

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

October 12, 2010

The Town Council of the Town of Carolina Beach met in regular session on October 12, 2010 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 Macon, Mayor Pro Tem (MPT) Pat Efird; Councilman Lashley; and Councilman Wilcox. Also present was the Town Manager Tim Owens, Town Clerk Lynn Prusa, Finance Director Dawn Johnson and Town Attorney Steve Coggins.

Mayor Macon called the meeting to order.

INVOCATION

Tom Campbell opened the meeting in prayer.

PLEDGE OF ALLEGIANCE

Presentation of Colors and Pledge of Allegiance led by Boy Scout Troop 277.

ADOPT THE AGENDA

MPT Efird made a motion to adopt the agenda with the addition of Item #5A, Boardwalk Makeover's presentation of plaque to Kohl's Department Store. MOTION WAS CARRIED UNANIMOUSLY.

RECOGNIZE THE ARTS AND ACTIVITIES COMMITTEE FOR ESTABLISHING A FARMER'S MARKET IN THE TOWN OF CAROLINA BEACH

Mayor Macon asked the members of the Arts and Activities Committee to step forward and be recognized for their hard work on getting the farmer's market established as well as all of the other activities they are involved in. Councilman Wilcox also recognized them for all of their hard work, time and effort in putting together the farmer's market, which was monumental, and all the weekends through the whole summer and into the fall running it. He said it was one of the best things to happen in Carolina Beach in a long time, and they did a great job.

Mayor Macon made a motion to adopt Resolution No. 10-1034 (Exhibit 1) recognizing members of the Arts and Activities Committee for outstanding voluntary service to the Town of Carolina Beach in establishing the farmer's market. MOTION CARRIED UNANIMOUSLY.

PRESENT PLAQUE TO KOHL'S DEPARTMENT STORE

Brett Keeler spoke on behalf of the Boardwalk Makeover for a special presentation to Kohl's Department Store. He thanked Council and the town for all their help in allowing them to do all the activities over the past two years and all the work that went into them, as well as the approval of ROT monies. He introduced the Boardwalk Makeover decision making team: Mike Kirkbride, Janet Hoffer, Dava Vilapanio, Bruce Slaven, Tom Campbell, Michelle Connet, and Councilman Wilcox. He said this is the core group. He thanked them for all their work as well as the help from 30-50 members of the community, town staff and other Council members. Bruce Slaven presented a plaque to Ms. Cook from Kohl's Department Store for their monetary donation and time from their Kohl's Cares for Kids program which provided quality youth oriented programs for the town.

(Note for the Record: Councilman Lewis arrived at the meeting.)

Councilman Lashley recognized Councilman Wilcox as the hub of the group and thanked him for his work. Mayor Macon personally thanked everyone, Ms. Cook from Kohl's Department Store and Councilman Wilcox because he has constantly heard great comments about what they have done. He also thanked the staff and all volunteers.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Macon, Sheila Mallard and Lynn Prusa recognized Sara Hartman, Admin Support Specialist II to the Town Clerk and HR Departments for 5 years of dedicated service to the town.

CAROLINA BEACH COMMITTEE REPORTS

None were given at this time.

PUBLIC DISCUSSION

Lynn Denne, 100 N. 7th Street, said she is here to applaud Council and give feedback. She and her husband provided entertainment every Tuesday night at the boardwalk for Family Night and said it was an amazing experience for them as well as the families who attended. On the last night of Family Night she had countless numbers of families who gave her thank you letters, how it had affected them, what it had done for their families and that they had made it their tradition every Tuesday night to attend with their families. She also said that towards the end of the season one night a family started talking to them and the woman said she used to live here but hadn't been back for 6 years because there wasn't much to do with families. They now live in the Raleigh/Durham area. The woman said she had been out of work for over 6 months and they couldn't really afford a vacation but because of all the stress they had all been under she decided they needed one of some kind. She talked a friend into bringing their child and sharing a hotel room and

staying for a day, that night and part of the next day. They encountered family night and was amazed because she thought they would have to spend a lot of money entertaining the kids in the evening and wouldn't be able to stay very long. She bought a dollar raffle ticket and won two armbands for the kids to ride the rides which allowed them to stay longer in the motel. Wednesday night they went to bingo and someone bought the kids two cards each to play so they got to play for free and won some prizes. Thursday night there were bands and fireworks for free. The families were able to not spend a lot of money, food was very reasonable - they ended up staying a whole week. The woman was crying at this point and said she is a changed woman, the kids had an awesome experience and are talking about coming back next year. She felt God blessed her with this gift. Her attitude was changed and she is determined to get a new job. Ms. Denne just wanted to share this one person's story with regard to what they have done by making the decision to spend the money to do some wonderful things on the boardwalk. She thanked everyone and said she was very proud to be able to represent her town in such an awesome experience.

Max Sussman, 301 Settlers Lane, Veggie Wagon, thanked everyone who made the farmer's market possible. It was an amazing experience being a vendor there and it gave a lot of opportunities for people to create jobs and income for themselves. Local people and those just over the bridge were able to come and not have to go all the way downtown. Everybody was disappointed that they ended it early and he is here to discuss the possibility of continuing the market and try to extend it into January as long as they have the local goods to do it. Right now they are getting a lot of produce from the fall season. They have talked to some land owners on the island about doing it on private land but he wanted to ask Council about using public land to do it. He knows there are some things during the fall season going on at the lake so he was thinking of on the right-hand side as you are looking south towards Kure Beach where you have the parking lot and the land west of the parking lot - where they were at this weekend. There was a good flow over there and were kept back from any of the activities going on at the lake. It would be a smaller setting with just the produce and items like that. He discussed this with all the vendors last weekend and they all had an interest in doing it. Councilman Wilcox suggested he get with the Arts and Activities Committee and try to put something together with them and come back to Council. They did all the work and without them he doesn't know who would take care of everything. It has to be sponsored by a town committee in order not to have any liability issues and things of that nature. He thinks they would still have to be an integral part of that. Maybe they could work with him to bring some kind of plan. Councilman Lewis suggested, because of the time element, to have him work with the committee and let them come up with a plan. Mayor Macon said he spoke with the town manager who suggested they work through the Parks and Recreation Committee, work with Ted, let them be the sponsor so they don't burn out the volunteers and have the winter off. If they don't have a problem with it, we don't have a problem with it. Mr. Sussman asked about using signage like what was used for the Blues and Jazz Festival, a 4x4, to let people know the farmer's market is carrying on. Mayor Macon suggested he call the town manager on Monday about that. Chris, from the committee, said she thinks it is a great idea to continue it but suggested calling it something else rather than the Carolina Beach Farmer's Market so there would be no

confusion as the latter has an established reputation and image. Councilman Wilcox said that is a good point and they might want to call it a produce market or something else.

Debra Butler, 401 S. 4th Street, said she is a candidate for the New Hanover County Commissioners and she came to introduce herself. She did some videos at the beach promoting Carolina Beach and a number of the businesses and commended the town for the farmer's market. She is in the race she hopes for all the right reasons. She is an attorney by education, graduated from Wake Forest University and has resided in downtown Wilmington since 1994 after 7 years in NYC as a trial attorney. She is fully familiar with the county, studied the issues very well and is interested in propelling the county into the 21st century. She is cautiously optimistic that they have great things ahead and that it will take leadership with innovation, compassion, consensus building and would like to build strong relationships with the beach communities and is committed to doing that.

Councilman Lashley asked what her concerns and thoughts are about the future pier. Ms. Butler said she has not studied that project at length but knows it is a matter of finance much like the Skyway Bridge and R3 projects that will have to be studied at length. It sounds to her in concept like a fantastic idea, something that will bring revenue to the beach and she can't see any reason not to go forward with the study that is proposed. Councilman Lewis asked if she was elected, would she entertain giving money from the county for the pier? She wishes they had enough money to fund all sorts of quality of life projects. She wants to develop a budget SWAT team, for lack of a better term. They have advisory committees for everything under the sun but the one big component that needs the most attention, which is the budget, has no advisory committee. She wants to develop an all volunteer, non-binding, budget advisory committee, SWAT team, so that they can make thoughtful decisions and fine tooth comb the budget, eradicate duplications, because she feels if they chop a certain percentage off the budget, across the board cuts, then you are throwing the baby out with the bathwater. Nobody wants to do that. We all live here for quality of life issues. So certainly sir, when they get to the prioritization of dollars, quality of life things they all want to restore as quickly as possible but they have to make some fundamental, basic sound decisions first but she is all about quality of life when they can afford it.

Councilman Lewis said that last year the county commissioners promised a re-evaluation of properties and made a decision not to do it. A couple of them are committed to doing it next year. If elected, is she committed to do a re-evaluation next year? Ms. Butler said she would vote to re-evaluation. It costs \$500,000 but it's a cost of doing business and she is hopeful they used staff efficiently to do legwork so that it won't cost that much.

Councilman Wilcox said he would gladly get her all the information on the pier that she wants so she can see that it's an income producing project and would benefit the county and the beach. She suggested he go to her website which is rundebrun.com and send her an e-mail and attach it and she promises to read it thoughtfully and carefully. She recognizes where their strengths are and they are right along our coast.

ADOPT THE CONSENT AGENDA

MPT Efird made a motion to approve the consent agenda as follows:

Approval of the minutes:

| | |
|-----------------|--------------------|
| Special Meeting | May 5, 2010 |
| Special Meeting | May 13, 2010 |
| Special Meeting | May 14, 2010 |
| Special Meeting | August 9, 2010 |
| Special Meeting | August 24, 2010 |
| Regular Meeting | September 14, 2010 |

Set a public hearing for November 9, 2010 at 7:30 p.m., or soon thereafter, to consider a request for a conditional use permit and a vested right for a site specific development plan to allow an addition and renovation to the existing fire station.

Set a public hearing for November 9, 2010 at 7:30 p.m., or soon thereafter, to consider a text amendment to create more allowances for storing boats in Carolina Beach. Consider amending Appendix A Article 3.8-1 Table of Permitted Uses; Article 7 Off-Street Parking and Loading Requirements; Article 12.2 Development Standards for Particular Uses. This amendment is for the I-1 and HB zoning districts but allowances may be modified/expanded during meeting deliberations.

Adopt Resolution No. 10-1033 (Exhibit 2) approving a Code of Ethics for the Carolina Beach Town Council.

Requests for budget amendments and transfers:

Fire Department

Transfer \$7,965 from line item #10-530-045 for FY 2009/2010 to line item #10-530-045 for FY 2010/2011.

Public Works

Transfer \$14,500 from line item #105800.03 to line item #105800.57.

MOTION CARRIED UNANIMOUSLY.

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

PUBLIC HEARING - CONSIDER AMENDING ARTICLE 3 AND ARTICLE 23 TO ADDRESS DRIVE-THRU RESTAURANTS. McDONALD'S CORPORATION IS REQUESTING A TEXT CHANGE TO ALLOW FOR DRIVE-THRU RESTAURANTS IN THE CENTRAL BUSINESS DISTRICT. DRIVE-THRU RESTAURANTS (SUCH AS McDONALD'S AND HARDEE'S) ARE CURRENTLY NOT ALLOWED IN THE CBD. SUBSTANTIAL CHANGES MAY BE MADE TO THIS PROPOSAL.

The Town Planner, Ed Parvin, presented this item. He said this is a text amendment request from McDonald's to allow drive-thru fast food restaurants in the Central Business District (CBD). In 1984 when McDonald's was built this was an allowable use. When our ordinances were rewritten in 2000, this was taken out as an allowable use in the CBD probably because it was encouraged to be more pedestrian oriented in that area. Today McDonald's is a grandfathered use which means they are allowed to remain but they are very limited on what they can do on that property. They can't expand or upgrade the facility which is one of the reasons they are interested in making this allowed in the CBD. What is right with allowing vehicle dependent uses like drive-in restaurants in the CBD? It allows for a variety of land uses in the CBD which is the number one goal of the master development plan. This is another use they could potentially allow. It supports vested businesses and allows folks like McDonald's to upgrade and improve their existing businesses. It could be a temporary boost to the economy and would potentially allow other folks to come in and add drive-thru restaurants. What is right and wrong with vehicle dependent uses? Fast food drive-thru restaurants have a high level of vehicle trips compared to most other uses you would see in the area. Why is this bad? Is it because it makes for a pedestrian unfriendly environment? (He showed photos of fast food area.) What is wrong with allowing this in the CBD? Traffic circulation, the more driveway cuts you have in the CBD the harder it is going to be to navigate on the streets. Staff came up with five options: (1) Allow drive-thru restaurants in the CBD. (2) Allow drive-thru restaurants in the CBD with conditions such as bicycle racks, landscaping, stacking lanes - making them more in character with the CBD area. (3) Allow drive-thru restaurants in the CBD but only along properties off of Lake Park Blvd. (4) Amend Article 18 non-conforming ordinance to allow for expansion and substantial improvement of drive-thru restaurants - this would allow for existing drive-thru restaurants to remain as they will under our current ordinance but also allow them to expand or upgrade within the laws of the zoning ordinance. This is the staff recommended option. (5) Keep the current ordinance that does not allow drive-thru restaurants in the CBD - this would not allow any new drive-in restaurants and would prevent the existing ones from doing any expansion on their restaurant. The Planning and Zoning Commission voted in favor of option (4) which is the non-conforming language and one was in favor of increasing the allowances to allow them all in the CBD. Our Master Development Plan Committee is just developing and you haven't heard a lot from them but they have been meeting a little and talking about things going on in the CBD. Staff brought this up as a non-agenda item and it was discussed and they also voted for option (4) with a couple of members voting for option (5).

Councilman Lewis asked about banks with drive-thrus. Mr. Parvin said that banks with drive-thrus are allowed in our CBD as are other multiple types of drive-thrus but not restaurants. He said the Master Development Plan Committee wants to bring this issue back and possibly tighten up those rules and make them more in compliance with the Master Development Plan.

Michael Lee, representing McDonald's, introduced his clients Mr. Anderson and Mr. Vanburen. He said they originally submitted the text amendment to allow drive-thrus as a permitted use for restaurants in the CBD. After meeting with staff and going through TRC and having some discussions, they feel that option (4) strikes a good balance between dealing with the issues the town has with existing uses. They want to upgrade their locations not only for the traffic flow but also for the improvements as opposed to being locked in to what it looks like today for a very long time if they want to expand at all the non-conforming use. When they were before P&Z there was a little bit of confusion in that they thought that expanding the drive-thru was the only expansion of the non-conforming use. Any expansion of this particular structure is an expansion of a non-conforming use that's not allowed. Through all these meetings they do think there has been a good balance that has been struck to allow for these existing uses to improve, look better, increase the values of the property, and allow for a better traffic flow while still being in keeping with the CBD.

Councilman Lewis asked about expansion of the building to allow for more inside seating.

Mr. Lee said that is part of it and there are different modifications that are being accomplished, part of it is in the front area and part in the back. The text amendment really wouldn't be specific, essentially you could expand the use being in keeping with all the technical standards and requirements that the town has but it does allow for an expansion.

Mayor Macon asked how much did the application for the text amendment cost the client. Mr. Lee said he did not know but it was not an expense taken lightly. It is very important for businesses to have the ability to upgrade what they currently have existing so that it is in keeping with what they do at other locations.

Councilman Lashley said he is always into increasing our tax base; however, how many parking spaces are we losing? The planning director said approximately 5 in front but they have an excess of approximately 20 surplus parking. Parking is not an issue on this site whatsoever.

Councilman Lashley said he remembers a lady from McDonald's came up during the road diet discussion and she was complaining that because of the road diet the traffic would cause problems going in there. He asked how business was there this past summer. Mr. Anderson said it had a negative effect on business. He doesn't have the numbers in front of him but there were some days that were down 30%. There was a negative effect also on bus traffic.

MPT Efird complimented Mr. Anderson on his new store at Masonboro.

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

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

The planning director said in 2000 that is when the use, the drive-thru restaurants, became non-conforming. If we are going to eliminate one type of drive-thru, what is the difference with other types of similar uses that may not be serving food such as a drug store, Laundromat or a variety of uses. We have a Brew-Thru now. We are trying to strike a balance. Our Master Development Plan is still in its infancy and we are still moving forward. If we are seriously committed to implementing that plan, we need to make some hard decisions on how we want to see our CBD grow. We have to look at balancing and not make it all pedestrian friendly but strike a balance because right now it is automobile oriented. When we have 12'-14' wide sidewalks down there, you don't want the conflict between vehicles and cars to be perpetuated when you have a variety of other types of drive-thru facilities. He agrees with Councilman Lewis' position and we as staff, with direction from Council, need to begin to look at these types of uses not just focusing on restaurants.

Councilman Wilcox said he supports the Master Development Plan and he doesn't want to see anymore drive-thrus in the area of high density where the pedestrian area flows. He feels Councilman Lewis' comments are accurate but that is a separate issue. We need to go back and look at that differently than what we are looking at tonight. This is a no brainer. McDonald's and Hardee's too have been here a long time and are an important part of our economy. Just because we have a new master plan concept now that doesn't mean you can forget about what they have brought to the community and continue to do so. He supports option (4). They are going to make it a better facility, make it look better which will be better for everyone.

Mayor Macon made a recommendation to add to the motion to refund \$350 for the application.

Councilman Wilcox made a motion to approve staff's, Planning and Zoning Commission's and the Master Development Plan Committee's recommendation for option (4) and to task the town manager to refund the \$350 application fee. MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING CON'T - CONSIDER AMENDING THE ZONING ORDINANCE, ARTICLE 3.8-1 TABLE OF PERMISSIBLE USES TO CREATE A NEW CATEGORY "SINGLE-FAMILY ATTACHED" TO APPLY TO VARIOUS RESIDENTIAL ZONING DISTRICTS; AND TO AMEND ARTICLE 23 DEFINITIONS TO DEFINE THIS USE; AND TO AMEND THE ZONING DEFINITION OF BUILDING. SUBSTANTIAL CHANGES MAY BE MADE TO THIS AMENDMENT AND THEREFORE THE PUBLIC IS ENCOURAGED TO ATTEND.

The item was presented by the Director of Planning and Development, Gary Ferguson. This is a continuance from the last meeting where we were speaking to the issue of how we attach two buildings together to make them one building. Staff came up with three different options: (1) Do nothing. This leaves the ordinance ambiguous and a little hard to understand, (2) Adopt an ordinance that requires roofs and walled structures to tie together two buildings, and (3) Adopt a permissive ordinance which speaks to having a roofed structure like a breezeway or carport that ties together two buildings to make them one. During our discussion Council asked staff to come back with an amendment that would allow for this permissive connection to be made between buildings, again, carports or breezeways that tie together these buildings - to make that allowance possible but not to allow it in several zoning districts which are principally residential, single-family in nature.

Councilman Wilcox asked to be excused. **Mayor Macon made a motion to excuse Councilman Wilcox from this item. MOTION CARRIED UNANIMOUSLY.** Councilman Wilcox stepped out of the room.

The planning director said those residential zones are R-1B and R-3. Also is the R-2 which was not listed on their memo. The R-2 residential zoning district does not allow for duplexes but does allow for planned unit developments (PUD) which is two houses on one lot as long as you meet the area and density requirements and all the other dimensional standards. With the information provided to Council the only change staff would like to have them look at is in the R-2 they have the use as being a permitted use on the table and actually the R-2 district should be eliminated on this based on what staff heard at the last Council meeting. You have an ordinance that is doing three things: (1) Define what a single-family attached type use is which they have given a definition for, (2) Take a look at the definitions of a new term for a building, what is a building, and they have defined that in a better format than what it is currently, and (3) Implement the proposed table of permissible uses, Article 3.8-1, which would limit this connecting opportunity to certain zones but eliminating it from the single-family residential zones in town.

Councilman Lewis said he thinks the discussion at the last meeting was that they were committed to now allowing connected buildings in R-3, R-1B and R-2.

The planning director said the town does not have any architectural review standards so if someone were to come in and say they want to make a weird attachment of an accessory

building to their existing building and put up walls and a roof, they can do that in any zoning district right now with no problem. That would be permissible. What wouldn't be permissible would be to simply use a breezeway or carport to make that connection possible. That would not be permissible unless you enclosed it and put a roof on top of it. The issue is making certain there is no separation between the buildings inside.

Mayor Macon said there are a number of breezeways all over town and in 1983-1984 there were some condos built that were attached with a 2x4 to make those meet a building code stipulation that made it one building because they were attached with a 2x6. So what you are telling me is that the town is now interpreting that unless it is enclosed, if you do a breezeway, that it is not one building attachment-wise. The planning director said yes.

Mayor Macon asked what is the authority for that? The planning director said since 2000 the zoning administrator has been making that call, he believes since the ordinance has been in place. Looking back in the records it seems to support this. Beyond 2000, late 1900's, at that time you still couldn't live in an accessory building.

Mayor Macon said what if it is attached; it's not an accessory building. This is where they had a discussion about accessory buildings and the mayor described a set of prints he had drawn years ago and he had it designed with the master suite over a garage that was attached with a breezeway to the main house and the planning director told him he would not be able to give him a building permit to build that structure in Carolina Beach.

The planning director said if you are attaching an accessory building to the main building or the principle building and the purpose of the accessory building is to live in it, he is exactly right, he would say no. That is not something they would permit.

Mayor Macon said he couldn't disagree more and he doesn't think he can deny that type of construction and design. What you are doing is you are getting into architectural design and dictating how people can live and what they want to live in. It is a reach for him to have that in our ordinance.

Councilman Lewis said he thinks it speaks to density. If you are going to allow somebody to put a breezeway out to an exterior building that building then becomes part of an apartment you can rent on top and bottom and all the density of that particular area becomes a real problem for you because it is a single-family home. Then you have multiple people doing that across all neighborhoods.

Mayor Macon said then it becomes an enforcement issue. If he wanted to build a home he designed when he was younger and wanted to put his master bedroom apart from the rest of the house and apart from where the kids are, he doesn't think the town has the authority or right to tell him he can't do it. He thinks they can tell him he can't rent it out but can't tell him he can't build it.

Councilman Lewis said he has talked to a couple of builders who asked the same question. There are some very large homes on the waterway, probably 7,000 sq. ft., that have a main structure but use a walkway to other structures that could be mother-in-law suites or private master suite, etc., so definitely in design there are opportunities there. What is our wording about how that design is going to conform to those lots?

The planning director said they are trying to be preventative here. That is the goal. He agrees with the mayor, we shouldn't be in a situation where they give people mixed signals where they can do one thing and someone else can't do the same thing. They try to be consistent. One of the concerns when this issue started arising more recently is our zoning administrator has been historically interpreting that you can only attach buildings together with walls and roofs. As a new administrator relatively new to the town, he (planning director) has a hard time reversing that interpretation simply because some new guy comes in on the block, he doesn't think that is fair to everybody who has been denied. That is his concern and he thinks they are opening up a door if they allow for buildings to be occupied separate from other buildings and be tied together simply by a breezeway or by a carport. If the goal of the town is to further enhance affordable housing opportunities or to provide mother-in-law suites and things like that, certainly they can go down that path and explore that. Planning and Zoning Commission asked them to investigate that. Many communities do allow it in their more restrictive residential zoning districts for a variety of reasons but he thought they need to bring it to a public hearing to hear the concerns of the Council and the public about what they would like to see happen here and not have staff making these decisions in a vacuum.

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

Alan Gilbert, 601 Atlanta Avenue, said he watched the broadcast of Council meeting with MPT Eford, and Councilmen Lewis and Lashley where they seemed pretty committed to protect the single-family districts. He remembers that in July 2004 that the word ambiguous was brought to Council then and there was some ambiguity in Section 18. In that July 13, 2004, Ordinance 04-558 was passed which opened a loophole in R-3 where people could start breaking up their individual lots and developing them individually. It took from that time until December 2005 to close up that loophole. When you go through surgery you open up something and there is always a scar. There are some scars left from doing that so you went through a handful of lots that you couldn't develop to a lot of lots back there now that he thinks you can actually break out and we have an ordinance. When there is an ambiguity and this was struck, they just took it out because of the ambiguity of it, it just opened this whole loophole. He thinks if they go to the more permissive way some things could happen that you maybe didn't discuss. You considered single-family, just three districts, we only have two multi-family districts which is quads or more so you have multi-family and T-1 by condition. What he was concerned with was that they were focusing on single-family, R-3, R-2, R-1b but the majority of our residents in our highest density, R-1 and mobile home, you could potentially really exploit this there and if you don't include them in this it becomes problematic. He thinks what they have to do is look at the design function of being able

to use pods or tree houses, that's compelling. Why not let the building community push that cart and come up with the citizens with some design elements that you could go through condition. He cautioned them to error on the conservative end. He said that during the presentation there was one case where somebody brought an accessory building that was too big and Jeremy Hardison said they should help people and the planning director agreed. Helping them was basically building this breezeway to make it one building. He thinks he has a challenge with that with respect to did it really make it one building and he doesn't think it did. He thinks he took a non-conforming situation and put a Band-Aid on it. He thinks that is the ambiguity they are looking for. Certainly he respects you want to build a breezeway between your main house. Is it conditioned? He doesn't know. If it is not, good luck in January going from the master to the kitchen. He is asking them to please consider the more comprehensive and clear restrictive ordinance over the permissive and like that zoning enforcement, it's only reactive in our community. We're not going to go out beating on doors and running people out. It's going to take a neighbor or somebody complaining that there are a lot of cars or something. Since we are reactive, he would say don't come up with a permissive use but have something more stable so we can protect a larger part of our citizenship. With respect to the present language to allow 50% walls or breezeways and a roof, the planning director said he does not have an affinity for the definition either, that definition does not serve the town well and he thinks that is the ambiguity of it. He thinks it would be a disservice to allow a permissive ordinance in our highest density areas. He looked at a 100x100 foot lot with a trailer in the center that has water and sewer. If they pass the permissive ordinance, what would restrict them from putting two more trailers on either side and connect them with a breezeway. You have increased the density by 2 or 3 and the town is not getting any impact fees and would have a larger carrying load. On the 1300 block there is a little garage behind a building, connect it with a breezeway and you connect to the water and sewer and you have another cottage to rent and you increase your density with no fees. He doesn't think the design flexibility discussed here really outweighs the potential for exploiting by increasing density and the load on our system. His thought is if somebody has an air conditioned building, a conditioned building and a conditioned building and the air conditioned building is something they want to live in then connect it with a conditioned building and it becomes one conditioned building. If you have a conditioned building, a primary dwelling, and you have an accessory building and you want to use it for your workshop or home office and you don't want to put transient people living in there, connect it with a breezeway, that is your option in looking at this. But if you are trying to get around the zoning ordinance, he doesn't think they should allow this, it just becomes non-conforming and people are going to use it the way they want to use it. Let's fix the ambiguity, preserve all the density in our zoning district and allow people to do retrofits or additions or remodeling but not some ambiguous interpretation that has gone on since 2000 to make non-conforming, conforming. Regarding the term "single-family attached", Kure Beach just passed an ordinance, Section 15-163, single-family attached residential dwellings. He suggested reading what Kure Beach did with it because he thinks it has a use into getting away from calling single-family attached, which are duplexes, share a wall or single-family town homes got away from calling them duplexes and condominiums and it might help them in the long run on their insurance where they don't have to form these condominium

associations. He thinks what Kure Beach did is what Council has talked about for 5 years. We do need some design flexibility but don't use the ambiguity in this ordinance to make it more permissive. Let's go with attaching air conditioned to air conditioned with conditioned and if you have an accessory building that you want to cover your stuff up from the rain, then that is what you get but it doesn't become a dwelling just because you did that.

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

Mayor Macon said he doesn't like the government telling him what he can do on his own property and it should be limited to reasonable things. Again, this goes back to a plan he designed years ago where he had an accessory building that was no longer an accessory building because he attached it with a breezeway and he put his master suite up because he knew he wanted to be away from all the noise in the main house and he thinks that you have no legal right to tell him that he cannot construct that. You have the legal right to tell him that he can't lease it or rent it out in a single-family zone. You also don't have the right to tell him how to connect it. He goes back to his building inspector days and his experience in the building industry and as an investigator for the state.

Councilman Lewis said the biggest problem seems to be ambiguity of what's going on. What does 50% mean? He has talked to a number of people in the R-3 and R-1b and their biggest concern is the impact on their neighborhoods. If we take and be permissive about all uses we are going to end up with a deck and no walls and TV sitting out there and that's a house. His concern is that we start pulling all this stuff away and then we have nothing. He would like to be comprehensive in our approach to this and not have a permissive use and keep it the same as we have it today. He would like to discuss what the 50% means, is it walls, not walls? Maybe we need more definition of that. He has the same issue with the 50% rule on remodeling an old, existing home based on the value of the structure. That doesn't make sense to him either.

Councilman Lashley made a motion to adopt Ordinance No. 10-852 with a change to include R-2 with that exception.

The planning director said that is the entire ordinance including the definitions, permissible use table. This is going with a permissible allowance in everything but R-1b, R-3 and R-2 zones. If you are outside those zones you can attach with carports and breezeways but you cannot attach buildings together to make them one building in the R-3, R-1b and R-2. It also includes definitions of what a building is and what a single-family attached unit is. Those are the three changes that are before you under the Ordinance No. 10-852.

Councilman Lewis motion to amend that motion to include R-1 and MH so that where it is not a permitted use would be R-1, R-1b, R-2, R-3 and MH.

Mayor Macon called for a vote on the motion to amend by Councilman Lewis.

Vote on amended motion:

MOTION CARRIED 3-1 WITH MAYOR MACON VOTING NO.

The town attorney asked if they had voted on the proposed definition.

The planning director said there are three pieces to Ordinance 10-852 which includes the definition on what a single-family attached unit is, the second is a definition of building and the third is amending the permissible use table to exclude those zones that Councilman Lewis identified.

The town attorney asked about the definition for attached single-family residence it says buildings, plural, that are permanently attached by roofed structures shall be considered a principal building provided the connecting structure covers at least one exterior door to each building. Buildings shall be considered a principal building. He thinks it is not grammatically correct.

The planning director said it is correct. What this is attempting to do is take two buildings and make them one building and in order to do that you have to make a certain attachment. That is what this is trying to describe. Example: an accessory building being attached to a principal building so you have two buildings - those are the two buildings in the beginning of the definition. You are making those two buildings but one building by a method of attachment which is by a carport or breezeway. That is what the definition is trying to explain.

The town attorney said, as he understands, the intent behind this definition is to allow you to regulate density. It's not to get into minutia so much as to how something is designed, what you are trying to do is avoid someone (*Note: inaudible*) on density requirements in a particular zoning district. Is that correct?

The planning director said that at the very end of it you could argue that but that is not what this is really about. Does Council want to allow people to live in accessory buildings? If they want to see that happen and you could say they only want to see bedrooms in those accessory buildings. If that is the goal here, fine. That doesn't mean that a stove is going to go in there or a family is going to go in there, it just means that you're going to have an accessory building that can be habitated or occupied. You could have a bedroom in there or workshop, you can do things in there. Right now our ordinance and it was relatively recent that we explored this and confirmed in our minds, at least Council did, that we cannot allow or should not allow people to live in accessory buildings. If we do that we can take all this stuff and throw it in the garbage and then look at accessory buildings and allowance for occupying them. That would be the simple solution but if we do that, you should be concerned about those accessory buildings that are now becoming areas to live being converted to dwelling units. That is what he means by having a stove in there, a kitchen, and being able to occupy that separate from the house that is next door to it or attached to it. The issue is simply how we want to see

arrangements of buildings made. If we want to allow people to occupy accessory buildings, live in those accessory buildings, then the easiest part of this fix would simply be to have an allowance for it. You can live in your accessory building, you just can't have a stove or separate housekeeping unit in there but you can occupy it. But right now we have an ordinance in place that says that is not legal.

The town attorney said what he is struggling with is the reasoning behind the rule. If it is not density or esthetics, what is it?

The planning director said the accessory building, the reasoning behind it is because of density, the potential. He doesn't want to assume people are going to be guilty before they are guilty, that is where he is going with this.

Councilman Lewis said there are people who are using exterior buildings, accessory buildings and renting them out. Then, all of a sudden, we have 10 people, 10 cars in that parking area, that street, and that density. And we have a person living next door with maybe a small home with everything under one roof who says it is driving him crazy. There is nothing anybody can do about it unless if you are not going to have an ordinance to enforce it.

The town attorney asked what the phrase "that if they are connected it shall be considered a principal building" do then to address the concern about people living in accessory buildings?

The planning director said the concern is that if you attach buildings with roofs, a roofed breezeway or carport, the connecting building that you are attaching it to which used to be maybe an accessory building apart from the house, now you are going to make it part of that house and you are making one principal building. We have no design standards in Carolina Beach, we have no maximum bedroom numbers in Carolina Beach. You can come in and build a 14 bedroom house in the R-3 zoning district right now. How that building is going to be occupied, as long as it meets the setbacks, the height requirement, the 40% lot coverage, you're good. We have a hole right now that people have not taken advantage of who could abuse it by having a large house. Are they going to rent out rooms? Potentially, yes, but that is not what this is about. What we're trying to say is that we are opening up a door that if we allow people to attach buildings together, accessory to a principal building, if we allow that to happen they way it potentially could happen by a roofed structure there is the potential, not the absolute certainty, that that accessory building that has now been attached to the principal building will become a separate dwelling unit.

The town attorney said again the concern is density, esthetics?

Councilman Lewis said it could be home value, density, esthetics. Right now we have a little round house, 350 sq. ft., that was built on a lot. What if there were two more little pods on that lot. That's just an example. It could be all those together.

The town attorney said as he reads this then what they are trying to accomplish then is that it may be desirable or undesirable but the next day it is going to be deemed all one building instead of a building with an accessory structure. He doesn't know if he understands, at the end of the day, what ball you're advancing.

Councilman Lewis said we have a restrictive ordinance today, somebody came up with the idea we should have a permissive ordinance that says you can permit permissive to do any of this anywhere you want and three shouldn't be permissible and we think it should be more restrictive in certain areas so that we keep the integrity of the single-family homes within those areas of the community.

The town attorney said to the planning director, with regard to the large home with 14 bedrooms, how does bringing up that example clarify what we are trying to accomplish here?

The planning director said only because he thinks there is an argument against what he is saying which is the fact that if we don't have a maximum number of bedrooms, if we don't have a maximum size house per se, if we don't have that stuff in the ordinance that would limit that except for the setbacks and the 40% lot coverage, if we have no allowances for number of bedrooms those bedrooms could be rented out. If there is a concern, the concern should be also looking at that as well.

The town attorney said so you are saying then if the sole concern was density we would also be regulating the number of bedrooms within a principal building.

The planning director said communities do that, zoning ordinances do that.

The town attorney said so because we are not doing that obviously we are addressing a concern that involves density but also maybe esthetics, character of the neighborhood, etc.

The planning director gave an example, the Town of Manteo, NC decided that they were concerned about density but what they were also concerned about, as Councilman Lewis brought out and you are bringing out, is esthetics. They were concerned about people building big, monstrous houses on one lot so what they said was you could go ahead and build your mother-in-law suite, whatever, as long as it's single-family and low level and in keeping with the existing house that is on the property. That is an example of trying to achieve an allowance for density but also keeping in mind the esthetics of the town as most important.

Mayor Macon called for a vote on Councilman Lashley's motion.

**Vote on motion to adopt Ordinance No. 10-852 (Exhibit 3):
MOTION CARRIED 3-1 WITH MAYOR MACON VOTING NO.**

Councilman Wilcox said he couldn't help but hear that part of that discussion with regard to enforcement concerns. It is his understanding that the planning director and his department go out and enforce things when people turn other people in or make complaints against other people. He also understands that they drive around and if they see a code violation that they act on that as well.

The planning director said typically, yes.

Councilman Wilcox said so his contention here is that you're not going to act on anything that you know to be a code violation. You're contention with this ordinance is you are not going to act on anything that you already know to be a code issue in his eyes with regard to this ordinance. You're going to only act if someone's neighbor gets upset with them and turns them in.

The planning director said he is still not clear on what he is asking him.

Councilman Lewis said he had the same issue, nobody seems to want to really bring the issue to enforcement. We either have to enforce the zoning ordinance as a compliance of the ordinance - he has a hard time with this reactive enforcement. It has always been an issue with him for years. He agrees with Dan and would like to get a position, what are we going to do?

Councilman Wilcox said he thinks if this ever gets tested it's going to be determined that this was just a violation of state building codes and state statutes because you just set building standards which we are not allowed to do in the town. We have already adopted the state building code and without going to the building council and having building standards adopted, we can't do that. We can do heights, setbacks, we can do all that stuff but that's not the issue. The issue is he just heard him say you were going to intentionally not enforce buildings you are not aware of.

The planning director said he did not say that.

Councilman Wilcox said you said you weren't going to take any action against people that are in violation.

The planning director said if he said that he was mistaken. He is going to be taking action against people who are in violation of our zoning regulations.

Mayor Macon said he did not recall that particular phrase.

Councilman Wilcox said he is referring to the last meeting. You were asked specifically what he was going to do about the people out there that are in violation and you said you are not going to go out doing anything unless you get a complaint.

The planning director said, exactly, that is the posture our department has had. If he gets a complaint from someone and he has gotten some complaints about this issue in the R-3 zoning district, then yes, he will pursue those.

Councilman Wilcox said he just wants to make sure what you consider fair when you enforce selectively or when you are aware of other zoning violations and you should enforce them but you are not going to enforce zoning violations here that you are aware of.

Councilman Lewis said he thinks it should be the position of Council in our town that we enforce the zoning ordinance fairly across the board for everybody. If we know there is a code violation or we should go out and find out if you have any connected buildings, go back and find out.

Councilman Wilcox said that for the record this does not affect his situation but he has concerns about the planning director be willing to go out, when you are driving around and you see something, a sign ordinance, you see some other type of violation, you stop and make an enforcement. In this case you are aware of other situations but you said at the last meeting, you were asked what are going to do about all the other people, we're not going to do anything unless somebody reports them.

Mayor Macon said, having been a zoning enforcement officer and a building inspector and having to enforce the ordinances, it is a difficult job to say the least and balancing your day to day activities and trying to get your job done is a little difficult on the enforcement side especially when you have lost a lot of people in your department. Here lately we have lost our zoning officer and several other people in your department as well. However, he does think this is an issue that warrants enforcement.

Councilman Wilcox said what we heard up here was all about fairness, this is not about fairness. If you are going to say you can be aware of something but I am not going to go out and enforce it unless somebody makes a complaint. That is not consistent with other things you are doing within the town and is certainly not fair to the person who happened to get on the wrong side of his neighbor and got a complaint but the guy three doors down, he's fine with the same conditions.

Mayor Macon said there are some configurations staff is not allowing now simply because of the ordinance you just passed that have absolutely nothing to do with it. His problem is he thinks there was a focus on a situation that absolutely nothing to do with the issue at hand which is can I connect a building to my house, an accessory building to my house and what you guys have said is now I can't.

The planning director said we're not saying you cannot connect buildings to buildings, what we are saying is you can't connect a building to another building and occupy both of them.

Mayor Macon said he thinks that is a violation of his rights. In his garage, if he builds a man cave in there and has a TV and is sitting in there and is his escape from his wife and children and it's no longer a garage, he has a little bar set up in there, you're telling him he can't connect those two buildings so he can walk in between them. He has a problem with that. He thinks government is overstepping its bounds in this particular case.

MPT Efirid asked to be excused from the meeting.

Mayor Macon made a motion to excuse MPT Efirid. MOTION CARRIED UNANIMOUSLY.

DISCUSS RESIDENCY REQUIREMENTS FOR APPOINTMENT TO TOWN BOARDS/COMMITTEES/COMMISSIONS

Councilman Lewis said they had a person who owns some property here and applied for a position on the Budget and Finance Committee, an ad hoc committee he thinks, and there was a question about his residency. He lives somewhere in Wilmington but has a place here and comes down and visits quite often. What is our position on this? What are we going to allow? There was a question there and would affect the committee he will have liaison with. We need some kind of definition.

The town clerk said they also have at least one member on another board who was appointed and they found out after the fact that he was not a resident. It is an ad hoc committee.

Mayor Macon said that he personally doesn't have a problem with it if they put in an application and want to use their knowledge and volunteer to help Carolina Beach, he doesn't think it is much of an issue and if the town board majority votes that they should be allowed on that board, he doesn't have a problem with it. If there is a regulation that they need to change then he guesses we should do that. On the Planning and Zoning Commission they have to live in town. On a volunteer ad hoc committee they're not making zoning decisions.

Councilman Wilcox said his concern would be that you would have people that don't live in the town, even if they are property owners, that would be basically setting the tone for what we are doing in the town and they have different interests than the people who live here. They might be pushing an agenda that would benefit them as a property owner if they want to sell it but might not be good for the community. He suggested looking at a five member board with one non-resident or seven member board with two non-residents, something along those lines that would still protect the integrity of the citizenry of the community but would also allow some outside public input as well as certain professionals in certain fields that we need on these boards that may not reside on the island.

Councilman Lewis agreed with the recommendation.

Councilman Lashley said he has taken a look at all the boards, six standing and seven ad hoc committees. He disagrees with the town clerk on saying we only have two with non-residents. He has no problems with having non-residents but would prefer Carolina Beach residents and would select them over a non-resident. He thinks Planning and Zoning should be residents only and give precedence to residents over non-residents for the other committees.

Councilman Wilcox said his suggestion was only for ad hoc committees.

The town clerk said they could amend the policy. The standing committees, some of those in the code book, will specify, for instance, a hotel manager. That hotel manager may manage a hotel in Carolina Beach but live in Wilmington. That is permitted but we have a lot of ad hoc committees now and we have had some of this to happen where they have applied but don't necessarily live here. They may own property here but not live here. We just needed some clarification on it but she thinks she understands and can bring something back to amend Council policy.

APPOINTMENT TO THE HARBOR COMMITTEE

Mayor Macon made a motion to appoint Shane Snow to the Harbor Committee. MOTION CARRIED UNANIMOUSLY.

CONSIDER THE RELOCATION OF THE US CELLULAR AND VERIZON CELLULAR PHONE BUILDINGS FROM WITHIN THE 100 FOOT REQUIRED WATER WELL RADIUS WITHIN THE GLENN AVENUE RIGHT-OF-WAY

The Operations Director Brian Stanberry presented. He said around 2005 Verizon and US Cellular signed a lease to put antennas on top of the water tower off of Dow Road. The state recently did an inspection and said you can't have buildings within 100 feet of these towers and wells. Bottom line, the companies have to get these buildings moved. Council received a copy of the plan showing the relocation of the buildings to Glenn Avenue in the right-of-way. He said the town receives about \$70,000 from the cell tower leases and it also provides better coverage. Only the buildings will be moved, not the cell towers.

Mayor Macon made a motion to approve the relocation of the two cell company equipment buildings as proposed. MOTION CARRIED UNANIMOUSLY.

CONSIDER RENEWING THE TOWN'S OFFICE SPACE LEASE WITH THE PLEASURE ISLAND CHAMBER OF COMMERCE

The town clerk presented this item on behalf of the town manager in his absence. She said the Chamber lease will be expiring December 31, 2010. The town manager states that the Chamber staff works well with the town staff in their current location and have

been an asset to the visitors and staff. The current lease with the Chamber is \$250 per month. He is recommending that Council consider renewing the lease but consider an increase in the lease amount to \$260 per month to cover inflation costs.

Mayor Macon made a motion to renew the lease with the Chamber of Commerce at \$250 per month. MOTION CARRIED UNANIMOUSLY.

NON-AGENDA ITEMS

Councilman Lashley thanked the operations department and the town for going through the flood issue we had and knows they put in a lot of time and hours and asked to pass it on to staff.

The planning director said he included on their table a little information about the storm and some of the damage with statistics, numbers and locations for their perusal.

Councilman Lewis said he wanted to review the Lanier Parking contract. He thinks we should consider approving the cancellation of that contract so we can bid it out and allow them to have an opportunity to come back with an agreement as well as take a look at alternative ways of delivering that service in-house. The contract expires December 31, 2010 and we need to take a look at it before the automatic renewal.

Councilman Wilcox asked the town attorney if we give them notice now within the notice period, can we withdraw that notice if we go through everything and Council decides that the status quo is good, can we withdraw?

The town attorney said assuming that is acceptable to Lanier, yes.

Mayor Macon said he has spoken with the town manager and he thinks this issue is coming back to them at the next Council meeting and he would be willing, if the contract is in jeopardy of being continued automatically, then they can call a special meeting. His problem is that he wants to be very careful that if you do send a notice and they accept it and then don't want to renew the contract, they want to renegotiate, take in bids and then the bids are all higher, that's the problem he has.

Council agreed to have the town manager coordinate a date for a special meeting to talk about parking.

Mayor Macon made a motion to go into closed session to discuss attorney/client and real estate matters in compliance with NCGS 143-318.11a(3). MOTION CARRIED UNANIMOUSLY.

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

Mayor Macon stated that no action is necessary as a result of the closed session.

Mayor Macon made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____