

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

May 12, 2009

The Town Council of the Town of Carolina Beach met in regular session on May 12, 2009 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) Dan Wilcox; Councilman Alan Gilbert; Councilwoman Pat Efird and Councilman Jerry Johnson. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order.

INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Macon opened in prayer and led everyone in reciting the Pledge of Allegiance.

CHANGES TO THE AGENDA

Mayor Macon made a motion to adopt the agenda to include switching Items #9 and #10. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE CHARLIE GRISSOM FOR YEARS OF SERVICE AS A MEMBER OF THE POLICE ADVISORY COMMITTEE

Mayor Macon made a motion to adopt Resolution No. 09-974 (Exhibit 1) recognizing Charlie Grissom for his many years of dedicated service to the town. MOTION CARRIED UNANIMOUSLY.

Mayor Macon read the resolution aloud.

Randy Simon, Chairman of the Police Advisory Committee, presented a plaque to Charlie Grissom recognizing him as a lifetime member of the Police Advisory Committee.

Joe Coen also said a few words about Charlie Grissom's hard work and dedication to the town.

MPT Wilcox made a motion to add an item to the agenda, Item No. 21(a) under New Business, to discuss having more than one meeting a month. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon recognized Lynn Prusa, Town Clerk, for 25 years of service.

PRESENTATION BY WITHERS AND RAVENEL REGARDING ADDITIONAL STORM WATER SERVICES

Hunter Freeman, Storm Manager, Cary Office of Withers and Ravenel, made the presentation. Derek Roberts, Wilmington Branch Manager, was with him. Mr. Freeman said he was pleased that Council adopted the storm water ordinance for Phase II compliance last month. The ordinance is just the first step, now the town must implement the ordinance. He reviewed some software tools and additional information that may be of use to the town. He began with standard forms and documents - application for storm water permit. They will be happy to help the town develop those based on what information the town needs. They can also help with standard/construction details, plan requirements, design manuals if the town feels that would be of help. He suggested that those are almost a required element of the ordinance with regard to implementation and record keeping. He spoke about organizing documents in electronic format, reducing paperwork and keeping electronic records. The Watershed Permit Program was specifically designed to track incoming permits and has the ability to link back to a GIS database so that a permit can be attached to an actual parcel and know what other permits are going on in the same block. You can track subdivision permits as far as impervious area allowances, what was called for on a permit vs. how the building permits are coming in, see when they are getting close to their impervious threshold - a lot of online electronic record keeping to make the process easier rather than going back through a paper file which lends to inefficiency and increases staff time. He reviewed the program on the overhead. Once the permit is approved, it automatically shifts it into the Inspection Program and can send yearly reminders of when inspections are due and track them as they come in, which properties have not done their inspections. If the Division of Water Quality comes to audit the town on their Phase II program, you can click a button, show all the inspections and how the town is in compliance. All the projects would be geo referenced so they are in a GIS map with a physical location to it showing when permits were applied for and where the structural storm water BMP's are within the town, etc. Standard checklists and application forms are imbedded in the program for staff's use and can be loaded on as many desktops at staff level as desired. You can choose to also track building permits, land disturbance permits, erosion control permits or any other requests and can be added to this program pretty easily and makes it easier to bring all these documents up pertaining to a piece of property. That is a desktop based application. He reviewed two GIS based, web based applications that can also have a public component for public outreach. The first one was created for the Town of Manteo, with the Coastal Federation's help, to identify possible private storm water retrofit opportunities within the town. That could be expanded if Carolina Beach wanted to look at other opportunities. This is a way for homeowners and private citizens to go online and send a request form to the town's staff to identify themselves as someone who is willing to help out with the

town's storm water program and potentially put in a rain garden or cistern on their lot and is requesting assistance from the town from a logistical standpoint. When grant funding becomes available, it becomes an easy database for staff to search for top projects and can be prioritized. This is all GIS based with aerial photos and becomes a nice interactive public and private project. This requires no software, is all web based and can be linked back to the town's website. The third application is more of a public works domain, more than simply just a storm water application. Staff encouraged them to show this to Council as a matter of interest. It's called Mobile 311 and is tied to a handheld cell phone. It can also be used for police enforcement to be able to track where problems are. The idea is that you have a handheld unit located within city vehicles where they can identify where potholes need to be fixed, drainage problems, white goods on the curb for pickup, lawn debris, trash, street sign that has been knocked down, etc. - any of that can be cataloged and by pushing a button would create a work order. The City of Asheboro has mounted them in their solid waste trucks. You can query the work orders, find out where they are and optimize operations. The information is collected at a website, publicly available to town staff and is password protected by default. This is a way of tracking all of your work orders. They are also geo-referenced so you can have town maps and can print reports and maps. You can sort the information. If you are sending out the crew to pickup lawn debris, you can sort and find all the lawn debris that's been identified, what addresses to go to for pickup. It makes collection very efficient by saving time and gas.

REQUEST TO HOLD A NC USA BEACH WRESTLING TOURNAMENT TO BE HELD ON THE BEACH IN FRONT OF THE BOARDWALK ON JUNE 13, 2009 FROM 10:00 A.M. TO 4:00 P.M.

P.J. Smith, State Chairman with NC USA Wrestling, explained this is a volunteer organization that promotes wrestling in North Carolina. He introduced Neil Doro, in charge of the officials and is from the Wilmington area. They have been in touch with Brett Keeler and they would like to host on June 13th the state beach wrestling championships. This is a new sport (he showed an overhead presentation). They feel this would be a good site for it in conjunction with the Battle of the Bands. They expect somewhere between 50 and 200 competitors who will bring family and friends. They are hoping it will be the kind of thing that will grow over the next few years. It would have a good economic impact. He gave handouts of the presentation. They will work with the Town Manager to make sure it did not interfere with anything. He has run two beach wrestling tournaments at UNC Pembroke where he was the former wrestling coach and they have been very successful, there were no injuries in those two tournaments with college-age competitors. This would also be kids, all ages. He said it would be sanctioned through USA Wrestling.

The town manager said they need to get the insurance liability and then he could work with Brian and himself if he needs any help with trash cans or other town services for the event.

Mr. Smith said the setup is simple, they have ropes in the sand, a 20' circle and the matches go real fast. It's fun and draws a pretty good crowd.

Mr. Smith said this would be their first state championship and would bring wrestlers from across the state. It is a fun, family atmosphere type event and one they hope will grow here in Carolina Beach.

MPT Wilcox made a motion to approve the request for June 13, 2009 for the NC USA Beach Wrestling Tournament providing they meet the requirements of the town manager. MOTION CARRIED UNANIMOUSLY.

UPDATE OF BOARDWALK ACTIVITIES AND DISCUSS USING THE FEMA LOT AS A CBD PARK FOR BOARDWALK ACTIVITIES

Brett Keeler and Michael Kirkbride made the presentation representing the Boardwalk Makeover Group. Mr. Keeler said things have been going very well with a lot of involvement from the local community as well as Wilmington and Wrightsville Beach. Mr. Kirkbride went over the landscaping efforts to date and, in terms of what they requested two months ago. They are about 80% done and are pretty much on budget. There have been a few small changes - the mural garden with fountain they are thinking of shifting that to a small scale splash park which has not been brought forward to Council yet. They have finished about 90% of the painting. They hope to complete everything in the next few days. Mr. Keeler spoke about entertainment. When they approached Council for funds to do some entertainment, Robbie Megerle had not approached the town to do amusements, so that was not planned into their program. They will be able to use that as a stepping stone to make everything better. They have a six night entertainment schedule with Monday being clear. On Tuesday nights they presented a four night pilot program in July which they have been able to extend that for 16 weeks. The first Tuesday after Memorial Day they will have a family night with discounts on rides, clowns that do balloon animals, possibly some jugglers, a little variety show, some bouncy houses, a climbing wall but because of the property that was taken up by the amusements, they would like to use the FEMA lot across the street. Wednesday night they have cash bingo with state of the art equipment with volunteers set up by people in the bingo business. Thursday night they have all 16 weeks booked with name bands from the local community and touring bands and will also have the free bouncy house and a couple of other things on the first Thursday as a kickoff. Friday nights they will have two bands, one on May 23rd to coincide with the Chamber's fireworks as well as June 5th, weekend of the Beach Music Festival, they will have music on the boardwalk area that Thursday, Friday and Saturday. On Saturdays they have kid's bingo, \$1.00 per card for the kids, with candy and prizes for about 2 ½ hours. Also they have Battle of the Bands for 4 weeks; Jazz Under the Stars for 5 occasions - Cape Fear Jazz may help and make it 16 weeks. On Sunday they have the Chop Rock entertainment at the gazebo from 6:00 p.m. to 8:15 p.m. preceding the movies at the lake. There are 117 events in the boardwalk area on 96 different days. They are within budget and spent the money wisely

and got good deals. They are asking for permission to use the FEMA lot to place some of the free entertainment and some of the spillover things, especially if they get more sponsorship and may be able to provide more.

MPT Wilcox said they don't just want to use it for Family Night, they want to fix it up and put some tables and chairs and plantings out there to use for overflow for entertainment.

Councilman Gilbert said his concern with the FEMA lot is that they are putting in irrigation and sod and his concern is will it be metered and who do they bill for it and suggested using drought tolerant species. Are other organizations going to be able to use that lot also and how will that be scheduled? Would that be Parks and Rec or the Boardwalk Makeover Group?

Mr. Owens said they would have to allow other folks to use it. Staff can do most of the work. There is a meter. The electrical and water supply will be coming off the lift station there. A secondary meter will be put in. They can use their own sod.

MPT Wilcox said the Boardwalk Makeover is not requesting the town to turn over the FEMA lot to them for use for their events only, they recognize that lot sits there empty, unused and is a wasted resource and would like for it to be used as an overflow, make it available to our citizens as a place to sit and relax.

Mr. Owens said he would like some direction from Council on where to fund some of this from, whether the town is going to fund it or some of the funds are going to come from the Boardwalk Makeover.

MPT Wilcox said the Boardwalk Makeover has agreed to go over there and do some landscaping and help with volunteer services. It is not a very big project and they would get a big return from it.

Councilman Gilbert said as long as it is managed like our other parks or spaces so there is not a conflict. He also feels it is more responsible to go with drought tolerant species looking at the long term liability.

Mayor Macon made a motion to approve the volunteers to work on the lot in conjunction with the town to sod and irrigate it and clean it up for use under the purview of the town manager. MOTION CARRIED UNANIMOUSLY.

PRESENTATION BY BRETT KEELER ON THE HIPPOH2 PROJECT AND A THANK YOU NORTH CAROLINA' PROGRAM

Brett Keeler said this is another venture by which Boardwalk Makeover is a subcommittee of. Mike Hoffer wants to talk about "Thank You North Carolina" which is kind of a give back to the state to people who are in the service industry.

Mike Hoffer said Thank You North Carolina is a pet project of his which donates lodging to deserving citizens and public servants around the state who would like to come down to Carolina Beach and have a little vacation. Lodging in the form of condos, cottages, oceanfront houses in the off season. This would be property owners/managers to donate use of their properties after Labor Day, property that they are not staying in or is being rented. This is not a charitable event, they should put down a deposit - some property managers said they would take care of the cleaning/managing. Their goal is to put 10 families on vacations in September and October as a thank you to service people such as social workers, teachers, law officers, etc. who don't make a lot of money and can't afford a nice vacation.

Brett Keeler said they would like to get a press release out by June 1st so they can start giving away vacations. Part two of the presentation has to do with TDA funds for the Boardwalk Makeover for \$240,000 for this year and money last year for the core of their events but they are heavily trusting and relying on volunteers. The schedule this year will need about 220 volunteer hours. Bingo will be a revenue generator to reinvest more money into the programs. One idea is the Hippo Slide, he showed a DVD on it. They are looking at a smaller one, 35' tall, and are asking to use the beach strand south of the Marriott. The slide costs about \$45,000 with site work costing about \$10,000. If they get approval, he will try to find 11 investors at \$5,000 apiece. Over a 2 year period there will be about 13% return of investment. The one in St. Petersburg grosses about \$350,000 a year. If they brought in \$50,000 they would pay off staff, insurance and pay it all. He has had two people interested so far. CAMA has told him that when and if they apply for a CAMA permit it will be denied because of the way it is written now it is seen as a permanent structure. But it inflates every morning, takes 15-20 minutes, and deflates every night at close of operation. It is not really a permanent structure. It is screwed into the ground at about 25 different spots. It is sturdy and safe. Then they will have to go to CRC on July 23rd where they hope to sway CRC that it is not a permanent structure in front of the first line of vegetation. He is asking Council to at least investigate putting a Hippo tube slide on the beach strand south of the Marriott.

Councilman Johnson expressed concerns about the width of the beach it would take up and emergency vehicles trying to get through. There is not a lot of room on the beach.

Mr. Keeler said that where the beach strand juts out, the slide is about 25' wide and would leave the same amount of space that is currently in front of the boardwalk.

Tim Owens said he is concerned about the location and the residents' views there being blocked, life saving services and any other services getting up and down the beach, vandalism, tides could go up to the dune line, the CAMA side, and zoning.

Councilman Gilbert expressed concerns about people with high end property trying to look out over the slide.

Mr. Keeler said he couldn't see the government putting out a hippo slide and trying to subsidize some of their programs because then they are competing with private business. He couldn't see private business putting it out there because that is not their land and not in the best interest of the town but the entity that is trying to accomplish this - the mission statement and what they have to do is a 501(c)3 and all money has to be reinvested in Carolina Beach into other programs. With that revenue they might be able to get larger loans. On the FEMA lot, maybe they can get a "surf rider" which costs \$1.2 million dollars to put in. They cannot be put on private property because of high, ancillary costs and structures. One way you can do it is through a non-profit and would increase the marketability of the area and value of the properties. The water can come from the ocean or a pump site, preferably a shallow well within 150' of the site. He cannot seek out investors or go to CRC unless he has a directive from the town to investigate.

MPT Wilcox said they want things here for people to do, but he does have some concerns about locating it in front of private properties. He suggested bringing this item back next month and send out notices to property owners in the intended area they are proposing and allow them to hear about it and give their input.

Mr. Keeler said they could use a generator for electricity.

Steve Coggins, Town Attorney, said they should check their dates on the CRC meeting because CRC has had to cancel a few of their meetings and when he checked their website today it showed that they meet again on June 24th and then August 26th. He doesn't know if they could be heard during the June 24th session. In the setback rules of CAMA, one of the very few exceptions for structures of any type oceanward of the setback line is a temporary amusement stand. He can conceive the possibility of them achieving a permit. To go to Councilman Gilbert's point about the blocking of view, there is no precedent of which he is aware in North Carolina regarding it, but there has been litigation in other states regarding public trust rights of the adjoining oceanfront owners - about what structures would impede their view and their suing alleging that the building of something that does obstruct their view, deprives them or diminishes a property right that they have. Councilman Wilcox's point of getting input from those particular oceanfront owners is wise. If Council wants this to happen they could go as far as to get waivers from those particular owners.

Mr. Keeler asked if it was possible to get temporary directive to further investigate so they can get those CAMA permits in line to do the 15 days and then next month, which would be prior to the CRC and make it contingent upon them getting approval in June from Council to be able to go forward and go to CRC.

Mayor Macon said he thinks it is a great idea and the best location is in front of the boardwalk but we have a sand problem. Budget-wise it could take a load off of the town where we are trying to keep these events going now.

Councilman Gilbert said a 501(c)3 is a private entity and not a town organization. Beaches where these slides are located are distinctly different from Carolina Beach and feels this is premature because of not having communication with those property owners here. Since they are a private organization, he asked what precluded them from going to CAMA.

Mr. Keeler said it was because they don't own the property.

Mr. Coggins said the beach property is held in public trust by the state. The town does have some limited jurisdiction to regulate activities on the beach itself that has been conferred by the statutes. The applicant does have a point that the officials at DCM processing their application would want to know the position of the town, either for or against or no position, they will want to know that.

Councilman Johnson said he would need to see a layout at the actual location to make a judgement and to decide if it would be a hindrance to services.

MPT Wilcox said he thinks they need a site plan, an aerial overlay. It needs to go through TRC, Police Chief, and Fire Chief. He wouldn't have a problem, as long as you know you don't have final approval, saying they go forward and see what happens and, in the mean time, get the rest of your package together and get something scheduled.

Mayor Macon said he didn't know why they couldn't do something that they agree they support it in concept although pending final approval through staff and Council.

Councilman Gilbert feels it is premature. Tim Owens agreed but he thinks what they could do is cone off the beach at various locations.

Mr. Coggins said he thinks a letter from the town saying it is supportive of the conceptual idea proposed but subject to the details of obtaining town approval under it's appropriate procedures.

Mayor Macon made a motion to send a letter as stated by the town attorney supporting it in concept but subject to the details of obtaining town approval under it's appropriate procedures. MOTION CARRIED UNANIMOUSLY.

Mr. Owens suggested Mr. Keeler get together with him on Thursday to go out and take a look at it.

REQUEST BY GOT-EM-ON FISHING TOURNAMENT TO USE TOWN PARKING LOT

Kurt Bartley presented this item. He said on behalf of the Got-Em-On Fishing Tournament they are requesting the town parking lot beside the Scotchman on Canal Drive on July 9-12, 2009. They are also requesting use of the town's extra port-a-potty.

This event will also support the Got-Em-On-Live Bait Club and Kure and Carolina Beach Fire Departments are the sponsors of it.

Councilman Johnson made a motion to approve the event subject to meeting insurance requirements, alcohol permit requirements and any other conditions of the as stated by the town manager. MOTION CARRIED UNANIMOUSLY.

CAROLINA BEACH COMMITTEE REPORTS

Dee Jenzano spoke on behalf of Arts and Activities Committee and said they were disappointed, after all their hard work that they were just a “think tank” and to hand off the events they had planned and all of the calendar information to others. None of the groups approached were willing to take on the events, even though they had been advertised, and the calendar information was handed over to a business that is now profiting from it. Their goal is to promote tourism and provide things for residents all year long. They would like to request the following from Council: (1) provide a site for a Master Calendar such as Kure Beach has on their town website; (2) give them the go ahead to start events and get them going as it will be much easier to pass off successful events to other groups in town; (3) have all art and activity events come before their committee so that they do not duplicate dates and can work with them if they need assistance; (4) allow them to work directly with the town manager for approval of their events. Some ideas for future events: art shows by the lake and boardwalk (already in progress - May 21st and July 2nd), October dog show, Christmas decorating contest (to help the Island of Lights), teenage dance, tennis competition, corn hole tournament and an island yard sale. If Council cannot grant the four requests, their feeling is the Arts and Activities Committee should be dissolved because they are meeting multiple times a month and not getting anywhere. They were approved on 9-9-08 through Town Council to go through Tim Owens with events so they would not clog up the system and were also told to keep the artists organized and show the work during times of events and activities to promote and enhance activities on the island. They want to help other people who want to have stuff. They are not requesting people come to them and be a part of their meetings because they want to squash anything or because they are power hungry but because they want to have a master calendar, have a grip on everything that is going on so if somebody else has an event they want to plan and they come to them they will know if an event has been planned and they could possibly join forces and maybe help coordinate it. That is why they would like to see event and activities come before their committee and help them with the process to do the event. They would like to have activities at the lake prior to movies and things to entice people to come and spend the day here. They would like to do Jazz Under the Stars, have an artist there. There are a lot of people on the boardwalk who are for that. The two dates they have on the boardwalk currently, without fireworks, on Thursday, May 21st at 5:30 p.m., which has been approved by the town manager, for the artists. The idea is to add another layer to things already going on to enhance the activities. They would like to direction as to what it is they are doing. They have been trying to get a master calendar for a year but it is not on the town website and it needs to be.

MPT Wilcox said he does not know anyone who is profiting off the calendar. The calendar is being hosted for free on Beach PC's website as a courtesy to Boardwalk Makeover. He has investigated how the calendar could be hosted on the town's website and we do not have the capabilities to do the kind of quick updates to the website for the calendar, at least at that time that maybe Kure Beach has. The intent was to put it someplace where the Arts and Activities Committee could have more direct control over it with quick updates. When you go to the town calendar and click on that it takes you to the main domain.

Ms. Jenzano said the problem is that it does not get updated. You have to click so many times to get to it, you can't go directly to it, and there are so many calendars. She understands that Beach PC's is going to sell advertising around the calendar. She needs a calendar with simple access to events showing everything on the website. That is what Kure Beach has. She offered her time to keep it updated.

Tim Owens said they could work on the calendar. He understands it is two clicks but they can make it easier. Even if it is a word document, that might be the easiest thing to do.

MPT Wilcox said this committee was not to be the Boardwalk Makeover, not to be a group of volunteers that thought of an idea and then went out and raised all the money and put all the volunteers together and provided all the resources and worked to make it happen. The people who were originally appointed to that committee understood that and didn't want to be the labor force behind it. Therefore the goal of that committee was to be a think tank, to think of what kind of events could be done and then go to groups like the Boardwalk Makeover, who that committee was closely linked with, and propose these ideas. The committee wouldn't directly be burdened with going out and doing the work, strictly an advisory committee to other entities. If the committee has the resources to put on an event, to take in revenue, pay insurance and manage all those activities. If so, maybe that is something that is possible. Lastly, the events on the boardwalk - last year when they did the arts and crafts proposed to Council, they were going to do it on Thursday nights because there was a crowd there, a captive audience, and, this year that the arts and crafts would have its venue - every Saturday, every Sunday or one major boardwalk show during the season. Because of the amusements coming and the way the downtown has changed, the area that was used by arts and crafts isn't available anymore. One of the proposals was to do Art in the Park which sounded like a good idea. The feeling he gets from discussions with a lot of artists and committee members is that a lot of the artists want to go down there and set up as often as they can down at the boardwalk. He doesn't have a problem with some activity down there but there has to be a balance to it because of businesses located there and they have a short period of time to make money. He supports the Arts and Activities, the boardwalk but there are also businesses down there.

Ms. Denne said they are only talking about 5 dates on the boardwalk for the whole summer and, if anything, it will enhance and bring people into businesses that are art

acclimated down there. She said that MPT Wilcox has a business at the boardwalk that many of the artists are in his business, they consign through his business. She asked if the artists that were on the boardwalk last Thursday night last year hurt his business.

MPT Wilcox said they close at 5:00 p.m. so he doesn't think it affected him.

MPT Wilcox said he is hearing conflicting information from different people and he is not sure exactly what is going on.

Ms. Denne gave him the dates for art on the boardwalk: one in May, one in June, July 2nd, July 25th, and August 22nd. Three dates at the lake. They are trying to enhance all businesses down there and Carolina Beach as a whole.

Mr. Owens said the Arts and Activities Committee events insurance is covered by the town if it is an approved event.

Ms. Villapiano asked Council if they wanted the Arts and Activities Committee anymore.

Councilman Gilbert asked why they are coming to Council to request events as they have charged the town manager to approve those.

Mr. Owens said he typically likes to have the committees/organizations who are having the events to brief Council on what they are doing, to see if there are any red flags, and to address those.

MPT Wilcox recommended he and any other Council members and the town manager come to their next meeting and discuss their mission and have their group be cohesive in what they want to do because they are confused.

Councilman Gilbert made a motion for the Arts and Activities Committee take these events to the town manager and go forward with that. MOTION CARRIED UNANIMOUSLY.

Mr. Owens said he had a report on the Master Development Planning Committee. They have tried to meet twice and the same 3 or 4 people showed up each time and they would like to readvertise.

Randy Simon, Police Advisory Committee, asked about the bylaw presented at last session and the Mayor said it is on the agenda. He thanked everyone involved in putting together the program for Charlie Grissom. He asked Council to consider changing the normal meeting date for the committee from the first Monday of the month during June, July and August to be on the first Tuesday during those months to conduct their meetings at 7:00 p.m. and be a part of National Night Out at the boardwalk. They will be there with the police chief to answer any questions of residents. They are also inviting the New Hanover County Sheriff's Department to participate. They will advertise in the Island Gazette.

Mr. Owens recommended they work with the town clerk and make sure everything is advertised.

The town clerk said the only people they would have to notify are the people on the distribution list, "Sunshine List", which is mainly media and a few citizens who have asked to be on that list. Anyone can ask to be on that list. Some are e-mailed and some by regular mail. Each year they are asked if they want to continue to be on the list. The notices are also on the website.

Mr. Simon said they advertise in the Island Gazette under public announcements. They are proceeding with the motto contest at the elementary school and will announce the winner on June 4th at the DARE graduation ceremony at 1:00 p.m. at the school. He invited Council and all residents to attend. Mr. Bigley will be providing pizza to the winner and their class.

On behalf of the Harbor Commission, Randy Simon said they have been working to providing transient docking for transient boaters, pump out utilities, transient mooring fields and dinghy and daytime docking and public access to waterways. They are close to putting the floating docks in but CAMA has requested them to do a major environmental impact study before they can do that. Even though they have made major repairs to the town marina, Capt. Bartley, Harbor Master is working to get them through the process of the environmental impact. The Harbor Commission is disappointed in the progress they have made as far as the water quality situation. He chairs that subcommittee on water quality and they are particularly concerned about the results of the testing from a study done during a one year period, eight tests that failed. He does not know the reason. \$70,000 was spent by the taxpayers and they have not received an understandable report from Mr. Brian Cox who was hired to do this study. A continuance was granted at the end of January. The Harbor Commission would strongly request Council to direct Mr. Cox a detailed and understandable report at the next Council meeting on June 9th. We need to know what kind of water quality we have and sufficient time and money was given.

Tim Owens said Mr. Cox is working on it, they have monitored and re-monitored some sites and even went beyond what they needed to monitor and they are working on the report. He thinks it is premature to have Mr. Cox here at the next meeting. He will get an expected date of when the report will be ready.

Mr. Simon said they have two vacancies and they would like to advertise for the Harbor Commission to fill those vacancies.

Mayor Macon said they can advertise that anytime through the town clerk. They do not need to go through Council.

PUBLIC DISCUSSION

Robert Lewis, 670 St. Joseph Street, also representing the shareholders of Last Resort in Carolina Beach, said he has ongoing issues with Planning and Development. He said the whole idea is to improve the community and promote business, he thinks. One of his concerns is he gets the impression that the people in zoning and planning make decisions based upon intent and using “what if” type things. Why do decisions made by staff members seem to be made on the intent of an ordinance not the actual law? He has had some personal experience and has talked to other business owners and residents and wanted to bring that to Council’s attention. There seems to be an ongoing selective enforcement ordinance in the community and that bothers him. When people go to Planning and Zoning, they seem to get different answers by different staff members on different days, such as cost of permits or requirements of applicant. He was looking at staff interpretation of intent, so take an exact wording of a particular ordinance and that is adjusting the intent of the ordinance or does the intent of the condition of the use permit and bringing it back to an owner of a business or maybe an ordinance as it relates to an individual and the resident. Interpreting the ordinance outside the law – basically the law is black and white. When you write an ordinance, you would hope that you entail all the details of that ordinance and how it affects the individual homeowner or business owner. So interpreting things outside the boundaries doesn’t make a lot of sense to him but it seems to happen. In using the word intent when referring to items on a permit, including a conditional use permit, saying the intent of that condition was this. How would you know the intent if you weren’t there at the time of issuance? Example - sign ordinances, all businesses are affected by this. You can use up to 25% of the front of a building structure as far as the square footage for your signage on your building or property. Sign ordinance covers all these different types of signs. Example - banners are allowed only 4 weeks per year. These are primary things a small business uses today to advertise specials, get people in the store, promote products, promote things to the general public. Somebody decided in Planning and Zoning, in a committee format, to allow banners only four weeks out of the year. Then it says four weeks a year, a Zoning staff member decided to interpret that intent to mean four consecutive weeks. He was told that. Once he challenged that he came back and said you can use four different weeks but it has to be weeks, it can’t be days. Our attorney believes that four weeks means 28 days and we proposed to put our banner up in our business and other businesses are the same, two days a week for 14 weeks. Zoning still says you can’t do that. It doesn’t make a lot of sense to him. If you go to the map, he bets they win over zoning. Maybe they need to amend this particular banner thing. A banner at a business should be used anytime you want to use it as long as it meets the constriction of size or dimensions within a particular thing or it meets your 25% signage use, he doesn’t understand why there is limitation on the number. It’s also good business practice. Someone has to go out there and police all those banners and there are tons of them out there. A-frame sign ordinance, feels there is inequity there. It’s allowed on the sidewalk area of the CBD but not anywhere else. We have the CBD and Business Highway areas and are considered differently and all businesses are treated differently in each, doesn’t make sense and you are discriminating against the businesses in what is called the Highway Business District. You don’t allow them to have A-frame signs and the A-frame signs in the CBD actually block people

walking on the sidewalks. In the business district in the highway it probably wouldn't bother anyone. They get the feeling, especially in their business that they are getting targeted for enforcement and it is only around certain people and it is selective. Some business owners don't seem to need permits, others do have to have them. He has looked through a number of records in Planning and Zoning and there are tons of records with no permits for signs, banners or anything. There are none in there. He doesn't know where they are and would be nice to know where all the records are and have them all together. He showed a sign, a banner that has been there for months at Michael's Seafood. They have put a banner up, had it there for months, no permit in the file, never made an application, not like some of the other business owners who actually paid \$25 for a permit and they are allowed to have it there for as long as they want. Somebody could determine that is actually a permanent sign. He feels it is a banner and permanent signs still require a permit. Then he showed Carolina Beach Furniture and asked if the signs were banners or flags and what are they used for and do you have to have a permit to have them. He feels they should be treated equally and doesn't feel that is happening every day. The record keeping at Planning seems to be a significant problem. He couldn't be in business today if he kept the types of records that are kept in the P&Z department. Technology could really help impact P&Z. You could scan all the documents, even the drawings, and formulate them into a database which could be searched and updated. Permits could be submitted online and there would be no lost documents. Then you could offload those to a remote location and have a backup system. When he asks questions about what is going on with the record keeping, he is told the previous administration did not have good record keeping. P&Z is so busy they don't have much time to focus on record keeping, he can understand that also. There are other files and other billings somewhere but no one seems to know where. The public is supposed to have access. Permits and enforcement when you question about permits and enforcement, we don't have an Enforcement Officer, guess we did at one time. The policy is to enforce something when a complaint is received. So, if nobody complains about it, unfortunately for those people at Michael's, they are going to be taken advantage of tomorrow, he's not complaining about Michael's or Carolina Beach Furniture. Once a complaint is received, then you go back to enforcement. Some permits can be approved by the town manager or Council with no record in the file. Who needs to have a sign permit or event permit. Sidewalk cafes are only allowed in the CBD. He feels this is inequitable to any businesses not in the CBD. They are about 50 feet from the CBD and they can't have a sidewalk café. Summary: some recommendations for action that Council should consider, maybe make recommendations to the P&Z Department, is that the selective enforcement needs to stop today. It opens up significant liability for the town. They will go to the mat on a number of these issues in our business because our shareholders believe in what we are doing is right and we don't believe that we can be selectively enforced in certain areas around that area. Making decisions on intent of an ordinance or permit should be limiting. The 28 days, the four weeks, that whole thing doesn't make any sense to him at all. He doesn't believe they are interpreting this thing right. The sign ordinance should be reviewed and adjusted to limiting the inequities in the law and open up opportunities to help businesses promote business. P&Z record keeping should be reviewed and investigation of the use of technology. He will be glad to help the town with that, free consulting. All business should be treated equally no

matter what districts they are located in. When you set a precedence by allowing nonconformance to exist, as it pertains to ordinances, requirements for permits or use of over a period of time, it becomes very difficult to legally enforce such in a court of law. He has had personal experience with that in a former position in government in the past.

Councilman Gilbert said he thinks the Last Resort has a neighbor who doesn't have who doesn't appreciate the business. When Mr. Lewis says selective enforcement, he thinks they have reactive enforcement and there are issues. He didn't have a problem with signs until he was running for re-election and his signs were evil. He got a banner permit and now it is on the side of his building, is it a sign? He doesn't know. He would challenge him on selective enforcement, they have reactive enforcement. If somebody complains, that is when he hears about it. It's not that the town doesn't like his sign because they don't like him or whatever. He doesn't think they have a sign police running around going after people proactively because these guys are busy. They have an outstanding Planning and Development Department and they are focused. They have gone through the sign thing and if there is a citizen who wants to take inventory of every sign and then give it to them to complain, he thinks they will react to it.

Mr. Lewis said that numerous business people have told him - just do it, don't get a permit and then nobody actually looks at it. If he had not gotten a permit to get a banner, he wouldn't have any issue.

Councilman Gilbert said his biggest concern is what he said that there is something disproportionate about the application of fees. You said some people pay \$13,000 and some people pay \$30, he would like to see that evidence and then sit down with the town manager and these folks because they did inherit quite a mess on the record keeping end of it. But if you are saying someone is getting special treatment with respect to application or fees and you said the difference is \$13,000 or \$30, he really wants to see that.

Mr. Lewis said he has a person Councilman Gilbert could talk to about that.

MPT Wilcox said on some of the points he made about our ordinance, which was started a long time ago and groomed by Councils through the years, they haven't created it all and normally when they change an ordinance it is because someone like him comes before them and says they don't think it's right and quite often they change it. He agrees with some of his issues with regard to sign issues and he would encourage Mr. Lewis to itemize them and bring them forward for text amendment for Council to consider.

Randall Purdy, Green Cab, LLC, 1005 Carolina Beach Avenue N., said he asked Council last month to consider dropping the speed limit from the ABC store to Dow Road, from 45 MPH to 35 MPH in order to accommodate him to be able to get to businesses in his green cab in which he is only allowed to do at 35 MPH and under. It was brought to his attention that there might be a need to determine where the transfers would be so he drew up a map, which he gave to Council and staff.

Mr. Owens said he contacted DOT by e-mail regarding his request and they are supposed to be looking at this area as well as by the lake.

Mr. Purdy thanked the town for their continued support. They are planning to use more carts this summer.

ADOPT THE CONSENT AGENDA

MPT Wilcox made a motion to adopt the consent agenda as follows:

Approval of the minutes:

Special Meeting April 9, 2009

Notification of Line Item Budget Transfers and Amendment:

WATER DEPARTMENT

Transfer \$11,500 from line item #308120.22-Maintenance to Tanks to line item #308120.32-chemicals and Lab Fees.

Approval of Budget Amendment in the amount of \$11,700 for the purchase of 3 handheld meter reading devices taking \$11,700 from line item #308120.55-Meters to line item #308120.74.

FIRE DEPARTMENT

Transfer \$7,500 from line item #105300.02- Salaries to line items #105300.14, #105300-08, #105300.16 and #105300.17.

Set a public hearing date for June 9, 2009 at 7:30 p.m., or soon thereafter, to consider amending Section 3.9(5), Dimensional Standards for the Various Zoning Districts to increase the encroachment into the required front yard setbacks for residential zones.

Set a public hearing date for June 9, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 3.8-1 Table of Permissible Uses of the Zoning Ordinance.

Set a public hearing date for June 9, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 12 Eating and Drinking Establishments; and (2) Article 23 the Definition of Eating and Drinking Establishments in order to clarify the requirements for specialty restaurants.

MOTION CARRIED UNANIMOUSLY.

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

Mayor Macon called the meeting back to order. He said he knows the first part of the meeting dragged on and he realizes they didn't conduct some of the business they are here to conduct and it is already 9:00 p.m. but there are a lot of citizens that have some very strong feelings about quite a few issues and they got their time to speak to Council and that is important. (Note: At this point, Sara Hartman resumed recording the minutes in the absence of the town clerk.)

Tabled from April 12, 2009 - CONSIDER AMENDING APPENDIX A ZONING ORDINANCE, ARTICLE 10 FENCE REGULATIONS

Jeremy Hardison said that in the past few months they have been discussing with Planning and Zoning Commission, in a workshop session, the fence regulations and issues encountered lately. Under their direction, staff has amended the ordinance, which he reviewed. Section 10.2 Location of Fences - currently the fence locations have been 6" to a foot off the property line. There are no as-builts required for fences as they are for buildings on the property. The fire chief asked staff to add that there be 3' of clearance for fire hydrants around a fence. Section 10.3 Location of Fences to Prevent Hazardous Traffic Situations - wanted to include the sight triangle language in there which is 30' measured off from the intersecting of the pavement where fences could not affect the sight distance. Currently the height measurement of fences is 6' in all districts and if you want to go higher there is a CUP that shall be required. The proposal is that the height shall be measured at the highest point, not including columns or posts, the fence section to the existing natural grade. Then it would allow for 18" for the posts of a fence. If you bring fill on a lot or have a retaining wall, the fence measurement will be from the property from the right-of-way or from the adjacent property. The retaining wall would be added to the overall fence height. For residential or commercial districts for the fence height, no fence shall exceed 6' in height for side yard and rear yard and limited to 4' in the front yard after the front yard setback. For fences exceeding height restrictions for non-residential uses, they wanted the ability to apply for a CUP for such uses as batting cages. For town facilities and utilities, such as the ball field, substation utility stations, they would be exempt from the fence height requirements. Currently you have to get a building permit for a fence, they wanted to be consistent with building code which states that you have to have a building permit for a fence, if it's a commercial fence and exceeding 6' in height. They also added language that sand fencing and silt fencing are exempt from permit requirements. Section 10.7 Construction Standards - states the finished side is oriented toward the public right-of-way or adjacent lot. In Section 18.4 where they regulate non-conforming situations but because they feel fences are a little bit different from buildings as they refer to a value on structures. They felt that Section 10.9 would refer back to Article 10 ordinance of fences, that it would be based on how much footage of fence you would have. If you have 100' of fence and you take 60' of fence down and it is non-conforming then the whole fence would have to apply, if it is more

than 50% of the fence. It is consistent with the Land Use Plan. TRC comments were included and it was unanimously approved by the Planning and Zoning Commission.

MPT Wilcox asked how staff interprets what a front yard is and where it starts. He gave an example of a garage that is moved forward 20'. There are a lot of odd lots.

Mr. Hardison said we have a definition of front yard which is the measurement from your front property line to whatever the setback is in that district - that area is considered your front yard.

MPT Wilcox said that if they are not requiring a permit for a fence and have someone come out and show where the fence can be placed; he feels the front yard definition needs to be clarified where the front yard starts. He is also concerned about the 50% nonconformity. If you have 100' of fence and for some reason you have to take 50% of it down that it is reasonable to tell someone they have to take the rest of their fence down that is in good condition and rebuild it. Seems to be a financial hardship and unnecessary. Unless it is in disrepair, he has a problem with that.

Councilman Johnson said it doesn't necessarily mean that.

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

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

Gary Ferguson made a couple of points. He said this is not a planning staff recommendation, this came strictly from the Planning and Zoning Commission. Staff charged them with doing this because fences are very value latent. He feels that is very important for Council to understand. They gave them a menu of items for them to consider, they went through it and brought it to them two times and they modified and changed it based on the current ordinance. It is a reflection of what they wanted to see changed. Regarding MPT Wilcox's point about where is the front yard, our definitions are very clear in what our front yard is. When you read the rule, it says the fence if it is located in the front yard and that is the distance that we measure, 25' in some districts and 20' in others, is very clear, at least to the novice reader. If it is located in the front yard, then the fence can be no higher than 4'.

MPT Wilcox said it is only clear if you go back and read the definition but by reading the ordinance and looking at the picture, it may not be clear. Why not make it extremely clear.

Mayor Macon asked if they could add setbacks after front yard.

Mr. Ferguson said that in many ordinances whenever there is a word that has a special

meaning, i.e. special definition, front yard. Someone's idea of a front yard and what the zoning ordinance says may be two different things. Many ordinances italicize special words or words that have special meaning or definition, therefore, the reader would know right away that it is defined in the ordinance. They could modify that to make it clear but that is just an idea.

Steve Coggins said that Council would heartily endorse that suggestion.

Mr. Ferguson said there is no building permit required but there is still a zoning permit required. There are some people building them without any kind of permit. They want to move away from building permits and the main reason for that, for residential applications, is because when someone begins a fence, even if it is too high, that fence can continue literally forever because a building permit is good forever, just about, until you call for a CO or final approval by the Building Inspector. We don't want to see that happening here. The applicant would be required to show staff on paper where the fence is going. Staff tells them where it has to be and if the applicant puts it on or over the property line, that is between him and the neighbor, not the town.

Councilman Gilbert made a motion to approve Ordinance No. 09-784 (Exhibit 2) including the language for three feet clearance for fire hydrants and emphasizing front yard setbacks with italics or definition as per staff and directed by Council and that it is in conformance with the Land Use Plan.

MPT Wilcox said he would like to amend Councilman Gilbert's also by removing the 50% requirement.

Mayor Macon said there is an amended motion on the floor which removes the over 50% requirement for damage to the fence, requiring the whole fence to conform to the new regulations.

Councilman Johnson said he has a problem with that as we need to have something making non-conforming items conforming. We do that now with our housing, that if it's 50% they have to meet all codes of the current ordinances. If we are not going to get control over our fencing, we're going to have fencing that will never be corrected.

Councilman Gilbert said that since Planning and Zoning Commission voted 6-0 on this, did they deliberate that non-conforming to any degree?

Mr. Ferguson said they had conversations about it but they didn't take on the complexion Councilman Wilcox brought up. They felt that once more than 50% of the fence was destroyed for whatever reason, the entire fence should comply.

Councilman Gilbert asked Councilman Wilcox if he had any substitute language.

Mayor Macon asked about the guy with a 7' fence because he didn't get a permit and built what he wanted to, half of it falls down and so the next part of it is 6' and meets the regulation - that won't be attractive. Most fences are stockade type fences and there is no way it can't be modified in a manner that is economical for the homeowner - doesn't mean he has to take the whole fence down he just has to take a foot off to make it conforming. MPT Wilcox said it still takes a lot of work. He feels the language should read that whatever portion of the fence is replaced needs to be conforming.

Councilman Gilbert said he would like to call the vote on MPT Wilcox's motion. He said it was to strike Section 10-9, correct? MPT Wilcox said his motion was to reword 10-9 to say that any portion of the fence that is replaced needs to be conforming.

Mr. Ferguson suggested changing the wording to "if more than 50% of a non-conforming fence is destroyed or removed for any reason, then that replacement part of the fence shall conform to the rules of the town". MPT Wilcox agreed to change his amended motion as suggested by Mr. Ferguson, clarifying his amended motion.

MOTION CARRIED 4-1 (MAYOR MACON VOTED NO).

Mayor Macon said now we are voting on Councilman Gilbert's motion. He called for a vote, and **MOTION CARRIED UNANIMOUSLY.** Councilman Johnson said his motion is basically the same as MPT Wilcox's motion. Mayor Macon said no and he clarified that Councilman Gilbert's motion didn't cover the nonconforming but it did the rest of the ordinance.

Since there was some confusion about the clarification of the amended motion, MPT Wilcox asked Mr. Ferguson to read the language again. Mr. Ferguson said what he thinks you are saying is "If more than 50% of a nonconforming fence is destroyed or removed for any reason than only that portion of the fence removed shall comply with this provisions of the ordinance." He asked if that is correct and if that is what he is saying. MPT Wilcox said yes, that is correct. Everyone understood the motion.

ACCEPT PUBLIC COMMENTS CONCERNING PROPOSED BUDGET FOR FY 2009/2010

Tim Owens presented a draft of the proposed Budget for FY 2009/2010. He said this is the second public hearing and at the end of this discussion he hopes to set another public hearing for June 9th where the budget could be potentially up for adoption. He gave a history of the budget process. He said the town has survived fairly well in these economic times. Other towns have seen more impact than we are. There are some downsides, sales tax is somewhat down, some development fees are down, and there are some things they are experiencing some concerns about. For the most part our revenues are fairly stable. Due to the uncertainty of the economy, the town was very conservative on revenue projection, particularly with our ad-valorem tax revenue. Some of the other development type revenue we were very conservative in our budget and tried to eliminate

expenditures where feasible. Our budget process really starts as soon as we adopt a budget, we are constantly looking at it. In the formal budget process we receive draft budgets from department heads at the end of February. Council got a presentation in March about it. We've held three budget workshops which Council has been directly involved in. We've reviewed most of the line items and looked at some cost cutting measures to consider further reducing budget totals. This is the town's second budget public hearing. The town will have one more. There is a requirement to have only one public hearing so we are going above and beyond that requirement. The proposed budget needs to be in your hands by June 1st and will probably be around May 27th and then we must advertise the budget process and the budget public hearing which we will do in the Island Gazette. That needs to be 10 days prior to. The numbers shown are still working numbers. This week will be the final say on it. What we're looking at is the General Fund revenue and expenditures of \$8,137,950; Tourism Fund revenue and expenditures of \$1,577,100; Water/Sewer/SW fund revenue and expenditures of \$4,598,400. This is about \$547,618 less than last years proposed budget which was adopted. He said this is a brief synopsis. In the budget presentation and documentation, probably during the public hearing, they will have a better breakdown of the different departments and what their totals are. As far as some of our current budget and budget deliberations, currently all funds are balanced, there is no proposed ad-valorem tax increase nor is there a proposal to increase our water and sewer fees. The budget proposal this year is \$547,000 less than the one adopted in 2008/2009. They have also contemplated a reduction in the storm water fee down to \$7.00 a month as apposed to \$10.00 a month which we are currently charging. This will represent about a \$36 savings over the course of a year for single family residents. There was some additional revenue taken in this year using the \$10 assessment and that revenue, directed by Council, to put aside in a fund to be used for either specific capital projects in storm water or to go forward and seek permits for the lake and the lake dredging. The finance officer will set up a capital account at the end of the year. One thing of interest is that New Hanover County Commissioners are discussing not moving forward with revaluation. Of primary concern, according to a presentation made by Roger Kelley, is the impact foreclosures are having the market in New Hanover County and, more specifically in Carolina Beach, if the county moves forward with revaluation in 2011, the projected 2011 tax value is \$2,000,517,000 and they project that going down to \$1,560,000,000. A revenue neutral budget in 2011 would be a little over \$.28, we're at \$.175 now. There are some pros and cons to moving forward. There will be a meeting on May 18th at the County Commissioners meeting to take input. If Council would like, he can write a letter or they can send a representative or he can attend. The pros for going forward with revaluation, it would bring tax values closer to market value, provide opportunity to correct any remaining outstanding issues from the 2007 revaluation. Also, the towns assessed value will move from 5% of the county total to approximately 3% of the county total which means Carolina Beach residents will be paying less in taxes. Some property owners who realized exponentially increases in tax value may see some relief. Typical action by local government following a revaluation would be to go revenue neutral. Some of the cons - decrease in tax base resulting in less revenue from those revenue sources that base their distribution on ad-valorem values. One of those is sales tax, utility franchise, etc. which base their value on ad-valorem value that the town has as a percentage of the whole county. Sales tax is a

big portion of our \$8 million dollar budget at about \$1.3 million of our revenue that comes in. Another con is a possible increase in tax rate. There is a cost associated with the county doing the revaluation. The tax value probably has some bearing on what the price might be. He would like to hear comments from Council if they would like him to attend the meeting and give our opinion of whether they need to move forward or not on the revaluation. He would also like Council to consider setting a public hearing date for June 9th at 7:30 p.m. to discuss the proposed FY 2009/2010 Budget.

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

Bob Lewis, 670 St. Joseph Street, said that about 2 years ago they had a major tax increase here and when the revaluation was done the last time, we did not have revenue neutral taxes in this town. He thinks it was over a 25% tax increase. Council disagreed. MPT Wilcox said there was 26% increase but it was revenue neutral, it was just the tax rate changed based on different revaluations.

Mr. Lewis said that, other than item #4, which he doesn't really believe is true, you really have to take a look at the pros of going to support revaluation because everyone at this beach is suffering from the valuation we had in 2006. We would really benefit from this. There are probably tons of communities in Wilmington who won't benefit from it at all because they never got the major increase in tax revaluations. He feels this is something Council should support. He can't really comment on the budget overall without the individual line items. Mr. Owens said he can give anyone a copy of the line item budget.

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

Mayor Macon said he would like the citizens to know that in the last three years there has been a significant reduction in employees. The manager said there has been about a \$533,000 cut from the budget from people leaving and not being replaced. We have been trimming things and we have a Budget Committee who is also looking at other things even down to phone billing for accuracy. This Council is very conscious of things that we can do better, using tax dollars wisely, and they are very dedicated to that. A very significant cost for our budget is the employees and we are taking a hard look at having the right resources and the right amount of people to do the job that we need to do to give the level of service the town needs.

Councilman Johnson asked that the town manager represent us at the County Commissioners meeting. His position is to go forward with the revaluation.

Mr. Owens said that on May 18th there is a budget workshop set. He also would like to have a meeting with Lanier Parking but that could be on another day but he would like to do that soon.

Councilman Johnson made a motion to set a public hearing on June 9th at 7:30 p.m. or soon thereafter and direct the town manager to represent Council at the New Hanover County Commissioners meeting on May 18, 2009 in favor of the revaluation. MOTION CARRIED UNANIMOUSLY.

Councilman Gilbert said he spoke with three of the County Commissioners and two of those commissioners had an opinion that they want what is best for Carolina Beach citizens and the others just responded and said thanks for the e-mail. If they don't go forward with the revaluation, they are going to pick a number but that number could be lower if they did go forward it.

REQUEST BY DIVER DOWN, INC. FOR A CONDITIONAL USE PERMIT TO RENOVATE AN EXISTING FACILITY AT 6B AND 6C LAKE PARK BLVD. N. (PIN 313011-55-1294.000) TO ADD A ROOFTOP DECK ON THE DIVE RESTAURANT

Gary Ferguson presented this item. He said Council has a memo in their package that speaks to why we are talking about a permitted use. He had a conversation earlier today with the owner of the building, Mr. Donald Womble and although Mr. Womble has signed a provision in our Article 17 of our Zoning Ordinance which requires property owners to sign off on a statement saying that this property can be used for this purpose or if it is leased property that the lessor and the owner are in agreement that this use or proposal can move forward - just before the meeting he spoke with Mr. Womble and apparently Mr. Womble is not comfortable giving total permission right now for this project to move forward. He has signed the statement, however, and he thinks Councilman Gilbert was privy to that conversation as well. He wants Council to know that he thinks Mr. Womble is having second thoughts about whether or not he wants to move this application forward giving what his understanding is right now. Right now the property is in foreclosure. Mr. Womble is first in line to acquire the property since he was the original owner. He sold the property to someone who went bankrupt and Mr. Womble is next in line for the acquisition of this property once he gets through the foreclosure proceedings. He asked Mr. Gilbert to confirm that.

Councilman Gilbert said that is what was communicated to him, that this property is in foreclosure and that he didn't want to go forward with it.

MPT Wilcox asked if what they are hearing tonight is a conditional use permit.

Mr. Ferguson said he would agree with that but he is asking for some direction and that is the second part of the conversation. The second part deals with whether Council thinks staff should administratively approve this, if so, he thinks they have the authority although he feels extremely uncomfortable in moving this forward administratively.

MPT Wilcox said what he just heard is news to him and it distresses him a little because he understands this coming forward as a conditional use permit. He asked why are we and why are people talking to people about the application and why isn't it happening here where it is evidence? It is hearsay. He doesn't understand what just happened. None of this should have happened as he understands the process. This board did not hear from Mr. Womble. This is a due process hearing.

Councilman Gilbert said he asked staff where the application was since this is a conditional use application and he wasn't provided the application. His question was where is the application and who signed it.

Mr. Ferguson said Mr. Womble did sign the application.

MPT Wilcox said if it is not a CUP let him know and he will drop this issue. If it is then he doesn't understand what just happened.

Mr. Ferguson said he felt it was relevant information and he brought it to their attention. If you think it is hearsay or not relevant to the conversation he can understand that as well. His purpose this evening is twofold. The first is to make you aware of this information and the second part is to try to get an answer as to whether or not you want to continue with a conditional use hearing on this. He would like to give a little background as to why they are bringing it to Council as a CUP.

Mayor Macon said to proceed.

Mr. Ferguson stated that in February he sent a memo to Council seeking direction about what happened when they changed from conditional uses for restaurants or eateries to permitted uses. Staff surveyed most of all the planners in North Carolina and the answers were usually bring back the applicant to the board that authorized that CUP with a grant order for that permit, then Council can relieve that individual of those conditions, if they so choose. The attorneys, Mr. Coggins as well as Rich Ducker with the Institute of Government, they were of the opinion that, no, under the 14th Amendment, equal protection, you cannot have someone coming into the town, brand new, wishing to open up a restaurant's permitted use, but, yet, you are going to turn around and have individuals who have conditional uses for their restaurant, to come in and ask for those conditions to be waived. The planners and attorneys were in total disagreement on this. He felt uncomfortable because he told Council earlier when the ordinances were being changed back in September 2008 that, yes, they were going to have applicants come back to Council and be requesting to have those conditions relieved. That was wrong. That was the first start. He didn't hear anything in February or March so he thought he would bring it back to them again. In the cover memo Council has he has tried to address that as saying that they are in a situation here where they need some direction from Council. This is a new ordinance. Secondly, when he starts looking at the standards for our restaurants under Article 12.2 as a permitted use, not as a conditional use, there are some issues that he finds difficult in terms of whether or not the Diver Restaurant is complying with those 12.2 provisions. Specifically, it says that we should look at the history of

compliance with noise as well as nuisance complaints. They got their CUP issued on June 30, 2008 and opened a few days later and in that time period the Police Department has reported 17 incidents that have occurred at this location. Some may be relevant and some may not, he gave Council a report of those incidents. Lastly, when staff developed standards for eating and drinking establishments, there were two standards, one included that the establishment shall comply with all provisions of the North Carolina ABC. Since November 2008 until March 2009, the Dive has failed to meet the ratio of 30% or greater food receipts to alcohol receipts. Their numbers are for November - 26.8% for food, December - 24.4%, January - 26.3, February - 25.5%, and for March - 27%. However, because we are a resort town, the ABC looks at an average for a 12 month time period. Strictly, by the letter of the law, they are in compliance with ABC rules. Also, there is a provision in our current standards under 12.2, that the access with respect to pedestrian and automobile safety and traffic flow and emergency access has to be provided. There have been numerous complaints, both with the police and other people who have witnessed this, himself included, where the sidewalk is congested to the point where people cannot walk directly in front of the establishment without being directed out into the street. For those reasons he has identified, staff feels that they should bring this to Council for guidance. If Council feels that staff can go ahead and approve of this administratively, they will be happy to do that. If Council feels that this should be reviewed as a CUP, they will be happy to do that as well. That is the question he is bringing before them first, as well as the previous question about Mr. Womble's statement, which may or may not be relevant.

Steve Coggins, Town Attorney, said he stands by his previous opinion. This is a legislative matter and the standards as set forth beginning with page 7 of this particular item that is before Council, which was just summarized very nicely by Mr. Ferguson to you, an additional issue, in terms of compliance, even as a legislative matter, is raised by the opening remarks regarding this item, that, regardless of whether this is a legislative matter or a quasi-judicial conditional use of permit matter, it must be brought by someone with standing. A serious issue has been raised as to who has standing to petition for this application, whether through a CUP or as a matter of right.

MPT Wilcox said he is not questioning his integrity or the fact that he knows he is trying to do what is right in the best interest of the town. He is trying to do what is in the best interest of the citizens of the community and also follow the law. He sees some legal concerns here. That may be interesting information coming from the owner of the property but if what they are getting ready to hear is the CUP, it is not information they can consider because it is technically hearsay, as he understands it. He has already signed the approval and that is part of the application. He understands they are supposed to be making decisions on the application. He guesses what they are trying to decide here is whether this is a CUP or a legislative action. Is that correct?

Mayor Macon asked the town attorney to put it in plainer terms.

Mr. Coggins said this is a decision just as if they were trying to adopt an ordinance or not. That is his opinion. In contrast, his opinion is that this Council is not acting in a judicial

capacity where one finds fact and enters conclusions of law. When Council acts in its legislative capacity, it is free to consider all sorts of factors brought to its attention in any way, whatsoever, and is only bound under the law to do a decision that is not, on its face, totally arbitrary and capricious.

MPT Wilcox asked the town attorney, on a legislative action if something is a permitted right, what type of conditions or restrictions do they have the right to place on it. Mr. Coggins said none. Tim Owens said unless they are specifically implied in the ordinance. Mr. Coggins said, right, unless they are specifically set forth in the ordinance, but, in the absence of that, no. A permitted use of right is a permitted use of right and you either meet the criteria set forth in the ordinance or they do not. Regardless, though, in any situation, whoever is requesting the change must have standing to request that change and another interesting issue has been raised this evening on that issue. He has no standing, personally, to ask for this particular change. He doesn't own or rent the property or run it. An issue has been raised as to who has the right to seek a change with respect to this property.

Mayor Macon asked if what he is saying is, in his opinion as the town attorney, the ordinance was changed so that the restaurant is allowed by right so this is not a CUP. Mr. Coggins said correct.

Mayor Macon said, based on that, the information that our planning director received from the property owner that he does not wish this project to move forward, he can take that into consideration. Mr. Coggins said correct.

Mayor Macon said so technically this is not a matter for Council at this point anyway because, what would basically happen is if the corporation who wants to add the rooftop seating for the restaurant, the applicant can do so, these gentlemen can make a decision on it. If he is denied because the owner of the property, which is still in question as it is in bankruptcy, the owner doesn't want to allow it to move forward then they have to make their decision based on that. If the owner of the property is okay with it and signs off on the project, then it is a decision for the gentlemen tonight, for staff to make because it is an allowed use. Is he correct? Mr. Coggins said he is correct but he believes he has also identified that they simply do not have all the information they need on the question of ownership or control, if you would.

Mayor Macon said let's say the owner of the property, once this stuff is settled, wants to move forward with it and it goes back into the hands of staff and they now have the owner of the property on board with the project and they still deny the project, the permit. What happens then? Mr. Coggins said the applicant has the right to seek judicial review of that decision. The Board of Adjustment is one avenue if it is a question of interpretation of the meaning of the particular ordinance.

Mr. Owens said he thinks what it boils down to is this is something new. They did away with restaurants as a conditional use and the planning director is trying to seek clarity as to whether we need to go through a process to undo that conditional use and also, due to

some of the violations he thinks there is some concern of moving forward with some of the things that have been going on with some of the police calls.

Mayor Macon said he doesn't know that it is their decision to tell staff that because they are going to go to the attorney and ask him for a decision and the attorney has already said that they are now a permitted use. They don't have to come back before us. He is talking about Richard Ducker as well.

Mr. Ferguson said they do have a provision in our Article 12.2 which is permitted uses, which the restaurants/eateries are, and it says clearly that if you have 3 or more violations of either the noise or nuisance law, then your permitted use gets elevated to a conditional use so you have to come back to Council.

MPT Wilcox said that according to the information that he has there are not 3 violations and, if that were the case, then they would be dealing with their existing conditional use grant which applies to their existing operation, not something coming up for a new CUP. There is a narrative in the report that says they don't have 3 violations.

Mr. Ferguson said he agrees but he spoke with the Police Chief and he is trying to understand what the distinction between what is an incident vs. a violation. He thinks the Chief might want to speak to that.

Mr. Coggins added that when Council elected to turn this into a matter a use permitted of right, Council received inquiries from many institutions that were operating under a CUP and inquired and asked expressly what this meant for them. Were they going to have to come back and ask this Council to modify their CUP's so not to put at a competitive disadvantage because of someone being able to allow something as a matter of right but they are restricted in some way by virtue of the fact that they had a CUP. They were told repeatedly that was not necessary, that the statute applies across the board. If a particular institution meets the definitions, as set forth in Article 23, they are entitled to the same rights and same mode of operation as any other new institution that comes along. And, so, the town has also taken some steps in regard and made representations of businesses as to what their particular status is. To take a position that is different from that now and to treat this as a CUP, he is not talking about this particular subsection that Mr. Ferguson is talking about involving incidents, but to reverse a course here would be very problematic for the town.

Councilman Gilbert said we changed from conditional use to permitted use. This Council has not made a position, has been very quiet, and he has not heard one person respond to Gary Ferguson's memo. He will have to go back to a conversation that the Mayor had he thinks was at a public meeting where he said this doesn't affect him because he has a CUP.

Mayor Macon said he is not in that zone.

Councilman Gilbert said, right, but you had a CUP and the Mayor said this doesn't apply to him. This Council has not made a position and the things that the town attorney said that these other restaurant owners or people with CUP's haven't brought that to Council

to his knowledge. He did miss a meeting but he hasn't heard this Council choose which way to go on this. He asked Mr. Ferguson if that was his understanding.

Mr. Ferguson said he tried to bring it out and, obviously he could have done a better job in making it known because he did the memo and getting no reaction and he did kind of blurt it out to Council a couple months ago and he was kind of hoping to get some feedback. The silence was deafening. He felt Council didn't want to talk about it then and staff will work through it. That was his interpretation of it.

Councilman Gilbert said what he originally heard was a planning perspective from Chapel Hill that said our CUP's stay in place but then you had an attorney perspective and that is what your memo - so, yes it was confusing.

Mr. Ferguson said it was. It was confusing from where staff sat.

MPT Wilcox said he would very much like to respond to Mr. Ferguson's memo but not knowing whether this is a CUP or a legislative issue yet, he knows if it's a CUP he shouldn't say some of the things he would like to say. He is waiting to find out if it is a legislative matter or a CUP.

Mayor Macon said it is a legislative issue, not a CUP as stated by the town attorney. We do not have 3 incidents although we are going to discuss what is an incident and maybe we can clarify that for the future. He said he didn't respond to Mr. Ferguson's memo, he's not the smartest guy in the room, but when you tell me that all the planning people say this and then you tell me that Richard Ducker and our attorney say differently, they are now permitted, that means they are permitted. That is what he got out of it and he has been in government a long time. He didn't think he needed to clarify it because he thought the Town Attorney did it for him and that is what he gets paid to do.

MPT Wilcox said if they need a consensus regarding whether they can pick list servers opinions or our town attorney's and Rich Ducker's opinions, he thinks he could bow to our town attorney and Rich Ducker. They are certainly imminently qualified.

Mr. Ferguson said he would never challenge an attorney.

MPT Wilcox said Councilman Gilbert said he didn't know where the board stands and he is just telling Mr. Ferguson where he stands. Our town attorney and Rich Ducker, who are both extremely qualified and Rich Ducker we use for a lot of other opinions on these matters.

Councilman Gilbert said Mr. Ferguson asked for that in February and got nothing.

Mr. Ferguson said what he was hoping for was to have some dialogue with Council about where they now realized something that wasn't exactly true as they were told, and what were they going to do to fix it. It's the fix that he was looking for.

MPT Wilcox said that is another issue and that is not what is before them.

Mayor Macon said if he would like for him to tell him how to fix it, you send a letter to the people who have CUP's in the CBD that are restaurants that are now a permitted use and let them know they are a permitted use and send them a copy of what the guidelines are that they have to operate under now.

MPT Wilcox asked if Mr. Ferguson needs a consensus from this board on whether we are accepting the legal advice and we are finding it a legislative issue?

Mr. Ferguson said, again, the only outstanding question right now he thinks is, whether an incident is a violation and if it is then this is a conditional use hearing, in his opinion. Maybe the town attorney will disagree with that. If these incidents are, at least in the Chief's opinion violations then he thinks they are on a different stage.

Mr. Coggins wanted to back up a little. There is a consensus that a permitted use is a matter of right in accordance with our ordinance. Our ordinance that has a permitted use of right has an interesting subsection within it that provides that if certain violations take place, the eating and drinking establishment in the CBD must obtain a CUP. His first question is that specifically noticed for hearing tonight? Mr. Ferguson said no, it has not. Mr. Coggins said then he has questions as to whether or not it is appropriately noticed for consideration. If it has not been then he thinks it is not fair to the citizens about what is before Council nor is it fair to Council.

MPT Wilcox said he would agree but, so they don't go through this again, should they go ahead and discuss what a violation vs. an incident is so they can have a clear path forward? Mr. Coggins said he thinks they can just for intellectual edification but it strikes him that he thinks they are crossing a bridge before they have to. He doesn't think it is properly noticed and then you also had this question of standing that he raised.

Mr. Ferguson said it was noticed as a CUP but it wasn't noticed as a result of violations. Mr. Coggins said the evidence is the ordinance but normally what you would find is for this kind of behavior you would have a revocation proceeding of a permit as opposed to a CUP. He confesses that is rather odd verbiage.

Mayor Macon said maybe that verbiage needs to be looked at if he wants to make a note of that. Here's the key, the applicant is here and maybe it would be very nice if they clarified what they are going to consider as a violation or incident.

Councilman Gilbert asked if Mr. Ferguson could read the ordinance they are talking about, the noise and nuisance, and then they will ask the police chief to qualify it because one way or another the applicant is going to come under a legislative issue that staff will

handle or it will come back to Council at some future date as a CUP because of these violations or whatever. He would like some qualification on that. Are they looking at Section 12.2?

Mr. Ferguson said yes. He read item 4 under Standards for all Eating and Drinking Establishments, from Article 12.2 Development Standards for Particular Uses. "Noise ordinance offenses shall be subject to the regulations as listed in Chapter 10 Sec. 10-10 violations. All violations shall be submitted to the ABC Board by the Town to ensure all operators stay in compliance with all provisions of the North Carolina Alcohol Beverage Control Commission. After receiving three (3) or more noise or nuisance violations, the establishment shall be required to obtain a conditional use permit."

MPT Wilcox asked how many incidents, how many violations have we reported to the ABC board? Mr. Ferguson said we have had more than 3. MPT Wilcox asked if we have reported 3 violations to the ABC board? Mr. Ferguson said no, they have not. Councilman Gilbert said that is a separate sentence. Mr. Ferguson said that is how he is interpreting it. MPT Wilcox asked what is a violation? Councilman Gilbert said we are talking about noise or nuisance violations.

Chief Younginer said perhaps we should send somebody a letter when we do something but when somebody is given some rules to follow and then they don't follow those rules and if we have to send somebody down there to talk to them about that or we have to call the owner in here to have a meeting, then he would say he had a violation in there somewhere. They have had several meetings with the owner about problems they have had with the drinking on the sidewalks, noise on the sidewalks, foul language, having to have people walk around in the street. They did not write him a citation because he didn't want to bombard him with citations and he has a new business going. They have other businesses that have started and have had some rules that were broken, they go down there and say these are the rules, you're not following the rules, this is the way it's going to be and most of them comply.

Councilman Gilbert said, referring to page 9 of the memo, "According to police incident reports, CBPD has been called to this establishment for 9 fights or disputes, 4 incidents of noise, and 4 miscellaneous calls." In our ordinance, it says after receiving 3 or more noise or nuisance violations, the establishment shall be required to obtain a CUP. Are these numbers correct? Chief Younginer said it is correct for that time period.

MPT Wilcox asked what have we done as a town traditionally - we have other sections of the ordinance that deal with violations. He's sure we have a code of ordinance section that deals with violations. He asked what the town attorney's and town manager's opinion is of a violation.

Mr. Coggins said the ordinance is directing you back to Article 10. It is talking about violations specifically. All it talks about is offenses subject to regulations of Chapter 10, Section 10 on noise violations. That is what your governing body is and right now he is

looking at that to determine what, if anything, it says about what is a violation and then what is the appropriate procedure when a violation occurs.

MPT Wilcox said the question is when someone violates something, is it a violation or is it only a violation once they get cited for it. He guesses that is what they are talking about.

Mr. Coggins said looking at it in Section 10 it talks about a first offense and it says any person who violates any portion of Sections 10-4 through 10 shall receive an oral order to cease or abate the noise immediately or within a reasonable time period.

Mayor Macon said they also have a violation for exceeding the decibel level where they can be issued a citation.

Mr. Owens said there is a little bit of gray area between that and that is why we are discussing this. If we proceed forward as a permitted use, one thing that could happen is if there are three violations, whether they are written or verbal, this restaurant could come back as a CUP. That could happen with any restaurant he would assume if they are serving alcohol. There are some procedures in place for that if we consider this a permitted use and those laws are broken and there are written, verbal or otherwise - it can come back so if we are going to go down that path there are some measures in place that would bring it back as a CUP.

Councilman Gilbert said, just for clarity, the attorney has taken the first sentence and applied it because it talks about noise ordinance. The third sentence he is still a little confused on, it says after receiving 3 or more noise or nuisance - what is a nuisance violation? Chief Younginer said it could be fights, the blocking of the sidewalk that turns into a nuisance every night, cursing.

Councilman Gilbert said so on nuisance violations, they have had 9 fights or disputes, are you saying those are nuisances? Chief Younginer said no, he didn't. It was just information that was provided for that time period. The nuisances that they had to go see him about were the alcohol on the streets, the foul language and the noise which continued where they had to go back down there and tell them to keep the people inside, you can't allow them to walk around the streets with alcohol and if they are cursing in front of your business, you need to regulate that.

Councilman Johnson questioned about having the owner in. Chief Younginer said he and the town manager met with him twice and his sergeants went down there and saw him at the business a couple of times.

Councilman Gilbert asked if a nuisance was a fight or blocking the sidewalk or alcohol out there. Chief Younginer said he wouldn't always say a nuisance is a fight because he can't control every fight that comes in so that is why he tried to interpret some of those things that were going on, somebody may walk in and have a fight that lasted for a couple

of minutes and it's over, it started somewhere else and ended in his establishment. It could end up anywhere. The nuisance part would be when they keep getting the calls for the same problems every time, and it's always the same place so it has become a nuisance. It could be fights, you could have fights there every night then that place would become a nuisance.

Councilman Johnson said if he understands everything that has been said, and what the attorney said, and from what it is saying here in 12.2, this needs to be readvertised as a CUP. Does it go through Planning and Zoning or come straight to us?

Mayor Macon said, at this point, we have an application that is before staff. Staff has verification from the owner of the property that there is some question as to whether or not he wants that application to proceed. At this point staff cannot do anything with that application. Where we're at now is whether or not staff is going to come to the conclusion, including the police department and the town manager, whether or not this particular establishment has 3 or more violations and they are going to advertise and require him to come in pursuant to that regulation. He asked the town manager and town attorney if that is correct. The town attorney said yes.

MPT Wilcox said he didn't disagree with them but he believes the operator would have standing and whether he is able to go forward with this or not might depend on his lease. He doesn't know any of that information but he thinks staff needs to consider what his legal rights are. He and Councilman Johnson agreed that they did not see how they could proceed with this.

Mr. Ferguson said, concerning P&Z, he thinks when they presented it to them he went through pretty much the same introduction that he gave Council tonight and they said they would like to hear it pretty much as a CUP. They went through the seven specific and the four general findings even though they are not acting in a quasi-judicial manner.

MPT Wilcox said they have already heard this as a CUP, it's just noticed differently. It can be noticed properly. He doesn't think there is any reason that it would need to go back to P&Z since they are not a quasi-judicial board.

Mayor Macon said they cannot hear it as proposed. It is in staff's hands as to whether or not they should issue it.

Someone from the audience asked as when the CUP was signed. MPT Wilcox said they assumed it was done when the application was made. Mr. Ferguson said that is correct. The application was made March 30, 2009 and Mr. Womble signed it. Now it seems he has had a change of heart.

Mayor Macon said let's move on to the next item.

CONSIDER AMENDING APPENDIX A ZONING; ARTICLE 8 LANDSCAPING AND DEVELOPMENT SPECIFICATION STANDARDS OF THE ZONING ORDINANCE TO REQUEST PROPERTY OWNERS TO MAINTAIN GROUND COVER MATERIAL ON PRIVATE PROPERTY

Gary Ferguson made the presentation regarding landscape standards, amendments to the Zoning Ordinance to address landscaping elements. He said Councilman Johnson brought up a couple of months ago that fact that there was a concern about debris, particularly landscaping type elements - wood mulch, pine, pebbles and the like being washing out into the road after a storm event and wanted to know whether or not there needed to be some beefing up of our zoning regulations to better address that. He went to the Town Code, Section 16-230 entitled "Debris, vegetation waste" which speaks to this. It talks about how an applicant needs to clean up his property, make certain that all the grass clippings, dirt, etc. needs to be cleaned up off of his property after such a rain event occurs. There is also a provision in 16-213, which deals with the Town Code under this debris section that speaks the fines that are levied against an individual who does not comply and the fines are pretty steep. It is \$100 for a civil citation and then a penalty of \$200 if there is a repeat violation and you can also be imprisoned for not more than 30 days so it is both criminal and civil. Staff took this to Planning and Zoning Commission and he has drafted an amendment to the Zoning Ordinance that would basically, under Article 8 which speaks to landscaping materials and landscaping elements, buffer yards and the like and in that provision or that section of the ordinance he included a new definition for what ground cover material is and they defined that and also set a new provision that was placed in the Zoning Ordinance, Article 8.10 Maintenance, where it basically says, "Where *ground cover material* is placed within the *street yard* or within twenty (20) feet of a public or private street, it shall be the responsibility of the property owner to contain this *ground cover material* on private property and to prevent it from eroding or being blown onto adjacent properties or the street right-of-way." Planning and Zoning Commission reviewed this at their last meeting and they felt like there was a certain amount of redundancy between the Zoning Ordinance and the Town Code of Ordinances, so they particularly weren't very supportive of having two ordinances do virtually the same thing and so they did not support this.

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

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

Councilman Johnson said there has been some, under definition there were some items that he discussed with the town manager and the planning director that he felt should be added in there in the definition.

Mr. Ferguson said particularly stone and rock and other types of more hard material.

Councilman Johnson said the reason he brought this up is that in the past we react to a problem and we really haven't been that proactive. We are in a slump right now as far as building and he felt this would be a great time to address so that when the building activity does pick up, when a builder or developer comes in, this is going to be under the landscaping ordinance and will be clear that if they are putting in these types of materials, they are going to have to contain them. Most of them remember the constant problem they had on Carolina Beach Avenue N. with the Cabana with various materials ending up on the street and sidewalk every day and people were going out into the street to avoid the sidewalk. They finally put in a retainer to keep the stone contained which saved our town employees from having to clean it up. That is all he was trying to address because he sees our vac truck after heavy rains, that we have mulch or stones or whatever getting sucked up into the vac truck. He just wanted a clear understanding for builders, developers, home owners up front what they had to do.

MPT Wilcox said Mr. Ferguson said there was some conflicting language in the two areas that covered it and Attachment #1 to him doesn't cover any ground cover material, just grass clippings and vegetation so is there some place other than this proposed ordinance that also covers it?

Mr. Ferguson said there is no other place. He thinks when he was talking to Brian in Operations – Storm water, it was his opinion that when they see material, be it whatever kind, out in the street they are proactive. They go out there and ask the adjacent property owner to clean it up. Attachment #1 does not include the array of things he has identified in the proposed amendment.

Councilman Johnson said that 8.3 kind of covers that. It's not being that restrictive because only when it gets within that 20 foot parameter that it gets close to our streets is the problem. It doesn't mean that they have to do it in the back yard or whatever.

MPT Wilcox said there is only one question he has about the way it is written. It states that it shall be the responsibility of the owner to contain this ground cover material on private property and to prevent it from eroding or being blown onto adjacent properties or the street right-of-way. There is nothing in there that says if it is they are responsible for collecting it and putting it back. Should that be a consideration that they are responsible for collecting those materials if they do blow out?

Mr. Ferguson said the first part of the sentence speaks to the responsibility of the property owner to contain this ground cover material on private property. If you are inclined to say the rest of that sentence can be deleted meaning that you can't prevent things from being eroded or washed away, your responsibility is to put it back where it once was. He feels the wording is clear.

Mr. Owens said he has a couple of questions about the wording too. Where it says, "Where ground cover material is placed within the street yard...", he asked what street yard means. Mr. Ferguson responded that street yard is defined and it means it is within 20 feet of the front yard.

Mr. Owens said that most folks will put stuff in the right-of-way, like around the mailbox. Most of Councilman Johnson's examples, it's in the right-of-way. Mr. Ferguson said the language the way it reads is supposed to be saying that it has to be contained, it can't just be out in the public right-of-way or private right-of-way. Mr. Owens asked if he considered that to be covered in here. If he puts mulch around a mailbox, is that covered? Mr. Ferguson said if the mulch is in the public right-of-way, then you shouldn't be putting mulch out there. Mr. Owens said that is where it is coming from. He said there are a number of corners and there is either mulch or gravel all the way around the property. They can take that gravel up any time it becomes a problem. He feels this needs to be a little more generic. Maybe state, "Where ground cover material is placed on public or private property as landscaping material, the property owner must control and contain said material", or something to that effect. He doesn't think you are changing the intent of the ordinance.

MPT Wilcox asked if it is the person placing the material or the property owner. What if it is a renter putting it down? The way he reads it right now is if you don't contain it, you're subject to a fine. He would rather see them go out and pick it up and put it back. Councilman Johnson said he thought this was covered because it says if no action is taken by the property owner, the town is authorized to issue a notice of violation. We have been very lenient in the past, the same with grass cutting on lots. They notified the property owner, they don't go out there and issue a fine automatically without notifying the property owner that they have 10 days or 20 days to get your mowed. That is under Section 16-213 according to the memo.

Councilman Johnson made a motion to adopt Ordinance No. 09-785 (Exhibit 3) with amendments as noted.

Mayor Macon said there is a motion on the floor, any discussion? MPT Wilcox said do we have any concerns over the town managers Mr. Owens said I think you could say private property and/or public property as authorized; you could add that language in there to help it out.

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

CONSIDER AMENDING APPENDIX A ZONING; ARTICLE 12 DEVELOPMENT STANDARDS FOR PARTICULAR USES; SECTION 12.2 STANDARDS FOR BARS/TAVERNS TO PRESCRIBE HOW THE SEPARATION DISTANCE WILL BE MEASURED BETWEEN BARS/TAVERNS

Gary Ferguson presented this item. He said that at the September 2008 Council meeting staff was questioned about separation distances for bars, particularly at the boardwalk. Also, there was a change in the ordinance that diminished the distance between bar separations on the boardwalk from 200 feet to 100 feet and the 200 foot requirement still exists outside the CBD. Council asked staff how they measure that distance. Jeremy

Hardison, Zoning Administrator, has been doing that for over 5 years by measuring the closest distance between two buildings or “as the crow flies“. That is also how we measure parking. However, there are other methods how distances can be measured. Staff surveyed some communities in North Carolina and they couldn’t find too many that did it as an alternative means by as a person walks from building to building, assuming on a street right-of-way or public sidewalk. How they measure influences, to a large extent, the numbers of these particular land uses they may have. They have been pretty successful in minimizing or limiting the number of taverns in town by the distance requirement. At one time there were approximately 20+ tavern establishments in the boardwalk area when there was a considerable amount of trouble. Now we have 5. Staff went to Planning and Zoning’s April 9th meeting and asked their opinion of how they should measure it. One board member said they thought it should be measured as a person walks, but the majority said it should be done as they have been doing it - by the closest distance between two structures. He did a quick analysis of what the impact would be on new bars being established in town under the existing measuring method using the GIS mapping. He looked at sites based on where existing bars are, not where new bars are being proposed. The total potential bars under existing rule could be 5. The total potential bars walking door to door could be 9. A problem with measuring by walking door to door is determining how close to walk to the buildings or changing of a door’s location. Planning and Zoning looked at it and voted 5-1 to continue to measure the distances between bars the same way we’ve been measuring them. Staff recommends Option #1 which is to maintain the current method. Option #2 is the walking distance. Option #3 is to do away with the distance requirement for the separations between taverns. Staff recommended Option #1 for the following reasons: (1) Expanding the bar/tavern allowance on the boardwalk and within the CBD appears to go counter to the previous efforts to minimize these uses. By using a strict interpretation of the building to building separation requirements the town has enjoyed the benefits of a reduction in the number of bars. (2) Potentially increasing the number of bars on the boardwalk and within the CBD is inconsistent with the following statements and policies in the 2007 LUP - Policy #26, “In an effort to revitalize the CBD the Town shall consider new economic development and redevelopment projects that support a resort-market niche, family-oriented business and year round residency and does not diminish the quality of life or environment.” Policy #27, “The Town will encourage new and expanding businesses that provide goods, services, and family oriented entertainment to year round residents and visitors. Examples include appropriately scaled and designed grocery stores, restaurants and entertainment.” Policy #87(D), “The Town shall promote new economic development and redevelopment of the Boardwalk that secures the pedestrian nature of this area and promote family oriented business, entertainment and amusements.” VI Management Topic: Local Concerns - Objectives and Background Discussion - Bullet #3, “The Town of Carolina Beach seeks to promote and increase family oriented businesses and activity.”

The manager said it would apply town-wide, the way you measure.

Mr. Ferguson said he has been focusing on bar to bar separations. There are other separation rules that have to be adhered to as well such as a bar from a church or a bar

from a residential area. The distance of a bar from a church by walking measurement could be 200 feet but “as the crow flies” could be 100 feet. It does impact how you are going to look at this rule.

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

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

Councilman Gilbert made a motion to follow the Planning and Zoning recommendation and staff recommendation to continue as we are doing it now.

MPT Wilcox said any distance bothers him as a property owner. There are no distance requirements between donut shops or clothing shops or art galleries and he feels it is not equal treatment, to a degree. On a land use issue we do promote family oriented businesses but he doesn't think it means that is the only thing that can be established, you can have both. He is not saying that 100 feet is the proper distance and he is not saying he wants more bars. He is saying the way it is measured is completely illogical. Just because the backs of two buildings touch that it is not appropriate because of the proximity. There are a lot of ways you could do it without it being complicated. Maybe 100 feet isn't the right distance, if you have to have a measurement at all. Maybe it's 200 feet. There are very few places on the boardwalk today that are left open for other types of businesses. Rules have changed for bars from times in the past. He would like not to vote on it tonight and would like more dialogue and a better way to have a measurement.

Councilman Gilbert said the way he reviewed this was if they put forward an ordinance to change the way they measure, it would put bars closer to churches and residents. The narrative he read said there is a potential for 5 more bars in the boardwalk area or if changed the other way, 9 more bars. He feels we should maintain it as we are measuring it until someone wants to bring an ordinance that expands it so it doesn't impact our churches or residential areas. That is his motion.

MPT Wilcox said they are talking about the CBD and if they need to have two different measurements, one for a high density, tourist based CBD, which is different than having something down the HB district that might be next to a church or residents behind it. If that is the case then we need to look at this ordinance even further because you are applying something because you need to make it fit for residences and churches, you are taking that same application, same requirement and moving it over to the CBD where it makes no sense.

Councilman Gilbert said that method of measurement is throughout the town. If he wants to direct staff in the future to change an ordinance specifically for the CBD of the way you measure distance, that's fine.

Mayor Macon called for a vote. **MOTION CARRIED 3-2 (MPT WILCOX AND COUNCILWOMAN EFIRD VOTED NO).**

MPT Wilcox asked if they could direct staff look at this and come up with a better way to measure it and bring it back to Council. He doesn't feel it works in a high density business district.

Mayor Macon said that staff is pretty busy. If anyone on Council wants to come up with some conclusion on this, maybe they can work with staff and work something out.

MPT Wilcox made a motion to ask staff to take a look at this with different alternative measurements in the different districts and come back with a more comprehensive recommendation.

Councilman Johnson said he would like to amend that motion that if you are going to consider changing the way things are measured, that goes for waiver of parking and the way that we measure for parking.

Councilman Gilbert asked that part of Councilman Johnson's amended motion that if they do change the method of measurement that they increase the density not to impact the distance, if he would consider doing that to his motion. Mayor Macon said he did not understand what Councilman Gilbert was talking about and to clarify what he is saying. Councilman Gilbert said he is asking Councilman Johnson to consider broadening his amendment to include, if they choose to change the measurement distance to door to door or stay with "as the crow flies" to consider enlarging the distance between bars. If it is 100 feet and you are doing it from door to door so there wouldn't be an impact to the churches and the bars that are already in the HB area. He is asking that it be consistent with whatever measurement way you recommend but also consider the distances. So if you say you are going door to door, make sure that from The Last Resort to the Baptist Church is still maintained.

Mr. Owens said they are asking for different options to be brought back to Council. He doesn't know if Council wants to consider the parking part too.

Mayor Macon asked Councilman Johnson to restate his motion.

Councilman Johnson asked staff if there is any other thing other than parking that they actually do measurements. Mr. Ferguson said sexually oriented businesses has a distance measurement prescribed by state law, he believes, about how close it can be to a park or school, church, etc. He said he thinks zoning at a very bare minimum should give people level of predictability which oftentimes focuses on the easiest way to look at things but he is here to serve Council.

Mayor Macon said that Councilman Johnson's motion is to address how the parking is measured for when you have a waiver of parking and he also included in his motion the clarification that Councilman Gilbert mentioned.

Mayor Macon called for a vote on Councilman Johnson's amendment to the motion.
MOTION DENIED 3-2 (MAYOR MACON, MPT WILCOX AND COUNCILWOMAN EFIRD VOTED NO).

Mayor Macon said MPT Wilcox's motion is requesting staff to look at different measurements as far as walking distance and distances and districts to come up with a better solution to the problem.

MOTION CARRIED 4-1 (COUNCILMAN JOHNSON VOTED NO).

CONSIDER AMENDING THE CODE OF ORDINANCES; CHAPTER 13 POLICE; ARTICLE III CAROLINA BEACH POLICE ADVISORY COMMITTEE; MISSION STATEMENT, ETC.

Randy Simon, Chairman of the Police Advisory Committee, said they wanted to clarify their mission statement presented to Council last month for review. They identified changes such as: representatives serving on the committee, such as high density retired police officers and such. Town Council took action and converted those to "at large". So that is basically created within this mission statement clarity and bringing it up to date.

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

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

Councilwoman Efird made a motion to adopt Ordinance No. 09-787 (Exhibit 4). MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING CHAPTER 8, ARTICLE IX SIDEWALK CAFES TO ADDRESS OPERATIONAL PARAMETERS

Ed Parvin made this presentation. He stated that at the April 10, 2009 meeting last month Brett Keeler came before Council during the public discussion concerning problems that he had experienced with his sidewalk café on the boardwalk. He said it was an arduous process of removing the sidewalk café every evening. The platform that levels off the seating area is a heavy and arduous process and asked Council to direct staff to go back and look at this ordinance, which they did. Currently everything has to come in at 11:00 p.m. The proposed ordinance is to continue to limit sidewalk café hours which requires that they be closed by 10:30 p.m. with no more service after that time. By 11:00 p.m.

they have to be in. They are proposing, in the Boardwalk area, that they still be allowed to keep the platform and barricade so it doesn't become a tripping hazard, can remain on the boardwalk but the sidewalk café must close by 11:00 p.m. - everyone will have to be out of the area. It still preserves the intent of the ordinance which is to offer an outdoor dining area on a public sidewalk while ensuring there is adequate space maintained for pedestrians on the sidewalk.

Councilman Johnson asked if staff considered if this amendment went through the number of other people adding platforms on the boardwalk. He feels this opens the door for more platforms, a potential safety hazard and a more complicated cleaning program for town workers.

Mr. Parvin said there is still a provision in the ordinance that at the town manager's request to remove the platforms at his notice or if there is an emergency such as a hurricane.

MPT Wilcox said not everyone has platforms. He understands they are heavy but they are also in the walkway and they are expecting pedestrian traffic to increase in those thoroughfares.

Tim Owens said he has some concerns as well. He thinks the platforms can be made a little lighter so people can handle them. He is wondering how Council feels about the sidewalk café ordinance in general. They have talked about coming back and taking a look at it. Some places it works fine and not so well in others. If Council wants them to come back with something, he can do that.

MPT Wilcox said they have an issue with a sidewalk café already, at least one. It is in a narrow walkway and has become problematic. Other areas accommodate sidewalk cafes quite well. Maybe we need some objective criteria vs. deciding who can have it and who can't.

Councilman Gilbert said it is up to the town manager's discretion if they hold on to that permit so he can pull that permit any time he wants to. There is the flexibility in the ordinance and, instead of being heavy handed, he agrees with MPT Wilcox that it is a narrow walkway through there and a trip hazard. If they have to pull everything at 11:00 p.m., that means you have a low line of view and you still have those things sitting out there. If he would like to present a café ordinance that could be easier to enforce, that would be up to him.

Mr. Owens said there is also some clarity issues. He said he thinks Dava would like to have an outside café but her business is technically a private club under the ABC laws but for the most part during the day she does serve food and the business acts as a restaurant. So there is a little disparity there as to how the ordinance reads, it says restaurant.

MPT Wilcox said he is generally in favor of outdoor cafes but they need not to be a public safety problem, they need to be managed well and need not to become a problem

for the community. You will always get some good with some bad and those are the ones that you pull. He said he thinks that platform sticks out about 5 feet.

Mr. Owens said he personally thinks they should not change the ordinance.

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

Dava Villapiano, 8217 River Road, owner of the Silver Dollar at 3 Cape Fear Blvd., said she put in a request for a permit to put in a sidewalk café. She measured and wants to go 4 feet out, which does not block anything. She would also have to use a platform to level it but she has been looking at some fairly light composite material because most of them are girls that will have to hinge it. Either way it would be removable. The reason she couldn't get approval from the town manager and had to come before Council is that her ALE permit is under a private club but she has a privilege license for a restaurant. The Health Department comes in and grades the restaurant. She has a full menu, not just snacks, and her daytime business is primarily food. After 9:00 p.m. she is a club. She would want to pull her tables by 9:00 p.m.

Mr. Owens said he thinks there is not clarity in the ordinance and he feels she would be a responsible manager of a café. One of the things they were talking about doing is making sure she comes to TRC and let them look at some of those issues.

MPT Wilcox said he wouldn't mind if the platforms were hinged or rolled out, something done neatly in the front of the building. He has a problem with them being out in the walkway on a full-time basis.

Councilman Johnson said he thought when they first approved the sidewalk cafes that they limited the area to 4 feet in the front of the building.

Mr. Owens said they will make sure she is on the TRC agenda. The ordinance states there must be 4 feet of clearance on the sidewalk.

MPT Wilcox said that's a problem because in an open area someone could put their seating area 10 feet. They need to have distance from the building.

Councilman Johnson said staff needs to come back with an amendment to the ordinance.

MPT Wilcox said they need the minimum walking distance of 4 feet and the maximum from the building not to exceed the minimum walking distance.

There being no further public comments, **Mayor Macon made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.**

Councilman Gilbert made a motion to use Appendix 1, use the existing ordinance and direct staff to bring back a distance from the building and clearance.

MPT Wilcox said they also need to address some distance a foot away from the building where the platform can fold up if they decide to use them.

Mr. Owens said they will clarify all that in the advertisement. Right now what they are sticking with is that they have to be taken in. If we change the ordinance to allow 1 foot out then we'll do that.

Councilman Johnson said he feels the hinged platform folded up would still be a safety hazard.

MPT Wilcox said that if they have a distance that is required of clear space and a distance from the building, he thinks they should state that.

Mr. Owens said staff would bring some options at the June meeting.

Mr. Ferguson said the ordinance is structured around restaurants. The privilege license for the Silver Dollar says it is a restaurant but the ABC says it is a bar. Do they want to expand the definition to include all eating and drinking establishments? A specialty restaurant can have an outdoor café but bars, even though they serve food, cannot.

Mayor Macon said maybe it just needs to be clarified to include an establishment classified as a bar that serves food.

Ms. Villapiano said she feels it is discriminatory. She doesn't understand why the town goes by what ALE classifies her as. She has a choice as to whether she gets a private club license or a restaurant license. She serves as much percentage of food as most of the restaurants in the CBD.

Councilman Gilbert said his motion stands and staff needs to work it out.

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

MEETINGS

Mayor Macon said this was an agenda item added by MPT Wilcox in reference to how many meetings we have a month.

MPT Wilcox said they talk about our committees having meetings at times when the public can attend and Council does not prescribe to the same protocol. Their last meeting lasted until 2:00 a.m. and they are there quite often until 12:30 a.m. or 1:00 a.m. He knows they are televised now and some people can watch on TV. He thinks they need two meetings and that they need to go back to having a work session and a Council meeting and they need not to be here until 1:00 a.m. or 2:00 a.m. keeping staff and everybody else here. The room empties out at 11:00 p.m. People come because they

want to talk on an issue but don't want to stay that late. They have kids who go to school in the morning, they have to go to work and you can't speak to an issue on TV.

MPT Wilcox made a motion to resume the previous practice of having a work session and a Council meeting once a month.

Councilman Gilbert said he feels they need to look at what is being put on the agenda because they spent 2 ½ hours talking about hippos and bouncy houses. Maybe the committees should report quarterly. Maybe the town clerk and town manager should review this tape and time it. Mr. Lewis spent 5 minutes plus on something he should have brought to staff and to Planning and Zoning. He feels they are not administrating the meetings well. Staff becomes meeting oriented because it is a double set of minutes, a cost to the town, staff becomes meeting centric because they are not doing anything else but planning the meetings. He used to go to those meetings and it was a rehearsal. There was not a lot of deliberation or it got the difficult stuff out of the way so there was no deliberation during the meeting. He talked with the folks in Brunswick County who have two meetings and they pick two commissioners to go to that meeting and they hash out whatever is on the agenda and when they go to their meeting it is basically settled and there is no deliberation. They could have gotten through earlier if the town manager had handled some of these issues. For 2 ½ hours they didn't do any business, they just listened to that stuff. Why would the storm water guys come to Council if they weren't going to make a decision. That's something staff can sit down with and go over. Council isn't going to make a decision on software. We have a public discussion area and it is a free for all.

MPT Wilcox said he thinks they can address some of the things Councilman Gilbert is saying too but he doesn't think that solves their problem. When they admonish their committees because they are not having their meetings at times when the public can attend and we do something completely opposite, it's ridiculous.

Councilman Gilbert said before they consider a second meeting they should consider what they can do to par the agenda down.

Councilman Johnson said he thinks what MPT Wilcox is proposing to do that they look at other municipalities that have one meeting a month. From what he hears their meetings don't last that long. He is guessing they limit their agenda.

Steve Coggins said other municipalities and counties who have shorter meetings is the practice of a separate agenda meeting.

Mayor Macon said that at a workshop meeting some of the stuff that goes on in the beginning of our meeting with the reports from the committees.

Mr. Coggins said it would need to be properly noticed. The practice referred to in Brunswick County was severely criticized because it was not open to the public and that had to be remedied through a threat of litigation.

Mayor Macon said the key for him is that they had a lot of people, some of who were angry, some had a lot of things to say. They could have gone about it a different way but they do have this venue to go about it. Were we conducting the public business for 2 ½ hours, yes, he thinks they were because they were listening to the folks who put them there and the people who pay taxes who allow the town to run and operate. Was it the most important thing they could have been doing - to them it was very important and, therefore, it has to be important to Council. He tries to speed the meetings along. When he was elected Mayor he knew the meetings were going to run longer because he was going to let people speak longer because he has been in a lot of cases where people have tried to shut people up and that is not why they are here. If you start repeating yourself, he will say something to you, but until you start repeating yourself and you are still providing us new information he tends to be a little bit more lenient with the time. He apologizes, that is definitely his fault because he does run the meetings.

MPT Wilcox said he agrees with the Mayor. He is proud of the fact that they take time to listen to the people. He has no problem spending extra time here but doesn't think it is best spent at 1:00 a.m. or 2:00 a.m.

Councilman Gilbert said they have talked about town information meetings where people can talk about bringing wrestling or Withers and Ravenel can talk about storm water opportunities. Maybe those are the times to do it and maybe it's at the school. He has had people say to him that they don't want to get out there and talk but they want an open forum. The agenda meetings that he sat in on from the former Council who did it was where they did all the heavy deliberation basically out of the sight of the public. Even though they go long he thinks the deliberation is healthy, at least it's out there and not a dress rehearsal and that is what he sees. Looking at formal minutes, the impact on staff and the financial impact, why don't they consider maybe having that Town Hall every other month and invite the public to the school. If they are going to have an agenda meeting, they are not making those CUP decisions there, they're not really conducting the business, we're hashing out an ordinance or a policy so they don't have to deliberate it up there. He would like to know the financial impact of an agenda meeting if they are going to have to advertise it and actually go through the agenda and he would like to consider town staff time in those too because it is cutting into their time if it's 5:00 p.m. He remembers those meetings being earlier.

MPT Wilcox said if they want to have open house meetings every quarter that would be great but he doesn't think it will fix their problem.

Mayor Macon said he agreed with Councilman Gilbert in that what would happen with these meetings is that not many of the public attended and Council would definitely skirt through some fairly important items.

Mayor Macon said the motion is to have two meetings, one being a workshop meeting and the second being the primary Council meeting.

Mayor Macon called for a vote. **MOTION CARRIED 3-2 WITH COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTING NO.**

Mr. Owens said they will have to decide on a time of day and they will have to amend the ordinance.

Councilman Gilbert said the public is not going to see it. He attended the majority of the ones that Joel and Pat and those guys had and the public is not going to see it, Arcadius extensions were done at that, it was phone calls, it was behind closed doors and there was less transparency when they were doing that and the deliberations we have, even though they get later our agendas need to be cut back, they need to be managed better by the town manager and the town clerk and what we are doing is spending the taxpayers money on something we could manage better.

Mayor Macon said he agrees with Councilman Gilbert. What happens with these meetings also is somebody trying to get a CUP, that's an earlier meeting, it knocks off another week or two from their thing and what ends up happening is people want to get on there for CUP's.

Mr. Owens asked if they are setting an agenda and talking about stuff or are they actually hearing.

Councilman Gilbert said you are going to pack that agenda just like you pack this agenda and it will go just as late and it's just going to start at 5:00 p.m. You have to manage the agenda. If Calvin managed the agenda, he kept it clean and concise and they rehearsed it, they came in and got it done, that's why they got out of those meetings.

Mr. Owens said there is a lot of stuff he didn't ask to put on the agenda. These are people who wanted to come before the agenda. He has heard many times that if people want to get on the agenda, put them on the agenda. That is what he has heard from the Mayor so that is how he manages it. Most of these requests are requests that they have to take action on.

MPT Wilcox said they do two meetings and they refine the process and see how it goes.

Mr. Owens said he guesses they want him to bring back a text amendment to change the ordinance back to what it was and bring that back to the next Council meeting to advertise for a public hearing.

Mr. Coggins suggested amending the ordinance to read may have two meetings.

Mr. Owens said he is seeking direction on setting another public hearing for the June meeting to set a date and time for the second meeting. He will check the ordinance.

Councilman Johnson recommended Council excuse all staff members not essential to the rest of the meeting.

Mr. Owens said it is policy that once there is not an item a staff member has anything to do with they can leave.

CONSIDER ADOPTING A RESOLUTION TO SUPPORT AND MAINTAIN THE DISTRIBUTION OF SALES TAX ON AN AD VALOREM BASIS IN NEW HANOVER COUNTY

Mr. Owens said this is a resolution in support of maintaining the current distribution of sales tax on an ad valorem basis. There has been some discussion on possibly changing it from ad valorem to per capita which would impact the town tremendously. The City of Wilmington would like to have it changed. Kure Beach adopted this resolution.

Councilman Johnson made a motion to adopt Resolution No. 09-975 (Exhibit 5). MOTION CARRIED UNANIMOUSLY.

APPOINTMENT TO THE PLANNING AND ZONING COMMISSION

Gary Ferguson said there was not an advertisement to his knowledge and they have two P&Z members whose terms will be expiring in August.

Mr. Owens said they would like to table this until they get it advertised and bring it back at a later date.

Councilman Gilbert made a motion to table this item. MOTION CARRIED UNANIMOUSLY.

APPROVAL RATES FOR KURE BEACH SEWAGE FOR FY 2006/2007 AND 2007/2008, AND CONSIDER REFUNDING KURE BEACH MONIES FOR OVERPAYMENTS

Dawn Johnson, Finance Officer, said the issue is to set the 2006/2007 and 2007/2008 rates for the Kure Beach and Aquarium sewage rates. Also, based on the audited numbers for those years, the town would need to refund the Town of Kure Beach approximately \$21,873 for 2007/2008 and \$25,920.54 for the years 2006/2007 and the remaining period of there would be a refund due also. Mayor Macon asked why. Ms. Johnson said because the rates have dropped based on our costs as well as what they have done to make improvements to their sewage. Tim Owens said what happens is the rate is set and then you do an audit and then you go back and readjust the rates. Mayor Macon said shouldn't this be done every year. Why are we doing this for such a long period of time. Mr. Owens said it is because they did not schedule a Sewer Authority meeting in those two years since we finalized, he thinks up to 2005 or 2006, so they are trying to close out 2006/2007 and 2007/2008. Ms. Johnson said it is just for the two past budget

years. In this current budget year they would be paying rates based on last audited year's numbers so they would be due a refund for this year's portion as well.

Mr. Owens said at the Sewer Authority they talked about doing a better job of scheduling meetings. They have one scheduled for December 7th. He has taken a look at these numbers too and he has all the numbers for what Kure Beach paid from 2003/2004 until 2007/2008 and most of them are around \$300,000.

Mayor Macon made a motion to set the current rates recommended by the Sewer Authority and authorize payment of applicable refunds to include Kure Beach and the Aquarium with funds coming from the Water and Sewer Reserve Fund.

MOTION CARRIED UNANIMOUSLY.

APPOINTMENT TO THE AD-HOC ARTS & ACTIVITIES COMMITTEE

Mr. Owens said the Arts & Activities Committee asked that this be tabled as well.

Councilman Gilbert made a motion to approve the appointment of Kenneth Badoian to the Arts & Activities Committee. MOTION CARRIED UNANIMOUSLY.

CALL A SPECIAL MEETING FOR THE POTENTIAL AWARD OF BIDS FOR THE LAKE PARK I/I PROJECT AND THE WILMINGTON BEACH DRAINAGE PROJECT AS REQUIRED TO COMPLETE THE REQUIREMENTS OF THE ARRA STIMULUS FUNDING GUIDELINES AND HANDLING CONTINGENCIES

Mr. Owens said that Council realizes the town received \$1,000,000 for the Lake Park I/I project, \$500,000 is principle forgiveness. The net impact of that is extreme and is basically \$1.1 million dollars, that is what they have paid over in interest and it was cash. There are going to be some traffic and business impacts. Most of the traffic impacts will happen in the evening. A lot of the things are just point repairs and slip lining and it won't be all on Lake Park but other areas as well and generally both lanes will be open during night and day. Any construction will happen at night. There are some things they can't project which could include a broken water or sewer line in the evening. They hope they won't happen but it is construction. There are roughly 12 point repairs where they will actually be excavation. The big thing is that they got the grant and was something they needed to do. It has huge implications to their budget which would have equaled about a \$3.00 flat rate sewer increase if they were to have had to pay for this through a loan. The Phase I Wilmington Beach Project, same thing, there will be some traffic concerns, some heavy equipment. Texas Avenue, which is currently a dirt road, will be torn up for a while and the same thing for Greenville Avenue so there will be some traffic impacts. There are some huge primary and secondary benefits to doing the Wilmington Beach project. It will treat that water going to the lake which means the lake won't fill up quite as fast. It will treat that first 1 1/2" and it may not flood as fast. This is a project they have been permitting and trying to get permits for three years. We're finally going

to have a significant amount of money to construct this project. Basically what it brings it back down to is what the original project was which is back to streets and drainage. We're getting this paid for, the benefit is huge it's a \$2.5 million dollar impact because of the interest we would have paid for over 20 years if they could have gotten a 20 year loan. If they had gone open market, 15 years at 5% interest, you're looking at about a \$220,000 debt service payment and they would very likely have had to increase their ad valorem tax rate by \$.01. Both of them are loaded in the current budget and they are a very manageable debt service at \$57,000 for the Wilmington Beach project and \$25,000 for the I/I project per year for 20 years.

Mayor Macon said that since they got grant money are they going to look back at not putting the lift station in the middle of the road.

Mr. Owens said that would be difficult at this point because they have to go to construction pretty quickly. He can ask Brian about that, if they can do just a change order. It is not necessarily in the road. On Texas and Snapper there is going to be a one-way roadway with a sidewalk along the way so you will have a one-way road for a block.

Mayor Macon said he feels people will look back some day and wonder why they did that and because we were able to get this funding and it's a perfect opportunity to re-look at that. He asked how the rest of Council feels about that.

Mr. Owens said that is something they can also talk about. They are supposed to set a recessed meeting for the 26th, hopefully Brian will be there and they can talk about that a little further too. They have to get all their paperwork signed and award that bid. He asked Council to hold a special meeting on May 26th at 10:00 a.m. and they will advertise it.

DISCUSSION AND DIRECTION ON HOW TO PROCEED WITH CWMTF GRANTS THAT WERE SUBMITTED FOR THE WILMINGTON BEACH STORMWATER PROJECT AND THE LAKE PARK I/I PROJECT

Mr. Owens said he just wants Council to consider writing a letter to the Clean Water Management Trust Fund Board saying that they appreciate the consideration but they think their time would be well spent applying for grants on other things at a later date because they basically got funds for what they were applying for.

Council agreed.

UPDATE ON PARKING RELATED ITEMS DISCUSSED AT THE RECENT BUDGET MEETING

Mr. Owens said this is another matter they took up at a budget workshop and there were some changes in our parking meter and fee structure, along with Freeman Park and there

were some things that remained the same. There are some difficulties in implementing some of it, some things he thinks Lanier Parking feels like they could do differently. So what he wanted to have was possibly a workshop type meeting with them on May 19th. They can go over these again and hear some recommendations they may have on how to improve even more. You would have to cancel the budget meeting on the 18th and reconsider a meeting on the May 19th to discuss parking. Council decided to meet at 10:00 a.m.

CONSIDER ADOPTING A RESOLUTION IN SUPPORT OF AN APPLICATION TO PARTICIPATE IN THE DIVISION OF COASTAL MANAGEMENT PUBLIC BEACH AND WATER ACCESS GRANT PROGRAM FOR FISCAL YEAR 2009/2010

Mr. Owens would like Council to go into a closed session to talk about real estate matters.

NON-AGENDA ITEMS

Councilwoman Efirm made an announcement that the Lion's Club will be reorganizing and will hold a meeting soon at the old Food Lion shopping Center if anyone is interested in joining the Lion's Club.

Steve Coggins said he has a couple of reports he can distribute during closed session.

Mr. Owens said they have been testing the well site across the road and they ran into a few snags. It is probably going to be a little more than what Council authorized but he would say they could handle it within our existing budget. It could be as much as \$22,000 more depending on what they are doing. He just wanted to notify Council of that and if they have any concerns they can go another route but there are a lot of options that he has and they need to move forward on it.

Gary Ferguson made an announcement that on May 18th they are going to have Rich Ducker come down from the School of Government, Chapel Hill, to give a presentation to the Board of Adjustment for Carolina Beach as well as Kure Beach and New Hanover County. Some folks from Wrightsville Beach may show up as well. It is an opportunity for Council if they would like to come. It will start at 4:00 p.m. in the Council Room, take a short adjournment into the Police Training Room for a Subway kind of dinner for about ½ hour to 45 minutes and then come back to continue. Council is welcome to attend.

MPT Wilcox said he has a question about the sidewalk cafes and whether the town manager has the ability to pull those permits. He asked, how is that handled when there is a problem? Mr. Owens said he would have to look at the ordinance, he thinks he does have the ability to revoke the permits.

MPT Wilcox said he has serious problems with the café at The Dive. There must be huge management problems there. Mr. Owens said there are. He thinks their permit is up sometime during the end of June and that is kind of what he was waiting for.

Mayor Macon made a motion to go into closed session to discuss legal and real estate matters in compliance with [NCGS 143-318-11(A)3 and 5]. MOTION CARRIED UNANIMOUSLY.

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

Councilwoman Efird made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____