

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

September 11, 2007

The Town Council of the Town of Carolina Beach met in regular session on September 11, 2007 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 Bill Clark; Mayor Pro Tem (MPT) Alan Gilbert; Councilwoman Pat Efird; Councilman Jerry Johnson; and Councilman Joel Macon. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Clark called the meeting to order. The Mayor asked for a few moments of silence in recognition of those who lost their lives in the 9/11 tragedy of 6 years ago.

INVOCATION

Valita Quattlebaum, the town's Public Information Officer, gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Clark led everyone in the pledge of allegiance.

ADOPT THE AGENDA

The following were changes to the agenda:

Item #14 - Consider Request to Amend the Zoning Ordinance, Article 18.2 Non-conforming Lots (g) Reduction of Required Lot Area when Lost to Shore Erosion - table to October 9, 2007 at 7:30 p.m. or soon thereafter

Item #8(c) - Set a Public Hearing Date to Consider a Request for a Conditional Use Permit for an Open Air Commercial Platform/Oceanfront Restaurant Located at 101 Carolina Beach Avenue South - table to November 13, 2007

Mayor Clark made a motion to adopt the agenda with changes. MOTION CARRIED UNANIMOUSLY.

RECOGNIZE EMPLOYEES FOR YEARS OF SERVICE

Mayor Clark recognized Perry Baughman for 10 years of service with the Public Works Department, and John Nelms for 25 years of service with the Public Works Department.

INTRODUCE NEW EMPLOYEES

The Assistant Operations Director, Harry Oakes, introduced new employee Kyle Lewis. The Town Manager, Tim Owens, introduced Adam Short the new planning intern from UNCW.

PUBLIC DISCUSSION (Five minute time limit per person)

Lonnie Lashley, 102 Florida Avenue, spoke about the skate park. Mr. Lashley invited Heather Kenny to join him at the podium. They passed around a proposition this past weekend to let the town enforce the rules that are currently posted at the skate park. They received over 100 signatures within a couple of hours. He said the residents are very concerned about the issues they have at the skate park which he elaborated on at the last meeting he attended. He said that he spoke with Mr. Owens and was told the skate park issue would be on the agenda tonight. He also said they could continue to get more signatures if Council so desired. Mayor Clark asked Mr. Lashley to turn over the signatures to the town clerk.

Ann Bowman spoke concerning the North End (Freeman Park) Committee and is speaking tonight because of Gil DeBouis who is on the Citizens Advisory Operations Department Committee. Ms. Bowman said he has missed 6 meetings in a row and he was sent a letter taking him off the committee because of his extended absences. She received an e-mail from Mr. DeBouis apologizing and that due to his work schedule he would not be able to participate. Ms. Bowman requested Council to send Mr. DeBouis a letter removing him from the committee. Mayor Clark asked Ms. Prusa to send a letter to Mr. DeBouis explaining the attendance requirements and requesting his resignation. Ms. Bowman also stated that they have received for the condos at the north end their first insurance renewal bill on the wind and hail with a 41% increase taking it from \$18,000 to \$31,000 which they were able to lower to \$29,000. This will require a \$50 a month increase in dues. This will happen all over the county due to the ISO rates for the Hurricane Katrina losses. Every coastal county is affected, has corresponded extensively with the insurance division of the State of North Carolina, the local realtors association, the state realtors association and the national realtors association. She served on the insurance committee 12 years ago for the National Association of Realtors for 2 years at which time a plan for formed a plan whereby the federal government would take their current structure for their flood insurance program and just renamed the program catastrophic insurance. It is her understanding that that bill is going to be introduced both in the house and the senate during September and October and that it already has 40 co-sponsors representing 20 states. Anyone who is listening now she would appreciate them

contacting their state representatives to let them know that we would really like to have this bill passed. Mayor Clark asked Ms. Bowman to send an e-mail with that information and he would share it.

Howard Otton of 507 Peninsula Drive, said he came about the beautification to entranceway to be discussed later. His concern is the road noise by the light at Food Lion and asked if there was anything that could be added along the road to help create a noise barrier. Motorcycles are especially noisy. Mayor Clark asked Mr. Owens to make a note of that. Mr. Owens said he would talk to the landscape architect about it.

ADOPT THE CONSENT AGENDA

Mayor Pro Tem Gilbert made a motion to approve the minutes and accept the consent agenda with the noted changes by Councilman Johnson as follows:

Approval of the Minutes

Regular Meeting	June 12, 2007
Continued	June 13, 2007
Special Meeting/LUP	August 6, 2007

Approve the adoption of Resolution No. 07-900 (*Exhibit 1*), requesting Governor Easley call a special session to deal with local, regional and statewide transportation funding issues.

Set a public hearing date for October 9, 2007 at 7:30 ;.m. or soon thereafter to consider a conditional use permit for an open air commercial platform/oceanfront restaurant located at 101 Carolina Beach Avenue South (PIN #313015-54-5527-000).

Set a public hearing date for October 9, 2007 at 7:30 p.m. or soon thereafter to consider an amendment to the Zoning Ordinance; Article 16 Planned Unit Development to consider changes to the PUD Ordinance and table 3.8-1 to eliminate the PUD from the R1-B Zoning District.

Set a public hearing date for October 9, 2007 at 7:30 p.m. or soon thereafter to consider an amendment to Town Code concerning horse regulations.

Approve the adoption of Resolution No. 07-899 (*Exhibit 2*) for financing of two police vehicles.

Approve the adoption of Ordinance No. 07-707 (*Exhibit 3*) amending the Town Code, Chapter 4 Building and building Regulations, Section 4-17 and 4-21, in compliance with NC State Building Code appendices.

Set a public hearing date for October 9, 2007 at 7:30 p.m. or soon thereafter to consider adopting a towing ordinance.

MOTION CARRIED UNANIMOUSLY

SET PUBLIC HEARING TO CONSIDER ADOPTING A NEW VENDING ORDINANCE

Mr. Owens said this is the same ordinance that came before Council at the last meeting with one addition from Council to address established businesses in the CBD. He presented some alternative language which is under Section 8-47B which would only allow those established businesses in the CBD to do vending on the beach or within the town limits. He suggested advertising both sides and making a decision at the public hearing possibly with input from the public. Mr. Owens recommended setting the public hearing for October.

Councilman Johnson made a motion to set a public hearing date to consider a new vending ordinance on October 9, 2007 at 7:30 p.m. or soon thereafter. MOTION CARRIED UNANIMOUSLY.

JOINT MASTER BIKE/PEDESTRIAN PLAN WITH THE TOWN OF KURE BEACH

Mayor Clark asked if Michael Kirkbride was in attendance. There being no response, Mayor Clark said let's move on to the next item.

PRESENTATION OF THE PARKS MASTER PLAN AND CONSIDER SETTING A PUBLIC HEARING DATE

Mr. Owens recommended Council review the document and establish a workshop meeting date to include the skate park discussion with the Recreation Committee and any other boards Council might want to participate in the review. Mr. Owens said he would put it back on the agenda after the workshop has been established and completed.

REQUEST BY ARCADIUS FOR A CONDITIONAL USE PERMIT EXTENSION

The request is to consider extending the conditional use permit that will expire on October 12, 2007.

Mr. Owens said Ron Mariello, the owners, and their attorney are present if there are any questions. He noted the three extensions that were given in the past few years and the

recent change in the CUP process extending the length of time from 1 to 2 years with a possibility of a 1 year extension. Mr. Owens said he consulted with the attorney and he believes they have zoning vested rights and would fall under the old ordinance.

Ron Mariello, representing the Arcadius project, stated they are requesting a 6 month extension to their CUP. He presented an overhead where he reviewed the history of the project which began approximately 18 months ago. They have invested nearly 6 million dollars of debt and assumed other exposures of about 8 million dollars. At the beginning they believed the project had a value of about 65 million dollar pre-sales which did not materialize. They made an extensive re-design of the project. They initially met with Council in January at which time they requested a 1 year extension and were granted a 6 month extension and if that was not sufficient they could come back. They have requested the extension because they are committed to the project and the reasons are as follows: significant market decline; specific challenges of which actions have been taken to sort them out and will attempt to complete them in the near future; requesting time to develop a reorganization plan that will include investment of their own capital as well as others and a reorganization plan with their bankers. They desire to create the original vision and destination with some combination of residential, retail and possibly a hotel. They would like to co-ordinate with the master planners. The height on the beach front was lowered and they moved 3 or 4 buildings from the beach to try to concentrate the mass in the middle. They ask that the town not give up on them. Mayor Clark said they are disappointed with the upkeep of the property, have had to notify them to cut the grass, fence maintenance, run-off area is run down, complaints from neighbors and he said the town needs a commitment. Mr. Mariello said he spoke with the town manager recently about this. He gave his personal commitment to fix it immediately. They are in the process of getting new fences and ensure the hiring of people to specifically maintain the area appropriately. He would be happy to make an arrangement with the town manager to overlook what they do to his satisfaction. Councilman Macon asked Mr. Owens about them being ineligible for any extensions. Mr. Owens said that after consulting with the attorney it was determined that they would fall under the old CUP ordinance. The town attorney said they recently amended the CUP process which provides 2 years to begin working on the project and eligible for 1 year extension subject to approval of Council. When Arcadius obtained their original CUP the zoning ordinance at that time provided that the Council, for a good cause shown, may extend the CUP for a time certain and he doesn't feel they can switch gears in the middle of the process. MPT Gilbert said the project is in bankruptcy, there used to be a working hotel there that has been burned and taken down, the area is blighted, the project has been extended for a number of years and the site plan would have to go back for a major modification anyway. He feels it would be a disservice to the community to keep extending it. Councilwoman Efirid feels this group is entirely different from the other and she doesn't want to close the door on a project that would look really good in that area. Councilman Johnson agreed with Councilman Gilbert and with they changes they have in mind they will have to go back through the process anyway. He doesn't feel that 6 months or a year will accomplish anything. Mayor Clark said they are working on a master development plan and they need Arcadius to be a part of that plan for that area.

Councilman Macon made a motion to extend the Arcadius CUP for 6 months. MOTION CARRIED 3-2 WITH MAYOR PRO TEM GILBERT AND COUNCILMAN JOHNSON VOTING NO.

SKATEBOARD PARK UPDATE AND DISCUSSION

Mr. Owens said the skateboard park has been open since June and there has been some concern about some of the conduct there and enforcement of the regulations. He said staff has done some research with other towns, talked about different ways it could be managed and would like to improve upon the current situation. He would like to invite Paul Miller, who is a high risk management specialist with the NC League of Municipalities. He has advised the town on policies and management of the skateboard park thus far. He would like to invite him to participate in a workshop with the Parks and Recreation Committee, some of the stakeholders like Jim Reese, the designer of the park. He feels we need to look at the current policies, hours of operation, ordinances in place and recommended having a workshop in the next month or so.

Mayor Pro Tem Gilbert made a motion to have a joint workshop with the Police Advisory Committee, the Recreation Committee, and include the public and the stakeholders and also include Paul Miller with Risk Management. MOTION CARRIED UNANIMOUSLY

ASR (AQUIFER, STORAGE & RECOVERY) STUDY

Mr. Owens presented review, said the town hired GMA to study the feasibility of ASR technology, the second part of the study explored other options such as a regional approach to the water supply possibly connecting into Wilmington, Brunswick County, etc., as well as reverse osmosis. He said the town might want to have another workshop to go over the second phase which would determine if ASR is a possibility. The cost of the study is \$40,000. Councilman Johnson would like to invite them back and get some clarification on the proposals through a workshop. Mayor Pro Tem Gilbert said he would like a workshop to include all the things Mr. Owens mentioned as alternatives. Councilman Macon said if it is not feasible, no sense in wasting money.

Mayor Pro Tem Gilbert made a motion to give the town manager direction to establish a workshop to pursue water alternatives. MOTION CARRIED UNANIMOUSLY.

Mayor Clark presented a letter from Governor Easley regarding drought conditions and the immediate implementation of water shortage response plans. Carolina Beach is listed under extreme drought. Mayor Clark asked Harry Oakes to look into it and the implementation of water shortage plans.

APPOINTMENTS TO THE OPERATIONS ADVISORY COMMITTEE

The town clerk said none have been submitted to date. Mayor Clark said they are looking for a low density property owner and someone to fill the engineering seat. The committee meets on Tuesday mornings, once a month at 8:30 a.m. The town clerk said the vacancies have been advertised for several weeks and two different advertisements. Mr. Randy Simon has been serving on the advisory board and he asked what the wishes are of Council and if he should be removed. The town manager said there was some discussion when he was appointed to the Harbor Commission that he was already serving on two committees and that he would step down from the Operations Committee. Mr. Owens asked the town clerk if that is what she recalled. The town clerk explained that he is currently serving on the Police Advisory Committee and the Operations Advisory Committee, and he was recently appointed to Harbor Committee. The general consensus of Council seemed to be that if he wanted to serve as an alternate to the Harbor Committee that he would step down from Operations Advisory Committee. Mayor Clark asked Mr. Simon if he would like to continue to serve on the Operations Advisory Committee. Mr. Simon agreed to serve on all three committees. Mayor Clark asked Councilman Macon if he would like to make a motion. After some discussion it was decided that a motion was not necessary. It was the general consensus of Council to let Mr. Simon continue to serve on all 3 committees. Mayor Clark thanked Mr. Simon for his willingness to serve on all 3 committees.

REQUEST TO ADD (2) NEW POLICIES TO PERSONNEL POLICY. (1) NON-VIOLENT WORKPLACE; AND (2) WEAPONS

The town's Human Resources Officer, Sarah Archibald, presented the request to add two new policies concerning non-violent workplace and weapons. She said these are standard policies for most public workplaces, and the language was taken from UNCW and the City of Wilmington.

Mayor Pro Tem Gilbert made a motion to add the two new policies to the Carolina Beach Personnel Policy. MOTION CARRIED UNANIMOUSLY.

AWARD OF FEDERAL GRANT FOR POLICE BOAT WITH LOCAL MATCH

Chief Younginer said the police department purchased a surplus boat upon being notified that they did not receive the grant and later were told that was a mistake and they did receive it. He said they could sell the boat for what they have in it and would like to get a more practical boat with a lift. The grant may be up to \$9,000 and would hope to get the lift and the boat out of that. The surplus boat, which has about \$7,000 in it, is too big and heavy and is hard to get in and out of the water. Some of the equipment in it would come out. Chief Younginer was not told how much the grant is, supposed to be \$33,000, \$27,000 from them and \$6,750 from us, but their message today said they believed our

match is \$9,000 - that's not 25% so their part might be a little higher. Mr. Owens said the boat is to be used for many things, police activities, response to any event, Sunny Point, ocean rescue patrol, and could be used as a resource for national emergencies. Mr. Owens said the grant would provide a new boat. Councilman Gilbert said the new boat would be more versatile with less maintenance on the front end; asked if we would break even with the old boat. Chief Younginer and Mr. Owens felt they could sell it to any law enforcement agency and get the money out of it.

Mayor Pro Tem Gilbert made a motion to accept the grant and go forward with the surplus sale of the existing boat. MOTION CARRIED UNANIMOUSLY.

Mayor Clark called for a 5 minute recess.

2005 CAMA LAND USE PLAN PUBLIC HEARING

Mayor Clark called the meeting back to order. Mr. Owens presented proposed Resolution No. 07-901 (*Exhibit 4*). Mr. Owens said there is also an attached letter (*Exhibit 5*) which supports the resolution and discusses the process. Mr. Owens summarized the plan process and said before you is the final draft. He stated that he had several recommendations for changes to the plan, as outlined in his September 4, 2007 memo to Council (*Exhibit 6*). He referred Council to Item 1. Mr. Owens said that the Division of Coastal Management's Planner, John Thayer, recommended removing the vested rights policy and told Mr. Owens that it would not require re-advertising to remove it as it is not consistent with their policies. Also under Item 2, to provide a more condensed separate map of Boardwalk area in more detail. Mr. Owens said if Council wants to move forward then they will need to adopt the proposed 2005 LUP and the attached resolution, as well as instruct staff to send the attached letter and appropriate documentation to the Division of Coastal Management (DCM) in time for the November 29th/30th Coastal Resources Commission meeting which would be within 45 days. If the Land Use Plan is adopted tonight, Mr. Owens will forward the documentation to DCM's staff by the beginning of October.

Mayor Pro Tem Gilbert made a motion to open the public hearing. MOTION CARRIED UNANIMOUSLY.

Dan Wilcox, 614 Monroe Avenue, said with respect to Mr. Owens, it was a disappointing interpretation of your requirements, that you are considering adopting a resolution that states a number of facts that have been proven not to be true. The NC Administrative Code says after you advertise your final draft, that minor editorial changes after the public hearing are acceptable without re-advertising the notice. Substantive changes, such as rewordings that alter the basic intent of policy statements or change timelines for actions in the original notice shall require a new public hearing and this notice shall be advertised in the same manner as the original. He said that Council, at the last meeting, put in some language that would cause people to believe by looking at your advertised final draft of the LUP that if they had vested rights they would be recognized by CAMA

but also protected under the LUP. He does not see anywhere in the Administrative Code or General Statute where it says you can make substantive changes if they conflict with CAMA. It says you can't make substantive changes and when you remove an entire policy from a LUP, that's a substantive change. He said if he wasn't mistaken this is a similar issue that Mayor Pro Tem Gilbert and some other folks held the previous Council accountable to in the 1997 LUP amendments when they went forward and Mr. Gilbert made them go back and do six months worth of work because they didn't follow six management topics. The end result was the same but you made them follow the letter of the law which is that if you make anything other than editorial changes, it has to be re-advertised. Mr. Wilcox said he doesn't feel that the town manager should tell them to consider something other than that. He also said that it would have been nice to have the resolution available other than tonight and he feels it is ridiculous.

Elton Tucker, trustee for land located on the west side of Ethel Dow Road, about 71 acres and is one of the largest undeveloped tracts of land on the island. He said it has come to the family's attention that this LUP shows this land classified as R-2 use. Mr. Tucker said it has been zoned industrial for more than 20 to 30 years. They feel the LUP should reflect what the actual zoning is, he understands the town is not bound by that, the LUP can vary from what the actual zoning plan is except areas CAMA controls, flood hazard areas, etc. They don't want the town obligating or indicating what they felt the certain use of the property ought to be put to. They have had the property on the market for a while, no serious offers but right now things are dead. They won't stay that way forever and one day that land will be put to some use. It is his understanding, as stated by our local representative of the Department of Transportation, that changing Dow Road to four lanes is one of the three top projects in New Hanover County for DOT. It needs to be done; Carolina Beach/Kure Beach needs some relief from the traffic and what the use of this property is going to end up being, who's going to be interested in developing it, whether they do or sell it to someone else to develop. The family felt the LUP should reflect what the current zoning is in case a PPD or some really nice outfit like that would come in and meet everybody's approval for some kind of industry or business. There probably will be some residential use but there might be some commercial use too. The town needs more than one grocery store. Eventually, things are going to be needed. It behooves the town not to indicate that they want nothing but houses over there when you may have serious needs for other uses for that property as opposed to more people and more demands for water and sewer and schools, etc. They would like to see the town change the plan to reflect the current industrial zoning use.

Garland Garrett, 306 5th Avenue N., Kure Beach. He concurs with Dan Wilcox that this whole process has really been flawed. He feels that the ad hoc committee was stacked to do what a few on Council wanted to do and Council has not considered the business people in this community. Just as Judge Tucker spoke of industrial development for the town that is going to increase our tax base that is something we need to consider. Mr. Garrett said he feels that if Council approves this document, you have devalued the property in the CBD. Some of the residents of this town won't realize it now but down the road they will because the property owners will have to go to the county and ask for reevaluation of it simply because of the action of this LUP. It is a sad day for this town,

we need leadership to make the town grow and develop in the best interests of not only the business community but the citizens of the town and Council hasn't done that. We need business people on the Council that realize what needs to be done to increase the tax base and build a community that we can all be proud of. He hopes Council will wait for the Master Plan to come forth, hopes that has not been sabotaged too with preconceived notions of what it ought to be but listen to the property owners that are involved in that area and what they need to make something, need to make a profit down there if they are going to construct something to be proud of. He hopes Council will postpone moving this plan forward.

Leroy Franks, 908 Canal Drive, stated he would like to pass this LUP on, doesn't agree with it to some degree like 100 feet in a Commercial 2 Zone but if that's what it is, that's what it is and the other people should realize that there is a mortgage crunch going on now, foreclosures, three on Canal Drive right now and they are continuing and they will double or triple within the next month and a half. Major projects like the Arcadius will be a blight to the eye, it will not be built, they were declared bankrupt and the bank has foreclosed all that property.

Matt Nichols with Shanklin & Nichols, 214 Market Street, Wilmington, said he hadn't planned on speaking this evening and was a little confused when he listened to what Mr. Wilcox had to say, perhaps he may have misunderstood Mr. Owens. As a point of clarification, at the last meeting there was a discussion regarding the vested rights concept and it was his understanding, based upon what was on the website today, that section E on page 83 of the final draft for September 11, 2007 public hearing was included in this draft CAMA proposal. He asked Council if that was no longer the case. Mr. Owens said it is in the current draft. Mayor Clark said the motion was made to put it in there. MPT Gilbert said the challenge at the time was there was some wordsmithing going on, didn't have information from DCM so we came up with Item E that wouldn't change the spirit of the policy, basically to serve that specific interest that was presented, but during that discussion was if it became that it wasn't legal, this would be the way to do it and possibly have to remove it if they found out they had to remove it if DCM found it was not a prudent way to go. That language was basically given to Council on the fly, there wasn't time for DCM to evaluate it or get a recommendation from DCM. DCM has now given their opinion of it. MPT Gilbert said that is what he recollects about it. Mr. Nichols asked if the DCM comment is available for the public to see. Mr. Owens said it is, they have a copy here and another e-mail that he needs to printed out. He said he did have a discussion with the DCM staff today and asked the specific question if they deleted this item whether they felt the town would have to re-advertise and go through the public hearing again, their response was no. He was concerned about that language and well aware of the NCAC Code and what it says in that code. It's possible they could have misled him. He asked if it was left in would DCM approve it and they said possibly, they might kick it back and they might also conditionally approve it if it were left in. Mr. Nichols said that his firm represents Park Place at Carolina Beach, LLC which is the developer of the Park Place development and they do have vested rights, this Council granted the 5 year vested rights to the Park Place development. There may be other developments that have vested rights, he is not aware of any pursuant to 160A3851.

He asked if they would have the opportunity to participate with on any discussions with DCM on this issue or submit something to DCM. It is a very important issue to them and to the development and if there is an opportunity that they may have to submit something to DCM or have public comment on they would like to have the opportunity to do that. He urged Council to please include vested rights in the draft as it is shown on the website. today. MPT Gilbert said there is a public comment period as this is submitted so you can present your case and look at it on that end, if they can conditionally approve it or not, that is what I would do. Councilman Johnson said if Council leaves it in there to go before the DCM to make your case for leaving it in there. Mayor Clark asked if it was DCM's recommendation that it would be risky leaving it in there. Mr. Owens stated that it was DCM's recommendation to take it out, there could be feedback from CRC that says you should have re-advertised, should have gone through the process again but that is totally up to the CRC as far as their interpretation of it. Staff's interpretation was we would like for you to take it out because it is not consistent with their policies and the way they operate. Mr. Nichols stated again that this is the first they have heard of this and they would like any opportunity to offer their comment on it whether through the public process or perhaps working with the town manager or the town attorney, they would appreciate your consideration.

Dan Wilcox said he would like to ask a question. He asked, did Mr. Owens say there is an e-mail from DCM that they don't need to re-advertise? He has an e-mail that states it should be taken out, doesn't see any e-mail that says you don't need to re-advertise. If that is a fact, he would like to see it. Mr. Owens said there is no e-mail that states they don't need to re-advertise, that was in discussion on the phone.

Mayor Pro Tem Gilbert made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson said he would like to have the map fixed. He said that he is a little confused about how the area Mr. Tucker addressed became R-2 when it is I-1 in our zoning map. Mr. Owens said it is I-1 in the zoning map and it is the same in the April 2005 plan and hasn't been changed or recommended to be changed since that time. Zoning-wise it is industrial. Councilman Johnson asked if it was changed to coincide with the zoning map, is there a problem with doing that? Mr. Owens said he has not asked that specific question of staff, and he doesn't know what their opinion on that would be.

MPT Gilbert said this is a future land use classification, during the LUP meetings that started in 2003 there were discussions on future land uses. This doesn't preclude the use of it as industrial and he thinks the future is that it will be developed as industrial. This LUP is a flexible document and if it not in an AEC or it is I think CAMA would have something to say about it. Thinking back on the discussions, he believes there was a gentleman who had talked about putting a contract on that property and their desire to develop it as residential. It goes back to the early LUP meetings where they were looking at future characteristics not trying to preclude non-industrial, just someone's vision and discussion and it came out of those meetings.

Mr. Owens said the only issue that could arise would be whether you are asking for a text amendment or a CUP, you have to make a LUP consistency statement or whether there is a zoning map amendment, that's when it comes into play, or if there happens to be a CAMA approval needed, which he doubt's there is but if there had to be. Those things could cause issues down the road. MPT Gilbert said even if you have a LUP consistency statement and it's inconsistent, you wouldn't hold up the process then you would amend your LUP. So if industrial is where it is, this is a future use that came out of those meetings and part of the public participation back then. Councilman Johnson asked, but we are zoned industrial and if someone wanted to come in and do something under the industrial zone.... Mr. Owens agreed but said they may have to come in and rezone it to residential or do something under industrial. MPT Gilbert said if they wanted industrial and its zoned industrial then they do industrial but then you have the land use plan consistency statement ... Mr. Owens said you can deem something inconsistent and if there is an appropriate reason why you are doing what you are doing you cite that reason. Councilman Macon said he does not feel safe with that conclusion, he has seen things not get passed because it was specifically stated it was inconsistent with the plan. Mr. Owens said that is possible too. Councilman Macon said he would rather reflect what it is currently zoned and feels it is a major issue. Obviously these gentlemen are here because they see it as a major issue too and you are in a sense taking property rights away from them or a tool to be used to take away property rights. Councilman Johnson asked if they should change the area to I-1, same as the two borders are, since we are only talking about one property owner and that property owner is here to be consistent with our current zoning map. Mr. Owens recommended not doing that since he has not talked to staff about that particular change. It could be considered a major change and you would have to re-advertise and go through the public hearing process. Councilman Macon said that would be his motion anyway, reason being if I have a family member running to the hospital the chief of police can not give me permission to speed behind the ambulance, and I don't think DCM staff can give you permission to violate state law, they are not the legislators and they didn't change the law to say "but if." He has a problem with that as well. Obviously we have a major problem – we have a large piece of property. There is a conflict with current zoning, and nobody has messed with that zoning for years. I think they are quite happy with that zoning and we don't need to leave a tool ... The problem that I have is with future councils, you don't know what is going to take place and a lot of history gets lost. It may be 10 years for now and somebody will sit up there and may possibly turn down a project because of this issue. Mayor Clark asked if you know what it was in the 97 Plan. Someone responded that it wasn't listed and it was unincorporated and it wasn't even considered. Councilman Johnson's recommendation was to change this area on the zoning map to I-1 and move forward with the plan since the sole property owner is in attendance to the meeting, current zoning map shows it as I-1 and feels staff should be able to write something to send in with the plan that it was an oversight and our current zoning map. Mr. Owens said that there is a possibility with any of these changes including the change to 86(e) policy, there is always the potential that CRC could require that it be re-advertised. He said I'm just warning the Council of that possibility. MPT Gilbert said they could also approve it conditionally going back in re-advertising it. The process started in 2003 and looking at the bulk of the document, yes I think the Tucker's

should be served because it doesn't affect anyone else. Mr. Owens asked if the Tucker heirs would provide the town a letter requesting that it be changed back to I-1. He said he would review the rest of the LUP for consistency because of that change and see if there is anything else that needs to be tweaked because of this change.

Councilman Johnson made a motion on item 1 to leave the recently added policy of 86(e) that addresses Vested Rights of projects in the Land Use Plan as it was approved and have Coastal Management make their comments on it. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson made a motion to direct staff to add the map of the Boardwalk area to better define the Boardwalk area for the plan. MOTION CARRIED UNANIMOUSLY.

Mayor Clark directed attention to page 74, item 32, policy on height for Commercial 2 area which was put in to encourage hotels in the Commercial 2 district. Mayor feels the language is a little confusing because no commercial structure is to exceed 100 feet but the language puts that height at 115 feet, some hotels do not have external elevators so they may have to go to 115 feet to enclose the elevators as part of the building - not all are built the same. Councilman Johnson said they can be internal and work the same way. Mayor Clark said he had asked Mr. Owens to call DCM and ask that question that if they made a clear cut policy to limit height to 115 feet with no exceptions and find out what was their response. Mr. Owens said he spoke to DCM staff who said they were not exceeding 115 feet and it was an acceptable change. Mayor Clark asked if he mentioned that it would make it a clear number for them to go by. Mr. Owens said he mentioned that it would be less confusing language.

Mayor Clark made a motion to strike out “Exceptions to the one hundred (100) feet maximum include the parapet wall (not to exceed 5 feet above the 100 feet maximum height) and the elevator/mechanical rooms (not to exceed 15 feet above the 100 feet maximum height).” and change the “The Town policy on height for the Commercial 2 area shall require no commercial structures to exceed 100 feet” to read “115 feet.” Mr. Owens recommended change to read “Town policy on height in the Commercial 2 area shall not allow commercial structures to exceed 115 feet including any accessories, mechanical, electrical, etc.” Council was in general agreement with Mr. Owens’s recommendation. There being no further questions or comments, Mayor Clark called for a vote. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson made a motion to take the current R-2 area shown on the west side of Dow Road to I-1 to coincide with the land classification map and the zoning map. MOTION CARRIED UNANIMOUSLY.

Councilman Johnson made a motion to adopt the proposed 2005 LUP and the attached resolution with the amendments as brought forward tonight. Councilman Macon feels that the DCM staff can make that interpretation that it is not a

substantive change, not to mention that they are changing the zoning even if the Tucker's are here but what about residents across the street that may be glad it was changed to residential and now I'm going to be protected, and now we changed it back to industrial. He said that it cuts both ways and he doesn't see any reason why we can't re-advertise and do it properly. He asked Mr. Owens if we re-advertised, what does that put you off to. Mr. Owens said he isn't sure but it could be sometime in March or April. Councilwoman Efird said it is in February. Mayor Pro Tem Gilbert said the CRC is going to look at this and see if we followed the rules and they are going to end up making a decision in the spirit of the total document and weigh and balance. The DCM has made their recommendations and this process has taken as long as it has and a lot of people have vested in it and spent a lot of time doing it and he feels they have followed in the spirit of the rules and we had another public hearing and did some wordsmithing. It's great that a family that has been here for years and years recognized that there were some changes and brought them there. Feels that is in the spirit of what they are trying to do, to make those changes. Mr. Owens said there is one option that we could have another hearing, is that what you are suggesting. MPT Gilbert said, no, not at all. He feels that it should go forward, there is public comment period with CRC and public hearing process and he feels it should go forward. Mr. Owens said that in light of Councilman Macon's comments, if the Council wanted to the town could advertise and still have 30 to 45 days to get information to the CRC if you all wanted to have another meeting, which could be towards the end of October and still give him 30 days to get information to the DCM. Councilwoman Efird said these are some major changes that we are making right now. Mr. Owens said it depends on how the CRC sees it. Mayor Clark said just for comment - it is probably not the best LUP they can have but it is the best after 4 years of a lot of work. Are there going to be changes just to answer Mr. Garrett's question about have they devalued property. We're starting the Master Development Plan, within the LUP as it states, the town will undertake a master planning effort with ample participation in Commercial 2 and other areas that tie into Commercial 2 and the Boardwalk. That's saying are we going to make changes, probably because this master development plan may come out with some marketing study that says a change may be needed to make it fit. Mayor Clark said he feels they need to move forward with the plan. We have had a lot of public hearings on it. Councilman Johnson reiterated his motion to adopt the proposed 2005 LUP and the attached resolution with the changes that we have made tonight. **MOTION CARRIED 3-2 WITH COUNCILWOMAN EFIRD AND COUNCILMAN MACON VOTING NO.**

Mr. Owens said he would have to modify the letter to notify CRC the outcome of this meeting with the changes and let them know why things were done the way they were done. He asked Council to instruct staff to send the attached letter with the modifications and appropriate documentation to the DCM in time for the November 29th/30th CRC meeting.

Councilman Johnson made a motion to instruct staff to do so. MOTION CARRIED 4-1 WITH COUNCILMAN MACON VOTING NO.

CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT FOR A RESTAURANT LOCATED AT 313 CANAL DRIVE (PIN #313011-56-753-000)

The following members of town staff were sworn in: Town Manager, Tim Owens, and Zoning Administrator, Jeremy Hardison.

Mr. Hardison said the applicant is proposing reopening the Harbor Masters with an accommodation of 143 seats. The restaurant is currently unoccupied, located in the CBD which allows restaurants by CUP. The restaurant proposes to serve breakfast, lunch and dinner from 8:00 a.m. to 10:30 p.m. Sunday - Saturday, year round. The number of employees will be between 10 and 15. A dumpster will be located on the northwest corner which is the same location as previously. The existing building does have setbacks which is not required in the CBD with 47% lot coverage. The applicant is asking for a waiver of the Type A buffer under landscaping requirements. The property abuts a residential district and the requirement is a 5 foot landscape buffer. Applicant will put a 6 foot fence as a buffer but are asking for a waiver due to space constraints. TRC recommended applicant not provide curbs, gutters, or sidewalks. Applicant will tie into storm water system, no upgrades in water/sewer lines were required by Operations; Fire Marshall will make a determination on water flow requirements during permitting stage. Parking requirements are calculated as 1 parking space per 3 seats, applicant proposes 143 seats which would require 48 parking spaces, and the applicant proposes 20 parking spaces on site. Applicant is requesting a waiver for the 28 parking spaces under the Zoning Ordinance which states, "Where properties are located within the CBD, parking requirements may be waived if public parking spaces adequate to meet the requirement are located within 500 feet of the use." Property is in consistency with the 1997 CAMA LUP. Mr. Hardison referred Council to staff memo on Conditional Use Permit to reopen Harbor Masters restaurant dated August 28, 2007 regarding specific standards, general conditions, operations, fire, planning and building, and staff recommendations for their review. Request was recommended for approval by Planning and Zoning Commission at the August 9, 2007 meeting granting waivers for the sidewalks, curb and gutter, the landscaping on the north side of the building with the exception of the 6 foot fence and the 28 parking places with an accommodation for 29 for a handicap space to be provided with a loading zone that may take out a space.

Mayor Clark asked if the Planning and Zoning decision was unanimous, and Mr. Hardison said that is correct. Councilman Johnson asked about timeframe for opening. Mr. Hardison said they would like to open right away and would like to be open by Christmas. Mr. Hardison said they would also be providing transient boat slips and would like to accommodate outside seating on the rear deck by taking existing seating from inside when the weather permits. Councilman Johnson asked if the CUP is on the condition based upon an engineering report provided to staff approving the structural integrity. Mr. Hardison said Planning would require that. Jeremy Bailey and Brett Keeler were sworn in. Mr. Bailey said there has been an engineer's report and work done prior to his purchase of the Harbor Master and have a recent document stating the building is up to code and was submitted to Van Paxton, Building Inspector.

Councilwoman Efird asked if they will rent to private parties, Mr. Bailey said yes, there was a banquet facility in the past and he hopes to cater. Councilman Johnson asked if the bathrooms will be enlarged, Mr. Bailey said yes the bathrooms would be brought up to ADA code. Said he has no problem with the handicap space being the second space.

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

The following were sworn in by the town clerk: Jeremy Bailey and Brett Keeler.

Brett Keeler, 310 Columbia Avenue, said he is representing the Blackhorn Restaurant on the Boardwalk, a proposal for a restaurant that has been approved by the Council and also they have a house that they rent out 2 doors down from the proposed Harbor Master's location. He feels it is a great idea, great use of space and would like to commend Jeremy for taking this step and putting in his resources of time and capital into the CBD. He said what disconcerts him is the lack of questions by Council unlike other people who have brought good projects that buffer residential such as ourselves were given the fifth degree because certain people spoke up to it, but this project as well as other projects are in the best interests of the entire community and the tourist community, that is why this is a good idea. Mr. Keeler said the CBD needs upwards of 10 to 15 restaurants to be viable as well as a couple of hotels. The standards need to be the same for every project and everyone that comes through here. He feels that this project was just padded through, maybe because it is not a new building. He said there is a lot of construction in doing this and doesn't seem that the same stringent principles were put towards this project as other projects that may not fall in line with certain agendas. He doesn't feel Council uses the same standards on all projects.

Leroy Franks, 908 Canal Drive, was sworn in. Said he favors this restaurant but there are a few items of potential for the city; one is that the parcel of land being talked about is in foreclosure proceedings; second, part of the marine trust waters has washed up under the building over 27 feet; and third, if you read the engineers report it states it was a cursory review and no non-destructive testing was done. Therefore, that means it's dangerous, you have the blocks on one of the supporting walls that are broken off and fallen - said he has pictures of all of this and the town has them in their files, everyone has them. The water comes up under the building over 27 feet, that's over half the width of the building. Consider the safety impact if there is a storm and it goes in to the public trust waters. He would caution Council to make sure that all these deficiencies are corrected because the engineer made an initial cursory review did not come back and check what was supposedly built.

Mayor Clark asked if anyone else would like to speak on this issue. There being no further comments, Mayor Clark offered the applicant a chance for rebuttal.

The Applicant, Jeremy Bailey, said he understood the concerns with the neighboring property but believed it was not residential but a T-1 district which is the likes of Harbor Master and have the property owners full support which made some sort of difference.

To answer the other questions, they did originally come to put out a fire, they engineered what was originally wrong with the building. Warren Wilson did come back and make a cursory review on what he said before was still good, no deterioration of the pilings and what not. Warren Wilson, who is the architect that Mr. Bailey is working with now, he is now the architect who is focusing on everything. Not just what was the fire to be put out, as far as the deck, it is being restructured/reengineered so it will have a full package by the time it is said and done. He understands there are a thousand rumors to be put out - he is well aware and it is being handled.

Mayor Pro Tem Gilbert made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Mayor Pro Tem Gilbert made a motion to approve the Conditional Use Permit for a restaurant located at 313 Canal Drive (PIN #313011-56-753-000) with the condition that the proposal is in general conformity with the Land Use Plan, required findings 1-7, and general conditions 1-4; granting the waivers for the sidewalks, curb and gutter, Type A landscaping to the north side of the building with the exception of the 6' fence with 80% opacity and 28 parking spaces, 20 spaces will remain on site with the parking plan as submitted and additional handicap space on the north side of the front entrance; accept the TRC comments and staff recommendations 1-11 with the following additional conditions: add to condition 9 "For the purpose of this conditional use permit transient boat slips shall be utilized in the same manner as vehicle parking for the restaurant" and strike the 50% language as it will be covered through the enforcement of the flood ordinance. MOTION CARRIED UNANIMOUSLY.

CONSIDER REQUEST TO AMEND THE ZONING ORDINANCE ARTICLE 18.2 NON-CONFORMING LOTS (G) REDUCTION OF REQUIRED LOT AREA WHEN LOST TO SHORE EROSION

Consider request to amend the Zoning Ordinance Article 18.2 Non-Conforming Lots (g) Reduction of Required Lot Area When Lost to Shore Erosion was tabled to October 9, 2007 at 7:30 p.m. or soon thereafter.

NC DEPARTMENT OF TRANSPORTATION ENHANCEMENT GRANT - GATEWAY BEAUTIFICATION PROJECT

Mr. Owens said the town held an open house and got some feedback from the public from which was made a write-up of the comments received. There was also some preliminary work done to generate discussion of where the focal points will be included in the information packet given to Council as well as some schematics of different types of gateways and signage that could be used. Mr. Owens said most of the people there were in favor of the project and felt it would be inviting to visitors and residents. Mr. Owens said some of the decisions to be made tonight would be whether to continue

forward with any type of landscaping improvements on the opposite side of Snow's Cut Bridge (New Hanover County side) and whether to go forward with the lighting part of the project both of which could create some additional expenses on a yearly basis for the town for maintenance and electricity. Mr. Owens said he called the NC Department of Transportation and their response was that they should probably investigate doing a maintenance agreement with the State of North Carolina to mow that right-of-way. In return for mowing that right-of-way across the bridge if they decide to do that the town would be refunded whatever they might pay a contractor to mow that portion. If the town has any other right-of-ways they might want to mow, for instance along Lake Park, that would probably apply as well. Mr. Owens said we can explore that if Council wishes. Councilwoman Efird asked if he had any more input from the people we deal with across the bridge? Mr. Owens said the only input he has had is what is in the packet, said there were about 30 people that showed up that evening.

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

Michelle Connet, 1321 Cabot Court, said she didn't believe they should be putting lighting across the bridge, and we should be more concerned about what is going on our side of the bridge. She doesn't feel we should be paying another \$15,000 a year of taxpayers money to furnish lighting across the bridge. She feels we definitely need beautification, especially down Lake Park Blvd., and she is in favor of that as a gateway but if you are looking at doing something over the bridge as a gateway into Carolina and Kure Beach, it's a dual town responsibility not just ours when talking about the other side of the bridge.

Leroy Franks, 908 Canal Drive, said he is not in favor of any improvement projects in Seabreeze or down River Road. He feels we should be concentrating on the beach and making it look as good as it can. Mr. Franks said the town put everyone behind the 8 ball last year and asked if they were going to raise taxes again next year and the year after. They need to take care of the town which is not being done.

Howard Otten said he addressed Council once before and he wants to reiterate his opinions about the noise barrier for the Pleasure Cay development, and he hopes that something could be incorporated in the beautification for noise reduction for that area.

Sue Burnwall, 404 Otter Road, said she wasn't at the first meeting and is not sure of everything that was covered but she feels the beautification should start after you get over the bridge. She thinks that along where Food Lion is there should be a lot of trees and blockage because the first thing you see is a parking lot and not much on the other side of the road. She said it would be nice if there was a pathway that led you down to Carolina Beach. She would like the money spent on this side of the bridge.

Ann Bowman, has a business at 1335 Bridge Barrier Road, and she wholeheartedly agrees with the gateway beautification process because she thinks about all the beautiful landscaping in Florida on the highways down there as you enter the towns and loves what

has been done thus far with the planting and mowing on the other side of the bridge. It is much more pleasant gateway into the beaches. She does feel Kure Beach should be approached to chip in. She also thinks DOT should make Dow Road a 4 lane highway. She is in full support of beautifying the other side of the bridge.

Mayor Pro Tem Gilbert made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

Mayor Clark stated the enhancement grant is \$264,000. Mr. Owens said it should tie in with another \$50,000 that was received by the town. Mr. Owens stated that relative to noise control you could do some kind of infill with plants, DOT has no plans to do so. That could be done within this project if Council wishes, no design started for the plan yet until after this public hearing. Mayor Pro Tem Gilbert asked if staff could ask DOT to do a noise evaluation and make a recommendation before going to far in the project. Mr. Owens recommended letting come forward with better plans and then discuss more specifics about plant material, walls, signs, etc. Mr. Owens would like for Council to determine whether Council wants to spend any money across the bridge in the right-of-way which would include some additional maintenance, whether they want to do the lighting across the bridge, and whether they want to continue to mow across the bridge and pursue reimbursement for that. They may mow every six weeks and we may mow not as often but it would offset some of the costs. Councilwoman Efird said we definitely need to keep that up. She said that nobody wants the lights so she'll have to give up, but she wants the lights. Mayor Pro Tem Gilbert said there is a potential for a traffic signal at River Road, it's not funded right now but meets all the requirements and he can go through the MPO and try to come up with some funding, possibly the county giving some matching funds. With that they could get some safety lighting. We have an intersection that is challenged and maybe from that we can come up with some funds and not have to use any of the grant money and any maintenance long term. Mr. Owens said that maybe there really isn't any need for action, he can explore several things such as talking to DOT about a noise evaluation and if Council doesn't want to do lighting on that side of the bridge, he will no longer pursue that. Mr. Owen can also ask the landscape architect to do some preliminary drawings, can continue to have several of the open houses and public meetings to continue looking at the product. Councilman Johnson said the public is saying they don't want to spend more money across the bridge, want to maintain the mowing and hopefully get some reimbursement for that from DOT.

NON-AGENDA ITEMS

Mr. Owens said he would like to thank Council for attending the workshop at the Fire Department, and hoped it was enlightening. He said we will continue to pursue some of those options. Chief Brian Roberts also thanked Council.

Mayor Clark said that last Wednesday he attended a meeting at East Coast Greenway in Raleigh, which is a greenway route that is going from Maine to Florida and a lot of Carolina Beach is a part of that map that is going to be for bicycles and walking. Right now we are on the interim part of that map going into Wilmington, down Dow Road, through Carolina Beach. There is a national meeting possibly in November, will be asking to officially name a couple of our routes as greenways - the new greenway at State Park and the one at the lake and get them officially named as a greenway.

REQUEST FOR CLOSED SESSION TO DISCUSS ATTORNEY CLIENT AND REAL ESTATE AND PERSONNEL MATTERS [NCGS 143-318.11(a)3, 5 and 6]

Mayor Clark made a motion to go into closed session to discuss attorney, client and real estate and personnel matter in compliance with [NCGS 143-318.11(a)3, 5, and 6. MOTION CARRIED UNANIMOUSLY.

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

The town attorney reported that Council has directed him to communicate with the attorney for Fairway to finalize the terms of our settlement. After they have a final settlement he will report the terms of that settlement in open session.

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

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____