

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

**November 10, 2008**

The Town Council of the Town of Carolina Beach met in regular session on November 10, 2008 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; 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.

***INVOCATION***

Jerry Bigley led the invocation.

***PLEDGE OF ALLEGIANCE***

Mayor Macon led everyone in the Pledge of Allegiance.

***CHANGES TO THE AGENDA***

**Councilman Gilbert made a motion to move Item #20 to Item #5(a), and consider the addition of the application for the MDP Implementation Committee. MOTION CARRIED UNANIMOUSLY.**

***RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE***

Chief Younginer and Mayor Macon recognized Police Captain Kurt Bartley for 15 years of service.

***REVIEW AND APPROVE A VENDOR FOR THE MANAGEMENT OF FUEL PURCHASES BY THE TOWN***

Tim Owens said he gave Council a memo with his recommendation regarding the bids the town received from Go Gas Universal and Citgo Fleet. There are representatives from both present to give short presentations and answer questions.

Michael Bright, National Sales Director, and Lorraine Taylor, who oversees the NC state contract for fuel card, represented Go Gas Universal. Mr. Bright outlined their program. Go Gas Universal is a division of K. E. Austin. They are a universal fuel card with over 200,000 accepting Citgo locations across the U. S. They were awarded the fuel contract for bulk fuel and unleaded fuel by the State of North Carolina this year. The fuel card contract for the State of North Carolina is for three years with multiple renewals on the

backend of that. They have Wildlife, State of North Carolina, cities and municipalities, Highway Patrol with probably over 6,000 state employees currently fueling with their card. Their program is outlined in their proposal.

Lorraine Taylor added that they have state of the art technology and they can customize any type of invoice for the town and they can download or upload it into the town's system via PDF, CSV, Excel or whatever is necessary. A lot of towns have really benefited by them breaking it down by department. Their theory is that they only want the town to spend about 15 minutes a month to go through a fuel bill. Their customer service is excellent and they are available 24 hours a day.

Councilman Gilbert asked if they would get rebates and discounts at all facilities. They said yes. If there was a particular station that is not accepting it but people like to go to it, they can introduce them to Voyager and let them become an acceptor of the Voyager Program. All the rebates will be identified on the monthly bill. All the state and federal tax exemptions will also be listed. They do a calendar month for the billing so there are no accruals. They can do departmentalization down five levels on the invoices.

MPT Wilcox asked about an emergency contingency plan. Mr. Bright said the contingency plan, one they had talked about, was working closely with the town. Currently the town does not have existing tanks. They have several contingency plans for NHC Hospital - assuring that station #1 across from the hospital will be open for emergency vehicles only and they have backup supply from one of their current suppliers as well. If you were interested in having your own tanks on site, because of their fuel delivery possibilities, they could address it on there. Because they have a lot of different options available on a contingency plan, they would like to sit and address those needs with the town.

MPT Wilcox asked if, in the event of a storm or hurricane, would they be able to bring in tankers of fuel and dispense that fuel. Mr. Bright said absolutely. They dispense it via contract carriers for bulk fuel delivery but the town would have to have their own facility.

Councilman Gilbert asked if the fuel card they are offering to be used on the island, could it be used at all locations and Mr. Bright said yes.

Jerry Bigley, CEO of Island Kwik Marts, Inc., said Mitch Rose, VP of Springer Eubank, was with him. This is their second time before Council. He said they left a package with them several weeks ago. He liked the question MPT Wilcox brought up. They can bring their own trucks during emergencies and pump gas into vehicles from the tankers. They also have a generator here which is above the flood level. Mr. Bigley said he has been a resident of the town for 34 years. With the Citgo card you get \$.05 a gallon reimbursement for the first three months for new customers. If you did \$13,000 during that time, the discount would be \$650. He is there day and night and if you have a problem, you talk to the CEO, not somebody else way down the line. He said Council has stated they try to keep the bids local, which he is. He is the third biggest employer on

the island and pays a lot of taxes. He said that no one can match the service he can give the town.

Mitch Rose said, on behalf of Springer Eubank, they are a local company in Wilmington with 180,000 gallons of storage, not counting six transport trucks and eight short trucks, where they store fuel before a hurricane. Typically the terminals here that provide fuel shut down prior to a hurricane so you better have your own source of providing your own fuel. They provide fuel to the Town of Burgaw, Pender County, City of Wilmington, Progress Energy, TV stations, etc. and deliver to the site and fuel with their own trucks into the vehicles directly. They also have their own transport trucks. In an emergency situation they have the advantage providing fuel.

Mr. Bigley said he has camera systems at both of his stores and can capture whoever buys gas.

Mr. Owens shared his thoughts and recommendations of strengths and weaknesses of the two bids.

**Councilman Gilbert made a motion to go with staff's recommendation for Go Gas card. MOTION DENIED 2-3 WITH MAYOR MACON, COUNCILWOMAN EFIRD AND MPT WILCOX VOTING NO.**

**MPT Wilcox made a motion to accept the Citgo proposal for a one year contract. MOTION CARRIED 3-2 WITH COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTING NO.**

#### ***PRESENTATION BY ISLAND LIGHTS ON UPCOMING HOLIDAY ACTIVITIES***

Frances Massey, President of Island of Lights, said most of their displays are up and will have fencing in the next week or so. She announced upcoming events: November 28<sup>th</sup> - Light Up Ceremony at 7:00 p.m.; December 5<sup>th</sup> - night-time parade; December 6<sup>th</sup> - flotilla; December 13<sup>th</sup> - Tour of Homes; December 31<sup>st</sup> - New Year's Countdown at Kure Beach about 9:00 p.m.. Ms. Massey thanked everyone for their support.

Council thanked her for the organization's hard work.

#### ***PRESENTATION OF THE PROPOSED PLEASURE ISLAND GREENWAY PROJECT BY MICHAEL KIRKBRIDE***

Michael Kirkbride made gave a preview and presented the different types of trails and the proposed route which would begin at the north end of the island at Snows Cut boat launch to the southern tip at Federal Point boat launch. He would like to present the data to Council in December.

Councilman Gilbert recommended Mr. Kirkbride show the existing bike route in color with the interconnectability in a different color.

**MPT Wilcox made a motion to set a public hearing for December 9, 2008 Council meeting. MOTION CARRIED UNANIMOUSLY.**

### ***CAROLINA BEACH COMMITTEE REPORTS***

Duke Hagestrom, Ad Hoc Tourism Committee, gave a brief update. On behalf of the Ad Hoc Tourism Committee, Kure Beach and the Pleasure Island Chamber of Commerce, they are sponsoring Judy Randall, Randall Travel and Marketing and a leader in travel and tourism industry, to present the visitor survey results on November 25<sup>th</sup> from 9:00 a.m. to 11:00 a.m. This is a great opportunity to find out what people expect when they come to our island. They will be sending out invitations.

### ***PUBLIC DISCUSSION***

Ed Jones, 114 Green Turtle Lane, Harbor Point HOA, said this issue affects 90 owners of Harbor Point. He stated that early in 2007 he visited the planning office in search of information pertaining to authorized parking spaces at Harbor Point. After encountering a helpful staff, but a record keeping nightmare, he came to the March council meeting to request their assistance. From March to June he made several visits to town offices, sent e-mails to the town manager and to Mayor Bill Clark and telephoned a number of times. In June of 2007, upon receipt of an e-mail from Mayor Clark promising more answers, but, after another month, he concluded this issue was going nowhere under the then current administration. He also heard Mayor Clark had made a decision not to run for re-election so he decided to await the next administration to see if his concerns might be better received. This year he spoke to one of them and was advised to let Gary Ferguson to "get his feet on the ground" and then talk to him. He did that about a month ago. He complimented Mr. Ferguson on his concern, his directness and his understanding of the issues in this matter. Unfortunately, the planning department files for the period in question are apparently not much better than they were in January 2007 but Mr. Ferguson promised he would pursue this issue in more detail. A couple of weeks ago he called and Mr. Jones visited him. He provided a copy of a memo entitled, "History and Approvals of Harbor Point". It was apparently prepared and signed by Ed Parvin, Senior Planner. It was also signed by someone representing HPPI Investment, LLC and the memo began with the statement the Town of Carolina Beach granted a conditional use permit on October 8, 1996 to Drew Noyes for a residential, planned development. That was followed by a section entitled, "Original Conditional Use Permit". Mr. Ferguson informed him there appeared to be no record of such CUP anywhere in the town records. He thinks you can understand his consternation with not being able to look at a CUP on the one hand but have details of that CUP quoted in five subparagraphs of this section of the memorandum. His greater consternation came from learning that the memo was prepared before his final correspondence with Mayor Clark. He found it most unusual that the person who had raised this issue was not provided a copy of the document which stated "facts" which he had asked about and signed by the developer whose action he was questioning. To say he has questions and challenges to the many facts in this memo is to put it mildly. On a related issue, he was directed to the Coastal Area Management Act

representative, who at the time was Rob Moll, and he indicated their requirements were that there be one parking place for each boat slip. He spoke with former Mayor Dennis Barbour who indicated he thought one parking space was required for each boat slip and he cited two properties approved during his administration where one for one was provided. He can only compliment Gary Ferguson for his help in arriving at this point in the search. He is convinced there are larger issues that he can resolve. We have 102 boat slips in existence at Harbor Point and 0 parking places identified to the Harbor Point Yacht Club Association, Inc. Yes, there are only 22 parking places on their property but they are owned by the Harbor Point Clubhouse Association, Inc. not the Yacht Club. The Clubhouse Association includes many members who are not associated with the Yacht Club and who must maintain the parking places. Regardless of who owns them, there are not sufficient parking spaces for the boat slips. Given the lack of progress in this matter from March of last year, he is asking that one councilmember be appointed to assist him in pursuing this issue and learning the facts.

MPT Wilcox said he would be glad to help him with it and asked what he is seeking.

Mr. Jones said he would like to see more parking spaces provided for the yacht club.

MPT Wilcox asked if it is a physical possibility.

Mr. Jones said yes sir, he was glad he asked that question. If you backup one block past the sign that says no parking from here to corner that you are familiar with, you will find Whelk Lane and on the corner of Whelk Lane there are what equates to two construction lots, two buildable lots, owned by the same people with a big sign that says, "Boat slips for sale, call (this number)". In his opinion that would make a great parking lot for this property. It abuts their other property.

MPT Wilcox asked if that property is the furthestest point away from the boat slips. Mr. Jones said it is no further than the homes that are on our property.

MPT Wilcox said, from the practicality of it, it is not going to hold very many parking spaces. How many parking spaces are you looking for or is it just as many as you can get and who are you looking for to pay for them?

Mr. Jones said he is looking for as many as he can get, certainly far more than the 22. You should see that place on a weekend in the summertime. As to who should pay for them, the guy who has yet to build the necessary parking places for the yacht club that he built and still owns better than 50% of the boat slips. Going back to the other point and the distance from the yacht club - in the document provided to him by the Planning Department, it is suggested that there are "X" number of the residential units who would be anticipated to purchase boat slips and their parking place would be in front of their house. Assuming he is willing to accept that, the answer to your previous question about how far away it is, it is only the same distance as the most distant of our units where owners have boats but no parking space provided except in front of their house.

MPT Wilcox suggested that unless someone else wants to volunteer, he will volunteer. It sounds to him like he is looking for someone to enforce the conditions of the CUP. He offered to get together with him on this. Mr. Jones said that was exactly what he wanted. The CUP was issued on October 8, 1996.

Councilwoman Efirm asked why the HOA wasn't responsible for providing the parking places. Mr. Jones said there are three distinct associations there: the homeowners and all of the parking places in front of their houses; the Clubhouse Association which owns the building, 22 parking places, 1 of which is handicapped, and the retention pond for all of the 90 dwelling units; and

MPT Wilcox said the problem is that those entities were all created after the fact, well after the CUP was issued so they don't count because they were not in place to be able to determine who would be in charge of what. He thinks they should go back and look at the CUP to see what the remedies are.

Gary Ferguson said that in looking through the files from 1996, the Planning staff and Town Clerk had difficulty trying to find the original CUP and so Ed Parvin, our Senior Planner, he has pieced together as best he could from minutes, meetings of Council, to try and come to the information that has been provided to Mr. Jones but it hasn't been the original CUP. It is possible that one was never actually put together, it's possible that it just didn't happen.

Tim Owens said there are a series of plans, there are some plans that were approved and there are some approvals on those plans. He took a long look at it back in 2007. There is a long history to it and it takes a little bit of time to look at it.

MPT Wilcox said right now we don't have the information but we'll just get together and take a look at it. Mr. Jones agreed. Mayor Macon thanked MPT Wilcox for volunteering to help with that.

### ***ADOPT THE CONSENT AGENDA***

**Councilwoman Efirm made a motion to adopt the consent agenda as follows:**

Approval of the Minutes:

Regular Meeting	September 9, 2008
Special Meeting	September 15, 2008
Regular Meeting	October 7, 2008

Set a public hearing date for December 9, 2008 at 7:30 p.m., or soon thereafter, to consider amending Section 3.9.2 of the Zoning Ordinance to allow for more than one story in accessory structures in residential zoning districts.

Set a public hearing date for December 9, 2008 at 7:30 p.m., or soon thereafter, to consider amending Section 14.21 of the Zoning Ordinance to eliminate the required annual review of conditional use permits.

Set a public hearing date for December 9, 2008 at 7:30 p.m., or soon thereafter, to consider a request for a conditional use permit for a planned unit development located at 800 Canal Drive/801 Carolina Beach Avenue N.

Set a public hearing date for December 9, 2008 at 7:30 p.m., or soon thereafter, to consider amending Section 12.2 of the Zoning Ordinance to address outdoor entertainment at eating and drinking establishments to eliminate amplification as a condition for triggering a conditional use permit.

Set a public hearing date for December 9, 2008 at 7:30 p.m., or soon thereafter, to consider amending Section 17.8 of the Zoning Ordinance to make Vested Rights Ordinance consistent with NCGS.

Set a public hearing date for December 9, 2008 at 7:30 p.m., or soon thereafter, to consider amending Chapter 3 Animals and Fowl, Section 3-5 Riding, Leading or Driving Animals on Sidewalks, Boardwalk, Roads or Beaches, Section (c) Concerning Horse Waste at Freeman Park.

Approve the State Applicant's Agent Agreement and Designation of Applicant's Agent Form for Tropical Storm Hannah.

**MOTION CARRIED UNANIMOUSLY.**

***CONSIDER A REQUEST FOR CONDITIONAL USE PERMIT MODIFICATION TO ACCOMMODATE A BUILDING HEIGHT INCREASE FROM 50' TO 55' FOR AN OPEN AIR COMMERCIAL PLATFORM/OCEANFRONT RESTAURANT LOCATED AT 101 CAROLINA BEACH AVENUE SOUTH (PIN #313015-54-5527-000)***

**Councilman Gilbert made a motion to recuse himself from hearing this item as there is a perception that he may have a conflict of interest.**

The town attorney said he spoke with Councilman Gilbert about this and he said there is a possible conflict of interest that could lead to the perception of a bias here and they decided it was probably best for him to recuse himself on a conflict of interest.

**MOTION CARRIED UNANIMOUSLY.**

The applicant asked to move this to 7:45 p.m. Mayor Macon said they would skip this item until his counsel gets here.

***CONSIDER A REQUEST TO AMEND THE CODE OF ORDINANCES, CHAPTER 9 MOTOR VEHICLES & TRAFFIC, ARTICLE II TRAFFIC REGULATIONS, SECTIONS 9-55 THROUGH 9-58 ESTABLISHING GOLF CART REGULATIONS***

Chief Younginer made presentation. This item has been under discussion with Council several times before. He said that NC General Statute 160A-300.5 provides Carolina Beach with the authority to establish an ordinance and regulate the operation of golf carts on public streets or highways within the town limits. You have to decide what is a golf cart. What you see right now, a golf cart with a tag on it, is a slow moving vehicle. It started out as a golf cart but was modified. In the state statutes, that is considered a slow moving vehicle now and not a golf cart. What they are talking about is the town can authorize the use of golf carts on our public and private streets. He put together a couple of ordinance options. One is from Caswell Beach. He spoke with the chief of police from Caswell Beach and several other police chiefs and put together an ordinance with a little more than that from Caswell Beach which he reviewed.

Tim Owens said the statute doesn't get into DOT streets vs. town streets. The only one it wouldn't apply to would be Dow Road and part of Lake Park Blvd.

**Councilwoman Efirm made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.**

Birdie Clark, 233 Florida Avenue, said she wants to know what happens on Canal Drive with one of these. The four people bikes cause some problem but if they do the right thing and stay in the bike path, they're okay but she wonders about prime time traffic on Canal Drive.

Councilman Gilbert said the carts will go the speed limit anyway, which is 25 mph.

Chief Younginer said they can go 20 - 25 mph and if they are backing up traffic, the ordinance says to stay to the far right so everyone can go around.

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

**Councilman Gilbert made a motion to approve Ordinance No. 08-765 striking item (B) carts must have liability insurance coverage and insert in item (G) to read: "The operator of the golf cart must possess a valid driver's license, or must 13 years of age or older and accompanied by a legal guardian or parent or have a driver's permit and be accompanied by a licensed driver."**

**Councilman Gilbert amended his motion to include item (B) requiring liability insurance.**

**MOTION DENIED 2-3 WITH MAYOR MACON, WPT WILCOX AND COUNCILMAN JOHNSON VOTING NO.**

**MPT Wilcox made a motion to approve Ordinance No. 08-765, Version 2 (Exhibit 1). MOTION CARRIED 3-2 WITH COUNCILMAN GILBERT AND COUNCILWOMAN EFIRD VOTING NO.**

**Mayor Macon made a motion to take a 3 minute break. MOTION CARRIED UNANIMOUSLY.**

**Mayor Macon called the meeting back to order.**

***RETURN TO ITEM TO CONSIDER A REQUEST FOR CONDITIONAL USE PERMIT MODIFICATION TO ACCOMMODATE A BUILDING HEIGHT INCREASE FROM 50' TO 55' FOR AN OPEN AIR COMMERCIAL PLATFORM/OCEANFRONT RESTAURANT LOCATED A 101 CAROLINA BEACH AVENUE SOUTH (PIN #313015-54-5527-000)***

Ed Parvin, Tim Owens, Gary Ferguson, Donald Motsinger, Greg Miller, William Wright and Greg Reynolds were sworn in.

Ed Parvin made the presentation. He said this is a modification to an existing conditional use permit (CUP) which they have seen a couple of times. The major modification is to increase the height for Tortugas located at 101 Carolina Beach Avenue South but there are a few other modifications based on some of the changes we have seen in our ordinance. One is the required parking. The town recently adopted a new parking standard of one per 110 square feet of gross floor area for restaurants which changes the parking requirements for this open air platform which is going to have a restaurant. The requirements were previously based on occupancy and now is based on gross floor area and comes up to 102 parking places. The location is the oceanfront on the southeast corner of the Marriott, parking within 500' with some on-street parking on Hamlet, Cape Fear, parking lot off Hamlet, parking lot off Charlotte totaling for 140 space. They are at 102 with this use. No parking being provided on site. The modifications - the original plans staff/Council saw had the bathrooms designed below base flood elevation. There was a condition on there saying that they were out of compliance. They have since redesigned those bathrooms to be above base flood elevation. We still kept the condition and just took off the note on the grant order saying that they are out of compliance. The next change is the height which is just for two aspects of the plan to accommodate the elevator shaft and for office space on the top floor. He thinks the architect has a rendering. Seating was limited to 288 seats. Part of the parking calculation was based on seating. Now that it is based on gross floor area, there will not be a seating requirement in the CUP. Parking limitation is based on the area of the restaurant. Also, the discussion was on deliveries. Before there was going to be no deliveries to the site and they are requesting that deliveries be allowed to the site. Planning and Zoning and TRC were supportive of that as long as it was limited to a two axle vehicle. The access point for deliveries was provided. Along with the deliveries they would have to submit a loading plan to the planning staff which would tell you what time loading would occur, size of the truck which would be limited to two axles, duration of the loading period, and

location. Location would be where Carolina Beach Avenue South terminates. Mr. Parvin presented a drawing identifying access points to the boardwalk, couple of accesses to the beach and to Carolina Beach Avenue South.

Councilman Johnson said it was advertised for height but now we are considering five items.

Mr. Parvin said there are five changes under Article 14. The major modification to the CUP is the height issue and the others are minor. Article 14 tells you what is major and minor and the height is what bumped them into a CUP and the height increase from 50' to 55' is what was advertised. The other changes are due to our ordinance changes that we have had in the past couple of months.

MPT Wilcox asked if we can act on this.

Tim Owens said he thinks we can act on it. Staff could have acted on some of it. The only one that would make a difference to him would be the delivery issue because there were no deliveries in the beginning so it is a little bit different. Originally he figured all these were basically major modifications but the height is the main issue. He thinks Council can act on it.

William Wright, 253 Marsh, Wilmington, NC, representing the petitioners and said the consensus was at both TRC and P&Z meetings that these were minor modifications that could be staff level made with the exception of the height as we went up. He thinks that is why that was the only advertisement there but since the whole thing is being brought in front of Council, we included all these items in there. Basically what it changes in the height, the 5' only addresses the tower for the elevator and the upper level office. As far as the operational floors, there is only going to be 1' of difference for the main floor in raising the ceiling. He showed what has been proposed. It was right at 50'. In the section 2 of the CBD, there are no height limitations. He showed where the tower would be at about 3 1/2' or 4' of what the office change is so it is very minor as far as changing the view to what was previously approved vs. what it is now. As Ed said, the change to the parking is to accommodate and incorporate the changes to the new ordinance. The bathrooms are still going to be subject to code. The NFIP, part of our changes are to allow staff the discretion to address whether this meets code. Also, regarding the deliveries, by having a loading plan, that allows staff to address it on an individual case basis instead of it being locked in to what the CUP originally said so that they have a loading plan that works with the adjacent and adjoining properties and allows them access through CBAS at times that are not going to affect other folks coming from Hamlet and going down there. Two axle vehicles are the maximum - basically small vans that can make quick deliveries going through there. They will definitely not be having any of the 18 wheelers or big trucks going through there. This is the same thing as any of the other adjoining properties. These are the types of vehicles of folks that access the condominiums on CBAS and other folks. Two axle vehicles, just like what is going to be delivered in small vans. One of the issues they found out since the initial application for the CUP was all the encroachments in CBAS that were not allowed on the

southern properties. There are some stairs that come down in there, some fences that have been placed out in there and Sea Bass is actually, as platted, a 30' right-of-way but in certain sections it has been encroached in to 15' and they don't feel they should be penalized for that. They want to have reasonable deliveries coming in there that won't adversely affect the other adjoining properties.

Greg Reynolds, architect, 711 Canal Drive, said they have now pulled the bathrooms up, from where they were, 5' 10" that squeezes pretty well but with that we have taken space out between each floor. This area (shown on drawing) is the biggest telltale. It is 3' 3" between the top deck where it was originally approved to where it is now. So that is a big change and what we have done is because we have pulled the bathrooms up off the floodplain level. The elevator shaft, which is the highest point, and before they did not have an elevator serving that top floor. We can do that per code because we have equivalent services else where, however, they felt like they would like to have an elevator to go all the way up. Elevator overrides 12' 3" and that is why we need to get to the 55' (he showed the difference on the drawings). The majority of it came in from the bathroom doors, which were here (showed) and now here with a difference of 5' 2". They took the office area and what became the elevator shaft, bunched it together and the difference between the distances is 5'. So they combined it so the impact on the folks behind us is minimal and they pushed forward to the south. He showed the changes from floor to floor.

**Councilwoman Efirm opened the public hearing. MOTION CARRIED UNANIMOUSLY.**

Donald Motsinger, 107 Carolina Beach Avenue South, told the town manager that he took exception with what he said. Putting deliveries on a routine basis down that street is a major change. On page 5 of what he was given, about the encroachments, there is misinformation there and there are just complete errors for misunderstandings. The encroachments that exist are there at the town's agreement. If you look at the boardwalk, which they said I could speak for their condominium association, they got that through an agreement with the town. The town came all the way down and said we could use that as long as we wanted to provide there was no permanent structure put down. The reason for that he thinks is there is utilities that go under there. They have used that for a long time. Here they have given dates of when these things were built. The first two are inaccurate, they are just wrong. Those have been used for quite a few years over 40. It is not something that just happened. We were there when you started this and you started this open air and you're going to play music all night long and disturb our guests and now you are going to run up and down the road. He doesn't think that is necessarily a bad idea if it is controlled but it has to be controlled. We have people walking to the boardwalk up there, we have children playing up there. It is used more as a playground than anything else and some of your friends that ride these skateboards use it quite often which we try to discourage but they do use it a good bit. A two axle, he doesn't know what that means. That is a definition but what does it really mean?

Mayor Macon said a car is two axles also vans and UPS trucks.

Mr. Motsinger said he can set a box how long in the back of a truck and it would be a two axle. And you back a box down that, and they do. The trash truck comes down twice a week in the summer and once in the winter and you occasionally have someone else run a box down there but if you run a box truck back and forth there everyday, someone here is going to be liable. You're going to get them hurt, there is no way you're going to get around it. We have to watch like everything now when we drive. You showed the parking up there is going to be 102 instead of 140. He thinks the Marriott has 84-86 so you are already giving away more parking spaces than you have available and part of those you have available, you don't own, you just lease which means down the road the taxpayer is going to have to pick up the bill for doing something to provide parking spaces. It's not a perpetual thing. The proposal, one of the things it says in here, "that the use will not substantially injure the value of adjoining or abutting properties". These people spoke for the Fairfield and a short time later sued the town because they said it would injure and harm their business. I'm telling you now that music that you have let go unabated is going to harm and injure us and our clients. What is good for the goose is good for the gander. He wishes they would reconsider that. It needs to be controlled. The more control you have the better off you are going to be.

Greg Miller, 102 Carolina Beach Avenue South, speaking on behalf of the Tidewinds HOA, said the changes to the CUP, the height increase is not a big issue to them but the deliveries are a concern to our homeowners because it is very, very crowded. During the summer on Carolina Beach Avenue South, it is a narrow street and when they park they actually park on property that belongs to them on Carolina Beach Avenue South and backing in and out during the summer is very difficult as it is. There are deliveries that come through, there are pizza trucks, Wheel Fun Rental uses that to get umbrellas and so forth, but they are pretty infrequent. They are early in the morning and late at night and the pizza deliveries, doesn't know how many times they come, are not every day or whatever. He thinks the big thing on it would be when he was at the P&Z meeting on October 9<sup>th</sup> there was a lot of discussion about the delivery plan and a very specific delivery plan to control the access in and out to the open air bar and he hopes that would be looked at very hard and would be strictly adhered to. He worries about children. He sits on his deck and sees the whole Carolina Beach Avenue South covered with children and families walking all the time there when they are going to the boardwalk, which we all want them to continue to do. That is the only access to get in and out so he is very concerned, as are the rest of our homeowners, about increased traffic on CBAS. It is very difficult and awfully crowded and a lot of it is foot traffic. Admittedly, delivery drivers might be safer than the people who are driving in and out on vacation. They are professionals. Any increase in traffic on that is going to be an issue. The other thing the homeowners have asked him to speak about is their concern about the music late at night. He thinks the original CUP was 11:00 p.m. on weekends and now it is 1:00 a.m. or whatever but he thinks that has already been voted on and approved but he did want to voice the concern on that. The biggest concern they have is the delivery and that be controlled and scheduled.

William Wright said that all the concerns that have been addressed about the delivery plan are the very reason they wanted to leave the discretion for a loading plan to town staff level. It is anticipated, at most, they would have two food delivery companies and two beverage companies that will be delivering here on an average of two times a week. They were looking at a delivery plan that would be prior to 11:00 a.m. when it wouldn't be adversely affecting, at low traffic time, after people have gotten up in the morning. Concerns about the noise, you have already addressed the amendment to the CUP when the town required them to have a noise abatement plan to be put in place and addressed before we go forward with hours of operation. Again, we are looking at very similar to what your summertime trash pickup already is, two times a week coming down the street and that is it. The parking - that had already been waived. They are just trying to comply with the newly passed ordinances here and to keep them on a level playing field with all the restaurants that come after the newly passed ordinances.

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

Councilman Johnson asked about seating and the elimination of limiting the seating amount of 288 and what would be the limitation.

Gary Ferguson said it would be based primarily on fire access, ingress and egress to inside the building and that is based on the number of openings within the building. The actual seating itself is going to be dictated, to some extent, by the cost of seats as they exist today which is \$250 per seat. They are looking at perhaps revisiting that issue and coming back with a different idea about how we want to gauge seating inside places like this but the fire chief is going to determine what the maximum occupancy can be.

Councilman Johnson said he is concerned about what that seat occupancy can be and is sorry that the fire chief is not here because he was hoping they would have that number. It concerns him based upon what can happen. The other is, on deliveries, he understands what is being said about two axles, he is a little confused in looking at this and going down there, why that is even necessary. He can't imagine, talking about alcohol delivery for sure, sending a special van down here to deliver that when most are trailer rigs that park on Cape Fear or Raleigh to deliver. He doesn't see the distance from Hamlet being any further than delivering up to the boardwalk to establishments up there so he doesn't understand why we have to even consider this delivery item in there and the possibilities of conflict.

Gary Ferguson said the applicant would be responsible for providing the town with a delivery plan. He thinks the attorney representing the applicant mentioned that. A delivery plan basically says when you are going to deliver goods, how big the truck is going to be, the length of time you are going to be occupying the street. Those are the three basic elements to the plan. It is his understanding that they are going to have to provide that regardless. Everybody needs to do that. Staff will be looking at it.

**Councilwoman Efird made a motion to approve the five (5) changes that are included in the 22 conditions, and finds that it is consistent with the General Conditions 1-4, Specific Standards 1-7, and TRC recommendations, as follows:**

**BASED ON THE FOREGOING FINDINGS OF FACT**, the Town Council makes the following conclusion as required by Article 14.9 of the Zoning Ordinance of the Town of Carolina Beach:

**General Conditions**

1. It is the Town Council's conclusion that the proposed use will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted and approved by the issuance of the conditional use permit.
2. It is the Town Council's conclusion that the use meets all required conditions and specifications.
3. It is the Town Council's conclusion that the use will not substantially injure the value of adjoining or abutting property.
4. It is the Town Council's conclusion that the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town Land Use Plan and policies.

**Specific Standards**

- (1) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe;

*No changes are proposed for ingress and egress under this conditional use permit.*

- (2) Off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the conditional use on adjoining properties and properties generally in the district;

*Condition 20 in the April 08, 2008 CUP prohibited delivery trucks on Carolina Beach Avenue South due to only 15' of improved roadway being provided. This narrow roadway from Hamlet to its dead end located at 101 CBAS would hinder the ability of large delivery trucks to maneuver to the site without blocking ingress/egress of the adjacent neighbors.*

- (3) Refuse and service area, with particular reference to the items in (1) and (2) above;

*No changes are proposed to refuse service area.*

- (4) Utilities, with reference to locations, availability, and compatibility;

*No changes in the approved utility plan are being recommended.*

- (5) Screening and buffering with reference to type, dimensions, and character;

*No changes are proposed in the approved buffering.*

- (6) Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

*All new signage shall require a sign permit.*

- (7) Required yards and other open space and preservation of existing trees and other attractive natural features of the land;

*No changes are proposed to the open space areas.*

## **22 Conditions (includes 5 changes)**

1. Final project shall be designed to provide required number of parking spaces as provided in Article 7 of the Town's Zoning Ordinance. "Where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use." Parking for the 102 required spaces shall be waived after the applicant signs a parking waiver stating the Town is not liable for any deficiency of public parking spaces.
2. Solid waste is handled collectively by the boardwalk area businesses. The owner will be required to continue to participate in this program.
3. A sign permit shall be obtained for any signs located on the property.
4. All permits and approval letters required by all Federal, State, and Local Agencies must be submitted prior to issuance of a building permit.
5. Certification shall be provided that all improvements, including but not limited to paving, drainage, stormwater, landscaping shall be constructed and maintained according to the site plan approved by the Town Council prior to any land disturbing activity.
6. Prior to issuance of building permit, all approval letters and final site plan shall be submitted, and items mentioned above shall be submitted and approved by the Town of Carolina Beach Technical Review Committee that includes the Town Manager, Planning and Development, Building Inspections, Operations/Stormwater/Public Works and Fire. All plans will be reviewed to ensure building fire and town codes have been met.
7. Major changes to approved plans and conditions of development may be authorized only by the town council after review and recommendation by the planning and zoning commission in the same manner as outlined in this article for original submission.
8. The storm water plan must be submitted prior to issuance of a building permit. The storm water

- system must be installed according to approved plans and a letter signed and sealed by a licensed engineer must be provided verifying that the system is properly installed and functioning prior to issuance of certificate of occupancy.
10. No structure or equipment of any description shall be erected or otherwise located outside the proposed footprint.
  11. The plan shall be in compliance with the National Flood Insurance Program (NFIP). A letter of acceptance for the design of the bathrooms and all other aspects of the structure shall be provided from the NC Emergency Management Floodplain Management Branch prior to the issuance of a building permit.
  12. Flood Certification must be presented prior to issuance of certificate of occupancy.
  13. Prior to Certificate of Occupancy, an architect or engineer must confirm the structure's height is consistent with the conditional use permit.
  14. The number and types of vegetation must be included on the final plan. A certificate of occupancy shall not be issued until landscaping is planted according to approved final site plan. A 5' "Type A" landscape buffer shall be provided along the border of the single-family residence to the south.
  15. Lighting installation requirements.
    - (1) Outdoor artificial lighting fixtures shall be designed and positioned so that:
      - a) The point source of light or any reflective surface from a light fixture is not directly visible from the beach.
      - b) Areas seaward of the frontal dune are not directly or indirectly illuminated and
      - c) Areas seaward of the frontal dune are not cumulatively illuminated.
    - (2) All types of wall pack fixtures mounted on a vertical structure shall be full cutoff or fully shielded.
    - (3) Outdoor fixtures mounted on a building structure within direct line-of-sight of the beach are considered appropriately designed if they are completely shielded down light only fixtures or are recessed fixtures having low wattage (i.e. 50 watts or less) "bug" type bulbs and non-reflective interior surfaces. Other fixtures that have appropriate shields, louvers, or full-cutoff features may also be used if they are in compliance with subsections (1)(a), (b) and (c) above.
    - (4) All glass shall be tinted that is installed in all windows and doors of single or multi-story structures within line-of-sight of the beach.
  16. Height shall be limited to 55'. Prior to Certificate of Occupancy, an architect or engineer must confirm the structure's height is consistent with the conditional use permit.
  17. Fence height shall be limited to 8'
  18. Hours of operation shall be 8am – 1am amplified music to end at 12am
  19. Require the presentation of a sound attenuation plan to staff prior to obtaining a building permit.
  20. Update the Carolina Beach Parking Study with this project if approved
  21. Only two (2) axle delivery trucks shall have access to the site and install a sign at Carolina Beach Ave S and Hamlet that states "*Delivery vehicles over 2 axles are prohibited.*"
  22. Off-Street loading requirements have been waived by the Town Council provided that a loading space plan is submitted by the applicant and approved by the Director of Planning or his/her designee that addresses the following: Time loading will take place; Approximate size of truck used for loading; Duration of loading period, and; Location of the loading area.

### **Technical Review Recommendations**

**Police:** No comments.

**Fire:** Concerned with fire-flow from hydrant on CBAS. Paradise Island V, LLC has the choice of using hydrant on CBAS or one more nearby. (this is more of a concern with getting water to the Marriott.

**Planning:** In reference to height change, it should be a major modification.

**Operations:** There is an easement between the Marriott and Tide Winds, although there is only 8 feet available between the stairwell of Tide Winds and adjacent wall of the Marriott. At least 15' is needed to access this water line, therefore, the water line shall run down CBAS as originally proposed.

**Town Manager:** In reference to CUP modification, manager thinks it needs to go to Council because of the height increase. He considers this a major modification.

Councilman Johnson asked about the 60 used in the calculation of the Charlotte parking lot, this being a CUP and is one of the conditions, what happens to the CUP if that parking lot goes away? There is not another 60 anywhere near by.

Gary Ferguson said he thinks the CUP will still be valid if Council approves it tonight. There was a debate about that when we were talking about these are not public parking spaces, these are privately held parking. There was a consensus, he believes, on the Council that we are going to look at these spaces as if they were public. He could be mistaken in his recollection of it but that is what he recalls. It is a good question, what if those 60 spaces go away but he believes the CUP would still be maintained regardless because it would have been approved under that condition. The condition being that parking was available at the time the CUP was issued by the Council. Subsequently, if it goes away, he doesn't think, that is perhaps a legal question, it then puts in jeopardy the approval of the CUP because that property has been sold, built upon, etc. He would point to the town attorney.

Councilman Johnson said he was raising the question for staff and the attorney that he thought under CUP's, when they put those conditions if any of those conditions are violated that the CUP could be void because they are not abiding by the conditions. What you are telling me now is that probably would not be the case.

Tim Owens said there are a lot of things that can change with our regulations, parking, setbacks, etc. and that doesn't automatically make your CUP invalid because those conditions change. If you intentionally violate one then, yes, they can call their CUP.

Councilman Johnson asked why are we even spinning our wheels with this if it has no strength to it, no basis whatsoever for enforcement? He doesn't understand why we have spent all this time on parking and the emphasis on it, even though we are waiving it and he knows what they are saying, why we are even looking at that. They have 102 spaces that are required, they are asking for a waiver of 102 and the town staff has showed

where those 102 spaces are to meet that waiver. Those go away and there is nothing the town can do, from what he is hearing. So, if that is the case and you mentioned others that we have waived, why do we even mess with parking?

Tim Owens said the same thing could happen on Lake Park too. We are going to do the streetscape plan and possibly eliminate a lot of parking. It's the same thing as any other CUP that was issued in the downtown area. We have created a new situation. I don't know that you can invalidate all the CUP's that we have issued in prior years. We created that situation. If we go in and do parallel parking on Lake Park we have created that situation.

MPT Wilcox said they had the same conversation last time and the culmination of this conversation was a unanimous vote by Council to pursue a parking deck because the issue is to provide the parking.

Mayor Macon said that in the CBD the problem that you get into is where are you going to park on the boardwalk? The access isn't there. If you own property on the boardwalk and you want to do something with an existing building, typically the building covers 100% of your lot. To waive the parking requirement in the CBD is something that has been going on for years. That is the way it is in the CBD and large cities and why they have parking decks and why a lot of buildings don't have parking. The town has been dedicated to purchase parking lots. They have purchased a lot of property for parking lots and it is because for years they have recognized the importance of being able to provide parking for people who want to go to the beach and downtown business district. That dedication continues and why we are looking at a lot of options we are currently looking at. Nothing is set in stone at this point other than a consensus that we need to address this in some form or fashion with either building a parking deck or purchasing additional property for parking. The streetscape is going to encourage more pedestrian friendly use, bicycles, walking. There are a lot of folks who are going to park in the parking lot and just go up and down the boardwalk to go to the restaurants and places. There are plenty of parking lots in the area whether it is in the 500'. If it becomes an issue, will make it 1,000', the ordinance can be changed to accommodate a larger area where we do have additional parking.

MPT Wilcox said that what they are imposing upon these projects that go down to the boardwalk area for parking are the same restrictions or requirements that we are placing on someone where Michael's is or somewhere where people have to drive to those locations. So they drive there for that single purpose and we are imposing the same parking standards on those projects that are being built at the CBD and the boardwalk when we know full well that a lot of their customers will come from the Marriott, will come from the Hilton, a lot will park in their private parking spaces and go to the boardwalk and will walk over there from their residences. Yes, they're going to have some parking demand but he thinks there may be overemphasis on some of the businesses that are down there with the fact that they are going to have the same amount of parking and vehicular traffic that you would otherwise have in a remote location. That is part of his consideration for it.

Mayor Macon called for a vote. **MOTION CARRIED 3-1 WITH COUNCILMAN JOHNSON VOTING NO.**

***CONSIDER AMENDING THE PROCEDURES AND FEES FOR THE DISCONNECTION OF WATER/SEWER SERVICE TO CUSTOMERS AS REQUIRED IN CAROLINA BEACH CODE OF ORDINANCES CHAPTER 16 UTILITIES AND THE CAROLINA BEACH FY 08/09 BUDGET, SCHEDULE OF FEES***

Tim Owens requested Council consider tabling this item until the December meeting as he needs to pull together some additional information and set a public hearing for that date to re-advertise some of the ordinance changes that would need to take place.

**Councilman Gilbert made a motion to table this issue until the December meeting and also call for a public hearing. MOTION CARRIED UNANIMOUSLY.**

***CONTINUED ITEM - CONSIDER AMENDING THE ZONING ORDINANCE, ADVERTISING AND NOTICING REQUIREMENTS FOR PLANNING AND ZONING MEETINGS***

Gary Ferguson said this is a continuation of that October meeting. This is dealing with the noticing requirements for Planning and Zoning Commission meetings only, it does not deal with Town Council meetings. We were told four things by Council that they would like to see in this revised language: (1) Have a strong intent section or have an intent section with this ordinance so that if administrators change, they would have a good idea of what the Council would like the administration to do about noticing/advertising Planning and Zoning Commission meetings. (2) Council wanted two advertisements within 25 days of the actual P&Z meeting. Currently it says, "not less than 10 nor more than 25", which opens up some opportunity for us. (3) Continue to post the sites with a sign. (4) Send notifications in the mail to all affected or adjacent property owners. Staff has provided two options. Both have an intent section. Option 1 might be more to Council's liking which says that within 25 days they will do those three things he just mentioned which he reviewed. Under Section 21.2 Option 1, the words in there are shall statements and underlying it is an intent section and this intent section under the first option says it is the intent of this section to lay out the guidelines that are utilized for these items. Errors in the process shall not preclude items from being heard by the Planning and Zoning Commission for recommendation and moving forward to the Town Council for a decision. Option 2 is less legalistic. There are no may or shall statements. It relies very heavily on the intent section. It goes through the exact same process but what staff has attempted to do was eliminate those words that say things like "we shall" or "we may", they are just going to lay it out there. Here is what our intentions are of staff to do to make sure that we have ample notice about Planning and Zoning Commission meetings. With Option 2 there are two corrections they need to make, the Town Manager would like to take out in the second part of the intent section the word *administration* to read, "It is, however, not the intent of this section to delay or

cause to delay a public meeting by the Commission due to advertising and/or noticing error(s) either on the part of the Town or by others.” Lastly, item number (3)(a) “Mailed notice provided for in subsection (1)” - that should be corrected to subsection (2). Both of these have a sunset provision in them which takes it up to May 12, 2009 where Council and Planning and Zoning can reevaluate it, find out if we are losing participation at our meetings or not.

Councilman Gilbert said the May sunset seems a little soon, maybe July or August to give it a little time.

Mr. Ferguson said he was having a little trouble trying to figure out how he was going to gauge any loss or increase. He will do a head count at P& Z meetings, not that it is going to show any differences. It is going to be driven by the issue in front of them, like the rezoning off Virginia Avenue. He doesn't know if noticing is going to play a big role in this. He thought six months is what Planning and Zoning recommended.

MPT Wilcox suggested not putting an expiration date in there and if there is a problem they can revisit it.

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

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

**MPT Wilcox made a motion to adopt Ordinance No. 08-766 (Exhibit 1) Option 2 with the change in Section 21.2 (4)(a)(3)(a), the elimination of (4)(b) which is the expiration date sunset clause, the elimination of the word “administration” from 21.2 (4) and that it is in general conformity with the Land Use Plan. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER ADOPTING A RESOLUTION OF INTENT TO CLOSE A 21.59' PORTION OF CAROLINA BEACH AVENUE SOUTH LOCATED IMMEDIATELY SOUTH OF THE MARRIOTT***

Councilman Gilbert said it has been brought to his attention that there is a perceived conflict or bias here.

**Councilman Gilbert made a motion to recuse himself from hearing this item as there is a perception that he may have a conflict of interest as brought to his attention by the town attorney. MOTION CARRIED UNANIMOUSLY.**

Ed Parvin said this is asking Council to adopt a resolution to hold a public hearing next month. Essentially you are just adopting a resolution tonight so staff can move forward with the advertising so they can go through the process next month.

**Councilman Johnson made a motion not to adopt this resolution as he does not see any need for it to go forward because they should not be considering closing any public streets at this point in time with the things they have before them like streetscaping and the Master Plan and don't know what effect this will have. MOTION DENIED 1-3 WITH MAYOR MACON, MPT WILCOX AND COUNCILWOMAN EFIRD VOTING NO.**

**MPT Wilcox made a motion to adopt Resolution of Intent No. 08-941 (*Exhibit 2*) to consider closing a portion of Carolina Beach Avenue South and set a public hearing for December 9, 2008. MOTION CARRIED 3-1 WITH COUNCILMAN JOHNSON VOTING NO.**

***CONSIDER ADOPTION OF RESOLUTIONS OF FINANCING WITH RBC BANK***

Dawn Johnson, Finance Officer, said there were several capital items that were approved in the 2008/2009 budget which totaled \$618,851.19. They have obtained quotes from RBC and BB&T to finance those items. The Vactor truck, can machine and the pump will be financed for 59 months while the Crown Victoria and 5 SCADA systems will be financed for 3 years. BB&T gave a quote of 3.65% for the 3 year loan and 3.17% for 59 month loan and RBC gave a quote of 3.46% for the 3 year loan and 3.67% for the 59 month loan. It is her recommendation that the financing be awarded to RBC.

**Councilwoman Efird made a motion to adopt Resolutions 08-939 (*Exhibit 3*) and 08-940 (*Exhibit 4*). MOTION CARRIED UNANIMOUSLY.**

***REQUEST TO APPROVE EEP COST FOR WILMINGTON BEACH PROJECT***

Tim Owens said the town is required pay into the Ecosystem Enhancement Program (EEP) for the Wilmington Beach streets and drainage project. The total amount is \$86,000. That payment will be the last step, other than signing a couple of permits, for the Corps of Engineers portion of it. He is requesting to move forward on the EEP program. He said that in the event they did not do this project or something else happens that they decide to scale back on some of the impacts, if that were to happen, they would be able to receive their money back.

**Councilwoman Efird made a motion to authorize the payment of \$86,000 to the EEP program. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER APPROVAL OF A LEASE EXTENSION FOR OFFICE SPACE CURRENTLY FILLED BY THE PLEASURE ISLAND CHAMBER OF COMMERCE AT TOWN HALL***

Tim Owens made presentation. He said the lease with the Pleasure Island Chamber of Commerce is ending in January. The Town Attorney brought to his attention that in order for the town to lease property for more than a year they need to do a resolution of intent to lease. If Council agrees to do so, they will need to advertise the resolution

between now and December. The lease has been around since 2002 and the chamber currently pays \$250 a month and it does include utilities, water and sewer. They pay for their phones and other ancillary items they need for their business. He did try to get some indication of what other leases are and came back with two: Federal Point Shopping Center is roughly \$9.00 per square foot which equals about \$255 per month; the medical center at Port City Java is roughly \$19.00 per square foot equaling about \$538 per month. Neither one would include utilities that he could find. Those amounts are based upon the size of their office and did not include the use of the conference room, restrooms, or foyer.

**Mayor Macon made a motion to move forward to keep everything as it is and bring a resolution back in December. MOTION CARRIED 3-2 WITH COUNCILMAN JOHNSON AND COUNCILMAN GILBERT VOTING NO.**

***CONSIDER A PROPOSAL FROM PETER J. SMITH TO PROVIDE SERVICES TO INITIATE A MASTER DEVELOPMENT PLAN***

Tim Owens said this is something they took up at the last workshop about the Master Development Plan. Peter J. Smith has given them a proposal to come in and do the private development part of this implementation. The quote is for \$28,000 and does not include any ancillary costs which would be copying or anything like that. There are several things Council can consider - you can move forward with it or you can send out some RFQ's to see if there is anybody else that can go about this process maybe more effectively. The only ramifications of not going with Peter J. Smith at this point, if we decided to go at a later point, the cost would be a little more because they would try to tie it in with the streetscape project so they wouldn't have to come back as many times. He did mention at the Master Development Plan workshop that one of his concerns is they might be moving a little too quickly on the private development side of things because he doesn't believe our current zoning or land use plan or zoning map for that amount may not allow for the development as the Master Development Plan contemplates and, at some point, will need to fix. They have talked about using conditional zoning district, possibly, as a method or regular zoning ordinances.

Councilman Johnson recommended notifying all CBD property owners and leasees and ask for a response back if they will attend a Master Development Plan implementation meeting with Peter J. Smith.

Council would like an accounting of what Alan Pacek has done and billing and if they don't get an answer then they need to deal with that at the next council meeting.

Mr. Owens said he needs to pin down a January date and then go to the property owners and say this is when they think the meeting might be.

**Councilman Gilbert made a motion to table to the December 9<sup>th</sup> meeting. MOTION CARRIED UNANIMOUSLY.**

Mr. Owens will write a letter to the property owners saying the town is not seeing the participation they had wished and encourage the property and business owners to attend more meetings, that the town is moving forward and would appreciate their participation.

Councilman Gilbert said if they made the appointments tonight, he thinks the charge to this committee would be to get with the town manager, put a committal letter together and to go out and get stakeholders on the committee.

***CONSIDER ADOPTING A RESOLUTION REQUESTING THE NEW HANOVER COUNTY COMMISSIONERS TO PETITION THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO ESTABLISH A NO DISCHARGE ZONE IN THE ESTUARINE WATERS WITHIN THE TOWN'S JURISDICTION***

Captain Bartley presented this item. He stated that at the end of October Mike Giles came before Council and asked them to consider this resolution. They took it before the Harbor Commission and they unanimously support it. Along with the resolution there is a request for a public hearing for Ordinance 6-16. He requested a change to that ordinance removing the words "fuel dock of the" in the last sentence. He said Mike Giles will review the purpose of the resolution. He also said the resolution will take it from Carolina Beach Marina all the way down the intercoastal waterway to the New Hanover/Pender County line and three miles off shore. It does not go down Snow's Cut or the Cape Fear River, just the intercoastal waterway.

Mike Giles, NC Coastal Federation, said he has been working with the Town of Wrightsville Beach with their problems within the area of Wrightsville Beach bridge on swimming advisories. UNCW and the state have been doing some dye testing in that area and determined that the pollution problem is not stormwater but boat head discharges - human waste. The Division of Water Quality and UNCW started testing up and down the waterway, compiling information like the number of boats in this area, permitted marinas and the Town of Wrightsville Beach passed a resolution, with the support of New Hanover County, to get a no discharge zone established within the boundary within their town. Kure Beach has now passed a resolution supporting that on their waterfront. They would like to establish a no discharge zone from Carolina Beach to Pender County line in New Hanover County, just in the estuarine waters. This is a health, tourism and dollar issue. The more pollution we put in our waters, the more people will stop coming to swim. It is a health issue, people will get sick swimming in water with human waste being discharged whether it is from a treated head or non-treated head exceeds swimming level over 200 times. They would like to have the town's support with what they are going to do with these resolutions from the local jurisdictions. They are going to take them to the Division of Water Quality and the EPA will administer this no discharge zone. The Division of Water Quality will start an education program bringing information to all the marinas, both private and public, and then the U. S. Coast Guard will enforce the rules. He said with the town proposing mooring buoys, this is extremely important as those are the areas in Wrightsville Beach where most of the discharge is coming from.

**Councilman Gilbert made a motion to approve Resolution 08-938 (*Exhibit 5*) requesting New Hanover County Commissioners to petition North Carolina Department of Environment and Natural Resources to establish a “no discharge zone” in the estuarine waterways within the town’s jurisdiction and also to set a public hearing date of January 13, 2009 for a public hearing on this ordinance. *MOTION CARRIED UNANIMOUSLY.***

***DISCUSSION OF POSSIBLE PART-F GRANT FUND OPPORTUNITIES***

Ted Lashley said the Parks and Recreation Trust Fund Grant cycle is now upon us. He attended a workshop in September. The due date for this grant is January 31<sup>st</sup> and he would like to talk to Council about some possible input for a project for this year. He and the town manager have looked at this. Although there is no penalty for applying year after year, they do like to spread the funds around from year to year and they were looking at, if not this cycle then next cycle, he thinks there is a possible aquarium pier project coming up, and they would like to do some parking for that project with the Parks and Recreation Trust Fund Grant. Looks like we are also, with Island Greenway and the DOT planning grant for bike trails coming up, we will use Parks and Recreation Trust Fund Grants for that also. We can apply this year if Council has a priority they would like them to go for. He gave some examples from the Parks Open Space Master Plan which he reviewed. He will also be talking about the outdoor basketball court. Two big items coming up in next year’s cycle are the bike path trails and the Aquarium pier project.

Councilman Johnson recommended they investigate the property on Goldsboro Avenue where the old rest home used to be. That would be a great location for a public park and the possibility of a grant if the property is for sale.

Staff said they would look into that. He said they were told at the workshop that funding money is getting a little tight. If they see something they can prove they have a need for, they will go ahead and apply for it this year. If not, they will look at the next cycle for some big projects coming up.

Tim Owens said there is a 50% match on this and feels we will have all the time in the world if the pier comes to pass to apply for a Part-F Grant. We are not there yet. It would have to be on December’s agenda to approve the actual application. He said they should prioritize the projects and have some preplanning done, and pre-qualify those projects.

***DISCUSS LOCATION OF OUTDOOR BASKETBALL COURT***

Ted Lashley offered some input and discussion about location of the outdoor basketball court. They have \$20,000 in the Capital Improvement Program for this project to build a high school size court. The dimensions are 84’L x 50’W with 6 goals, two main and four side goals, outdoor basketball court. He showed some of the locations they felt it would

fit: parking lot beside the Recreation Center; between the Senior Center and the library; Carolina Beach lake; Mike Chappell Park - two possible locations, sand volleyball court and in front of the skate park. His choices of those would be either the Chappell Park location or the parking lot area by the Recreation Center.

**Mayor Macon made a motion to set a public hearing date for January 13, 2009 at 7:30 p.m. or soon thereafter. MOTION CARRIED UNANIMOUSLY.**

***APPOINTMENTS TO THE MASTER DEVELOPMENT PLAN IMPLEMENTATION COMMITTEE***

Mayor Macon said that part of the change on the agenda was the addition of another application for Alan Pacek.

Tim Owens said the ad stressed the types of applicant backgrounds they are looking to appoint. He will volunteer himself as staff liaison. The applicants all show a diverse background.

**Councilman Johnson made a motion to appoint all five applicants to the Master Development Plan Implementation Committee. The applicants are: Alan Pacek, Anita Baggie, Charma McKnight, Carolyn Thomas and Frederick Grady. MOTION CARRIED UNANIMOUSLY.**

Mr. Owens said they will continue to advertise and will add to his letter to property/business owners in the CBD about the need for stakeholders on this committee.

***APPOINTMENT TO THE BOARD OF ADJUSTMENT***

**Councilman Johnson made a motion to reappoint Rob Pomeranz to serve a three year term of office to the Board of Adjustment. MOTION CARRIED UNANIMOUSLY.**

***APPOINTMENT TO PLANNING AND ZONING COMMISSION***

**MPT Wilcox made a motion to appoint Leah Garcia to serve a three year term of office to the Planning and Zoning Commission. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER APPROPRIATING FUNDING FOR THE BIG P GRANT AND PUMP OUT GRANT***

Captain Kurt Bartley requested a budget transfer from the Tourism Fund balance to fund these grants that were requested. The Pump Out Grant they are asking authorization to put in a second pump out system in the transit area they are constructing at the marina. That pump out will cost approximately \$14,284.00. The grant pays 75-25 and he is hopeful that he can absorb the 25% in his budget from some of the street end projects

they are doing but until he gets into that he won't know. He is also asking to be allowed to charge on that pump out system a money collector to allow them to charge \$5.00 to supplement the cost. Planning staff applied for a Big P Grant to add a mooring field to our harbor and also do some street improvements to put in a dinghy dock area. That cost is about \$50,000 with a 75-25 match.

**Councilman Gilbert made a motion to transfer \$64,284.00 from the Tourism Fund into the 74 Marina account. MOTION CARRIED UNANIMOUSLY.**

***CREATION OF A BUDGET FOR WWTP EQ BASIN PROJECT AND LAKE PARK SEWER REHAB PROJECT***

Mr. Owens said they have already approved Engineering Services to move forward on design and permitting for the EQ basin project as well as Lake Park sanitary sewer replacement and repair work and that is in anticipation of repaving park of Lake Park Blvd. He is asking Council to establish a budget for the sewer replacement work in the amount of \$1,113,474 and the EQ basin replacement in the amount of \$367,577. They have approved an engineering contract as well as a reimbursement agreement but had never established a budget for the two projects. On the books you would see a loan amount and expenditure amount.

**Councilwoman Efirm made a motion to approve the budget for the WWTP basin project and Lake Park sewer rehab project. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER AMENDING THE CURRENT STREETScape PLANNING BUDGET TO INCLUDE ENGINEERING COSTS FOR PROGRESS ENERGY, AT&T AND CHARTER***

Tim Owens stated this is something they discussed when they moved forward on the streetscape planning and Councilman Johnson and Councilman Wilcox had the opportunity to attend this meeting with some of the utility companies. The town needs some funds to go forward with having the utility companies design their portion of it to go underground. You are looking at AT&T, Progress Energy and Charter and they all have their own individual people that work on the engineering but it all ties together back to the streetscape plan and what Peter J. Smith has to do. He is asking for a budget appropriation from the General Fund unappropriated fund balance in the amount of \$100,000 to create a budget to move forward with the utility contractors. They think the Progress Energy portion of it will be about \$40,000 to have their engineers do their design work and they other two should be a little bit less than \$40,000 a piece.

**Councilwoman Efirm made a motion to establish a budget from the General Fund unappropriated fund balance of \$100,000 for streetscape. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER CHANGES IN FREEMAN PARK YEARLY PASS FEES FOR VETERANS AND SENIORS***

Mayor Macon said he received an e-mail in reference to this and since this was a request he felt Council should act on it. Basically it is whether they want to have a reduction of fee for individuals that are veterans and seniors.

**Councilman Johnson made a motion to approve item 2 under action, and that is for Council to take no action on the matter and support the existing fee structure. MOTION CARRIED UNANIMOUSLY.**

***CONSIDER ADVERTISING FOR RFP FOR NEW AERIAL APPARATUS***

Chief Rorie said they discussed various issues today and key among those was replacement of our 1984 aerial apparatus. They have researched a used model, looked at everything from aerial ladders to platforms. They have come up with financing plans, have considered that in terms of the overall cost. They have looked at the impact of what that would do in terms of financing that over a 20-year period. It was presented today. The purpose tonight is to request for some action, either approval or disapproval, to where they can move forward and authorize the Town Manager to submit Request for Proposals from various vendors to provide a replacement aerial apparatus for the Town of Carolina Beach. The RFP approach still meets competitive bidding requirements, it's just a streamlined approach. The purpose is to take advantage of some potential cost savings if we do it now rather than waiting until March or July. He thinks the RFP or cost figure could come in for \$700,000 or less.

**Councilman Johnson made a motion to authorize the town manager to submit requests for proposals for various vendors to provide a replacement aerial apparatus for the Town of Carolina Beach. Councilman Johnson withdrew the motion.**

Grainger Soward, 8453 River Road, Assistant Chief, said they want a platform truck for various reasons but mainly safety as it is much safer in rescue and use and they feel they can use it as diligently or better than they can an aerial. Most of the volunteers are getting older and they are the ones who will have to climb the 75' aerial. On a ladder they have to carry a person on their shoulder as they climb down to the ground. In a platform, they open a door, step into a platform and you are set down on the ground like an elevator. It is much safer for the firemen and person being rescued. They can also get a two gun nozzle on a platform, piped air and other equipment. The chief is sold on the ladder but he and some of his constituents are not. They have a ladder now and have used it various times and the platform is much safer and better operation in the majority of times they have to use one. They feel \$200,000 over 25 years, which is how long this truck is supposed to last, is not a lot of money.

Chief Rorie said the difference between an aerial ladder and a platform is roughly \$310,000 over a 20 year period. His argument is yes, it would take some time, but they

have a 75' platform sitting at Myrtle Grove, they have access to platform apparatus in the City of Wilmington. They do not need to duplicate. He agrees that a working platform is better than an aerial but when you are looking at it as a function of cost and looking at it as a possibility and probability, he can't get to expressing an additional \$300,000 for 20 years for what little use it will get. He is concerned about other departmental needs that affect their work.

**Mayor Macon made a motion that the town manager submit requests for proposals from various vendors to provide a replacement for aerial apparatus to include not only a ladder truck but a bucket. MOTION CARRIED UNANIMOUSLY.**

### ***NON-AGENDA ITEMS***

Councilwoman Efird asked the chief how many speeding tickets have been written since the reduction in speed limit on Harper Avenue. She has heard some complaints. Chief Younginer will check on it.

Mr. Owens said there is a Council meeting this Friday at 8:30 a.m. at Harbor Masters Restaurant and Lynn may touch on it. He asked Council to be thinking about some of the issues and items that we want to talk to our state representatives and our senator about during the meeting. He will pull together a list as well.

Councilman Gilbert said he went to the MPO meeting the other day and Dow Road came up - \$90,000 for some of the planning for Dow Road. There was a consensus to shelve it. He requested that they put out an RFP to see if they can get that \$90,000 down. We didn't get a lot of support on going forward with that project. He held firm and got the consensus to go back with him on it to consider Dow Road, maybe a turn lane, a little bit of widening and some signage. Mac Montgomery's suggestion was to take the Dow Road money and put it on a project in town that would benefit all of us. He disagreed with that. He thought Dow Road is going to become more challenging, it is a safety issue now. Hopefully we can keep that going forward. The town manager agreed with his assessment and said there is a little bit of overlap maybe between what the town is doing and what that Dow Road project was so they are looking into that as well. Councilman Gilbert said they might be able to take some funds and get them together on that. The scope of that will change but Mac did bring up signage to maybe relieve some of the congestion that happens on Lake Park to get people down to our CBD. People want an alternate route to the Aquarium, maybe some signage. DOT was going to look at that, it wasn't something that policy supported but they said they will look at that. If anybody wants to talk to Mac, he would take an opportunity to maybe help get Kure Beach back on line to support that part for them.

**Mayor Macon made a motion to go into closed session to discuss personnel and legal matters according to NCGS 143-318.11(a) 3, and 5. MOTION CARRIED UNANIMOUSLY.**

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

There being no further business, **Councilwoman Efirid made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa  
Town Clerk

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