is pretty much a boiler plate grant order in Appendix #1. There are two conditions which are specific to this site. One is what they are doing on this site. They are adding a fellowship hall with some other amenities, some kitchen space, classroom, restroom, storage, pantry, janitor closet and quarters, lobbies and stairs is essentially what they are adding. There is also a note staff is requesting they put on the site plan to clarify some gaps in the property lines, some of which are adjacent to the town's lot and CVS where there was an alleyway closed years ago. The overview of the site shows two lots which are split by one of the alleyways which were originally part of the Ocean Heights Subdivision that is now split when Dow Road was cut. The site on Lake Park Blvd. is where the existing church sits and where

the expansion/fellowship hall will be placed. The site on the rear addressed on Glenn Avenue is where the parking will be located. This is all in the highway business zoning district. The expansion will require 115 parking spaces, they are providing 117. Gross floor area is 17,500 square feet. He showed an overview of the site as it looks today which showed adjacent properties of town hall and CVS, the expansion area and the second lot for parking. Then he showed an overview with the expansion and new parking. They are handling stormwater for the new section in a pond on the second lot. They have saved a number of large live oak trees and incorporated them into the landscaping. Staff recommends approval of the grant order which includes the seven specific standards and the four general conditions and it lays out eight additional conditions that will be required to be met.

Shane Lippard, Right Angle Engineering, said he is the site consultant for the church. They worked with staff over the last few months to get the CUP ready to present tonight. The church is essentially just expanding the fellowship hall to provide some additional meeting space, assembly area for receptions, adding some office space, redoing the rear parking lot to accommodate more parking and save trees in the process, and stormwater control.

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

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

Councilman Wilcox made a motion to approve the conditional use permit request for 1290 Lake Park Blvd. North and 804 Glenn Avenue based on the finding that it meets the general conditions 1-4 and specific conditions 1-7, TRC recommendations from the manager, staff conditions, and Planning and Zoning Commission recommendations, as follows:

1. The square footage of 1209 N Lake Park Blvd is 72,674 square feet (1.67 acres). The square footage for 804 Glenn Ave is 62,839 square feet (1.44 acres). The total square footage of the properties is approximately 134,572 square feet or 3.1 acres.
2. The church is located in the HB zoning district.
3. The church requires 115 parking spaces in accordance with Article 7 of the zoning ordinance.
4. Gross Floor Area = 17,500 sq. ft.

BASED ON THE FOREGOING FINDINGS OF FACT and competent, substantial and material evidence presented at the hearing, the Town Council makes the following conclusion as required by Article 14 of the Zoning Ordinance of the Town of Carolina Beach:

It is the Town Council's conclusion that the proposed use has satisfactorily addressed the following seven (7) Specific Standards:

- (1) Ingress and egress to property and proposed *structures* thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

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

General Conditions:

- 1. It is the Town Council's conclusion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted and approved by the issuance of the conditional use permit.
- 2. It is the Town Council's conclusion that the use meets all required conditions and specifications.
- 3. It is the Town Council's conclusion that the use will not substantially injure the value of adjoining or abutting property.
- 4. It is the Town Council's conclusion that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town Land Use Plan and policies.

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

- 1. Major changes to approved plans and conditions of development may be authorized only by the Town Council after review and recommendation by the Planning and Zoning Commission in the same manner as outlined in Article 14 of the zoning ordinance.
- 2. All permits and approval letters/final inspections required by all Federal, State, and Local Agencies must be submitted to the Town of Carolina Beach Planning Department prior to issuance of a building permit.
- 3. Outdoor artificial lighting fixtures shall be designed and positioned so that the point source of light from a light fixture is not directly visible from adjacent properties and/or right-of-ways.
- 4. The site plan corresponding to this approval was designed by Right Angle Engineering dated 5/25/2010 and stamped received by the Town of Carolina Beach on /5/27/2010 (see enclosure 1).
- 5. Waivers are granted for landscaping along the north and south property lines; sidewalks, and curb and gutter are waived for Glenn Avenue and the 15 wide alleyway located at the western end of the property.
- 6. A sign permit is required for any new signage on the property.

7. **The expansion will be limited to the uses listed on the site plan: Fellowship Hall, Kitchen, Office/Classroom, Restrooms, Storage, Pantry, Janitor Closet, and Corridors, Lobby and Stairs.**
8. **Include a note on the final site plan clarifying the reason for the breaks in property lines on both the north and south.**

MOTION CARRIED UNANIMOUSLY.

Mayor Macon referred to the town attorney to speak regarding the text amendment concerning outdoor amusement.

Councilman Wilcox said they can't do anything with the text amendment tonight and if there is proposed text amendment language, he would like to take it and review it and if it is going to get on the agenda, that's fine.

The town attorney said it would be appropriately noticed and gave Council a draft of the proposed text amendment.

Councilman Lewis said that one of the question they had initially was going back to the statements here. Does the freedom of speech protect them in this case, basically on those streets, to have performing arts or doesn't it?

The town attorney said that performing is a form of speech and does enjoy protection under the first amendment as does commercial speech or any form of speech. What is not commonly talked about is that no right that is conferred under the Bill of Rights, none, is absolute. With respect to the first amendment, the most famous expression was that of Justice Holmes who said that the first amendment does not give you the right to stand up in a crowded theater and yell fire. It is always a balancing act. Is there sufficient, compelling enough state interest that is balanced and to be weighed against the particular first amendment right that is being invoked. Our courts have looked a lot at where the location is of the speech to be invoked. There are a lot of case offerings and so on regarding parks, there are some on roads and you will be shocked to find out there are hardly any cases that deal with sidewalks and the particular issue in that case and the activity resembled nothing in this matter. Once again, Carolina Beach proves itself to be case of first impression. Nonetheless, there are some analogies and that it finds that if there is an ordinance available for performers to perform if you specify the locations in a rational basis, if you take into consideration in weighing the needs of the town to assure ingress and egress of the pedestrian ways for the public safety, if you are taking sufficient precautions that the particular business does not enjoy an advantage over other businesses through an in fact extension of the physical space permitted for the business. For instance, if a person came with a permit application to run a business and showed that the business actually intrudes or takes over a particular part of a sidewalk, staff would probably say no, that couldn't be done. The City of Wilmington passed an ordinance in response to a lawsuit that was brought by the ACLU on the behalf of a saxophone player and the City of Wilmington, in response to that lawsuit, passed an ordinance that dealt with this particular problem that was specific to the space of the Riverwalk. There was a problem with the saxophone player, in that particular instance, that it was interrupting

certain pedestrian flows up the Riverwalk and made it difficult, in certain instances, for law enforcement and fire to get where they needed to go. Sometimes persons behaved appropriately and sometimes they didn't. That is where the sufficient state interest comes in. It is not a question of esthetics but of judgment of protecting the public beach access, public property such as the boardwalk to public resources. To what degree are you going to allow any individuals first amendment rights to impede that. That is the balancing act he is talking about. He has a personal right to go on a public sidewalk and be able to access a public resource that belongs to him as a member of the public. Part of the job of elected officials is to balance that. One way of doing that is if you have a particular location that is particularly sensitive in the public domain and is not a traditional forum, like the Riverwalk or the boardwalk at Carolina Beach. You can require certain things to be done by permit. What he has proposed is an ordinance which would simply deal with soliciting activities and exemptions. The draft before them he has changed the title of because he feels they focus too much on whether or not something is begging or peddling. We all know it when we see it but know that is not the only situation where the problem or the state interest is invoked. The problem can also come when there is a legitimate solicitation and, regardless of whether somebody or not actually offers something, a service whether it's a song, painting faces, doing caricatures, whatever it is. We have all probably been in situations where someone gave you a service and you didn't want it and they expected you to pay them for that service. Under our existing ordinances we don't have that kind of distinction drawn so what he is proposing is to get away from labels like begging and peddling, etc., and focus on the town's powers to regulate soliciting whether or not something is offered, whether you're begging, performing or anything else. Soliciting is soliciting and it draws pedestrian traffic in a particular area, the boardwalk. He is emphasizing again, narrowly for right now, talking about the boardwalk. Regardless of what it is you are offering or nothing at all, you shouldn't be able to solicit in an aggressive manner where you actually intimidate people. No one wants that. He doesn't think anyone wants to block general public access in any real way. The ordinance provides that. There are special concerns of areas where there is an automatic teller machine (ATM's) in those facilities. There are case laws where those particular locations be subject to greater regulation. What he is proposing is that, generally, there are restrictions on soliciting in certain situations. For instance, not soliciting in a threatening or intimidating way, not being within 15 feet of an entrance of a bank or ATM.

Councilman Wilcox interrupted to ask a few questions. He said he is trying to separate things and asked if there is a difference between someone who wanders down to the boardwalk, picks a spot and plays their guitar, anywhere on the sidewalk, any location, is there a distinction between that and a business that is actually using that entertainment to promote a business? He is trying to sort out what is being asked for here and what is reasonable. Business owners have certain rights to quiet enjoyment of their property and when you hang merchandise out there, that's relatively quiet enjoyment. He is trying to determine, we heard a lot of talk about this issue tonight but it seems we have been confusing the issues.

The town attorney said there is some authority that commercial speech does enjoy

somewhat less protection than other kinds of speech. The dilemma here is that it is virtually impossible to write an ordinance in a way where a law enforcement official or town official can come on the scene and instantaneously make an accurate judgment as to what is going on. Is it someone who just decided to come along and start playing or is this person in fact a part of a business' business plan.

Councilman Wilcox asked if in Wilmington did they pick spots where people could perform, what kind of limitations did they place? Can they perform at 4:00 a.m.?

The town attorney said no, they specified where they can perform. They have a special Riverwalk ordinance. To start you have a general solicitation ordinance, then you have a performance ordinance where performers are allowed to perform at these spots, ask for a permit, let the municipality know what you are going to be doing, don't do anything that hurts folks, don't have noise that's too loud, you can't have but so many performers but so close together so as to increase the risk of congestion, that sort of thing.

Councilman Wilcox asked if a business in that area have performers in front of their business for the purpose...

The town attorney said if that particular location is permitted. One thing the town enjoys, that the City of Wilmington does not have, is the gazebo and beach stand which can be permitted at any time under certain circumstances and that particular location would enjoy a premium because there is less risk that some right of the public is impinged in that situation. In this proposed ordinance he has a general "thou shalt not solicit in an intimidating manner" say at a public bus stop, on a bus, at the bank, while people are waiting in line to go into a movie theater, on private property without permission of the property owner, while impaired, within the street. Those prohibitions wouldn't apply though if somebody else is otherwise permitted. That is when you go to the separate ordinance that is then proposed and that is for performers. The proposed ordinance for performers makes the distinction whether the performers are connected to a business or not. You don't have to be concerned about that. The same rules apply to everybody and that brings clarity to both the performer and the business and takes the hook off law enforcement and town planning officials of trying to read people's minds as to what is motivating them and to keep it's eye on what is truly the public interest here - to respect first amendment rights and to protect the town's rights to appropriate use of what sidewalks are for which is for people to be able to move and walk on them.

Councilman Lewis said we allow people who have restaurants to serve food and drink on them as an extension of their business.

The town attorney said that is true but even in those instances, as he understands it, there has to be a space in between where that outdoor café is extended and where parking takes place. Even then, there has to be a minimum buffer. They are not allowed to totally intrude and block the pedestrian access we have.

Councilman Lewis said the proposed ordinance is focused on the boardwalk. To him it should be anywhere in the business district it should be allowed.

Councilman Wilcox said that is one of the other things, we have areas where there is severe, physical restrictions as far as sidewalks and access.

The town attorney said he thinks that is something Council needs to take into consideration. He simply tendered them the most discreet, narrow area before them. After all, the more discreet and narrow defined it is, the more it is likely to pass constitutional muster and that was the immediate issue they were facing in the public debate. Should it be throughout the CBD or should it also be in HB or residential or not. He thinks that is another discussion and they could certainly try to come up with something to tailor it. He is simply suggesting to them that based on the cases he has read and the City of Wilmington experience, it dealt with a very discrete area.

Councilman Lewis said we also have a lake area where people also talk about people playing around the lake area when there is an event or something at the lake area.

The town attorney said his understanding is that, at the lake area where performers did in fact obtain permits ahead of time.

Councilman Wilcox said he is still trying to draw that distinction between us providing spaces for performers, which he would generally be in favor of, and applying that now to commercial outlets that are representing artists and things of that nature. We don't let places that have live entertainment move their bands outside. Those are performers.

The town attorney said those are events and there is a means for permitting them.

Councilman Wilcox said no, if somebody down at the boardwalk has entertainment inside we don't allow them to put the entertainment outside. Whatever we look at we need to look at something that works for everybody. He guesses we are in a unique situation where we have the lake, the gazebo, marina area, areas that could be designated as areas where these performers could perform. Where he starts to go off track is with the commercial use part of it. He is a little concerned about that aspect of it.

The town attorney said he shares that concern. As a lawyer, it is not his job to make a value judgment but he was trying to anticipate that what you were going to hear was a very grey zone that you may have the situation one day that the performer is telling you that he just came up and doing it on his own and then another day he may say he is here to promote that business. The business may say one day yes, that's true, and another one says no, they didn't ask them to come, they just showed up. He is trying to propose in the ordinance scheme that, in effect, rescues everyone from that kind of scenario.

Councilman Lewis said the business in question, the individual performers are getting paid by themselves, they are not paying the performers or making a commission. It really

doesn't affect their business that way. That is only one business. He thinks they should try to cover everyone if they are going to do this.

The town attorney said he thinks the proposed ordinance does just that. A performer is a performer is a performer and, as defined in this statute and regardless of who they are connected with, if they want to perform they need a permit.

Councilman Lewis said he looked through all these items in here and they need to walk through all of them. Such as, no more than one performer may perform at a specific location at a particular time. If a performer is going to be putting on a play, drawing or singing together, etc., now we are saying only one person can be at a location at a particular time. Not permitted within 25 feet of any commercial business unless permitted location is the gazebo. We have just eliminated the business that's here because it's within 25 feet of their commercial business.

The town attorney said it is the opposite. He was assuming that if there was a business that is closer than 25 feet to the gazebo then that's okay.

Councilman Wilcox said that businesses that opened in close proximity to the gazebo knew what that area was used for. With regard to one performer, that brings up a good point. One performer may be perfectly fine, two may be fine but at what point is it too many?

The town attorney said the risk of interfering with the ingress and egress probably increases with the number of performers.

Councilman Wilcox asked how the time element handled with the permitting - daily, weekly, blanket?

The town attorney said it is not a blanket permit, the person applies and says he wants to perform at certain times and certain designated locations and the permit follows the performer.

Councilman Wilcox asked if a performer ask for a location and play 365 days? Do you stagger it? Let's say you can have a performer in front of each business or you can't have a performer any closer than 25 or 50 feet and so one business has a performer in front of their business that is there all the time and that excludes someone else from being able to enjoy the same privilege.

The town attorney said you're right because he does have the buffer that you can't have performers but so close to another performer. He does have a special thing that the performer who is using the gazebo or the beach stand enjoys a privilege in that the other performer has to worry about you.

Councilman Lewis said he guesses the attorney is saying that if we don't have an ordinance covering it, you can't do it in this town? Is that the position we have as a town?

The town attorney said he can't speak for that. He is saying that if there is not an ordinance governing the activity, precisely as it is defined...

Councilman Lewis asked how you shut it down? Somebody shut this individual down, how did they shut it down legally? They didn't want it shut down.

The town attorney said this is a way to another subject that was brought up tonight but you do have your nuisance statute but he doesn't think anyone has claimed yet that this is a nuisance.

Councilman Wilcox said there actually have been some claims of that but that is a definition.

The town attorney said Councilman Wilcox's point is valid about how many locations does a performer get to apply for. This proposed ordinance doesn't do that. He didn't go into that kind of detail and how many permits are they allowed to do. This is currently structured that the person goes and applies for a permit and just because you apply for a permit it doesn't mean that is what you get because the town is going to have on file what are the other permits. What is the point in granting a permit that is going to place itself in conflict with another one that has already been granted?

Councilman Wilcox said there were no complaints about any of the performers there. He got a couple of complaints about some of the people who were watching the performers and some things they said to passersby.

The town attorney said, to be clear about that, unfortunately for the performer, it is part of the burden that comes with seeking the permit to perform. The performer, yes, brings a potential benefit but he also brings a potential burden. The performer didn't ask people to act inappropriately but it happens in consequence of the performer being there. That is a burden to the remaining citizens of the town. It is all part of that balancing act.

Councilman Lewis asked what if the amusement company at the boardwalk decides to bring individual performers on site. Do they have the permit to do just whatever they want to do down there or do they have to go by the same ordinance?

The town attorney said this talks about a permit to perform on town, public property.

The town manager said it would become a matter of whether it's a major change or minor change at that point.

The town attorney said he thinks it is appropriate to study and do a notice for a public hearing. He will send them a copy of the Wilmington ordinance. There has been case

law that has come out since Wilmington amended its ordinance in consequence to that law suit. Wilmington had 4 staff attorneys working on it around the clock and it has worked pretty well.

Councilman Lewis asked if they could take a look at allowing the individual performers to perform and let the police chief make a decision whether it is extruding or a public nuisance until they get this rectified in the next month or two it's going to take to do it?

The town attorney said he thinks that is what they have right now.

Mayor Macon asked if what he is saying is that the ordinance doesn't really cover it so it is allowed until we adopt an ordinance that has some type of control.

The town attorney said that is correct and, in the meantime, it's wise for everyone to take into consideration that where one person's rights begin another's ends. Because we have rights we should exercise discretion in the use of those rights.

Councilman Wilcox said if this isn't against the ordinance, what were they cited for?

The town manager said there were several things, one that he started out as a sign and that is what they told him he was. We just adopted a new sign ordinance and he didn't agree with that interpretation of him being a sign. And then, after that it was merchandising and there are only certain things allowed as merchandising. Those are the two things. He just has concerns with anybody coming on any public street, whether it be Britt's Donuts setting up and cooking donuts in front of their shop or somebody going to the lake. He just has concerns about that type of activity and the liability comes along with that activity. He basically said no until we had a venue for something like this and that is what they are discussing today.

The town attorney said he did provide in this draft a provision for the performer assuming liability and identifying and holding the town harmless and, if necessary, to require liability insurance. There is no question that if a particular activity gets out of hand that there are state laws and ordinances that would allow the police and fire departments to ensure public safety, if that is what Council is concerned about right now. It has to be a clear situation.

Mayor Macon said, whether any of us like it or not, at this point, the attorney is saying is the current ordinance doesn't address it unless it's a nuisance and then the police department can address it if it falls under a nuisance so, until then, if a performer was going to perform out in front of the shop it is allowed unless it becomes a nuisance.

The town attorney said or interferes with the public health and safety.

Mayor Macon said the key here is she can do what they have been doing and it would also behoove her to be careful where somebody else's rights begin, someone else's ends,

pay attention to the schedule so she is not interfering and things like that. If she takes those things into consideration and are done appropriately, it can be an asset.

The attorney said the lake is a park have a different statutory scheme that govern them and he believes there are some ordinances that he hasn't carefully reviewed that are different and are applicable to a park.

Councilman Wilcox said so anyone can go on any sidewalk at this point in time and perform.

Mayor Macon said unless it's a nuisance or a threat to public safety.

The attorney said they cannot block passage on a sidewalk. They might be on a sidewalk but cannot block passage on a sidewalk. No one has any kind of right to block a street, to have traffic move, the same thing applies to a sidewalk. If you are able to perform and people are able to get by, fine.

PUBLIC HEARING - CONSIDER AMENDING THE ZONING ORDINANCE TO ADD ELECTRONIC GAMING OPERATIONS (INTERNET SWEEPSTAKES) AS AN ALLOWED USE IN THE CBD AND HB ZONING DISTRICTS. MODIFICATIONS TO THE PROPOSED LANGUAGE MAY OCCUR DURING MEETING DELIBERATIONS.

Gary Ferguson, planning director, said they had a joint meeting on May 13th with P&Z and Council and in that meeting they were prepared this evening to come up with an ordinance which was given to Council, however, in discussing this issue with the town attorney, he gave a recommendation to consider adopting a new moratorium to expire on September 14th. This is for 3 reasons - the General Assembly is still in the process of discussing electronic gaming operations. Right now there are 4 bills in legislature none of which are prohibiting gaming operations but are all looking at this as a variety of different revenue sources but there are 4 pending right now. So with that no outcome has yet been determined about what local governments may garner from this legislation in terms of revenues. Secondly, Wilmington has not yet made a decision and we want to make sure that we do not have a rate that is a lot less than what Wilmington does. Thirdly, the definition that we have may need some tweaking based on the new technologies and the new way these gaming operations are evolving. With that said, the requirement for establishing extensions for a second moratorium is the same as advertising a public hearing, not less than 10 or more than 25 days. This timeline can be met as follows: advertise June 12th and June 19th in the Wilmington Star News and June 16th in the Island Gazette. The moratorium may be continued at the June 22nd meeting, which would be your second meeting in June. The moratorium prohibits new machines from coming to Carolina Beach. Council needs to clarify the privilege license tax for existing machines before July 1st. We had a gap in there when the moratorium was about to be established for \$3,000. We talked about accessory use gaming operations with a fee of \$250, that was at the joint meeting where we talked about that and was somewhat tacitly agreed to and that is kind of part of your ordinance. Before going any further, he

needs to ask Council, based on the attorney's recommendation, would they like to continue with this public hearing on electronic gaming or would they prefer for staff to go back and establish a new moratorium for June 22nd at the Council meeting?

Mayor Macon said he feels they should listen to the attorney and wait.

Councilman Lewis asked if they passed the ordinance and moved forward, post fees, new privilege license fees and July 1st comes around, that's the budget year and everybody puts those license fees together to pay for it, the General Assembly puts something into effect in August, are we covered to just keep those fees for the next year? It sounds like they are going to try and allow you to charge at the local level, the county will throw up a tax on these things...

The attorney said no he doesn't think that would happen.

Councilman Lewis said if we decided this month to move forward with the privilege license fee on all machines, we could collect it in July?

The attorney said his moratorium proposal is only with respect to the regulation of machines, not the taxation of machines and/or businesses.

The town manager said he would recommend Council do if they want to extend the moratorium is you advertise for the moratorium extension and also for a change to the privilege tax ordinance and then they can consider both of those at the June 22nd meeting and create a fee for the following year at that meeting too and extend the moratorium if they want too. You don't have to set that right now.

Mayor Macon made a motion to authorize staff to advertise for a public hearing to extend the moratorium until September 14, 2010 and advertise for a public hearing for changes to the privilege license ordinance and fees for electronic gaming operations.

The attorney said he would like for Council to take it on faith that, based on his meetings with industry officials and with city and county staff attorneys, many telephone conversations with other attorneys across the state, this issue is extraordinarily complex and he would hate to see Council go through that tedium and all that work only to have the legislature to change the whole thing. In the meantime, you don't do anything that hurts existing businesses. It provides you a revenue source, in the meantime, and the legislature may not change that but it may say that the privilege taxation is okay and preempt the regulation of it and throw it all into the lottery. We don't know. He would hate for the town to come up with a comprehensive ordinance only to find out that the legislature is changing. September 14th we're going to know the answer to that question. All indications he is receiving is that legislature will have adjourned well before September 14th. They want to get out of there by July, pass the budget and go home. Nothing is going to be changed regarding the privilege tax.

The town manager said they will make a decision on what the actual is at the June 22nd meeting, then you can extend the moratorium to not allow any more machines until September 14th, if they wish.

Councilman Wilcox said his question is why aren't they making a decision on what the fee is going to be for July 1st?

The town manager said they could tonight but they thought they could just lump them together on June 22nd.

The attorney said to go ahead and proceed how you want to tax them, in whatever amount and method but, in terms of anything else such as regulating machines, he is asking them to extend the moratorium so we know better how to go about doing that.

The planning director said right now the fee is still at \$5. The joint committee had only one recommendation for accessory uses and that was \$250. There was a \$3,000 fee established to be a disincentive for any new business trying to come into Carolina Beach which there was an interim gap between the time in which we were proposing to enact a moratorium. This was back in May when we were looking at establishing a moratorium. We were fearful, Council was fearful, that folks might come rushing in saying they wanted to open up a principal use internet café and you guys need to charge me \$5 per machine. Council invoked a \$3,000 per machine for any new machines that came into town.

Councilman Lewis said, with regard to the \$250 accessory use fee, if he had an ongoing other type of business and put up to 4 machines in his place as an accessory, it would cost him \$250 a machine and then we were going to talk about establishing a price for principal use businesses who were just having it as a gaming license.

Councilman Wilcox said they talked about a fixed fee of some amount for the first 2-4 machines and graduated that down in one or two steps to \$500 to \$250 or whatever, depending on how many machines you had.

The planning director said there have been a number of law suits going on right now on this in various towns and the law suits are based on the exorbitant privilege or business license fee that these communities have charged. It's not like it's an open ticket. Regarding what was discussed, they were talking about a graduated fee for principal use internet sweepstakes cafes during the joint workshop. New Hanover County does have a piece of legislation in the legislature right now that will give them the more than \$5 privilege license fee which surprised a lot of folks when that bill was introduced.

The attorney said he found it interesting that he didn't enjoy a particularly close interaction with the county on this issue and he found it interesting that, at the tail end of that, the bill proposed by Senator Boseman does not purport to regulate internet sweepstakes gaming. At the very same time that bill was introduced, was introduced a

bill that would permit the county to oppose a privilege tax on internet sweepstakes gaming.

Councilman Wilcox said, based on the input he is getting, small bars that have these 2 or 4 machines are doing fine but places that have the multiple machines there is just not that much money there.

The attorney said you will get mixed reports on that.

Councilman Wilcox asked to what extents have they gone to identify what constitutes an accessory?

The planning director said that as long as it's a commercial use, it doesn't have to be in a commercial district as long as you are an existing commercial establishment you can have accessory use internet sweepstakes.

Councilman Wilcox asked if there is no requirement for what that primary use is.

The planning director said no. There is some square footages you have to adhere to. They were looking at 1 per 200 square feet for an accessory use with a maximum of up to 4 machines or 800 square feet of floor area.

Mayor Macon said there is a motion on the floor and he called for a vote. **MOTION CARRIED UNANIMOUSLY.**

DISCUSSION AND RECOMMENDATION OF AN AUDITOR FOR FY 2009/2010 BUDGET

The finance director said the former auditing firm, Goodson and Taylor, has decided to discontinue service of governmental auditing making it necessary for the town to put its auditing services out for bid. She has prepared an RFP and asked 6 different firms to submit bids and they received 4 responses. She attached a spreadsheet which shows the bids from each firm. After they received the bids, she and the town manager met with each individual company to help them make a decision on the auditing firm they felt would fit the town's needs the best. They would like to recommend the firm of Martin, Starnes and Associates located out of Hickory, NC. They currently do 31 counties and 40 municipalities and have a vast amount of knowledge concerning auditing and tax services. Their bid is a 3 year contract. The first year bid is \$9,500 with subsequent years at \$85,000 each. The first year is higher because it is their first year coming in plus they will have to do a single audit for the town because of the ARRA money received. She has the RFP's for anyone wishing to review them.

MPT Efirid made a motion to award the contract to Martin, Starnes and Associates. MOTION CARRIED UNANIMOUSLY.

CONSIDERATION, DISCUSSION AND POSSIBLE ADOPTION OF

PRELIMINARY ASSESSMENT RESOLUTION FOR THE INSTALLATION OF WATER AND SEWER WITHIN THE WILMINGTON BEACH SUBDIVISION FOR TWENTY-SIX VACANT PROPERTIES

The town manager made presentation and said that a while back they talked about the 26 lots that do not have water and sewer in Wilmington Beach project area. What they discussed at that time was that they would put the water and sewer in and hold it in abeyance for up to 10 years which means they would not pay anything until they hooked on or until the 10 year period. The first process of going through an assessment situation is the preliminary assessment resolution. Attached is that resolution. He would like for them to consider adopting Resolution No. 10-1018 and allow them to advertise for what would be the assessment resolution public hearing on July 13, 2010 at 7:30 p.m. He showed the location of the lots, Sea Grove is roughly across the street. Those areas are slated for road construction. They are owned by one individual, one individual who was a representative of the company he talked, and he has been informed of it and knows the situation. The total cost is estimated at \$200,000 which puts the assessment fairly high, close to \$8,000 to \$10,000.

MPT Efirm made a motion to adopt Resolution No. 10-1018 (Exhibit 5) and allow staff to advertise for a public hearing for the assessment resolution on July 13, 2010. MOTION CARRIED UNANIMOUSLY.

CONSIDERATION OF A PROPOSAL FOR THE RECONSTRUCTION OF GEORGIA AVENUE FROM CANAL DRIVE TO DELAWARE AVENUE AND THE REPAIR AND RESURFACING OF GEORGIA AVENUE FROM DELAWARE AVENUE TO MARYLAND AVENUE

The town manager presented. He said Georgia Avenue is something they have been talking about for 2 years trying to figure out a cost effective way of fixing what they have out there. They had their engineer look at it, did some surveys and the estimate he came up with was around \$350,000 to do it perfectly. They decided they can't spend \$350,000 on roughly one block of street so they went to one of the contractors who is doing work for them now, Skinner and Smith, and they recommended that they come with an inverted street, extend some of the stormwater from Canal up into Georgia by 220 linear feet. He thinks this design and fix will be advantageous in several ways - it will allow the water to flow from some of the driveways and some of the lots that are there down Georgia Avenue and out towards the yacht basin. He is recommending they move forward with that project. The second part of the project is to go ahead and try to resurface, which is not in very bad shape, the second part of Georgia Avenue and that was about another \$20,000 to do that project. He estimated a \$10,000 contingency. He would like for Council to consider allowing staff to use the reserve power bill funds in which they have a little over \$300,000 to do this project. The total cost would be roughly \$100,000. They would like to move forward as soon as possible. They plan on sending a letter out saying they want to move as soon as possible. The entire roadway will basically be demolished and built from the ground up. He thinks the inverted situation and even the cost was fairly reasonable.

Councilman Lewis made a motion to consider the proposal for reconstruction of Georgia Avenue from Canal Drive to Delaware Avenue and the repair and resurfacing of Georgia Avenue from Delaware Avenue to Maryland Avenue. MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to go into closed session to discuss personnel matters in compliance with NCGS 143-318.11(a)6. MOTION CARRIED UNANIMOUSLY.

The Mayor said that no action is needed as a result of the closed session.

A motion was made by Mayor Macon to return to open session. MOTION CARRIED UNANIMOUSLY.

The town manager said the Police Advisory Committee has asked the town to adopt a proclamation that would declare August 3rd and National Night Out. We did one last year.

Mayor Macon made a motion to adopt Proclamation No. 10-1019 (Exhibit 6) to declare August 3rd as National Night Out. MOTION CARRIED UNANIMOUSLY.

The town manager said they have completed our day docks and he would like to schedule a ribbon cutting before Fourth of July weekend, with Council's permission. He can pick a day and do some invites. He is trying to get it in the Fourth of July paper, that week, to get the most exposure. He will figure out a day and e-mail Council. Council agreed.

Councilman Wilcox said he would like the ordinance to be scheduled for the next Town Council meeting. If this is not a planning issue then we just need to deal with the ordinance and move on.

The town manager said so they need to advertise for a public hearing for the next meeting on June 22nd. He had considered maybe giving them two different ordinances, one that the attorney has been working on and one that would sort of like a merchandising/outdoor café ordinance - two different ordinances for them to review.

A motion was made by Councilman Wilcox to set a public hearing date for June 22, 2010 at 5:30 p.m. or soon thereafter to consider an ordinance amending 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, and the boardwalk and beaches. MOTION CARRIED UNANIMOUSLY.

**Mayor Macon made a motion to continue this meeting to June 22, 2010 at 5:30 p.m.
MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____