

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

March 9, 2010

The Town Council of the Town of Carolina Beach met in regular session on March 9, 2010 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Joel Macon; Mayor Pro Tem (MPT) Pat Efird; Councilman Lonnie Lashley; Councilman Dan Wilcox and Councilman Bob Lewis. Also present was the Town Manager Tim Owens, Town Clerk Lynn Prusa, Finance Director Dawn Johnson and Town Attorney Steve Coggins.

Mayor Macon called the meeting to order.

INVOCATION

Michelle Connet 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 following changes, as presented by the town clerk: under Item #12(a) remove the February 17, 2010 minutes; add under new business, Councilman Lashley would like Council to discuss sweepstakes parlors as Item #25(a), and consider making an appointment to the Planning and Zoning Commission to replace Betsy McQuillan as Item #25(b).

MOTION CARRIED UNANIMOUSLY.

SPECIAL RECOGNITION OF FORMER COUNCIL MEMBERS ALAN GILBERT AND JERRY JOHNSON

Mayor Macon presented a plaque to Alan Gilbert to honor him for his work as a former member of Council.

Mayor Macon said he would also like to recognize former Councilman, Jerry Johnson; however, he was unable to attend this evening due to his being out of town. Mr. Gilbert

said Mrs. Johnson is here this evening and she has asked him to accept the plaque on Mr. Johnson's behalf.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon and Police Chief Younginer recognized Mike Bojko, Police Officer I, for 5 years of service.

Mayor Macon and Gene Gurganius recognized Sheila Trott, Administrative Support Specialist, Water/Sewer Administration, for 25 years of service.

REQUEST BY MICHAEL OLIVER TO HOLD THE REVOLUTION EVOLUTION OF LOVE MUSIC FESTIVAL TO BE HELD IN LATE APRIL OR EARLY MAY AT FREEMAN PARK

Michael Oliver proposed the Revolution Evolution of Love Music Festival to be held in late April or early May, nearly a weekend long event. The festival would start early evening until midnight on Friday with live music. Music would start again early Saturday afternoon and last until midnight. The music style would vary from reggae to classic rock but would be mostly peaceful, no hard rock or hip-hop. The majority of the proceeds would go to the Carolina Beach Ocean Rescue as a donation. There would be great emphasis on picking up litter throughout the weekend and would, hopefully, be cleaner than before they got there. They are requesting to have vendors attend the event - 3 to 6 paid vendors to cover the costs of the festival allowing everyone to attend free. The donation for the ocean rescue would come from donations, local business donations and multiple raffles held at the event. They would like to have it at the north end of Carolina Beach near the inlet. They feel the porta-potties currently in place would be sufficient for the projected number of attendees - 500 or less. More toilets can be rented for the event at the request of the Council. The stage has been built and disassembled for easy transport. They feel they will need between 6,500KW to 11,000KW, two different kinds of generators depending on how many vendors they will have. Estimated cost for the whole thing is \$2,000: generator rental - \$267-\$390; liability insurance \$600-\$800; fuel for transportation of performers/generator - \$500-\$700; and food/water for volunteers - \$100-\$400. He has been putting on music festivals for 5 years in Ohio and have always been successful, largest of about 1,200 people. They have never had any problems. The benefits: will raise money for the lifeguards, town will make money from people attending, publicity for town and musicians, awareness about keeping the beach clean. They would like to work with the town and are willing to change anything to fit Council's wishes. Types of vendors would be 1 or 2 food vendors and then maybe t-shirts. He wants to have it at Freeman Park so people can camp out for the weekend long event.

The town manager said he is a little concerned as they have never approved one of these in the 4 years he has been affiliated with Freeman Park. They have a lot of events that

create a lot of staff time for police and they kind of have it down to a science. The boardwalk and the lake are better venues for the town as there is power there, bathrooms, places where folks can get food. He is not sure how vending at the north end will operate with going through the Health Dept. You have to have places to wash hands, etc. That is something that would have to be worked out if it is approved. He is not sure where the beach nourishment will stand at that point, but it has to be done by the end of April. If it is approved, he would suggest they do it in early or mid May. Sound carries out there. They would probably look upon them to make sure they have an officer or two hired through them.

Chief Younginer said they have had them show up in the past and most people will be shuttled out. If they hire an officer it is \$30 an hour and two officers for two 12 hour shifts will be \$720.

Mayor Macon said he would rather it be planned than impromptu and would rather he go about it like this to work together and make it a safe environment. He feels they will definitely need more restroom facilities and more officers.

Mayor Macon made a motion to approve the event as presented with changes to be worked out between the police chief and town manager for details and insurance.

Councilman Wilcox said the police would have to monitor the noise.

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

UPDATE BY ARTS AND ACTIVITIES COMMITTEE CONCERNING FARMER'S MARKET AND OTHER UPCOMING EVENTS

Elaine Stewart introduced members of the Arts and Activities Committee. They have put in a lot of time pulling this together. She thanked the town, the Chamber of Commerce and the Boardwalk Makeover Group for all their support. The Star News and Island Gazette have also supported them. They will also be on the NC Dept. of Agriculture's website and the localharvest.org website and the NC Farmer's Market mailing list. They attended the Dept. of Agriculture farmer's market seminar in Raleigh last month where they obtained a lot of information on running a farmer's market - met growers and farmers, how to keep vendors happy, how to take care of business, setting rules, teaming up with non-profits, universities and schools, etc. Murray Middle School's science class may be participating. The registration for the farmer's market is complete and they have a set of rules for the applicants which covers such things as vendor equipment, signs, supplies, exhibit space, hours and days of operation, setup, cleanup, attendance, vehicles, product display, permitted market items, fees, vendor responsibility of sales tax, and process and place to enforce the rules. The market will have 75% produce, 25% crafters and artists, which seems to be the norm unless circumstances require differently. They may rotate crafters. There will be an information desk and they will try to get some kind of customer count. They will soon be scheduling a volunteer meeting and vendor

meeting. They have been working on a logo, which she showed. They also have a flyer. They would like to have a flyer with the retailers in the CBD with 10% off for those who want to participate on market days. The site at the lake is mapped out and they are going to try to put everyone around the amphitheater. The refrigerator trucks will be lined up in the grassy area behind the amphitheater. The application deadline is April 1st and they are still getting them. They may have to extend along 421. As they get more they will have to meet with the town to see what they can do.

Janet Knott showed a power point presentation she did at Southeastern NC Food Systems Program project who are an 8 countywide group dedicated to placing farmers' products in people's hands. She showed a layout at the amphitheater area for the market. There are massive numbers of farmers who need a location, another venue, to market their products. Right now they have producers from New Hanover, Brunswick, Pender and Columbus County who want to participate and maybe Duplin. She gets calls and e-mails everyday and believes they will have a tremendous turnout. Right now they have 9 produce vendors, 2 bakers, 2 nurseries, 1 peanut man, and Tarheel Beef who are committed. Wrightsville Beach opened last year with 6 vendors. The project is coming along extremely well.

Councilman Lashley requested having a first aid station at the information table.

Mayor Macon opened the floor to anyone wishing to speak on this matter.

Alan Gilbert, retail business owner in the CBD, said that in July 2009 Council voted unanimously to have an agricultural only, food and flowers, at the gazebo and he thought that was moving forward at some point. A member of the Arts and Activities Committee brought that forward. His biggest concern is that they have a local art gallery and gift shop where they represent local artists and crafters on a commission basis. They also have about 6 to 8 people who do soap and he is concerned about the soap maker at the farmer's market competing with their crafters. He spoke with a number of year round businesses who pay a premium on insurance, fees, taxes, rent/mortgage. It has been a struggle keeping the doors open to get to the season. Seeing a government sponsored committee, who are doing an awesome job, serving at the pleasure of council, the initiative of an every week vending event at the lake that is disconnected from the business district - he asked a number of businesses there how they felt about that and they support an agricultural only farmer's market. They would like to see that market as a compliment to the brick and mortar businesses there. Next to the fish house there is a large public parking lot with bathrooms and they have new restaurants right there so if you are doing an 8-12 event this area would be an awesome introduction of the area to the marina. He has heard mixed discussions on why they are having a farmer's market - to service locals with farm fresh goods, bring people over the bridge, support local farmers. Local farmers on the island have said they can't make enough. The perspective from year round business owners he has spoken with is that they have a hard enough time competing and the idea of an agricultural only farmer's market in our business district, maybe by the fish house, gazebo or the green parking lot might create some cross traffic from which they could benefit. If they had a core anchor agricultural only farmer's

market in the business district he feels that would be an awesome opportunity to create a business cluster, that maybe they could open earlier, could create that cross traffic. He thinks the lake is a great venue for special events, fundraisers but not for a venue to create cross traffic. They would like to see the unanimous vote from 2009 that was agricultural only, in the business district. Maybe it doesn't have to be on the boardwalk but looking at various other venues, if this council through its committees sees fit, they would like to see agricultural only for them not to have to compete with vendors coming in from different places with jewelry and things like that. Lots of local businesses have local artists and they are all competing for a very finite amount of money during a very small season. Maybe try the agricultural only end of it and in the future, if it is not successful and it needs crafters and vendors to be successful, be considered later. They would also like to see it as a special event, rather than weekly. Wilmington has 30 farmers. Wrightsville Beach is doing agricultural only on Mondays. Wednesdays they are at the plantation. So there are 8 other communities who are doing farmer's markets that will be competing with farmers. Looking at some level of exclusivity might behoove the town. They need help Monday through Thursday in the business district. If there was something going on 8-12 on those days in the business district, he thinks it would benefit everybody. He doesn't know that they need a whole lot of help on Saturdays, especially if you are doing an event at the lake that is pulling people away. He doesn't like government competing. If they want brick and mortars and private companies to be the backbone, you have to respect what they are trying to do. He thinks agricultural only would be awesome. They have a local grocer and perhaps someone should speak to him. He feels the July 2009 agricultural only vote in the business district would benefit the whole business cluster. Maybe they could experiment with it before going full blown at the lake every Saturday.

Lynne Denne, Arts and Activities Committee member, said that the ex-committee member who came before council to get approval for it to take place at the gazebo, at the time that he did that, was not on their committee but was an individual seeking approval for that. He ended up joining the committee and left less than 3 months later. He did not represent them at all when he came before Council. About 8 months ago the committee came before Council and was given the approval to go through the town manager to set things up and that is how they began putting this together. They put it together because they saw and heard a lot of conversation about people who wanted this. Their research showed a lot of farmer's markets were started by their town governments. It isn't their desire to hurt anybody. They have great respect for Mr. Gilbert's opinion. He came to their meeting and they met with him at great length. Out of that meeting they felt it would not be fair to have so many artists there and decided on the 25% artists, 75% agricultural. She had a meeting with the local grocer for over 45 minutes and he does not want to be political but he said there are produce markets all up and down the highway, trucks who sell corn, etc., and people who are going to buy produce from a grocery store are going to buy it from a grocery store and those who perceive fresh as on the back of a truck or at a produce market, are not going to buy it from him, Harris Teeter or Food Lion. He said, "I don't give a s_____ what you do. Do what you want to do." As far as the fish house parking lot and other areas, our committee did give a lot of consideration to other areas they could have that. She has spoken to Mr. Gilbert about the marina in the

past, they have a real problem with parking in that area. Fishing boats leave from 6-8 a.m. and there is a lot of congestion. To add farmers and people in that mix would be a nightmare. They looked at the green lot but there is no power there and felt there would be a lot of problems with extension cords to each truck causing safety issues with pedestrians. They looked at the gazebo area and realized they would probably have to block some streets off and, in doing so, what would they be doing to some of the local businesses and their parking situations, such as Britt's Donuts. That took them back to the lake. They are doing this for the local people and those who might want to sell their own goods. They do hope it brings people here to the market and go to other businesses as well. They have tried to address as many concerns as they could. They have received a lot of letters and phone calls from local residents who are very excited about being able to buy things they can't buy in the grocery store. They are hoping it will enhance local business and by doing the 10% discount at shops and putting information out there that they can do some handouts and hopefully people will take a look around. She knows how hard Mr. Gilbert has worked. She has exhibited some of her art work in his business but her committee is not ruled by the fear of a few farmers who thinks they don't have enough. The committee has worked very hard and they are not afraid and are hopeful it will bring people in.

Councilman Lashley said he thinks the work by the committee is outstanding. He has talked to about 3 or 4 business owners who have small concerns, not about having a farmer's market, but about getting too far away from the produce and the competition that brings. He would like to keep the percentage of arts and crafts as low as possible. Joe Coen sent an e-mail saying he and his wife are very supportive of having a farmer's market and doesn't feel it will be a competition for them.

Ms. Denne said they would not be allowing any resale items. They want this to be a classy event. The farmers are to be the growers of the produce, not buying it elsewhere to sell. They will also have a booth there that a non-profit can use. Each week throughout one non-profit group can go do their fundraising there but it will also have to be something that they created.

Mayor Macon asked how she is holding the vendors to the 75%-25% ratio?

Ms. Denne said they have to sign up ahead of time. They have an application form which she will leave a copy of.

Mayor Macon said if the ratio was off then it would be because someone was sick or didn't show up.

Ms. Denne said they expect 24 hours notice from anyone who doesn't plan to attend and, if they do not notify them, they will see that as a violation of their contract and can pull them from the market and not allow them to return. They are not allowing any vending of food - hot dogs, drinks, etc., they will have to find it in the community. They realize they are not going to make everybody happy but they would really like to and they are doing all that they can to try to do that.

Councilman Wilcox said he has spoken to a lot of business people too and has had nothing but support. He has learned that these things are never 100%. He feels Mr. Gilbert's concerns are legitimate but he thinks there are other concerns that are legitimate also. The idea is to create community events and bring more people onto the island and giving people more things to do, you create a balance. You might sell a bar or two less of soap but you might sell a couple of other things. It also draws out local residents who might also go out and get food, etc.

Mayor Macon said, with regard to the movies at the lake, that his parking lot is full and his restaurant is empty for two hours during the movie. He has not had a measurable impact from the movies at his business. He doesn't say anything. They're not going to tow anybody. He doesn't know that anything is going to be that big of a benefit to what he is doing. He thinks the committee has taken these concerns. Let's give it a shot this year and see how it goes and we can make adjustments. It's a part of the process.

MPT Eford said she didn't think she has seen a committee in many years who has worked as hard as these people have on putting this together. She thinks they are very concerned and everyone she has talked to has been delighted about going to get some vegetables. She commended all of them for their hard work to make it happen.

REQUEST BY NANCY BUSOVNE OF THE PLEASURE ISLAND SEA TURTLE PROJECT REQUESTING FUNDS FOR THE 2010 SEA TURTLE MONITORING AND RELOCATION PROJECT

Nancy Busovne, Pleasure Island Sea Turtle Project, this is her 9th summer with the group, her 7th summer as a volunteer coordinator for Carolina Beach, and her 6th summer of holding the NC Wildlife Resources Commission and Endangered Species permit for the sea turtles in Carolina Beach. Last summer they had 13 nests, including the leatherback nests, and she thanked the town, especially the police department, for the help and support they received last summer. They put in approximately 1,700 turtles into the ocean. She is here tonight to ask for the opportunity to do it again this summer. They are going to continue at the same monthly rate, \$1,100 per month. Most of that goes to the purchase, maintenance and upkeep of our vehicles and nesting supplies. They will bill from May through August, unless they get a late nest like they did last year, and will continue it on a month to month until they are done nesting. Last year they billed through October.

Mayor Macon made a motion to approve this request.

The town manager said they will talk about it again and it will be part of the budget.

Mayor Macon rescinded his motion.

CAROLINA BEACH COMMITTEE REPORTS

Randy Simon, Police Advisory Board, thanked council for appointing Wayne Hartsell to the board. He asked council for permission to move the regular first Monday meeting of April 5 to Tuesday, April 6. They will advertise accordingly in the Island Gazette. Council agreed. He announced they will be doing a blood drive at the police training room on May 4th from noon until 5:00 p.m. in cooperation with the Red Cross. They will also be participating again in the National Night Out to be held on August 3rd where their meeting will be held at the boardwalk area making that part of the community effort. They now have a full complement of 9 members and they are looking forward to the upcoming year, making the community safer and invited everyone to attend their meetings to improve communication between the people and the police department.

Randy Simon, Harbor Commission, he reported 2 months ago about concerns regarding the floating docks in the marina area for transient dockage. They have been striving since last year to ensure floating dockage free of charge for transients to help boost our economic growth. Most boaters stop in Southport and Wrightsville Beach and we are trying to be more boater friendly. His concern was they were supposed to have the floating docks established before the fall migration, referring to this past fall of '09. We missed that. With warmer weather coming, the migration has already begun. The town manager assured him that the bids have been sent out again and have a local contractor who is going to be building the docks, hopefully, in a week to 2 weeks at most, they will be in and functional. The town manager said it will probably be a little longer than that. They are being constructed now and it may be a couple of months. Mr. Simon said they have made this one of the focal points, along with water quality, referring to the sound area here. It is a struggle to get things done with permits, bids going out, etc. He wants everyone to know this is a very important aspect of the Harbor Commission, make this a boater friendly neighborhood - this, along with the mooring field. They will not be able to open a mooring field this year but they are doing everything possible to expedite that. At the January meeting the majority of the commission met again, appearing before the Operational Advisory Board, of which he is a member, to inform them that having water quality is a top priority, along with the money that is going to be afforded, some \$35,000 which he hopes is going to be appropriated. After years of testing, they have identified the problem and we know we need to correct this problem through the stormwater system. He stressed the importance of continued testing to the town manager at that meeting but it is time to go ahead and implement at least a pilot program to start addressing the major areas of polluting. He would like to actually identify the differences between animal waste and human waste which can be done by DNA testing. If it is human waste, they need to address our sewer system, lift station areas, and identify the higher levels of polluting that we have established through prior testing. If it is animal waste, then we need to go to smart sponges because that is where the rain waters come and wash these pollutants of animal waste into our storm drain system where there is not adequate filtration. The town manager was very receptive to that testing. Our funds are so valuable and we can't afford to waste and implement programs in the wrong direction. Let's use these resources to identify and address the particular problems we are actually dealing with. He hopes Council will sanction and support what they are trying to do.

Councilman Lashley said he would like to have a joint meeting between the Police Advisory Board and the Parks and Recreation Committee to discuss skate parks and come back to Council with any issues that need to be addressed.

PUBLIC DISCUSSION

Alan Gilbert, 601 Atlanta Avenue, said he gets a lot of phone calls from people who feel a little disenfranchised and have a lack of trust. He wants to focus on the R-3 neighborhood, single-family zoning. This is more directed at the mayor, as the committee chair and is in charge of it. There are some folks who have been challenged with complaining about some things that are going on in the R-3 who don't feel they have a voice. They have a unique situation there in that they have grocery stores, auto parts stores and R-3 single-family homes. The R-3 definition is single-family dwellings and is to provide for moderate to low-density single-family residential use and other compatible uses. The regulations of this district are intended to discourage any use which, because of its character, would not be in harmony with the residential community and which would be detrimental to the residential quality and value of the district. When you look at R-3 you don't get any two family dwellings, no manufactured homes and it's pretty clear that it is single-family and, in that, one housing unit per lot. The challenge some of the folks have brought to him over the last couple of years, and it is close to home in that there is a dwelling around the corner from here that is in violation of this. What is going on is these are garages that are used as apartments, have been upfitted. He has pictures of the apartments, documentation from the police department and they are not allowed. When it was brought to the attention of staff, it became a sensitive issue and they felt their hands were tied. He wants the Council to make a decision to support them in the R-3 residential district and uphold the single-family. This involves Dan Wilcox's two properties which he has upfitted into two apartments. On Monroe he has upfitted and basically built a duplex. People have given him documents because they don't want to be ostracized by the community and fear there will be some level of retribution. They have had 911 calls, documents signed by Mr. Wilcox that people are living there. He looks at it as being in gross violation of our zoning. It's the law and when he was elected he swore on the Bible that he would uphold the laws and it is compromising. He thinks a lot of folks feel disenfranchised because we have a councilman breaking the law. He is asking that they enforce the laws for every citizen in this community. If permits were pulled and the permits say that people weren't going to be living in it, we expect that to be done. If inspections weren't done or proper permits weren't pulled, accessory buildings aren't supposed to be 2 stories. Our zoning ordinance today says they can't be over 15', that they won't be inhabited, can't live in them, and won't be for profit multi-family in an R-3 district. He feels this is a situation that the Mayor and this Council can come together with Councilman Wilcox and bring some integrity back to this Council. There is a new general statute, he thinks it is 160A-83, it's about ethics. He was reading over that and he knows this Council has to make a commitment within a year to have an ethics law, and, one of the things he read in this that the public trust can only be preserved if public officials take their calling seriously and make informed decisions that

reflect the core ethical principles that they and their fellow citizens share. Public officials should also consider who or what is affected by the decision and how they are affected. Hold each other accountable for ethical principles such as honesty, fairness, and caring. It means a lot that this ordinance is there and he thinks they are all ethical and by no means does he have any malice coming there. When he was on Council he tried to take the concerns of the citizens and he did feel disenfranchised at one point in this town and felt there was a lack of public trust. He is asking the Mayor today to enforce the laws, make sure he looks out for their interest and that everything is apportioned fairly. There was another complaint about a commercial vehicle parked on the street. He referred to Ordinance 03-538. It is a tough situation for staff because Council is the boss and nobody wants to upset them. He feels Council does an awesome job. He gave Council a copy of paperwork regarding his complaints and pictures.

Mayor Macon said they have been aware of this and he has instructed the town manager and the planning director to do their jobs and that they need to enforce the regulations of the town. He has also spoken to Mr. Wilcox and there are things that can remedy this situation and those discussions are underway with town staff. There is a meeting this week.

Nell Honeycutt, 10 S. Carolina Sands, she is there to request a no u-turn at the entrance of Carolina Sands so people won't go up into people's yards.

Mayor Macon said the letter from the HOA says they have no objection. He said they would look into that and it shouldn't be an issue.

Steve Shuttleworth, 808 Carolina Beach Avenue N., said he is there to talk about the potential and the future for the city to pay for the proposed pier property that was purchased, the 309 property that Council is going to discuss paving later as well as all the other properties that were purchased by CBP3 for over \$4 million dollars. In doing research through the town's list of debt service and lease purchase obligations as of the first of this month there are 20 items listed for a total of over \$14 million dollars in outstanding balances. 30% of that is an obligation that he can't determine if the city is obligated to pay or if some non-profit is obligated to pay. It is a great concern to him to hear the county he lives in talking about raising taxes and he is looking down the horizon at shortfalls for the town he lives in and he is suspecting the someday Council is going to say they may have to raise taxes. If they need to raise taxes to pay \$400,000+ in debt service in year one for some land they bought or didn't buy to build a pier that you don't have funding for, that you are going to give to the state... He is reminded of an issue that he has with his small children. They want an Xbox and he said he couldn't afford one; he has to paint the house. He has to make choices. As the Town Council, they need to make choices. Out of those 20 items there are things like a water and sewer bond, water tank at Wilmington Beach. The balance on the municipal complex they are in tonight is \$1.7 million dollars. There are pumper trucks, wastewater treatment plant, generators for lift stations, wells, fire department vehicles, pay stations, and a platform truck. There is one item that is real estate related and is \$4.3 million dollars that Council has obligated the town to pay that they don't have the ability to do. In talking to Mr. Owens, they are not

sure if the town is obligated to pay or just signed a consent agreement Mr. Coggins drafted on behalf of both the town and the new LLC, the non-profit, that there is a consent agreement, a support agreement. So we have a non-profit that was just set up and days later enters into an agreement to borrow over \$4 million dollars in this market. He is concerned. His primary residence is a duplex, zoned for a duplex, and lives in half of it. The other half just went into foreclosure. It sold to the bank at 50% of what his assessed value is so he can assure them that if they do a reassessment this year, he is going to be pleading to have his value go down by 50%. He understands revenue neutral. He might remind them that Council never, in a revenue neutral position, reduced his taxes over the years when his property was going up. You kept that extra money and you did some great things. He heard tonight the phrase "turtle friendly community", we're going to be a boater friendly community, we're a family friendly community, we're going to be a farmer friendly community, we're business friendly. He would like to be Council friendly, unfortunately he doesn't find them very tax payer friendly. Stop doing this. Don't agree to make this payment. The payment is due in December. You have issues coming up before you where you have to approve a budget. He is sorry that Council stepped out there and purchased something for way more than you can sell it for but, at some point, we have no business supporting or being in the business to buy motels, to mow them down, to hopefully get a grant to build a pier to give to the state and then charge them to walk on it. There are certain things the town should do - buy pumper trucks, water and sewer, wastewater treatment, helping the turtles, he is all for it. The volunteers they have had tonight have done tremendous work, it is a shame that they are going to spend 30% of the budget on a long term debt obligated to one item, the only real estate item that the town owns other than this building, that they are leveraged on. You own other real estate but you are not currently paying for it. It seems to him it is the wrong direction and he seriously encourages Council to think about that as you are putting the budget together and as you are asked later because he will speak again later when they are talking about paving one of those lots. We have other infrastructure needs in this community. We have done great things at the boardwalk, we are seeing new businesses come in, please don't drive out the year round residents by raising taxes to pay for something we are going to give away that we can't afford.

Mayor Macon said they appreciate his comments and they are actually not building the pier, the aquarium is building the piers, so it is a \$16 million dollar pier the town is not going to build.

Mr. Shuttleworth asked if they have obtained the grant and have they been issued to the other two locations?

Mayor Macon said they are working on them. The aquarium is going to build the pier with door receipts when people go to see the piers.

Mr. Shuttleworth said it is debatable. Let the aquarium buy the lots. The town has no business financing something out of taxpayer dollars when we have other capital improvements that need to be done on his tax dollars to give away. Please don't do that.

Charles Eaves, Sea Colony, 1311 S. Lake Park Blvd., unit 31B, said they have some problems at Freeman Park. He said the Spanish are coming in on Friday night and staying until Sunday. He doesn't know if they have a 2 day permit. They are not paying but one time and wonders if they could institute a 2 day permit for all those people. He considers that a loss of revenue. They don't have time to check all the vehicles if they paid for 2 days. The other problem because of the Spanish, going down to Kure Beach Pier where he has fished for over 10 years and he left the gate open all winter. Now it is closed to all of us when he goes away on vacation in the winter because the Spanish went in there with whiskey bottles and cases of beer cans and left them there and he doesn't have an ABC permit, so now it is closed to everyone.

Chief Younginer said they try to monitor as best as possible people who are staying more than one day at Freeman Park. They check the permits on the dash and the people who are working there are generally there every day. They probably do miss some of them. They could look into multiple day passes.

The town manager said it is a day pass and then you have to buy another day pass. You can walk in or shuttle in as long as you are camping past zone 6. If you have one pass, you can have as many people as will fit in that car.

Chief Younginer said once they tell them if they are going to be there more than a couple of days, they can take their \$20 pass and turn it in to get a \$60 pass with \$20 off. A lot of them do that.

Rich Lehrer, 103 Charlotte Avenue, said he wanted to talk about the purchase of the land for the alleged pier. He was talking with Willard about this, the editor of the Island Gazette, he had a pretty good handle on it and said this is like you let your kids empty their parents bank account, went to Las Vegas, gambled it all away and came back and found out the parents couldn't make the payment on their house. On 8-28-09, the foreclosed Arcadius lots were sold off at auction. The Town of Carolina Beach successfully bid \$475,000 for a lot located at 309 CBAN. The Surfside Motor Lodge and the Guy Johnson Motel and two adjacent parking lots were sold as a package. They went back to the bank, actually. Republic Bank bid in \$2.15 million and they were the mortgage holder. Live bids didn't get that high. On 10-13-09, Council approved offering the foreclosing bank \$3.6 million for property that probably wouldn't have gone for half of that. Council voted to finance the \$3.6 million purchase with BB&T and, after closing costs it came to \$3.825 million. You add the \$475,000 and you are at \$4.3 million. On the 19th of October, you guys gave the bank a \$360,000 non-refundable earnest money check. The town manager told him that the town does not own the land. The town has agreed to pay the P&I mortgage payment on behalf of CBP3 but the town is not obligated to do that. If the town stopped making payments, the property would likely be lost unless the CBP3 board of directors stepped up to raise the funds. Those are actually his words. The loan that BB&T made was not to the town but to CBP3 with the land and hotels as collateral, the only collateral. The town credit rating should not be affected since we do not own the land. The corporation members are Dan Wilcox, President; Lonnie Lashley, Secretary/Treasurer; Dennis Barbour, Vice-President; and Gregg Reynolds and Lisa

Wills are on this although they were not there at signing, there were two other people signing instead of them. The town manager assured him that the town is not liable for this but the closing certificate references a support agreement dated as of December 15, 2009 among the company, the bank and the Town of Carolina Beach, NC, which says that the town is still liable. It is all confusing to him. Former Councilman Gilbert asked Town Manager Owens if he went to the LGC for financing. Mr. Owens answer was, "the application did not go to the LGC because the loan is not with the town". But Bill McGivry of the Local Government Commission, the LGC of the North Carolina Department of State Treasurer, claims to have an application from the Town of Carolina Beach seeking permission to finance that \$4.3 million from BB&T. Documents contained in that package, some were signed by Mayor Macon and they date back to November before there was a CBP3. He believes the actual application is signed by Dawn Johnson. He just got copies of the whole thing and hasn't had a chance to read them. He doesn't believe there will ever be a pier there but that might be a good thing because in reading over everything in that October meeting, he sees that it is going to cost \$1.5 million to clear that lot and get rid of the motels and build a park there. Then another \$750,000 to extend the boardwalk and, before you know it, once you put the interest charges on there, you are up close to \$10 million dollars. The bank has budgeted, once that \$4.3 million, after the payout after 20 years, principle/interest, they have it on their budget as \$6.539 million dollars. That is an awful lot of money for something he doubts will ever be used. If it really is a great value, then it should be able to be sold for more than you paid for it or at least get the money back. Meanwhile, the town is paying \$30,000 for insurance on it. The town and the county used to get \$50,000 in taxes, because you put it in a non-profit, that money is gone. It is a huge, huge drain. If the town manager is correct and we don't really need to buy this thing and Dan is the owner of this property now. And he might be right because he sees this statute 160A-209, property taxes, and he can't find anything on here that states we can use ad valorem taxes to pay for this because it's not owned by the town. There may be something in here, the attorney might find something in here that says you have to pay but if this is correct then, even though they signed something with BB&T that says the town has to pay, you can't force someone to do an illegal act and if it is illegal by statute to pay for that because some other entity has it, then the town doesn't really have to come up someday with \$6.55 million dollars. That would be a good thing because we can't afford it. He also noticed on the budget there was a \$200,000 purchase of the Kirkbride property. He can't imagine why anybody would want to pay that kind of money for this and why the town needed this. We've got a water system that people are tired of the way it stinks but instead we pay \$200,000 for property of dubious value that actually came from people who he believes at one time sued the town, the Board of Adjustment. It is a mystery as to what is going on here. He hopes Tim is right and hopes we don't have to pay for this because it would be a nightmare.

The Town Attorney, Steve Coggins, said that a taxpayer's concern over the purchase of the property, regardless of its fair market value, is entirely valid. The Town of Carolina Beach wished to take advantage of opportunities that may be available to obtain grants, as he understands it, to defray the cost of ultimately purchasing the land. He does not understand there is any obligation or vision by the town itself to construct a pier, itself.

There have been efforts for land to be acquired on which the pier could be located and which other infrastructure could be in the future constructed that would link the marina area and the boardwalk area. This is something that would be of great value to the town going forward. Under present statutes and grants that are available of significant size from various agencies, a quirk in the law exists that a municipality cannot after the fact purchase with title in its name, be eligible to obtain a grant to help defray the cost of the purchase price. That placed the town in the dilemma as to what it could do to defray the purchase price when it was confronted with the opportunity to acquire the property at what was understood to be a substantial discount in the market value and in consequence of the Arcadius bankruptcy proceedings. In order for the town to be able to defray and obtain grants, ultimately, to reduce what the town actually owes for obtaining the property, the mechanism is available by which a non-profit corporation can be created which would hold the property and then the town, under the hyper technical requirements, could in the meantime apply for grants when it then obtains the property from the non-profit corporation so that the plan is that the grants would be obtained and then at that point the town would acquire the title from the non-profit entity that has substantial less value through application of the grants that are available. He does not know the status of those grant applications or the chances of obtaining them. The Town of Carolina Beach has a recorded, enforceable option to purchase the property from the non-profit. These were all part and parcel of the creation of CBP3, which incidentally can exist for acquiring title in the future if something like this should ever happen. It is not the sole purpose for it. That is where it is at Mr. Mayor. What we are seeing is a legal mechanism that was setup and in consultation with the LGC as we have been advised by the LGC and the lenders that this particular transaction is not something that is in the rubric of the LGC because, again, the municipality wasn't involved in acquiring and, also, the way the particular loan was structured, it doesn't come with any requirements before the LGC. It is true that there was in fact an application, as he understood it, that was submitted to the LGC for the town to obtain the property. That application before the LGC was not acted upon because it was then at that time that the town learned about this hyper technical requirement he spoke of earlier that the town would not be able to apply for grants to reimburse it for property it had already acquired. So that application before the LGC was pulled and not acted upon so that the town could then try to obtain these grants after the fact and then acquire the property.

Mr. Lehrer said there is no grant money, the state is broke, the county is broke and we're working on the town. As far as this deal, he looked at the Nags Head deal. They have a leasing corporation which was put together in 1988 because the town itself didn't have the credit to lend so they had citizens step forward and do this. Later on they got a \$250,000 grant. There may be other things that are similar to this but this is so incredibly contrived. When you first signed for this loan, you had five town officers or workers signing on this loan to buy this property. They are not the same five that are on it now, two are different - hardly an arm's length transaction. BB&T is not going to lend to these five people that are on this thing, on their strength. These people cannot get a \$4.3 million dollar loan. They are not going to lend on this very weak collateral. What they are lending on is the strength of the taxpayer's money to backstop this. You can call this a separate deal and he hopes it is a separate deal because he hopes they can walk away

from it without hurting the town or its credit position. That would be an incredible maneuver to be able to get the \$360,000 back and walk away but if we are stuck with this debacle, and that is what it is, this is going to hurt us for 20 years.

ADOPT THE CONSENT AGENDA

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

Approval of the minutes:

Regular Meeting February 9, 2010

Requests for budget transfers and amendments:

In December 2009 the town closed on the pier property. The loan proceeds received were \$1,032,168.28. Out of those monies we paid off the loan which had just been processed for the four lots on Carolina Beach Avenue North in the amount of \$475,000. In addition to the pay-off of the four lots there were attorney fees, insurance and surveying costs related to the project. These monies were taken from existing account appropriations; therefore, at this time we need to do a budget amendment replacing the monies expended from existing accounts and the monies expended for the loan pay-off. The expenses are as follows: Surveying and other costs were \$18,910, insurance \$28,919 and legal fees \$42,367.42.

Parks and Recreation Department

Transfer \$25,000 from line item #103990-000 (fund balance) to line item #10620-076.

| | |
|----------------------|---|
| Total Grant Cost | \$25,000 |
| Grant Award | \$20,000 (NCDOT will reimburse to town) |
| Town's Match Portion | \$ 5,000 |

Request from public utilities department to transfer \$4,000 from 308120.46 to 308120.03 to cover overtime and call pay for the rest of the year.

Set a public hearing date for April 13, 2010 at 7:30 p.m., or soon thereafter, to consider an amendment to Article 1, Sign and Handbill Regulations, to allow for additional commercial signage.

Set a public hearing date for April 13, 2010 at 7:30 p.m., or soon thereafter, to consider adopting an ordinance rescinding Chapter 9 Motor Vehicles and Traffic, Article VI Schedules, A Speed Limit, Reference Number for DOT 1031992 at US 421 (Lake Park Blvd.) from Atlanta Avenue (non-system) at a point of 0.23 miles north of the southerly

Carolina Beach/northerly Kure Beach corporate limit northward for a distance of 0.45 miles, to St. Joseph Street (non-system).

Set a public hearing date for April 13, 2010 at 7:30 p.m., or soon thereafter, to consider adopting an ordinance to amend Chapter 9 Motor Vehicles and Traffic, Article VI Schedules, A Speed Limit to 25 mph speed limit on Lake Park Blvd. at US 421 (Lake Park Blvd.) from Driftwood Lane (non-system) to St. Joseph Street (non-system).

Set a public hearing date for April 13, 2010 at 7:30 p.m., or soon thereafter, to consider amending Chapter 9 Motor Vehicles and Traffic, Article VII Wrecker/Towing Services and Impoundment.

Request by Ed Duncan to hold the second annual sand wrestling tournament on the oceanfront in Carolina Beach on June 19, 2010.

MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to take a 10 minutes recess. MOTION CARRIED UNANIMOUSLY.

Mayor Macon said there was a citizen request and asked Beth Golden and Chief Younginer to step forward. Ms. Golden did not make it in time to speak during the public discussion.

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

Chief Younginer said Beth Golden has been doing vending at Freeman Park for a couple of years and have had some vehicles there that they have put some generators on that don't make a lot of noise. A requirement was passed last year to make them stop vending out there at night at 11:00 p.m. and they are requesting to extend that to 12:00 or 12:30 a.m. He is not against that, doesn't feel it is a bad thing to do. People are moving around out there wanting something to eat or drink. They sell snacks and ice cream, things like that, firewood, etc. If they stop vending at 11:00 p.m., they have to stop at around 10:30 p.m. as it takes a while to get back. He would not be opposed to saying she has to be off the park by 1:00 a.m.

Mayor Macon asked staff to bring their request before Council to change the ordinance at the next meeting.

PUBLIC HEARING - RECEIVE PRELIMINARY INPUT AND REQUESTS FOR NON-PROFIT FUNDING CONCERNING THE FY 10/11 TOWN BUDGET PROCESS AND DISCUSS SCHEDULING OF FUTURE BUDGET WORKSHOP MEETINGS

Marv Griffin, president of the Federal Point Historic Preservation Society, introduced four other members - Leslie and Darlene Bright, and Lewis and Rebecca Taylor. He reviewed the history and operations of the society. He said that the contributions they have received in the past from the Town of Carolina Beach go solely to the operation of the history center and no other function of the society. The town has provided significant support to the history center operations for many years for which he thanked them and hopes they will continue their support through the budget for the coming fiscal year. He has a written request, along with copies of their budgets for the last 2 years, and will provide any other information that might be necessary.

The town manager said that he and Mr. Bright talked about some possible roof repairs and would like for him to call him tomorrow. The town will try to fit this into this year's budget and try to get it done fairly soon. That is part of the town's program to maintain the exterior of that building and we will continue to do that.

Barbara Plage, representing the Help Center of Federal Point, read their letter to Council. The center is a non-profit, short term emergency assistance program for families living in the Kure and Carolina Beach community. In 2009 their 80 volunteers provided 3,212 individuals in 1,444 households with food and some with other needs such as rent, medicine, gas and utility bills. They served 200 more households this year than in previous years. At Christmas they provided gifts of toys and clothing to 62 children. In past years local churches have been very generous in donations of pantry items but due to the tough economy, those donations have decreased by 1/3. Costs and number of clients keep rising. Grants from the Town of Carolina Beach have enabled them to cover their overhead expenses - telephone, office supplies and software and to purchase gas vouchers and Food Lion vouchers for diapers and hygienic supplies. This year they need more funds to go for food supplies to supplement donations to the pantry. They would be very grateful if the town could again provide funds to the Help Center for the overhead expenses and are asking to be included in the 2010/2011 for them.

Frances Massey, vice-president of Island of Lights Committee, thanked Council for everything they have done for them in the past 20 years and asked that they continue funding them for the next budget year. They are asked for \$7,000 again this year as they did last year and hope they will give this consideration.

Steve Shuttleworth, 808 CBAN, said this is a public hearing to receive preliminary input for non-profit funding. Does that include CBP3? He asked who would be making the application on behalf of CBP3 for \$438,000 non-profit payment.

The town manager said they are a little off schedule. He will be giving a presentation on the budget and then they will open up the public hearing and then there will be budget

concerns and questions and requests after that. The non-profit, the debt service he is concerned about is in the current year's budget. The budget has not been approved. He can appeal it now and at another public hearing in June.

Mr. Shuttleworth asked if there is someone on behalf of CBP3 that makes a request to the city similar to these fine organizations because the amount of payment that is going to be made this year in the proposed budget is 14 years worth of their budget. Is there a member of CBP3 that makes a presentation? The town manager said no. Mr. Shuttleworth said is it just slid in there? The town manager said yes.

The town manager presented the budget. He showed the list of non-profit requests. The next part of the process would be to have a preliminary budget hearing to give folks a chance to input on the budget process and any concerns or programs they might want to change. Thirdly, they would like to schedule some other budget workshops. They have some scheduled for April. They are in the very early stages of the budget. He is probably further along than he has ever been on any other budget at this point because he knew it was going to be such a tough year. The 09/10 General Fund budget was about \$8.2 million dollars. The 10/11 estimated revenue is \$8.6 million dollars. The estimated expenditures that were loaded into the budget this year are \$9.7 million dollars giving a shortfall between revenue and expenditures of about \$1.2 million dollars. He went through the budget and made a preliminary, first glance adjustments and considerations of cuts which he gave to Council at the last workshop and that includes some revenue adjustments where he thought they were too high on some revenue projections and the shortfall that he came up with is still \$690,000. What that equates to, if you want to put it into terms of an ad valorem amount is \$.03. That is where they are at. They will go back to work on the budget. They have done a lot of things which he will go over and summarize some of their concerns this year. The Tourism Fund budget for 09/10 was roughly \$1.6 million dollars. The FY 10/11 budget is estimated revenue of \$1.7 and estimated expenditures is a little over \$2 million dollars for a shortfall of \$253,503. He went through a first glance look at some cuts and revenue adjustments and got the shortfall down to \$118,735. It is a little less than 10% of the budget but he thinks it is manageable as far as getting that budget back into balance. The FY 09/10 budget for the Enterprise Fund was roughly \$4.6 million dollars. The estimated for this year is \$4.5 million dollars with estimated expenditures are almost \$5.1 million dollars for a shortfall at the early stages of the budget of \$542,051. They looked at some first glance cuts and revenue adjustments and the new shortfall is \$218,869. They have a long way to go and he will be going over the budget line item by line item, getting with department heads to see if they can do anything better or more efficiently. These are just the first glance numbers and it is early in the process. Some of the debt service that has been alluded to tonight are the General Fund which we are basically obligated for close to \$1.2 million dollars. The Tourism Fund has about \$140,000 in debt service and then you have the total debt service amount in the Enterprise Fund at about \$1.4 million dollars. There is a lot of new debt they loaded in several years ago, they kind of raised rates and they are getting towards constructing some of these projects and they are still working to implement some of those projects. That debt service is there and the money is there to service the debt service. So the budget challenges, as he thinks some of the folks have

alluded to, one is the debt service associated with the pier project and that is something they debated about at public hearings, talked about at many separate occasions in going through the deliberation of purchasing the property for the pier. The Wilmington Beach project they are slated to begin construction in mid to end of summer. There will be a time when there won't be any assessments coming in because those assessments don't go out until right after so they will have to service some debt for the first year to 18 months. That is loaded into this budget, the \$250,000. There is debt service on the ARRA project that we had with Wilmington Beach retention pond. Half of the money that was for that project was grant, the other half was a 20 year, no interest loan, which was great. That would have impacted our budget hugely if we had not gotten the stimulus funding to those projects. So that is under construction, soon to be completed, hopefully. We have had some snags, some pump issues and that will be completed. Some other things they have seen, trends, 17% reduction in sales tax which is one of our larger revenue producers. There were some snags at the state level in distributing the money but those are the numbers we are receiving. He hasn't had a chance to call and ask anybody why that is. A lot of people are having a lot of concerns about their sales tax statewide.

The finance director said those monies come directly from the state and we don't have any control over them. There is no way to audit their records. It is our share of what the county receives. Sales are down for everyone across the state.

The town manager said if they are down in New Hanover County, they are down in Carolina Beach. We might have had a great year but if they are down in the county. There are certain splits of the sales tax and part of it is ad valorem and it's all formulas. This is early in the budget process and they will try to explore a little better where the 17% reduction is. He thought he had it solved by some list serve stuff that we hadn't gotten our credits and he thought that was the problem but the finance director assured him that we have gotten what we're supposed to get. Our retirement contributions they put into everybody's retirement account has gone up by 4.5% for all employees. We are projecting health insurance increases of around 10%, same thing for property liability insurance and worker's comp increases. Typically every year you budget for those things 10% and hope it's not more. We have had some good luck with our health insurance lately. The budget numbers aren't looking that great, particularly in the General Fund. We have done other things over the years to try to enhance our revenue sources. We have also probably eliminated at least \$700,000 in employees' salaries and close to 20% of our employee base and that is back from 03/04. We have done some things to reduce costs and there are some other things where we have increased costs on and it is going to be a tough budget year.

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

Steve Shuttleworth, said he is shocked that everything that is supposed to be going up is going down. Our sales tax revenue is down and everything we hoped would go down is going up. The stuff we can't control - insurance, liability insurance, those are going up 10%. He is happy to see the increase in the retirement contributions, he is sure it is well

deserved. Most people in the country aren't getting a 1.5% increase in their retirement. But you have \$428,000 debt service associated with the pier project. That is 5% of your total budget. That is half of your shortfall. If the town manager puts those numbers back up there and you don't make that payment, a lot of other things happen in this community. Either you own the ground and you are obligated to make the payment or you don't own the ground and you don't have to make the payment.

Rich Lehrer, 106 Charlotte Avenue, asked if Kure Beach's sales taxes went down commensurately with Carolina Beach's? Staff did not know. He said Carolina Beach's is somewhere between 8%-10% of the New Hanover County income. If somebody knows for sure they are not looking at our numbers and saying they are off, he would like to know that. He doesn't know if they just lopped off a percentage of the whole state and this is our percentage and this is what they gave us. He does know that from May to October of 2008, compared to May to October 2009 when we had all the boardwalk improvements and the carnival, 2009 is down for those summer months, about a little over \$90,000 in sales tax. As far as cuts, he did once visit Brunswick, Georgia and they are a much larger city than we are, and they did an incredible renovation downtown. They have one person in their planning department, the director.

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

Councilman Lewis asked the town manager if the increase in the required retirement contributions is dictated by the state?

The town manager said it is our match and the employees put in 6% and the town puts in a certain match. Regarding the meeting dates, we currently have 3 meeting dates that are open to the public, they are budget workshops. The first ones scheduled are Wednesday, April 7 and Wednesday, April 28. He would like to change the meeting dates and try to propose some dates for May. He thinks they will need at least 4 meetings to get through the process, if not more. Then they will obviously have a normal meeting date in June which is the first meeting of the month. Right now the meeting dates are April 7, 9am - until and April 28, 9am - until. Council agreed to meet on April 7 at 5:00 p.m., April 28 at 9:00 a.m., May 5 at 5:00 p.m. and May 14 at 9:00 a.m.

PUBLIC HEARING - CONSIDER A CONDITIONAL USE PERMIT FOR "SPLASH WATERPARK" A TEMPORARY AMUSEMENT WITH CONCESSIONS. THE PROPOSAL IS TO PLACE APPROXIMATELY 8 INFLATABLE WATER SLIDES WITH TWO CONCESSIONS TO BE LOCATED AT 104 HAMLET AVENUE, THE SITE OF THE PARK PLACE CONDOMINIUM PROJECT (PIN: 313015-541448.000), 100 HAMLET AVENUE (PIN: 313015-54-2406.000) AND 107 S. LAKE PARK BLVD. (PIN: 313015-54-0522.000) ZONED: CBD

Gary Ferguson, the planning director, wanted to clarify a few things. He said they have three conditional use permits coming before Council this evening and he felt it was

important to briefly touch on these so they can get a look at where they all are falling and a good idea of how they are going to be. He showed the 3 sites - the water park is on the far left hand side, the amusements are in the center around Cape Fear, and the newest one coming forward is on Harper. They wanted to show things geographically so there is no confusion so they can see where things fall and where they are going with these things. The water park is going to consist of 9 rides, 1 concession, a capacity of 108 folks. A waiver for parking is requested of 46 spaces. The returning location for the amusements at Cape Fear, there were 16 rides in total, concessions were 2, the capacity of the crowd at this particular site was 216 and waived parking was 92. Lastly they have the amusements, this is one the Council has not yet seen, just like the splash park, but the first one will be on the Astor lot which is on Harper Avenue, a total of 15 rides, 2 concessions, 208 is the capacity at Harper Avenue and a total requested waiving of parking of 90 spaces. In summary, when you look at all three of these sites collectively, you are looking at 40 rides, 4 concessions, a crowd capacity of 532 people and waived parking at 228. Meeting was turned over to the swearing in of those wishing to speak on the Splash Waterpark.

The following were sworn in: Ed Parvin, Gary Ferguson, Tim Owens, Police Chief William Younginer, Fire Chief Jon Rorie, Alan Gilbert, Steve Shuttleworth, Greg Reynolds, Jeffrey Mechanick, Charles Daniel, Charles Eaves, Cindy Jacobs, Alan Pacek, Mike Kirkbride, Shawn Cook, and Richard Lehrer. During the time all witnesses who spoke at the hearing were being sworn in before the presentation of the application, the Mayor and each of the members of Council confirmed they have no conflicts, and are aware of no other circumstances that would make it appropriate not to hear and vote on the matter. The hearing then proceeded.

The Town Planner, Ed Parvin, presented this item. He stated that this is an application for a water park that will be a temporary use in the CBD for the 2010 summer season. Plans for the site are going to be 9 waterslides, 1 food stand, 4 temporary restrooms, 6 storage containers, 1 inflatable tent for picnic tables, 2 ticket booths and they are going to keep the existing landscaping. He pointed out a question that was brought up at the planning board meeting regarding the storage containers. The town adopted an ordinance a few years ago about pods or storage containers on lots and you are allowed to have 1 per lot. When they looked at these amusements, staff level as well as the amusements for last year's amusements, they looked at the site holistically. They have maintenance trailers, storage trailers, temporary bathrooms, all kinds of things, so they looked at that as a part of the activities for the water park and not as specific for the pods that you typically see for somebody moving in or out of a home or business. He showed the proposed layout. You have the waterslides going around the edges of the property. Up near Lake Park Blvd. is the planned area for the concessions with the seating area behind that. The main entryway points are going to be off Lake Park and another one off Hamlet. The hatched area you see around is zoned for where the water, the different utilities will be located and is labeled as a "no walk zone". Just on the outside of that area will be a chain link fence to enclose the property. Specific standards from our ordinance, ingress and egress he mentioned are Lake Park Blvd. and Hamlet. The ordinance states that parking is required to be adequate to handle the anticipated, normal

capacity. Staff was very conservative with this estimate as determined by the building inspector who met with them at the TRC. They looked at the capacity as a little bit higher rate with the number of people that are accommodated by the rides and then people in line for the rides as well as concessions and then used 1 per 3 based on similar uses we have in our ordinance are 1 per 3 or 1 per 4 in other towns. So it was more of a conservative estimate that they used. 46 spaces for this site would need to be waived. They do have some parking on site - 5 stacked spaces and that is on the east end of the lot and then there are 2 parking spaces that they will use mostly for internal operations near Lake Park Blvd. They have it labeled as golf cart parking. Refuse and service area, they are planning to use the designated area for solid waste on Canal and Raleigh. Utilities - there will be 4 port-o-lets on site, a new light pole on the northwest side of the lot and one on the southeast side already, will be using a t-pole for power, and there is water and sewer already on site. Screening and buffering - there is a chain link fence proposed around the property as seen in the original site plan and a Type E buffer in this district is typically planters every 50' along the sidewalk. They are asking for that to be waived. Signs - there is one proposed sign on the southwest corner of the lot near Lake Park Blvd. there will be a freestanding sign for which they will have to get a permit. Required yards and other open space and preservation of existing trees - existing vegetation will remain. There are no setback requirements in the CBD but they are having the 5 foot "no walk zone" where they will have their utilities. The four general conditions they went through as well at TRC and Planning and Zoning Commission and public health and safety - all rides for these waterslides, as well as amusement rides will be inspected and tagged by the NC Department of Labor. Required conditions and specifications have been reviewed by TRC and P&Z and appear to meet all of our codes. The value of adjoining or abutting properties, they put specific conditions on there for some of the concerns they discussed were noise, trash, background checks for employees - all those are conditions in the grant order included in Council's packet. General conformity with the town's land use plan - there is a consistency analysis done in Council's packet as well and it was determined to be consistent with our policies as well as consistent with characteristics for the area. This area is split between our Commercial 2, which is mostly our business district, and Commercial 1.1 area which is the corridor along Lake Park Blvd. He showed the site with the zoning where the rides are proposed. To the south you have the Mixed Use zoning district and to the southeast you have the tourism district. Pictures shown: Hamlet looking to the north, the Coastwalk building adjacent to it on the north side; Hamlet looking to the northeast; looking down Hamlet straight east; existing vegetation looking from Lake Park Blvd. towards the ocean; adjacent neighbors to the south; looking across the lot to the south; largest ride (25' tall and approximately 60' long pipeline) proposed for the site located in the northeast corner; a variety of some of the other rides they are looking at proposing. Town Council has already approved a project for this site. They have had discussions about whether 2 projects can be approved on 1 site. That has been done several times in the past so they have had quite a bit of experience with that. He showed a rendering of Park Place, the Hamlet parking lot which will be a parking deck, the building behind the Marriott is 103 Charlotte condos and there is one real estate office in the bottom and then the units facing Lake Park Blvd. Park Place is a 92 unit, 13 story residential structure and it has 9,500 sq. ft. of retail with a restaurant on the top floor and parking over at the Hamlet lot with a clubhouse,

swimming pool on the top floor of the parking deck. What is proposed to be built to the north of this, right behind Coastwalk, and came before Council a couple of years ago, Victory Village was approved in which its ground floor will have kid's entertainment, open area for things like laser tag; the second floor mostly retail/leasable area for possible food and beverage services; and third floor planned for mostly offices. Both of these projects still have vesting with the town so they both could be built. He said that in Council's packet, he thinks Attachment 5, there are several letters from adjacent property owners. They have a few more. He put a note on dealing with letters that come when the person is not here to swear in or give testimony, how Council wants to handle those. The attorney might want to comment on that. There are 3 or 4 additional letters that have come in since the 2 that are in their packet.

The town attorney said there is no impediment to them being admitted into evidence per se, they can be put into the record. What they are required to do is whatever the decision is is based on substantial material competent evidence. Letters, as have been tendered, are hearsay or not subject to cross examination, they are being offered to prove what is stated in there so it is not testimony that is under oath so that is problematic under our case law in our own ordinances. There is a further statute that became effective January 1 of this year by the General Assembly that provides that lay opinions may not be used to establish impact on property values or the impacts of vehicular traffic on public safety. So, there is no problem with it being admitted and being in the record but Council is to be cautioned as to the weight, if any, to be placed upon it.

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

Jeffrey Mechanick, 813 Sloop Pointe Lane, Kure Beach Village, said he is here to obtain a CUP for Splash Waterpark. He is proposing 8-9 waterslides to be put into this park with a fence surrounding the entire area. He believes they are going with A Wolfe Security Company with 4-8 motion cameras to monitor the park 24 hours a day. He said also they are going to incorporate on some type of, don't quote me on this, infrared laser beam system that if someone were to cross the fence and come through it will sound an alarm to the police department. If the police department contacts him, they both go to the property to see if there is any issue at all. What they are looking to do here is to clean up this property, bring in some really new, high traffic, super safe, really nice looking slides that are fun toddlers, 30-40 year olds. He is 42 years old and he rides them and thinks they are a ball. They want to bring those in and make it appear like a beach theme. They want to scrape the surface and utilize the sand that is there if they can, make it look beachy, put in an inflatable or pole tent with concessions with some picnic tables underneath. Some people will want to be in the shade and he wants to make sure they cater to those who want to. They will also put some picnic tables out in the sun and possibly put in some beach chairs and umbrellas. Just incorporate a really neat looking beach theme with all the inflatable waterslides. Everyone who is going to be employed there will have the background check done and trained by him personally. He has close to a decade of experience in this business. He showed slides of some of the past events he has done. Some of the people he has worked for include the Fayetteville Dogwood

Festival, the American Red Cross, the US Army, NASCAR, and hundreds of private party rentals. He has worked for larger and smaller venues. He has a substantial amount of experience and knowledge in this as far as safety, regulations, codes. They are going to make sure they meet or exceed every single safety regulation and every single code that is going to be enforced. He feels the water park is going to be something new, fun and safe for families to enjoy while they are in Carolina Beach. It will offer families a new place to go between trips to the beach, boardwalk, restaurants, etc., and what these folks will have is the ability to come and go freely. One of the first things they are going to offer is called a paper plate. You purchase a wristband, wear it, and can come and go all day long for that day. They are also going to incorporate seasonal passes for the waterslide park which will be good for the locals and they are also going to offer \$1.00 tickets. He has set them up in the past for those who are not sure their child wants to go up there. They can purchase the \$1.00 ticket, see if the child likes it and, if so, come back and buy the wristband for the whole day. Normally, he takes off the price of the \$1.00 ticket off the price of the wristband. They will not be competing with anyone on the island. There is nothing there like this and he feels this is a great thing. Being there may be beneficial to other places around there and will draw more people to come there. This is a tourist town and he feels it will enhance and bring more tourists there and good for the locals to enjoy. They will be bringing summer employment opportunities. He showed a manual from Cutting Edge Creations which is one of the 3 largest manufacturers of inflatables in the country. He follows their guidelines. Everyone will be trained. There will be daily inspections of all the rides and all the grounds. There will be people in place solely to make sure that any debris or trash inside their fence is picked up and kept clean. He can guarantee it will not be a messy place but a fun place to go and enjoy yourself. He and his family live on the island and they are looking to become a part of the community, not someone who comes into town, trying to make money off tourists and locals and then go back where they are from. Regarding noise, he has designed and built a prototype of what is called a blower baffler box. What this does is the blowers, which are in this manual, which aren't that noisy to start but, after hearing these concerns, they want to make people happy and are going to build these boxes, have them out of sight with the blowers inside. They are of wood construction with some type of sound proofing or foam board inside which will reduce noise even greater. It doesn't need to be reduced that much at all, if any, but they are willing to take that step. By doing that, he is hoping he doesn't open up the question or the debate of possibly baffling what he considers one of the greatest sounds in the world which is children having fun. He showed a newspaper article of a water park he did in Fayetteville and read some comments which gave an idea of how favorably the water park was received there. He feels this would be a really big thing for Carolina Beach and the central business district.

Councilman Lewis asked if they had taken a look at a wooden, privacy fence vs. the chain link fence.

Mr. Mechanick said he looked into that and he feels it would box it in. One of the ways they are going to attract people is by seeing what is out there. That would be the only reason he wouldn't want to put a wooden fence and close it in like that. He also doesn't think it would look good.

Councilman Lashley asked if he is open to moving some of these things around.

Mr. Mechanick said there is no doubt about it. Those things are fairly heavy and, as he explained at the Planning and Zoning meeting, he would much rather move them around on paper, as many times as you want, to make people happy before he put them in place and have to move 1,000 - 2,000 lbs. inflatable waterslides. He showed pictures of the slides. They are not using hard rides with big pools. They are inflatables. They will go up during the morning, all day long. They will be deflated and put down, covered and staked off with tarps over the night. In the morning they will repeat the process and start all over again.

Greg Reynolds, 711 Canal Drive, said he is here to help the applicant. He was actually recruited by one of the adjacent property owners. Waterslides have been discussed for about 3 or 4 years now and the field marketing study they did about 4 years ago, waterslides was the number one request for the tourists. What they have here is a family friendly, daytime operation, very low impact - people laughing. He misses Jubilee Park. He lives on Canal and he used to sit out at night and listen to all the noise coming from the park because that meant the town was alive. To the attorney he said he is a licensed architect and will be speaking on that behalf and jobs and projects he has worked on in this town. Victory Village was a project that Caroline Meeks and Steve Shuttleworth were trying to do directly north of this property. It was an open air, family friendly activity with laser tag at nighttime. They are not proposing any nighttime activities here. They do have some history showing similarity to this property. What they have done since the P&Z meeting, they had some comments from adjacent property owners, and 103 Charlotte was one of the most vocal, they have shown their floor plan, their proximity to the rides, they have moved the rides 14 feet forward so when they come out on their east balconies they have to look to the right to even see the back of one of these rides. You can see the amount of property they are not using, they have made that concession to move the rides 14 feet to the west so they are not looking at a person on the slide. There is not a lot they can do about every view from every window on the island. They have tried to be sympathetic to the adjacent property owners. They said the gate on Hamlet was too close to the intersection, it is 80 feet from the intersection. That is a secondary gate. They feel this is a great location for a water park because this is probably the most popular beach access in the CBD. They are hoping people coming to the beach will also come to the water park. The property owner, Charles Daniel, is here. They do know that existing CUP's for mixed use, 17 story building, this is a good temporary use for a vacant lot and better than a vacant lot. They did look at other lots in town, this is the one that was large enough and was available.

Charles Daniel, representing the property owner of 107 Lake Park Blvd., said he supports the project. There has been a lot of talk tonight about money and budgets, and this project will help. He thinks the applicant will be a fantastic owner/operator and will keep a close eye on things. He also will be an asset to the town as well as his project.

Alan Gilbert said point of order, may I approach? Councilman Lashley said wait a minute Alan I'm tired of people hollering from the back. If you want to talk come up here please. Mayor Macon said he was asking to come up. Councilman Lashley said okay. Mr. Gilbert said I was asking for point of order so I could approach which is allowed by Roberts Rules of Order which I believe Council goes by.

Mr. Gilbert said he was a little concerned earlier when they were talking about public hearing, opening the floor and things. What wasn't communicated very well Steve is that they are in a public building and when you open up a public discussion, you can't really filter what people say. So what you are doing now is having a quasi-judicial hearing and you are opening up for public comment. So, what people say going to be pertinent to the issue but it is Council's job to consider what is competent or not. Anybody can come up here and say anything they want - opinion, speculation, etc. The way it was presented, you get sworn in and it has to be competent authority. Sitting back there and listening to it and listening to some of the questions, he just wanted to make sure it is clear that once this public discussion or public comment period is open, that the legislation allows that you may be sworn in. The applicant can say he wants to hear from everybody, doesn't want to worry about swearing in. It's up to the applicant if he wants people to get sworn in because the statute says "may". He wanted to make sure that everybody understands that what is competent, what is layman, things like that is up to Council to understand. People should be able to come up there and share a position or opinion or competent evidence but it is up to Council and he thinks that is pretty clear in the statute and he doesn't know that was communicated well. That was Councilman Wilcox's question.

Councilman Wilcox said, just to be clear, anybody can come up and always has been able to come up to say anything they want to. It is Council's job to filter that and determine what is material and competent evidence when they make their decision.

Steve Shuttleworth, 808 CBAN, feels this is the wrong place to put a water park. He suggested Jubilee Park where there is a mini-golf course there, go carts across the street. There are other locations. You said at P&Z you would be willing to move those potential side locations around as many times as possible and he saw where they moved the one. He is concerned when you say the town has recommended staff has agreed to a waiver of the type E buffer and you came up with a 5' "no walk area". There is no setback so the 5' no walk is a little interesting because you are just basically going to lay electric cables and waterlines down there so you can fill these things up. It's going to be hard to police. He just thinks it's the wrong place. You showed pictures of Park Place on a previously approved CUP. It was a huge residential complex with a little bit of commercial and a rooftop pool but it was primarily residential. This is a commercial activity in a mixed use area surrounded by residential uses. He owned half of the Victory Village project, one lot. The bank now owns that because they are down 17% of tax income. They talked to P&Z and heard that these things would take 5 gallons of water a minute, that's close to 1 million gallons a month and he questions whether the city has that kind of water capacity. Regarding scraping the surface - land disturbance, even if you just scrape that, you have to have a land disturbance permit and you have to go to DEHNR. He is not sure any of those applications have been made. You are talking about a pretty substantial impact

when you scrape the surface. Looking at the picture of all the slides, they are colorful and pretty. The article from the Fayetteville Festival was at a park, not on a 30,000 sq. ft. lot jammed in a bunch of residential units all hours of the night. Primarily they were temporary uses. Looking at the pictures, they look like parks not like Carolina Beach CBD, 30,000 sq. ft. lot with old asphalt up front, one old palm tree, and jammed up against layers of residential units and across the street from primarily residential. Go down to Jubilee Park, there is a spot and you can make it work. It's not the use, it's the location that is inappropriate. He asked staff to put up the original slide that showed the 3 mixed use parcels for the 3 CUP's that will be discussed tonight. The 2 amusement parks and this potential waterslide. There are 3 colored blocks up there that show the amusements we had last year, which was fun right down by all the restaurants and everything in the CBD. It was great. You don't see a lot of houses around there. The pictures that Ed provided show residential houses in every direction you look. It's mixed use and this is the wrong use. He respectfully asks Council to deny this CUP.

Councilman Wilcox said that this location is in the CBD. He also said that the project he mentioned he was part of had a kid's amusement center in it.

Mr. Shuttleworth said it had 8,000 sq. ft., was on pilings, had an opaque slat fencing around the side with roll down doors so you could close it down at night because they weren't late night venues. They did talk about having kid's venues underneath there. They talked about possibly doing laser tag. The economy hasn't allowed Park Place to be built. His project was a totally different use and included office and retail space on top, more of a CBD use.

Charles Eaves, 1311 S. Lake Park Blvd., said this is a great venue, we need the income. We are in arrears on our budget. However, he has 2 questions. He is assuming a background check is a criminal background check but he made no mention of drug testing. Due to the bad economy, there have been 2 individuals who bought at Sea Colony who are well-heeled, have grandchildren, attorneys and doctors in their family. He is concerned for their grandchildren. He is not part of the council at Sea Colony but he takes care of security matters and watches it 24 hours a day and he is the one who takes people to court for destruction of private property. He is the complainant when he catches them.

Cindy Jacobs, 1018 N. Lake Park Blvd., said she was at the Planning and Zoning meeting where they had 8 rides that were approved She said if you pull up any of the pictures, it is not to scale. If you look at the back part at 103 Charlotte Avenue, there is not that much room there. If you pull into the 5 stacked parking spaces proposed for the employee parking, you drive into the side of this 103 Charlotte Avenue building. There is not this much room. My confusion is, and I took the time and effort to come and try to understand this plan. The zoning committee was kind enough to say why would they put the tallest 25' slide directly next to this half million dollar property. They applicant said they would move them. She doesn't see anything moved and its been a month. She gave them her card and said let's talk about this and hasn't heard anything except for we are now increasing. If you try to squash those 3 rides in that area, she doesn't see how there

is enough room. The chain link fence, she would like to know the height proposed. Council said 6 feet. She asked about the other rides and what their tallest height would be. She doesn't know how much income will be made from this but based on the \$1 rides or daily passes, her fear is that they are going to become a camp, a babysitting service. They didn't discuss any of the music that was talked about in Planning and Zoning, with boom boxes. The hours are the biggest thing because if she has to hear daylight hours one more time or not 9:00 a.m. to 9:00 p.m. They have to break down the rides every evening. If the park closes at 9:00, they're breaking down the rides and making noise. If they open at 9:00 a.m., they're going to be doing that at 7:00 a.m. She manages 6 properties next door that are half million dollars. Some are long term residents, others are vacation rentals. The alarm, the generator or compressor that blows the rides up every morning, she would like to know more about that. So when they are doing all of that noise there is an alarm on there that if, during the time that the place is open, that they start to lose the air, an alarm will go off to warn. So we have the generators, the compressors, the alarms and now we have another alarm that is going to be infrared so if a cat crosses or anybody crosses that 6' fence, which isn't a great deterrent, then we are going to have more alarms to go off next door to these residential areas. Everything that Jeff talked about seemed to her, not only was it in a park but it was temporary. She knows they can say this is a CUP temporary permit but she thinks he did 7 days, she could be wrong. She doesn't think he did 3, 4 or 5 months. She doesn't know that is necessarily bad but that is something she would like to talk about. And the move to the 14', she had to laugh about that just because she thinks that 14' is probably what is misconstrued on the plat.

Alan Pacek, 101 Island Mimosa Lane, said the random marketing study that was paid for the Chamber of Commerce a couple of years ago reviewed several different things that were good about our beach and several things that needed improvement. One of the things that they quoted was that a lot of people leave our beach with money in their pocket and go home without having as good a time because there just weren't enough things to spend money on. One of the things that was stated that would be a great attraction that was needed here at the beach was a water park. While this is not the end all water park, it is a step in the right direction and these people are asking for a CUP, as he understands, for a one year period. He thinks there is an awful lot to gain and not a lot to lose at this juncture. In comparison, there also was some comment made that comparing a first class museum for families on vacation next to third class water park, the end result that 4 for 4 people wanted the third class water park. In listening to what the applicant is saying, he is going to run a very good show here and he would like to think they are willing to work with the neighboring property owners to work things out. He is for this and urges Council to approve it.

Mike Kirkbride, 417 Marina Street, said that as they look forward for our town and island, in terms of sustaining ourselves, he sees they are in competition with our neighboring islands - Oak Island, Wrightsville, Topsail, Southport. What do they have to offer for children and families? One of the things he sees is that we are branding ourselves with is that we have some amusements going, a CBD where we can have amusements, entertainment possibilities. He sees this applicant applying for a CUP for

one year to try a water park he thinks will give us the competitive edge over all of our competing islands that we are surrounded by. In these economic times, as a Council, we have to look to how we are positioning ourselves to sustain ourselves in the future and if we are a place where families see they want to have their kids to have a good time, he thinks we are addressing that with this project. It's not a perfect project but it is going in the right direction. He would also encourage Council to approve this project and it is a CUP so if it needs some correcting after a year, we have that opportunity to do it.

Shawn Cook, 2 N. Lake Park Blvd., he noticed that the folks who live across the street from this proposed project don't seem to be here tonight. He thinks that is fairly interesting. He thinks that is Driftwood Villas across the street also and he doesn't see any of those folks here tonight opposing this. He thinks the idea is great but if he lived across the street, honestly, he would probably be here against it. He disagrees with the statement that we need a water park, he doesn't think we need anything. He thinks we have a wonderful island with a ton of amenities. There are other locations. Owning two businesses here and one being seasonal that he has kept open 10 months this year, the one thing he is not liking is that it is the consistency of people coming in and getting CUP's for one year and they stay for 4 or 5 months. I know he has moved here and would probably want long term if he is successful but it's not a huge initial investment like coming in and building a water park. It's inflatable and he can drop it in the winter and if it doesn't work, he can move on. We're getting fly-by-night. We started with the amusement parks and now we have a water park wanting to do the same thing. He would like to see more folks coming in and dropping some solid money. He knows the economy is bad but you have to take a risk.

Alan Gilbert, 601 Atlanta Avenue, he was contacted by a number of people and he guesses maybe they are the disenfranchised, the people who are afraid to stand up and be ostracized at some level or some kind of reparations. They have seen things happen in the past where maybe they are hoping that Council will do the right thing. This CUP isn't about Carolina Beach needing some temporary amusements for 3 months to entertain a few people. It's about the rights of our residents and all of our citizens to have some level of protection for the quiet enjoyment of their properties, rental or long term. It also accesses the beach and Shawn mentioned dogs and fights. We use Hamlet a lot as our beach access as it is close to our home and offers a lot of parking. Sometimes leaders discount the rights of our business district residents and the visitors and they should have known better, caveat emptor - let the buyer beware, you should have known better than to live or rent a cottage in the Carolina Beach CBD. That's really not the way it should be. Let the buyer beware has been levied and if some objects to a concert bar or a "Flying Bob" next to their cottage or the Marriott. He was copied on a letter that was sent to the town. The Town of Carolina Beach Town Hall was copied, the Marriott, Cape Fear Coast Convention Center and he was copied. It was from a Dr. Kerry Pierce from Midland Michigan. "To Whom it May Concern: As a frequent visitor to Carolina Beach, we have been staying at the Marriott Hotel in an ocean view suite with our immediate family. Please be advised we are vehemently opposed to amusement rides which were installed adjacent to our lodging. It appears to us to be a detriment, not an enhancement, of the boardwalk experience for the visitor to your community. Personally, we find the

sights and sounds repulsive. This type of business is certainly not an enhancement to our vacation. If the intent is for the local families to have this type of activity in their home area, I would think a more appropriate venue would be located.” The Marriott had a list of some challenges that they had and he thinks what they did was to take one of our number one destinations, the Marriott, and made it a mediocre destination by putting those amusements in there. There are a lot of folks who wax nostalgic and they remember the good old days at the boardwalk. For those folks it’s a hard pill to swallow because on June 7, 2004 an ordinance was passed 04-555 that basically turned the CBD into a residential district. Pat and Joel voted for this, Dan was on Planning and Zoning. So, basically, on that day the Carolina Beach Town Council decided to change the makeup of the CBD boardwalk. And from an amusement, strictly amusement, with no residential allowed, they changed the zoning to allow it and that also coincided with a number of projects that were coming through. He doesn’t think we can point the finger now and say residents don’t have a say so because that ordinance 04-555 actually gave residents a right so the folks who were already there became true residents and he doesn’t think we can ostracize those folks and he believes they have a right for quiet enjoyment. Both our comprehensive plans protect the rights of residents in the CBD. The land use plan specifically says in a number of places that those residents have rights. Other than the master plan, our land use plan is our other comprehensive plan so when we voted on the master plan we made that one of our comprehensive plans. The general statutes say that any zoning, conditional use permitting, or zoning legislation has to be consistent with our comprehensive plans. Our master plan, both characterizes the area as mixed use residential. The folks at 103 Charlotte were the pioneers. They are the ones who went down there at the bequest of Council. When they changed the ordinance to allow residential, these folks were the pioneers to implement your master plan because that is what they started doing. And now they will suffer if this permit is allowed to go forward. The master plan, which is our adopted comprehensive plan, states very clearly in goal number two, “enhance economic development opportunities in Carolina Beach in a manner that improves the livability of the town for residents in its attraction as a destination for visitors”. So the goal of number two of the master plan doesn’t say build amusements next to residential. It actually says that the manner that improves the livability of the town for residents. It doesn’t just say the residents in R-3, R-1 or R-2. It says residents. So when you allowed residents in the CBD, you extended that right to quiet enjoyment to those folks. He would like to present the following that supports the denial of the CUP for temporary waterslides. He put this together as evidence and it has the ordinance 04-555 and it has the date that was signed and also has the minutes of the Planning and Zoning Commission meeting so three of you were involved with that at some level. He has also included the goals and objectives in the master plan that state that that area is designated as residential. He started with Specific Standard No. 4, utilities. As stated earlier, about 5 gallons per minute, and at the Planning and Zoning Commission meeting, listening to the audio, they discussed 5 gallons per minute per slide and that equates to about 1 million gallons a month. And when you look at 1 million gallons a month and they don’t have any impact, he doesn’t think there has been any discussion of impact fees. So, a million gallons a month is probably pretty close to looking at your automatic car washes and for each bay of an automatic car wash that is \$2,500 per bay so, one this isn’t in line with conservation because what you are doing is

taking a million gallons a month and you are just dumping it on a lot. You know a million gallons a month has to go somewhere, it's not going to be absorbed in the aquifer because that is not going to happen. It's going to runoff somewhere and that is a big concern that there has been no discussion on. The impact of the operation would be similar to an automatic car wash. Garbage - in the narrative that he shared with the town staff in the audio, the garbage was going to be carted through the town to facilities on the boardwalk area. Those dumpster facilities, that he understands, were more exclusive to the restaurants and bars there and there is an exorbitant fee so he doesn't know why they would want to pay. In our ordinance there is a fee for that and when you compare that fee with just having receptacles on site. It's an immense expense compared. They are not required to take it to that dumpster and doesn't know why they would want to pay that fee and why we would want to cart the garbage through the town. So, that's on the utility end. General condition (1) is public health. Without having recirculation pumps and the possibility of pooling water, without the recirculation, you can't sanitize it. So cryptosporidiosis, when we have talked about splash pads in the past, one of the concerns of Parks and Recreation was when you have a splash pad the problem is problems with health so looking at cryptosporidiosis and not having circulation pumps and the possibility of pooled water there, that would be a challenge. Without proper drainage, the adjoining property may be exposed to that water that could potentially be contaminated. He has an e-mail from Ricky Gibbs, Sr., environmental health specialist, who stated that the portable, inflatable waterslides or other temporary water devices are not allowed in accordance with 15A NCAC, North Carolina Administrative Code, 18A.2500. He included the e-mail that has his signature image, all his contact information and 30+ pages of the NCAC that he has interpreted that these waterslides aren't even permitted with respect to senior environmental health programs specialist, New Hanover County Health Department. So, basically they are saying the code doesn't even permit them. So, that is in here too as evidence. He would also like to talk about General condition (2) - parking. There is no public parking within 500' of the lot that has not already been in standing waivers. You've heard about all these waivers. When you go out to Lake Park Blvd., you have a number of businesses there. You have Michaelangelo's, Fat Pelican, Magic Bean, and an assortment of other commercial businesses and realtors on the other side and that parking is basically used up every day. The green lot would be considered within 500'. The green lot is behind the Trolley Stop. There is no contract on that. That parking could go away tomorrow so issuing a waiver with respect to the distance of that lot wouldn't be prudent because we don't own that lot and we just take advantage that we get to take money for it, he guesses. The other lot in question is the Hamlet lot which is a beach access lot that was funded by CAMA and, according to the Division of Coastal Management, should not be used to subsidize parking for private businesses. He has included in this evidence, and this has come up before, when you try to give away parking in waivers but that CAMA is a beach access lot and not for water parks and not to give away to private entities. That lot is basically deeded as a CAMA access lot. He said I'll read a portion from Mike Christianberry, Division of Coastal Management, wrote, "The Hamlet lot is a replacement lot for the loss of a previous public parking lot, paid for by grant funds. As such, the lot is subject to provisions in the grant contract which states that the lot shall be used for public beach access parking." He then goes into some more dialogue and offers this as evidence. "That said, DCM is not in the business

to subsidize parking for private businesses. Our mission, as far as grants go, are to provide opportunity for the public to access the state's public trust beaches and waters, not to subsidize parking for private businesses. If the town is actually counting parking spaces at public access parking lots paid through state fund grants to offset parking for adjacent businesses, DCM may have issues with that practice. DCM will need to closely scrutinize future grant proposals by the town, particularly with proposals within the CBD to determine if the proposal actually falls within the mission of the state's public access grant." Condition (2), meets all required conditions and specification - that is what all of these fall under. He says they don't meet the requirements. Developing this lot as described would be inconsistent with specifications set forth in Ordinance 09-780, Article 4, Phase II Stormwater Management Ordinance. That is a 37 page ordinance and, basically, on every single page you can see how not providing for stormwater defeats the purpose of that ordinance on the phase II. General condition (3), not substantially injure the value of adjoining or abutting property. He brings this narrative and printed out all the values of those adjoining properties. The value of 103 Charlotte is approximately \$2.634 million dollars and paid property taxes of approximately \$20,000. The adjoining waterslide property is valued at around \$600,000 and pays under \$4,000 per year. Positioning of public waterslides will equate to noise, congestion, nuisance and becoming of a nuisance to the residents of 103 Charlotte and the other bordering property owners. The area is already impacted by poor stormwater runoff and crowds associated with the beach access. An indication that the adjoining property values would be injured is evidenced in the value of the existing property in the boardwalk area that have been adjacent to the amusement district. He listed those properties: 2 N. Carolina Beach Avenue, taxes paid approximately \$1,000 per year; 3 South Carolina, taxes paid \$838 per year; 112 Cape Fear, taxes paid \$1,524 per year. Respectively, the value of those properties are \$159,000, \$133,000, and \$242,000. Those properties have been adjacent to boardwalk amusements for years and have been impacted by those. Condition (4), location and character of the use will be in harmony with the area in which it is to be located. We have seen from the diagrams that every property that surrounds that is residential and when the Town Council passed the ordinance to allow residential in that district, you afford the rights of quiet enjoyment. There hasn't been an amusement surrounding that in years. It might have been the go-carts, not sure, but most of those amusements went to Jubilee Park and the amusements left Jubilee Park because they didn't have exclusive zoning to allow them to stay because speculative residential took over. We perpetuated residential in our CBD a lot for the same reasons, so we did it. So, for the people who wax nostalgic, we did it to ourselves. Maybe it should have been kept all amusement/boardwalk but it's not and the folks over at Charlotte Avenue were the pioneers and they went in there and looked at what the desires of this town were and they were the pioneers on the master plan. He was contracted by a number of people who don't want to stand up here, don't want to be ostracized, who don't want to speak against 3 months out of the year having some waterslides. You heard from a commercial realtor and other investors. For 3 months out of the year, maybe it's worth renting that lot but he looked at the sales tax revenues, the actual sales tax collected in Carolina Beach and in 2007 to 2008 it went up. In 2009 it went down, which would be counterintuitive when you see that all the amusements and all the booming, all the money were funneling right down to that boardwalk. You look at those numbers. Unfortunately for 2009, it was state

budget cuts and not collecting that data anymore. He's not saying you couldn't get it but it's on the web. Before 2006 you won't see Carolina Beach data because we were less than 5,000 population. But from 2007 to half way through 2009, you can look at it. Our sales tax revenues went down. What he has given them, with respect to these conditions, are enough reasons to turn this project down and what he would say, don't focus on 3 months out of the year mediocrity, focus on long term. If they want to throw something out at Jubilee Park, he thinks that is a good place for it but we have residents and the value of those residential properties tremendously exceed the value of anything down there in that CBD that doesn't have it residential. The Marriott, and we basically, backhandedly put a "Flying Bob" next to those guys. That Marriott is a \$15.3 million dollar property and they pay over \$97,000 a year in property taxes and we effectively backhanded them by putting the loudest, meanest amusement right next to them. He would say, let's treat the folks that are paying the bills a little better than the folks that are just coming down here for a few months out of the year. He gave his evidence/information to the town clerk which contains all the property values, general statutes he referenced, and correspondence from DCM and the Health Department.

Rich Lehrer, 106 Charlotte, also vice president of the Laluna HOA which are the six units there. He asked that Councilman Wilcox recuse himself. He has a problem with him, with his feeling about zoning. He doesn't believe in it. He saw what he did in R-3 where he built whatever he wanted to build. He pulled something for a 600 sq. ft. garage and he built a duplex. He watched what he did on Virginia Avenue when he got a deal to build a duplex there and it was all single-family and everybody had to come out and fight it and Dan said if you fight it then we will build two houses. We'll build one in the wetlands. He doesn't care. He watched him try to get Kirkbride's lot to be buildable, which it is now because Kirkbride took the town to court. The residents across the street and the condos were freaking out. They were afraid Kirkbride was going to build there or somebody was going to build there and then that thing would wash into them in the next big storm. The other thing is, he has a problem with the people who are on Planning and Zoning. We have Brett Keeler who was a major zoning violator. He did it with his Blackhorn. A quote from former Commissioner Bill Parker, "You demonstrated to me that it doesn't matter what we say or is approved, you are going to do whatever you decide to do when the time comes." That's why we put a guy like this on Planning and Zoning. He brings nuisance projects. He came up in 2007 and asked to bring amusements.

Councilman Wilcox said he is not going to recuse himself so he can move on. Mr. Lehrer has a problem with anyone who disagrees with him and he is sorry but he is not going to recuse himself. There are no zoning ordinances on record against him of violations of anything, let's move on.

Mr. Lehrer said let's start with the process of how this was initially presented. First of all, he has the unit right next door at ground zero. He wasn't even notified. When he sees the presentation, if you look at the map that the town used, even here today, the map didn't even show his building. It showed a parking lot. That is what people of Planning and Zoning saw, a parking lot, where all anybody had to do was pull it up from Map

Quest and there is his building. You don't need to pull something 5 years old to obfuscate it. Then there is what Greg pulled up, his original drawing that he showed Planning and Zoning. This was shown again and Mr. Lehrer asked where his building was on it and said there was a tremendous obfuscation there. The neighborhood itself, there is only one building in that whole neighborhood that is zoned commercial or that is commercial and that is the real estate office. The real estate office shouldn't be commercial because it isn't even ADA accessible. Everything there is residential. This is an incredible impact on this. He showed a decibel chart. One of the most dangerous things, believe it or not, is noise pollution. This is a study from the Southern Medical Journal and a lot of the references are from WHO, World Health Organization, and from the NIH. He read a few passages. "Noise produces direct and cumulative adverse effects that impair health and degrade residential, social working and learning environments and corresponding real economic and intangible well being losses. It interferes with sleep, concentration, communication and recreation. The aim of enlightened government controls should be to protect citizens from adverse effects of airborne pollution including those produced by noise. People have the right to choose the nature of their acoustical environment. It should not be imposed on them by others. Noise represents an important public health problem that can lead to hearing loss, sleep disruption, cardiovascular disease, especially in children, social handicaps, reduced productivity, impaired teaching and learning, absenteeism, increased drug use and accidents and can impair the ability to enjoy one's property and leisure time and increases the frequency of anti-social behavior. Noise adversely affects general health and well being in the same way as does chronic stress. It adversely affects future generations by degrading residential, social and learning environments and corresponding economic losses. Local control of noise has not been successful in most places. This points out the need for improved methods of local control that should include public education, enlightened legislation and active enforcement of noise ordinances by local enforcement officials. Part of the solution may require federal or state legislation and its supporting local efforts or the restoration of federal funding for the Office of Noise and Abatement and Control." You hear about boom boxes, you heard about compressors. What you didn't hear about are screaming kids. The average child's screaming is 87 decibels. In the CBD, the limit is 75 decibels. Across the street, the limit is 65 decibels. This is 87 decibels. Multiply that by 93, because you can have 93 kids in there and 108 people. This decibel noise will be unreal. The average decibel noise at a carnival, he has all this documented from OSHA, etc., is 110 decibels. If you understand anything about the logarithmic scale, which is what a decibel scale is, this is incredibly detrimental to people.

Councilman Wilcox said he does know something about decibel scales and asked if he knows how it is measured. Mr. Lehrer said no. Councilman Wilcox said it is measured at a specific distance. You have to have 87 decibels at 3 feet, 87 decibels at 20 feet. You can't just throw out decibels and they don't relate at every distance.

Mr. Lehrer said 87 decibels at 50 feet. His unit is at ground zero and is at 14 feet. He wants to go over the law referring to the town's noise ordinance. He read, "Nuisance noise levels - Noise levels which do not exceed the noise thresholds but create an irritating impact sufficient to disturb an individuals sleep pattern or the peace and quite of

a residential neighborhood. Outdoor amplified sound - Any sound using amplifying equipment whose sound is outside or whose source is inside and the sound propagates to outside through open doors or openings in the building. Any device for amplification of the human voice, music or any sound including jukeboxes, stereos and radios.” Then they have the definition of noise, “Any sound or combination of sounds which because of its volume or quality tends to disturb reasonable persons of normal sensitivity or to interfere with the human activity. Noise disturbance - Any unreasonable, loud and raucous sound or noise which endangers or injures the health or safety of humans or animals, injures personal or real property or disturbs reasonable people of normal sensitivity. Amplified sound - Any sound or noise including the human voice that is increased by volume or intensity by means of electrical power.” General prohibitions of this, Section 10-6: “Except as allowed in this article, no person shall willfully engage any activity on any premises or public area in the town which produces or constitutes a noise disturbance on occupied, neighboring premises or public area without limiting the generality of the foregoing, a sound or noise shall be deemed a noise disturbance, if when measured as prescribed herein, it exceeds the level set forth below. Residential area at daytime level, 65 decibels; CBD, 75 decibels. Section 10-7, noise prohibitive nuisances, general prohibitions: It shall be unlawful to create, cause or allow the continuance of loud, disturbing, unusually frightening or unnecessary noise which prevents or unreasonable interferes with neighboring residents reasonable use of properties. Such noise may include but not limited to the following: yelling, shouting, whistling, singing on public streets or private property. Loading operations - Noise resulting from loading, unloading, opening or otherwise handling boxes, crates, containers, garbage cans or other similar objects during the nighttime.” That is what happens when this park shuts down at 10:00 p.m. on weekends and 9:00 p.m. on weekdays. “Nuisance noise - Nuisance noise which does not exceed the noise threshold but creates an irritating impact sufficient to disturb an individual’s sleep pattern or the peace and quiet of a residential neighborhood. Commercial entertainment - Without limiting the applicability of any other provision in this article, no commercial establishment shall play, operate or cause to be played or operated any amplified or non-amplified musical instrument or sound reproduction device in a manner that causes a noise disturbance any neighboring premises in a public area. For the purpose of this section a noise disturbance shall be presumed to exist where the sound or noise caused by the activity described here and is plainly audible with an occupied structure, not the source of the sound of the noise but within any public area more than 66 feet from the property line for the commercial establishment during the day set forth below. For structures located in a residential zoning district the presumption shall be effective for all hours.” This is the New Hanover County code and if you are the owner of the property, you will be fined and if you are the tenant, you can actually be jailed for 30 days. This is some legal talk on nuisance because that is what this is. This is a huge nuisance. “A legal action to redress harm arising from the use of one’s property. The two types of nuisance are private nuisance and public nuisance. A private nuisance is a civil wrong. It is unreasonable, unwarranted, unlawful use of one’s property in a manner that substantially interferes with the enjoyment or use of another person’s property without the actual trespasser physical invasion to the land. A public nuisance is a criminal wrong. It is an act of omission that obstructs, damages, or inconveniences the right of the community. Examples of private nuisances abound,

nuisances that interfere with the physical condition of the land, vibration or blasting that damages the house, destruction of crops, raising of water table or the pollution of soil or stream. Examples of nuisances interfering with comfort, convenience or health of an occupant are foul odors, noxious gases,..." He said there are 4 port-a-potties there with regard to foul odors and view off his deck. "...loud noises, excessive light or high temperatures." This is of a little over a month of the complaints from the Marriott of noise. They had their own noise meter. They have had a bunch of cancellations this year and the first question asked is whether the amusement park is going to be back. When the answer is yes, they don't book. He read a letter from Jim Specusa who has sold well over \$500 million dollars worth of property in Carolina Beach and throughout greater Wilmington.

Councilman Wilcox addressed the Mayor and said he had a little issue with this. He said we can't cross examine these people, and he thinks this is completely out of order. They are presenting all kinds of information here and we don't have the ability to cross examine these people. What are we going to do with it? We're going to listen to a letter?

Mr. Lehrer said it is not what Councilman Wilcox wants to do, it's what he wants to do. He wants to get as much as he can on the record so that Council is aware of it so that when he challenges this.

Mayor Macon asked his to read his letter and speed it up.

Mr. Lehrer read the letter. "I looked at the comparable sales of units in your building and saw that nothing had sold for less than \$500,000. If this proposed waterslide park goes in, I don't believe I can sell your furnished unit for even half that amount. What you've got going next door to your building will render your condo unit virtually unlivable for at least 4 months a year. Those 4 months are the prime vacation rental months. I reviewed the information from the packet you gave me containing the Town of Carolina Beach's proposed waterslide park and I have come to the conclusion that with the decibel rating as high as it is, with boom boxes, compressors and kids screaming, it will be very difficult to sell your property. Personally, I can't conceive of buyers who would willing choose to live in a place that would be constantly bombarded by 12 to 13 hours of continual noise reaching possibly more than 100 decibels. That kind of noise pollution is highly undesirable and unhealthy. What I am writing to you may sound harsh but to understand where I am coming from, it is important to have some understanding of the decibel scale. As I understand it, the decibel scale, like the Richter scale, is logarithmic. In other words, the power and intensity doesn't increase in the standard linear manner. With the decibel scale, a person's perception of sound doubles with every 3 decibel increase. This means the difference between 45 decibels, the EPA's acceptable, safe indoor noise level, and 100 decibels, the sound of a jackhammer, or 110 decibels, the sound of an amusement park, is of such magnitude that extreme difficulty of having to live in such close proximity to noise polluting environment produced by a waterslide park would render your condo unit economically obsolescent as a rental or a residence. A property that is economically obsolescent is one in which the neighborhood or area around it has deteriorated due to the conditions like a serious increase in noise pollution

from a newly constructed airport, highway, or, in the case of your condo, a waterslide park being constructed directly adjacent to your unit. Aside from the actual waterslide park noise, there would be early morning equipment setup noise and commotion from proposed 10 or more seasonal workers as well as late night noise from those same workers as they dismantle the slide equipment. This would all but kill any kind of quality of life expectations that potential buyers would command. Add to that the stench from the proposed projects for portable toilets and I can't imagine being able to find a buyer who would not take issue with the inability to be able to comfortably sun themselves or barbecue anything outside on the decks. There is also the problem of no parking for this park. People walking from their cars will be swarming all around your property just to get to the proposed amusement park's entrance. Even when the waterslide park is not in use, you have the issues of the ugly chain link fence with an even uglier inner green plastic silt fence giving the lot next door the look of an abandoned construction site. According to the town's planner packet, the construction site could last at least 12 months, then there is the issue of tons of sand that they propose to bring in. The blowing sand would give potential buyers one more reason not to open their windows. With all those open decks in the back of your building, I'd have a difficult time representing any of the 6 units in the Laluna complex but your unit is by far the most unsaleable." He showed a slide of Laluna and said it is probably the most expensive building built, per square foot, not including the lot, maybe in Carolina Beach. His tenant has told him if that goes in, he is gone. That is \$1,500 a month he won't get. Everything in that whole neighborhood is residential. They were asked to come down there and build this building and he financed it. At the time there were 278 units that were coming in the Arcadius building, another 92 units in the Park Place building. Altogether there would have been 400 to 500 units, including the units that are already there, in the CBD. That would have been the largest residential neighborhood. He believes Carolina Sands is the largest and if you built out all the lots, that's only 252. To all of a sudden say this is the CBD, we can do anything, we don't have to care about the residents that we brought in here and if you look at the land use plan, that is what it calls for. Quality, sustained projects both residential and commercial and that is what we did. We trusted you guys, we did what you wanted us to do, we spent a fortune doing it and now somebody wants to put a water park in there, screaming kids, to wreck it.

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

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

Jeff Mechaniack, 813 Sloop Pointe Lane, Kure Beach Village. He apologized for this taking so long. Said he wanted to briefly touch on some things he heard, he tried to write notes as fast as he could. Pertaining to what Ms. Jacobs had to say. Her comment of him getting a home down here on the island and making some kind of assumptions that this will be passed. He owns and operates another company in Fayetteville, NC. It's called Bounce Around of North Carolina. It's an inflatable rental company. He was making no assumptions coming down here that he would be passed and make his living down here.

He makes his living there. He is trying to expand what he does and better the life of his family. He heard something about not all night long. He emphasized this to P&Z and he will emphasize this again tonight. They are looking for daylight operating hours. That is when the sun is up. No nighttime, nothing in the dark. Something he forgot to mention earlier, he did bring up background checks, but he would like to mention that drug testing will be in place also. He did miss that. Ms. Jacobs also brought up the term silt fence. Silt fences is one of the numerous things that were mentioned at the Planning and Zoning meeting, at the base of the fence. He believes it was 1 to 2 feet of something to keep the sand from blowing. Something meaning something, not ugly silt fencing as he believes was quoted. Another thing which Mr. Lehrer and Ms. Jacobs had to say - he said to Ms. Jacobs at one point in the Planning and Zoning meeting that he would be willing to rent that unit. He would love to be able to look out his window and see the property that he runs the business at. So is someone was going to lose rental from that, he would be happy to sit down and talk about taking over that property and renting it. Another thing mentioned is that these are all in parks. Our setups are not always in parks. He has setup at NASCAR tracks, beaches and parks. All the photos are not at places that were setup at parks and people seem to be pressing it needs to be in a park. Which brings him to his next comment about Jubilee Park, he heard that an awful lot. People spoke as if they may own Jubilee Park. If they do, please present him with an offer to rent it or lease it. He doesn't know why they are bringing this up because, to his knowledge, these people don't own Jubilee Park. Another thing he had mentioned at the last meeting, to try to appease and make all these neighbors happy, he offered his own personal cell phone number and said if they had any issues, if there's noise, if a light is shining in the wrong place, anything you can think of, please feel free to call the police or him too and he is totally willing to sit down and talk to them right then and try to help and work with them to make them happy. Regarding the generators and compressors, he keeps reflecting back to Planning and Zoning where these were brought up there also. He does not and will not be running anything with generators or compressors. Everything is going to be run off from outlets that you could plug in a beard trimmer, a hairdryer, anything in your house. There will be no generators or compressors on site. As far as the port-a-potties and the horrible stench from them - one, they will be maintained more than one time a week and they are going to be at the utmost distance from this gentleman's property where he doesn't think it will be offensive to anyone there at all. They will be in the closest corner of S. Lake Park Blvd. A comment he heard he believes from Shawn Cook was something along the lines of not investing enough money. He can show documents and price tags of what these inflatables cost him and they are not cheap items and are very expensive. He wanted to bring that up because it made him feel like he is trying to present a very cheap form of entertainment. This is a very costly project and these inflatables and everything that goes with them have quite large price tags that go along with them. Alan Gilbert stated something about let's not have someone come here for just 3 months. He now lives here and he is not looking to come here for 3 months but to be part of the community and open a new and very exciting business that a lot of people are going to enjoy. With regard to amusements near hotels and things of that nature - one of the biggest amusement companies in the world is Walt Disney World and they have a hotel right in the center of their amusement park. He doesn't see anyone complaining about that. He thinks they enjoy staying right there in the park so they are

there. Regarding the 1 million gallons of water a month, at the Planning and Zoning meeting he did state 5 gallons per minute. He never once stated 5 gallons per minute per ride. Five gallons per minute of water is going to run every single one of the slides. That means you are looking at 90,000 gallons of water opposed to 1 million gallons. That's a huge difference. Regarding trash, they will make sure they police the area to take care of any trash and if the CBD dumpsters are not something he should use, if he should get his own trash receptacles, he will be happy to purchase them and pay to have the trash picked up. Adding to that, he would make sure to have a fencing or housing around it unlike his soon to be, or hopefully soon to be, neighbor who only has 3 sides around his trash receptacles. He heard something about babysitting. There is not going to be any babysitting going on at that site. He is not opening a daycare and there will not be any babysitting going on at all. He heard something to do with mildew maybe or something along those lines. There is a product called Swisher Cleaner which he will be disinfecting every single ride every single day and at least twice a day. This is one of the most highly recommended disinfectants in the whole industry. The units will be spotless and clean every single day in use. He would not put his own 4 year old daughter on something he would put someone else's on. He will make sure they are clean, disinfected and safe. As far as the Marriott hotel goes, it kind of goes back to the Walt Disney World thing. He is curious, if the Marriott marketed their sales towards family oriented things, he personally think that families would enjoy having a room within walking distance to a place that is fun for the children to go. When the decibels came up, he never heard a single quote from telling him what the decibels of a blower for an inflatable unit is. He doesn't know if anyone in this room could tell him that, especially the ones who brought it up. About the photos that went up, he asked if they were photo shop because they are not his slides so comparing someone else's equipment and then perhaps photo shopping it or overlaying the photographs, he thinks that is completely unfair. At least use the inflatables he is going to use to reference what it is going to look like near your property. None of those inflatables are any he is going to purchase. About alarms, these are not alarms that will go off on the property but will go directly to the police department and himself. You will not hear them. Someone did mention the bulldog siren alarms. What these are, they attach to the blower units of the inflatables. The reason for that, you can't hear the blowers running so if a blower was to turn off, you have an alarm which is for the safety of everyone. That would be the only alarm you would hear on the property during daylight business hours. He thinks it is an incredible thing to add on to what they are doing because you can't hear the blowers and if one goes off you will have an alarm to let you know this thing is not getting are and you need to get people off. You have a minimum of 5 minutes before there is even any worry of swaying or starting to deflate much, which is adequate. As far as the cat comment, the lasers that are going to go across and around the border of this property, are going to be in an area of 18 to 24' roughly. If you see a cat that big on that property, tell him so he can get out of there. He is not trying to say anything to offend or upset anyone. He is just trying to make some valid points against what has been said against him and he hopes he did that. His cell phone number is 518-307-9753.

Greg Reynolds, said his one comment to Cindy Jacobs would be, this drawing is to scale based on two different surveys. He has walked it, measured it. He did the survey for

Park Place and the survey for Rich's property, that is how he drew the building there. If it is wrong, the survey is wrong. To Rich's comment, the property line was shown back of the old property line and that was done (note: inaudible) ... by the town but he has no requirements to show your property line on my CUP application. All I have to do is show your name. It actually hurts your argument because your building is not further east now because we thought your building was a lot further west. And to say we didn't move the rods, I'll show you the old drawing. We moved it 14 feet. We moved all the rods 14 feet. We did that, I'm not lying under oath. It's the same number of rods P&Z had, all he did was shift everything to exactly what it is. It's the identical number of rods. Talking about somebody coming for 1 year and disappearing, we asked for a 5 year CUP and the town told us we could get 1 year and come back next year and reapply. He used to live over by the lake and loved it when the kids came out at recess just to hear all 200 of them scream. They will only have 10 kids on a ride at a time. So, if decibel levels are not additive, sorry if kids screaming bothers you, I guess I wouldn't live at the beach. If kids having a good time bothers you. The only other thing he wants to say is the property at 103 Charlotte is a CUP, it comes with some requirements also and this is a CUP and neither one is allowed by right. The terminology it came under was multi-family that is subordinate to the business. He knows they stretched the rules to build that building and the rule was changed for that building. We're not trying to change any rules, we're trying to follow by the rules. If you have a 1,000 sq. ft. office and a bunch of parking and you call that a mixed use, it stretches the imagination. The sizes of the rides have always been on the application and have not changed those since day one.

Jeff Mechanick said music came up at the Planning and Zoning and he said then that, at the most, there might be a radio, a boom box type item at the ticket stand playing a little surf's up, Beach Boys music but, after hearing all these statements made, there will not be music on the property.

Rich Lehrer said Disneyworld, he does not see the hotels anywhere near the amusement parks. They keep them pretty clear from the amusement parks so you don't have that noise. It's not about compressors, it's not about the pumps, it's about the screaming kids. Forget the waterslides. Just imagine 93 kids in a playground. That is what you hear. It's unbelievable noise. And that is what is not mentioned.

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

Councilman Wilcox said he is compelled to make a few comments. He has heard a lot of stuff tonight. A lot of it is not factual or material. A lot of it is opinion and stuff that came from other people, it's third party, and he wants to address some of those things and share his feelings. It is disturbing when somebody comes up here and says do the right thing like were up here not to do the right thing. Just because our opinion might disagree with someone else's doesn't mean were not doing the right thing. That is an unfair characterization. I see a water park about 3 month periods of operation or 4 month periods of operation, when else do you operate a water park? Do you operate during January and February? It's a seasonal operation just like any other seasonal operation

would be. He heard comments about asking them to come build this unit. He doesn't know that anybody asked them to come build this unit. He thinks they came and built in the boom to take advantage of that and to make money and he appreciates that they did. He does value them just like he does all the other residents and all the other business people but he thinks it's an unfair characterization to suggest to imply, all of a sudden, somebody is doing something dishonest because they asked them to come build that building. He doesn't recall that being fact. Stormwater issue, he thinks stormwater is pretty much going to fall on that lot just like it does any other time. With regard to the water running off those slides. He has lived at the beach all his life, that is sand out there. With that amount of water they are talking about, he has yet to see it pooling on sand. It is interesting to him that one of the same people that was willing to vote to put the skate park back here and put the basketball court back here when those neighbors over there were complaining about the noise has a problem now putting this park next to some neighbors. Everybody thinks this is a great idea, they just don't want it near their house. With regard to the noise, the noise comments he heard were all over the map. It is something he does know about. A lot of references were used that were inaccurate. He would have loved to have an audio engineer here to ask him some pointed questions and get some factual information back from him. He can't even consider most of that stuff that was heard. He thinks it is really unfair to suggest that because, like Gregg says, it was a residential subordinate to the CBD. First he hears it was a residential section, then he hears it's a mixed use section but, in fact, it's the CBD. He understands that council never changed it to a residential district, they changed it to a mixed use district. In doing that, the uses and rights that were allowed to be there in that CBD, those didn't just go away because mixed use was allowed. Mixed use was an additional use that was allowed. All the other uses that were still allowed in that CBD that had been allowed there through the years, the amusements, the go carts, whatever, and it's allowed in the CBD, commercial uses, is still allowed. Those people's rights didn't go away just because some residences were allowed. It confuses him that they were told a couple of years ago that there were too many bars, there wasn't any family entertainment and it needed to be changed and now that that has been changed, he guesses everybody is still in favor of family entertainment as long as it doesn't cause them any inconvenience whatsoever. He is going to deal with the substantive issues here which is that we approve and deny these things based on material facts and credible testimony and most of what he has heard here tonight is opinion. There is a noise ordinance that we have that addresses almost everything we heard with the noise. They are required to follow the noise ordinance, just like they are required to follow all the other ordinances. When you approve a CUP, you approve that CUP based on them being required to follow the ordinance. If there is an ordinance in place, we can't tell them they don't have to follow it unless that power is given in the ordinance. We can impose some additional requirements but we can't impose requirements that are create unnecessary hardships or are unreasonable or aren't consistent with the spirit of the ordinance. Here is the problem he has. Most of what he heard tonight was people getting up here forecasting everything they expect to be wrong. In other words, they are anticipating that they are going to break the noise ordinance. He doesn't know how you do that. If we did that for every business that came into town, if we put an ordinance in place and then said oh, you know what, we put an ordinance in place and that is how we're supposed to be approving or

denying a project but we're still going to deny you because we think you're going to violate the ordinance. He doesn't know of anything that is of greater violation of somebody's due process and their property rights. Those are his basic opinions and, at Council's pleasure, he would be willing to make a motion.

Councilman Lewis said there has to be some kind of happy medium between the residential community and the business community and he thinks it is appropriate to take a look at what that is. He feels for where you people are at from a residential side because it is going to impact you somewhat no matter what you do. He kind of agrees with Dan, it's kind of like the district was built to have multiple uses so he can see this here. But he thinks the hours of operation that maybe they could compromise on when the hours of operation are. He doesn't think it is going to make any difference if they open at 10:00 a.m. and close at 8:00 p.m. vs. opening at 9:00 a.m. and close at 9:00 p.m. It's not going to cause you any consternation or people coming in and out of there. That means you wouldn't start opening and getting the rides up until 9:00 a.m. and you would be closed down by 9:00 p.m., shutting them all down by 9:00 p.m. So, a person sitting out on their balcony could at least get something a little quiet for a period of time after that. The other thing is maybe the layout and design, there has been some question about design, he thinks Lonnie had some questions about design, is agreeing about where the rides would be located on the lot. He doesn't have a problem with where they are located now but if somebody else has a problem with that or somebody has a better suggestion, he is open to that as well. The only thing he thinks that really impacts there he thinks, the biggest impact is going to be on parking. We have a big impact on parking down there now but we haven't put that burden on the business community in the past so it is kind of hard to say we'll we're going to put the burden of the parking on this particular business and we haven't done it with any other business. Shawn made some points about parking but his business in benefiting from not having to have the parking. There is a concern about water use, he is assuming we have some type of impact fee for the water that is going to be delivered to that particular lot he, right?

The planning director said the answer is yes to that. They will be looking at the consumption and measure it in an equitable way.

Councilman Wilcox said, to follow up on the parking issue, he heard our ordinance quoted to us, which wasn't quoted accurately, our ordinance allows people to count parking within 500 feet. We have been through this issue before about the leased lots. We have a lot of situations that are leased, that have been allowed to claim those areas as parking all through the years and there is nothing in the ordinance that specifies that each business has so many spots on every lot. That is not what the ordinance says. The ordinance says if you are within 500 feet, you are able to get a parking waiver. He just wanted to clarify that too.

Councilman Lashley said what he is concerned with is having the pipeline over by the residential area. He would suggest moving that over where the smaller three are on the south side starting with the big kahuna on down. He would take the smallest one, which is called little surf, and put that by the residential area and then the other two can go

where the pipeline and where it shows a future site there. He would move those three over to that location. His big concern is having that big monster, it's only 25' but it's the largest, put that away from the residential building. He also has a few suggestions for Jeff, remember our zip code is 28428 when you are looking at applications. We're a seasonal place here and we need people to be employed. Please take that to heart. Our local high school is Ashley, consider those kids. We own two hotels now. If you are going to bring people in here, have them look at our two hotels. They are called Surf Side and Guy Johnson.

Councilman Wilcox made a motion to approve this request for the application for the water park based on that it meets the four general conditions, seven specific conditions, it is consistent with TRC, building, police, fire, utilities, public works and planning comments and that the hours be monitored and if there are any problems with regard to noise then, at the town manager's request, that those hours be curtailed. Also, if there are some Health Department requirements, then that be taken care of.

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.

Applicant must comply with the following staff conditions/comments:

1. As provided in Article 7 of the Town's Zoning Ordinance, "where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use." Parking for the 46 required spaces shall be waived after the applicant signs a parking waiver stating the Town is not liable for any deficiency of public parking spaces.
2. Solid waste is handled collectively by the boardwalk area businesses. The owner will be required to continue to participate in this program. Trash receptacles shall be provided throughout the water park. Trash receptacles shall be emptied daily as needed. Surrounding areas shall be patrolled by employees for any trash associated with the water park throughout the day and at the closing of rides each day.
3. A sign permit shall be obtained for any signs located on the property.
4. All permits and approval letters/final inspections required by all Federal, State, County, municipal and any other local authority. Agencies must be submitted to the Town of Carolina Beach Planning Department prior to beginning operations.
5. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission. Moving of rides on-site may be approved administratively by TRC.
6. Outdoor artificial lighting fixtures shall be designed and positioned so that the point source of light (light bulb) is not directly visible from the beach, adjacent properties or right-of-ways.
7. Off-Street loading requirements have been waived by the Town Council. The following loading plan shall be utilized:
 - Two loading areas are identified: The western end of the property which is already asphalted will be used for small deliveries; if larger deliveries are necessary the designated space on Raleigh Avenue will be utilized.
 - Loading will typically take place prior to 9am.
 - The largest truck anticipated will be the food delivery typically seen serving the Boardwalk area. Only two axle vehicles will be delivering on-site.
 - The loading period for the vendors should be less than 15 minutes.
8. The use shall be allowed for 1 year. If requested, an extension may be considered for approval or denial at Town Council's discretion.
9. This conditional use permit may be revoked in accordance with the provisions of Article 19 and 21 on various grounds allowed therein. Further, the

conditional use permit may be revoked if any of the following are discovered:

- a. Upon a preponderance of evidence that the establishment's patrons display a pattern of disorderly, violent, indecent or unlawful conduct;
 - b. If the application contains any material misrepresentation, misstatement or omission, concerning information required to be provided.
10. A manager shall be on-site at all times when the water park is open.
 11. Criminal background checks shall be performed on all full time employees prior to opening. Employees convicted of a felony or a sexual offence shall not be hired. The cost of these checks shall be at the applicant's expense.
 12. A fence shall be installed around the perimeter of the property in accordance with the approved site plan.
 13. The site plan corresponding to this approval was designed by Reynold's Architecture Corporation dated January 27, 2010, revised on 2/24/2010 and stamped received by the Town of Carolina Beach on February 24, 2010.
 14. Waivers are granted for landscaping, sidewalks, curb, and gutter.
 15. The use shall adhere to the provisions of the zoning ordinance and town code to include but not limited to the noise ordinance listed in Chapter 10-4 – 10-10 and 10 – 27. The applicant has agreed that no amplified or non amplified music will be played on-site.
 16. Hours the operation that the site is open to the public shall be limited to 9:00 AM until 9:00 PM Sunday through Thursday. The water park may remain open an additional hour until 10:00 PM on Friday and Saturday. At the Town Managers request the hours of operation may be reduced.

Jeff Mechanick said he can move the rides but would rather not. If you look at the east end of the property where the concession stands, picnic tables and seating and tents are. That is typically where the parents are going to be. The reason he wants to put those smaller rides, what he considers toddler size rides, is because that is where their moms and dads are going to be. If he puts them all the way down at the other end of the park, mom and dad might not like that they can't see that far to their children. That would mean if he moved those slides, he may need to move the whole concession area. He would be happy to move the pipeline and put it on the other side but if you are talking about the smaller slides, he would really like to keep them in that area. He will swap those two out and make sure the shorter of those three is on the side of where the property in question is - put the pipeline closer to the fence line over towards Hamlet. He has no problem with doing that.

Councilman Wilcox said he would make that part of his motion. The condition is as follows:

17. The "Pipeline" ride shall be placed on the south side of the site.

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

The town manager suggested that whenever they decided to have a meeting, Item #20, which has to do with peddling, they need to move that up.

Mayor Macon made a motion to move Item #20 next and then Item 25(a) and handle the Planning and Zoning appointment. MOTION CARRIED 4-1 WITH MPT EFIRD VOTING NO.

PUBLIC HEARING - CONSIDER AMENDING THE CAROLINA BEACH CODE OF ORDINANCES, CHAPTER 8, ARTICLE III PEDDLING AND SOLICITING TO CONSIDER EXPANDING THE ALLOWANCES FOR BEACH SERVICES (RENTAL ITEMS SUCH AS CHAIRS AND UMBRELLAS) TO FREEMAN PARK. BEACH SERVICES ARE CURRENTLY LIMITED TO THE MUNICIPAL BEACH STRAND. ODIFICATIONS TO THE PROPOSED LANGUAGE MAY OCCUR DURING DELIBERATIONS.

Ed Parvin presented. He said that Shawn Cook has requested that we go back and look at beach delivery services. We adopted an ordinance last summer to allow for rental items on the municipal beach strand. It is a little bit different than vending. Vending is when you sell items on the beach. Beach delivery service they define as something a little bit different, you can rent items. What they did not do is make an allowance for Freeman Park and he is simply asking that we do make an allowance for Freeman Park so you can have beach delivery service such as umbrellas and chairs like he operates now on the Freeman Park area. The restrictions are very similar to what we have now. The municipal beach strand is sunrise to sunset. There are only two that will be allowed. There is a fee of \$100 per year as approved by the manager and there was a recommendation from the Business and Economic Development Committee meeting that his fee for the first 3 ½ years be waived based on his payment for the text amendment.

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

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

MPT Efird made a motion to adopt Ordinance No. 10-821 (Exhibit 1). MOTION CARRIED UNANIMOUSLY.

APPOINTMENT TO THE PLANNING AND ZONING COMMISSION

Councilman Lashley recommended Lisa Wills as a new appointee.

Councilman Lewis recommended Jessica Keenan.

Mayor Macon opened the floor for a motion.

Councilman Lewis made a motion to appoint Jessica Keenan to the Planning and Zoning Commission. MOTION CARRIED 4-1 WITH COUNCILMAN LASHLEY VOTING NO.

MPT Efirid made a motion to continue meeting to March 23, 2010 at 5:30 p.m. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____