

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

March 8, 2011

The Town Council of the Town of Carolina Beach met in regular session on March 8, 2011 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 Dan Wilcox; Councilman Bob Lewis and Councilman Lonnie Lashley. Also present was the Town Manager Tim Owens, Administrative Specialist II Sara Hartman filling in for Town Clerk Lynn Prusa; Finance Director Dawn Johnson and Town Attorney Steve Coggins.

Mayor Macon called the meeting to order.

INVOCATION

Mayor Macon introduced the former Mayor of Kure Beach, Mac Montgomery, who opened the meeting in prayer.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

Mayor Macon made a motion to adopt the agenda with the addition of Item #13(a), Addition and Improvement of Stormwater System from Periwinkle to Sea Oats on Carolina Beach Avenue North. MOTION CARRIED UNANIMOUSLY.

PRESENTATION AND SUMMARY OF THE “DRAFT” COASTAL SHORELINE PROTECTION CONTINGENCY PLAN

The town manager requested that this item be postponed until April or possibly later.

REQUEST BY CINDY PHILLIPS, REPRESENTING CAROLINA BEACH ELEMENTARY SCHOOL, FOR APPROVAL OF THE “HOLLAND HUSTLE” WHICH IS A 5K RUN FUNDRAISER PUT ON BY THE SCHOOL PTO TO BE HELD ON SUNDAY, MAY 15, 2011

Cindy Phillips presented this item. She said the Carolina Beach Elementary School PTO would like to hold a 5K on the 15th of May in memory of Vicky Holland and Paula Holland, two teachers who were lost due to cancer, to raise money for music, technology and PE department at the school. All funds will be going back to the school.

The town manager asked Ms. Phillips to work with him, the police chief, and Brian Stanberry, and to call him so he can set up a meeting. They will also need insurance which she said they had.

REQUEST BY SANDRA KITTINGER, PRESIDENT OF THE CAPE FEAR GARDEN CLUB, TO PROCLAIM MARCH 29 - APRIL 1, 2011 AS "PLANT AN AZALEA WEEK" IN THE TOWN OF CAROLINA BEACH TO PROMOTE THE CAPE FEAR GARDEN CLUB AZALEA GARDEN TOUR TO BE HELD APRIL 8-10, 2011 AND THE NC AZALEA FESTIVAL TO BE HELD APRIL 6-10, 2011

Sandra Kittinger was not present.

Mayor Macon made a motion to adopt Proclamation 11-1049 (Exhibit 1) proclaiming March 29 - April 1, 2011 as "Plant an Azalea Week". MOTION CARRIED UNANIMOUSLY.

PRESENTATION REGARDING THE CONTINUATION OF THE PLEASURE ISLAND SEA TURTLE PROGRAM

Nancy Busovne, volunteer coordinator of the program, said the upcoming season represents the 10th year that the Pleasure Island Sea Turtle Project has taken care of Carolina Beach's sea turtles and it has grown from 2 people to over 200. They provide a reliable vehicle, 24/7 service, thousands of volunteer hours, outreach to public schools, Adopt a Nest Program and weekly turtle talks that have been popular with the tourists. Many tourists return each year because of the wonderful experience they had at a turtle nest. Volunteers have reached out to many residents and businesses on the island. As president for the last few years she has held the state permit for sea turtles and appreciates the faith the town and state have in the program and their support. The budget of \$1,100 a month is mostly spent on the purchase, care and upkeep of our vehicle used for morning patrols and has to be replaced every 3-4 summers.

Councilman Lewis made a motion to approve the upcoming budget for FY 11/12 \$1,100 a month to support the volunteer coordination of the program for the Pleasure Island Sea Turtle Program. MOTION CARRIED UNANIMOUSLY.

PRESENTATION AND DISCUSSION REGARDING OFF-SHORE WIND POWER

Carina Barnett-Loro, of the NC Sierra Club and Zachary Keith, with Oceana presented this item. Ms. Barnett-Loro said they were there to talk about offshore wind, a clean energy future and clean energy jobs. She gave a background and mission of the Sierra Club, and Mr. Keith did the same for Oceana. Ms. Barnett-Loro gave a background on offshore wind which has been around about 20 years. There are currently none in the U.S. There are 3,000 MW installed in Europe and about 23,000 MW planned. A 1,000 MW of offshore wind powers about 227,000 in the U.S. It has also created thousands of clean energy jobs in Europe - 34,232 people in 2010 in Europe and it is expected to increase to almost 300,000 by 2030. She showed a map of offshore and onshore wind

resources, especially along the east coast offshore and, in particular, North Carolina which has the most abundant offshore wind resources of 140 GW. Only about 56 GW is economically viable to be developed but that can meet 130% North Carolina's current electricity needs.

Mr. Keith said he would speak as to where North Carolina is in this process. They are falling a little behind in the permitting process of offshore wind farms. Five other states are ahead of us. Onslow and Raleigh Bay are the two big areas right now and they are about 10-30 miles offshore in about 30 meters of water (showed graph). A state task force has been formed and met in downtown Wilmington in January through the Bureau of Ocean Energy Management to look at areas off of North Carolina's coastline and identify the best lease blocks. He showed states that are in various stages of planning and the approximate firm demand created. Those states combined don't have the potential North Carolina has and that is why they are talking to people about this issue.

Ms. Barnett-Loro said if we develop a little more than 10,440 MW of offshore wind power in North Carolina, about 3.5% of total resources, it will create 45,000 during the construction process of 1-2 years and over 9,000 long-term jobs including related infrastructure jobs. Total economic benefit would equal \$22.2 billion over the next 15-20 years. Manufacturing facilities follow the energy supply chain. Some parts are too big to truck or ship and require manufacturing facilities where the wind resources are. Those businesses are looking for long-term, stable demand and that is where they want to build their really big manufacturing facilities and job training firms.

Mr. Keith said the Stockholm University Zoology Dept. discovered that the structures create artificial reefs and increase the amount of marine life and is good for the recreational fishing industry showing environmental benefits.

Mr. Montgomery said he has been involved for some time helping the Sierra Club and Oceana and frequently what happens with initiatives in the State of North Carolina is that decisions are made in Raleigh/Washington and who ends up having to carry them out and bear the brunt of it are those of us down at this level. They would like to reverse that and start and if this initiative really is good for the State of North Carolina then let's get the municipalities and county government involved from the very beginning, brief every one of them, which is their plan, and then move up to briefing the state. The idea is to tell our legislators and governor that this is an initiative they need to do something about. They are asking Council to pass a resolution to show support for the initiative.

Councilman Wilcox asked about the cost effectiveness and seeing others pulling away from wind power.

Mr. Montgomery said there are some studies and they can give them some more details. He referred back to the use in Europe since 1991 where it is viewed to be viable. The largest producer of onshore wind is the State of Texas, also the largest producer of oil, he doesn't think anyone is recognizing that wind is going to take the place of fossil fuel but we have to work toward the mix. This will require state and federal cooperation,

incentives to private business to invest their capital, power companies to agree to purchase the power at a set rate to ensure that the private investor will get their money back over a 10-20 year period. The federal government has already decided to put \$50 billion dollars into this to encourage development. The jobs and economic benefits are what is important. He can give Council a copy of Texas' plan. They have some good guidance to go on. They are trying to encourage private capital. North Carolina has to have 12.5% of their electricity from a renewable source which means that the Duke/Progress Energy merger has no option but to somehow produce that from one of these sources. This is cheaper for them in the long run than creating another nuclear power plant and one of the major manufacturers for offshore wind turbines has an office in Wilmington, that's General Electric and the other is Seemans which also has a manufacturing facility in North Carolina. We think we are well positioned if our legislature and governor will move forward on this.

Councilman Lewis said there was some question of certain locations in the North Sea which have all told weather conditions that have affected them actually installing farms in certain areas. Has anybody done a study on our North Carolina coast with the tendencies of hurricanes? Mr. Montgomery said it is in the North Carolina study. The blades are replaceable, if you blow one off you just put another one on but they are set to the point that at about 25 to 30 knots the turbine has a computer in it where it will free wheel and as the wind drops down the computer senses it and reset it. They are using these in the North Sea. They will leave some of the studies with the clerk tonight. Congressman McComas has said he is interested in it from a commerce point of view. They are hoping to get a bill in the legislature this year to go forward with it.

The town manager asked if they would be visible. Mr. Montgomery said it's possible if you were on top of the Marriott, at 20 miles you would see it, but on the beach in the morning, no; only on the clearest day. They have pictures. Massachusetts is concerned about people not wanting to come to their beaches. There's a concern about fish, birds, etc. and these issues have to be taken into consideration. We think it needs to be explored. They would like Council to consider the resolution and they will send it to the governor and the leaders of both houses.

Councilman Wilcox made a motion to approve Resolution No. 11-1048 (Exhibit 2) in support of the development of offshore wind resources by the State of North Carolina. MOTION CARRIED UNANIMOUSLY.

CAROLINA BEACH COMMITTEE REPORTS

Fred Crouch, Chairman of the Operations Committee, said there are two things he needs to accomplish and one of them is to present a plaque to someone who is not here so they will postpone it to a later time. It is a member of their committee who said he was not able to attend anymore, John McQuade, Jr. who has been a member since 2004. He wants to notify Council and the community of the desire of the committee to meet for the next three months at 6:30 pm in the conference room behind the chamber. They are doing this to try to get more public input and draw new members to the committee. They

currently meet at 9:30 am. Their next meeting will be April 5th and will last approximately 1 hour. Their discussion includes any water or sewer issues and finding ways to improve operations. Brian Stanberry and Gene Gurganious are the two heads of the two departments involved that make up operations. They are hoping to recruit someone to replace John McQuade.

The town manager said if Council approves they can work with the clerk on the dates and advertising of meeting time and place change. He and Brian will meet and get this taken care of.

Duke Hagestrom, representing the Parks and Recreation Advisory Committee, along with Eric LaChance and Heather Kenny, said it has been about a year since they brought forth the plan for Mike Chappell Park for which they had several public meetings to get input. Among the ideas of the plan were an exercise path around the park and maximizing green space to encourage soccer/Lacrosse/flag football/all the different athletic groups who want to use that space. They are working on a plan to put in a new basketball court and, for financial reasons they weren't able to bite off everything but came up with a plan in phases. Phase 1 we had in the budget around \$15,000 and their first focus was improving the green space - sod/grass/different fields. They are here to appeal to Council for one or two of their members to come to their next meeting for their help and support. One of their first issues they have been confronted with was with the sod. They had an understanding that the \$15,000 budget was going to get them a beautiful field. At this point the approach that has been taken with spraying twice for weeds, power raking and then spraying again has not given them the results they were looking for. There are still some undulations, low spots, lawn is not coming in they way they assumed it would. They are not sure of the process for managing the vendor, making sure it is done the way they said it would be, we don't have a copy of the statement of work we have engaged with this vendor and would like to get to the bottom of that but are struggling with it. We really need some help with that. Examples of other issues: the basketball court - in the plan it was going where the sand volleyball court is but they have identified another potential spot where the girls' softball field used to be where it would present a great basketball venue for different leagues; current parking situation is a safety concern - part of it is located by the dog park and skate park and children's playground and they are concerned about the children running back and forth and having cars coming in there so fast, they would like Council to consider closing that piece of parking as there are plenty of other spots off the road such as opening the back gate to the skate park and close the front gate. There are about 15 parking spots. Those are the types of issues they are challenged with. They don't feel they are making the headway the way they would like to, not sure how they get the teeth they need to ensure progress and they are looking for Council's support at their next meeting on April 4th at 7:00 pm at the recreation center, first Monday. Councilman Wilcox, Councilman Lewis, and Councilman Lashley said they would come. The town manager said he would be there and suggested the council members walk the field before they come. Councilman Lashley asked about the \$200,000 in the park fund and the town manager said the intent was to use that for match money for a lot of the pier and park project and they also talked about using it for the basketball court. It can be used for anything within the bond purpose, it's up to Council.

The money is there waiting for our request for it. Councilman Wilcox said the county is looking for some opportunities to do some more fields and if we can provide some land for that they might be interested in coming in and helping us with some of these other things. There might be an opportunity there that we don't want to miss. Eric LaChance said there are a couple of things you will be hit with. One, they spent \$15,000 with this guy doing the sprigging (weeding and raking). I asked for a scope of work, and I want to know who is doing the quality control on it and what is the pay structure for that because it is unacceptable. Two, they are laying clay down and he asked if anyone is doing any soil testing to make sure we are getting exactly what we are paying for and he didn't get an answer nor who is responsible for providing QA on that. Three, we really do need to close the entranceway. He coached soccer there for years and almost lost 2 to 3 kids because of the way other kids are driving in there. The town manager said if they have some specific questions about what you are talking about right now he would be glad to meet with a couple of them before the 4th. They have all the information on what was to be done to the fields and how much. Council decided to have a joint meeting with the Parks and Recreation Advisory Committee on April 4th, it will be advertised by the clerk.

PRESENTATION BY DANNY SWINSON REGARDING BIKE WEEK IN CAROLINA BEACH

Danny Swinson, Drifters Reef Motel/Lazy Pirate Sports Bar and Grill manager and event coordinator, read a letter he sent to Council regarding opening the town to a small portion of bikers that would normally stay in Myrtle Beach who has banned bike week. He mentioned various biker groups who do many charitable events to help those who are less fortunate and would not be considered rowdy troublemakers. The event would help fill the void between Easter weekend and Memorial Day and bring in revenue. He would like to send out e-mails to those groups he mentioned, with the endorsement of the town, and welcome them the week of May 13-22, 2011. He said the majority of bikers are white-collar workers/professionals who do it as a hobby. It would boost our economy. He has spoken with the Chamber of Commerce and there are some events going on that week and feels they are on board with him on this. He also has letters from some local merchants who support it as well. He has also spoken with the police chief.

Chief Younginer said the way it was pitched to him was that it was not so much a rally but they would have certain areas they would visit as they come here - battleship, Southport, riding the ferry, the two Harley shops and there would be destinations chosen here and the area would be taken a look at. They are going to have to take a look at the size of the area and know that we can't take all those bikes in here. They know locations that they are going to go to, if one of the businesses is going to have a pig picking and a band then they would show up there. The beer festival is that weekend, some would come to that and some would go to the battleship. It is his opinion that they are not all going to come at one time. It should be okay.

Councilman Lashley thinks it is a great idea.

Mr. Swinson said he would like to post city ordinances when he sends out the e-mails so they will know what to expect when they come into town. It's not going to be a rowdy free for all. We have spring breakers come in. We have a lot to offer and there are people who would like to spend some money here.

Councilman Wilcox said there is a stigma related to bikers and the town has worked very hard to bring families back here. Council has not been presented with anything other than a request, no version of the letter he would like to send out, list of the clubs he would like to invite, how many people anticipated, etc., and he would not be able to vote without specific information. He asked if Mr. Swinson if he could provide a letter with those specifics.

Mr. Swinson said he would like to start with just inviting the groups in his letter. He can give them a drafted letter along with the town ordinances. We can learn from Myrtle Beach's mistakes, they don't endorse it anymore because it turned into a segregated rally of two groups.

Councilman Wilcox said we need to know what those problems were so we can apply them and we don't have any of that. He would like to see that information with the drafted letter - a list of the groups that would attend, approximate number of members, draft of the letter, any problems that he is aware of that have happened in any other locations relative to these things and what the plans are to address those concerns; anything of that nature that we can look at and get a feel for what we are dealing with.

Councilman Lewis said there is limited time to approve it and get anything out to anybody.

Mr. Swinson said he will get the letter to Council, it may be something that individual businesses can do this year as a soft opening and then possibly next year have the endorsement of the town.

Councilman Lashley suggested having a meeting on March 22nd and have Mr. Swinson bring his letter and make a decision then. Council agreed.

Councilman Wilcox said to also bring to them anything else he has by way of documentation, by way of what has been done that didn't work and how you are going to change it.

Mr. Swinson said he would be there on the 22nd.

PUBLIC DISCUSSION

Greg Reynolds, Chamber of Commerce, thanked Council for the appropriations last month and said that within that package last month there was a request for the use of public lands but they never publicly discussed it and he would like to review that now. The first is the chowder festival at the lake on April 16th and he has a letter with all the

dates and particulars that he will give them. They have had this festival for 15 years and will be selling beer. They have a \$2 million insurance policy with the town named as co-chair. The next one is the 26th Annual Beach Music Festival on the beach. They are going to rename it this year to the Carolina Beach Music Festival hoping to build it back into what it should be. We are allowing coolers on the beach but will still have the same safeguards in place as well as the \$2 million insurance policy. The other items are summer fireworks on 16 dates during the summer as well as the movies on Sunday nights, 15 dates there. This is more of a formality and a matter of making it public record as to what lands and dates we are asking for. He handed out copies of the letter.

Charles Eaves, 1311 S. Lake Park Blvd., said he was here during the riots when those motorcycle gangs were thrown out of Myrtle Beach, they came down Ft. Fisher and we had to call the NC Highway Patrol and the county's sheriff department. They locked up at least 10 of them because of the fights and impounded the motorcycles. He has nothing against people who ride motorcycles and not all of them are bad. He has three items he wants to bring up. The first problem is the carnival operation. Some of this he covered last year but the mayor wasn't present. They have had some problems, which the police chief knows about, with some of the people operating the carnival. He heard from a reliable source that some of the people came up from Florida. He wants the carnival to come, it is a great asset to Carolina Beach but it is the type of people who are normally associated with carnivals and he suggested the following: owner hire students from UNCW and/or CFCC as well as other business during the summer season; do a criminal background check and drug testing; and issue a permit with picture and ID # which must be carried while working in Carolina Beach and charge for the permit. The second item is the proposed WAVE bus issue. We should not use hard earned tax money for the WAVE bus to Carolina Beach. We have only one lane of through traffic from Bowman's Seafood traveling south. Where is the room for a bus to unload passengers without backing up traffic trying to come to Carolina Beach? He checked with WAVE and the bus they are contemplating holds 30 passengers. The cost of an oceanfront condo at Sea Colony is \$1,200 a week from Memorial Day to Labor Day. Do you think it is fair for wives to cook on vacation because traffic is backed up and they can't travel to a nice restaurant in the business district? This has happened numerous times this past summer and police were called. The paid parking lot between Sea Colony and Pelican's Watch couldn't get out on the road because traffic was backed up. Who is going to produce the most tax revenue for Carolina Beach, people on a vacation for a week or daytrippers on a WAVE bus? Business owners have to make 75% of their profit during the tourist season. Last item is the road diet. He talked about the roundabout in Southport after you get off the ferry and the traffic problems there. Said he went to traffic school in D.C. and talked about turning the traffic light to blinking yellow and directing traffic manually and moving traffic faster than using a roundabout which is a disaster in Southport. Some of the solutions: hiring part-time retired police officers who can work for 30 hours a week without benefits at \$20 per hour for 5 hours is \$100 per day for 3 days, Friday, Saturday and Sunday. The only thing Carolina Beach would have to provide is liability insurance, check with their insurance. The town could use them to handle the traffic manually

instead of the lights. There is a yellow vest that shows in the dark they could wear and you could call the retired officers traffic coordinators and use them June, July and August.

David Cole, representing The Dive, said he applied for 2 vending permits, one for the strand and one for Freeman Park. The reason he is here is because he would like to have a pushcart at Freeman Park and no one could tell him if they are or are not allowed at the north end and he was advised to come tonight.

The town manager said the Code says 4 wheel drive vehicles so he would have to apply for a text amendment or Council would have to direct staff to come back with one.

Mr. Cole asked, so I can't get the cart until he gets the permit.

The town manager said it is a code issue and if they are going to have a meeting on the 22nd they can get something advertised and have the public hearing that night, it's not necessary but he would prefer it. He is also going to ask for a budget meeting that night as well.

The planning director said this would be a new category.

Mr. Cole said he will be back on the 22nd.

Someone stated that the meeting on March 22nd will begin at 5:30 pm.

Larry Brown and Robbie Little of Sandstone Surf and Skate just opened a new business at the old cupboard grocery location at the north end. The new business also includes a grocery shop. They are proposing a surf contest on May 21st, the weekend before Memorial weekend. There is public parking at Sandpiper Lane. It's a one day free contest in front of their shop for 18 and under and they want to promote it for Carolina Beach, Wrightsville Beach, Wilmington and the surrounding areas. He talked to his insurance company and checked out the \$2 million coverage for general liability policy and that is in place and ready to go.

The town manager said there wasn't time to get this on the agenda, he did ask today. He generally works with ESA and those folks who do that. It is up to Council to approve it, but he can work with them to make sure it is done properly.

Councilman Wilcox recommended they go through the Arts and Activities Committee tomorrow and come back on the 22nd. The meeting tomorrow is at 10:00 am.

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

FY 11/12 BUDGET PROCESS UPDATE

The town manager said they have scheduled March 22nd at 5:30 pm for a preliminary budget workshop. They went over a bunch of things the other day and there is a pretty significant shortfall under General Fund with regard to revenue vs. expenditure and in the Tourism Fund and Water and Sewer Funds. We need to start looking at the budget a little more closely and they can do that on the 22nd. They need to set a meeting for Item 13(a) Addition and Improvement of Stormwater System from Periwinkle to Sea Oats on Carolina Beach Avenue. They did look at the water and sewer part of it and there are some French drains in that area that don't function very well and they want to upgrade them. They propose to use our Powell Bill Reserve Fund to upgrade the drainage in that area. Brian's drawing shows the new part of the draining and how it ties into the old part. They received a quote from the contractor who is out there doing the water infrastructure now which is about \$38,000, including some contingencies, and would like Council to consider taking the power bill funds and applying those to the storm drainage project.

Mayor Macon made a motion to approve the use of Powell Bill funds to correct the drainage in that area. MOTION CARRIED UNANIMOUSLY.

DISCUSSION AND DIRECTION FROM COUNCIL REGARDING NON-PROFITS AND PRIVATE GROUPS HOLDING EVENTS ON PUBLIC PROPERTY IN CAROLINA BEACH

The town manager said he has not had a chance to talk to the Arts and Activities Committee and we need to table until the March 22nd meeting.

CONSIDER WAIVING THE SIDEWALK REQUIREMENT AT 608 S. LAKE PARK BLVD. THAT WAS A CONDITION OF THE CUP FOR THIS MULTIFAMILY HOUSING PROJECT

Councilman Wilcox asked to be excused since he is the applicant.

Mayor Macon made a motion to excuse Councilman Wilcox from this item. MOTION CARRIED UNANIMOUSLY.

The planning director said the applicant, Councilman Wilcox, is requesting a condition to be removed from this CUP. It was issued back in February 2005. Russ Maynard was the applicant at the time and Mr. Wilcox acquired that property after Mr. Maynard got the approval for it. The requirement that is being requested is a waiver of the sidewalks. I put wide sidewalks both on Carolina Beach Avenue S. as well as S. Lake Park Blvd. What we have here is 4 units, a multifamily project. One of the conditions at this time in 2005 there was no specific zoning requirement in place that required sidewalks in February 2005. It was in May of that year that Council, due to growth that was happening in the town, decided it would be a good idea to go ahead and require sidewalks to be put in but this was simply a recommendation from the Planning and Zoning Commission and one that was carried forward by Council in 2005. He showed a picture

of the property and, as you can see, the majority of the property is already concreted with the driveway and that is true on both S. Lake Park Blvd. as well as Carolina Beach Avenue S. There is perhaps 7.5' on each side of that driveway that is unpaved. That would be the area of the sidewalks that was being proposed to be 5' wide. He showed a map where there are basically very little if any sidewalks. That little blue corner in the bottom left hand corner is the applicant's property and by and large you see the locations of sidewalks. The closest sidewalk to the applicant's property is the sidewalk that goes around the lake. Beyond that there are really no sidewalks until you get up to around Atlanta Avenue where you have the multifamily project built with sidewalks around it. It's a sidewalk that is not really going anywhere. The condition that was placed upon the applicant at the time is condition number 18 and that condition is what is being asked to be waived.

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

There being no public comments, **MPT Efirid made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Mayor Macon said this can be a problem because as you are developing a piece of property you don't know what level it is going to be at and tying all those sidewalks in together can be a nightmare when you are putting them in a 50' lot at a time.

Councilman Lewis said they are not putting sidewalks in the Wilmington Beach project and he doesn't know why they would have a single residence with that restriction.

MPT Efirid said she was for putting in sidewalks at the time but in certain cases like this on the highway she doesn't think it pertains. She wanted it for developments like the one on Seventh Street where she wanted to make sure they had sidewalks.

Councilman Lewis made a motion to remove the condition of this permit for the requirement of the sidewalks located at 608 Carolina Beach Avenue S. and find that it is consistent with the land use plan and other long range plans. MOTION CARRIED UNANIMOUSLY.

ADOPT THE CONSENT AGENDA

Mayor Macon made a motion to approve the consent agenda as follows:

Approval of the minutes:

Regular Meeting

February 8, 2011

Requests for budget transfers:

FIRE DEPARTMENT

Transfer \$1,000 from line item #530-002 to line item #530-010.

Transfer \$1,000 from line item #530-007 to line item #530-010.

Transfer \$7,000 from line item #530-009 to line item #530-010.

Transfer \$1,000 from line item #530-014 to line item #530-010.

Transfer \$1,000 from line item # 530-018 to line item #530-033.

Adopt Resolution #11-1046 (Exhibit 3) approving financing terms with BB&T for Wilmington Beach street and drainage improvement project.

Set a public hearing date for April 12, 2011 at 7:30 pm, or soon thereafter, to consider amending the Table of Permissible Uses to create a new use, “Planned Residential Development” and to create an allowance for “accessory dwelling units” to be authorized as a permitted use in the following zoning districts: R-1, R-2, MH, MF, MX, NB, MB-1 and T-1 and to amend: Article 3.2 Zoning affects use of land and structures to allow more than 1 principal structure on a lot; Article 7 Off-street parking; Article 23 to define this new use; and Article 12.2 to develop standards for this use.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING - CONSIDER A TEXT AMENDMENT TO ALLOW THE RECOMBINATION OF LEGAL LOTS WITH IMPROPERLY SUBDIVIDED LOTS ALONG VIRGINIA AVENUE ONLY (ARTICLE AMENDED: ARTICLE 12, SUBDIVISION REGULATION)

The planning director said they have discussed this issue on several occasions since December. The purpose of this public hearing is to consider an amendment to our subdivision ordinance, not zoning ordinance that would allow for the recombination of a property platted lot that fronts on Virginia Avenue with ones that aren't properly platted. This will resolve the problem of a strip of land behind these lots that the property owners paid money for and finding it difficult at all to use. Mr. Perry came through a couple of months ago and Council granted him the approval to go ahead and recombine those lots. In this proposal, however, the remaining lots that front on Virginia Avenue and those lots that were not properly platted behind those lots would be able to take advantage of the same thing that Mr. Perry did and basically extend their house, if they wished, back into this marsh lot or the lots that were platted out by deed. Attached in the packet is recommended language that P&Z looked at and supported but there is one particular provision he would like to draw their attention to and that is item #7 which says, “Only expansions to existing single-family or new single-family homes located on legal lots of

record shall be permitted to expand into the deeded lots. No separate or independent dwelling units or accessory buildings shall be permitted on deeded lots.” This is the language that P&Z had recommended and I think the Council and Commission were on the same page with the concern about having separate, individual buildings being placed on these deeded lots. The concern being that in this zone R-1b, which is single-family only, people are concerned about blocking of people’s views by other houses and the like. Staff wrote in the conditions 1-6, P&Z wanted to nail it down as tight as they could and wished to see included in this ordinance that language in item #7 which is the last piece that says only expansions. We agree with that. That second sentence about no separate or independent dwelling units reads good as well but the problem is “or accessory buildings”. Typically most people use their backyards for accessory building purposes so there is a concern on staff’s part, we mentioned this at P&Z, but they felt this would make it more ironclad in terms of locking out the opportunity for people that not only expand their house but also to make other use of those deeded lots.

Councilman Wilcox said he understands what P&Z is trying to do. The accessory buildings in our zoning ordinance are not necessarily the same as accessory buildings under the building code. Has staff looked at possible restrictions to size, anything under 12’x 12’ accessory structures.

The planning director said they did not, it’s a good idea. One of the limiting factors in this conservation zone, which is the zone directly abutting the rear of the lots that are platted correctly on Virginia, the lot coverage there for building purposes is only 15% so it really limits. Mr. Perry is at 12% lot coverage just with his small addition he has which is a 7,200 sq. ft. lot he is combining with a 6,400 sq. ft. lot in the front. When you look at the conservation zone what you are seeing is a severe limitation on development. I agree with what you are saying Councilman Wilcox, that maybe we should allow for buildings that don’t require permits maybe.

Councilman Wilcox said you have 15% lot coverage, 15’ setbacks and the most you can do is 20’ wide and it has to be on non-wetlands. It doesn’t leave you a lot of opportunity to do anything. He recognizes that people do need an accessory building quite often and typically we’d look at those as smaller buildings, I was just looking for something that might work all the way around.

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

There being no public comments, **MPT Efird made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Councilman Wilcox said we can impose setbacks and height, could we dictate that an accessory building only be a certain size?

The planning director said typically no. This is a very atypical situation and something that neither he nor the School of Government has experienced. He thinks because of the legality of those marsh lots, those deeded lots, he thinks they can impose some conditions. We could just not issue building permits and we would be on solid legal ground. So I think what we are doing is granting people an opportunity, a privilege, to make use of these lots. We have the right to say no.

Councilman Wilcox asked if you can tell someone they can't build an accessory structure when under our ordinance you are allowed to do that.

The planning director said under the conservation zone you are allowed to have an accessory building. Single-family houses and their appurtenances such as accessory buildings would be permitted back there. It would be difficult.

Councilman Wilcox asked if we could legally say they can't put an accessory building back there if we already have standards that exist in our ordinance that say as long as they follow the requirements they can do it.

The planning director said given the type of lots we are dealing with here I think we do have that right to say we do not want you to have an accessory building on those lots. I would have to turn to our town attorney for his opinion on that.

The town manager said he thinks from a zoning perspective you could say no detached accessory structures. If you want to allow them you could modify what is there.

Councilman Wilcox said he just wants to make sure we are on solid ground if we say they can't be there.

The planning director said he agrees with him but we are also granting them an opportunity, a privilege that perhaps we could deny. This is more than meeting them halfway in trying to resolve the problem. The folks who purchased these properties aren't the culprits; they are not the people who did this. Right now they couldn't put an accessory building on these separate lots without a principal building. He is concerned just as Councilman Wilcox is. Zoning should apply uniformly and to allow expansions of houses only, and that was the measure he thinks our P&Z was going towards, let's only allow those, but they don't want to see it morph into something other than a garage type of situation. But when you start looking at 12% lot coverage that Mr. Perry has, when you look at how little development he can take advantage of, he thinks the zoning regulations that are in place now are very restrictive.

Councilman Lewis said you could take out accessory buildings.

The planning director said you can get a permit to fill certain kinds of wetlands. There is a very limited amount of land that could be filled and used back there and the corps is going to put a restriction on how much they will allow you to fill anyhow. Terry Hamm

was the most vocal about having no separate structures, buildings beyond just the expansion of the houses.

The town manager asked where the VE zone is and said there is also a COBRA proposal too.

The planning director said the COBRA is going to include and possibly could include all of these lots that are deeded lots right now. The fish and wildlife goal is to maintain natural habitat for animals. When they are talking about filling wetlands, that is exactly what Fish and Wildlife wants to see prevented so they may come in with their COBRA line and go right up into these lots and if someone, like the Perry's, extends their house into this area, the entire property is going to be considered in the COBRA zone. Not just the property, the house part of their property. The VE line is all throughout here and thinks a majority is in the VE zone. A structure has to be designed in such a way with flood vents or breakaway walls.

The town attorney said he would ask that whatever is the motion that is made by Council it would state it is made in order to remedy a prior illegal situation. This is a unique situation and he understands Council's concern for uniformity but the way this unfolded made it impossible to remedy it in a uniform way that would apply all over the town. It is by nature reacting to an illegal activity so the motion should probably state that it is in reaction to that and is a remedy that the town is pursuing.

Councilman Wilcox made a motion to approve Ordinance No. 11-860 (Exhibit 4) that addresses conditions for recombination of deeded lots fronting on Virginia Avenue for the purposes of correcting illegal conditions that exist that are unique to these properties and that it is consistent with the land use plan. MOTION CARRIED 3-2 WITH MAYOR MACON AND MPT EFIRD VOTING NO.

PUBLIC HEARING - SEEK INPUT ON METERING APPROXIMATELY 30 PARKING SPACES ON LAKE PARK BLVD. BEGINNING AT THE CAROLINA BEACH LAKE AND EXTENDING TO THE ENTRANCE OF THE CAROLINA SANDS SUBDIVISION

The town manager presented. He said they had talked awhile back about placing meters on some parallel parking in the south part of town from the lake to the entrance of Carolina Sands. Since this is the first time we have introduced meters in that area he thought it would be a good idea to have a public hearing and there are some people here tonight who would like to speak on this topic. There are approximately 30 spaces in that vicinity some of which were already dedicated as residential parking. We do not have a very good program for residential parking, some are signed that way and, hopefully, people abide by that but there is no sticker, permit, or hanging tag type program. It works fairly well. We do it on a case by case basis. It works fairly well in other parts of town where we have less transient population and more full-time folks. You could supply a hanger and those folks could use those hangers. We do meter parking all over town.

This is one of the areas that we have left remaining on street that is not actually metered and one of the reasons we considered it was to encourage turnover and increase revenue.

Councilman Wilcox asked about the issue on Charlotte when they had the resident parking there, did we assign that per an address or just put a resident parking sign on it.

The town manager said they put resident parking and then assigned each one and told them which parking spot it was. Those aren't transients, they have their tags and it's easier. He thinks they came in and filled out an application. We didn't necessarily assign a spot, they just know four of them.

Councilman Wilcox asked if this is not our right-of-way anymore. Is that going to be taken by adverse possession?

The town manager said that was a question by the town attorney. Mr. Owens said he doesn't think by signing or giving them limited rights to an area would by any means give them a state right-of-way by adverse possession.

Councilman Lewis said the problem exists because these places were built without having any parking for the property. Now we take away that existing property and put a meter out there, it's going to devalue the property.

Councilman Wilcox said for whatever properties we were to give resident parking, I don't think the town wants to give up their right in the future, through redevelopment or whatever, maybe those houses go away and then all of a sudden they are still claiming ownership of that property through adverse possession.

The town manager said the ordinances specifically say it is a case by case basis, in the event you rebuilt your house or the house went away that you would have to provide on-site parking. We would require that nowadays.

The town attorney said he is not concerned about the claims of adverse possession within the defined town right-of-way.

The town manager said in order to make it clear on an application we could say this by no means gives you the right to possess the property and we have to right to change it at any time.

Councilman Wilcox asked, if you have a resident parking spot like that, who is responsible if somebody else parks there?

The town manager said that is what he is saying, the program is not very easy to enforce in a transient area. We wouldn't be responsible for towing cars. The sign just says resident parking. Things have changed over the years as houses have gone in and driveways have been put in and driveways have been closed. The options that I see is to continue to manage it the same way and not put meters or put meters in and work through

those difficult issues out in the field. There is no program so we wouldn't be able to ticket those folks who wrongfully park there at this point, on Charlotte we could have them ticketed but not towed automatically.

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

John Blamy, lives in Michigan, the house he is referring to is 701 S. Lake Park Blvd. He hopes everyone received an e-mail with the plat plan. Currently the town proposes to install two metered spaces and one residential space in front of their house at 701 S. Lake Park Blvd. The house is a two family house and has had renters since their ownership. Some of the renters have had two cars and we have come down on some occasions and driven two separate cars. This is a small corner lot, only 50' x 61' with access to the one car driveway and the second floor entrance on the side street, not off Lake Park Blvd. The other apartment is on the first level with the main entry door off Lake Park Blvd. We have relied on street parking from the front of the house since they purchased it. When they bought the house in April 1997 parking was not an issue as there wasn't any on street parking restrictions to our parking needs. When the 2 hour limit parking was initiated in the spring of 2001, after working with the administration and town planner, in tandem, we were granted residential parking only in all the spaces in front of the house. Parking issues are not new to us and we have had concerns with parking issues since 2001 and hope that we can work with this administration to maintain prior agreements that were made by the Town of Carolina Beach. This issue is of paramount importance to us. Restricting residential parking to one residential space only of street parking severely diminishes the value of our home. They are asking that you leave the parking in front of 701 S. Lake Park Blvd. as resident only and thanked them for their consideration in this matter. To answer the question that was brought forth, there are no restrictions on there; it pretty much is the honor system. On the 4th of July weekend as an example, all bets off on everything, people are going to park there, you're going to ticket them and they are going to drive away and you may never see them again in town so you are not going to collect your money. There aren't any tags or anything, and about 5 times a year they have a problem with someone parking there. If we are outside we say something to the individual and they will move on. Right now it is working but it is something to look at down the road because this is going to probably expand throughout the center of town, paid parking is going to be there. I don't like it. We are becoming a town of signs and not of lights. You're going to put up more signs saying metered parking, 2 hour parking, etc., probably every third space you have you are going to have another sign added to it.

Councilman Wilcox asked the town manager, how many places we have this condition and how many spots does it affect.

The town manager said he really doesn't know that is why we sent out letters to everybody so that folks like Mr. Blamy could come in and tell us what his concerns are. Most of the driveway cuts are in that he has seen, it is something we would have to go out in the field and look at. We look at 22' as at a minimum for a parallel parking space might give you 3 or 4 spaces. All we have right now is a parallel line there. There are

some parking spaces that have been marked in front of curb cuts that don't need to be there either so there are a lot of things we would have to do if we decide to do this. We have to look at each individual lot and each individual case and mark it so that is not only a parallel line but some vertical line there delineating spaces.

Mr. Blamy said when you mark the cross lines designating your 20' section, or whatever you choose to use, you will diminish the use of it. When you leave it open like we have in front of our house that if people work together they can park 3 cars in there, depending on the size. That's where we get the 3, the 4th area we talked about in the e-mail is the one actually extending down past the Mariner and he would expect that that would possibly have 1 spot for metered parking if you choose to go to metered parking and would expect that one not to be available to us.

The town manager said another concern was also mainly from the condo complex in front of the Scotchman and I tried to forward those to you, that was the other area.

Councilman Wilcox asked if staff is planning on going out and looking at these and come back with a more refined determination.

The town manager said it is up to Council. I would hate to spend the time to do all that and then decide not to do it but I can do whatever Council wishes to do.

Councilman Lewis said he was down there the last couple of days from the lake down to Spartanburg. The density is so crazy there on that one side, I can't see how we would have metered parking there because a lot of people don't have any way to get into their lot. There are no driveways on half of those properties; they are almost on top of the street. Once I got beyond Spartanburg it opened up with a bunch of spaces. Otherwise, I don't know where these people are going to park.

Councilman Wilcox asked about the condo, don't they have parking?

The town manager said he thinks their main concern is that they drive multiple cars and folks at times park under their units and they are not supposed to be parked there and they are using that on the road.

Councilman Lewis asked what an average meter brings in a month.

Sherry Shaw, Parking Manager, said it varies in the month. In April a meter makes about \$69 a month but in July it makes \$145 so it's about \$600 a season average. Some make a lot more than others.

Councilman Lewis said that's about \$18,000 for 30 meters, not very much money.

A lady by the name of Yolanda, resides in Carolina Beach, and expressed her concern with the location of certain parking meters that are next to her office (*note: comments were inaudible*).

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

Mayor Macon said they have been talking about putting meters here for awhile.

Councilman Lashley said we currently have no meters on Lake Park Blvd. and earlier this year we said we are not going to have any meters in the CBD and also eliminated the meters on Harper and Cape Fear. If we want to be a friendly tourist town, I think we have to have a combination of paid and free meters. I remember someone saying from the traffic department that we have 20%-22% of our parking spaces are free and I think that is great for tourism. I don't want parking meters on Lake Park Blvd. and that is where my vote would be. I think we want to be tourist friendly and Lake Park Blvd. is our main avenue. Don't put parking meters there; we don't have it in the CBD. The only parking lot we have in front of a business on Lake Park Blvd. is at our mayor's business and I don't like that quite frankly. I think he needs to never speak up about that. I would take that parking station meter and put it someplace else. I'm against parking meters on Lake Park Blvd. We don't have parking meters in front of any other business on Lake Park Blvd. and I don't like it.

Councilman Wilcox said he thinks we owe it to some of these people, due to circumstances and the way the town has built up, whose houses are right on the street and they don't have any other options. I like a friendly place for visitors to come but we are not talking about parking spaces being made available to visitors, these are being used by residents and overflow parking for their guests.

Councilman Lashley said we have people who park in those spots who go to the beach, visitors and tourists.

Councilman Wilcox said we may but what we are talking about tonight is providing them for resident parking. I count, loosely, 5 spaces on the west side and 18 spaces on the east side that are either in front of empty lots or in front of condos that already have parking or in front of other lots that appear to have adequate parking. I don't think we are obligated to provide overflow parking for all of those facilities. I think we could distinguish the two and take care of the people who have a real hardship and still address the parking we discussed at the other places.

The town manager said, depending on which way the Council wants to go, he doesn't mind going out and trying to come up with a precise map. What we did is ask the coordinator to break it down into 22' blocks.

Councilman Wilcox asked what would be the proposed time for the meter on this thing.

The town manager said you can feed the meter up to 2 hours at a time and can pay by phone. If you are a resident you can park there for free.

Mayor Macon said he doesn't quite understand what Councilman Lashley means about the parking lot in front of his particular business. Are you saying you think it should be free?

Councilman Lashley said exactly, take that parking meter and put it someplace else.

Mayor Macon said it is a pay station and, if you are a resident and you have a sticker, you can park there free.

Councilman Wilcox said he doesn't know that he is ready to make a motion but would like for the town manager to go back out and take a look at these lots that are truly affected and the ones that aren't and maybe distinguish the difference.

Councilman Lashley said he thinks they should take a vote. Why have the town manager go out and look at it when maybe there are three of us on Council who don't want metered parking on Lake Park Blvd.

Councilman Lashley made a motion to not put parking meters on Lake Park Blvd. MOTION CARRIED 3-2 WITH MAYOR MACON AND COUNCILMAN WILCOX VOTING NO.

PUBLIC HEARING - REQUEST FOR A CONDITIONAL USE PERMIT TO CONVERT A 2 UNIT BUILDING INTO 3 UNITS BY UTILIZING THE ALLOWANCES FOR PLANNED UNIT DEVELOPMENTS (REQUESTED SITE: 211 FLORENCE AVENUE; 313010.45.8853.000; ZONING: MX)

The following were sworn in: Ed Parvin, Mike Bartz, Tim Owens, Duke Hagestrom, and Gary Ferguson.

The Town Planner, Ed Parvin, presented this item. He said this is a CUP request for 3 units at 211 Florence Avenue. The site was originally approved as a duplex and the applicant is looking at putting three 2 bedroom units with 2 units on Florence and 1 unit on Harper. They are both separated by an indoor pool. The zoning is MX and it is in a flood zone. This is an existing building. The footprint of this lot has not changed. He showed the original plat of lot 11. It is a fairly large building going from Florence to Harper Avenue. He showed pictures of the building fronting on Florence, across the street on Florence, the building fronting on Harper and the properties to the west, east and across Harper. Going back to Florence he showed the fence that would be moved back to accommodate some parking, the tree will be able to remain to accommodate the parking spaces going in along the side of the building. Some of the shrubs on this side will have to be removed. Planning and Zoning made a motion to approve the CUP. There was one additional condition that they discussed and asked to be put on the permit. There were some building code issues at the time of the Planning and Zoning meeting, the building was condemned and Mr. Bartz has done a lot of work and been able to remove that condemnation placard, but there are still some building code issues and, for safety reasons, Planning and Zoning wanted to see those things addressed at a time set. There is

also some zoning things that would have to be done, mainly for parking especially in the summer season. There are some concerns from property owners that the parking has overflowed onto their properties. We met with Mr. Bartz and he felt that by May 31st he would be able to have a couple of building code issues that he had remaining fixed and could have his parking in place. That was the additional condition. He put up the site plan.

Councilman Wilcox asked if the application for CUP's didn't require a larger plan than this in both the existing site plan and proposed site plan. He can't read this. Mr. Parvin said there should have been an 11"x 17", he doesn't know what happened to their packet. They had an 11" x 17" that was scaled.

Councilman Lewis asked if they are proposing to take the whole building down and rebuild it. Mr. Parvin said they are going to do some renovations to this building. There are some minor things they will have to do, put a 1 hour separation wall, put in some HVAC units.

Mike Bartz, 211 Florence/212 Harper, said the house was originally built in the late 1940's and the original red brick house on Florence Avenue was originally three unit's the owner built. They lived up in the front and the two 2 bedrooms they rented out and that was their retirement. All of the plumbing, everything electrical is already there. He is proposing is to turn the site on Florence into a large 2 bedroom, a smaller 2 bedroom then across the pool would be the third unit. The size of the building won't get any larger or smaller. I have been working with Richard Lang and will have to put in 6 parking spots which he thinks in the neighborhood will be a plus because, as you saw in some of the pictures, most of the people parked on the public right-of-way there. He will have 6 parking spaces on his lot and would guess that is probably more than anybody within a 2 block radius, as far as residential, and thinks that will be an asset. The other things he will have to do - he is in the process of redoing all the electrical and been updated and is waiting to get the meters installed providing he gets the CUP. Also build the 1 hour firewall. He will have to install new heating in one of the units to make that separate unit code. Most of the stuff is ready to go.

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

Duke Hagestrom, 920 Riptide Lane, said he has seen some of the work that Mike himself has done and knows he does quality work. He has gotten to be a part of a couple of projects he has worked on. He is really good people and I think this property makes sense divided into those three units.

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

Councilman Wilcox made a motion to approve the conditional use permit for 211 Florence Avenue based on the applicant's presentation, that it meets the 4 general conditions, 7 specific conditions, is consistent with TRC, planning review and is consistent with the land use plan, as follows:

The Town Council of the Town of Carolina Beach, having held a public hearing on March 08, 2010 to consider the application submitted by the above named applicant for a Conditional Use Permit to accommodate a triplex and having heard all the evidence and arguments presented at the hearing, makes the following findings of fact and draws the following conclusions:

1. The property is in the MX zoning district
2. The site requires 6 parking spaces; 6 are being provided.
3. The property is in a AE-13 Flood Zone
4. The total lot coverage is 3,770 square feet of the 8,050 square foot site or 46.8% lot coverage.

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 the Town of Carolina Beach be **GRANTED**, subject to the following conditions:

1. 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 beginning operations.
2. The site plan corresponding to this approval was designed by Reynolds Architecture dated January 4, 2011 with revisions on 1/26/11. The plan was stamped received by the Town of Carolina Beach on 1/27/2011.
3. The approval of this site plan shall expire 2 years after the state permit extension act ends, or December 31, 2013.
4. Waivers are granted for landscaping, curb, and gutter requirements.
5. The site improvements needed for the three units to meet building and zoning codes shall be done by May 31, 2011.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING - REQUEST FOR A CONDITIONAL USE PERMIT AND A VESTED RIGHT FOR A "SITE SPECIFIC DEVELOPMENT PLAN" TO RENOVATE, CONVERT AND EXPAND THE EXISTING BUILDING INTO HOTEL ROOMS (REQUESTED SITE: 104 WINNER AVENUE; 313006.47.9654.000; ZONING: HB)

The following were sworn in: David Pierce, Tim Owens, Ed Parvin, and Gary Ferguson.

The Town Planner, Ed Parvin, presented this item. He said this is a request is for a CUP to convert an existing building into 6 hotel/motel rooms. The description that we had on file is listed on here, what this building was in the past, it has been commercial use. In talking to some people who have some history in the town, there have been several different uses at the building. What Mr. Pierce is looking at doing is creating some efficiency units, basically a standalone hotel but it is going to be run out of his Drifter's Reef right now which is across the street. He is looking at doing 6 rooms now and having a phase development for potentially adding 6 above it in the future. These lots on Winner Avenue were originally platted out as 25' lots and this is three of them combined. He showed pictures of the site, Drifter's Reef across the street, looking down Winner Avenue, and property to the west. The town has a pump station just to the west of the property. The town owns a 25' lot that is adjacent to Mr. Pierce's property. There is actually a little bit of encroachment on his property. He showed more pictures of Mr. Pierce's property, across the street on St. Joseph. Planning and Zoning looked at the proposal and recommended approval with the conditions placed in the grant order by staff. It's going to be 6 rooms. There is an encroachment on the rear property line, there is a door that walks out onto the property to the rear which will be removed and will remove a nonconformity there. The second phase with be those 6 units staggered right on top of the original six.

David Pierce introduced himself and asked if they had any questions.

Councilman Lewis said he appreciates all the reinvestment the applicant has done in the community. Every time he turns around he is doing something wonderful for the town and thinks it is a great use of the property.

Councilman Lashley asked if they approve both phases or does he have to come back for the second phase.

Mayor Macon said this would be for both phases.

Mr. Pierce said he had a question about the encroachment. The lot beside it the town owns, if I wanted to purchase that lot, what would be the procedure for that? Is that something we can talk about tonight?

The town manager said he is planning on going ahead and marking those corners to make sure that we are or are not encroaching. I think probably the fence is what is encroaching. As far as purchasing it, there is a procedure in the general statutes that sets forth purchasing property and there is an upset bid procedure and a process. It is up to Council if they want to pursue that or not.

Mr. Pierce asked if Council could advise staff to look into that or start that process.

Mayor Macon said he would start that process by following the statute and submitting a request, the town manager will help him with that.

The town manager said they can look at it and will probably need a survey. I guess you wouldn't want to purchase all of it, it would just be that portion where the lift station is not. They could put an easement on it too.

Mr. Pierce said whatever is best.

The town manager said he could get with him maybe later this week or next week.

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

There being no public comments, **MPT Efirm made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Mr. Pierce asked about the restrictions or comments by Planning and Zoning.

The planning director said Planning and Zoning didn't add anything, and we only had 4 conditions associated with this:

1. 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 beginning operations.
2. The site plan corresponding to this approval was designed by Reynolds Architecture dated 1/8/2011 with revisions on 1/26/11. The plan was stamped received by the Town of Carolina Beach on 1/27/11.
3. The site specific development plan is being approved for a two phase project to expire 5 years after the state permit extension act ends or December 31, 2016. Phase 1 includes completing renovations to convert the existing building into 6 hotel rooms. Phase 2 includes adding 6 additional units directly above the existing building.
4. Waivers are granted for landscaping, sidewalks, curb, and gutter requirements. Landscaping shall be provided in accordance with the site specific development plan.

All those conditions that you placed upon yourself meeting the zoning ordinance at the time will be in place.

Mr. Pierce said the reason for the waiver on the landscaping is because of a really large tree that is nice.

The town manager said the one parking space that is on Winner Avenue, is that deleted or part of the site plan, showing a handicapped?

The planning director said it's not needed. He needs a handicapped parking space.

The town manager said there is one up there and we generally don't let parking right-of-ways configure like that.

The planning director said that is not a required parking space.

The town manager said even in the right-of-way we generally don't allow parking and would suggest we not stripe that one.

Mr. Pierce said he is referring to the one that is a paved space that is there now.

The town manager said if it is a paved area now and is delineated as that then maybe we can keep it.

Mr. Pierce said it is delineated but not paved. It's the one that Don put there.

Mayor Macon said probably for the restaurant because that was overflow parking for the restaurant.

Councilman Wilcox asked if they can get accurate maps and correct scale in the future on these things. We shouldn't be seeing something different up there than what they are seeing in their packets. I don't know what Planning and Zoning saw but it seems kind of odd. This site has challenges with regard to the setbacks and if he is building within that footprint, I don't have a problem with that, but if this building were to get torn down in the future and rebuilt they would have to meet the setbacks.

The planning director said the rear setback is what the concern was and we have interpreted the ordinance to say as long as you are not increasing the degree of non-conformity you can still go vertical with your building and go straight up as long as you don't go further into the rear yard setback than what you already are.

Councilman Wilcox said the CUP running with the land is to build this building straight up in its existing footprint, if the building were all completed and get torn down they would have to meet the current setbacks requirements.

The planning director said yes, if it was destroyed by more than 50%. That is in the zoning ordinance.

Councilman Lewis made a motion to approve the conditional use permit for the site designated as a 6 unit hotel at 104 Winner Avenue with all the standard conditions approved by Planning and Zoning as well as the conditions outlined by the planning director and that it is consistent with the land use plan:

The Town Council of the Town of Carolina Beach, having held a public hearing on March 08, 2010 to consider the application submitted by the above named applicant for a Conditional Use Permit to accommodate a 6 room hotel and having heard all the evidence and arguments presented at the hearing, makes the following findings of fact and draws the following conclusions:

1. The property is in the HB zoning district
2. The site requires 12 parking spaces; 12 are being provided.
3. The property is in the AE 12 flood zone
4. The total lot coverage is 2,622 square feet of the 8,865 square foot site or 29.57% lot coverage.

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:

5. 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.
6. It is the Town Council's conclusion that the use meets all required conditions and specifications.
7. It is the Town Council's conclusion that the use will not substantially injure the value of adjoining or abutting property.
8. 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 and a vested right for a site specific development plan by **the David Pierce** be **GRANTED**, subject to the following conditions:

1. 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 beginning operations.
2. The site plan corresponding to this approval was designed by Reynolds Architecture dated 1/8/2011 with revisions on 1/26/11. The plan was stamped received by the Town of Carolina Beach on 1/27/11.
3. The site specific development plan is being approved for a two phase project to expire 5 years after the state permit extension act ends or December 31, 2016. Phase 1 includes completing renovations to convert the existing building into 6 hotel rooms. Phase 2 includes adding 6 additional units directly above the existing building.
4. Waivers are granted for landscaping, sidewalks, curb, and gutter requirements. Landscaping shall be provided in accordance with the site specific development plan.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING - CONSIDER ALLOWING EXISTING DRIVE-THRU FACILITIES IN THE CBD TO EXIST, EXPAND, AND/OR IMPROVE BUT PREVENT ALLOWANCES OF ANY NEW DRIVE-THRU FACILITIES TO LOCATE IN THE CBD; AMEND ARTICLE 3 PERMISSIBLE USE TABLE; ARTICLE 18 NONCONFORMING SITUATIONS AND ARTICLE 23 DEFINITIONS (ZONING: CBD, HB)

The Town Planner, Ed Parvin, presented this item. He said this has been an ongoing discussion with implementation of the master development plan and allowing the types of uses we want to see in our CBD be consistent with that. These are things that the Town Council Master Development Plan Committee and Planning and Zoning have talked about since we made an ordinance allowance allowing McDonald's to expand in our nonconforming language which is McDonald's located in the CBD. I will go through 4 options on the next few slides and some pros and cons. We never came to an agreement at Planning and Zoning so I will try to go through them slowly and then at the end I will put up a summary slide that will hit upon the 4 options in one sentence apiece.

The planning director asked Mr. Parvin to explain where we are right now with allowances in the CBD for this type of use he thinks it would help Council and the public better understand where we are.

Mayor Macon said he thought we already handled this?

Mr. Parvin said we handled it for drive-in restaurants, we made an allowance for McDonald's and Hardee's to expand which they wouldn't have been allowed to do under a nonconforming language. But what Council was interested in doing and different committees, was making sure that we took out other types of drive-in facilities, some of the vehicle oriented uses and that was one of them. Banks was another one. So what we are doing is basically the same thing that we did for restaurants we're going to try to do for banks as well. BB&T and the Bank of America being the two in the CBD, we're going to give them the allowance to stay but not allow additional drive-in facilities to come in whether it's a bank, restaurant, a retail establishment with a drive-thru like Brew Thru or pharmacy like CVS. Those are the types of uses we are eliminating in the CBD and we are creating a new type of use in the HB district that's going to be drive-in facilities. In the HB where you want to see that type of use, your going to have drive-in facility and any kind of drive-in facility will be allowed in HB. That is kind of the history of it and then when we got to Planning and Zoning we had three different motions and I've got four different options. Option 1, which is the most restrictive, would be that you exempt the current businesses, those being Bank of America, BB&T, Hardee's and McDonald's, from the part of our nonconforming language that allows expansions. Essentially only the McDonald's that is located at that location will be allowed to expand. Under this option only that McDonald's could be there. You couldn't have McDonald's close up and Burger King come in under this allowance. Pros: It gives the existing business the ability to expand which is what we have already done for McDonald's and do renovations to the building. If McDonald's leaves then only uses other than a drive-thru may locate at this site. That is a good thing because that supports the master development plan and we hopefully get somebody coming in with the types of buildings we're looking for in our CBD. Cons: It limit's the allowance for similar drive-ins to locate at this site. Also, there is a fairness issue which we are making specific allowance just for McDonald's. Also, we're pretty much grandfathering in McDonald's forever. McDonald's could go away and then they want to come back years later and you would have to allow them to come back under this ordinance. Option 2, this was not one of the motions but this was something discussed at Planning and Zoning and the difference

between this one and the previous one, the previous one McDonald's was the only one at that location as an example. Under this one, it's restaurants for restaurants. As long as you have a drive-in restaurant at one of those locations or a drive-in bank at the other locations it would be okay. This is not as restrictive as the first one. Pros: This allows for a drive-in business at this location to expand as long as it's the same type (i.e. restaurant for restaurant). If the specific type of use leaves (i.e. drive-in bank), the new use can only be a drive-in bank, or a conforming use. Cons: Only the same type of use may locate at this site in fairness to others wanting other types of drive-ins on that property or within the CBD in general. The specific type of drive-in will continue to be allowed forever. Option 3 was made by Planning and Zoning. None of these options passed, they could never agree on one of them. This one basically says you have your four drive-in locations, and we're grandfathering those in to allow expansions and under this option, as long as it's a drive-in facility. So if McDonald's wants to leave, as long as there is another drive-in facility whether it's a Brew Thru, a CVS, a bank, etc., it would be allowed. Pros: Allows any drive-in business at the location to expand. If a drive-in leaves the site, the new use will have to be consistent with the regulations of the town. Cons: Fairness to others wanting drive-ins within the CBD in general. Drive-ins continue to be allowed on these sites forever. Option 4 is the least restrictive and is to go back to how we were before and allowing these uses in the CBD. There was a motion and no second. Pros: It's fair to everybody and it removes special allowances that were put in Article 18 for nonconforming language. Cons: Promotes businesses that are not consistent with the vision for the area that we have in the master development plan. For large developers who are looking at investing in the area it may discourage them if they are uncertain as to what the plan is for the area, and if they're wanting to do something consistent with the area and there could potentially be drive-ins around them that might not be consistent with the type of development we're wanting to see. It also inhibits our ability to develop Lake Park Blvd. as the town's "main street" and primary retail destination, create a connected pedestrian system and improve traffic flow; and create a hierarchy of gateways and development patterns that announce the arrival to the town, CBD, and the beach. This is something that we didn't talk about at Planning and Zoning but with all these options it's something that staff really talked about over the last month and we need to get clarification on and that is does Town Council want to exempt McDonald's and the other drive-in facilities in the CBD from just the regulation that prevents nonconforming uses to **expand** or does Town Council want to exempt drive-in facilities from all sections of the nonconforming ordinance or just specific ones. I listed the three main ones which are **expansions, 50% rules, and abandonment (180 days)**. In summary you have your four scenarios that have been discussed by Planning and Zoning: Option 1 - most restrictive, using McDonald's as an example, only a McDonald's can stay at that location. Option 2 - if it's a drive-in bank it has to stay a drive-in bank. Option 3 - these four locations would be the only ones that have drive-in facilities no matter what the drive-in facility is. Option 4 - allow all drive-ins in the CBD. The final thing to decide once we know which way or if there is another way we want to go with this, we also need to know to what extent we're interested in grandfathering these. Is it just expansions or other parts of the nonconforming language?

Councilman Wilcox said when you talk about allowing these rights, in option 3 it says to allow anybody that moves into the building. I haven't heard much discussion about whether these exemptions will run with the property or they run the business or the use, a few discussions there about maybe being able to change hands. Typically your nonconformity is for purposes if it ever gets all torn down and you want to put something else there that meets the new ordinance. I've never seen a Harley's move into an old McDonald's or Hardee's building, they just don't do it. They tear them down and build new buildings. It is not clear to me that we are suggesting that by any of these options that we choose that if they tear the whole building down and build it back up that they are going to be allowed to build it back with the drive-thru. For instance, if McDonald's leaves the building and somebody comes in and buys the property and tears it down. Where is that really addressed to?

Mr. Parvin said the 180 days is the address. If you tear a building down and you're going to be closed for 180 days.

The planning director said the 50% rule is what is kicking in there. That is the issue. When we talked about McDonald's originally the issue was can you expand a non-conforming use and Council agreed, yes, we should allow that to happen. Then Councilman Lewis came back and said if we are going to do this to McDonald's then let's go look at every other drive-thru facility that we have and we said okay. Then the questions started to begin which was just what you asked. How much can you replace, take away, can you change one drive-thru facility for another drive-thru facility. Then it occurred to us that maybe we were only talking in the past about McDonald's about only the expansion. The 50% rule we didn't talk about but I believe Council thought that when we exempted McDonald's we exempted them across the board, we went and said not only are you exempted from the expansion, you're exempted from the 180 days if you stop operating for 180 days you can't open up again. That's the way the nonconforming rule reads today but staff didn't really get that level of specificity when we came to you with the McDonald's example. We only said can you expand and Council said yes. We didn't talk about the 50% rule either and if half the building is destroyed by whatever means, natural or voluntary. Those were the questions Ed is asking at the end here. I think we should begin with the McDonald's and say do we really want to allow McDonald's or any drive-in restaurant to be able to be totally rebuilt again at that location.

Councilman Wilcox said that the five where you get into that. In the four previous to that it is not clear to me what they're suggesting. Are you suggesting that that 50% rule still applies on those four other conditions that they would not be able to do over 50% and still maintain those privileges?

The planning director said that is the question I think we are trying to say to Council that you don't really have a nonconforming ordinance if you are going to allow all of those things to go away. In other words, if they are not held to the 50% rule, to a timeline for reestablishing themselves and if they can expand then they are really not nonconforming. They probably ought to be considered a permitted use or a conditional use.

The town manager said when we adopted it we only exempted them from the expansion part and the other items we said if you tear it down then you're done or if you are closed for over 180 days then you are no longer a drive-thru restaurant. That is all we addressed.

Councilman Wilcox said also to him if McDonald's were to leave that building, all kinds of potentially drive-thru businesses might come and use that that may not be as desirable as McDonald's to our CBD.

The planning director said they couldn't get a consensus from P&Z and we didn't get into the three conditions of a nonconforming use. We only started talking about whether you can take a restaurant and replace it with a bank? Can you take a bank and replace it with a pharmacy? Are we grandfathering in the exact site, the actual lot? That's the question and that is where they started going back and forth. They wanted to be fair but they wanted to be fair to the person next door to them who wouldn't be granted that same privilege. When you look at Hardee's and McDonald's, they're side by side, but let's suppose when you look at BB&T right beside them, that's the real estate office, is the real estate office going to feel slighted that they can't open up a brand new bank if they chose to do so at that location where they are now but right next door to them in the same zoning district a guy can come in and tear down the BB&T and build another bank or restaurant or anything that is a drive-thru facility. Those are the questions that P&Z had difficulty with.

Councilman Wilcox said if the Council were to suggest that they don't want new drive-thru businesses opening in the CBD but they are fine with the businesses there now and then you follow the logic that if McDonald's or BB&T or somebody decides they want to tear their building down tomorrow and build a building that is more suited for that site, better for the community, it's safer, has all that new stuff - we wanted to do that then all we would really have to do is maintain the restriction in the zoning area but remove the nonconformity issue, correct?

The planning director said that is correct. We make that use then virtually a permitted use. I had a brief conversation with the town attorney about this today and we were discussing what would be the best solution to this problem because when you are dealing with nonconformities it is the most difficult thing to deal with in zoning. It was suggested that maybe to look at an overlay and say in these spots, when you start looking at McDonald's, Hardee's and the bank they are all in alignment, same block and same side of the street, that's the problem and we're trying to figure out could we perhaps develop an overlay and say these businesses at these locations are, instead of grandfathered, permitted by right and can be replaced and changed if that is the direction Council might want to go toward. Do we want to grandfather that site forever for drive-ins? That is not consistent with the master plan.

Councilman Wilcox said he personally would not want to see a drive-thru cleaner go there. The banks and restaurants serve that area of the community well but I have concerns about other uses.

Councilman Lewis said are we still not talking about drive-thrus in general because in contemporary cities across the country drive-thrus are in 25 story buildings and I think we have them here in Wilmington. In most major cities they have restaurants, coffee shops, cleaners, CVS stores in the same building as either residential or retail or mixed use so those driveways are still there. So we're saying those types of developers couldn't develop in the CBD. You would have to put your building with no drives at all, there would be no way to drive through the place, right?

The planning director said if you are talking about a drive-thru facility, I'm not sure I can agree. I think when you go to any city in this country, I don't see drive-thru facilities in downtowns or their CBD. Maybe I'm not looking at the same cities you're looking at but when I go to Greensboro or Asheville or anything in North Carolina or even up north.

Councilman Lewis said in Wilmington they have a drive-thru bank and upstairs is an office building 6 stories tall.

The planning director said he is saying typically and those would have been there forever and the question becomes one, do we want to allow those? I don't think you could open up a new one in downtown Wilmington. The answer is no, they are not allowed uses.

Councilman Wilcox said that is what our HB district is for.

The planning director said there should be some recognition, like we did for McDonald's, these people have been with the town since the 70's or 80's. Let's continue to allow them to exist and expand and improve. If we want to hold these people harmless against their nonconformities, we can get right to the brass tacks and say McDonald's, McDonald's only. That's what you can do at that site. Is that what you want? That is where P&Z had some real difficulty. They could not come to an agreement on what level of drive-in they wanted to see in our CBD.

MPT Efird said it took a long time to get Hardee's and McDonald's there that everybody could walk to from the beach and loved. I think we need them.

Councilman Wilcox said I don't think there is any question that we need them. The question is forever is a long time.

Councilman Lewis said he has a problem with McDonald's only because one of his former clients is Young Brands and they are basically KFC and Taco Bell and they put those two of stores together. McDonald's could make the decision to buy somebody else and have McDonald's plus whatever it might be and have it in one building. That could definitely be part of it. So we're saying we can't do that here. Mr. Anderson if you

wanted to expand and put that extra money in the building, you can't do that here, you can just do McDonald's only. That doesn't make sense to me.

Councilman Wilcox said he doesn't think anybody is saying that, I think we're just trying to figure out the mechanism to make everything work properly without creating other problems.

The town attorney said the other problem we have too in modern franchises, the franchisor has the power to compel the franchisee to tear down, start over and put in a new modern prototype. The franchisee has no choice or they could lose the franchise.

The town manager said he thinks it is fairly simple. We have made some accommodations for McDonald's and I guess any drive-thru restaurant. Do you want drive-thrus in your CBD or do you not want drive-thrus in your CBD? What types of drive-thrus do you want, restaurants, banks, etc.?

The planning director said this is a public hearing. We couldn't get a recommendation from P&Z that was consistent. They couldn't come to a consensus on this.

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

There being no public comments, **MPT Efirid made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Councilman Lashley said we have four sites in our CBD with drive-thrus and I agree with Pat that people want to walk to those sites, there's nothing wrong with keeping those four sites and put whatever you want to at those sites as long as it's a drive-thru. It doesn't even have to be a drive-thru if somebody wants to buy it and put a hotel there, they would have to come in here and ask us. We have four sites and we don't want anymore, as far as what I am hearing, but those sites should be open to any business who wants to put a drive-thru in there.

Councilman Wilcox said he differs with him a little bit. I think those particular businesses are of benefit to our downtown. I am not sure that all drive-thru businesses would bring the same benefit. I would be in favor of pretty much allowing them to tear down and rebuild. Those are both always going to be drive-thru restaurants, those are both always going to be drive-thru banks unless there is some provision that could be built that they could abandon them and never use them for anything again. I don't know what would kick that in. I don't want to see a drive-thru cleaner going in there, video store, or whatever. I don't think those bring the same benefit to our CBD. I would like to limit it to two restaurants and two banks.

Councilman Lashley said you can put anything you want in the HB as far as a drive-thru.

The planning director said what he hears Council saying is let's grandfather those uses, restaurants and banks at their locations, against all of those provisions of our non-conforming section being the 180 days, stops, expansions and not a 50% rule.

Councilman Lashley said, yes tear it down and build something beautiful.

Councilman Wilcox said he has a little bit of a problem with unlimited time because if they close that McDonald's down and nobody comes in and it sits there not being used or blighted for a year, it's not doing us any good but I think 180 days isn't adequate for them to figure out what they are going to do with it either.

The planning director said perhaps we can change our nonconforming ordinance and just add that provision and instead of 180 days let's put all of our nonconformance for a year. We can revisit our nonconforming language and make it a year if that works. That way when we change it we're not going to isolate it just to the CBD but for the entire beach.

The town attorney said he wanted to ask a hypothetical to address Councilman Wilcox. Let's assume that BB&T closed or failed or what have you and that building stays vacant for a year and a half, nothing happens and that is understandable even in good economic times. Let's say Bank of America wants to now come onto that site, tear it down and put a bank with a drive-thru there. Is that good or bad? I think if you are not careful you even preclude that situation from happening. I understand your concern about the abandonment but, on the other hand, let's say Hardee's or McDonald's closes and Popeye's comes by a year and a half later and wants to do something with the site. Do you want to foreclose that?

Councilman Wilcox said his concern is that a lot of these corporations will close and hold onto that property and they will hold on to for extended periods of time, years, and that is not servicing our CBD if that becomes the case. If a year is the time limit or two years, whatever gives them time to go out and seek new, to sell that business or lease it or whatever. It's not doing our CBD any good to have a business sitting there empty.

The town attorney said so your point is to have a built-in incentive for the owner of the property to get on with the program and put something there.

Councilman Wilcox said I don't think it should sit there for an unlimited amount of time.

The planning director said it could become a blight in our CBD. You see it already now.

The town attorney asked the planning director if the idea is to have this particular ordinance that this language applies throughout the entire CBD or is the thought that it would be limited to banks and restaurants that are on state maintained highways.

The planning director said the four sites that we have, it would be applicable to that but they couldn't be, if I'm hearing Council correctly, jumping back and forth changing their uses. You couldn't go from a bank to a restaurant, if I heard Council correctly. They went with what Ed showed as option 2.

The town attorney said he is not sure he heard that.

The planning director asked if he heard that correctly.

Councilman Wilcox said when he speaks he is only speaking for himself. I don't think it would be as good to have four drive-in restaurants down there because I think we have other places they can go.

The planning director said they are trying to move them. Nonconformities by their very nature should not be encouraged to remain and that is the problem because anything we do to encourage their survival I think we are going to continue to have them. I couldn't agree more with Pat, she is exactly right. They are part of the community and we don't want to just disregard them like they are not part of us but at the same time we are a growing town. We want to make certain that we make certain improvements to our CBD. Again, as a planner we focus on the master development plan and I think we are holding that out there as something to strive for. That is the importance I think of following through with some rules about drive-thru facilities in our CBD.

Councilman Wilcox said we are focusing on the drive-thru aspect of it and I think that is obviously what we are dealing with. The way I am looking at it is the value of those businesses goes beyond the drive-thru aspect of them. There are people who walk and ride their bikes to them and they are part of a vibrant CBD as ours exists so I like having them there but I wouldn't want them to increase and I wouldn't want to end up with four fast food restaurants right there in that clump either.

The town manager said he thinks they can come up with some language and bring it back and table this matter.

The Town Attorney, Steve Coggins, said he agrees that they should table the matter but he also agree that the current status of your nonconforming ordinance is untenable. You can see that it is totally incongruent to say it's okay to enlarge but you can't replace or rebuild. I think the court would find that irrational is subject to equal protection challenges.

Councilman Wilcox said he would hate to discourage somebody that like Hardee's wants to tear down and build a brand new beautiful facility there that would better serve our community because of nonconformity language.

The planning director said Councilman Lewis brought it up, it was a fairness issue and staff totally agrees with that.

Councilman Lewis said he just wants to be as fair as we can across the board. We have properties sitting all over the CBD, nobody really has the money to invest.

Councilman Lashley said we want to keep four places as drive-thrus, right? That's the bottom line and you want to keep it to restaurants or banks. Is that what I'm hearing?

Councilman Lewis said he'd like to keep open to ... *(note: inaudible)*

The planning director said staff would bring back two options.

PUBLIC HEARING - UPDATE OF WILMINGTON BEACH STREETS AND DRAINAGE PROJECT AND TO CONSIDER ANY FURTHER FINANCIAL, LEGAL OR ADMINISTRATIVE ACTION WITH REGARD TO THE WILMINGTON BEACH STREETS AND DRAINAGE PROJECT AND INSTALLATION OF WATER AND SEWER IN A PORTION OF THE PROJECT

The town manager presented. He said they have basically gone through the entire process for Wilmington Beach. We have completed the assessment process, permitting, plans and specs, bid the project for financing and construction and submitted the project to the LGC for review and approval. During that process of submitting it to the LGC, they started questioning two items of our assessment phase. The first one was NCGS160A-223(7) "An order setting a time and place for a public hearing on all matters covered by the preliminary resolution which shall be not earlier than three weeks nor later than 101 weeks from the date of the adoption of the preliminary resolution". The other thing they were questioning was NCGS160A-217 where it talks about 50%, basically you can't go over 50% unless the petition says so. Those two things we really sat down and looked at, I had to go back and research the record. The two things that we came up with are (1) during the process we probably missed the mark back in 2005. The resolution was adopted on May 17, 2005 and the public hearing was set September 13, 2005 which is outside of the 10 week span. I think the intent on that day was to resend the existing preliminary assessment resolution and put another one in but we had a hurricane on that day and our meeting got pushed back to September 27th. On that day another preliminary assessment resolution was adopted that changed the 100% to 2/3 to 1/3 and we missed the front end which is three weeks so we only advertised for two weeks. So we missed it that time too. What I am recommending and the attorney and I have talked and the LGC agrees is that we probably need to go back through the process to advertise for these assessments. We notify property owners. I'm not proud that we have to do this but it is what it is. The contractors agree to hold the bids for another 30 days so we should be fine with that respect. The LGC has tentatively approved our application and it has agreed to allow us to go back through the process to make sure that we are fine. As far as greater than 50% of the cost being assessed, we feel like we are on solid ground. I don't know that there have been any challenges. We have done it in the past, we don't have to have a petition, we're exempt from the petition regulation as far as the North Carolina General Statutes go. We don't have to have a petition to pave roadways, we just have to go through a process. What we are recommending is basically there is a preliminary assessment resolution, these are the areas that would be affected. The preliminary

assessment resolution that you have is 11-1047 for street paving and drainage improvements on unpaved streets within the subdivision known as Wilmington Beach. It goes on to set forth different terms, the streets that are basically in general and the streets that are included and the number of parcels that we counted that are included are roughly 460. It goes into a little more detail than the assessment resolution that was approved in 2005 and goes into what is a 50' lot vs. 100' lot and how they are split up. This resolution also sets a public hearing for our normal Council meeting on April 12, 2011 at 7:30 pm at the Town Hall. This resolution will be advertised per the general statutes and it will also be sent out with this map and everything in a notice to all the property owners that are impacted by the assessment process. I hate that we have to go back through this process but it's in order to be out of abundance of caution and work well with the LGC which we try to do. The only thing I am requesting that Council does is to go ahead and open up the public hearing, we don't necessarily have to do that at this point but I feel like it is another good faith effort of getting more public input.

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

Geri Graham, 1306 Snapper Lane, said it is so disappointing that we are still working on this and would like to know when we start the process again when we go through this and praying that all will go well and we have no more hurricanes in the middle of everything. When do you think we can start getting those roads paved?

The town manager said as soon as we get through the process and the LGC approves it, we do notices to proceed and probably within 30 days of that so hopefully by May.

Ms. Graham asked if there is a chance with the new public hearings that this could be overturned or something could be changed.

The town manager said yes, the Council could not adopt this preliminary assessment resolution and it could be overturned. There is always, while we're doing this, that we hope that we are putting ourselves in a better legal position in case it is challenged. What happens at the very end you go through a final assessment role process and that is when folks have the right to challenge their assessment and we just thought it would be in better standing if we go through the process again.

Ms. Graham asked what he thought the chances would be that the cost of this project would be greatly increased because of the gas prices.

The town manager said there are some built-in mechanisms for the gas price in there. We use an index mechanism, so it could happen that it could be more expensive at some point.

Bill Strickland said he hopes he doesn't have to come back and talk to them anymore about streets in Wilmington Beach. Not being real ugly about this, we have dug our feet a long time and should have been done a long time ago. I heard last summer, then I heard this summer and if there is any way - I don't know who you are talking about that has to approve the public hearing again but it's been done one time. It's just prolonging everything. Nobody showed up the first time or very few. Whatever we do I would like for us to do it as soon as we can and not keep putting it off. The oil prices are going up and I would hate for oil to be \$150 a barrel when we do the paving. I know you have something in your contract that is going to escalate the price somewhat too when the roads are paved. I have offered my assistance in the past and if there is anything I can do, just call me.

Mayor Macon said we do want to say, too, that the delay was not the town's fault, it is this time, but the delays before were because of Division of Water Quality and the Corps of Engineers and permitting.

Randy Simon, 1410 Snapper Lane, said he appreciates their candor but there have been so many setbacks so he appreciates the dilemma that the people you just heard speaking at the podium in reference to this, with regard to this, setback after setback going for years and years. I know you worked hard Mr. Mayor, Dan and Pat addressing these years of different government agencies taking (*note: inaudible words*) to get this project completed. It should have been completed many years ago. Town Council voted unanimously in 2005 to do it. My contention is that this be a most important priority or at least one of them to the town to get this project completed and also a different clarification on the sidewalks themselves. Is there still availability for sidewalks on three of the major roads such as Ocean, Alabama and Tennessee? If not, is there anyway we could still encourage to try to remedy this if, for nothing else, for safety reasons. The traffic on our island has grown, that is a big plus. Do we have slowdowns and stoppages on our major arteries; absolutely. With the aspect of implementing signage diverting traffic, for example, on Ocean Blvd. going toward Dow Road, that is one of the main arteries of pedestrian traffic. People park on all the side streets, get their children out and proceed on dirt shoulders on a roadway that has 90' of width. Do we still have the availability to provide a safety sidewalk for at least on those individual highways?

The town manager said there was some discussion, and the original thought was no. We bid it out and we were going to bring it back and try to nail down a cost of what Ocean might be on a per foot basis. There has been a decision that there will be no sidewalks.

Mr. Simon said Council can see the increase in traffic and now we are going to put a stronger burden, on Ocean in particular and maybe more on Alabama and Tennessee. Are we not going to have to look, conscience-wise, to provide a safety barrier of sorts for the people walking to and from that particular intersection of Lake Park, 421 and Ocean Blvd.? I would strongly encourage Council to please take another look, if not the three then at least that one primary road with the wide berth of being the width of that variance being a state highway of 90' to at least consider a sidewalk, should be on both sides, but

at least on one side of that highway before someone gets hurt in that area. I would like to know if Council has any strong feelings on our pedestrian traffic in that particular area.

Mayor Macon said it hasn't come back to us but I think when we were discussing it before I think there was a majority of Council. I don't know what it is right now but I can tell you that I do support at least some sidewalks on those main arteries.

The town manager said it was going to come back for discussion purposes but I didn't really want to get it mixed into this right now. It has been bid and I can bring it back at a later meeting, probably the April meeting. I want to get through the assessment part and then we can tackle the sidewalk part of it if we want to.

Councilman Lashley said he thinks the Mayor gave him an answer. It's just a matter of it coming back. We talked about Ocean Blvd. and very aware of it and I would be surprised if we don't put a sidewalk on Ocean Blvd. I see three nods. It's just a matter of getting something else out of the way right now.

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

The town manager said he did ask our engineer to give us a separate cost estimate on Ocean Blvd., we just haven't done it yet. I can bring that back in April.

Councilman Wilcox said he wanted to take this opportunity to plug the town manager and town attorney because all you folks who have come to us talking about the delays and there have been delays. I have to underscore the importance of good legal advice and the town manager does due diligence. We're redoing a lot of things and finding issues that needed to be corrected that weren't handled perhaps as they should have been in the beginning. I know it is time consuming but that is what is going on.

The town manager said he thinks it would have probably been done right had we not had a hurricane and got wrapped up in that. I went back and read notes and on the 13th there was going to be a switch of this resolution and that would have given plenty of time to do what they needed to do. The hurricane threw everybody for a loop and some of those details didn't get caught. He is asking Council to adopt Resolution No. 11-1047 which is a preliminary assessment resolution for street paving and drain improvements for unpaved streets in the subdivision known as Wilmington Beach. It sets forth those terms and we'll go forward with the advertising as required by North Carolina General Statutes.

Councilman Wilcox made a motion to adopt Resolution No. 11-1047 (Exhibit 5) a preliminary assessment resolution for street paving and drainage improvements in the Wilmington Beach Subdivision. MOTION CARRIED UNANIMOUSLY.

APPOINTMENTS TO THE PLANNING AND ZONING COMMISSION

MPT Efirid made a motion to appoint LeAnn Pierce for a term ending 11/12/14 and Ked Cottrell for a term ending 6/12/15. MOTION CARRIED UNANIMOUSLY.

The town manager said that is going to create what probably should be a Board of Adjustment vacancy as well. With Council's approval we can advertise for that position.

Councilman Wilcox said we also need to advertise for two slots in the Business and Economic Development Committee.

The town manager said they will advertise for both of those.

DISCUSSION AND CONSIDERATION OF UPGRADING PARKING EQUIPMENT AT A VARIETY OF PUBLIC PARKING LOT FACILITIES

Chief Younginer said this was brought up at the first budget meeting yesterday. The town manager put together a package for you to look at parking offices here to answer some questions also. This is to look at whether we are going to finance and do this next year or look at doing it before the season starts this year and start getting some revenue in from those lots. Some of the pay stations don't recognize the new bills, they won't take credit cards and we're using honor boxes in some of the lots.

The town manager said if Council wants to go ahead and try to get this done early in the season, we can. I would like to maybe do it on a contingency basis that we have to look at the fund balance because the finance officer hasn't been in. We can order the equipment and pay cash and allocate funds from the Tourism Fund. If I see any issues there then I may stop the process and bring it back to Council.

MPT Efirid made a motion to pay cash and take funds from the Tourism Fund Fund Balance for parking equipment. MOTION CARRIED UNANIMOUSLY.

DISCUSSION AND DIRECTION REGARDING AMUSEMENT RIDE OPERATOR STANDARDS

The town manager said he placed this on the agenda at the request of Councilman Lewis so you can discuss it now or wait until April. Both of the CUP's do require that we get background checks on some of the operators. It is really up to Council on whether you want to handle it tonight or wait until April.

Councilman Lewis said one of the recommendations we had by Lt. Goodson was to require that these employees have a photo ID badge created for them.

Chief Younginer said they did call and talk to him about that and he is prepared to talk about that when he comes. We talked about him paying for that and us making the badges.

Councilman Lewis said to move this to the next meeting.

DISCUSSION AND CONSIDERATION OF A LEGISLATIVE BREAKFAST MEETING HELD BY THE CAROLINA BEACH TOWN COUNCIL

The town manager said that due to the state's economy he thinks this is important. We have a lot of legislative items that are probably on the table. We've got beach nourishment that's a concern that maybe some state representatives can help us out with. We also have our park and pier project and we really need to probably meet with our legislators. I'm not sure we're going to be able to schedule a breakfast but he would like to try to do that here in town. If that is not available, I would maybe a couple of the Council members, the Mayor and one member, go up to Raleigh and try to have a dinner or a meeting with those members. I did talk to the Mayor of Kure Beach and they would be willing to go in if we go to Raleigh and maybe have some of their members attend too. I am just trying to put together something. We have a lot of new elected officials and a lot of stuff going on at state level.

NON-AGENDA ITEMS

Councilman Lashley asked about the roof on the Senior Center. The town manager said they are working on that. Councilman Wilcox said the scope is written and the bids go out tomorrow and expects maybe within a week to have them all back. Councilman Lashley asked Chief Younginer about statistics about citations written, DUI's, etc., used to get a report but hasn't seen one for about 6-7 months. It seems like whenever he asks about that we put down skate park that it disappeared. He wanted to know if we are writing any citations at the skate park and the report disappeared. If he could see a report on what is happening in the police force as far as drugs, haven't seen that report in a while.

Councilman Lewis said the Senior Center is running out of funds for food as well. The girls at the hair salon next door have started collecting money. The Senior Center is needing food if anyone in the community would like to donate. The Help Center probably needs it as well.

Councilman Wilcox said it is one of the reasons he wanted the Arts and Activities Committee to take a look at how we are doing these events and making sure that the events are leaving some of the money on the island for the Help Center, the Senior Center, all the different organizations that are serving our community. He said he was out looking at the beach stage today and the engineer has started on that. There are some really bad walkway boards with big chunks that whole feet could fall in, 3 or 4 of them, going up the walkway that turns in front of Old Salty's. There may be others. The town manager said they would take care of them.

Councilman Lewis said he received a call from Ed Brown regarding a sinkhole at 913 and 915 Lake Park Blvd. N. where some construction was done, sewer or something, and left a big sinkhole. They have called numerous times at town hall but nobody is really helping out. Mr. Brown has businesses along there. The town manager said whenever he gets those calls, just tell them to call the town manager. If it's paving sometimes it takes awhile to get it on our contractor's schedule so that could be the problem.

The town manager said the next meeting is on March 22, 2011 so we can either recess this meeting or advertise it.

Councilman Wilcox made a motion to recess this meeting until March 22, 2011 at 5:30 pm. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Sara Hartman
Administrative Support Specialist II

Approved: _____