

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

May 10, 2011

The Town Council of the Town of Carolina Beach met in regular session on May 10, 2011 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Joel Macon, Mayor Pro Tem (MPT) Pat Efird; Councilman Dan Wilcox; Councilman Bob Lewis and Councilman Lonnie Lashley. Also present was the Town Manager Tim Owens, Town Clerk Lynn Prusa; Finance Director Dawn Johnson and Town Attorney Steve Coggins.

Mayor Macon called the meeting to order.

INVOCATION

MPT Efird opened the meeting in prayer.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in reciting the Pledge of Allegiance.

ADOPT THE AGENDA

MPT Efird made a motion to adopt the agenda with the addition of Item #19b to consider the proposed change to the conditional use permit for Dianne Dugan on Harper Avenue (Boardwalk) to allow servers to deliver beverages to an adjacent outdoor seating area. MOTION CARRIED UNANIMOUSLY.

PRESENTATION BY DOUG MURRAY, SAFETY OFFICER OF CAPE FEAR SAIL & POWER SQUADRON, CONCERNING NATIONAL SAFE BOATING WEEK

Genie Lancaster presented on behalf of Doug Murray who was unable to attend. Ms. Lancaster is a member of the Cape Fear Sailing and Power Squadron. One of their biggest thrusts is education of boating safety on the water. Next week is the beginning of National Safe Boating Week. She read the proclamation and is asking for Council to consider adopting it.

Mayor Macon made a motion to adopt Proclamation No. 11-1054 (Exhibit 1) recognizing National Safe Boating Week. MOTION CARRIED UNANIMOUSLY.

PRESENTATION BY BARRY JOHNSON OF JOHNSON ENVIRONMENTAL CONCERNING DISCUSSION AND APPROVAL OF 2011 BID AWARDS FOR THE FOLLOWING:

C&D/Vegetation Removal

Mr. Johnson said the staff requested he discuss the award recommendations for disaster response and recovery contracts for the upcoming fiscal year of 2011/2012. He said Council should have received in their packets two sets of contractor recommendations. C&D and vegetative debris removal: if a hurricane were to occur they would want to be able to activate the contract to remove construction and demolition debris and vegetation debris. The contracts are set up to where there is a primary, first call contractor that will pick up the material, keep the material segregated and carry it to the Dow Road public works facility where it will be managed and loaded for disposal through the New Hanover County contractor. We had excellent bids this year, 13 companies bid on this particular project with the overall lowest price bidder being Bamaco, Inc. from Florida with a bid of \$4.89 a cubic yard for pickup, load, haul and delivery to the Dow Road site for both vegetative and C&D. Second place was Disaster Recovery Group and Tree Service of Arden, NC for \$5.20 per cubic yard for each. The rates are very competitive and the lowest he has seen in several seasons. They both have quite a bit of sub-contracts, especially Bamaco, Inc. who will utilize local contractors to do the work. Both of the companies are worthy of the award, they have experience, not federally debarred, have insurance that meets the municipality's requirements and are able to bond the projects requested. Their recommendation is Bamaco, Inc. as primary and Disaster Recovery Group and Tree Service as the backup or secondary. He said this is a pre-event contract so we have it in place and requires the contractor to respond within 24 hours of notice and the town has met the requirement of phase one which is making the roads clear and available for use.

Mayor Macon made a motion to award phase one, vegetative and C&D debris removal to Bamaco, Inc., primary award and the secondary award for backup to Disaster Recovery Group and Tree Service. MOTION CARRIED UNANIMOUSLY.

Sand Removal

Mr. Johnson said they had 11 bidders for this project. Hensley R. Lee Contracting of Mississippi is a new contractor to us and they are the award recommendation for primary. It is not the first year they have done this but have worked in the gulf coast area and are the number one provider of FEMA trailers in the nation, are used to rapid response, and want to incorporate debris removal back into their business. They are the primary company for taking care of the levees in New Orleans right now. They have disaster experience and their ability to move dirt is well known. We feel comfortable with the numbers they provided which are very competitive and it is a turn key project. This contractor will pick up the material, carry it to the north end, the Freeman Park area, set up a debris management site where they will sift all the sand and then return it to the beach at \$7.35 per cubic yard. Bamaco, Inc. is the secondary bid at \$8.49 per cubic yard.

Their recommendation for primary is Hensley R. Lee Contracting and Bamaco, Inc. as secondary. These contractors are not paid anything unless they come on site. They do not require a minimum or a maximum.

The town manager said the reason we are doing this is to position ourselves for FEMA funds, make sure we do it correctly, and bid it like it's supposed to be bid and so we don't have any slipups if we ask for reimbursements from FEMA. Also this will put us in a position to respond quickly after events and to move forward.

Mayor Macon made a motion that the sand and debris removal, sifting and placement primary award go to H. R. Lee Contracting, Inc. with a secondary award to Bamaco, Inc. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon recognized Dale Funderburk, Police Officer I, Police Department, for 5 years of service; Anthony Ammons, General Maintenance Worker, Operations Department, for 5 years of service; and Kim Anderson, Laboratory Technician, Utilities Department, for 20 years of service. He thanked them for their service and our appreciation for it.

INTRODUCE NEW EMPLOYEES

Brian Stanberry introduced Tony Burnett-Millage, General Maintenance Worker, Operations Department.

The town clerk said that Gene Gurganious was unable to attend this evening and would like to bring the new employees of the Public Utilities Department to the next meeting.

There is also a new police officer who will be introduced at the next meeting as well.

CAROLINA BEACH COMMITTEE REPORTS

None.

PUBLIC DISCUSSION

None.

RECOMMENDATIONS BY THE ARTS & ACTIVITIES COMMITTEE REGARDING A CHANGE IN FEES FOR EVENTS HELD ON PUBLIC PROPERTY

The town manager presented this item. He said the Arts and Activities Committee came forward with a recommendation last time regarding fees for events on public property. He has tried to summarize the different types of activities that we have in town, one

would be a private event on public property. It's not something we encourage but it does happen occasionally and we do have a fee schedule for that. There are public events on private property, which our ordinance addresses; private events on private property, our ordinance addresses; public events on public property and that is what we are talking about today. The Arts and Activities Committee identified 3 different groups: *Community based organizations* - recommendation is if you are not for profit or a 501(c) 3 and it's a free event there would be no charge. We are working on an application which is a meshing of one they gave us and the one we have already, making it simpler and shorter. *Open to the public with no admission fee* - a private entity (no 501(c) 3 or not for profit), recommendation for a \$250 charge for to cover some of the costs. *Open to the public with admission fee* - a private entity (no 501(c) 3 or not for profit), recommendation for a \$500 charge to cover some of the costs. The town does help setup a lot of these events and that is really the main premise of trying to recoup some of the costs. There are other costs that we do have occasionally, we require police officers to be contracted with, fee of \$30 per officer, which covers all benefits, etc.; maintenance workers are occasionally hired out as well and port-a-john trailers. We have fees for those types of things where we would potentially charge folks. Some of the other things that might be involved, if fencing is required, it takes a long time to put that up, trash removal, port-a-john placement, cleaning before and after, mowing, etc., things that we probably never recoup all the costs for and would be cost prohibitive to charge that amount. We want to recoup some. Those were the recommendations by the Arts and Activities Committee. What he is recommending if Council wants to move forward on these types of fees for events on public property, that we incorporate that into our budget process and make it part of the fee schedule and effective July 1, 2011.

Councilman Wilcox discussed an entity being a 501(c) 3 or not for profit, the town manager will remove that wording and copy directly from the committee's memo and also to clarify the distinction between an activity and an event which is determined by the number of people in the fee schedule.

MPT Efird asked about cleaning up the community building. The town manager said it is in next year's budget.

Council agreed with the proposal. The town manager will add it to the budget effective July 1, 2011.

Mayor Macon thanked the Arts and Activities Committee, they do a lot of things for us and do a lot of hard work and we really appreciate them working on that. It was not an easy task.

DISCUSSION REGARDING THE FY 11/12 BUDGET PROCESS AND DIRECTION OF FUTURE WORKSHOPS

At this time the town manager gave an update on the budget process. He said we have had several budget workshop meetings and we have tentatively scheduled two for May and that is what he is here to talk to them about tonight, whether we want to move

forward with 1 or 2 more meetings before we try to get this thing in a final form. He is also going to go over some of the other items and give an overview of where we are in the budget process as far as the different funds. He showed on the overhead a summary of the General Fund. We are at \$9,162,268. It summarizes the different elements of revenue. It is balanced at this point. He showed the different expenditures of that fund starting at legislative and going down to Parks and Recreation Department. It is balanced and there is no proposal for a tax increase in the General Fund at this point. He also showed the different departments and their costs proposed at this point. He showed the Tourism Fund revenues which starts at parking revenues and goes through other revenue sources. The proposed budget at this point is \$2,098,260. The expenditure side of the Tourism Fund includes lifeguards, marina, parking, and beach maintenance. This fund is balanced. He showed the different departments within the fund. The Utility Fund balance is balanced at \$5,326,482. The different revenue sources are charges to customers, storm water drainage fees, facility fees, other revenue and appropriated fund balance. If you look at the line item spreadsheet, obviously it is split up and this is just a consolidation and is usually what you will see in your budget process but there is a spreadsheet which shows different line items for revenue. A good portion of other revenues is the grant. By year's end there still are some things that we won't get to from the debt services perspective; those are loaded in the budget. We probably won't allocate any fund balance unless we did what we did this year which was to take care of a lot of different infrastructure which we want to do that next year. There's a portion of CBAN we want to look at. There are also a lot of lines back in our main, older residential district. We're going to start looking at those and see if we can chip away at some of those 2" power lines that we need to probably think about replacing. We're working to identify those. He showed the different departments within the Utilities Fund. Storm Water Fund is typically around \$555,000 but there is a grant mixed in with it and that is why it has jumped up so high. He showed a summary of the 3 funds with a total of \$16,587,010. There is no proposal for an ad valorem tax rate and no proposed changes to the water and sewer rate or proposed changes for other fees. One of the things he identified is that we only had \$80,000 in the Tourism Fund for the 1710 CBAN and the entire debt service comes due in March so he had to load another \$80,000 back into the Tourism Fund so you will notice that increase. Also the line allocated to the Reserve Fund went up \$80,000, too, so there was a change there. That will be paid off in full once we pay it off in March so that won't be an expenditure next year. Hopefully we underestimated the Freeman Park revenue based on our trends this year. We were a little conservative with those funds because it is hard to say what the weather is going to be like and what is going to happen. The county is projecting possibly going up on their tipping fees and he projects that cost may be as much as \$1.00 a month per household with different rates for the commercial side of things that they need to go up to offset that cost. Council extended the contract to help with the gas part of it. By the time he gives Council a proposed budget at the end of May, we'll probably know whether they are going to go up or not and by the time we vote on it in June we can approve to raise it or not. The question is do we need to have another budget workshop, we have one tentatively scheduled for Monday, or do I just need to move forward and bring you a proposed budget and deal with it at a later date. He said there is money available in this

year's budget to potentially increase employee salaries and that is a decision we will have to make - how much, what form it looks like.

Councilman Lewis said he is not happy with the fact that we have to take \$350,000 out of our General Fund balance but he definitely thinks the employees deserve a raise at this time even though some other people in the market place aren't getting them. People seem to be working pretty hard and it's about time. I have put my issues on the table and we have kind of passed over them. I'm not going to keep bringing them up over and over today.

Councilman Lashley said we are not taking \$350,000 to cover our employees' increase. The employees' increase is only about \$110,000 or \$115,000 so that is kind of misleading.

Councilman Lewis said he didn't mean to mention that, I don't have a problem with putting it out there. I'm not really feeling good that we're going to take a fund balance, appropriate \$345,000 from it in the General Fund. I don't really care about water and sewer because there is no capital set aside for the investments we're making there so I understand where that's coming from. It is the same thing in the Tourism Fund. On the General Fund side, we should be able to balance from the income that we have to the expenses we have should be balanced. He thinks we are overloaded in personnel in planning and zoning department, I have brought it up over and over and done my research and looked at that and based on other communities I think that \$470,000 that's excessive. Four or five years ago we were looking at \$230,000. Leland has 2 people in their planning and zoning department and 4 building inspectors who are paying for themselves, they are bringing in almost \$500,000 in fees in from buildings because their commercial and residential space is going up about 3 times more than we are and they pay for that whole department. We almost have the flip side. We're at \$470,000 and have \$100,000 in fees coming in to pay for one employee. We don't need 2 senior planners in a community this size. I have also mentioned the GIS technician position which seems to be excessive in this town because within 50 miles there is not one GIS person other than NHC and Brunswick County but we still cost those things in. There is a savings there if you take a look at how you run it. That is his personal feeling on that one. I still think we are paying excessive amounts to the parking management authority and until I get to the end of this contract I really can't do anything about it but those same comments are now coming out of Wilmington. The Wilmington Council is sitting there with the same company and they are now saying the fees coming in and collected by the parking authority are not what they expected and their costs are looking a lot higher than they expected, in fact they are losing money in their parking proposition with the same the company we're working with. So I get a little concerned when those expenses are kind of running out of control. Those are 2 primary areas and I start walking down other areas where I thought we have personnel issues and I think we have to make some decisions on some of those and nobody wants to make those decisions, that's fine, but I think there are areas in the town where we have people who are delivering any value for the taxpayers dollar.

The town manager said there will be a public hearing set in June, the budget will be delivered, if we don't have another meeting, by June 1st to Council and if we have issues that we want to go over we can do that in June as well.

Councilman Wilcox said we can't do anything about the parking this year and our staff, we've looked at all the other coastal municipalities that have the same basic duties and functions that our employees have to do and we are pretty consistent with all of those.

Councilman Lewis said he doesn't believe that. That's not what was presented. That wasn't even in our own county. Those were communities that weren't even around us. Let's take Wrightsville Beach, Southport or Oak Island - we didn't want to put them in. We wanted to put places that are 50-75 miles from here. You can throw the numbers any way you want to throw them and compare information and statistics any way you want but to tell me and sit here and say we've looked at all the communities doesn't make any sense.

Councilman Wilcox said you can say what you want to say and I can say what I saw, the communities with our size and our basic makeup and responsibilities, our staffing runs pretty consistent. We have cut in the last 4 years about 15 job positions and our staff is doing more than they have ever done before in the history of Carolina Beach.

Councilman Lewis said the building permits, the statistics, our activity don't prove it.

Councilman Wilcox said that just because we don't agree with him doesn't mean we're wrong.

Mayor Macon said he would be more than happy to look at actual figures and actual numbers of employees vs. amount of work. I do cover the coast up to New Bern and visit the inspection departments in that jurisdiction and it is difficult to compare us to places that are having a lot of permit activity and a lot of activity such as Leland. There are certain areas that are booming and others that are not. The county has suffered a bunch of layoffs in that department because there is not as much activity but I would be more than happy to look at figures instead of talk, I'd like to see something in my hand that is a comparative analysis of what is going on. I would be more than happy to meet anytime, anyplace.

Councilman Wilcox said if there is something to look at more than anecdotal he would be glad to look at it. I've looked at what is available from other coastal communities, similar size and requirements that we have and know what we have gone through here in the last 4 years as far as reduction in staff and how hard our staff is currently working and the level of service our citizens are looking at and I am comfortable that we don't have \$360,000 worth of waste or cuts to be made.

Councilman Lewis said he doesn't agree but he doesn't have to. It's kind of interesting because Dan made the comment that, as a contractor, he wasn't really excited that it took a couple of weeks to get a building permit out of our building department that doesn't

have a lot of permits going on at the same time. They are either working really hard or they are not, it's one or the other. However you want to do it; that's fine with me.

Mayor Macon said if somebody wants to bring some comparative analysis to him to look at, what we've had is some discussion thrown out there but he has not seen anything concrete in writing. He would be more than happy to look at anything that would allow us to come to some kind of conclusion.

Councilman Lewis said the other thing that we did agree on was legal service. He asked if the legal service is being put out to bid.

The town manager said yes.

Councilman Wilcox said he feels it is extremely important that they shall have 3-5 years of municipal experience and 3-5 years dealing with state and federal issues relative to municipal issues.

Council members Lashley and Lewis said they should list a potential salary.

The town manager said he wanted to leave it kind of open so the board could negotiate but he can put that number in there (\$75,000) and then put negotiable. He said if they have any other comments to get with him and he will try to incorporate them.

Councilman Lewis said he will bring some statistics regarding local employee/departmental costs.

Council agreed to meet on June 3rd at 10:00 am. Councilman Wilcox asked that whatever information is collected that it be submitted to Council at least a couple days in advance so they have time to review it.

The town manager said Council will receive a proposed budget before May 31st and they can modify it if they need to.

ADOPT THE CONSENT AGENDA

MPT Efirm made a motion to approve the consent agenda to include the following:

Approval of the minutes:

| | |
|-----------------------|-------------------|
| Regular Meeting cont. | January 14, 2011 |
| Special Meeting | February 22, 2011 |
| Regular Meeting | April 12, 2011 |

Budget transfers:

Legislative Department

Transfer \$1,400.00 from line item #104100.51 (liability/workers comp) to line item #104100.46 (professional services).

Transfer \$10,000 from line item #104100.51 (liability/worker comp) to line item #104300.12 (printing & publishing).

Public Works Department

Transfer \$115.00 from line item #105650.16 to line item #105650.33.

Transfer \$822.00 from line item #104930.45 to line item #105800.46.

Transfer \$1,300.00 from line item #309000.45 to line item #309000.15.

Public Utilities Department

Transfer \$17,243.55 from line item #308110.02 to line item #308100.16.

Transfer \$50.00 from line item #308110.08 to line item #308000.08.

Transfer \$5,000.00 from line item #308110.02 to line item #308110.03.

Transfer \$1,500.00 from line item #308110.02 to line item #308120.03.

Police Department

Transfer \$4,500.00 from line item #25-630-033 (beach maintenance supplies) to line item #25-630-056 (beach maintenance).

Transfer \$1,000.00 from line item #10-510-053 (dues and subscriptions) to line item #10-510-033 (police supplies).

Set a Public Hearing Date

Set a public hearing date for June 14, 2011 at 7:30 pm, or soon thereafter, for the proposed FY 11/12 budget for the Town of Carolina Beach.

MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING - CONSIDER REPLACING THE SAND VOLLEYBALL AREA WITH AN OUTDOOR BASKETBALL COURT AT MIKE CHAPPELL PARK

The parks and recreation director presented. He said this project is a standard 50' x 90' court with a 5' outside buffer area around it. The court will be constructed by leveling the area, laying down a 6" ABC stone base for the foundation, and then a 2" layer of asphalt which will be painted and striped to spec. Six goals will be installed in a similar fashion to the recreation center gym - 2 main goals and 4 side goals and will allow for multiple use of the court. You can run games side to side, 2 games at a time. The price of the goals range in price from \$1,500 each for standard goals with a 10 year warranty to \$2,400 each for goals with a lifetime warranty that are designed for coastal areas with special coatings on the poles and backboards. The prices do include shipping. He got a base bid from Lumina Builders at \$31,970 for the court and he will set the goals for us but will have to purchase the goals on top of that. Option with the standard goals: \$31,970 + \$9,000 (6 goals) for a total of \$40,970. Option with the lifetime goals: \$31,970 + \$14,400 (6 goals) for a total of \$46,370. Costs may vary with increasing materials and delivery costs. For funding options, we could have led into the CIP for this year. I have run this by the NHC manager to see if it does qualify for a NHC bond funding and it does and that is a reimbursement. This is the exact type of project they are looking to do with bond funding. He said he would like to try to get a couple of bids first to see if they can get a lower price.

Councilman Lashley said he would like to see one small goal for younger kids. Parks and recreation director said they get broken easily by the bigger kids. Councilman Lashley said it doesn't mess up the full court because you run it going across, having 2 games at one time.

The parks and rec director said we could do it that way. We will stripe it to spec and have them paint it. The main court will be striped just like at the gym.

Mayor Macon said he agrees with Lonnie if you can do it that way. He also likes the idea of purchasing the better goals because they will take a lot of abuse out there.

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

There were no public comments.

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

Mayor Macon said to get some more bids.

The town manager said he is still having a difficult time comprehending the smaller goal and where it would be without messing up the long full court or the 2 shorter full courts.

Mayor Macon said to take a look at it and bring it back.

The town manager said it might be worthwhile to make a smaller court just for kids.

PUBLIC HEARING - CONSIDER AMENDING ARTICLE 3.1-1 TABLE OF PERMISSIBLE USES TO CREATE A NEW USE "PLANNED RESIDENTIAL DEVELOPMENT" IN THE FOLLOWING ZONING DISTRICTS: R-1, R-2, MH, MF, MX, NB, MB-1 AND T-1; AND TO AMEND ARTICLE 3.2 ZONING AFFECTS USE OF LAND AND STRUCTURES; TABLE 3.9-2 LOT COVERAGE STANDARDS FOR ACCESSORY STRUCTURES IN RESIDENTIAL DISTRICTS. ARTICLE 7 OFF-STREET PARKING; SECTION 12.2 DEVELOPMENT STANDARDS FOR PARTICULAR USES; AND SEC. 23.3 DEFINITIONS. PLANNED RESIDENTIAL DEVELOPMENT WILL ALLOW MORE THAN ONE PRINCIPAL BUILDING ON A LOT AS LONG AS ALL REGULATIONS IN THE ZONING ORDINANCE ARE MET

The Town Planner, Ed Parvin presented this item. He said at the February 22nd joint meeting with Town Council and planning and zoning we talked about 3 different things and he wanted to address each one in order. The first was planned residential development (PRD) and what that is which is the flexibility on building design in a residential area. The next thing he wants to talk about are some allowances for accessory dwelling units and the third thing we talked about at the meeting is our definition of a dwelling unit. The first thing is PRD which doesn't change anything that we allow now. Basically, your lot size, and I'm going to use R-1 as an example, R-1 is your basic 5,000 sq. ft. lot that you can have. With a PRD in an R-1 district, by right you can go in there and put a 2 family dwelling, a duplex. Under PRD you have that same 5,000 sq. ft. lot and instead of that duplex, this will give you the flexibility to put 2 houses separate from each other so there will be 2 detached houses, single-family homes vs. that 1 large duplex. So you're not changing the lot size, you're not changing the density. It still allows for 2 units, you're still putting 2 units on there, you're just changing how they're formed. Instead of being 1 building, there's 2 buildings on the lot. We're not changing anything with setbacks. The setbacks in R-1 you have 20' on the front, 7 1/2' on the sides and 10' in the rear. All that stays the same, you're just having those 2 houses on there. Lot coverage, in R-1 it's 40%, so it would be 40% for the 2 houses. Nothing changes, the only thing that changes under PRD is where you have a lot that allows for 2 units, instead of building it as 1 building you can build it as 2 buildings. That is the only thing that PRD does. The next thing is accessory dwelling units, which we talked about as well, and it's part of PRD but it does a few things. The first thing we want to do is accommodate existing accessory buildings. We'll go back to R-1, if you have a single-family home on a 5,000 sq. ft. lot where it allows for 2 units and you have your accessory building, your garage, in the rear and accessory buildings are allowed to be 5' from that rear setback so now we pass this ordinance and somebody comes in and says they want to make use of my garage and turn it into an accessory dwelling unit or my second unit. Well, it doesn't meet the rear setback so what we did is create an allowance but with that allowance we put some limitations in there because they are a little bit closer to that rear line. The allowances are your setback of 5' vs. 10', which the existing buildings are, and

then we put a height limitation on there of 25' or no higher than the building. If the building is 20', the principal structure, then the accessory dwelling unit could be no higher than 20' so whichever one is less. The gross floor area is the final restriction we put on it. These accessory units would be, because they are a little bit closer to the rear property line, no bigger than 800 sq. ft. R-1, you have a single-family and then you have your accessory building and you want to convert it to an accessory dwelling unit, you can do that as long as it doesn't exceed 25' and it doesn't have more than 800 sq. ft. of living area. The 800 sq. ft. figure came from looking at other ordinances and was probably a little more liberal allowance for garage apartments or accessory dwelling units and we also looked at unit size. Most communities have 600 to 700 sq. ft. so 800 sq. ft. was a little bit on the higher end. He has an example of what you might see. These are not allowed today. An accessory building which is basically your garage or carport, you can't have any living space in today. This is creating an allowance for an accessory dwelling unit which is 5' from your rear property line. Even if you didn't want to do the accessory dwelling and the density allows for 2 units, you could just meet that 10' rear setback. Either way you are allowing 2 separate homes vs. 1 duplex on the lot.

The town manager said let's say you have an accessory dwelling unit and you want to transfer title, I would assume it would look like a town home because there would be 2 footprints and an HOA.

Mr. Parvin said yes. That was one of the conditions we built in under planning and zoning should it require it to be one owner or owner occupied and they did not like that condition. You see that condition on a lot of other ordinances.

The town manager said he would assume the accessory, the outbuilding, the garage apartment situation, would have to be owner occupied. I guess you could lease that out but you couldn't transfer title to that, correct?

Mr. Parvin said yes you could.

Mr. Parvin said you're garage apartment could be a separate dwelling unit on one lot that the density allows for. The density in R-1 is 15 units per acre so with 15 units per acre, that's 2 units and you can put 2 units.

Mayor Macon said basically the only difference is if you have a duplex lot and you have a side by side duplex you can still sell either unit, it's just these 2 aren't attached.

Mr. Parvin said exactly, that's the only difference.

Councilman Lashley asked, in this case, could you have 2 homes, could you also have a shed?

Mr. Parvin said you could have a shed, too. Your limitation is going to be on lot coverage and setbacks. Your lot coverage is 40% and most folks when they build in the R-1 on a 5,000 sq. ft. lot, you don't see a lot of people with accessory buildings because

they max out the lot coverage or come close to it and that is one thing we did with this ordinance, too. We did limit you to accessory buildings and accessory buildings being for your shed to one, we're taking that out so you can have more than. This is not habitable space. If you have a home and you want to have a garage and a storage building, you can have 2 things but you have to meet that 40% lot coverage. You have to meet everything that you have to meet today.

Councilman Lewis said that is only going forward. In other words, if people already had it on the lot and their coverage is 80%, they're grandfathered in, right?

Mr. Parvin said right. There are some situations where folks have exceeded the lot coverage. Someone came in for a triplex with an existing building a couple of months ago. So that's an existing building, some of the ordinances have changed over time and at one point it allowed for 80% or whatever it was at that point.

The town attorney asked what is the proposed language dealing with that that's in the packet regarding accessory dwellings.

Mr. Parvin said it's under 12.2 under planned residential development where it defines it and then it has accessory dwelling and has those limitations under there for 25' in height or no taller than the building and then you can have that 5' rear setback. There are a few standards if you look in that section.

The town attorney said the hypothetical someone on Council asked that you would have 2 structures on a lot, that they're separate, and I recall someone on Council saying you could sell that 1 structure to someone else on that very same lot separate and apart from the other structure. Did I understand that correctly?

Mr. Parvin said yes, that's right.

The town attorney said but that is only in the limited situation where it is a PUD and also in the context it would be in a conditional use permit. Is that right?

Mr. Parvin said up until this proposal, that's right.

The town attorney said that is the scenario we're talking about in that limited incidence because, obviously, I can see selling off a piece of property but the remaining lot there would probably not comply with the minimum lot size in that particular zone.

Mr. Parvin said you couldn't subdivide the property. You could sell it out as a townhouse with limited common area but you couldn't say I'm going to split the lot and sell you part of the lot. We're not creating separate lots.

The town attorney said he just wanted to make sure that we're talking about that very narrow incidence so it's not only that it's a PUD, not only that it's a conditional use, it has to be in the context that you're talking about, in effect, a condominium complex, HOA, that kind of thing.

Mr. Parvin said yes.

The planner director said, to clarify, on this particular proposal you can sell the units but this is not a conditional use proposal that we're talking about. You mentioned that two times and I just wanted to correct for the Council's benefit. If a proposal comes through that is a PRD, it would be permitted by right, it would not be a permit that Council or the Planning and Zoning Commission would be reviewing and the thought behind that is PUD's currently go through that process. It's troublesome, it takes 3 months, it costs money - \$350, and you go through a long process. What we're trying to do is say, do we really care the form the density takes when the density allowances built into a zoning district. Ed gave you the example of R-1 that allows 2 dwelling units, a duplex. Do we care the form of those 2 dwelling units, what form it takes on a particular lot? That's the policy question I think the Council needs to hear but I wanted to make clear that we're not talking about a use that is going to be conditional that is going to have to come back to Council every time somebody wishes to do something which is what building 2 single-family houses on 1 lot will say under a PRD. That is a value I think the town has cherished in our land use plan. Single-family development is what we support and this is an effort to try to give development an option besides the duplex form of development.

Councilman Wilcox said he knows for a fact that we already have these on the beach, they were just allowed under a PUD. They're not townhomes. I know of at least 1 example where there is a duplex that is physically separated that is on 1 lot that came through under a PUD. So, with the exception of the allowances for the existing accessory buildings, everything you are proposing here is currently allowed under a PUD, correct?

Mr. Parvin said yes.

Councilman Wilcox asked what is driving this. Is this the convenience to the citizen or ease on staff?

The planning director there is a difference between a PUD and a PRD and the difference is the setbacks, typically, and the bump in density that you get with a PUD. Those things go beyond the typical, underlying zoning allowances. Setbacks can be modified, density can be modified. Under this proposal, none of that can happen. You have to comply with all the underlying zoning regulations so if you're in R-1, the 40% lot coverage, the 7.5 side yard setbacks, the 20' front yard and the 10' rear yard. Those are the standards that we're not proposing to change with one exception and that is the garage apartments or the accessory dwelling units that Ed mentioned.

Councilman Wilcox said he understands. The process is easier, the requirements are more stringent.

The planning director said yes, but they are as equally stringent as if you were to have a duplex or single-family house on that one R-1 zoned lot, if that makes sense.

The town attorney said, as he understands it, the thrust of the proposal is to narrow the availability of this device to certain zones, the zones that allow the density to begin. The planning director said, right. The town attorney asked if these particular kinds of approvals already exist in other zones that aren't named in this proposal.

Mr. Parvin said if he could finish going through his slides he thinks he can answer some questions.

The town attorney said that under our statutes where municipalities are required by law to allow PUD's. Where he is being thrown off is the difference between a PUD and a PRD.

Mr. Parvin said he has a slide that hopefully will clarify that in a second. Going back to the accessory buildings or accessory dwelling units, numbers on a lot, the PRD is designed, I was using R-1, 5,000 sq. ft. lot, we capped it at, maybe you wanted to combine 2 lots together or several lots together, if you wanted to do that, up to an acre. So you can combine them up to an acre and just meet the density requirements, but on that combined lot, say you have 2 lots combined in R-1 that allows for 4 units only if you want to do one as an accessory dwelling unit with that 5' rear, that's fine, but you can't do 2 that way. So if when you are combining them, you can only have 1 accessory dwelling unit per lot. Lot coverage for accessory buildings and accessory dwelling units, you're looking at your 40% lot coverage. Your accessory building, like your garage, can be 25% of your principal building is how we do it now, that's an existing rule. Your accessory dwelling unit is 800 sq. ft. that is the limitation on it. Both of them are limited by 40% but there is just a little bit different ways...

Councilman Lewis said, if he has a 1,500 sq. ft. house, he can only have 25% of that from the garage next to it, an accessory building.

Mr. Parvin said that is a perfect example. If you have a 5,000 sq. ft. lot, 1,500 sq. ft. house, then you are at 75% of your 40% lot coverage so 2,000 sq. ft. is 40% on 5,000 sq. ft. so you could have a 500 sq. ft. accessory building.

Councilman Lewis asked if 25% is the maximum or is 800 sq. ft. the maximum or 25% of the 1,500 sq. ft.

Mr. Parvin said for accessory buildings, a garage or carport or something like that, it's 25% of the principal building.

The planning director said these are footprints.

Councilman Lewis said he understands, there are two distinctions, 800 maximum square feet but if you don't have a home big enough, the 800 sq. ft. doesn't help you. If you have a smaller home you go by the percentage of that smaller home so that the accessory building doesn't look like a big building next to your little house.

Planning staff said that's correct. He said they were going to be talking about PRD, accessory building and defining a dwelling unit. The lot coverage dictates the accessory building, garage, and then the habitable space dictates the accessory dwelling unit, you can only have 800 sq. ft. of habitable space. Height and setbacks I've already talked about. PRD's and PUD's are allowed in the exact same zoning districts, R-1, R-2, MH, MF, MX, HB, MB-1 and T-1. Almost every zone you are allowed accessory building - garage, carport, that type of thing. We're not making any changes to R-1B or R-3, those zones are remaining the same.

Councilman Lewis said those areas basically, you can have an accessory building but that building has to be a garage or carport.

Mr. Parvin said yes, you couldn't have an accessory building in R-1B or R-3 with any living space, no rentable space.

The town manager asked if single-family dwellings are allowed in HB. Mr. Parvin said just subordinate to a business, you can't have a standalone single-family.

The town manager said but now we are proposing that you can put a PRD in HB, which will be 2 single-family homes.

Mr. Parvin said it would still have to be approved under ...

The town manager said generally in a HB or CBD you don't typically allow single-family.

The planning director said we allow residential PUD's in HB. They were just trying to follow exactly what the PUD allowances were and say if you can do a PUD in these zones, then you should also be able to do a PRD in those same zones.

The town manager said typically it is only what is allowed as a use. Normally if you allow a single-family in say R-1, you allow a single-family PUD.

Mr. Parvin said you would have to do a PRD with allowed uses.

The town manager said so this wouldn't be allowed in HB.

Mr. Parvin said he thinks there are some residential allowances.

The planning director said that is what he was explaining, maybe I'm missing you but I think in a HB zone you are allowed to do a PUD today as a conditional use. So, if you can do a residential PUD in the HB, which is residential dwelling units on a lot, why not allow PRD in the HB under that same provision.

The town attorney said he thinks he put his finger on it. What I am trying to get my arms around is what is it that is the same in sharing between a PRD and a PUD because when you think of a PUD you are allowing greater density as an exchange for open space and that is one of the powerful public policy reasons as to why you have PUD's in the first place.

Councilman Wilcox said we don't allow greater density unless they take advantage of that 25%.

The planning director said there is a small bump in density with a PUD. I think we had an example recently where someone, for the first time since I've been here, took advantage of it. The difference is simply this that in a PUD it goes through a public hearing process and there is some flexibility built into the PUD that allows you to reduce setbacks and increase density. That is the thing that is currently on the books today. What we're saying in a PRD is no changes, no decrease in setbacks, no increases in density – nothing, and follow the exact rules. Lot coverage, everything stays exactly the same. The only difference is we're going to permit this as a matter of right like we do for duplexes today as opposed to going through a conditional use permit (CUP) that encumbers the applicant to spend money, go before two boards and maybe get an outcome of approval or maybe not.

The town attorney said maybe he is focusing too much on the HB example that makes it hard for him to try to envision.

The planning director said because the CUP for a PUD exists today in the HB zone, so if it exists for a PUD in the HB zone, why not also allow it for a PRD in the HB?

The town attorney said he didn't know. He supposed that being entitled to do something as a matter of right regarding a residence in the highway district is one thing when you're trying to do that in the conditional use process where Council is given the ability of oversight and particulars involved. Is that a good thing or bad thing? I don't know. I am just trying to get my arms around the distinction. Ed, if you have already covered it or are going to cover it, I'm assuming you've talked about other communities that have addressed or approach of having this PUD creature over here and a new creature, PRD, and how they interrelate with each other and what their experiences have been.

Mr. Parvin said they have been talking about this for about a year now so I don't think I put all the background in your packet but I have extensive research that we've done in the past several months about other communities, how they look at these types of developments, accessory dwelling units, that type of thing. But I think this slide might answer some of your questions and this shows, basically I'm still looking at R-1 or MH

zoning districts, your approval method. The PUD, as we've been talking about, is a CUP. The PRD, the PRD accessory unit and, what we permit now, single-family and two family are all permitted. They are all 5,000 sq. ft. lot, all have the same height, all have the same setbacks except for the PUD where you have some reduction on the very top, they have reduced setback allowances. When you get down to the accessory dwelling unit for a PRD you have that one 5' rear so that's the only difference. Then you get to density you have, as the planning director what just mentioning to Commissioner Wilcox about the 1 ¼ multiplier that you're allowed, the other three it stays the same. There is additional height restriction if it's an accessory dwelling unit under PRD if it has that 5' rear. All of them have 40% lot coverage and your accessory dwelling unit is limited to 800 sq. ft. of gross floor area. There is not really a whole lot of difference from what the allowances are today. The only difference is where you have a duplex buildable lot, where the lot density allows for two units, you're allowing them to build two separate homes. That is all we're talking about, it's really that simple.

Councilman Wilcox said the 800 sq. ft. gross floor area, that's not a footprint. If it's two levels, 400 sq. ft. per level.

Mr. Parvin said concerning allowances for a PUD (he showed examples on the overhead) this is one we were talking about that we looked at earlier or late last year, this had the 1 ¼ multiplier allowed for 3 units on one lot. This is a little bit of an oversized lot, 50' x 125', has a duplex and single-family and also had some encroachments and allowances for some reduction in setback, 10' for the steps going in the front yard there. This is basically two buildings on one lot under a PUD that Council looked at and approved. This is possibly what you might see with a PRD in R-1. You would see two houses on one lot, it could have parking arranged all in the front or maybe some back in the rear. This is just an example with 30% lot coverage so you could actually add a little bit more house there. With the accessory dwelling unit, I showed this example to Planning and Zoning Commission and we talked about some ordinances, you asked about other ordinances require when they require an offset. This rear unit wouldn't be visible from the street. Some ordinances require that there be some staggering of the units. Planning and Zoning was very clear, they wanted to keep all the requirements the same, they didn't want to change or put new requirements on there so they were completely satisfied. If someone came up with that design, it would be okay too.

The town attorney said, back to that drawing, in the hypothetical if it was sold separately, what is the guarantee of access to the accessory unit?

Mr. Parvin said you would have your common areas and limited common areas and you would have your agreements similar to how folks do for duplexes or townhomes today. The third item that we talked about on February 22nd was how do we want to look at a dwelling unit. This is our existing definition which basically lists out living, sleeping, eating, cooking, sanitation facilities define a dwelling unit when they are independently separate from one another. Basically the interpretation that we were making is a dwelling unit is really when the building plan states that they are building a single-family home and when you can access all parts of the housing unit from the interior. That was the

discussion we heard from Council what you wanted to see. They've defined this as a dwelling unit and they're saying that there's access to all parts of the building from the interior. So that's exactly how we wrote the definition for a dwelling unit.

Councilman Wilcox said the definition under accessory use you talk about accessory buildings in different zoning districts and housing dwelling units but you didn't think it important to create a definition for accessory dwelling unit?

Mr. Parvin said it's at the bottom of page 12 where it says accessory dwelling unit detached. We have a housing unit definition in our definitions and then under the housing unit definition we have this table and that is how each different type of housing unit is defined in Article 23.

The town manager said in this draft there are two townhouse definitions or did that just bleed over to the second page on your definitions 23.3.

Mr. Parvin said they just bled over to the second page and there are no changes to townhouse.

Councilman Wilcox said he hasn't looked at it for a while but there is no requirement for a PUD in HB to incorporate any percentage of commercial use.

Mr. Parvin said you couldn't do a single-family home in HB is what I think the manager is getting to so if you can't do a single-family home, you couldn't do a PRD with single-family homes. You would have to do a PRD with allowable uses which would have to be commercial. It would have to include allowed uses which would be commercial.

Councilman Lewis said let's go back to accessory dwelling units because now we're just saying it's "A detached accessory or subordinate building to an existing single-family dwelling, containing living facilities for not more than one family." That seems a little confusing to me. So you're saying accessory buildings can contain living facilities for one family there and your main building can also contain living facilities for one family?

Mr. Parvin said it is a little confusing, the verbiage. Your accessory building is defined as like a garage or carport in your R-3 area can not have living space. But your accessory dwelling unit is a separate thing. It would be allowed to have living space as long as the density allows for it so if you're allowed to have those two units, then, yes.

Councilman Wilcox said it is basically taking the place of the garage apartment that was in our ordinance but didn't ever really apply anywhere, I guess.

Councilman Lewis said a garage apartment still wouldn't apply in R-3 or R-1b.

Mr. Parvin said they haven't addressed that issue. Planning and Zoning has had some discussions but this ordinance doesn't broach that issue.

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

Mayor Macon recognized former councilman Alan Gilbert who just entered the council room.

The first to speak was Terry Hamm of 111 Virginia Avenue. He said this has his attention. He has a few questions about this process. Number one, article 15 on the agenda is about six different issues. It talks about off-street parking, a lot of things, which to him is sort of conglomerated together. His interest is in the PRD. He has had some conversations with Gary Ferguson about this previously. I totally respect Gary, he is a very professional man, very open and honest and he told me that pretty much some of this is his ideas but I don't agree with it. All these 8 different zoning districts that this would apply to, are any of them what is considered single-family neighborhoods? The planning director said single-family by not allowing duplexes, the answer is no. It only applies to areas that allow more than two dwelling units on a lot. Mr. Hamm said then basically where you can put a PUD now, you can put a PRD without going through a CUP process and paying the additional fees. Why would you do that? We have enough zoning requirements and regulations and different zones now that covers single-family, duplex, triplex, multi-family, whatever you want to call it, multiple buildings on one lot. We already have that which Dan was talking about a while ago but you have to go through a CUP and a PUD. If I want to do that, I should be willing to pay \$350 for the filing fee if I want to do something special like that, that's non-conforming. I shouldn't have a vested right to do that so that my next door neighbor doesn't know what's going on until he walks up one day and there's two houses sitting on the lot beside him 5' off the back of the property line. I just don't understand the function or reason why you would want to do that. It doesn't give you the ability to do anything under this that you can't already do but you have to go through a permitting process and you have to have a public hearing and people have to be made aware of and know what's going on. I have been to many public hearings on this exact situation in a different environment. I am just confused as to why you would want to do this. If it doesn't apply to single-family and thank God I saw that R-1b is not on here or I probably would have brought the hoards with me tonight. You approve this and then next month or next year or whenever you'll want to throw it into the single-family neighborhoods and I don't think that's right. We had to fight for about 3-4 years to get PUD's taken out of R-1b and a PUD may be a required option by the state as I heard previously, but I don't like them either. This is not a neighborhood where you can take 10 acres and put up 15 condos. That type of property doesn't exist down here anymore and to put two structures on a 5,000 sq. ft. lot, even at 40% density, it's going to look like you stuck two tobacco barns back to back. We have an example of one up on CBAN now, they're nice looking buildings but there is about 3', maybe, between the two of them. I don't understand why we would want to do that. In the picture that was put up a while ago with the two back to back, what happens if there's a fire in the rear unit and cars are parked in the driveway in the front unit, how does the fire truck get back there? Has the fire department been consulted on this Gary? The planning director said they have taken this to our Technical Review Committee and they seem to be okay with it. There is a 15' separation between dwelling units as opposed to

being attached side to side in a duplex. Mayor Macon said they use a fire hose, and they don't drive the trucks back there. Mr. Hamm said he is comforted to hear that it doesn't apply to single-family neighborhoods, what I call single-family. That goes back to the definitions, what is single-family? We fought this 5 years ago, too, because some people said a duplex is a single-family home. We finally got that removed out of the zoning district. I don't think there should be any allowance for duplex, triplex, multi-family, condos, PUD's, PRD's, or whatever acronym you can come up with that goes in a neighborhood that is considered or zoned as a single-family and from what I am hearing tonight, you can't but that's today. I know how things get changed from time to time. I don't understand it, I don't like it. There's nothing you can do in a PRD that you can't do in a PUD except you have to go through a CUP and a permitting process. I don't agree with it. When you go back to the discussion that occurred in previous meetings about having multiple kitchens in one house, you're going to have two separate buildings and you're going to have two separate kitchens, two separate homes, right? The planning director said that's true, they're two separate, independent dwelling units. Mr. Hamm said he has heard of a process where someone wanted to build a duplex in a duplex allowable environment but couldn't because of some building restrictions that he was going to be his own builder or whatever so he simply said let's change that and call it a single-family home and it's going to be one big open environment inside the house. I know how long that's going to last and you're going to go back six months from now and see if there's been a door put up there. We have enough facilities and capabilities for multi-family developments and constructors in this town now, in my opinion, that we don't need to go out and find more ways to increase density. We don't need to increase density. We have more empty properties sitting here now and more houses for sale and foreclosure that nobody wants to buy so why do we want to put more. Mayor Macon said we're not increasing density, so let's get that straight. Mr. Hamm said that was one of the reasons he was told why you want to do PRD's that it would be another way to allow... Mayor Macon said it is not increasing density, the fact of the matter is since 1983 density on Carolina Beach has been reduced 75% in the multi-family areas. You can drive to Wilmington Beach and you have a big huge building on a small lot that's a duplex. If somebody wanted to come in there and build a smaller building and then have an even smaller garage in the back, they technically can't do that without doing the PUD. What you're basically saying is that you're for more government but you're not for more government but you don't like the government but you're for more government. All you're doing is saying, you're encouraging a little bit less, building-wise because you're splitting the two buildings, it's still two units, you can still build two units and you can do it now and if you want to do a PUD and you want to let the government take some more money out of a regular old Joe's pocket, then we'll see how the vote turns out because that's what they're doing. The government is not going to raise your taxes but they're going to raise fees for everything else. Mr. Hamm said he is not for raising taxes but he's not a libertarian either. Someone who is going to take a single lot and build two houses on it is going to be a developer, they're in it to make money and if it costs them \$350 for them to do that... I don't understand why add more and more processes and red tape than we already have.

Alan Gilbert, 601 Atlanta Avenue, asked who sponsored this test amendment. Mayor Macon said he questioned it and thinks staff took it and ran with it. The planning director said this came out of a joint meeting between Planning and Zoning and Town Council on February 22nd and this is what they thought they heard Council and P&Z agreeing on. Mr. Gilbert said what he heard come out of it is what don't you understand about no to increasing density in residential districts? Help me understand this, let's go back to HB. You were saying that you could build single-family residential in the HB? The planning director said in a PUD with mixed use. Mr. Gilbert said you can build mixed use development but you can't build single-family dwellings. The planning director said that under a PUD with mixed use. Mr. Gilbert said mixed use with commercial on the bottom, that's not a single-family dwelling is it? The planning director said no. Mr. Gilbert said okay, I just wanted to make that clear for the record. He asked what is their definition of R-2? He said that R-2 is a residential district, single-family dwellings with the purpose to provide moderate density, single-family, residential use and other compatible uses. The regulations of this district are intended to discourage any use which because of it's character would not be in harmony with a residential community in which would be detrimental to the residential quality and value of this district. I may have gotten here late but you are proposing to put what you are calling a PRD in R-2. That's what it says. Are duplexes allowed in R-2? The planning director said if they meet the density requirements, yes. Mr. Gilbert said I'm sorry but Ed you want to help him out with this because my interpretation of R-2 is single-family dwellings and from my understanding, Ocean Ridge is a single, residential district. Are duplexes allowed in R-2? The planning director said they are not allowed in R-2 but PUD's ... Mr. Gilbert said that PUD's are allowed in R-2 but only single-family dwellings, not multi-family dwellings. Mr. Parvin said that the R-2 would allow PRD's. If you go to Lewis Road you have a lot of really large lots that at one time folks were splitting off the lot and building a house behind the house on the road and we changed our subdivision laws so that you can't do that anymore. But you could come in and do a PUD and do two single-family homes on Lewis Road. That's just one example, on larger lots. What PRD's allow you to do - it doesn't allow you to build duplexes because it's single-family only. So if you had the density for it and in R-2 the density allows for a 7,000 sq. ft. lot, you could have one unit. So in a PRD you have to have the density for it so to put two units in R-2 you would have to have 14,000 sq. ft., two lots. So if you put two lots together then yes you can do a PRD, you can have two houses on one lot, but it is two lots. We have that now but, instead, you're going through the PUD process and having to go through three months unless you want reduction in setbacks, you can do it by right so you can do two single-family homes on one lot. Councilman Wilcox said, so you're saying you can't take a typical R-2 lot and put a PRD on it. Mr. Parvin said the density wouldn't allow it, it would only allow one unit. Councilman Wilcox said you can't take a single-family, typical R-2 lot and put a PRD on it. Mr. Parvin said, right. Mr. Gilbert said you can do PUD's in R-3, correct? Mr. Parvin said no. Mr. Gilbert asked why this is being excluded from R-1B. The planning director said the density doesn't allow it. Mr. Gilbert asked, it doesn't allow you to combine lots? The planning director said you can have two lots that are meeting that standard for R-1b. Councilman Wilcox said PUD's are not allowed in R-1B. Mr. Gilbert said he thinks where Terry was going with this, you were saying that multi-family is allowed in R-2, could have been an interpretation but R-2 is

single-family and what you are saying is over in Ocean Ridge, if somebody had enough space, they could build a garage behind and have a dwelling unit so, how is that not increasing the density of what is there now? The planning director said you can subdivide off two lots of the required lot size in R-2 to have two dwelling units on it. Mr. Gilbert said when you look up planned residential development, traditionally it is used when you are talking about condominiums that you have a unified ownership and then you have two dwelling units on it that are separate. In 2005 we got rid of performance residential because of the PUD's because they felt that PUD's was sufficient enough. So now what it sounds like is you're bringing back some semblance of performance residential so I guess my question to staff is, in 2005, to make things a little more streamlined and lessen density, per se, they got rid of performance residential. So, when you looked at this, did you look at performance residential and what we had gone from and now coming back to? The planning director said one of the values we were looking at was in R-2, if you can do a PUD there, which we agree you can, is that correct? Mr. Gilbert said yes. The planning director said what we're saying is you can do a PRD in R-2 but with more limitations than you can right now in a PUD and I thought that was a pretty strong value. If you're not changing your setbacks, if you're not increasing your density, then why not allow this. Mr. Gilbert said when you say development will allow more than one principal building and what you have described here is you have two dwelling units on a singularly owned piece of property. So basically a family could have a main dwelling unit and then have an accessory dwelling unit that they could rent out and do whatever they wanted to do with it. The planning director said, right, just like you could in a duplex situation, where two units in an R-2 district you could have two dwelling units on a lot in R-2. Mr. Gilbert said but you can't have duplexes. The planning director said no. Mr. Gilbert said or you can't have multi-family. What he is confused about is... Councilman Wilcox said that duplexes aren't multi-family, they are two family dwellings. Three units or more are multi-family. Mr. Gilbert said yeah, in your semantics Dan, I've watched you guys go about it. Councilman Wilcox said it's in our ordinance. Mr. Gilbert said dual family, multi-family, what you're trying to do here in the spirit of this, what I understood you had a joint meeting and no meant no and this was going by the wayside and this all came about because Dan has an accessory dwelling unit in the back of his house. Am I right or wrong? The planning director said this does not speak to R-3. Mr. Gilbert said he knows it doesn't speak to R-3 but when this initially went forward, when staff started trying to put something through that would accommodate this, it did include R-3. The planning director said no, it never included R-3. Councilman Lewis said he disagrees there. The planning director said they never spoke about increasing density in R-3, that's not what we were ever speaking about. Mr. Gilbert said he'll get done with this. This was attempt initially because there was an accessory dwelling unit in R-3 and this is the discussion going back from when this originally started manifesting. So, if Joel asked for PRD to go forward, then certainly I understand that initiative but I read the minutes from the joint meeting and I didn't get the feel and that is why I was surprised it was on here as Terry was. What you are doing is you are allowing more than one principal building, you're allowing more than one dwelling unit on a lot. Call it a PUD, call it whatever you want to call it but, in most people's respects, you're increasing density. Mayor Macon said that is not true. Mr. Gilbert said he is not going to argue about his opinion. Councilman Wilcox said it is

your opinion and it's inaccurate so you should stop misleading the public. Mayor Macon said if you can build a duplex on a lot ... Mr. Gilbert said my opinion is that you're taking R-2, which is single-family, and then increasing the density, that's my opinion. You can call me wrong if you like but that's how I have interpreted this. Councilman Wilcox said well a professional planner just told you are wrong and it's wrong based on the ordinance so you can keep saying it all you want, you can keep trying to have as many dramatics as you want but you're wrong Alan. Mr. Gilbert said okay, I'd like to be wrong, Dan. Let's answer the question, does Dan Wilcox have an illegal accessory dwelling unit on his property? Councilman Wilcox said that is not the issue. This has nothing to do with R-3. Mr. Gilbert said so, let me ask the professional planner, does Dan Wilcox have an accessory dwelling unit on his property. Does he have two dwelling units? The planning director said that Dan is in the process of obtaining and has obtained a building permit to make his... Mr. Gilbert said you can obfuscate this one as much as you want. The planning director said I am telling you right now that he has pulled a building permit with conditions... Councilman Wilcox said I realize you want to make this about me, why don't you stick to the issue. This has nothing to do with R-3; it has nothing to do with me. I don't know anything about this, and I'm looking at it for the first time like everybody else is. If you want to make more out of it, why don't you just stick to the issues? Mr. Gilbert said you attended that joint meeting where this came forward. Councilman Wilcox said he did attend that meeting. Mr. Gilbert said this was on it. Councilman Wilcox said he understands that. Mr. Gilbert said you just saw this. Councilman Wilcox said this is the first time he has seen the package. There was some discussion, I hadn't seen anything. Mr. Gilbert said single-family is R-2 and if there is something planned that you know of for R-2 that is a PUD and these things are permitted by right, then that's the stimulation on this. Mr. Lewis said it, you know this to be true, you're taking something - we went away from this, we went away from performance residential. You can look back at the notes, you can look at Councilman Wilcox's position on performance residential and you can see the spirit of that. They voted unanimously to go away from it because PUD's did the job. Now you as a professional planner are bringing something back out of the spirit of I'm not sure where and introducing a PRD. When you look that up you look at common interest communities, you look at themed and gated communities, you look at public housing facilities, that's how they permit these things. So you are looking at a single residential neighborhood that doesn't have duplexes and has a modest density, like Ocean Ridge, and you're proposing to permit by right that somebody who might have a detached garage or had the room to build it, to put an accessory dwelling on that and, in my opinion, that once you create an accessory dwelling where you can put another family in, then you've created that. I think in the spirit of this, we have PUD's, they are conditional use permits, we went away from performance residential because it complicated issues and it gave people an end-around and increased density. I think in respect to this, I agree with Terry. I don't know why more people aren't here but I think they probably understood the minutes from that joint meeting that it didn't need to come back. Thanks a lot. I appreciate you guys respecting that we, in some opinion, you don't need to increase density. Thank you for respecting R-1 and R-3 and, if the folks in Ocean Ridge aren't here, then, they didn't understand it.

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

Councilman Wilcox asked if there is a lot in Ocean Ridge that would allow this. I'm not aware of it.

The planning director said he was not aware of the lots in Ocean Ridge.

Mayor Macon said, in Ocean Ridge which is a 7,000 sq. ft. requirement and if I bought the lot next door to me and it was empty, I could build a house on that lot, couldn't I?

The planning director said you could build two houses or combine the lots together and build a PRD which equates to two houses.

Mayor Macon asked if that was an increase in density.

The planning director said absolutely not.

Councilman Lewis said he kind of agrees with Terry and Alan and is not sure why we are sitting here going through this again and again. I think a CUP in this situation would give, what Terry expounded upon, an opportunity for the neighbors to understand what is going to happen right next to them. So I'm sitting right here and somebody is going to build two buildings right next to me, I'd like to know that is going and at least have the opportunity to come to the Town Council meeting and maybe give my opinion on it or go to the Planning and Zoning Commission and talk to those guys. That's all we're asking here, I think that's pretty simple. I admit, this stuff all started back 6 months ago and was about all the uses of land and it was really focused on accessory buildings. That's where it kind of started and it's morphed into something totally different. I'm not really sure why. I just don't believe that we need to put more legislation in place.

Councilman Wilcox said he didn't really have a horse in this one way or another. When I first saw this thing, it took me awhile to wrap my mind around it and I wasn't sure it was even worth messing with. In looking at it, what it promotes is where it's allowable, where something is already allowed under a PUD and I will remind you that it's fine that the residents might want to come and tell us things but a PUD is a conditional use process and if the applicant meets all the requirements of the PUD, we have to issue the PUD so it's not an emotional decision. If an applicant comes before us and meets less standards than what they are proposing for in the PRD, we would have to approve it. In some ways I suggest this offers more protection to the neighbors. It would not be allowed in any place like the planning director has talked about in R-2 unless you could have two lots which are already allowed to have two single-family homes so there is no increase in density, there are no increases in building footprints with regard to individual building footprints. I don't think there is any question that duplexes are a common phenomena in a beach communities. We certainly got over built with them during the building boom and I think everybody has expressed the fact that small, single-family homes would be more preferable than duplexes so to force people to build something that is less desirable,

that's less attractive for the community, that just doesn't serve the community as well doesn't make any sense to me. I don't see people rushing us to do PUD's, I don't see that people are going to rush us to do PRD's, I don't see an issue with it. It is decreases inconvenience to somebody that wants to go do something with a property that is already allowed under the ordinance I don't have a problem with it.

Mayor Macon said he kind of looks at it like a CAMA permit. You can go through six months of restrictions, advertising, to do more on a lot on the sound or you can go through a minor CAMA permit instead of a major CAMA permit and do less and have bigger setbacks and a better situation all around and it's an easier process. Basically what this allows you to do is instead of going through the PUD requirement, if you want to have increased setbacks and a better situation that is actually better for your neighbors and the community, then you can do that. That's all it is. Instead of building a big old duplex, you can build a smaller house and a smaller out building that's a single-family dwelling as well, no increase in density. You don't have to pay a lot of money, tax payer isn't imposed upon with some increased setbacks, insurance is less and you can do it. It's simple and not complicated and less government.

Mayor Macon made a motion to approve Ordinance No. 11-864, that it is in conformance with the provisions of the NCGS 160A-383 and is consistent with the goals and objectives adopted in the Land Use Plan and other long range plans. MOTION DENIED WITH COUNCILMAN LEWIS, COUNCILMAN LASHLEY AND MPT EFIRD VOTING NO.

PUBLIC HEARING - CONSIDER AMENDING ARTICLE 3, 18, AND 23 TO ALLOW EXISTING DRIVE-THRU FACILITIES IN THE CBD TO EXIST, EXPAND AND/OR IMPROVE, BUT PREVENT ALLOWANCES OF ANY NEW USE AND TO AMEND ARTICLE 12.2 TO DEVELOP STANDARDS FOR THIS USE

The planning director presented this item. We have talked about this at length at P&Z and at Town Council. That last thing we heard from Town Council concerning this issue was let's go ahead and grandfather drive-thru facilities as they exist today in Carolina Beach. There are four of them in our CBD and this regulation deals specifically with and only with the CBD. In our discussions, when we brought this issue up what we heard Council say was allow them to exist in the CBD, Hardee's, for example, McDonald's in the CBD, the BB&T bank and Bank of America, only those four drive-thru facilities at their current location. We brought this issue back to the Planning and Zoning Commission last month and they basically disagreed with that. They thought the better approach to that would be to open up the floodgates and allow any type of drive-thru facility in the CBD, regardless. They thought that this might frustrate business folks' plans for drive-in, drive-thru facilities be it banks or be it restaurants. So, their recommendation was Option 2 which says they can go in just like they can in the HB district. They didn't see the master development plan as something that is going to be achievable in the next few years based on the current economy and they felt like if they could stay the course as it is right now then they don't see an issue with drive-thru facilities. We've also provided you with some information regarding how other

communities addressed this. There was a poll we put out on the planning list serve which is a resource that we often times go to and we only had 12 hits on it from people who are interested and it was a mixed bag in terms of their responses about how you address drive-in facilities, drive-up windows, etc., in your CBD. Staff, on the other hand, is supporting the regulations that we brought forward to you two months ago which is to go ahead and grandfather these existing uses as they are but not allow new uses to come in with one caveat to that and that was is that any new use or any existing use that needed to expand would have to meet our requirements for the National Flood Insurance Program and, also, there was one caveat in there that we heard two months ago saying if the drive-in use should be abandoned for a period, instead of six months, for a period of up to one year then that grandfathering would disappear and you would no longer be grandfathered.

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

There were no public comments.

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

Councilman Lewis said that when he looks at business opportunities, no matter where they are in our community, the market conditions really will dictate what we can bear so I don't really have a problem with current economic conditions and the potential over the next five or ten years, for us opening up the opportunity for somebody who wants to open up a business to have a drive-thru somewhere in the CBD or the HB district. I don't think there is going to be a rush to anybody running down there based upon the cost of implementing something and if you take a look at the demographics I think they will quickly find out that there isn't an economic reason to move something like another McDonald's or Taco Bell or somebody else down there. I think we should keep it open so people could do it or people in the CBD who have a lot and there might be a potential buyer for that particular lot or that business might see it as an additional opportunity. Maybe another bank wants to move in there. My position, I would kind of go with what the P&Z commission, their direction, and approve Option 2.

Councilman Wilcox said as important as it is to protect our single-family resident neighborhoods, I think it is equally as important to protect our CBD. We have a very small CBD, it's a very finite resource. The very nature of the CBD is to encourage bicycles and pedestrian traffic and the simple fact of having more drive-thrus and people having to walk by driveways for these types of facilities and, I have to emphasize, every time you have a driveway cut, you're creating another parking problem, another traffic issue, so you start going into our four block district of the CBD and have driveway cuts for whatever that's going to go in that's going to have a drive-thru, I think it would be a disaster on it's own. As importantly, maybe it wasn't these folks on the Planning Commission that were involved in the master plan process but a lot of people put a lot of work and effort into it and our Planning and Zoning Commission was involved at that time. I'm not sure where their crystal ball is and when they determined when that master

plan is coming together, I can tell you this, it will never come together if you keep chipping at it and keep putting strategies in place that defeat the master plan. So, I strongly disagree with the fact that we shouldn't follow the master plan and I strongly disagree with the fact that we would allow... we have a very large HB district with plenty of places to put driveway cuts, those are places where people drive to facilities. CBD places are people intended, especially in the complexion of our community, to walk and ride bikes to. I would disagree and would certainly support staff's recommendation of Option 1.

Councilman Lewis said he would like to make a comment about the master plan. A plan is not something you make one time and you stick it in stone. A plan should be something you evolve over a period of time. Right now the master plan is out of date. We are years beyond the master plan right now and nobody's making any changes or even talking a look at what do you do on an annual basis to update that. I have been in business a long time and I've never had a 3, 5 year plan that I didn't change every year and go back and revamp based on marketing conditions, the conditions of the facilities, the conditions of what I wanted to do and changes within the market itself. For whatever reason we built a master plan, which I think is great, great for all the people involved, I think it's a good idea, was great to have it, but to sit it on the shelf and to sit it out there for years on end and no changes to it, no updates to it, doesn't make any sense to me.

Councilman Wilcox said I think you take the master plan out of context, Bob. The master plan is a combination of elements that any good business district, whether they are in a specific location or not, it's elements and it's concept. If our concept is that we want to have a CBD that is friendly to our community, that's pedestrian friendly, that's bicycle friendly and that we want to have that type of a feel in our CBD, we don't really need to draw out where everything is going to be, this is inconsistent within that concept, so from a master plan perspective I agree with you. Plans have to be upgraded. But the vision behind the master plan is what we strive for and that is to keep true with these elements that the master plan was built around, whether they end up in a different location, whether they look different, whether they feel different. The whole plan about having the CBD in the master plan is to create something for our community, a CBD that interacts with our community which requires pedestrians and walking traffic and requires a feel that is inconsistent with opening it back up to all the same elements that the HB district in creating a place for cars to pull in and out of. I understand plans, you're not the only one in business, but, the point is, this is about a vision more than it is about a plan. That's what the master plan was based on and when we talk about the master plan we should think about that vision and the long term ramifications of changing that vision.

Councilman Lashley said the master plan is fine, you can put it wherever you want to put it but the thing that I want to think is common sense. Our CBD is four blocks, it's very small, we don't need to have multi drive-thrus beyond the four that we have at this time so I am for Option 1.

Councilman Lashley made a motion to accept Option 1 adopting Ordinance No. 11-865 that it is in accordance with the provisions of the NCGS 160A-383 and that it is consistent with the goals and objectives of the adopted land use plan and other long range plans.

Councilman Wilcox asked, regarding that close down. What kind of particulars are you looking at for that?

The planning director said, for right now, the section that we're changing in our zoning ordinance is the non-conforming section and what we are doing is we're adding these allowances in the CBD. So, typically what we have done is after six months, if the use should cease to operate for a period of six months, then that grandfathering status goes away. But what we heard Council say two months ago was we see that these are hard times and that maybe what we should do is give that extension six additional months, go from six months to a year, whereby if a building sits in a state of disrepair or decay or dilapidation for that period of time, which is one year, then there should be another business perhaps that comes along and takes advantage of that site as opposed to perhaps another fast food or another bank or something like that within the year. Typically we give them six months, now we're giving them a year to redevelop those sites for drive-thru facilities, same uses.

The town manager had a question for clarification. He said that number 2 says that should any one of the four existing drive-ins be closed, abandoned or discontinued for any reason for greater than one year then the grandfathering status shall be eliminated and only a conforming use shall be permitted at that site. I realize that all four don't go away, it's not quite clear.

The planning director said the idea was only if that one, individually.

Councilman Wilcox asked what would have to open in that facility within the year for it to get another year's status. My concern would be that it would sit there for 11 months and 2 weeks and somebody would turn on the electricity and then open a book store for 4 weeks and then close it down and now they have another year's grandfathering.

The planning director said what they have said in the past is that a bank can be replaced by another bank, a fast food can be replaced by another fast food but you can't replace a bank with a fast food so if someone were to come in with a restaurant, a Hardee's for example, if they were to close for 11 months and then something else were to open up at that location it would have to be just a restaurant.

Councilman Wilcox said they would have to change the use and then the non-conformity is gone?

The planning director said right.

MPT Efird said she doesn't agree with not allowing drive-ins. There is a large piece of property just down below from her office that is probably the largest in the CBD and if a nice restaurant, another nice drive-in, there are others, would like to come I just don't agree in limiting it.

The town attorney said he has not researched this and haven't been asked to do so, but, a note that this thing specifically names businesses at locations in this ordinance. I don't know why.

Mayor Macon said you would need to if you were going to talk about grandfathering an establishment and we probably didn't ask you because we were trying to cut down on attorney's fees.

The town attorney said he understands and what I am going to try to do is save you a lot more money later on. There is a red flag waving in my head that when you go to that kind of specificity you are opening yourself up for a very significant challenge and exposure. I don't know if it has been considered as to trying to accomplish what it is you are trying to accomplish, but, narrow it in the situation of the CBD to the extent the business fronts a state maintained highway. That is a different situation. You can justify it based on that difference alone. As long as that is a state maintained highway, it's going to have a character that is different. Reasonable people may disagree on whether or not that is a good thing or a bad thing but you don't have to apply the same kind of restriction on the part of the CBD, in my opinion, on a part that fronts a state highway than you would, say, the boardwalk. I think you can justify different treatment like that. I've already said the point that when you're naming these businesses here I think that you're asking for trouble. For all I know, maybe that particular lot you're talking about is on Lake Park and you could do that. If what you're concerned about is, for instance, trying to not increase car traffic and you want to make it less of a threat, say to pedestrians and bikes, I'm assuming, for instance, a drive-in restaurant has more drive-in traffic during the 24 hour day then, say, a bank. Under this, and theoretically, you wouldn't object that if a drive-in restaurant closed and if another bank wanted to come in and take the place of a drive-in restaurant, why would you prohibit that when it gives you less traffic than what you had before?

The town manager said if we're worried about being too specific, you could strike that whole last sentence, the specific names and addresses, you could strike that and under that it says the following requirements shall apply to all restaurants and banks as of thus and such date and CBD on it. That's less specific.

The planning director said the effort was to make them specific, to identify the locations, not to identify the uses, the uses being a Hardee's. If Taco Bell wanted to come in and replace Hardee's, that would be perfectly permissible under this proposed ordinance. If a fast food restaurant were to replace a bank, that would be something different, that's what we were trying to guard against.

Councilman Wilcox asked if you could use Tim's language and then refer to the uses known to date.

The town attorney said sure.

The town manager said that is what he was recommending.

Councilman Wilcox said can you make them kind of part of the ordinance or part of the record.

The town attorney said he doesn't see any material difference.

The town manager asked if Kate's Pancake House is in the CBD or the MX.

The planning director said it's in the CBD, but the window is not operational.

Councilman Wilcox said if the ordinance said that anything operating as a bank, at this point in time, and anything operating as a restaurant, at this point in time, that's what it was obligated to be, it couldn't be vacant for more than a year, then that's generic and it's not really addressing the businesses, right?

The town attorney said you might be right, I really don't know because I really haven't had a chance to research it. You might be right but you might not be wrong because I don't see a fundamental distinction. You've still got to look outside of the record. The record is already replete with these businesses being identified and it wouldn't take a rocket scientist or law review editor-in-chief to figure out who we're talking about. As far as I'm concerned, the damage has already been done and I am trying do to what I can to pull you out of the fire as best I can.

Councilman Wilcox said we have that same situation every time we make an ordinance that makes somebody non-conforming. It's obvious to us many times what those non-conformities are. I defer to you on the legal issues and maybe there is some case law out there or something that needs to be looked at.

The town attorney said I am trying to be straight with you, I don't know what the case law says, I have no clue. I know that a red flag is waving in my head as hard as it can.

The planning director said, as we know, we have already identified McDonald's as an allowable use that is grandfathered in the CBD, that location, that specific use. That was adopted months ago by Council. It was Councilman Lewis who came back and said we're not keeping this playing field level. We need to also treat all uses who have drive-thru facilities the same and that's when staff came back and said okay, we're grandfathering McDonald's, we're grandfathering restaurants, now let's look at should we also turn around and grandfather banks. That's what this effort is this evening. So I wanted to be as specific as possible in the locations and uses as I could and that's why that last sentence in 18.1a gets right to the heart of it.

The town attorney asked what is the downside of simply grandfathering any drive-in/ drive-thru facility in the CBD that is on a state maintained highway - that simple, period.

The planning director said it accomplishes the same thing it's just the specificity I wanted to be clear.

The town manager said what he would recommend, and he understands that you wanted to be clear, but if that's giving him heartburn, there's really no difference because it's on the record now so people can look back and understand what we're talking about. But, we could strike the specific names and addresses, that whole sentence there, and add "the following requirements shall apply to all restaurants and banks with functioning drive-thrus as of this and such date in the CBD only". Or you could say that front Lake Park Blvd.

The town attorney said he is not disagreeing with him but his point is this, yes, we know the four businesses of whatever we're talking about but we don't know in the future what is going to be the geographic definition of the CBD. That could change. You could have it this way where if it's fronting a state highway in the CBD, regardless of whether or not it's boundaries shrink or expand.

Councilman Wilcox said he is really not in favor of having the drive-thrus in the CBD whether they are on the state highway or not.

The town attorney said fine, that's simply a political decision that has to be made.

Councilman Wilcox said, with regard to whether they stay banks or restaurants, I don't really have a strong feeling about that.

Councilman Lewis asked what about the gas stations?

Councilman Wilcox said they can only remodel 50%.

Councilman Lewis said they're not a drive-thru but people drive through there 24 hours a day, probably as much traffic going on at a gas station then there is anything else. There's one on Carl Winner Drive, then there's the Exxon station, then you have another convenience store - Scotchman. You can have convenience stores in gas stations all over the CBD but we can't have a drive-in restaurant, additional one. So we want to restrict the drive-ins but it's okay to have a drive-in convenience store or gas station but we don't want to have a drive-in restaurant or a drive-in bank in the CBD. We like those convenience stores and the gas stations, is that what we're saying?

The planning director said he thinks the whole goal here was to try and minimize the conflicts between automobiles and pedestrians. We always have to look at what the trip generation rates are for these different uses and I think it was brought up earlier that fast food restaurants are by far a huge trip generator relative to banks and to other automobile

oriented businesses. And so the idea was to try and minimize those conflicts as much as possible. If the Council is not supportive of that, that's fine but I just think the idea being that we wanted to try and follow the goals of the master plan. We spoke to the designers of the master plan and they support this and that is why we brought forth the proposal to try and eliminate those kinds of conflicts by restricting the uses.

Councilman Lewis said what we're trying to do is like one use at a time. I didn't think about the gas stations until I started seeing all the driveways. There are probably as many people going into the Exxon or BP, whatever station, as there are going into a restaurant. I see people going in there every minute to go grab something - ice, etc. Jerry loves the people coming into his spots, those things are very popular. There's probably as much business driving in through there as are going through McDonald's or Hardee's. Probably more than Hardee's because they never look like they're crowded to him.

Councilman Wilcox said we can't change where we are but we don't have to keep headed in the wrong direction.

Councilman Lewis said let's work on one issue at a time then we can ...

Councilman Wilcox said he saying they have an opinion like he has an opinion and it's different.

MPT Efird said a lot of people who go to Hardee's and McDonald's are not driving; they're walking up there too. You get a lot of those people who don't drive there but can walk to these convenient places. Even people who live back here 3 or 4 blocks walk up there and eat. I can't see not allowing that.

Councilman Lashley rescinded his motion.

Councilman Wilcox made a motion to approve Option 1 Ordinance No 11-865 (Exhibit 2) with changes recommended by the town manager, that it is in accordance with the provisions of the NCGS 160A-383 and that it is consistent with the goals and objectives of the adopted land use plan and other long range plans.

Councilman Lewis said he supports Pat's statement that there are a lot of different lots and a lot of different opportunity there. The market will dictate what will happen, it's not going to be 50 million people running in here to open up a drive-thru restaurant but it just gives the option of putting it out there. Right now the CBD could use a real bump. Anybody who has a big lot there is looking for anybody to come in. They're renting their lots out to the carnival guy because they have nothing to put on that lot. That's his opinion.

Councilman Wilcox said this is why Carolina Beach, over the years, has struggled to achieve what it could because plans get adopted by Council and 3 years later those plans aren't any good anymore. Nobody sticks to any kind of vision for the town and that's unfortunate.

Mayor Macon said no but we'll spend another \$300,000 for a new plan every 5 years.

MOTION CARRIED WITH COUNCILMAN LEWIS AND MPT EFIRD VOTING NO.

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

Mayor Macon called the meeting back to order.

PUBLIC HEARING - CONSIDER AMENDING ARTICLE 3.8-1 TABLE OF PERMISSIBLE USES TO CREATE A NEW USE, "DROP-IN CHILD CARE" TO BE AUTHORIZED AS A PERMITTED USE AND TO AMEND ARTICLE 23 TO DEFINE THIS NEW USE AND TO AMEND ARTICLE 12.2 TO DEVELOP STANDARDS FOR THIS USE

The Zoning Administrator, Jeremy Hardison, presented this item. He said staff is proposing to amend the ordinance for a new use. It would be classified as drop-in childcare. If you are defined as a daycare in the state's eyes, there are extensive regulations and are highly supervised by them. However, they do have exemptions for things such as churches, shopping centers, healthcare facilities or health spas that provide childcare that don't necessarily have to go through and meet the standards for a daycare under the state regulations. The state has an application to review these that all short term childcare providers have to have and they use the application to evaluate whether they are exempt from the requirements of the state childcare. If they are exempt from being a daycare center, they have to have parents who are easily accessible, the children shall not be left at the facility for more than 4 hours and a sign must be posted on site stating the facility is not regulated by the state. This came about as the town was approached by a proposed business of opening up a short term childcare facility and it did not meet our definition which is consistent with the state for a daycare. So we thought if she doesn't meet daycare but is providing childcare, what is that use? Staff looked at it and we took it to TRC and we categorized it as indoor recreation and we felt comfortable after hearing her proposal with that but we did want to take it to our Planning and Zoning Commission to discuss it to see if they wanted to amend the ordinance to address the use. They did and they recommended, we came up with a definition for drop-in, which is consistent with the state, and added additional conditions for these uses such as a criminal history check, register and post a notice stating the facility is not regulated by the state, drop-ins are recommended to follow state daycare student/teacher ratios, occupancy for these facilities shall be reviewed and be consistent with the state building code and exterior play areas shall be fenced same as daycare standards. We wanted to add those additional conditions under Article 12 for additional protection of the children. Currently daycare centers are a conditional use in all zoning except it wasn't allowed in MB, T-1 and I zones and P&Z said to make it conditional across the board. For short term childcare providers we were consistent to allow them everywhere in the town except for commercial districts, why not just make them permitted by right. For signage for drop-in

daycares that would like to be in a residential zone, which would require a CUP, signage would be consistent with those of non-profits such as churches, those allowances, in the residential neighborhoods.

Councilman Lewis asked why they wouldn't have permitted use in residential? If you have all these guidelines and met all these standards, why wouldn't you just have a permitted use?

Mr. Hardison said it is the impact on the neighborhood, these things could grow. If you're having 20 kids around and the impact on your neighbors and, for residential, it could be out of character if it grew to something else and to have the ability to have a public hearing and having the neighbors chime in. It is consistent with the land use plan and Planning and Zoning recommended the ordinance before you. This is a new category, we would have daycare centers and drop-in childcare. There are a couple in the county.

Councilman Wilcox said, if you have something of this nature in a residential district but you're supposed to be in keeping with the character of the neighborhood and you put signage out and you have 9-10 children being dropped off and picked up and cars coming and going, how are you looking at that?

Mr. Hardison said if you are already allowing daycare centers in residential zones, this would probably be less intrusive than the daycare.

The town manager asked, what is the parking standard in a residential neighborhood for daycare or drop-in?

Mr. Hardison said it would be the same as for commercial zones.

Councilman Wilcox asked, what is the parking requirement?

Mr. Hardison said it would be 1 per 200 sq. ft. of floor area devoted to that use. If they are meeting the definition of a drop-in childcare, then they would have to provide that parking.

Councilman Lewis said basically this is being done right now without anybody having to get a privilege tax or just a business. These people who brought it through here want to make it a legitimate business. We have drop-ins all over the place.

Mr. Hardison said they are going to be an actual storefront in the HB district.

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

There were no public comments.

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

Councilman Wilcox asked, how many daycares do we have in the R-3 district?

The planning director said none that we know of right now. The concept here is that if you were going out on a Friday night to Carolina beach, you came down here and you needed a daycare center, a sitter or somebody to take care of your kid just for up to 3-4 hours, but no longer, that's the purpose of this. Or if you're going to a healthcare spa or something like that and you're in a shopping center and you're readily accessible, then you can drop your kid off at a place within the mall. The idea is the hours, not so much the numbers of children, that's the concept here.

Councilman Wilcox said but it's up to 10 children.

The planning director said yes.

Councilman Wilcox said when it is, God forsaken that someone's son or elderly parents or something can't live in an apartment behind their home because it's going to ruin the residential neighborhood but we are talking about allowing up to 9 different individuals drop off children, 9 vehicles, extra parking spaces and commercial signs in a residential district. I don't get it.

The planning director said those are the allowances today. Today if you have a daycare, they're allowed, it's a conditional use in those residential zones. That is the allowance today. What we tried to do is mirror the exact same thing that is in child daycare today, allow that as a drop-in center in those same zones.

Councilman Wilcox said he gets it, he's not saying he agrees with daycare. How do you have a CUP that says the use has to be consistent with residential and have commercial signs and extra parking and 9 parents dropping off and picking up kids at different times of the day? I'm all for daycare centers, I know people need them to take care of their children and I am sure there are people in these residential districts where people are dropping off and caring for their children. I just can't connect all these dots when everything else is so egregious in these zones that apparently have far less impact.

The town manager said he and the planning director did talk about that and it would not be well received in an R-3, R-2 or R-1b if either one, daycare or drop-in, and I guess that's when you get into the approval whether it is consistent with the land use plan, etc., whether it meets one of those criteria.

Councilman Wilcox said it has to be consistent with the character of the neighborhood so if an R-3 district is consistent with not having any businesses in it then I don't know how you meet that criteria.

The town manager said it is customary to have a church occasionally in a residential neighborhood, I've seen that. I've seen daycare if it's 5 and under because I think that is exempted by the state as far as having to go through a commercial process. I've seen that, I've just never seen a true daycare or adult care, daycare for adults.

Councilman Wilcox said he's not saying I have a problem with people dropping their kids off in a residential district but we start allowing commercial signs and we start requiring extra parking spots, which is more impervious space, and we're talking about as many as 9 children with 9 cars coming and going, twice in some 24 hour period I assume, every day potentially, I'm losing it especially considering some things that went on here a couple of weeks ago about deliveries and such.

Mayor Macon made a motion to approve Ordinance No. 11-866 (Exhibit 3), that it is in accordance with the provisions of the NCGS 160A-383 and that it is consistent with the goals and objectives of the adopted land use plan and other long range plans.

Councilman Lewis said he kind of agrees with Dan but at the same time this is probably happening every day in various places where people are dropping off a couple of younger children here and there, doing things with people. The one thing I liked about the ordinance is that it requires a criminal background check because you have all kinds of unscrupulous people trying to make money, doing one thing or another maybe and you really don't understand what their background is. It's a little protection for the kids and then some of the other standards that you have I think are good for it.

MOTION CARRIED WITH COUNCILMAN WILCOX AND COUNCILMAN LASHLEY VOTING NO.

PUBLIC HEARING - CONSIDER AMENDING ARTICLE 3.8-1 TABLE OF PERMISSIBLE USES TO ALLOW FOR RECREATIONAL VEHICLE/BOAT STORAGE YARDS AS A PERMITTED USE IN THE HB ZONING DISTRICT AND TO AMEND ARTICLE 12.2 DEVELOPMENT STANDARDS FOR PARTICULAR USES TO INCREASE THE ALLOWANCES FOR RECREATIONAL VEHICLE/BOAT STORAGE YARDS IN THE HB ZONING DISTRICT

The planning director presented this item. Mr. Ferguson said that back in November of 2010 staff brought in a new amendment to Council regarding recreational vehicle and boat storage in the HB zoning district. We had two goals in mind when we brought that ordinance forward. One was to try to minimize the numbers of locations for potential boat storage and RV storage locations in HB and, two, to create a buffer to keep these uses as far off of the highway as practical which would be, I think we established 100', the distance on each side of Lake Park Blvd. With that, we ended up with a total of 16 original boat storage facilities along Lake Park Blvd. Councilman Lewis came to us and wished to change that number and see if we could increase the lot size. We have a minimum lot size and we have a maximum lot size and that is a little odd, I know. The maximum lot size is 15,000 sq. ft. That number, although somewhat arbitrary, was

intentional in that it tried to limit the locations where these would go. I think Councilman Lewis had some interest in trying to see if we could increase that number from 15,000 to 25,000. What you see on the map (showed overhead), the yellow locations are the existing 16 and the green locations are an additional 25 that would be opened up as a result of Councilman Lewis' request. That would give us a potential locations of 41 in the HB zoning district. We took this issue to P&Z and we have two options for you. Option 1 is Councilman Lewis' recommendation and Option 2 is the P&Z recommendation which is to simply eliminate the maximum lot size. P&Z was of the opinion to just make sure the lot is a conforming lot, which is a 10,000 sq. ft. lot. Anything over 10,000 sq. ft. would be perfectly permissible so let's not cap out the maximum lot size for boat/RV storage facilities. Option 1 is a 10,000 to 25,000 sq. ft. lot and may translate into 41 locations.

Councilman Lewis said he is willing to defer to the recommendation of P&Z. The market will bear what is going to happen here. The original ordinance came to us because we had one individual who had a lot that didn't exceed 15,000 sq. ft. and wanted to put some boat storage on it and that kind of got pushed through and I think it is kind of arbitrary to be for that one individual and maybe a couple of others along the way. I talked to another property owner who has a significant business in the market and said here's what I would like to do with this business, I have an opportunity to expand this business, and I'm investing back into the community by adding more and more jobs - here's what I'm having a problem with, my lot is non-conforming because it's just a little bit bigger. I think the idea from myself and in talking to some of the planning commission individuals, it should be open to anybody, whatever lot size and when that lot size comes up it takes a look at who really wants to put it here. We don't think anybody is going to be rushing to put boat storage here, you can't go up, you have to have all the restrictions you would have at any other, even with the current ordinance. You're not going to have any stackable storage so it really is not going to be something somebody is going to have everywhere along these additional locations.

Councilman Wilcox asked the planning director what the setback requirement is.

The planning director said 100 feet and there is a 20 foot buffer from residential as well as the 100 foot setback from Lake Park Blvd. One additional item I forgot to mention in this request, right now if you co-locate a boat storage facility with a permitted use on a lot in HB, right now the ordinance requires you to go through a conditional use process because of the effect it may have on adjacent property owners. This proposal, however, makes it a permitted use so it would not go through a public hearing process to make this happen. This would be allowed by right. Staff doesn't support this amendment, Planning and Zoning recommends that. Staff recommends leaving it the way it is because of the potential locations for a use that really is characterized as a use that should be relegated to the industrial zoning district, in some people's minds. I'm sure you can find other locations along vibrant commercial zoning districts that have boat storage facilities but they also have rigorous standards, too. The one in Monkey Junction with the black, wrought iron gates and brick that would be beautiful in Carolina Beach. That hides it well, heavily vegetated, landscaped but it costs a lot of money to try and install

something like that. So we could go on the one hand with rigorous, difficult, hard to meet standards or we could go with minimizing the locations and having just a few. So, staff is more leaning towards minimizing them and keeping them to a few, 100' off the road.

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

Alan Gilbert, 601 Atlanta Avenue, said it's kind of interesting that we talk about land use plans and in the land use plan you guys focus on the CBD but I think most of our comprehensive plans, land use plan, talks about that corridor in the HB so I understand that during these hard economic times that people are probably sitting on lots over there and want to find a revenue source for them. I think boat/RV storage facilities in our main corridor coming through probably isn't the best use for that and I applaud you if you actually approve something that would limit the number of them because I think we went around with this with the Council that I was on that it would preclude maybe different, more service oriented business to come in that would service our seasonal and year round community. I am a little more conservative when it comes to the corridors. I travel a lot, Fayetteville, Jacksonville and obviously they didn't have that consideration when they were building their entry corridors into their town. Even Wilmington coming from the 421 side has some things, storage and businesses, that aren't very attractive. So I would say I applaud you on your discussion to limit and have setbacks. At Monkey Junction if you had to have one you would probably want it to look like that. I understand that it's hard economic times. I understand that you did make a commitment in the CBD to minimize driveways and go for more, an esthetic, probably, appeal and pedestrian appeal with respect to your plan and I would say that you would be consistent if you limited the number of HB storage facilities. I don't like the idea of it in there because I don't think it's the best use but if you did pass an ordinance that allows only 16, that's great. I guess my question is if you took away that requirement, how many would you come up with? You said 41 if you limited it to 25 but ...

The planning director said it could be any lot with an area that is 100' off Lake Park Blvd.

Mr. Gilbert said that is scary. So what you're saying is, and I think people would come, I think people who have empty lots down there are looking for revenue sources and they probably would come. If you can mow your lot and go back 100' and put a bunch of boats on it, wow. That's not a lot of revenue input. If you did change it to only allow 16 I think that is probably a compromise in this economic nature. I think opening it up to every single lot on HB to put a boat storage, I think people would take you up on that offer and I think they would come in droves if you didn't have any strict requirements for that.

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

Councilman Lewis said the way this whole thing came about is that I think Dan brought this to the attention of Council for a person called Johnny Davis. Basically that is what I was told by Planning and Zoning and I think Gary related that Johnny Davis wanted to have this facility.

Councilman Wilcox said that is incorrect so let me explain. Just like citizens call you and you come in and say what citizens say and you tell the planning department somebody called me and said are these allowed and I said no they're not and he said I'd like to do one and I said call Gary.

Councilman Lewis said okay. So then Gary went through the process and we came to Council with this recommendation for this but it was kind of arbitrary. Nobody thought through the process. If you talk to the Planning and Zoning Commission members they all say the same thing, we just said let's do it because it was a recommendation and let's let it go through. When it came to Council that's kind of the way I looked at it. Now we have another person in the community who runs the CMS, basically, who employees 15 people here and is expanding this thing and he has an opportunity, he sits there and says it's kind of unfair to let this guy have a boat facility over here and he doesn't even have any business here, basically he has a real estate business, but I can't have one because of the square foot of the lot. I guess I was coming back to saying what damage could it do to open up the square footage of the lot and I will go back to the market will bear this whole thing. There is no way you are going to have 50 lots or 10 lots or even 5 lots out there with boat storage because the demand isn't there. Unless our community is having a 500,000% increase of boats in the community which probably isn't going to happen, you really don't have the need for that storage. The market will bear what we can have as far as supply. You're going to have 1 or 2 lots and 10 years from now if you think there are too many boats on here we can start changing it. That's kind of how the ordinance is set up here. If we move from 10,000 to 25,000 sq. ft., it would help the individual I'm talking about but then it takes all those other owners who might have an opportunity and says to them they are excluded. I know what your opinion is Gary because you've been voicing it. Your position with Planning and Zoning Commission and they didn't agree, now you're here positioning your position again, I understand but I just think it's not a smart thing to do.

Councilman Wilcox said the market will bear what it will bear and not too long ago it beared about 50 bars down at the boardwalk in the CBD. I'm all about free trade and all that but I think communities have to have some say so in the direction they want the community to go in. I think we should have boat storage, we are a coastal community. There are people dying for places to put their boats here and they have RV's and they come down here, they just want to put their trailer someplace because they live in a condo or they live in a duplex, there's no parking spaces available so in order for them to enjoy the water they have to jump through all kinds of hoops and break our existing ordinances or run stuff in town. I'm certainly in favor of it but at the same time I don't want a boat storage place popping up on every lot in the HB district. It just doesn't seem where we need to be headed. The purpose of the 100' setback, I anticipated would be that people would have the opportunity to do some kind of business in front of that

setback, that the boat storage would actually be secondary to the lot and would be behind the lot but I'm not sure if that's the way that's turned out or not. Whatever we do, I would not be in favor of it being a permitted use. I think it should be a conditional use. I think that is the corridor to our town and if we're going to reduce the square footage or something of that nature, if we're going to make those changes, I still think it should be a conditional use so that Council has the ability to look at what's being proposed, what it's going to look like, how it's going to visually impact our town entrance.

MPT Efird said she knows of one she looked at today that over beside the post office and looks like a suitable place for them - out of the way, the post office is on one side and then there's all those commercial buildings to the right. One of the ladies who works there was talking to her about it. Looked like a great place for boat storage.

Councilman Lewis made a motion to approve Option 1, Ordinance No. 11-867 (Exhibit 4), to extend this to 25,000 sq. ft. and removing the requirement that individual lot owners who have an adjoining business on that lot need to have a conditional use permit, that it is in accordance with the provisions of the NCGS 160A-383 and that it is consistent with the goals and objectives of the adopted land use plan and other long range plans.

Councilman Wilcox asked if anyone has taken advantage of boat storage.

The planning director said not yet.

Councilman Lewis said it takes out the requirements of having a CUP if you have an existing business on the lot, primary business on the lot. That's what is in the ordinance, and that is the way it is written right now.

Councilman Wilcox said he is still trying to understand the motion and the ordinance. What if you have a 25,000 sq. ft. lot and the bulk of it is dedicated to a different business.

The planning director said it deals with the lot size so a conforming lot in the HB is 10,000 and we put a cap on it of 15,000 and that created 16 lots potentially that could become boat storage whether they be in conjunction with another business or a standalone business. Now we're moving that number up from 15,000 to 25,000 and what that means is you could still have a boat storage facility with a standalone or it could be permitted with another use in that same zoning district and that will create potentially 41 as a permitted use in both instances.

Councilman Wilcox said square footage size causes him less concern. I can't vote for it if it's not a conditional use so I would have to say no.

MOTION CARRIED 4-1 WITH COUNCILMAN WILCOX VOTING NO.

DISCUSSION CONCERNING SEAGROVE CUP AND THE REDUCTION OF RIGHT-OF-WAY FOR CROAKER LANE

The planning director presented this item. He said about a year ago we had proposal by the developer, Mr. Wallace of Tri-Coast Properties, to withdraw portions of Croaker Lane. Croaker Lane has been a 90' right-of-way. All the roads in this area – Sea Ray, Pinfish, Spot all of these roads are 50' rights-of-ways so what Mr. Wallace wanted to do was to withdraw 20' on each side of Croaker Lane and that would give the lots a little bit more room to develop. We went through a process on May 11, 2010 of accomplishing that and when we went through that process there were two conditions that were attached to it. The first condition said that some of the roads aren't completely (showed a rendition of what Seagrove looks like), 133 lots, 19 acres, 5 acres of open space, all of the streets have been installed with some exception. He showed one of the exceptions. There is a topcoat of about 1.5" to 2" of asphalt that needs to go on top and most developers don't like to put that on until houses are finished, everything is complete and then they can come back later to put on the last topcoat so it won't be damaged. Two of the conditions that Council placed at staff's recommendation were that the topcoat of the streets in Seagrove needs to be completed. All of Pinfish Lane, which is at the bottom is not top coated at all. All the streets north from North Carolina Avenue have not been top coated. In total, there is 61,000 sq. ft. of top coating that hasn't been done on these streets. Secondly and of equal concern is the fact that there are no utilities in the Croaker right-of-way. When someone is abandoning a right-of-way or giving up a portion of that right-of-way, we're not sure where all of the utilities are and we asked the developer to provide us an as-built survey showing us where all the electric, water, sewer, all those lines are that are all underground. He had a surveyor to go out there and we still have not yet received all those surveys yet so we don't know where all the utilities are and we hate to give up right-of-way if some, by chance, some of those utilities would then end up on private property because then we would need to get easements to access that private property. So it is important that we know where they are. That was the second condition that Council, at staff's recommendation, placed on them. There is also an easement issue, all these developments in there are served also by sewer and the sewer does not follow the street, in the middle of the street or down the side of the front street, it goes up the back alleys. We don't have any easements or any idea of where those as-builts are for that either. So easements and surveys are extremely important if we need them but right now we don't know what easements we need because we don't know where all the utilities are. Back in 2005, however, and I need to make this clear, this subdivision plat went to record showing Croaker Lane being a 50' right-of-way so the question is if it went to record in 2005, why did we talk about it in May 2010? What was our concern? Our concern was, quite frankly, we didn't have those two items identified. We didn't have the easements or the utilities identified nor do we have a topcoat on the streets identified.

The town manager said the main concern was that we didn't follow state law on the roadways.

The planning director said and we didn't follow state law on the closure, GS168-299. We did not follow that in 2005. Council thought they did I'm sure but it didn't happen. So now what is happening is Mr. Bryant Bass, who represents Bass Developers, comes along and he is on Croaker Lane and has a client at this lot (shown on overhead) and wishes to build on that and that little hatch there, he wants to take advantage of that 20' there and add that to his lot, which is the right-of-way withdraw portion, 20'. He wants to add that to his lot and build a single-family house. The lot as it sits right now without that 20' is conforming, a 50' x 100' lot, R-1 zoning. However, he is concerned that if all the rights-of-ways are withdrawn on this, 20' on each side, he's going to have a house that sits back further than all the rest of the houses. We find it difficult to turn around and issue a permit based on the conditions that Council placed on the developer. This is not in Seagrove. When you look at this plat what you see is the US property - Sunny Point's property to the right of it. Everything on the top part of this screen is part of Seagrove but everything on the bottom part, even those 4 lots that you see, are not part of Seagrove but that's not the issue because the issue is still... and this road is top coated all the way through, all the top coating is on Croaker but, again, the utilities aren't shown. Mr. Bass is willing to provide us utility surveys to find out where those utilities are so that we know we're not giving them up and putting them on private property. So his interest is simply coming ahead and getting his project built for his client. These are the conditions that Council placed on the withdrawal of those 20' on each side of Croaker Lane as I mentioned earlier. Given all this, the question is what can Council do? What are some of the options for your consideration? As you know you can build on streets right now that unimproved in Carolina Beach so we could just say to let it ride in terms of the street improvements and say the streets are to remain as is but the developer should provide as-built surveys so we know where the utilities are. A second option, which is more stringent, would be to assess the street improvement costs, much like we're doing in Wilmington Beach, to those people in fronting on any of those streets, Pinfish or wherever. Or three, just withhold building permits until somebody comes forward with a plan to put the topcoat on. This is just for the top coating of those streets that are still unimproved. Concerning surveys we could do what Mr. Bass would like to do which is have each individual come along and so okay I am going to provide you with a survey showing all of the utilities in front of my property and if easements are necessary, so be it, they can also provide easements. Secondly would be to go back to Tri-Coast Properties, the developer, and provide all surveys before issuing any new building permits. Or, three, the town could go out there ourselves and hire a surveyor to do that for us. Those are the three options I have identified. Mr. Bass is here if you want to discuss anything with him.

Councilman Wilcox asked if these roads were intended to be built to state specs?

The planning director said town standards; these are all town streets and will be turned over to the town for maintenance. Right now they are on the Powell Bill map for Powell Bill funds.

Councilman Wilcox said we have basically incomplete streets that are supposed to be turned over to the town.

The town manager said yes.

The planning director said they are about 90% complete except for that last coat of top coating. They have the sub-base, the base, the curb and gutters in, the sidewalks are in. Most of the work has already been done in this development with two exceptions. The first exception is that top coating, that 1.5" of asphalt. That has not yet been installed nor has ...

The town manager said on some of the roadways it has been.

Councilman Wilcox asked what percentage of it has been installed.

Mr. Bass said about 57%.

The planning director went back to the map and showed which streets have been top coated and said none of Pinfish has been top coated and showed which other ones have not been top coated.

Councilman Wilcox asked of the ones that haven't been top coated, how many houses have been built on them? Staff pointed out where houses have been built. Councilman Wilcox said so it is mostly un-built.

The town manager said he would like to explain kind of where we are as a staff. I think Gary has done a good job, but basically when this proposal came through there was a PUD and I'm sure they said we're going to pave these roads, put in infrastructure, in return you will get reduced setbacks, etc. So where we're at is we've got incomplete streets, there are no development agreements with Tri-Coast, there should have been. There should have been bonding to begin with, probably. There should have been phasing to begin with and the developer has basically stated he can't pave these streets right now, maybe later. In effect, what we told him he had to do is bond all the streets that aren't, at this point, top coated and we also have to get as-built utility plans and in return we will close Croaker. That is kind of where we're at. Mr. Bass kind of got caught in the limbo so what we're asking, there are several different options. Do we want to continue to push and say we need you to bond these roadways, we need the utility plans, or do we want to try to open it up and allow for development?

Councilman Wilcox asked to be shown Mr. Bass' lots on the map. He asked if he builds to that 20' extension, then does the street jog back to the state property.

The planning director said the state is not going to do anything with their property.

Councilman Wilcox asked where is the street line.

The planning director said it will be 20' back. He showed the area of right-of-way withdrawal and said there is no proposal for any withdrawal by the US of America or of Sunny Point on this area (shown). The withdrawal occurs from here, north, up to North Carolina Avenue. There is a problem with these two lots right here, too, these aren't Mr. Bass' lots. The problem is these lots were deeded this way. These lots were oriented towards North Carolina Avenue. A metes and bounds deed was put to record shifting the location of these lots instead of fronting on North Carolina Avenue now front on Croaker Lane with the extended area. The problem is that in our subdivision rules we say that if you have a corner lot, you have to dedicate 10 additional feet on a corner lot. When they reoriented those lots, they said it was an exempt subdivision and it is not exempt because it doesn't meet our standards. That's a different issue.

Mayor Macon said let's fix this problem and then we'll worry about that one at a later date. He said to go back to the options.

The town manager said if we are going to close the two portions of Croaker on either side, there are two conditions. One, you give us an as-built of all the utilities, make sure that we have easements if they are needed, are they in the right-of-way and, two, bond all of the roadways resurfaced at this point.

Mayor Macon said he doesn't like number two or three so that is where I stand on that one. Go to the next one. I don't like two and three on that one anyway. He asked Mr. Bass to come up.

Bryant Bass, 117 Leeward Court, Kure Beach, said he is here representing Charlotte Jenkins, 1308 Croaker Avenue. I guess our thoughts are that those four lots that Gary was showing you a minute ago kind of got caught in the crosshairs of the Seagrove neighborhood. Pretty much the whole other side of Croaker is all owned by the federal government so it will never be built until they decide to lease that land and Sunny Point is gone. Those four lots, with the exception of the two he's going after to get fixed the other way, there are two other lots that face Croaker that at some point in time that road will be a 50' right-of-way. Once Jim starts finally selling some stuff and the economy comes back and he gets some money to finish his project, it will be a 50' right-of-way. But there are going to be at least two lots and maybe four, depending on what happens on the other two lots, that one of the clients wants to build now and if we build that at a 50' right-of-way that house is going to set way back off the road. Eventually the other lots will be built according to a 50' right-of-way which doesn't give a great orientation to the street with the other houses. He is just looking for Council to possibly give an exception to the four lots that have absolutely nothing to do with Seagrove. It is on a road, it is already top coated, it's done that portion of Croaker has been completed. My client is willing to get an as-built survey stating that there are no utilities in that 90' right-of-way, just in the 50' right-of-way. I have spoken with Bell South, Progress Energy, Town of Carolina Beach, Charter and everybody else and there is nothing over there. They didn't even know that land existed to be honest with you. The Town of Carolina Beach would still have to run water and sewer to that side of the road which is normal for development of lots that don't already have something there. So I am just looking for an exception on

those four lots. You can hold Tri-Coast's feet to the fire on their property. He has plenty at stake over there that he isn't going anywhere. That is kind of our view on that.

Councilman Wilcox said that was kind of his question. It sounds like were dealing with two different issues here. Bryant has already said they are willing to do surveys.

Mayor Macon said if they will do a survey and show that there is nothing in that area then I don't see why we're not issuing this man a permit.

Councilman Wilcox said he wouldn't have a problem with that. With regard to Tri-Coast, we all know what the times are but you said we should have had a development agreement with them?

The town manager said there should have been something in writing. I think you did have one with your PUD and the fact that they probably stated that they were going to pave roads and build houses, etc., I think you probably had one.

Councilman Wilcox asked if the development agreement any good without a bond?

The town manager said, generally, in order to build houses you would require them to do bonds. I understand Mr. Bass' situation. The road closure, I think, we're going to have to record a plat and I guess, essentially, that has been recorded but does that one stand? It was before we went to legal process. You could record another plat with just those four lots, once we resolve those other matters, that close that roadway and we'd sign off on it. Or it might just be that one lot where we just sign off on that one because that has been approved, there were conditions placed but if you want to waive those conditions for those four lots, we probably can do that.

Mayor Macon said if he has a house to build in this economy, let's get a permit in his hands.

The town manager said that is what he is saying, he (Mr. Bass) would record the plat and we would sign off on it as, yes, that road right-of-way is closed.

Mayor Macon said and they're going to provide the survey that shows there are no utilities in that particular area then we don't have a problem with that. That's the way I look at it.

Councilman Wilcox said I don't have a problem with it if he is providing the surveys but, with regard to Tri-Coast, rather than the options that were given to us, could we request them to provide us with a development agreement with ...

The town manager said they are not going to bond those ...

Councilman Wilcox said without bonding.

The town manager said some kind of legal, binding agreement that says that at thus and such time we will coat all these ...

Councilman Wilcox said sure. Right now we don't have anything, we don't have surveys, some of the roads aren't finished and I would expect that at some point in time they would want to come back and do it. If we move forward with that without getting a development agreement, which we should have had, it seems that right now the door is open to sit down with them and maybe get that development agreement in lieu of creating additional hardships at this point in time.

The town manager said I think you can do that but there's nothing holding their feet to the fire that they're going to do anything. Usually you bond your requirements in the development agreement that give you 1 or 2 years to do it. You would have to sue him for the topcoat.

Councilman Wilcox said that's right. He has value in those properties, right?

The town manager said yes.

Councilman Wilcox said he has something to protect, I would have to leave that to the attorneys, but it would seem to me he is vested there so an agreement to do the work, I don't know how it would be tied to the property or as part of the agreement with the entity, the holding company of the property, or what but that they could give us an agreement that has some legal binding. If it's not done, at least the town has the ability to recover our losses.

The town manager said in lieu of allowing him to close the roadway is what you're getting at.

Councilman Wilcox said no, in lieu of requiring a bond and do surveys right now and topcoat during these times.

The town manager said that's what I meant.

Mayor Macon said we still need some surveys whether it's on the individual lot as it is developed. Still, we need the surveys.

Councilman Wilcox said utility surveys are what you're talking about.

Mayor Macon said yes.

The town manager said generally you would have one final plat that is recorded that shows all the utilities and where they are and whether easements are required or not and that is what we don't have.

Councilman Wilcox said so homes have been built on those lots in that extended area and we don't know where the utilities are.

The town manager said we have never had a final utility as-built.

The town attorney asked if there is an agreement available for review.

The town manager said there is no agreement other than the CUP.

Councilman Wilcox said I guess my point is do we keep on building homes on lots where we don't know where the utilities are. He has like a 5' setback.

The planning director said he has a 5' on the side and 10' in the front and the rear.

Councilman Wilcox said he may be actually building over top of the utilities.

The planning director said only on Croaker which was a 90' he's reducing to 50'. I think we're pretty good on those utilities but there are other issues, I mentioned earlier about the alleyways and there are sewer lines running there and we have no easements, no surveys of those utilities.

The town manager said he thinks there are easements. I remember reading that plat that was recorded, whether it was correct or not, there were easements on that with houses.

Mayor Macon said we've got Mr. Bass and he's ready to roll. You guys are cool with that, right?

The planning director said if the two conditions that the Council has placed on this withdrawal of right-of-way, if you're agreeable with that, that's why we're bringing it to you.

Councilman Wilcox asked if we can do it for just those four lots.

The planning director said that is the question I think. These four lots front on a completely improved road and they are willing to show us the utilities but are we going to do this incrementally down the road?

Mayor Macon said these guys aren't part of Seagrove. Seagrove is a separate problem which I need a little more information on.

The planning director said the right-of-way is part of it and the right-of-way is a 90' right-of-way and he is asking for 20'. He's asking for 20 more feet of land. He has a conforming lot, it's a 50' x 100'. The only issue here is he wants this 20 additional feet and he wants to sit in line with other houses that may be built. That's what he wants. I can understand his need.

Mayor Macon said I understand that but what I am saying is if we already agreed to the closure ...

Councilman Wilcox said I thought you already recorded the plat?

The town manager said we did but it was prior to us going through the process that we should have gone for before signing off on the plat. It was a mistake.

Councilman Wilcox said but the intent was to record the plat, record Croaker at 50', right?

The town manager said yes.

Councilman Wilcox said so we're not giving up anything we didn't intend to give up?

The town manager said he thinks Council can relax those two requirements on these four, it's just whether you want to or not.

Mayor Macon made a motion that we relax those requirements on the four lots that were shown to us which includes the property that Mr. Bass is attempting to build on.

The town manager said he thinks there probably needs to be some kind of recording of a plat that shows that was closed, showing the utilities and that the town would sign off on.

The town attorney said it sounds like you need to consider either an amendment or revocation of the prior plat and authorizing the recording of another one.

The town manager said that could be too. Is there a process for that?

The town attorney said sure.

Mayor Macon asked what does that involve? And that's involved in the four we're talking about, that's involved in the other issue, right?

The town manager said yes.

MOTION CARRIED UNANIMOUSLY.

Mayor Macon said on the other issue we need to know if there are easements so we need some questions answered and then you guys need to come back to us.

Councilman Wilcox asked if the town manager has talked to Tri-Coast.

The town manager said yes.

Councilman Wilcox asked, what are their intentions with regard to these obligations?

The town manager said very non-committal and he wants to continue to build houses and if things improve then he would consider top coating the final roadways.

Mayor Macon said he understands the economic conditions and I don't mind working with somebody but we also have to protect ourselves and we need to find out where those lines are and make sure we have easements. So we need to answer those questions and come back to us.

The town manager said he is not willing to do that at this point. From what I understand, he keeps pushing the surveyor and the surveyor is going look, I'm not getting any direction from the owner so I can't do anything. So, we're getting nothing that was originally approved.

Mayor Macon said that's no problem but if he doesn't want to build anymore houses out there and we do have control over whether we issue building permits or not. So, let's get some of these questions answered, let's tell him what Council is considering in looking at and maybe he will reconsider.

Councilman Wilcox asked if we know what that survey will cost.

The town manager said he thinks most of it is done other than showing where the utilities are so it would just be a matter of going out in the field and showing where the utilities are. He's done all the surveys. There are some other little issues here and there, some drainage easements, and some things that just need to be fixed. They're still hanging out there.

Mayor Macon said if he can't get permits then that takes care of a lot of those issues. If need be, I will sit down at a table, let's bring him back in here and let's talk it out.

The town manager said they will work it out.

Mayor Macon said he will be more than happy to be in that meeting.

Councilman Wilcox said he didn't know what the legalities of it are. If nothing else, if he is going to continue to build, maybe some portion of each of the sales of the lots or whatever it is could go into an escrow account that would go towards paying for that surveying once we identify what that amount is; not to not allow him to build but that each time there is some opportunity to profit there that some of that goes toward that obligation.

PROPOSED CHANGE TO CUP FOR DIANE DUGAN LOCATED ON HARPER AVENUE, BOARDWALK, TO ALLOW SERVICE TO DELIVER BEVERAGES TO AN ADJACENT OUTDOOR SEATING AREA

The planning Director, Ed Parvin, presented this item. He said Diane Dugan received her CUP for a bar/spa on 2 and 6 Harper Avenue back in November of 2010. When she did she also showed us a plan for a variety of things that she had. She had actually 3 or 4 phases going on in this development site. I think you all have a copy of a plat that went with this. On that plat you'll see Phase 2 and on Phase 2 what you will see is a wall on the west side of the bar that opens up onto a patio and it is labeled Patio #2 and there are 6 tables sitting out there. He showed it on the overhead. The issue is really the door. In order for drinks to be served from inside the bar to outside on the patio, that door would need to be installed, at least that is the plan that Diane originally was going by when she came before us. She now wishes to not put the door in but just simply have servers taking drinks from inside the bar out on the public sidewalk of Harper and back onto the private patio to serve alcohol. The police department checked with ALE in Wilmington and they were okay with it, they just said it is a town decision whether you want to allow alcohol to be taken from inside a bar out on a public sidewalk to a private patio. So it is kind of up to the town as to whether or not to allow this. There are also two provisions in our zoning ordinance that speak to major amendments and minor amendments to CUP's. Neither of those categories seems to fall well into this particular situation and this is why we are bringing it to you. I feel uncomfortable just saying yes to it without your approval of her not doing all of what is shown in Phase 2. I feel like you needed to hear this and see for yourselves as to whether or not we want to alcohol to be dispensed in this particular method.

Mayor Macon said he understands and thinks it does fall into a minor change but I also feel it kicks into a major change when it comes to you guys feeling comfortable making that decision so I understand why we are here and I appreciate it because I asked for it to go ahead and be brought up instead of being put off to next month. We're either going to allow it or not.

The town manager said the concern too is not necessarily the service. You have a waiter or waitress going over there and serving someone on the patio and someone on the patio grabbing their beer and walking back inside. That would be my concern. Right now we allow for cafes, people can serve alcohol out there, they can drink alcohol but you have to have food and this is just a category that we don't allow at this point. So it is a Council decision.

Councilman Wilcox asked which properties was part of the original CUP.

The planning director said the building itself is 6 Harper, I believe, and 2 Harper is the patio. They are separate parcels owned by the same corporation. We have signed approval for the building itself, which is 6 Harper, and we have a signed approval for behind it, which is Pavilion but we don't have any signed approval for 2 Harper which is the actual patio. The owner has not signed off on that. We have no lease agreements,

none of that information at all. The only thing we typically ask for is the owner to sign the CUP just so that they are knowledgeable about what their tenant is doing. That's where we find ourselves at.

Mayor Macon made a motion that we continue this item until we have proof that the owner ...

The planning director said they contacted them today. We tried to get an e-mail to them today. Ed got a hold of them by e-mail and they said they have to check with their partners and, as of 5:00 today, there was no response.

Councilman Wilcox said if that patio area wasn't part of the original CUP ...

The planning director said it was part of it but we didn't have a signoff by the owner for that parcel. We only had a signoff for the one on Pavilion and the main building itself, the blue building, but not for the patio which is a separate lot.

The town manager said it is an easy thing to fix if they sign off on it and if they're not then it doesn't happen.

Mayor Macon said right. So, are we going to allow somebody to walk from the bar entrance to the side patio to serve drinks? I'll rescind my motion. I think it's a minor modification and I think that staff could have made the decision whether they wanted to allow it or not.

The town manager said it is a minor modification and Joel is exactly correct but there are some policy issues that are above our pay grade and that is ... Generally a minor modification is staff driven. There are several things that should have happened. They would have had to recombine these parcels in order to put that door in because they are opening out onto a separate parcel and then they would have had to put that door in. When TRC went through it we kind of encouraged that doorway because of what we're talking about now and now she is saying she doesn't have the funds to do that door and we would like to do it this other way.

Councilman Lewis asked the police chief how the police department would enforce people walking back and forth with bottles of beer and the servers going back and forth. It would be a difficult situation.

The police chief said they talked to ALE about it but our problem with it was the servers would be okay and the reason we wanted to put that door in or have them put that door in was because people are going to want to go to the bathroom and they are going to want to walk around and do other things. And what they are typically going to want to do is walk out with their beer or whatever and now they are going to be in trouble. The last thing I want is for people who are on vacation to get in trouble for something they don't know about. It is right behind the puppet show. This is different, this is on private property here so it is not like some other issues that we've had on the main drag. I can put some

signs there and kind of barricade it off so that might not happen. They could have no alcohol past this point.

Councilman Wilcox said, to his knowledge, all the other places where there are tables out in front are directly in front of the establishment adjacent to the door in front of the windows where you can keep an eye on your patrons. Here you have something that appears to be around the corner of the building in a blind area.

The police chief said it is and that's a problem and the other thing is when it's in front of the building that's on town property or on the sidewalk, it's a restricted area that you have to be eating and other things like that. That's on private property and they don't have to, they can just be sitting there having beers or whatever. I think there's going to be more of a tendency to just walk around and if there's nobody monitoring that, they're going to have people wandering around everywhere.

Councilman Wilcox asked why they can't put that door in, it's all owned by the same ...

The town manager said he thinks there is a building code issue about opening a door out onto a separate property and also the cost. Councilman Wilcox said he doesn't think that is a monumental cost.

The planning director said that recombination would have to occur according to the building inspector, the two lots would have to be combined into one. There is no minimum lot size in this zone so they could re subdivide it out in the future if the idea disappears. It would be easy to do but it is a cost issue because you have to have a survey, recorded, etc. The owner may not want to do it. The door would have to open out. Miss Dugan did say that she would be willing to put stanchions out, some type of a roped area on the sidewalk. The sidewalk measures about 9.5' from her building to the middle of the planter in the middle of the Harper sidewalk there so there would be room. That is one of her concepts of getting this approved. Secondly, she said she would be willing to have beer capped and alcohol basically contained as opposed to uncontained whereby the servers would take it out to the patio to be opened on the patio but that doesn't solve the problem that the chief has mentioned which is when someone would get off the patio to go to the bathroom or what have you. They're not going to leave their drinks on the table.

Councilman Wilcox said we're talking about one of the main entrances to our boardwalk and it is directly adjacent to the puppet show situation. My biggest concern about it is that it is a blind area.

**Councilman Lashley made a motion not to approve the change to the CUP.
MOTION CARRIED 4-1 WITH MAYOR MACON VOTING NO.**

DISCUSSION AND DIRECTION REGARDING IMPROVEMENTS TO THE BEACH STAGE

The town manager presented this item. He said they have talked about this for awhile and came up with the solution to put a temporary roof on our stage. The cost came in a little more than anticipated. We were going to try to do this for the beach music festival but it is up to Council as to whether we want to spend the \$15,000 to \$18,000 to do the project and get minimal use out of it. I am leaning towards probably not unless we had a grant or some other means of funding whether private source or what have you. It's a great project, it would look nice, and we would use it for the beach music festival and maybe a couple of other festivals. What we have been doing in the past is tarps but these are corrugated sheets and a metal roof truss type system. It would be a little more of an incline and the panels would basically be removable. It's a more permanent roof situation but CAMA says you can't have it over 180 days. This would provide some weatherproofing.

Council decided this to be something to try to do in the future.

COMMITTEE APPOINTMENTS

The town clerk said there was one change under the Operations Advisory Committee, Fred Crouch has decided that he would like to remain on that board for the remainder of his term which is about another year.

Mayor Macon asked what does that do to Mr. Kennedy?

The town clerk said they have full membership but I think the committee is going to discuss bringing back to you to amend the code to include an alternate member and maybe making him an alternate member. That board vacancy can be skipped.

APPOINTMENT TO THE BOARD OF ADJUSTMENT

Mayor Macon made a motion to appoint Ms. Jerry Kennedy to serve as an alternate member. MOTION CARRIED UNANIMOUSLY.

AD-HOC BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

Consider dissolving the committee.

Councilman Wilcox said there is no functioning committee at this point in time. The people that were involved lost interest, dispersed and we're not sure there is a need for that committee any longer.

The town clerk said they have been advertising for vacancies and haven't received any interest to date.

Councilman Wilcox recommended sending a letter to each committee member to see if they are interested in continuing and go from there. Council agreed.

AD-HOC MASTER DEVELOPMENT PLAN IMPLEMENTATION COMMITTEE

The town manager said we have three vacancies on that committee and we can re-advertise if you want to for those vacancies.

Mayor Macon said to re-advertise and then maybe they can take a look at the master plan with the new members and make some type of decision as to where we go from here. Council agreed.

NON-AGENDA ITEMS

Councilman Lashley said concerning the Wing Fling group that we should send a letter to them regarding the \$4,000 donation they made to our senior center thanking them for it. Council agreed. He also said he thought the 8' basketball goal should be put over where the small kids are and get it away from the main court. The town manager agreed.

The town attorney said there was a closing that was conducted on the financing for the Wilmington Beach improvement project, and that went fairly smoothly. Also, I am pleased to report that we have now in hand signed, revised license agreements for the cell companies on top of our water tower that have been completely renegotiated. The last of them will be recorded tomorrow. Related to that is a law suit that has been filed by a company that used to broker the services to try to get more cell companies for us and basically what they wanted to do is have a piece of every monthly rental payment that comes in, there is a law suit to terminate that. It was complicated by the fact that the owner of that company is serving in Afghanistan right now and protected by the Soldier's Serving Relief Act and that made this thing very complicated. It was no big deal when Tim and I were first working on it but it's urgency increased when we started developing this problem that the state imposed on us about where the equipment could be located, the access there at the water tower. So, going forward with this, we really need to get that monkey off our backs and I've got for each member of Council the filings that were done as a result of the court order where we were able to prevail upon the court to lift the stay and impose a duty on that person to answer the complaint and respond to discovery and get on with the program and see if we can resolve it. Also in your packet is filings in the Otter Creek matter where we have a brought in as an additional party the Otter Yacht Club. You may recall that originally we had claims against the town by both the HOA and the yacht club, however, we were sued only by the HOA. So, working with the town manager, I don't see how we could come up with a solution whether it be quick settlement or through a judgment or whatever unless we had all the parties involved at the table. So the yacht club has been brought in as well. The HOA has been issued some discovery so we can find out some of the facts behind it and I'm hoping that Council will soon enter an appearance for the yacht club then we will have everybody we need to be

able to sit down and come up with a quick solution to that. Any further discussion on that I think should take place in attorney/client closed session.

The town manager said lift station no. 1 is starting to make a little more progress, they made more progress in four days than they did in four months so that is getting back on track. Wilmington Beach will hopefully be beginning pretty soon. I've got some contracts for the mayor to sign and the clerk and finance in the back room. I appreciate those who went to Raleigh, we met with a lot of our legislators and a few of our senators and talked about some of our projects and needs and hopefully we can do that again maybe on a one to one basis at some point.

The town clerk reminded the mayor that she will need to get her signature on several documents before he leaves this evening.

The town attorney said that reminded him, the mayor does have some material to sign on that.

Councilman Wilcox said Lonnie pretty much covered what he was going to say but was probably more gracious than I would have been. I was going to complain that all the negatives about the Wing Fling were in the front part of the paper and Linda Ashley came and gave the senior center \$4,000 and he does appreciate them doing that. They also gave \$4,000 to another charity. They raised some good money.

Mayor Macon said he thinks it was a good event and can get even better. It was short notice but it turned out okay and they could have a new home if they wanted to.

Mayor Macon made a motion to go into closed session to discuss personnel and real estate matters in compliance with [NCGS 143-318.11a(6 and 5)]. MOTION CARRIED UNANIMOUSLY.

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

Mayor Macon said that action is not necessary as a result of the closed session.

MPT Efirid made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____