

**MINUTES OF THE RECESSED MEETING  
OF MAY 13, 2008 OF THE TOWN COUNCIL  
TOWN OF CAROLINA BEACH**

**May 20, 2008**

The Town Council of the Town of Carolina Beach reconvened on May 20, 2008 at 11:30 a.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; Councilwoman Pat Efird; Councilman Jerry Johnson; and Councilman Alan Gilbert. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order.

***PROPOSED OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC)  
SETBACK RULES AS PROPOSED BY THE DIVISION OF COASTAL  
MANAGEMENT (DCM)***

The Planning Director, Gary Ferguson, introduced Dr. Jeff Warren, Coastal Hazard Specialist for DCM, and Steve Everhart, District Manager for the Wilmington District, for presentation of the new CAMA oceanfront setback regulations and the impact on Carolina Beach. Dr. Warren said that DCM started reviewing the setback rules with the advent of larger structures coming along the coast and the advent of higher real estate values. He said that in 2009 it will be the 30<sup>th</sup> anniversary of the 30 year setback. There has been one round of public hearings - the initial draft rules went before public hearing in November and December. In January they distilled those comments into a synopsis for the commission and they made some additional recommendations at that point and again in March. They have re-approved the draft rules for public hearing at this point. Assuming all the paperwork goes through department administration and gets published in the register on June 15<sup>th</sup>, there will be additional public hearings in July. One in front of the full commission at the Raleigh meeting on July 24<sup>th</sup> to be held at the Holiday Inn Brownstone. The commission wanted to have some more regional public hearings which came out of the first public comment period. They understand and recognize that this is a big issue and affects a lot of people. There will be five additional regional hearings. One will be here at the Town Hall on July 8<sup>th</sup>. They will give a presentation at 5:00 p.m. of what the proposal is and then at 6:00 p.m. the public hearing will be opened. These dates are tentative and will depend on the publication date in the register but will not know until June 15<sup>th</sup>.

The main rule that is being changed is called O7H0306 and is the use standards for ocean hazard areas and really just deals with setbacks. In typical cases the setback is measured from the first line of stable vegetation. In the case of many towns like Carolina Beach that have received ongoing nourishment, there is a static vegetation line. Because they couldn't roll back time to where the vegetation was before the first projects decades ago, there was a negotiated static line that came about. He believes they used some aerial

photos from the 1980's to determine our static line from which the setback is measured. With the exception of a few spots in town, Carolina Beach is all measured from the static line. He understands people get nervous when there is a rule change, especially that it might impact their oceanfront development, tax base or economic vitality. But there are a lot of really good things in the change that he feels will make everyone happy.

First of all they have added a provision on how total floor area is calculated. In the past it has been heated square footage and structurally attached covered porches. They are eliminating the covered porches provision and just going with heated square footage. One, it is more in line with how tax assessors are doing it, insurance companies, towns and it is just more of an apples to apples comparison. It also actually helps out another provision of one of their other rules - a total area floor restriction. By removing the covered deck from that, you get more living space. In addition, there is a provision in there to provide an exemption for linear infrastructure. Right now if any development is greater than 5,000 square feet, anything besides single-family residential, it has to meet the 60 times the erosion rate setback. A lot of folks have always grappled with what it means for a road, a parking lot or sewer system - those things aren't traditionally measured as an area. They realize that in certain situations that you are going to put in a development that may be 30 times the erosion rate and not be able to get critical infrastructure to that development because it is considered large scale and it's 60 times the erosion rate. So there is a provision for linear type infrastructure such as roads, sewer systems, boardwalks, sidewalks, power lines, anything that is kind of linear in nature. That only has to meet the 30 times erosion rate. This is a relaxation of the current rules and will make it a lot easier for development in the future. A lot of people haven't hit those challenges yet but as we start to lose shoreline it becomes a little more difficult to develop on the oceanfront. This will help get infrastructure to their small scale development. In addition, there is a provision for lots that don't meet the setback from the static line. They provide an exception if the town is undergoing a large scale, long term beach fill project like Carolina Beach. If they can't meet the setback from the static line, they can go ahead and measure the setback from the actual line of vegetation that in most cases has moved oceanward. The original policy was that it's a temporary situation because if the project isn't maintained, the shoreline of the beach is going to go back to where it was. They convinced the commission of two things, that long term beach fill provides storm mitigation and is in the spirit of CAMA because it is reducing the hazard along the oceanfront and there is a lot less damage behind a nourished beach vs. an unnourished beach. In addition, towns that now have beach box homes from the 50's and 60's that are in major need of repair or replacement - this gives them a potential for redevelopment. Some of these homes are on lots and the structures are no longer conforming. So the 50% rule where greater than 50% of the value of the structure is considered new development, they can't meet the new rules so people are doing repairs and keeping it under the 50%.

They have also convinced the commission that there is something to be said for putting in new construction to current building codes with newer materials that is also in the spirit of CAMA because it does decrease the hazard to life and property. They are not saying open up the whole coast and all the non-conforming lots to development but that under

certain conditions where people might get stoned by this static line and they can't meet the setback, look where the actual vegetation line is and if you can meet the applicable setback from there then you can look at putting in a structure no greater than 2,500 heated square feet. You have to be in line with your neighbors. This provision will open up many, many lots down the coast.

In the spirit of beach fill and long term beach fill projects, the part of the rule that makes people nervous is that there is an increased setback provision of the rule for structures greater than 10,000 square feet. Caroline Beach has low erosion rates, two feet per year, so this isn't really going to affect the town. Right now there is a very convoluted calculation for setbacks. If you have a single family residence, regardless of the size, it is 30 times the erosion rate. Commercial or multi-family greater than 5,000 square feet, it is 60 times the erosion rate unless the erosion rate is 3 ½ feet per year or greater then you are 30 times the erosion rate plus 105 feet. This actually gives a break to areas behind higher erosion rates. A couple of things that staff recommended to the commission: (a) the setbacks should be based on floor area regardless of what the structure is. Floor area means heated floor area. Single family means anything less than 4 units - triplex would be considered single family unit (of any size) in the current policy and would be 30 times the erosion rate. Under the new policy, if the total square footage of the structure is 5,000 square feet or greater, it would have to meet an increased setback of 60 times the erosion rate. Mayor Macon suggested that when they write these regulations they look at what is a standard and use that. Steve Everhart said that in the current policy they use the term single family structure but under the new policy it won't matter whether it's residential, commercial because it is just the square footage that matters. Dr. Warren said it would be the square footage of the entire structure because if they were to come in and get a new permit, they would not permit unit by unit they would come in and say this is our whole structure that we need a new permit for. The 50% rule is a different rule altogether. He knows that it was just rewritten and they constantly have people that comment about being confused about it. He said that there are some people with single family residences greater than 5,000 square feet that will be affected by the rule, as well as triplexes greater than 5,000 square feet that may be affected if they need new permits for new development.

MPT Wilcox asked if they have any intent to bring their 50% rule more in line with FEMA and the state building code. Dr. Warren said he did not know, that would be Ted Tyndall with permits and enforcement who usually handles all of the rule issues. Tim Owens said they had notified Jim Gregson about some of the town's concerns. Dr. Warren said that in the case of an elevated parking garage that is two stories, if the bottom story is at grade then that is not counted but it is the elevated story above grade that is counted and doubled if it is two stories above grade. Councilman Johnson asked about a pavilion, which would not be heated space. Dr. Warren said there are three provisions in the new rule - total square footage will be heated or air-conditioned living space, in addition to parking that is above ground level (parking under your home is not counted or if you have a large parking lot, that would be treated separately as a parking lot based on total size) and total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load

bearing. So if you were to have a pavilion on a second floor that maybe was an open air breezeway and it was on a load bearing area then that would be considered in the total floor area because it could be enclosed. However, roof covered porches and walkways are not included. If you have a high-rise, you would not include the deck space that are attached and the elevated porches. If you had an attic that is not designed to include load bearing trusses or flooring which would allow it to possibly become a room, that would not be included. MPT Wilcox asked for clarification on the vegetation line, is he saying if one has an empty lot and it's a challenged lot that maybe doesn't have the area that it needs, that you can measure out to the new vegetation line and you are restricted to 2,500 square feet to build a building. Dr. Warren said yes. MPT Wilcox asked if you have an existing structure that is built beyond the static line but not beyond the vegetation line and it incurs an exception amount of damage - how does this address that? Dr. Warren said you can be oceanward of a static line in this scenario but you need to be able to meet the minimum setback from the actual vegetation line. So there could be a situation where the static line runs right through somebody's living room but if they have established vegetation that is 70 feet oceanward, as long as they can meet setback and be in line with adjacent homes - they would be limited to 2,500 square feet. MPT Wilcox said they have a lot of structures that are not in line with adjacent homes, that exceed 2,500 square feet and they're in the water direction of the static line. What would happen to those structures if they were to incur a substantial amount of damage? Dr. Warren said that right now they could not be rebuilt, right now it's a non-conforming structure and they would need a new permit for development. The new provision is to, under certain situations, allow new development on some of those challenged lots. If there is a static line that is where they measure the setback from in a landward direction. But in certain cases like Carolina Beach where you have a long term beach fill project, for those homes that get destroyed and can't meet the static line setback, you can look at where the stable vegetation is and if it has moved in an oceanward direction a substantial amount, it could potentially give you a useable building footprint. Right now if you can't meet the setback, you can't meet the setback. There could be a situation where the static line runs through your living room and so it would be impossible to meet a 60 foot landward setback from that but you could have a situation where the vegetation then grows 70 feet oceanward of the static line and you could meet setback from that but you would have to look at all the other restrictions. You could then if you meet that setback and can go between the adjacent homes, then you can put in up to a 2,500 square foot structure. Councilman Johnson asked about duplexes and what would happen if they were destroyed and what is the relief for them to try to go back and build. Dr. Warren said that under the new rule they would have a lot that has more value than it currently does and if you have two owners, then at least they have a lot that is marketable for a single structure and they could sell the lot and split the proceeds or they could be a house and share it. It adds value to the lot as far as its marketability. Right now if their duplex is wiped out, the only thing they could use it for is limited. Councilman Johnson asked about multiple condo units in a single structure that were built back in the 80's, what happens with those where you have maybe 30 to 40 owners? Dr. Warren said, again, if they can't meet the setback, they can't redevelop. What this provision is saying is the commission still understands that beach fill is temporary but if a town makes a long term commitment, they will allow limited development on the oceanfront. The CRC is willing to give at

least some options where currently there are none. They have that scenario up and down the coast where there are 30 unit condos or 8 story condos that cannot meet setback and could not be replaced. He said if you have two adjacent structures, you have to be in line with the landward most structure. The static line is from where the setback is measured, that is not a line of demarcation or a building line. The static vegetation line, if your erosion rate is two feet per year, you would measure 30 x 2 landward of the static line position. You have situations now where when that static line was put in it did cut across homes and whatnot and those are non-conforming structures.

Dr. Warren showed an overhead explaining the setback rule using the static vegetation line. In that scenario it would not work because there is an ownership issue where once you get to public sand you cannot put private structures there. Scenarios do exist where you could develop oceanward of the static line under the new provision. He showed another overhead view with 4 non-conforming structures. Under current policy you couldn't build anything oceanward of the road. Under the provision, the vegetation line moves out far enough and you can come back that minimum distance of 60 feet and then you can look at where the adjacent structures are, both criteria must be met. He explained where the structures could be built. Councilman Johnson asked why you would not make it a simpler rule to just make it the 60 feet from the vegetation line and forget adjacent structures because it appears you are rewarding one side and the other side, because there is a structure that happens to be a little closer to the road, you are making them setback to be in line with that structure. Dr. Warren said there were two reasons behind this approach. One was an equity issue and a view issue. If you just went the 60 feet, you have a reverse scenario of a another home owner saying wait a minute, you're letting this home build closer to the ocean and now they are blocking my view. This home owner would want to tear down potentially and move another 10 - 20 feet closer to the ocean. That is not what the commission wants. If anything, the commission wants to create a scenario where they are always looking at the landward most position on structures on either side. So, over time, the hope is that you will not only line up your structures during redevelopment, you also continue to move them in a landward direction. There could be scenarios where people take advantage of it and they get 10 - 20 feet closer to the oceanfront. This is a long term approach to moving things landward. If you can meet the setback from the static line, this is all a moot point. MPT Wilcox asked, under what scenario, if you have three houses that are built on the static line and the house in the middle gets torn down or needs to be rebuilt, there is no scenario by which it can move forward on any type of a lot because it has to be in line to the houses next to it. Steve Everhart said that is the point to this - if you have those houses already built at the setback and they are outside the setback, not inside the setback, then if a hurricane comes and wipes out the center one, that one can be rebuilt. Dr. Warren said this new language would not help anybody with a structure over 2,500 square feet that wanted to put that back but this scenario would let people at least have the opportunity to put up to a 2,500 square foot structure on a lot that under current policy could have nothing on it.

If all the 4 structures were wiped out, that would be a situation that might have to require a variance procedure or a revision of the rules. The variance proceedings are still open to

anyone, especially in these situations if they do have a multi-unit complex, to come to the commission and say they have a hardship, none of the commission's rules would allow them to build back but they would like a variance from those rules based on their criteria.

Dr. Warren said that at 5,000 square feet currently, if it is commercial or multi-family, you are building at 60 times the erosion rate. At 4,999, you build at 30 times the erosion rate. Tim Owens said the town is a beach fill community and loses authorization in 2015. He asked, what does that mean with regard to these rules? Dr. Warren said that to use these exceptions you have to say you have a 30 year plan and this is one of those areas that is going to become interesting to watch how the commission handles this because we have only put 3 criteria in the rules and have left this kind of nebulous because it is impossible to address every situation. So they said you could be considered a long term large scale beach fill if you have a design for 30 years from the time you are applying for this exception and you have the sand identified and the money identified, and not necessarily the money in the bank but a funding source. You have a situation where in 2015 you say that is not a 30 year program. He thinks in that case you just need to convince the commission you have had it since the 60's and you plan to continue this program, and he believes if you give enough supporting material that they will say that makes sense. Tim Owens said the town doesn't know if this is going to affect them or not, it all hinges on how the CRC looks at whether we have a long term beach fill program or not. Dr. Warren said that would be correct. He would be surprised if the commission were to balk at a town like Wrightsville, Carolina or Kure Beach because you are all kind of the poster children for the long term large scale beach fill projects. It could be that this commission currently supports it and in September when new commissioners are selected, it could swing another way. The good thing is the provision says that staff will make a recommendation to the commission and usually the commission will listen to staff and staff almost always tries to side on the side of the developer. If it comes down to you're pretty close, A vs. B, we'll always side with development. The important thing of what Tim is saying here is not only is there this static line exception that you can get, but we've also asked the CRC to consider managing beach fill beaches differently than non beach fill beaches. The thought is that if a community is going to actively take part in a beach management program to mitigate coastal hazards, that they indeed should have a less stringent set of development criteria. Not only is there the static line exception which many people on this island may not benefit from because it sounds like there is not a scenario with a lot of non-conforming small structures, however, when you start to talk about this increased setback for larger structures greater than 10,000 square feet where the setback factor starts to go up by steps of 5 - 65 times the erosion rate, 70 times the erosion rate (With the use of the overhead projector he showed a graph). If you have a long term beach fill program, staff has recommended that your maximum setback factor is 60 times the erosion rate regardless of the size over 10,000 square feet. So if the CRC says yes, you have a beach management plan that they think is long term, you can forget about all the stepped up setbacks. They presented this in March for the first time and the commission seems to have embraced this. Staff feels strongly about this because they feel it addresses a lot of the stakeholder concerns and it is also in the spirit of CAMA. The only difference is they

would still apply 60 times the erosion rate to any structure greater than 5,000 square feet. Right now there is kind of an exception to the rule and single family or units less than 4,000 square feet are 30 times the erosion rate. The original setback factor was proposed to be 25 times the erosion rate and when they were trying to adopt a minimum setback, a lot of people thought it was based on the 30 year mortgage - they were looking at the limited data that existed in the 70's and said 25 is not enough and raised it to 30. In the 80's when they started looking at larger setbacks for larger structures, they doubled it. He believes the 5,000 square feet came from when they were looking at what an average size unit was in a quad-plex with the average size unit being about 1,000 square feet and upped it to 5,000. They are going to stick with 30 and 60 and if they are going to look at increase for larger structures based on economic impact and other hazards, they are just going to go ahead and add another factor of 30 and make 90 the maximum.

With the static line exception you do have to come back every 5 years to the commission with a progress report saying what the status of the project is: (1) that you have a construction plan, how many times it has been nourished, still plan to have it another 25 years, (2) still have the sand source, and (3) still have the funding source identified. It is not a carte blanche or has this exception forever. The commission wants a failsafe. A town may start down the path of a 30 year project and after 8 years, for economic, geologic or whatever reason, abandon the beach fill project and the commission will require the stricter provisions. The waiting period of 5 years is from the initial date of the project - Carolina Beach is well past that. If you didn't go 5 years without maintenance but still came back and said we didn't have maintenance in 5 years but we still have your 3 criteria then they could say yea or nay. It doesn't mean you have to have maintenance in that 5 year window. If they revoke the exception, they can only do so in the 5 year increments. If they say no, we're taking it away, you can come back as soon as you feel you have it in place and apply again. That 5 year waiting period is only from that initial project that triggered your static line to begin with. You could get it revoked in July and come back to the commission in September and say you have some clarifications of what you wanted and we think we have proven our point. It is up to the commission whether you meet those 3 criteria. There is a provision for an appeal process. You can go through the administrative hearing if they decide against you and you don't agree with it. You still have the same ways to address that if you get a permit denied.

MPT Wilcox asked about their quasi-judicial capacity when they are looking at variances that you mentioned earlier like for these bigger structures. What is the criteria they consider to allow one when you might have 6, 8 or more up a coastline. What would someone have to do to be granted a variance? Dr. Warren said the 4 criteria, and you have to meet all 4, are: (1) you have to prove there is a hardship, (2) you have to prove that that hardship is due to peculiarities to the lot, (3) you have to prove that your proposed development meets the spirit, purpose and intent of the rule - it may not meet it verbatim but you feel that the spirit of the rule says you should be able to build, and (4) that you did not create the hardship. Oak Island and Ocean Isle, in particular, really like the static line exception policy because they have hundreds of lots that are currently unbuildable and are inside the static line setback. Emerald Isle is also on board with it. Tim Owens said his biggest concern is that you couldn't build anything larger than 5,000

square feet where you currently can build a single family, which is up to 3 units under your definition. His other concern would be doing a progress report every 5 years. Right off the bat we are not necessarily considered a beach fill community. We are hoping to get reauthorized but that concerns him a little bit too. Dr. Warren said that under the new provision the commission treats everything the same because the hazard is the same and this is more consistent. MPT Wilcox asked about the scenario where Dr. Warren talked about the adjoining properties - what is in line with them? Is it in line with the face of them or the furthest point of the structure? Dr. Warren said it would be wherever the setback is measured from so it would be a roofline. If you were between two homes, it would be the most landward that you would line up on - the closest house no matter how many lots away. There is a provision for odd geometry lots, if you have flag lots or when you get to an inlet or you have an undulated part of the shoreline or you have a road that may be 50 feet closer to the ocean and then it curves and is further landward.

The last thing to touch on is ocean side cantilevering over the setback. Years ago people were only trying to cantilever 2 or 3 feet over the oceanfront setback. DCM always said that's allowable and they loosely enforced the rules and said because your pilings still meet the oceanfront setback, they would allow it. A strict interpretation of the rule is development and floor area has to meet a setback. If you have a porch that is cantilevered, the roofline technically should meet the setback but because there have been some of these exceptions given in the past, they have to be consistent with past decisions unless they go and codify it. The commission decided that the setback is the setback and cantilevering will be eliminated under this policy.

There is another rule that goes along with this in Chapter 7J that talks about the actual procedures for getting a static line and spells out exactly what a town needs to do, time limits when they have to have things in, when the commission will hear their request and that rule is moving in tandem with this because they reference each other. Dr. Warren said Gary Ferguson has done a great job, they have talked on the phone quite a bit and he put together a lot of information. He offered to answer any further questions. Councilman Johnson asked if the town needs to petition for the static line exception. Dr. Warren said yes. Gary Ferguson said that if this rule is adopted, the town will have to go to the CRC to petition. Dr. Warren said to wait to petition. He thinks the scenario will be the public hearing period will go through July, the earliest the commission could consider this for adoption would be September at that point. He believes they will adopt it, there may be some tweaking here and there but overall they are happy with the body of this policy. Then it's about 2 to 3 months for the Rules Review to look at it and put their stamp of approval on it. If there are a lot of people opposed to certain rules then it can get diverted to the General Assembly for consideration, but he thinks they have addressed most of the issues. If the commission adopts these rules, it will still be 2 to 3 months before the Rules Review Commission before it will become effective. If the commission adopts in September, the town could start posturing itself to request an exception realizing that for some reason it may get kicked from Rules Review into the General Assembly. MPT Wilcox said that with regard to the cantilevering he doesn't think this is something that anybody wants to see but he understand the logic behind 2, 3, 4 feet. If you apply that specifically to our condo situations, larger groups with 15 - 24 people in

them, the town has made the exception that if they have catastrophic damage, they can move 10 feet closer to the street. That doesn't solve all of their problems but that is why he hates to see someone who has kind of abused the spirit of this policy to then create a hardship for everyone else where they could use this to some benefit. In the case where they are 20 feet past the static line and they have catastrophic damage and they could move 10 feet closer to the front and cantilever 4 feet on the living levels, that would be a huge benefit to those home owners. Anytime you throw out the baby with the bathwater, in his opinion, you are going to hurt somebody down the line that wasn't intended. The consequence of somebody arbitrarily saying let's just move it back and make it all the same, in that particular situation creates a substantial hardship. Is that something that is hard and fast, are they willing to listen to argument on that for that basis or is that something that could be taken into consideration in a variance for those particular projects. Dr. Warren said every rule can be taken into consideration for a variance and he thinks that is probably a more appropriate venue to handle it. Then on a case by case situation the commission could say, yeah 3 feet is great, 20 feet no way. In this case staff's hands are tied because they were instructed by the commission to eliminate cantilevering from the rule. The public comment period would be a perfect opportunity for you all to voice your concern and say we think you might be doing a knee jerk here and you should at least consider limited cantilevering and give an example. He thinks that is what the commission wants to hear during the stakeholder input period. Staff's hands are tied as far as the recommendations because they have been instructed what they want to see in the proposed rule but they want to hear what the stakeholders have to say about the proposed rule. He urges the town to give their pros and cons, if there are things you support they always love to have that in writing. Things that concern you - put that down too. You have months to prepare. Gary Ferguson asked if DCM would support minor cantilevering. Dr. Warren said that with these rules he would have to talk to the director about it. He thinks this would be something that if the commission asked staff they could be prepared to respond to it but they would not proactively say yea or nay.

Tim Owens said this would be put on the June agenda and Council can take a stand on different items if they want to do it and discuss it some more in preparation for a public hearing that they can then present to. Steve Coggins is pretty familiar with these rules as well.

Referring to something written, Councilman Johnson asked do you know about the proposed boundaries for the inlet hazard areas. Dr. Warren said the science panel has proposed boundaries for the inlet hazard areas because the current ones are woefully out of date by 20 years. The science panel has worked with them to develop a new methodology to redraw the hazard areas. They presented this in September and the commission was ready to adopt and staff said they need time to review this. Not only is it a boundary change, they needed to look at what you can and cannot do inside that boundary. He thinks that is what concerns people. This is not a no build zone, this is a you need to build under different criteria than an oceanfront zone. Staff is still reviewing this. He is talking to the commission on Thursday, giving them a progress report and saying they were trying to come up with some draft policy recommendations but they are still running through the challenges of the inlet hazard rules. The problem is that most

people are looking at the yellow box and taking the current use standards and applying it to the yellow box and staff is saying please do not do that because what they have is a completely different situation. They have a much larger area, it's still under inlet influence but they don't necessarily think it requires the same use standards in the current hazard areas. Staff wanted an ample amount of time to go back and look at what you can and cannot do in it. The box is proposed to be a greater expanse than the existing one but right now there are no recommendations as far as the use standards within it. It is not a good idea to take the current rules and say they would apply inside the yellow box because they are looking at trying to revise the current rules and make recommendations. They were going to try to do it at this week's meeting but they still have a lot of issues to work through. Councilman Johnson asked if this expanded area whether there could be any possibility of consideration to reduce that expanded area back to at least our corporate limits to the north. Tim Owens said they nourish from the pier on. Dr. Warren said that right now this is a recommendation from the science panel for a box and the commission can adopt it, amend it or not adopt it. That is one rule and then there is a separate set of rules about what you can and cannot do in that box. They suggest that these rules need to go through in tandem. They understand the challenge and that is why they want to be very thorough because there are people who are not in the box today and would be in the proposed box and how do you go about regulating their development. They are looking at all sorts of ways to address that within reason but not completely wipe out all redevelopment possibilities off the table. They are going to talk to them again hopefully in July but they are not coming forward with rule language to be sent to public hearing in July but rather concepts and if the commission buys off on it as a starting point, can they go talk to stakeholders. This will be a 1 or 2 year process. The recommendations are a starting point. Sometimes they put it in draft rule language so they see how it fits and if they can codify it but please understand that if you see that in a memo, they are not recommending it go to public hearing. You will start hearing more about this in the summer and fall. Councilman Johnson said, with regard to his question, I know what that is based on but because they have gone so far vs. what was existing as the inlet hazard area of cutting off that point at our corporate limits, which is 1,000 feet roughly beyond the pier, and then to consider that where we are not having to deal with all the existing properties that are built upon and everything there, we don't have to go into all that, you all don't have to go into all of that, and look at that hazard area over the years. This is a tremendous increase. Dr. Warren said this box is just to identify the area under inlet influence and, if it is beyond your corporate limits it's a moot point to Carolina Beach, right? MPT Wilcox said it is inside our corporate limits. Councilman Johnson said he was saying to, it's inside. Our corporate limits end approximately 1,000 feet north of the pier. Tim Owens said what they are saying is that it will impact a large portion of our north end area possibly, they don't know what that impact is going to be. Dr. Warren said that is what is important to take away here. This box as drawn will impact as far as saying, well, now you are in an area that they have identified as being under the influence of the inlet but it may not be that you have more restrictive restrictions inside this box. This is really an educational box at this point. It is where the science panel feels the inlet influence has been and will continue to be. This will be many years in the making. Dr. Warren said that hopefully this has helped them to be able to discuss it further and devise how they want to respond officially.

***PRESENTATION BY MS. LAUREN KRAVERTZ, SPECIAL COUNSEL, WITH THE OFFICE OF GOVERNMENTAL AFFAIRS, FEDERAL COMMUNICATIONS COMMISSION, CONCERNING WILMINGTON DTV TRANSITION***

Lauren Kravertz stated that the Wilmington area, including New Hanover, Pender, Bladen, Brunswick and Columbus Counties, was selected as the test site for digital TV transition for the whole country. The whole country transitions on February 17, 2009 which will be the last day for the old style of analog broadcasting. Wilmington will transition at noon on September 8, 2008. Currently, many over-the-air stations are broadcasting in both analog and digital TV formats. If you have cable you probably two WECT's and two WWAY's, one is the old one and the other is the new one. On September 8<sup>th</sup> what will happen for satellite and cable viewers is they will be only showing you one of them because the other one gets turned off. The DTV transition will affect those who watch free over-the-air television through an antenna. If you watch over-the-air programs on an analog TV, you must take action before September 8, 2008.

An important number for information is 1-888-CALL-FCC which is one of a number of consumer call centers that will be well staffed and trained. That number is good across the country. There is a special Wilmington option right now for the TV viewing area. She said this is the biggest change since the advent of color. Councilman Johnson said this is the first he was aware of the September date. Ms. Kravertz said it has been in the Star News. She was told that Time-Warner cable still has an ad that says February 17<sup>th</sup>. She said that Time-Warner is very involved in knowing what is going on with this transition but she will be contacting them about running updated ads here or be more specific about it. The first thing they are doing is reaching out to the county, city and town governments so that people will not wake up on September 8<sup>th</sup> and not have TV. The change will affect anyone who is not on satellite or cable TV, anyone who uses a rooftop or "rabbit ears" antenna, which is approximately 10% of the population. This will probably include seniors, disabled, other home bound, and low income groups.

Wilmington was chosen because all but one of the broadcasters here (PBS) are already operating at full power through their digital signal and they were willing to be a test market. Councilman Johnson said this information needs to go out in the cable bill because people get confused and think they have to get rid of their old TV's. Ms. Kravertz said that is why they need to talk to that 90% so people are not confused about what is really happening. No one needs to throw out their TV. Council feels the best way to reach people is through TV. Councilman Johnson said the ad still says February 2009. Ms. Kravertz said they are concerned about some fraud points with regard to seniors such as being told they have to get a new TV, which they don't, or that they have to get a box even when they don't. The boxes will be available at electronic retailers. The coupons are good towards the cost of these boxes. Some of the very small or battery operated TV's do not have any sort of video input capability for the box to be connected to and will not work. Ms. Kravertz said she has posters, fliers and other educational information she will be leaving with Council and will be making rounds in the area. They will not be going to do direct informational mailings.

There are three choices you have in order to be ready: (1) Connect your analog TV to a digital-to-analog converter box. Digital-to-analog converter boxes are in stores and have a one-time cost of \$50 to \$70. To help you pay for the boxes, the US Government is offering two \$40 coupons per household. For more information on the coupons, visit [www.DTV2009.gov](http://www.DTV2009.gov) or call 1-888-388-2009 (voice) or 8-877-530-2634 (TTY). Plus, you should not need a new antenna if you get good quality reception on analog channels 2-51. (2) Buy a digital television (a TV with a built-in digital tuner). You do not need a High Definition TV (HDTV) to enjoy digital broadcast television. You only need a digital TV (or an analog TV connected to a digital-to-analog converter box). Plus, you should not need a new antenna if you get good quality reception on analog channels 2-51. (3) Subscribe to a pay TV service. If you subscribe to a paid service such as cable or satellite TV, you should contact your provider to see what, if any, equipment you may need. Remember that you will need a digital-to-analog converter box for any analog TV in your home not connected to your paid TV service.

The reason for the change is that Federal law requires the switch, which will free up frequencies for police, fire, and emergency rescue communications, allow broadcasters to offer programming with better picture and sound quality and offer more programming choices, and allow for commercial advanced wireless services. The Wilmington, NC area is leading the nation with the early switch to DTV. There are some TV stations who operate at a lower power and are not required to transition even in February, such as local or community programming. Closed captioning is required to be on all converter boxes. The coupons are good for 90 days and come with a list of retailers that are selling boxes that the coupon can be used for. Not every box is eligible for the coupon and it is more the lower end boxes that are eligible. The town manager said he may be able to make a link on the town's website for this information.

**Councilwoman Efird made a motion to recess until May 28, 2008 at 10:00 a.m.**  
**MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa  
Town Clerk

Approved: \_\_\_\_\_