

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

October 7, 2008

The Town Council of the Town of Carolina Beach met in regular session on October 7, 2008 at 6:30 p.m. in the Council Chambers at the Municipal Administration Building, 1121 N. Lake Park Blvd., Carolina Beach, North Carolina. The following were present: Mayor Joel Macon; Mayor Pro Tem (MPT) Dan Wilcox; Councilman Jerry Johnson; and Councilman Alan Gilbert. Also present were Town Manager, Tim Owens, and Town Clerk, Lynn Prusa. Councilman Pat Efird was absent.

Mayor Macon called the meeting to order.

INVOCATION

Mayor Macon led the invocation.

PLEDGE OF ALLEGIANCE

Mayor Macon led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

Councilman Gilbert made a motion to adopt the agenda. MOTION CARRIED UNANIMOUSLY.

***REQUEST TO HOLD THE PLEASURE ISLAND SURF FISHING CHALLENGE
AT FREEMAN PARK ON OCTOBER 24-26, 2008***

Eddie Hargrove, of Fisherman's Post, said they would like to come back in 2008 and request that Council make Freeman Park available to the fishermen this year. Last year they had passes printed for the fishermen for the tournament and they had over 260 anglers. They are asking Council to make these passes available to them again to be used at the north end on the weekend of October 24-26, 2008 for the fishing tournament.

Councilman Gilbert made a motion to print up the passes and make them available to the fishing participants and give approval for the fishing tournament at Freeman Park. MOTION CARRIED UNANIMOUSLY.

INTRODUCE NEW EMPLOYEES

Chief Younginer introduced Officer Richard Manning.

CAROLINA BEACH COMMITTEE REPORTS

Jasmine McKee, representing the Youth Services Committee, said they currently have 4 people working on the committee - herself, Heather Kenney, Janet Benson and Margaret Dowling. During the last several meetings they have discussed such things as giving the youth more activities to do, as well as more things they can learn such as building, CPR classes and things like that - give them some different trades with the help of area residents. They also went around town to the boardwalk, beach, schools, parks, etc. and talked to different kids and asked them what their likes and dislikes were on the island, what different things they would like to see. The bulk of the answers consisted of an outdoor basketball court, a youth or teen center and a pool. They would like to get more information together to be able to request receiving the \$200,000 Park and Recreation Bond to use for the Youth Services Committee as well as benefiting the youth of our island. They would plan on using the money to fulfill some of the requests and get the committee rolling. The town manager said he is not sure what strings are attached to the \$200,000 and he would have to find out first. He does understand it has to be for recreation purposes. The money is definitely there. He talked to the Parks and Recreation folks. His original thought was to match grants and turn \$200,000 into some more money. It is up to the discretion of Council. He will find out more information about it. He suggested that Ms. McKee call him about it and they will discuss it. She said they do not have any cost figures yet as they need to contact local contractors first and figure out cost of upkeep. Mr. Owens said that a basketball court is budgeted for this year. Oak Island recently did a youth services type center and Ted Lashley talked to them about it. They would be a good point of contact. They used a lot of public support, town funds and, possibly, part of a grant. Ms. Kenny said there is space by the Recreation Center but she doesn't know how much is available or if they could ever expand it. She suggested perhaps putting some kind of storage shed behind the community center for the Help Center and maybe free up some room in the Recreation Center. MPT Wilcox said they currently lease space at the Boardwalk for the Welcome Center that is not being used right now or not on the scale it would be in the summer. During the winter it might be a potential place for a temporary facility. Ms. Kenny said the upstairs at the Recreation Center is currently being used for classes, etc., and two rooms are being used by the Help Center. She feels the Recreation Center should be for kids and recreation not passing out food and things like that. If they were able to free those spaces they could put in a pool table and maybe some video games. That would be something to start on. Councilman Gilbert suggested that Mr. Owens discuss this with Ted Lashley and some of the other employees and walk through the Recreation Center with Heather and Jasmine and share that vision and if something is being under utilized or not utilized in the spirit of the Recreation Center, maybe we could help relocate something.

Ann Bowman, Operations Advisory Committee Chairman, said they had a meeting this morning regarding a request from Council to reconsider whether or not to hold their meetings in the morning or evening. There were four members present and it was their feeling that three of them would have to leave the committee if they went to night time meetings on a regular basis. There are supposed to be five members. Fred Fisher volunteered and at the first meeting wanted the committee to change their hours. She asked twice for a motion to change the meetings to evenings and could not get one and was asked to come tonight to tell Council. They have met for 6 years on the first Tuesday morning and this is the first complaint they have received. Most of the members have commitments in the evening and that is the reason they signed up for the Stormwater Committee originally. That committee became the Operations Advisory Committee. Councilman Gilbert said, with respect to membership, there are a lot of folks in this community that have jobs like Mr. Fisher's and, it seems, if you have a public meeting in the morning you are also excluding people to attend it who also work and we have a lot of commuters here. That is why he put the motion before Council. If we have a committee that serves the pleasure of Council but people can't attend the meeting or serve on it because they have a schedule and we want to keep our committees as diverse as possible and he believes they are the only committee that meets in the morning - of our formal committees that is other than ad hoc. Looking at it as people being able to attend, it seems more consistent and in the spirit of serving the Council, that we want to make that meeting available to as many people as possible. Council concurred and put that forward unanimously for their committee to discuss it. He feels it is unfortunate that they would lose people but he thinks in the long run they would gain some participants with respect to people like Mr. Fisher and other people who have daytime commitments. MPT Wilcox said he thinks it would be great if Mr. Fisher could participate and that he would be of value to the board but, no matter where they put the meetings, there will always be some people that can't make them. Losing three members or upsetting the entire committee that has been together for 6 years and doing good work without complaints, he is not prepared to do that to change the schedule. Ms. Bowman said this is one of those committees that you almost have to be familiar with laws in order to serve on it because all they are doing is comparing Carolina Beach ordinances with other communities' ordinances and trying to follow state law. She spends half her time on the NC General Statutes site. Councilman Gilbert said they have a number of people in the community who have worked for DCM, Water Quality or work for professional organizations as consultants but have daytime jobs. Ms. Bowman said they don't have public attendance normally unless they ask to come before them. They have had four guests that she can recall this year to observe. Councilman Gilbert asked if she thought that might have anything to do with the timing on it, if it was in the evening would you have more people coming that might have some concerns with fees and stormwater and those things? Ms. Bowman said she wasn't sure. Most people don't even know what they cover. Their meetings are all publicized and they would be glad to a meeting at a different time if someone called and said they couldn't attend because of the time. Councilman Gilbert said he really thinks the committee meetings need to be held in the evening, but precluding losing people he would say that any new additions to the committee they agree to be flexible to meetings being held in the evening and when the terms come due they can flush this out. He feels it is important to have some consistency and make the

meetings available to the majority of the general public. This is why they have Council meetings in the evening. For future regard as they advertise for that committee, it is with the understanding that it would be the pleasure of Council to eventually have those meetings when the majority of the public might be available to attend. Ms. Bowman agreed that was not a bad idea. She stated, in particular to Councilman Gilbert, that the committee feels quite strongly about wanting to meet the needs of the citizens in town and they volunteered to have a regularly scheduled quarterly, evening meeting if that would please Council but most of them can't do it in the evening on a monthly basis.

Adam Higgins, representing the Arts and Activities Committee, said they had a couple of annual events in mind and would like feedback and overall approval from Council. The first and most time sensitive is the Haunted Boardwalk which they are considering for October 30, 31 and November 1, 2008. Halloween is on Friday, October 31st. They are not 100% on using all three of the dates but that would be the largest number of days. The idea is to utilize the natural setting there, nice alleyways, etc., decorate them and have a walking haunted house for kids and maybe incorporate some buildings like the arcade building but they are not sure that would be available, for insurance and other reasons. The heart of it would be a walking Boardwalk tour. There is a UNCW fraternity who is interested in helping out with some of the manpower for their philanthropy and community service hours. There is also a UNCW art grad who would work with those kids on decorations. They could have pumpkin carving contests and things of that nature. Councilman Johnson pointed out that October 30th is followed by a school day and it might clash. Mr. Higgins agreed. They have a meeting tomorrow morning to hash out the specifics on days. Insurance would be taken care of by the Boardwalk Makeover group and there would not be any fee to participate.

The second event is the Christmas by the Sea which is also a walking tour type event and they would like for it to coincide with the Island of Lights timeframe. The idea is to decorate the Boardwalk with the gazebo as a main entrance focal point with 4-5 lighted trees, the empty lot behind the gazebo then up to the coves - decorate the whole strip. They would be looking for sponsors for the coves to pitch in on the decorating costs of those. They would try to staff some weekends, maybe have some music or carolers or hot chocolate to make it friendly and inviting. They would have competitions for decorating the coves for the different sponsors. They have a lot of ideas and feel they would get a lot of support.

Councilman Gilbert made a motion to approve the Haunted Boardwalk on October 30, 31 and November 1, 2008 and the projected Christmas by the Sea and work with the town manager on the specific dates. MOTION CARRIED UNANIMOUSLY.

PUBLIC DISCUSSION (Five minute time limit per person)

There being no public discussion items, **Mayor Macon made a motion to move Item #32 to Item #10(a). MOTION CARRIED UNANIMOUSLY.**

CONSIDER APPROVAL OF RESOLUTION SUPPORTING WILMINGTON DOWNTOWN, INC'S REQUEST TO THE ABC BOARD TO ELIMINATE 3-DAY WAIT RULE FOR PRIVATE CLUBS

Mr. John Hinnant, said that Wilmington Downtown has received much press over the last few months regarding the private club industry there, particularly bars and if you are familiar with ABC rules in the State of NC, if you are an establishment that serves liquor by the drink but do not serve food, you are classified as a private club and, as such, you are required to have a 3-day wait to allow someone to become a member. The purpose of the 3-day wait is to do background checks and make sure the customer who is seeking to become a member is of sound character and judgment and well suited to join the club. In the process of dealing with some issues, with regards to the submarine commissioning ceremony that occurred in May, as well as some Marines who encountered some difficulties accessing some of our clubs over the summer, they scheduled a meeting in August which was attended by the local delegation, Wilmington City Council, New Hanover County Commissioner, ALE officer, and the Chief Counsel for the ABC Commission and at that time they developed several action items at that meeting: Have the civilian liaison with Camp Lejeune serve in an ex officio capacity, along with ABOARD (Association of Bars and Restaurant Owners Downtown). He has been to two monthly meetings and is interacting with e-mail correspondence with the bar owners in making sure that if a military member is out of line he can hold him accountable and make sure the communication is sent to the command to make sure they are punished. Secondly was a general consensus, is that the 3-day wait provision had to change and be done away with. Also, when we considered this 3-day wait, it is important to note that the average tourist in our market stays 4.15 days. We are leaving discretionary income on the table. We are leaving customers at the door that cannot spend their money under that provision. Closure and Realignment Commission has created an influx of population in Fayetteville and Camp Lejeune which generates a lot more transient citizenry family of military members who come in for only a couple of days. It is another opportunity to gain some revenue locally and statewide. Additionally the growing film industry is creating a lot of transient citizens as well. Also, the City of Wilmington is investing \$62 million dollars in a convention center. Right now they have about 69 liquor licenses in downtown Wilmington and approximately half of those are private clubs with a capacity of over 10,000 people in those 69 liquor licenses. If the 3-day wait provision is being enforced, he is afraid that the restaurants won't be able to handle the increased capacity the convention center will be putting on the market and feels that it has to go away. They either need the resources to enforce the 3-day wait or they need to deregulate. They are here to respectfully requesting support of this resolution. To date, the City of Wilmington, the Town of Kure Beach and the Town of Wrightsville Beach have all passed resolutions supporting an effort to end the 3-day wait and New Hanover County Commissioners asked that he secure support of all the beach towns before they consider the resolution.

Mayor Macon made a motion to adopt Resolution No. 08-935 (Exhibit 1) supporting the elimination of the 3-day wait rule for private clubs and give authorization to local governments to charge a permit fee to raise additional revenue to assist local governments in dealing with alcohol related enforcement issues. **MOTION CARRIED UNANIMOUSLY.**

Mayor Macon made a motion to excuse Councilwoman Efird from voting due to absence because of illness. **MOTION CARRIED UNANIMOUSLY.**

ADOPT THE CONSENT AGENDA

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

Approval of the Minutes:

Regular Meeting	August 12, 2008
Recessed Meeting Of 8/12/08	August 22, 2008
Special Meeting	August 22, 2008

Set a public hearing date for Monday, November 10, 2008 at 7:30 p.m., or soon thereafter, to consider a request from Paradise Island V, LLC, for a modification to a conditional use permit granted on April 8, 2008 that allows an open air commercial platform/oceanfront restaurant located at 101 Carolina Beach Avenue S. (PIN #313015-54-5527-000). Applicant is requesting a height increase from 50' to 55'.

Adopt reimbursement Resolution No. 08-932 (Exhibit 2) for Phase I - development of streetscape improvements in the Central Business District.

Adopt proposed Resolution No. 08-934 (Exhibit 3) endorsing the application for the NCDOT Division of Bicycle and Pedestrian Transportation 2009 Bicycle and Pedestrian Grant Initiative.

MOTION CARRIED UNANIMOUSLY.

DISCUSSION REGARDING THE CONSIDERATION OF A MULTI-USE PARKING DECK IN THE CENTRAL BUSINESS DISTRICT

Adam Short, research fellow for the Town of Carolina Beach, said he wanted to discuss the possibility of a multi-use parking facility. A parking deck has been discussed before in the Central Business District and he would like Council to consider the possibility of having other things besides just parking. He showed examples such as: Asheville - hotel with public parking and a restaurant; Roanoke - center in the square facility with public

parking and seven different non-profit organizations at no charge; standard parking deck on top with office/leased space on bottom; Miami - building with public parking with shops on the bottom. These are some potential uses: parking, town sponsored events (on top level such as festivals, different exhibits, cook-outs, fish fries, etc.), leaseable space - top or bottom, recreational space (such as outdoor basketball court), and park or green space on top. Potentially interested users: Police Department, possible small office with bathroom; Chamber of Commerce is very interested as they need storage/meeting space; Federal Point Historical Center stated they need some meeting space but more interested in a kiosk; commercial uses - restaurants, retail, etc.; art groups; library; visitors' center; senior center; youth center; local and state government. Rough, preliminary estimates come in around \$8 million dollars just for the deck. Would it be worth, for an additional estimate of \$1 and \$2 million dollars for Type 1A construction, to have leaseable space of 15,000 sq. ft. and is it what Carolina Beach needs. He showed a preliminary deck design to go between Myrtle Avenue and Canal Drive and what it would look like from the air. He said it is about \$150-\$200 per square foot for Type 1A construction for office space not including upgrades. Parking is about \$18,000 per space. MPT Wilcox would like to see some more examples and whether they are privately owned or owned by the municipality. Councilman Johnson recommended a day trip with Council, the planning director and town manager to Myrtle Beach to see some of their new parking decks, the development mentioned by Mayor Macon and streetscapes. Mayor Macon said he has met with Donna Moffett who runs the NC Aquarium and they discussed parking in depth. There are less and less opportunities for a parking deck. The site shown in the picture is land the town owns. There have been other parcels that may or may not be available that they have looked at and they will continue to look at them. Ms. Moffett is definitely in favor of that and the closer the parking is to her, the better. She did discuss that if the parking deck is not closely located to her facility, she would want to probably scale back her meeting facilities. She would still have the banquet facilities but perhaps not as big as the one currently being constructed. She said the one in Nags Head had grown to pretty large proportions because they felt that there was nothing else in the area where it is going and would be better to make it as full service facility as possible. She felt that with the Marriott and Hilton being in close proximity, she may not have to have quite as much in her facility. Councilman Johnson will meet with the Town Manager to discuss dates and contact Council regarding those dates.

CONSIDER AMENDING APPENDIX A ZONING, ARTICLE 22.5 PROTEST PETITION

Ed Parvin said this update is in response to legislative changes to the NC General Statutes. He showed an example of a protest petition on the overhead which showed a block of land area proposed to be rezoned, a protest petition would need to encompass 20% of that area. This could be one lot or several lots and the 20% could be in separate areas. Council would have to have a ¾'s vote (4 members of a 5 member board) of all members to a qualified, filed protest against a zoning map amendment. The second example - if there is protest coming from land outside the area to be rezoned, you can take a petition of 5% of the total area within 100 feet of the land. The requirement for signatures has been reduced from 20% to 5% of the land area within a 100 foot wide

buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. If there is a 100 foot wide street right-of-way, if it is 100 feet or less then that is excluded. If it is over 100 feet then that area would not be included. Those are the two scenarios where people can submit protest petitions. Staff provided two options. Option #1 is what a lot of communities have done and it basically leaves the ordinance open and references the General Statutes. It says that a written petition required by form provided by the Town but it doesn't lay out the details of the General Statute. Option #2 lays out what the ordinance talks about, has an illustration similar to what he showed. The actual reader of the ordinance can discover what they need to do to make sure they have an adequate petition. Either option would suffice, communities do it both ways. TRC did not have a preference. The Planning and Zoning Commission looked at Option #2 and like that because the reader of the ordinance could look at that and see exactly what they needed to do. He said he would like to look at, under both options, is item (3) which he recommended the sentence include the word "may" and read, "May be on a form prescribed and provided by the town manager and contain all the information requested on the form." The town will provide the form but if they fill out a petition and it meets all the requirements of our ordinance, they could use their own form.

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

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

Mayor Macon made a motion to adopt Ordinance No. 08-762 (Exhibit 4) using Option #2 adding the word "may" to item (3), and also adding under (a) and (b) at the beginning of the ordinance right after in accordance with G.S. 160A-385 and GS 160A-386, "as may be amended from time to time" and that the adoption of this ordinance is in accordance with the provisions of and that the adoption of this ordinance is consistent with the goals and objectives of the adopted Land Use Plan and other long range plans. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING APPENDIX A ZONING, ARTICLE 14.5 AND ARTICLE 21 BOARD RESPONSIBILITIES AND ADMINISTRATIVE MECHANISMS, 21.2 PLANNING AND ZONING COMMISSION MEETINGS TO ADDRESS PUBLIC NOTICE REQUIREMENTS FOR PLANNING AND ZONING MEETINGS

Ed Parvin made the presentation. He said staff has gone back and looked at the town's public notice requirements for the Planning and Zoning Commission. Right now the Planning and Zoning Commission follows the same requirements as the Town Council. That changed in 2006. The change occurred when it was decided to go to a quasi-judicial process at the Planning and Zoning Commission. Since then we have removed that process and we no longer hold public hearings at the Planning and Zoning board level. It is just a public meeting and we are looking to go back to remove the notice and advertisement requirements that were incorporated in 2006. What you have now is two

ads required to go into a newspaper. There is an onsite posting, mailing to affected property owners and, if it is a zoning amendment or it affects zoning uses, there is a mailing that is required to go to the Military Ocean Terminal Sunny Point. Advertising requirements from other NC municipalities for their planning board, essentially there are none. In looking at other communities, none of them have requirements in their ordinance for advertisements for their planning boards. Most of them do have an ad, whether it is the agenda, there is a lot of flexibility how they publish it. All of them do place something in there. He put September 10, 2008 Island Gazette because they talked about advertisements that we did back in 2000, he thinks three consecutive papers, but Willard said it was actually three ads in one newspaper. At that time there was only a requirement for one ad. There are times where we have advertised above and beyond. Maybe it was an item we really wanted to get people out. He showed a sample ad from Nags Head which showed title and agenda. Staff did something similar for our planning board in the last Island Gazette. This gives you a little bit more information, little easier to read. There are some advantages from moving away with the stringent requirements the decision making board had or what the Town Council has. Staff looked at this from several different angles, starting with public participation. Mr. Parvin reviewed the seven evaluation criteria. Staff recommends adoption of the proposed amendment. He presented two options. The recommendations basically reiterate what he has been talking about. The option staff is looking at takes the language and changes it to one advertisement that we may place in the newspaper. They changed the word from “shall” to “may” and that would still meet the 10-25 day window. The Planning and Zoning Commission looked at it a little bit differently. They changed it to “may” as well but wanted to keep the same requirements as Town Council. Our language is just one ad, their language is the ad, the notice, the postings and everything but if there is a mistake, the meeting can still go on. Planning and Zoning Commission wanted this to be an ordinance that comes back to them in six months and they want to see just how it works out. If it does look like it works well, they want to keep moving with it, otherwise, then they would like staff to bring it back after six months.

Gary Ferguson said we are not attempting to limit or restrict information to the public. The words we are proposing to change is a “shall” to a “may” statement which means that if there is a mistake in the advertising, even on our part, staff’s part or on the newspaper’s part, we are not going to have to rerun another meeting and do this all over again. We are not going to change the way we post property, the way we notify adjacent property owners for conditional use hearings that comes before Council. We are still going to be doing everything we have been doing but we don’t want to be hamstrung by a typo, a miscommunication that makes us rerun another meeting just to have this issue satisfied. This is not an effort to undermine public input into our Planning and Zoning Commission meetings.

Steve Coggins said he understands the primary reason for this amendment is to allow flexibility for advertising. It appears also to be an effort to have some flexibility as to whether or not these recommendations are adopted by the Planning and Zoning Commission’s regularly scheduled meeting or a specially called meeting and suggested that Section 22.3 would need to be amended as well.

Staff said they could bring back to Council an amendment to Section 22.3.

MPT Wilcox made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

MPT Wilcox made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson made a motion to adopt Ordinance No. 08-761 using Attachment #2 or Option #2 as recommended by Planning and Zoning Commission with the amendment to item (4) under Section 21.2 stating, “Conditional use permits or zoning text and/or zoning map amendment shall be considered by the commission for recommendation(s) to town council at a scheduled meeting, held, advertised and noticed two different times in a newspaper of general circulation in the town no more than 25 days before the scheduled hearing.”

Gary Ferguson asked what Council would be comfortable with, understanding the situation we are under now. It would be great for staff to get clear direction from the board members as to what they think staff should be doing to notice the Planning and Zoning Commission meetings and to what level should they do that.

Councilman Gilbert said he thinks they should advertise twice in 25 days. You communicate the best that you can with the public of what is going on and do it somewhere between 25 days and 1 day before the meeting. On the other issues that you had, if the ball gets dropped on that, he thinks they should do everything they can to accomplish this but it shouldn't debilitate the process at the Planning and Zoning level. His personal feeling is two ads in 25 days, give you and out on the “may” on those other three points and you can get as creative as you want on the advertising.

MPT Wilcox said he is looking for adequate advertising and it doesn't have to be in the same advertising as done for Council. Something that is meaningful to the public. If two times in 25 days sounds reasonable, he would be fine with that. The main objective is the intent to follow a certain set of advertisement and, if something goes wrong in the process where something is a day late in the paper or the paper or the paper doesn't get something worded exactly right that it doesn't stop the process at the Planning and Zoning level.

Councilman Johnson suggested that where you have the Planning and Zoning Commission “may” follow the same advertisement, something to the effect in listing these five items here and adding number six or the two ads in the newspaper will be two different times no more than 25 days prior to the hearing instead of referring to these sections which ties you to the ten days.

Mayor Macon said that being on Town Council he is going to know what is coming up, he doesn't have to read the public notices because they are in his box most of the time but he sees people that do. They scrutinize them. Looking at the example, there was a typo

on the advertisement which said Zone C-2 and it actually was a B-2. What you are saying is that someone could say that it wasn't advertised properly, therefore, we're not going to talk about it. Then we have to re-advertise and do another meeting and that is basically something similar to what happened. The problem with that is, let's say the address was wrong and someone who was affected that doesn't live in Carolina Beach, they're an out-of-town property owner and they see the address is not near their home but it was a typo and it actually is beside their home and there is something that is pending. You are going to have a problem with that because that is their notice process. I don't read the paper and, if I am no longer on the Town Council, probably won't read in depth to know the different issues that may be coming up to P&Z but if it affects him as a property owner, then he would definitely want to get mailing. To him that is a requirement that he can't do without either.

Steve Coggins said that the affected property owner that you described will be notified specifically during the Council's section of it.

Gary Ferguson said this is a duplication of effort, everything is done twice.

Councilman Johnson said you can be missed twice, people have complained that notices were not sent to the same address as their tax bills. People have said they were not notified.

Tim Owens said they have been notified because he has looked on the list.

Mayor Macon said he understands what staff is trying to say, you want it to be that you "may" so that if there is an error but it concerns him about the error. He knows that there have been some problems in the past and staff has been trying to work through them with the newspaper.

Staff said it also includes the dates to be advertised and they do that two times, once for Planning and Zoning Commission meetings and once for Council meetings. Also, especially at the planning board meeting there is almost always a change, almost always at TRC level, there is a very strict timeline, but there is almost always a change of what goes forth because there is something added on or something the applicant wants to change during that first part of the process so the ad, usually, gets changed at the Planning and Zoning level so that is when you see a lot of mistakes occur whether it is on our part or the Island Gazette's part or whoever's fault it is. By the time you get to the Town Council ad, nothing is changing.

MPT Wilcox said he is a big property rights advocate and he certainly would want to be notified but, if you put things in perspective and look at other beach towns that are doing their notifications, if we cut our notification process in half, we would still be doing five times more than they're doing. We are going above and beyond to get these advertisements out on multiple levels and he thinks what staff is asking for is, in the rare occasion that there is a mix up in a publication or something of that nature, that it not stop the whole process when we know that process will be duplicated for Town Council.

Steve Coggins said, to add to the comments of staff, apparently the policy of the General Assembly that empowers and, in fact, mandates the creation of the planning board, the statutes only require that the meeting of the planning board be public. There is no statutory requirement whatsoever that addresses obligations of planning board meetings, regardless of its functions, to be noticed in a particular way. The General Assembly has only spoken that those meetings be public. He senses that they have identified three issues: (1) In addition to being public, should there be some kind of notice at all that is required. (2) Staff is entitled to know what that required notice is at minimum. (3) What is the type of notice in which they are allowed discretion on? Is there going to be, for instance, a mandatory minimum prior amount of notice and, if so, what for? Is it going to have to be in the newspaper, on a posted sign, mailing or on the internet? He senses there is a desire by Council to give them flexibility. He does want to underline the point made by the Mayor that the word “may” means may and given the fact that there is no statutory requirement for notice at all, the appearance of this word “may” preceding any form of suggested notice here basically gives them the power to give no notice at all if that is what they chose to do. We know that is not the intent of staff but, in future staffs, councils or future times, that the absence of a statutory mandate of notice, the word “may” could mean not to give any notice at all. He thinks this is a very solvable problem. He senses Council wants some form of notice, that they want to relieve staff of the onerous burden of duplicating the stringent requirements for notice with respect to Council. At the same time you don’t want to remove any obligation to give any notice at all. His opinion as town attorney is that neither proposal accomplishes those goals.

Gary Ferguson said that before this amendment occurred in 2006 he asked Council if it would be agreeable to go back to what they were doing before this amendment was adopted which said, basically, you are going to follow the exact same process Town Council meetings follow for noticing requirements to be done for Planning and Zoning Commission meetings.

Ed Parvin said that prior to 2006 it was one ad with the 10 to 25 day window. Essentially they were changing the process to go to a quasi-judicial process and this is just one thing that they changed. There was no outcry that they were not advertising - this was just part of the change to accommodate to replicate what Council was doing in 2006.

Councilman Johnson asked if the prior one to 2006, the one that you have right now, it had one ad. Did it have the other four items? Ed Parvin said no. It was very similar to Wrightsville Beach which is the only other community they could find in NC that has notice requirements at all for planning board and it required one ad. They may notify affected property owners, post property but it is not required. There is no ordinance.

Councilman Gilbert said we changed the way we did it because of the quasi-judicial issue with Planning and Zoning. He thinks it is important to onsite posting, to mail to the affected property owners, to follow the Sunny Point at the Planning and Zoning level and to make every attempt to do that correctly but if you slip up he doesn’t think it is right to debilitate the process and hurt the people on the other side of it. He is not sure if one or

two ads are enough. Two ads are better than one when it comes to a weekly publication that not everyone is going to get. He would like to continue doing what they are doing but use “may” instead of “shall” but he wants to see is that you “shall” advertise twice in 25 days. If you want to sunset it after a year or six months and revisit it, that would be a good start. Then staff could say they would like to stop doing this, we’re not getting any feedback and then wean ourselves off of what we have been doing with respect to the value of that Planning and Zoning commissioner and make sure they are involved with that process.

Councilman Johnson rescinded his motion.

Mayor Macon made a motion to direct staff to take another look at this and bring it back to the next meeting. MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to recess for 5 minutes. MOTION CARRIED UNANIMOUSLY.

Mayor Macon called the meeting back to order.

CONSIDER AMENDING THE TOWN CODE CHAPTER 8 LICENSES AND BUSINESS REGULATIONS, ARTICLE IX SIDEWALK CAFES

Ed Parvin said this item was discussed at the August 12th regularly scheduled meeting and requested by Council for staff to review again and bring back. Some of the issues discussed were: (1) Sidewalk cafes were intended for seated dining in conjunction with the consumption of alcoholic beverages, but patrons have been utilizing them as a drinking and smoking area. (2) The number of patrons on the sidewalk has been exceeding what was permitted resulting in patrons blocking the area of the sidewalk that is to remain open for pedestrians. (3) The sidewalk cafes are remaining open after 11 p.m. The purpose of this amendment was to clarify those items in the ordinance as far as when you are required to cease operations and that all items such as chairs, decking, tables, and barricades associated with sidewalk cafes shall be removed at 11 p.m. and sidewalk area open for public use. Also, sidewalk cafes are for seated dining only. Those changes were made in the proposed ordinance, where they defined the purpose of a sidewalk café and laid out a little more clearly what the timeframes for sidewalk cafes are and spelled out specifically what a sidewalk café is used for. Mr. Parvin said they brought in the sidewalk café operators (three now) and talked about these rules and they also signed new agreements to abide by rules which included language contained in Appendix #2.

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

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

Councilman Gilbert made a motion to approve Ordinance No. 08-763 (Exhibit 5) and that it is consistent with the General Statute 160A-383 and consistent with the goals and objectives of the Land Use Plan and other long range plans. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE TOWN CODE, CHAPTER 16 UTILITIES, ARTICLE IV STORMWATER MANAGEMENT ORDINANCE

Tim Owens said that at the last Council meeting they had a lengthy discussion about stormwater and part of it had to do with a new subdivision that was being required to treat the water twice. He took time to compile the Phase II permit, which they got in February 2007, and go through these issues. Currently the town is a Phase II community and received a Phase II permit in 2007 which requires the town meet certain stormwater criteria. There are also some new laws that went into effect in October 1, 2008, new coastal stormwater rules for the most part where our Phase II requires that we meet them. The discussion they had is fairly complex. According to our ordinances, we are more stringent than DWQ at this point. Stormwater treatment is required for any development activity over 500 sq. ft., for all new major subdivisions, for redevelopment of 50% of sites - they must treat the entire site, and when a site is expanded then that site must meet the town's treatment requirements for the newly expanded areas. This is a little different than our coastal stormwater regulations they allow more flexibility with redevelopment. Basically the coastal stormwater regulations would allow to, as long as you don't have more intense development as far as surface area goes, you could go back with the same development. Our codes are a little more stringent. The town has been requiring that the first 1.5" be treated and that the pre-storm, post-storm runoff rates equal the same. That is not what our ordinance says. Our ordinance says the ten year storm, which along the lines of about 7-7 1/2". The new coastal stormwater regs would require one year, 24 hour storm which is about 3.5" of rain. We have not been requiring developments to meet the ten year standard and he doesn't think it is really economically feasible to do so. We are still more stringent than DWQ and the ten year is extremely stringent. We also require that any development pay impact fees if they can't meet the 1 1/2" on site. Currently the DWQ kicks in only at one acre but was changed recently to 10,000 sq. ft. but only applies to subdivisions and commercial areas. It talks about built upon areas. It used to be an acre of land to start with so there have been some changes there. Phase II rules for our permits, there are a couple of items he tried to hit on such as the DWQ change. If you're within SA waters - they got the waters map and he doesn't believe they have anything within 1/2 mile of essay waters. If you did, if you met the threshold for DWQ then you would have to meet the one year, 24 hour storm which is about 3.5". The loaded density development regulations for mainly, could be commercial, subdivisions change from 24% to 12%. Current requirements for current subdivisions, there are a number of subdivisions in this town that have stormwater ponds and that is where we entered this discussion. They were all built at different times with different designs and may or may not meet the intent of the original DWQ permit. For the most part, state DWQ permits require restrictive covenants to limit impervious surface and continual maintenance of ponds or stormwater devices. Without a lot of study it would be difficult to determine if

existing subdivisions violated their lot coverage covenants and if their ponds can maintain the level they are required. His guess is that most people, at some point, put another little pad down for parking or added an addition and may not meet those lot coverage requirements. And that, possibly, some of those older stormwater ponds, other than the ones we maintain, may not meet the standards they were approved upon when DWQ looked at their permits. There are two developers who came forward to express concerns. He doesn't disagree with their concerns and feels we were making them treat water twice but what our ordinance says and what they are doing is a little different. He looked at the permit for Seventh Street Subdivision which requires treatment of 1" of rainfall. According to the developer, he said that he believes they went beyond that because they had some downstream concerns if they did meet more than 1". So it is very possible that they meet 1.5", maybe the ten year storm, he is not sure. Without those calculations he would not know that. They were required to restrictive covenants but he is sure it was probably only for the 1" storm and there is probably some lot coverage calculations that the covenants would say. The town needs to determine if it wants to continue to exceed DWQ requirements that we currently have and have always had but we are not necessarily following our ordinance either. He believes the ordinance was adopted in 2002. The town needs to include a provision in this ordinance requiring stormwater impact fees for new development, Wilmington Beach to be able to displace their water offsite because we are going to build two retention ponds in that area. We talked about charging a fee to recoup some of that cost. That was a DWQ requirement to put in stormwater basins to treat the water even though the subdivision was platted in the 1930's. The town's design storm is currently the 10 year storm. The town has been enforcing the 1.5" rainfall and that is something they need to decide whether we want to go with what is in our MPD ES permit or Phase II permit or do we want to do more? The town needs to determine which areas of our town are within a ½ mile range of SA waters and which are not. Just from looking at the map, it appears that we don't have any properties within ½ mile. Will stormwater ponds be maintained by the town or by the developer through a HOA agreement or restrictive covenants? What happens if a single lot cannot meet the design storm but can meet some portion of the design storm? There may be an instance where you might be able to treat .5" but may not be able to do the 1.5". We need to have some allowance there for them to do that if they are willing to do that on site and you reduce their impact fees to do that. Right now it is either an 1.5" or not at this point. There are a lot of different issues with our ordinances and it is really complex when you get the new stormwater rules in. A possible ordinance amendment given to Council may address one of the subdivisions that they talked about which requires some proof that you are treating 1.5" and there would be an exemption there and would include all public and private surfaces. Redevelopment or site expansion within a new or existing major subdivision must meet all applicable requirements set forth in this section. Basically you are still at the 1.5" level. DWQ still looks at our permits. One of the requirements, by February, we have an ordinance, we have been submitting this ordinance to them and they haven't officially approved our ordinance. By February our permit says that we have to have an ordinance officially approved by then. We need to fix it quickly. He would like to send it to a professional. In the meantime, if Council wanted to consider this amendment they could which would address the issue where they are installing the adequate stormwater for their impervious surfaces to meet state

requirements and we come back and charge them a fee or require them to do an additional treatment. He spoke with one of the developers who brought this forward and he is not sure the developer is in a big hurry to have this fixed. He is not here tonight. He thinks it would be okay to move forward on a revised, sound ordinance and it still would meet his timeline. The other thing we didn't really address is, for instance, Hidden Hills was developed at the low density approach. He hasn't pulled their permit but he is sure it was either at the 30% threshold, 24% threshold. That is now 12%, so how do we handle that with regard to 1 ½" rainfall? They are not treating any water. It is allowed to dissipate and he is sure they had to use some practices. There are a lot of questions and not a lot of answers. He is not a professional in stormwater by any means. In talking with some of the folks at DWQ, these new rules have them a little off guard too. He feels it would take to the end of the year to have a professional look at the ordinance and come back with some recommendations. He spoke with DWQ and all they are going to do is say we are in violation of the ordinance, he hopes there is not a fine involved. We are not the only new Phase II community who doesn't have an ordinance. We have an ordinance and passed it along to them but we haven't gone through a formal process.

Councilman Johnson made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

Kathleen Riley, resident of Dunmore Road, said she thinks she might be able to answer the question about what triggers. What usually triggers stormwater is change in impervious areas. She is not an expert on stormwater but when she was doing CAMA permitting with an environmental company if there was any change in the impervious areas, if they were to increase and fall within a certain purview then they would automatically kick in. To answer your question, when you are building and developing, the key issue is the 50%. In and around the building, what the state tends to look at is how it is going to affect the water runoff of the impervious areas. Her question and maybe it is premature is that your are going to adopt or go by new stormwater rules but what stormwater rules is Carolina Beach going to implement over and above the new stormwater? Mr. Owens said they are currently doing that now and we are largely above it because we are taking single-family lots, whereas the old rules used to be an acre. If he is redeveloping a site and he has an existing site and he adds a little bit on it, the stormwater doesn't apply under the DWQ regulations so we are light years more stringent than DWQ. Council will have to decide if they want to continue with that. Ms. Riley said she knows we are more stringent and as long as you are more stringent, you're fine, you can't be less than the state. She was just wondering what particular areas in your ordinance, what you're going to promulgate is going to be more stringent than DWQ? MPT Wilcox said we were more stringent in rainfall at 1.5" when DWQ was at 1" but they brought their standard up to 1.5" and unless we change it we would not necessarily be more stringent. Mr. Owens said it was mainly the coverage and the redevelopment factors, such as where it used to be 1 acre of land disturbance before DWQ would kick in. Now it is 10,000 sq. ft. of built upon area for commercial and subdivisions. We are far beyond that where every 5,000 sq. ft. lot you need to do some kind of stormwater management. Ms. Riley asked when he thought the town would be finished addressing it. Mr. Owen said by February, hopefully.

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

MPT Wilcox made a motion to give the town manager direction to pursue the person who can help us with all the ins and outs of stormwater changes and what our town is doing and resolve all those issues but, in the interim, adopt Ordinance No. 08-764 (Exhibit 6) that will help us be in compliance in February, it will be a stopgap for some situations and give a little more breathing room for the town manager to come up with the rest of the resolutions. MOTION CARRIED UNANIMOUSLY.

Councilman Gilbert made a motion to amend MPT Wilcox's motion to include an April 1, 2009 sunset clause for Ordinance No. 08-764. MOTION CARRIED 3-1 WITH MAYOR MACON VOTING NO.

REQUEST TO CONSIDER DELAYING THE RESURFACING OF LAKE PARK BLVD. UNTIL THE FALL OF 2009 AND DISCUSSION REGARDING STREETScape IMPLEMENTATION TIMELINE AND CONSIDER HIRING WILBUR SMITH TO PERFORM TRAFFIC ENGINEERING SERVICES TO ASSIST IN THE IMPLEMENTATION OF THE MASTER PLAN

Tim Owens said that DOT is ready to go forward with their contracts and come in and repave Lake Park Blvd. from the bridge to approximately Carolina Sands. In light of the town taking on streetscaping study there are a lot of things that have come to light and he feels it is in the public's best interest if we hopefully slow that process down. He has had some tentative discussions with DOT to maybe have that resurfacing after Labor Day of 2009. Some of the concerns are the need for striping and traffic engineering study. The master plan contemplated changing the four lanes to two lanes with a center turn aisle with some bike lanes. In the core district area there is a center median with two lanes, bike lanes, and widened sidewalks. His concern is that if we don't have a striping plan we're going to put back what we have now in order to implement the Master Development Plan. Later down the line we will have to grind down a bunch of stripes or do something to take out those stripes to make it not look like a mess. If we do the striping correctly, we can go in and implement the maybe turn lane which then becomes the center median aisle and we have our parking the way it needs to be. Some of the other things, we are working as hard as we can to get the utilities done in a timely manner but it is all contingent upon DOT encroachment agreements and other types of permits. We want to get all underground utilities, water and sewer, storm water so we won't go back in and mess up what is done by DOT. We need to look at irrigation. There are utility companies that have to come in and we need to decide if we want to go underground or above ground conduit - is probably where they will go, they will give you a conduit plan. They probably won't engineer the whole thing because it costs a lot of money. Traffic signals - he sees mast arm signals as opposed to the wires we have now. That needs to be considered. Currently there is pull-in parking, the plan contemplates

parallel parking and there are some concerns there because it will reduce the number of parking spaces. We estimate it will cut down about 72 parking spaces in our main CBD because you get one parallel space for every 3 pull-in. Costs - tonight, he would like for Council to consider creating a budget of \$40,000 to be taken from the General Fund, fund balance. The original estimate was \$28,000 from Wilbur Smith to mainly do the traffic engineering part. A lot of that work would have been done if we had gone forward or continued to go forward with the Dow Road study but since they haven't done that, they need an updated traffic analysis. Hopefully they will cut down the price on the Dow Road project. He talked to them about a striping plan which they neglected to put a striping plan for DOT to go back and re-stripe the roadway in their original estimate. They are saying that will cost \$6,500 and he added \$5,500 for engineering services to coordinate some of these projects. They will be in attendance at some of these meetings. The streetscaping is getting ready to get underway. We are going to advertise, per Council's recommendation. We are going to mail flyers, advertise in the paper. Hopefully the paper will do some kind of decent sized write-up on it. There are several meeting dates that have been considered. October 29th is when they get started. There is an open house meeting that night which is mainly for the public to come in and take a look at concepts and discuss what they would like to see. There will be a site reconnaissance and then we will meet with Peter J. Smith too. October 30th is a crucial meeting, the coordination meeting from 9 a.m. to 12 noon at the Town Hall and he would like Council to consider appointing one or two members to attend that if they can. There will be utilities involved - Progress Energy, cable company, phone company, hopefully DOT representatives, Peter J. Smith, Wilbur Smith, Engineering Services and that will be a real crucial meeting to hammer out some of the issues and determine where we are going with this. The other part of this is a public open house or drop-in. We were trying to have that downtown somewhere but that is mainly for the people who actually own property. It is not closed to the public but it's mainly for folks to come in talk about where they are going to store their trash, where their sidewalk café is going to be, things of that nature. The scope of this project is from Third Street/Cape Fear intersection all the way to the oceanfront, Harper/Third Street intersection all the way to the oceanfront, extends north and south basically from St. Joseph to Atlanta Avenue. Finally, there will be an October 31st meeting and that is more for Peter J. Smith. Two public meetings, one being more of an open house type thing for everyone to come to, the other being more of an informal type workshop setting where they can converse, and he can converse with the people who own businesses and property about the projects. He has given some pros and cons for delaying resurfacing. He feels with all the stuff they have to do, it makes good sense. He is still worried about Progress Energy and some of the other folks meeting the Labor Day deadline. He talked to Progress, who is the biggest player, and they thought that, at minimum, give us a conduit plan where they could go forward with putting conduit in. There has to be a plan for water. He would like Council to consider \$40,000 coming from the General Fund fund balance and hiring Wilbur Smith, under their contract, which will be \$34,500. The extra \$5,500 is for engineering services. The projected total cost for streetscaping for the area outlined, his estimate is about \$7 million dollars. You're looking at \$600,000 worth of debt service over 20 years at 6% interest. Peter J. Smith's scope does not get you the design documents, rather one step closer to them. You still need civil drawings which engineering services would have to do. Once

they have the meeting on the 31st, he's sure Progress Energy is probably going to want a deposit on what they have to do and, maybe all the other utilities as well. He has given what he thinks is going to be a ballpark figure just to get the construction price. Peter J. Smith - \$65,000, that didn't include the other part of this phase. Surveying - \$20,000, we've done that, it was closer to around \$15,000. Wilbur Smith - \$28,000, he wrote this memo before he talked to them and there was another \$6,500 involved in that. Engineering services, he estimated that before he changed the price tag and that is based on 10% on \$5 million dollars but when he went back and looked at Peter J. Smith, that was up to \$7 million dollars. The utility company design he is estimating at \$150,000. These are ballpark numbers but you can easily spend \$750,000 to \$1 million dollars just getting to construction.

Mayor Macon said we need to put something together so that we can get to the interlocal agreement as quickly as possible and is a top priority. There is no sense to shell out all this money for design unless we have a way to pay for it.

Mr. Owens said he has asked Alan Pacek to handle that part, to flesh out an interlocal agreement. We can look at that as a council and decide if we want to move forward on it. He will check with him to see where that stands and request cost to date for his work. We would figure out the money part of it, how many years and the project. He sees the first part of Cape Fear, where we have \$100,000 grant, as being probably the showcase. We may get to the design development part and then maybe a master developer shows up. That may be the carrot to bring them in, we're that much closer to what we want. If the enhancement grants come back around, you can apply for them. The interlocal agreement will have the project area left blank for Council to fill in.

Mayor Macon explained to the public how the interlocal agreement would work.

Mr. Owens said that as long as we start after Labor Day of 2009, DOT will go along with allowing us to delay it.

MPT Wilcox made a motion to ask DOT to consider delaying resurfacing Lake Park Blvd. until the fall of 2009, make \$40,000 available from the General Fund balance to continue engineering and design work on the streetscape. MOTION CARRIED UNANIMOUSLY.

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

Tim Owens said this proposal speaks more to the Master Development Plan implementation as far as the development goes. He is not asking Council to act on this tonight but suggesting they consider, since they are going to be in town anyway on October 30th, to have a discussion with Peter J. Smith at 6:30 p.m., a called meeting that evening, and talk to them about this second phase or this phase. You can ask questions about anything, second phase or streetscape project. Their timeline will allow a meeting

on October 30th at 6:30 p.m. if Council chooses. This is the type of thing that you need a professional to perform. He is not 100% sure Peter J. Smith is the right person to do it but that is why we are having this meeting. Peter J. Smith works a lot with municipalities but he doesn't think he works a lot with developers and big time urban redevelopment. He said he is open to suggestions regarding the owner's information meeting on November 6th, which is an open meeting. Maybe have it like they did the town hall meeting and talk about the Master Development Plan, what we're working on which is all this that we are talking about tonight, and what the property owners want to see. Bring them up to date. MPT Wilcox feels the input from those owners would be much better if we give a good presentation about where we are.

Councilman Johnson made a motion to have an open meeting on October 30, 2008 at 6:30 p.m. with Peter J. Smith to discuss the scope of work. MOTION CARRIED UNANIMOUSLY.

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

Ed Parvin said this is a notice of intent. The public hearing will be at the November meeting. If adopted, the resolution will be published in the paper for four consecutive weeks and the planning board will be reviewing this Thursday night.

Mayor Macon made a motion to adopt the Resolution of Intent No. 08-936 to close a 15' x 21.59' (323.85 square feet) portion of Carolina Beach Avenue South located at northeastern most point termination on the south side of the Marriott Hotel. MOTION DENIED 2-2 WITH COUNCILMAN GILBERT AND COUNCILMAN JOHNSON VOTING NO.

REQUEST FROM NCBIWA FOR THE TOWN TO BE A SPONSOR OF THE 2008 NCBIWA ANNUAL CONFERENCE WHICH WILL BE HELD IN CAROLINA BEACH ON NOVEMBER 17-18, 2008

Tim Owens said they received a request from the North Carolina Beach Inlet and Waterway Association (NCBIWA) to be a sponsor for the conference in the amount of \$2,000 which would be taken from the Tourism Fund reserve account. This was not something we budgeted for this year but have participated in the past. It is a good event and brings a lot of folks into town and is probably well worth the \$2,000. Mayor Macon said they do tend to support and lobby for funds for beach renourishment and inlet waterways dredging issues.

Mayor Macon made a motion to approve funding for the \$2,000 sponsorship for the NCBIWA Annual Conference to be taken from the Tourism Fund reserve account. MOTION CARRIED UNANIMOUSLY.

CONSIDER REQUEST TO RECLASSIFY TWO (2) POSITIONS IN THE FIRE DEPARTMENT

Fire Chief Rorie said this was originally brought before Council in July before the budget meeting and the decision was made to table it. He stated he needs some help in making sure the day-to-day activities of the fire department get done. He would like to reclassify two of the current engineer positions to company officer positions, give them clear expectations in their job description, put them in a probationary status to make sure they meet those expectations and when those expectations are there, hold them accountable for them. There is provision in the town policy to allow this to occur. It requires Council approval because it is not the creation of a new position in terms of the budget, just reclassifying current positions into a new classification and our pay grade and pay system. He talked about some of the key items under the job description regarding specific, special requirements. In particular one of them is possession of level II fire inspector or obtain as a condition of employment. Each of the candidates they are recommending promotion have probationary level I. This will establish the training requirements, establishment a timeline to get them to level II, which means they will have internal, at least two inspectors and himself as a level III fire inspector to conduct 100% of the inspections across the island rather than farming that out to other government entities. We are still working on that. These two positions currently exceed the requirements of their current classification in that they hold certifications as fire instructors and state certified driver operators and, in addition to that, they would have to complete a career development program that is not yet in place but will come in the future that looks towards such things as associate degree programs and college level courses. They are requesting of Council the reclassification of two fire engineer positions to the rank of company officer with a salary grade of 17. He said both of these positions are currently at the hiring rate that they are recommending which is \$34,775. This would equate to about \$1,700-\$1,800 increase per person. In addressing that issue, the town policy, in terms of the personnel policy, there are reasons why he would recommend moving them to a rate higher than the hiring rate: they already exceed their current requirements for their current job description; there are additional special requirements for that promotion they will have to meet which means they will have to take on additional duties that were never part of their job description; they are qualified higher than the hiring rate is now; it is a promotion and, based on town policy, a promotion requires them to go to the hiring rate or 5% above their salary before promotion or as a reclassification to the hiring rate or 5%, whichever is greater. So, the grade 17 at \$36,514, that is what a 5% is.

Councilman Gilbert made a motion to approve the position reclassification of fire engineer to the rank of company officer. MOTION CARRIED UNANIMOUSLY.

***REQUEST FOR ENGINEERING CONTRACT AMENDMENTS FOR
ENGINEERING SERVICES FOR THE WILMINGTON BEACH STREET
IMPROVEMENT PROJECT AND LIFT STATION #1***

Tim Owens said we are getting closer to the lift station #1 and Wilmington Beach street project but we are still waiting on Sunny Point's permitting for Wilmington Beach. We are getting through most of the permitting hurdles and then it will be, hopefully, getting easements from Sunny Point. Sometime around 2005 the town signed a contract with Engineering Services for Wilmington Beach and then in 2006 signed a contract with Engineering Services for lift station #1. He reviewed the contracts with Council. Mr. Owens said they are trying to keep the costs increases out in the open and want the contract to be correct. If it comes under the \$1,354,080 then this contract will be amended again for a lesser amount. Attachment #2 of this agreement talks about how they charge for different services. The amendment of the fee for lift station #1 would change from a total of \$107,594 to \$152,835. The original budget for the Wilmington Beach project started at \$3.6 million dollars and we will now be closer to \$7 million dollars. There was additional design work, two retention ponds, the line, and the lift stations to pump down through those lines. He reviewed cost changes and additional environmental work and permitting. Mr. Owens said his biggest concern is that both of these projects were put on hold and there are permitting deadlines and things that have to be met. We have already overspent the estimated design fee at this point on both projects and we need to make it right, buy another plan or negotiate the fees. He will ask them to reconsider and perhaps attend a Council meeting to explain the cost differences.

Council recommended having a preliminary discussion with the New Hanover County Tax Department to see what their projections are.

***REQUEST TO CONSIDER FUNDING AND CONSTRUCTION OF BEACH
ACCESS WALKOVERS AT SANDFIDDLER, SEA OATS AND SALT MARSH
LANES***

Tim Owens said the town has received e-mails regarding walkovers in these locations. There is some challenge there with the rocks and it is a public safety issue. We have a permit to construct and have come up with a design that seems to work pretty well. He asked if Council wants to consider putting in all three of these or fewer. Estimate on materials is about \$2,500 but he feels they will cost closer to \$4,000 and he has estimated a total budget of about \$18,000. If Council wants to go forward, they will use Department of Corrections labor, just buy the lumber, hopefully, and be able to install these. He showed pictures of areas and design work. He is asking for a budget of \$18,000 to come from the General Fund unappropriated fund balance to do the three walkovers.

Councilman Gilbert made a motion to give the town manager direction to go forward with the walkovers at Sandfiddler, Sea Oats and Salt Marsh Lanes, preferably to be constructed in the spring but contingent on CAMA permitting process and for a budget of \$18,000 to come from town funds decided by the finance officer and the town manager. MOTION CARRIED UNANIMOUSLY.

REQUEST TO SEEK AN RFP FOR THE FEASIBILITY OF THE OPERATION OF A TROLLEY SERVICE ON PLEASURE ISLAND

Tim Owens said staff, Kure Beach, NC Aquarium and other state agencies have been meeting informally regarding the feasibility of a trolley system on Pleasure Island. The Aquarium is very interested in that they have parking issues and Kure Beach followed in. They don't know anything about the operations of a trolley but would like Council to consider allowing them to go ahead and send out an RFP just to see if it is feasible or not. He doesn't know what will come out of it or if it will require public funding. He has a draft RFP done by the Kure Beach Town Administrator and they would like to send it out to perspective trolley vendors.

Councilman Gilbert made a motion to give the town manager direction to go forward with the RFP for the trolley service on Pleasure Island. MOTION CARRIED UNANIMOUSLY.

DISCUSSION CONCERNING UTILITY CUT-OFF POLICIES AND PROCEDURES

Tim Owens said there was a discussion at the last meeting regarding policy for cutting off utilities. The only thing that has really changed in our cut-off procedures is the second notice. He reviewed the procedures with Council. He said there was some concern about notice to the public about how we do things. The second notice that was eliminated didn't say a whole lot about when you were going to be cut-off. It said your final bill date is the 26th. The current billing language could have been clearer and he doesn't feel there was much direction when there was a second notice. The new language being considered on the new bill is: Water disconnected 10/27 if unpaid. That is very clear. All the other language would continue to stay in there. If we wanted to advertise the Land Use Plan or any type of event, etc., that goes away. You would not see that. We are very limited as to what we can put on these billings. The other concern is the amount charged for connection fees. In the budget year of 2007/08 it went up to \$80 for the first time and \$120 for subsequent times. The reconnect fee is \$45 for first time and up to \$85 for the fifth and subsequent times. The Operations Committee thought this might be one way of lessening the cut-off amount. He reviewed the utility ordinance comparison. There are roughly 250 people on the cut-off list every month with 60 who call before cut-off and make arrangements, 60 get cut-off and stay on the cut-off list and another 100-150 that are new that month. The town generates about \$120,000 on reconnection fees. If we contemplate lowering the reconnection fee, there will be some implications on the budget. He recommends analyzing whatever that implication is, change our ordinance to

include more clarity and set another public hearing. There would be changes in software and procedures if we decide to go to 45 days. Staff needs direction. We can come up with some different options if Council would like, if they give a general consensus - would you like to see the fees reduced or the timeline increased. They could come back with some recommendations.

Ms. Johnson, the finance officer's recommendation would be to go back to doing it the way they were doing it and then if that is going to be your option because, with what we are dealing with, the transients, she would not recommend extending the time the time that they have to pay the bill because, when you turn around, they have another bill to pay. We're having problems getting the first bill. If you are extending their time then that means we're going to have even more problems with outstanding amounts due when they move out.

Mr. Owens said this is for another discussion and then we are going to bring this back to you but we also have some significant bad debt issues in water and sewer. We're going to bring that back to you too and try to collect that or figure out a way of writing that off. Bad debts are only good for three years.

Ms. Johnson said the town's collection rate is probably around 94%-95% but there is a lot of old accounts out there that they have not brought before Council to get written off.

Staff will check on cost of envelopes identifying utility bill inside, and bring back some other options for consideration.

DISCUSS GOLF CART ORDINANCE AND CONSIDER SETTING A PUBLIC HEARING DATE FOR NOVEMBER

Police Chief Younginer gave an update. He said this is going to be set for a public hearing for next month if Council desires. There has been a lot of discussion about Caswell Beach's ordinance and most of what he put in the proposed ordinance came from that. A lot of their carts stay at HOA's, they are not really riding on the public streets like they are going to be here so he put more in it than maybe we needed but he tried to do it in a way which we could go through it and take some of it out. He would like to clean this ordinance up a little bit more and send out a new draft and then have Council give him direction before the next Council meeting. Other people have come forward to talk about. People have approached him and the Police Advisory Committee with questions. Possible changes: daylight operation only, cannot be used for rental property, definitions, no gas powered golf carts (cause a lot more noise), reflectors. He can clean this up a little and e-mail it to them if that is good.

Councilman Gilbert would like to see two options: He would like to see the Caswell Beach, which he thinks is straightforward, as an ordinance. He thinks it would work in Carolina Beach. Then take Chief Younginer's ordinance that he wants to clean up and

take some input so we have two options which would give Council an opportunity to pull something together if we have some challenges. Council agreed.

Chief Younginer said he could do that.

Councilman Gilbert made a motion to set a public hearing date for November 10, 2008 to consider adopting a golf cart ordinance. MOTION CARRIED UNANIMOUSLY.

REQUEST APPROVAL FOR A CONTRACT WITH NCDOT FOR A SIDEWALK EXTENSION ON LAKE PARK BLVD. AND THE CONSTRUCTION OF A PEDESTRIAN REFUGE ISLAND AT THE CORNER OF ATLANTA AVENUE/LAKE PARK BLVD.

Tim Owens said this is a contract with DOT. The town received \$20,000 to do the remaining sidewalk on Lake Park Blvd. from Hamlet to Fayetteville. Also, those funds will be used to put a pedestrian refuge island. He is asking Council to consider approval of the NCDOT contract for Project ER-2971 C and begin work on these improvements.

Councilman Gilbert said that the speed limit into the curve is 35mph and, once you get into the more hazardous part of that curve it becomes 25mph. He feels that part of this consideration should be to consider reducing the speed outside that curve because it is blind coming in.

Mr. Owens said they can do that but it might be another separate request to DOT and they decide whether it warrants it or not. They will also examine the location of the refuge island, they will meet whatever the traffic code is.

Councilman Gilbert made a motion to approve Project ER-2971 C. MOTION CARRIED UNANIMOUSLY.

CONSIDER SEEKING RFP FOR PARKING ENFORCEMENT AND MANAGEMENT OF OUR PARKING PROGRAM

Tim Owens said he would like to send out an RFP for parking enforcement and management of our parking program. He provided Council with a draft and the finance officer would like to add to it. He needs to count and make sure how many parking spaces we have. He would like to go ahead and send out the RFP because our contract ends with Central Parking on December 31, 2008. We collect about \$270,000 from parking revenue and about \$460,000-\$500,000+ for Freeman Park. Central Parking expenditures average around \$150,000 per year. He is not sure whether they will re-bid but has talked to them. They have talked to Lanier Parking also who took over Wilmington parking. They will send it out to whatever avenues they can to seek other bidders. He is seeking permission to go ahead and send out an RFP for parking

enforcement, to include Freeman Park. When staff gets them back they will look at the cost and consider the in-house alternative as well.

Councilman Gilbert made a motion to give the town manager direction to go forward with the RFP for parking enforcement and management of our parking program. MOTION CARRIED UNANIMOUSLY.

CONSIDER APPROVING AN IDENTITY THEFT POLICY FOR CAROLINA BEACH

Dawn Johnson said in accordance with the Federal Trade Commission's Fair and Accurate Credit Transactions Act of 2003, the Identity Protection Act of 2005 and NC General Statutes 75-60 of the Identity Theft Protection Act, the town is required to adopt a policy by November 1, 2008 to safeguard certain information of customers, vendors, employees and other individuals who provide such information to the town.

A motion was made by Mayor Macon to adopt the Security of Sensitive and Confidential Information and Breach Response Plan. MOTION CARRIED UNANIMOUSLY.

CRC OCEANFRONT SETBACK RULES

The town planner said at the September 25-26, 2008 Coastal Resources Commission meeting in Sunset Beach, the Commission adopted the new large structure oceanfront setback rules. These rules now require buildings to meet an oceanfront setback based on the size of the building. Currently structures greater than 5,000 sq. ft. must meet the 120 foot setback as measured from the "first line of stable natural vegetation." The new rules will now require a graduated setback beginning with structures 5,000 sq. ft. to meet the 120 foot setback and increasing that setback up to 180 feet for structures equal to or greater than 100,000 sq. ft. These setbacks will apply to Carolina Beach if we are considered to be a "beach fill" community as determined by the Division of Coastal Management (DCM).

Given this, it is probable that the proposed Fairfield Inn will need to undergo a major revision and many other developments will be made non-conforming when this new rules becomes law.

Mr. Ferguson said this is being presented to remind you of these rule changes and he presented a draft letter for Council to consider sending to DCM objecting to the rules. He went on to say that it is our understanding that these new rules will become effective December 1, 2008 unless the direction of DCM receives 10 or more letters of objection to this new rule. Should that occur, these new rules will then have to be re-examined by the Rules Review Committee under G.S. 150 B-21(b2). This review could take several months and afford some oceanfront projects the opportunity to apply and receive for all

necessary permits before the new rules become effective.

A motion was made by MPT Wilcox to authorize Mr. Ferguson to send the letter (Exhibit 7) of behalf of the Town of Carolina. MOTION CARRIED UNANIMOUSLY.

REVIEW OF RFPs SENT FOR THE MANAGEMENT OF GAS PURCHASES IN THE TOWN

Mr. Owens said the town advertised an RFP to select a vendor to manage the fuel that is purchased by the town. The town received two submittals. The two proposals were for a Citgo Fuel Card System and from Go Gas Universal Card System. RFPs were submitted late in the month and a review of each has not been completed. He suggested that Council allow each vendor to attend the November Council meeting to make a short presentation on their proposal. By the November meeting, he will have had the opportunity to talk to the 2 vendors and better analyze their proposal.

Council agreed to let both vendors come to the November meeting to give a presentation.

REVIEW COMMITTEE POLICY

During a recent meeting Councilman Gilbert said he would like to address the town's committee policies and procedures, and to discuss turnover of the town's boards/committees. The most current policy was adopted on March 12, 2002 by a previous Council.

The town clerk asked Council to consider affirming the current policies and procedures as presented or make amendments if needed.

Councilman Gilbert motioned to adopt the policy (Exhibit 8) and implement it as stated. MOTION CARRIED UNANIMOUSLY.

NON-AGENDA ITEMS

The town clerk reminded Council to inform her as soon as possible if they plan to attend the NCLM Conference in Charlotte, NC.

Some time ago Council said they would like to meet with the state representatives in Carolina Beach to discuss local issues and projects. The town clerk asked Council to look at their calendars and to select some possible meeting dates. Everyone seemed to be in general agreement to meet on Friday morning, November 14, 2008, if that date is available for the state representatives. The town clerk will work toward coordinating the meeting on that date and confirm with Council later.

There was discussion about the relocation of the Pleasure Island Soccer League from Chappell Park to Veteran's Park. MPT Wilcox said he would like to invite Mike Bennett to attend the next Council meeting to explain issues to Council or for him to talk to Will at the Island Gazette and ask him to get something out to the public instead of letting this fester in the community.

REQUEST FOR CLOSED SESSION [NCGS 143-318.11(a)3&5]

A motion was made by Mayor Macon to go into a closed session to discuss real estate and legal matters. **MOTION CARRIED UNANIMOUSLY.**

A motion was made by Mayor Macon to return to open session. **MOTION CARRIED UNANIMOUSLY.**

There was no action to report as a result of the closed session.

ADJOURNMENT

There being no further business, a motion was made by Mayor Macon to adjourn. **MOTION CARRIED UNANIMOUSLY.**

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____