

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

November 8, 2010

The Town Council of the Town of Carolina Beach met in special session on November 8, 2010 at 5:30 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 Pro Tem (MPT) Pat Efird, Councilman Dan Wilcox, Councilman Bob Lewis, and Councilman Lonnie Lashley. Also present was the Town Manager Tim Owens, Town Clerk Lynn Prusa, Finance Director Dawn Johnson and Town Attorney Steve Coggins. Mayor Joel Macon was absent.

MPT Efird called the meeting to order in the absence of Mayor Macon who is sick.

OTTER CREEK

The town manager presented this item. He said there are two requests in this item, one is from the Otter Creek Landing Homeowners Association and the other is for the Otter Creek Yacht Club. Both of them are separate entities. There is a stormwater pipe that is located under the base of the condos there and goes out to the yacht basin. They are requesting that the town consider paying for the damages that were suffered in that area during the last rain we had on the 24th. It is currently in our insurance company's hands and still pending their investigation. They are recommending that we wait and find out what kind of response happens. Both groups want to present tonight. Mr. Owens said the first to speak is a representative with the Otter Creek HOA.

***REQUEST FROM THE OTTER CREEK LANDING HOMEOWNERS
ASSOCIATION FOR THE TOWN TO PAY FOR THE REPAIR OF A FAILED
STORMWATER OUTFALL PIPE LOCATED ON THE OTTER CREEK
HOMEOWNERS ASSOCIATION PROPERTY AND FOR THE ACCEPTANCE OF
ANY FUTURE MAINTENANCE ASSOCIATED WITH THIS STORMWATER
OUTFALL PIPE***

Attorney Adam Beaudoin, 5133 Wood's Edge Road, Wilmington, representing the Otter Creek Landing HOA said he has given the town manager just now a copy of our position paper and he understands that it is pending, but based on their research and on the history of what has transpired that it is the town's maintenance of this sinkhole area of this stormwater drain in the past, it is their position that it is the responsibility of the town to pay for the maintenance, repair and care of that drain. He cited several NC cases consistent with that position and would submit to Council that it is the right thing to do in this situation. He is not sure what has changed since it was recently done several months back other than maybe the size of the sinkhole is bigger or different but that is the position they are taking.

The town manager asked if they have final numbers on estimates, he still hasn't gotten final numbers. He has gotten some from the yacht club but not from the HOA.

Mr. Beaudoin said it is a two stage process and, so far, the HOA has paid to have the pipe fixed and that is about \$17,000. It still needs to be filled and, right now, they are holding off on filling it. It may cost an additional \$5,500 or thereabouts to fill it, get it situated and packed back down. The total cost will probably be somewhere around \$25,000.

Councilman Wilcox asked if they took bids on the initial work. Joyce Steward, President of Otter Creek Landing HOA, said they did not. When Mr. Owens went on vacation had already contacted SECOF to come in and shore up whatever they needed to. However, upon learning that your insurance company wasn't going to cover this, they were left with an open hole, tidal water coming in from the marina and water flowing in from the marsh so they did not get bids. They went ahead with Matt Murphy of SECOF. They have not had bids yet from our landscape people either. There are trees that fell in the hole which is about 35' x 10' deep. Right now it is about 2' from a very critical area of their building and they would like very much to get that completed.

Councilman Wilcox asked if the HOA has any insurance that covers anything other than the building. Ms. Steward said their insurance does not cover underground water or storm drains.

Councilman Wilcox asked if it covers any landscaping, docks or anything of that nature. Ms. Steward said they don't have docks and, no, it only covers the building.

Mr. Beaudoin said he doesn't want to speak for the town manager but there is documentation from four incidents of this sinkhole being repaired by the town starting in 2004 moving forward to most recently in 2010. That is set out in the memo he just gave them and he realizes they might have to spend a little time on that.

Councilman Wilcox asked if they have any construction documents, any CAMA permits or anything from the original construction. Mr. Beaudoin said there is a CAMA permit but it is not really inter-related to it but the original building permit they tried to get copies of it but don't have one. He does not know who the contractor was. The town manager said the original builder he thinks was United Developers out of Fayetteville but he is not sure who the actual contractor was.

Councilman Lashley said he read something about New Hanover County FEMA taking care of disasters that have happened with this drainage problem with the 21 inches they had a couple of weeks ago. Have you considered putting in a claim with FEMA for these expenses? Mr. Beaudoin said they have not. Councilman Lashley said they may want to.

Mr. Beaudoin said they will have to explore options, absolutely. He said he is not going to take up any more time and will let the yacht club speak but that is basically the position for requesting that the town reimburse them for the cost so far and the additional cost to fix this and continue that responsibility going forward in the future.

The town manager said the town attorney has been involved with this and has seen a memo from the yacht club but not this memo from the HOA. He will give him a copy of this as well as the town's insurance carrier.

REQUEST FROM THE OTTER CREEK YACHT CLUB FOR THE TOWN TO PAY FOR THE REPAIR OF A BULKHEAD AND DREDGING OF SEVERAL SLIPS AS A RESULT OF THE FAILURE OF A STORMWATER OUTFALL PIPE AND FOR THE ACCEPTANCE OF ANY FUTURE MAINTENANCE ASSOCIATED WITH THE STORMWATER OUTFALL PIPE

Sue Berwald, President of the Otter Creek Landing Yacht Club, asked if they received their position paper and was told yes. She reviewed pictures of the damage starting with Figure 1 on page 6 which shows the sinkhole as it exists when they were doing work on trying to pull out the drainage pipe that collapsed. Figure 2 is the sinkhole, your back is to the condo and you are facing out towards the marina. That is the amount of damage that was done in the washing out of the area around there and the soil in and around the bulkhead. Figure 3 shows a piece of the corroded pipe which collapsed. All the corrosion that was there over time collapsed that pipe and it failed. Figure 4 shows the stub sticking out of the concrete catch basin that comes from the drainage pipe, the drainage pipe attached to that and then it ran through and attached to the marina bulkhead which has a poly pipe and that was the connecting pipe and this collapsed. If you look at this picture, to the left is a concrete deadman used to hold the tiebacks for the bulkhead. To the right is another concrete deadman that is slipped and you can see the slippage that occurred as a result of the water that swirled into that hole. The tiebacks on the right-hand side when that concrete deadman slipped it hit into the tiebacks and bent them. The tiebacks on the left-hand side were loose and so it compromised the integrity of the wall as far as being safe and secure. Figure 5 shows the same pipe with water flowing through it. When it pulled off, it pulled off the pipe by the condos and collapsed in the center. On the bulkhead side it started to pull back but didn't come completely off so the water came running through the pipe on the stormwater runoff. It eroded underneath, caused the pipe to collapse, which is underneath there, then all the water swirled around into this area there and eventually was rolled out into the marina. The tide was part of the problem, it came up and went down. The problem with that drainage system comes across Lewis, it starts on the south side of Lewis Drive, runs underneath the roadway, comes across the HOA property, there is a concrete storm drain in there and then this is the part we're talking about that goes into the marina. When they did work on the HOA property in 2002, they put a drainage part that parking lot but they found that the metal pipe connecting Lewis on that Lewis part that it was corroded and it was corrugated steel so they replaced that but nothing else was done other than that. That is the drainage system and all the storm drain water that comes off of south and southwest Lewis runs through that pipe, underneath the condos and out into the marina. You have all that stormwater from that Nicole storm where we had 22" of water coming through and undermining and just taking everything out. Figure 6 shows slip #12 at the marina which is right at the outfall where that pipe dumps. The boat that was in that slip was grounded at low tide. Figure 7 and Figure 8 are pictures taken in March 2010. In 2004 and 2007

there was a sinkhole in the same spot. The HOA called the town who came out and looked at it, said it was a water problem/drainage thing and didn't do anything about it. In March 2010 the town came up. Figure 7 shows they did work around there, put sandbags down, put the filter cloth there, put sand in it, they wanted to see where it was going and were trying to figure that out. They got a camera and went in and couldn't find anything and stopped at that point - didn't go any further and filled it up. Figure 8 shows the water that pools there when there is a really heavy rain. Figure 9 is the outfall that shows Carolina Beach, outfall #28 which is the pipe they are talking about, as part of that system. The little map in there with the little squiggly shows the drainage area that goes all into that pipe so this pipe is not just for the HOA property. As a matter of fact, the yacht club does not need the pipe. It has no purpose in the yacht club, it just drains into the marina and what it is doing in draining all of the property on the other side of the condos. They have talked to the town about whether they could close the pipe up and the town said no because when there is a heavy rain the flooding would be very severe back up in that area. She referred to page 4 to talk about the conclusions which she read (*see Exhibit*). Mr. Dan Bell, attorney for the Otter Creek Landing Yacht Club, was unable to attend the meeting due to the change in date but did set up a position paper and, for the record, she would like to cover that. She referred to the issues: (1) Did the town have a duty to maintain and repair the section of the pipe which failed? (2) If so, was the town negligent in its exercise of this duty? Short answer: Under North Carolina law, a municipality is liable for damage caused by its negligence if the municipality has assumed control and management of the drainage pipe. Legal Position I: The Town of Carolina Beach by its repeated maintenance and repair of the pipe prior to the failure assumed control and management of the pipe. Legal Position II: The Town of Carolina Beach assumed the duty of due care and the liability for damages caused by its negligence. Conclusion: The facts establish that the town assumed control and maintenance of the pipe that failed and that it abrogated its duty to properly repair and maintain the pipe. Under the law the town was negligent and must pay the yacht club for the damages caused by its negligence.

Councilman Wilcox said he understands Mr. Bell's job and what he writes. This pipe runs under your condo. Ms. Berwald said no, the HOA is a completely separate entity - their management and property are separate. When the development was made in 1992 it was Otter Creek, Inc. and they developed that area and they did the yacht club, the permits for it, built the yacht club, filled it and built the condo. They went bankrupt around 1983/84 and as a result of that bankruptcy they split the property so one tract, which the condo is on, has one part and it comes up to the marina area and then we have the marina. We have no intertwining as far as governing, management, etc. The pipe starts at Lewis Road where it goes under and across through the HOA property, underneath the building, out the other side, then we get to the dredge pipe that collapsed and then it comes to the edge of the bulkhead. We are the marina and our problem is that we have two tiebacks that hold that bulkhead in place ... (*note: the rest of the sentence was inaudible*).

Loretta Whalen, property manager for the yacht club, reviewed the costs/estimates including those for legal representation and an engineer. The engineer was required to look at the integrity of the bulkhead itself. The other costs have to do with repairing the tieback system. The \$12,583 has to do with an anchoring system and we do have a decision to make as to whether they go with helical anchoring system or a concrete deadman system. The engineer can explain about the differences on those. They also have the dredging that needs to be taken care of.

David Terkeltoub, their engineer, said the helical tieback system consists of a shaft with plates on it and it is torqued into the ground a certain distance, 25'-30' back from the bulkhead, and then the tieback is attached to that, run through the bulkhead whaler and bolted holding the bulkhead in place. The other system that is used is a concrete deadman and that is cast in place concrete with a threaded rod that goes through the concrete, anchored to the deadman and then the deadman holds the bulkhead in place. In order for that to happen you have to have soil in front of the deadman which puts pressure on the concrete and keeps the concrete from moving. Right now we don't have that soil, its been washed out. We have to determine whether or not we can fill it back in and pour new deadman and hold that bulkhead in place.

Ms. Whalen said the difference in the cost of those two, it's just a little bit more on the concrete deadman where we will have to be making those decisions along with the HOA because it does go on their property. The costs that you see are the total excluding any permits or unexpected costs because we have run into a little bit more cost trying to get our engineer to do what is necessary to ensure that we come up with the right solution for our anchoring system.

The town manager said he saw that the other day but never got a copy and needs to get one if possible and also final estimates of costs from the HOA so he can submit it to the insurance company.

MPT Efird asked if we have any information about when that project was started.

The town manager said he and the town clerk have talked to the adjuster on numerous occasions and he thinks he is coming into town next week to interview some employees as well as himself, hopefully in the next week or two and then they will know what the decision is and they can either reconvene another meeting, give them what the outcome may or may not be, and make a decision on what they want to do.

Councilman Wilcox asked about any files they might have.

The town manager said the only thing he could find was an annexation file from 1982 which had an annexation map he included in Council's packet. There are no building permit files that he knows of. It is very likely that they went through the county originally to get their permits probably annexing the town to receive water and sewer.

Councilman Wilcox asked about the timeline of the development.

The town manager said he believed, just from talking to them, the yacht club part was done first and then the condos after that.

Councilman Lewis asked if it is typical that we would have a stormwater/sewer run under a building. Isn't it normal that we would divert it from running under a building? The town manager said that generally a developer would come in and we would require that they give us an easement if they want us to maintain it and relocate around a structure, generally that is what happens. This was 1982 and there were a lot of condos probably being built at that time so it is hard to say what happened.

Councilman Wilcox said he was sorry they were having problems but there are a ton of questions that still have to be answered. Is it a contention that the town is responsible for this, between the two groups, the town is responsible for this pipe all the way through and underneath the building? They responded yes.

MPT Efird said she guessed they need to hear from the adjuster and get more information. The town manager said we do and maybe reconvene this same item at another meeting.

The town manager said he is guessing a couple of weeks before we hear from the adjuster. He knows they were in the process of talking to their legal staff too and our insurance is the League of Municipalities. He can only anticipate that it is going to be a couple of weeks.

Adam Bowden, attorney for Otter Creek Landing HOA, asked about the insurance in terms of what they are doing, is it an evaluation of coverage? What is taking the time is the question? The town attorney said they are not necessarily privy to all that so he doesn't know how to respond to the question.

MPT Efird said she hoped they can have some answers for them soon. The town manager will be working on it and they will probably have to have another meeting and they will be notified.

***DISCUSSION AND DIRECTION ON THE TOWN OF CAROLINA BEACH
PARKING ENFORCEMENT PROGRAM AND MANAGEMENT OF FREEMAN
PARK***

The town manager presented this item. He said the town's contract with Lanier Parking ends on December 31, 2010 and they need to decide on how they want to proceed. There are several options that he sees - they can extend the current timeframe on the existing Lanier Parking contract; the town could send out RFP's soliciting bids for companies to manage the town's parking program and come back and try to decide on another vendor, possibly the same vendor depending on how the bids come back; they could bring the parking program in-house and manage the town's enforcement program and Freeman Park admissions; and the other would be some kind of hybrid to abandon a portion of the

parking program, particularly the meter parking and bring the surface lot parking and Freeman Park program in-house along with enforcement. These are the options he sees at this point, there may be others. Current conditions - we have 832 total parking spaces, 144 metered, 498 lot spaces and 190 free hourly spaces in the downtown CBD. In the calendar year of 2009, from January to December, our parking program brought in \$351,000 and the Freeman Park revenue brought in about \$700,000 during the same time frame for a total of a little over \$1 million dollars. Revenue from the beginning of this calendar year of 2010 to 9/15/10 our program has brought in almost \$1.2 million dollars with \$365,000 for our parking program and \$817,000 for our Freeman Park revenue portion. For the budget year from 7/09 through 6/10 they generated about \$1.28 million dollars between parking and Freeman Park. The projected budget expenses for our current budget year are \$367,000 including the Lanier Parking contract which is roughly \$300,000. We also have some debt on some meters we purchased several years back at \$37,000 for some pay stations and there are some other departmental expenses such as capital projects, extra meters, signage, etc., in the amount of \$21,000. As mentioned, there are several alternatives.

Pros for Extending the Contract

- Lanier is familiar with town parking enforcement, collections, and the administration of Freeman Park.
- Lanier is a respected parking company with significantly more experience in parking related matters than town employees.
- Lanier parking provides all management, staffing, collections, and enforcement allowing existing town employees to focus on their daily duties.
- The existing parking office is conveniently located for those leaving the island.
- The existing parking office allows for those that wish to pay a ticket or discuss a parking issue to do so exclusively in an environment built for those activities.
- The existing parking office has a garage, storage and workspace to accommodate the equipment and vehicles needed for the program.
- Lanier parking brings innovative solutions to the town to increase revenue and make the parking process more effective and efficient.
- The town is currently under a management contract with Lanier meaning that it can increase the operation or decrease the operation (particularly enforcement) with a phone call. Lanier limits employee hours during poor weather or periods of inactivity.
- Under the management style contract, the town knows exactly what the itemized costs will be from budget year to budget year.
- Lanier's operation can be reduced drastically in the event that we have a major weather event.

Cons for Extending the Contract

- The town is not involved in the collection of revenue leading some to question procedures and reliability of the collection process.
- There may be some cost savings (estimated \$50,000) for bringing the service in-

house which may be lost during the first few years due to the inexperience of the town with the parking program.

- The town has not extended the opportunity to bid on the service to other companies which may or may not result in a cost savings.
- The town can be more involved in the hiring process of perspective employees if brought in-house.

The estimated budget for extending Lanier's contract we would see a net total revenue of about \$750,000. Our parking program does generate some expenditures but it does bring in \$750,000 and that is part of the tourism fund money that basically goes to pay for a lot of our tourism related activities. The next page you will see the projected budget for the upcoming fiscal year through December 2011 that was provided by Lanier. The page after that are some numbers our finance director pulled together comparing Central Parking's numbers with Lanier Parking's numbers. The second option would be to potentially send our RFP's for soliciting other bids which he gave pros and cons for. The RFP is essentially done so if Council did decide to do this they would have to tweak it and send it out and get responses back fairly quickly and act pretty quickly to get up and running by April 1, 2011 of the new parking season. The estimated budget for sending out an RFP for bids is hard to say what kind of bids you may get back, you may get some back that are a better bid and you may get them back at a less competitive rate so it is very hard to create a budget for sending things out for an RFP until you actually get those responses back. The other would be to consider moving the program in-house which he has given them the pros and cons. He also created a potential budget for that. They anticipate that the total net revenue, if you brought it in-house, our parking program would be about \$791,000. In short, he believes they would save approximately \$40,000 to \$50,000 per year if they brought it back in-house. They would spend less money than currently with Lanier contract. Mainly this is generally because of the \$12,000-\$14,000 in rental payment for the office space across the street as well as the management fee included in that. He gave them copies of personnel costs with a total estimated cost for personnel at \$200,000. There would be one manager that is a full-time employee, one office assistant that is basically a 1,000 hour employee, one full-time employee that would do maintenance and also fill in other areas as needed, and 5,000 hours of enforcement with on street parking as well as our Freeman Park ambassador hours. He looked at what Lanier is doing vs. what we are doing and the total amount of hours were the same. They had it broken out a little differently with more management time than in the enforcement area but the total number of hours was within about 60 hours.

Councilman Lewis asked why ours comes to almost \$40,000 more than theirs in payroll. The town manager said that some of it has to do with some of the unemployment benefits they had to add in.

Councilman Lewis said they are charging us, for example, \$4,000 just for bonuses which we don't pay. We're paying \$1,000 and they are talking about \$4,000 for management bonuses. It would surprise him if they would be much different than their number other than unemployment or worker's comp.

The town manager said there's worker's comp, our insurance package. We projected the manager's salary at \$35,000 which is probably pretty low. The full-time employee was around \$30,000 and all the other benefits you can see below that for those total costs. He believes they used around \$10 an hour employee for the enforcement activity. There are some things they have to abide by that they may not have to such as if you work over 1,000 hours in a given year you are eligible for state retirement and the town isn't paying state retirement. Some other things, if you work over 35 hours per week you are entitled to some benefits that they may not have to pay like health insurance.

Councilman Lewis said some of the items he just mentioned Lanier Parking is charging us for.

The town manager said they can probably speak to their budget better than he can, he thinks they are here tonight. He was only looking at in-house. He thinks they are pretty close to same costs. The operating costs if brought in-house, there would be no rental and we would have to find a location in-house, uniforms, supplies, cell phones, equipment leases, office furniture, what you would see in a normal, departmental budget. There are some other items they didn't add into the equation, some computer costs we would probably have to incur. We had some golf carts in our current budget the CIP items that were loading back into this. If we did it in-house we would do it at \$50,000 cheaper than what Lanier Parking would be charging us. There are a lot of costs that aren't easily computed - extra workload on finance, extra workload on finance, the utility billing clerks for processing the tickets, extra workload for human resources, extra workload for the town manager. Obviously theirs is a turnkey operation that they do for us and we basically reconcile the funds and don't deal with any of the staffing issues. There are some things we couldn't really include in the costs as far as outside work that I may have to do or finance or human resources. The other option he didn't spend a whole lot of time looking at is to abandon the meter parking, focus on enforcement only, lot collection and Freeman Park management. His thought was that there is probably a lot of time tied up in going from meter to meter, taking out funds and working on those meters but you really need to have the same type staff and you probably wouldn't save any money by getting rid of the meters and you would lose a significant amount of revenue as well. Some of the summary stuff - management fee, it is his opinion that the management fee is worth the service that is provided given the following reasons: Lanier Parking is extremely knowledgeable in all aspects of the parking service and has made significant strides in making the town's parking program more efficient, increasing revenue and making the program more effective. They are informed about all of the latest technology and understand how to implement the technology to make the parking experience easier. The management team now provides all of "behind the scenes" that would have to be handled by new employees or existing employees. This includes things he just mentioned, purchasing of equipment, new technologies, budgeting, press releases,

purchasing, any of the day to day activities that you might have to be involved with in this department. The competitive advantage of knowing the parking industry leads to better efficiency and increased revenue. They have come and presented to us and told us how they may have some savings involved with some of the purchases that they do. The other difficulty is finding a location for the operation. In order to have a parking office you need to have it in a convenient location with sufficient parking, sufficient storage and maintenance space for all the machines and things, a separate entrance and office space away from other town activities, and adequate office space and secure location for collections and processing of collections. There are three options that he sees. Option A: continue to rent the existing office space across from the town hall. This location seems to work well, there's a garage there, office space, it's removed and on the way out of town, it's easily accessible. One of the pros is that it would continue to occupy a privately owned space that could become vacant if the program moves to the town hall. Option B: install an additional entrance at the rear of the building and convert two offices there which is now the public works director and finance analyst making that into a parking office. There would be costs involved with that. Option C: rework the front entrance where the planning technician is, move that employee and co-mingle all those activities together in the front office space there. He feels these are the best options for where they could relocate. His recommendation, given the analysis presented, is for the town to move forward with a 2 year commitment to Lanier Parking. However, Lanier Parking would be in agreement with a one year extension. Also attached you will see a copy of the town's contract. Lanier's representatives are here as well for any questions.

Councilman Lashley asked if it is the same price for one year vs. two years as far as an extension. Someone with Lanier Parking said yes.

Councilman Lashley said he is not sure we have any storage area over here where you can put all the golf carts, meters, motorbikes, etc. In speaking with the people who work for Lanier, they said people have difficulty finding them. He would suggest to them that they look downtown if we extend this. The florist shop closed up, there's a place by Sandpiper - not sure there is enough storage there. It would be nice if we had it in the CBD for the parking office. If they stay where they are, he thinks we should pursue helping them put shelves in the storage area to put the meters on instead of the cement floor. They have plenty of space there. Also there have been accidents from people falling from the motor bikes and he feels the golf carts would be better to use. He first thought it would be fine to bring back in-house, the budget committee will need about 6 months to study it. We may want to extend the contract just for one year vs. two years so the study could be done.

Councilman Lewis said he brought up bringing it in-house and thought it would be an opportunity to bring in about \$100,000. He still believes that looking at the numbers provided by Lanier and that would probably reduce by \$30,000 because of costs bringing it in-house but there are some things you would already have here. When he looks around the town hall there is a lot of empty space here and would be shocked if there was not space. He brought it back to the Budget and Finance Committee because he thought it needed to be bounced off of them and they felt they needed to educate themselves more

on what the parking is, felt there was too little time to go out for bids because we are trying to make this thing work very quickly even though there are companies like Republic Parking who are offering us probably a better deal up front and said they would get us 40% off of your equipment purchases vs. 30%. There are people out there who want to bid on it and he would like to get one but we are down to 6 weeks left to make a decision when the contract is up. The committee recommendation was, because of the short term we would not do a bid process as well, we extend it for one year and let the Budget and Finance Committee review the process, put our costs to it and bring it back to Council for a decision. He believes there are other costs and he is concerned why we as a town are getting charged for bonus incentives to managers that should be a corporate cost. He agrees with the recommendation of buying golf carts but thinks the town can negotiate our own golf cart purchases or use government pricing. He doesn't want to see any kind of loss bringing it in-house the first year and would agree to look at a one year contract extension but not a two year. This has been a three year process where it has never been out to bid and he doesn't think that is healthy.

Councilman Wilcox said he agrees with Councilman Lashley on the space issue, the police department can't even find places to put their ATV's and their jet skis. He is also concerned about angry customers coming into the planning department. Do we know the industry standard for the cost of someone who would manage an in-house program? \$35,000 is not a high level salary for someone who is supposed to have a certain expertise. The \$40,000-\$60,000 they would save is if all things were perfect. Finding someone with the ability and knowledge to do this at \$35,000 seems unlikely. He is willing to go with the one year renewal and give the committee time to look at things in more detail.

MPT Efird said she would be interested in looking into it further. She has been there a long time and has been through the in-house parking situation. It would have to be awfully good for her to ever vote for it. She would be willing to give them a one year lease. She thinks they have done an excellent job and run the operation very efficiently, much better than some others they have had.

Councilman Lashley said the town has roughly 20%-22% free spaces, not all beach towns have free parking.

Councilman Lashley made a motion to extend the contract with Lanier Parking for one year. MOTION CARRIED UNANIMOUSLY.

Councilman Lewis made a recommendation for the town to take a look at the audit process. It is not healthy to have someone manage \$1 million dollars plus and we are not auditing their process. That would be a field audit as well as financial audit.

The town manager said he would look into it.

NEW INLET HAZARD RULES PROPOSED BY DIVISION OF COASTAL MANAGEMENT

The Planning Director, Gary Ferguson, presented this item. Mr. Ferguson and the town manager recently met with the folks from the Division of Coastal Management or CAMA and talked about having some new rules established for inlet hazard areas. Inlet hazard areas along our coast with Coastal Management have not been updated since the beginning of the program back in the mid 1970's. They went through ocean setback changes, graduated setbacks, this is one of the big ticket things they want to try and nail down this year. There will be a public hearing on this issue in Beaufort on the 17th and 18th of this month. What Dr. Warren went over with he and the town manager are the changes that have occurred. He reviewed those with Council. He presented a map of Carolina Beach Inlet which depicted two important pieces. One is Masonboro Island and he said to the left you see our little inlet with little red dots around it and then you see the other side of that inlet errodable area which is to the north of that. What you are seeing on this map, however, the whole green area is now going to be designated the inlet hazard area. It is huge in size. Right now we have no houses or improvements in our inlet hazard area. The proposal will have 109 building/structures in this inlet hazard area. It will extend as far south as a little bit north of Starfish which is pretty far into our developed areas. What does that mean? The kind of purple color on the right hand side of the screen was the old inlet hazard area. As you move south it picks up. The size of your area was 4 acres and now it has gone to 30 acres. It is huge in terms of the overall size of this. There are 131 lots in total in this area now that are going to be impacted, \$50 million plus is going to be the total value of land impacted by this that is developed, \$10 million plus is going to be value impacted as improved. The boundaries of the inlet hazard area on the east side of Carolina Beach Avenue N. starts a half block north of Starfish, on the west side Carolina Beach Avenue N. starts at the Sand Dollar, on the east side of Canal starts at Periwinkle and on the west side of Canal starts just north of Virginia Avenue. One of the elements of what is being proposed is, in talking with Dr. Warren, he wanted to insure two things with these new inlet hazard areas - buildings try and maintain a small scale of 10,000 sq. ft. or less. Anything larger than that they have concerns about. He also presented a map of the inlet hazard area with buildings over 10,000 sq. ft. The 12 shaded blue areas of which the Breakers is included are in this inlet hazard area and represent buildings over 10,000 sq. ft. Can you replace a building that is over 10,000 sq. ft. if it is destroyed by natural forces? The answer is yes; right now you can. He said we asked the question what happens if it is a voluntary demolition and Dr. Warren could not answer that question. That is a concern of ours. He has also included some of the changes when you start looking at what is proposed vs. what is right now and what you are seeing is not a huge impact for Carolina Beach only because we are enjoying that static vegetation line. Some communities who have the graduated setback based on the first line of natural vegetation, they are in a different boat so we do get some benefits from this. It used to be that the size limitation inlet hazard areas under the old rule was 5,000 sq. ft. It prohibited commercial buildings and you couldn't do multi-family building over 40 units. Now they are saying, and I guess you could look at this as a betterment, you can go to 10,000 sq. ft. of a building but nothing over that in the inlet hazard area that is delineated on the maps. You can replace the 10,000 sq. ft. if it is

destroyed by natural causes but it has to meet that 120' setback line. Infrastructure such as roads, water/sewer lines, etc., used to be part of this setback but is no longer under the new rules. Density - there are no density limits now but was one in the past, 15,000 sq. ft. per unit was the old rule. Grandfathering of lots both pre and post 1979 will be allowed. The static line exception rule does apply right now. Erosion rates apply to setback determinations, yes they will apply as defined in the current rules now. We are concerned; however, that those rules, they make them up with different erosion rates and they may try to negotiate that static vegetation line as it interacts with the inlet hazard line. Swimming pools today can be east of the 60' setback line. In the inlet hazard area the answer right now is no, they are not going to be allowed and that means if you are on the edge of the inlet hazard area some person might enjoy having a swimming pool placed on their lot because they are outside of the inlet hazard area they couldn't put a swimming pool east of the 60' line if you are in the inlet hazard area. That was not a good thing and Dr. Warren also said if we have a real problem with that to include that in any comments to the CRC. Overview of the rules in general the three options are: (1) Support the new rules governing inlet hazard areas as currently presented. (2) Conceptually support the new rules with amendments addressing swimming pools, building limitations and no new erosion rate setbacks. (3) Do not support the new rule changes.

The town manager said there is probably a fourth option too which would be to allow us to send back these questions and don't take any action and wait until it comes to the forefront.

Councilman Wilcox asked, what is their reasoning for changing this so dramatically? The planning director said that when they sat with Dr. Warren he couldn't give them anything solid to say here are the reasons why for doing what they are doing, it's just that they haven't touched inlets. One of the things about inlets, according to him, is that they oscillate, they don't necessarily erode. They accrete and then they erode. The same area of accretion can be the same area of erosion 10 years down the road and are very unpredictable. And because of that he guesses they are just trying to put out large areas that may be under the influence of an inlet. The town got the map first and then it took forever to get the rules. The rules are not that difficult but he is concerned that down the road they may begin to start to look at our erosion rates around Starfish north and up to the inlet and start saying our static line may not be applicable here and may have to be re-evaluated.

The town manager said the other concern is that the static line goes away because we are not doing beach nourishment again and now you tack on those erosion rates, and that could be an issue also.

Councilman Wilcox asked regarding the 10,000 sq. ft. properties, the only one where the 60' and 120' rule applies ...Twelve of them we counted where there are buildings over 10,000 sq. ft., they do meet the setback. Four of them do not meet the 120' setback. If you are over 5,000 sq. ft. you have to meet the 120' line.

Councilman Wilcox asked about non-conformities. On less than 10,000 sq. ft., anything that comes down for any reason can be rebuilt. The planning director said as long as it meets the setback, yes. But, you said for any reason and that is a point he is not clear on from DCM, whether or not you voluntarily take something down and then you want to re-establish something new.

Councilman Wilcox said there is also fires, arson, end of life products - buildings in such poor structural condition they have to be replaced but we don't know the answer to that. What do you mean by grandfathered lots?

The planning director said lots that were platted before 1979 enjoy a certain amount of development freedom relative to that 60' setback line. Well, they apply the same rules to the inlet hazard area in that those rules will be grandfathered whether they are pre or post 1979 as long as you can meet the setbacks.

Councilman Wilcox asked how many of the structures along there have a setback problem. The planning director said the ones right now they are showing in the blue are the ones that are 10,000 sq. ft. or more that do not. There are a lot of those under the 10,000 sq. ft. that don't meet the 60' line setback but they are not being made more non-conforming, they are staying the same. Everything is being measured from the static line but that is why his concern was about that static line when you get into the inlet hazard area, what are they going to start doing? Are they going to start messing with that line and saying you are in a different erosion rate.

Councilman Wilcox asked how many pools are they dealing with that have a problem. The planning director said right now they have counted about 4 pools that seem to be in an area of concern for us but those pools, because they are in the inlet hazard area, if they were removed they wouldn't be able to be put back if they go with the rule prohibiting them. Dr. Warren was very interested in us getting our input into that and it sounded as if they are willing to reconsider that allowance.

Councilman Wilcox said he had a real problem with somebody changing something this dramatically without providing us a good, solid reason why. Have we looked at the movement of our inlet over the past?

The planning director said that was some of the information that they were telling us, a couple of things going on in Carolina Beach that made it very difficult according to Dr. Warren. One was the amount of beach fill that we've gotten. We have been a beach fill community since the mid 60's and it is hard to understand how the erosion works when you have constant renourishment. Secondly, it was the rock jetties which mean something relative to affecting the erosion rates so he said that is another reason why the erosion for Carolina Beach is a little bit unknown. Apparently just north of the pier there was another revetment that was also causing trouble for the coastal geologists to try and determine where and what is the erosion, such as why are they going too far south but this comes from the science panel for DCM. Jeff was very much of the opinion that this

is the first time in a long time, if ever, the science panel for DCM and the policy people are at odds with one another.

Councilman Wilcox asked, what is the purpose of the inlet hazard area? The planning director said it is just dynamic, it's changing. It is to protect development if anyone wants to build in it.

The town attorney said it arguably exists to provide greater protection, supposedly, for structures and lives of people in an area that is argued by some to be at greater risk than the standard oceanfront.

Councilman Wilcox asked greater risk from what? The town attorney said the dynamics of ocean hydrology erosion and the like as is defined in the rules - the movement of the inlet.

Councilman Wilcox said so, they are outlining this area all the way back to Starfish suggesting that this inlet has an effect.

The planning director said that area is influenced by the inlet as far south as Starfish.

The town attorney said you have already put your finger on the problem. This thing is called the inlet hazard area. We don't know what the difference is of risk of something that is influenced by inlets as opposed to being exposed or risk because of inlets. In other words, he doesn't think anybody on the science panel or DCM is going to be able to explain why there are quantitatively greater risks immediately to the south of Starfish and immediately to the north.

Councilman Wilcox asked, what are the influences? The town manager said mainly the inlet. The erosion at that end has always been historically a hotspot. That break line is kind of what we see as far as the break spot goes but I don't know what the science is behind it other than inlets fluctuate. That is kind of what we get as the science behind it.

Councilman Wilcox said so they are basically trying to say that anybody that builds in this area could be a potential problem.

The town attorney said his understanding is that your experience after your beach renourishment projects has been that you would see faster erosion occurring closer to the inlet. That is either so or not so. The planning director said that is absolutely so right now.

Councilman Wilcox asked if we have plotted our inlet for the last...

The town manager said he thinks they did do some of that, they did take aerial photographs of what they had over the years and have done some of that throughout North Carolina. Our expansion was probably a lot less than a lot of other places. We did have some impact but there were others who were impacted tremendously.

The planning director said our erosion rate near the inlets, north of the pier about 100 yards to the very tip of the inlet, is 8' a year. This is in a westerly direction. When you move down to the pier, it's about 2' a year.

Councilman Wilcox asked, what is the erosion southerly from the inlet, do we know? The planning director said he was speaking from Carolina Beach inlet all the way down to just north of the pier, the erosion rate is higher in the neighborhood of 8' and when you get south of that it drops to about 2' a year. So it is influenced. Their position was a variety of lines come together right around Starfish and those lines are the fluctuation of sand and water right in that area and it is attributable to the inlet is what they are saying.

MPT Efird asked if this is similar to the situation we had on Virginia Avenue some years ago, this plan?

The planning director said no, the COBRA zone is just an area where you can't get federal flood insurance.

Councilman Lashley asked what the planning director's recommendation is?

The planning director said he thinks he and the town manager are pretty much on the same line and thinks what he said lastly would be that we have concerns with this, the science doesn't seem to be all that great and what we want to know is here's our concerns and list those concerns with this. He thinks that is what they are willing to hear. The CRC is divided on this issue and don't seem to be unanimous in they're thinking about this. He thinks the prudent thing to do would be not to support it but say what our concerns are with this proposed legislation. Concerning the 10,000 sq. ft., there is absolutely no justification for that number, the swimming pool issue which seems to be something that is fleeting. If it is good for outside the inlet hazard areas, why isn't it good for inside the inlet hazard areas?

Councilman Wilcox asked, where is the justification for any of this south of the pier? That would be his first question. They have identified this area for a reason but they are not able to articulate that reason to us.

The planning director said that Dr. Warren came and told them about a variety of lines coming together, not at Starfish, but right around the southern end of the rock revetment.

The town manager said he thinks they could add a bullet point that we can't take action on this because we don't know the science behind it or don't know why the new area is what it is.

Councilman Lashley asked if this is a matter that is going to come down the line that we have to vote yes or no?

The town attorney said this is not a foregone conclusion.

The planning director said they are looking for input from local governments about these rules. CRC does work in partnership with local governments and he thinks they want to maintain that partnership. They don't want to make everybody angry.

Councilman Wilcox said they want to ask us before they do it. He would like to hear what Steve has to say.

The town attorney said he thinks the town needs to make a decision to submit comments and not view them merely as comments of them asking your permission. He thinks the particular dynamics going on right now at the CRC are very different from what has gone on in the past. He thinks they have had a huge amount of regulatory changes for the past 5 or 6 years and it is very difficult for those of us in the trenches to keep up with them. He believes that you have the process backwards that until you know how the erosion rate is determined, because after all the erosion rate is what drives the setbacks. Until science can tell us and we can understand here where we live how that erosion rate works, how do we have a discussion on erosion setbacks at all let alone within the context of an IHA. Secondly, is it the most current information that I have is that the science panel is going to reconvene again and they are going to be directed by the CRC to develop another methodology for determining the IHA dynamics. Thirdly, in the long view, I don't see anything good if your priority is to preserve values of the property. There was a particular slide that showed that the value of the properties that were developed was approximately \$58 million dollars. This box is called the inlet hazard area not an inlet influenced area. CRC has received no input, whatsoever, from either the insurance industry or the lending industry as to how it underwrites its risks for purposes of its loans or insurance and I can foresee some underwriter seeing something called an IHA and imposing even higher insurance rates or refusing to do the lending when there is really no quantifiable difference in the risk. Now if there is a quantifiable difference, fine, but, as he understood Dr. Warren what the science panel is able to tell us is that these are areas that are influenced but more by the inlet than it is influenced by frontal ocean dynamics like if you were in the middle of the beach. That doesn't tell me what the difference in risk is. The next point is that we are a static line vegetation exception community and counsel is well aware of the long, hard road the town has taken to get to that point to be able to protect the structures of the 10,000 sq. ft. and I don't think that anyone at DCM or CRC understands fully about how vegetation line exception status interacts with these IHA rules and that is something that really needs to be thrashed out. Carolina Beach is not alone in this. There are many communities that are making very pointed comments to the CRC on this and I think that ultimately what could come out of this is that they may actually defer all this until the erosion rates are determined again or, perhaps if they do come up with these rules, apply them only to the already existing smaller box, the purple box to the right. The final comment he wants to make is that the rules on the right hand column are proposed. We don't know what they are actually going to be. Once you are in that box they can then meet and convene again and change those rules anytime so I suppose that if your goal is to preserve the monetary value of those properties, from where he is sitting, I don't see anything good about being in that box.

Councilman Wilcox said it makes him nervous any time a group of any single profession get together and make rules for the rest of us whether they are scientists or attorneys, etc. We seem to have a list of questions but I still can't get past the point where they haven't demonstrated to us why this area would increase so dramatically. Are they saying all this area has an equal hazard?

The town attorney said they don't say but the bottom line is that everybody within the box is treated equally in terms of restrictions regardless of what the actual risk is. I want Council to understand that I am not naïve. I may be the only person in the room who lost my home, all of it, one night on September 6, 1996. I am well acquainted what are the risks here and I don't take this lightly.

Councilman Wilcox said I personally don't feel we should even respond with questions until we know the answers to where the science comes from but we would probably be remiss if we don't. I would like to see us put together a list of these concerns as well as requesting some additional information on how this area has been established and the reasons. Could we provide them any information? Does this area have anything to do with projected movement of the inlet or just because it is in this proximity to the inlet?

The town manager said he kind of glossed over some of the stuff and it had to do with how they surveyed the original one out vs. some of the long term photos they have taken and some of the movement there. They really do need to detail why the change, why is this so much larger than the original one and we need that information and we can ask for that information.

The town attorney said I think when you say why the change, the ultimate question is - what is the quantifiable increase in risk to those structures in that area as opposed to those further south of it? Further you will see that the risk is the same in that red box whether you are on the oceanfront itself but going all the way back on the other side of Canal Drive in places here on this box. It could be the result of a map that they found back in 1928, who knows.

Councilman Wilcox said even the line that runs at an angle behind Virginia Avenue looks a little suspicious. There's no rhyme or reason to it because all that area, if they are talking about it being low in there, that whole area is low. So, how can everything on that right side of that line be more hazardous than everything on the left side of the line?

The town attorney said MPT Efird raised a good point when she was talking about the COBRA they take the same method, for instance a line that happens through a particular parcel, they just go ahead and encompass the whole parcel in it.

Councilman Lewis said maybe everyone should submit to Tim or Gary their concerns and compile those together and then agree on what we might want to send them.

The town manager said that is something we need to do fairly soon, too, probably by the next day or two.

The planning director said they are going to have their meeting next week, 17th/18th. One of the things that I am not familiar with and was in their write-up says that “erosion rates associated with location of a historical inlet opened in 1954 just south of the Carolina Beach fishing pier”. I have never heard of that.

MPT Efird said she has not either.

The town attorney said it was just north of the fishing pier. They were saying that in those days Carolina Beach pier would have been on what we now call Masonboro Island and that’s not so.

Councilman Wilcox said the town manager, town attorney and town planner probably know most of the concerns and suggested they draft those and send them to Council so they can add to it rather than a bunch of redundancy.

The town manager said that would be great.

The town attorney said he has some template language that he knows from other comments that have been submitted that he could easily send over to the town manager and planner to help them.

The town manager said they can do that this week.

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

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____