

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

September 8, 2009

The Town Council of the Town of Carolina Beach met in regular session on September 8, 2009 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 Alan Gilbert; Councilwoman Pat Efirm and Councilman Jerry Johnson. Also present were Town Manager Tim Owens and Town Clerk Lynn Prusa.

Mayor Macon called the meeting to order.

INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Macon gave the invocation and led everyone in the Pledge of Allegiance.

ADOPT THE AGENDA

Councilwoman Efirm made a motion to adopt the agenda. MOTION CARRIED UNANIMOUSLY.

REQUEST BY JERI GRAHAM TO HOLD HOPE FOR THE WARRIORS 9-11 HOPE RIDE ON SEPTEMBER 11, 2009 IN CAROLINA BEACH

Jeri Graham, 1306 Snapper Lane, President of the Military Officer's Association of America local chapter, presented this item. She thanked the town for its support to service members and said that having this portion of the Hope for the Warriors 9-11 Hope Ride on September 11th is incredibly important. When the Mayor addresses the wounded service members who will be there, she knows he will also be recognizing the memory of our firefighters, policemen and citizens who lost their lives on September 11th eight years ago. That was a very important time for us. Carolina Beach has been very supportive of the Wounded Warrior Project in the past. This year the Wounded Warrior Project, which is a national organization, decided not to take their cycle ride to this part of North Carolina. Over the past year they looked for a group and found the Hope for the Warriors group which started at Camp Lejeune by two women. The mission has expanded and is now a national organization as well. It is looking to enhance the quality of life for service members and their families nationwide who have been so affected by severe injuries or death in the line of duty. This group, in recognition of those sacrifices, has developed a number of very important programs. This is the first year they are doing a cycle ride. They should have 28 servicemen with their families. They will be starting

around Jacksonville on Thursday and have a big ceremony in Wilmington ending at Cape Fear Community College. They will be spending the night at the Golden Sands Hotel. Most of the service members are still on active duty and this is part of their rehab program. Their spirits are incredible and inspirational. On Thursday, September 10th, they will spend the night at the Golden Sands Hotel, dinner at the Golden Corral, breakfast the next morning at the Ocean Grill, ceremony at Carolina Beach Lake Park pavilion with the Mayor presiding with special support from the Carolina Beach Fire and Police and Operations Departments. They will then depart on the Ft. Fisher ferry. They would appreciate as much attendance as possible to welcome them. On Saturday there will be a community bicycle ride fundraiser on Oak Island and everyone is invited. Ms. Graham thanked everyone who helped make this happen.

Mayor Macon made a motion to adopt Proclamation No. 09-988 proclaiming September 11, 2009 Wounded Warrior Day (Exhibit 1). MOTION CARRIED UNANIMOUSLY.

REQUEST BY MICHAEL PAUL WITH HOT WAX SURF SHOP TO HOLD THE HOT WAX CHALLENGE AT THE HAMLET BEACH ACCESS ON NOVEMBER 7-8, 2009

Michael Paul, owner of Hot Wax Surf Shop, presented this item. He said they have had this event, between Wrightsville Beach and Ft. Fisher, for 22 years. This year they wanted to move it to the Boardwalk area to tie in with what Robbie Johnson has going on at the Marriott that Friday and Saturday night. He owns *Surf Carolina* magazine and asked if they would move the surf contest to create an event that is different from anything the surfers have seen here before, something extra special and have the facilities of the Boardwalk available. They would like to start the contest at 8:00 a.m. until 6:00 p.m. for two days. They would be giving away about \$50,000 worth of stuff. A lot of big companies are very supportive. The contest promotes goodwill and support of the town. This is a good community event. He is requesting to use the beach just north of Hamlet Street. The Marriott has extended a rate for Robbie Johnson's event. Mr. Paul will be contacting them tomorrow about his event.

Tim Owens said there will be free parking and the town will work with them on restrooms, extra trash cans, insurance, etc. a few weeks before the event.

Councilman Gilbert made a motion to approve the Hot Wax Challenge at the Hamlet Beach access on November 7-8, 2009. MOTION CARRIED UNANIMOUSLY.

REQUEST BY EDDIE HARGROVE TO HOLD THE PLEASURE ISLAND SURF FISHING TOURNAMENT ON OCTOBER 16-17 AND 18, 2009 IN CAROLINA BEACH

Eddie Hargrove presented request to hold the Third Annual Pleasure Island Surf Fishing Challenge at Freeman Park in Carolina Beach on October 16, 17 and 18, 2009. It will begin around 2:00 p.m. for registration at the Federal Point Shopping Center and the tournament will be from midnight until noon on Sunday when the angler's fish. They are requesting free access to Freeman Park for the tournament anglers during the tournament. In the past they have been given a pass which they were required to put in the windshield when entering the park. The tournament requires they put a red marker on their antenna and wear an armband during the tournament. He thanked the town for their support in previous years.

Councilman Gilbert made a motion to approve the request for the Pleasure Island Surf Fishing Tournament on October 16, 17, and 18, 2009 at Freeman Park consistent with the requirements of the previous tournaments. MOTION CARRIED UNANIMOUSLY.

CAROLINA BEACH COMMITTEE REPORTS

Fred Crouch of the Operations Advisory Committee thanked Brian and Gene for their hard work. He said they are keeping abreast of any upcoming events, specifically the two retention ponds they are building and any new changes. They are looking into the potential of greening sources of energy at Carolina Beach and the wastewater area - putting in wind or solar. They will be investigating that and invited anyone with knowledge in that area to come speak to the committee. They meet the first Tuesday of every month at 9:00 a.m. at the town hall. Mayor Macon said they might want to look at using the reuse water for irrigating the park, and LED lighting. The Mayor will get together with him on that.

PUBLIC DISCUSSION

Fred Phelps, Carolina Beach Fishing Pier, asked about the Aquarium purchasing land to build a pier at Carolina Beach and wanted to know if the public or other pier owners would be notified before they purchased any land. He asked if they had looked into purchasing property at the north end. There is a big issue with Freeman Park with emergency access on busy weekends. If there was a fishing pier down there, that situation would be a lot better and he feels that purchasing land in that area should be looked at. Mayor Macon said it is up to the town to purchase the land but the location has to be approved by the Aquarium. They also require a concrete pier and 150+ parking spaces. They will take his location into consideration. Council seemed to be in

agreement at looking into his spot as well as a potential site. Mayor Macon said there is a north end committee that will be looking into improvements for that area that will make it work a little better.

Duke Hagestrom, 920 Riptide Lane, spoke on the Parks bond. He spoke a year ago about one of the reasons the soccer program moved off the island was because the park facilities weren't adequate or properly maintained. He pointed out that the county had passed a parks and recreation fund for \$35.5 million dollars in May 2006 and Carolina Beach had yet to request a single penny of that bond money to date. He understands projects take time and there are conflicting priorities. He feels he has a responsibility to express concern that so much time has passed and they haven't moved a project along far enough to execute. He has submitted his application to be considered for the Parks and Recreation Advisory Committee.

Mike Kirkbride gave update on the bike path. Congressman Mike McIntyre is supporting us with getting the easement approved at the Savannah level that approves all easements nationally. New Hanover County is now in a position to accepting that easement which would allow for the whole island to have an easement. They have been told that it is on the fast track and feels in the next couple of months they will have some word on it.

Mayor Macon said that he and Duke have talked about the parks bond money, talked about doing the basketball court and tot lot on the back of the property. Councilman Johnson said that at the last meeting they discussed the fields and they are getting conflicting reports on what people want, soccer vs. baseball fields, so they sent it back to the Parks and Recreation Committee to give Council more feedback and more information. Mayor Macon would like to get it to Sunny Point about the parks expansion into other areas. The town manager said he is trying to schedule an appointment in the next week or two with Sunny Point about the park and the bike path.

Mary Holly, Carolina Sands, said she really enjoyed this summer and all the events and thanked the town. She said there is a problem at the entrance to Carolina Sands in that people are pulling into the entrance and turning around, driving through the front of her property and her neighbors' yards, messing up water lines, leave tire tracks and she doesn't like it. She is asking for a no U turn or something and would appreciate any help they can give her. She also talked about parking at 421 or Lake Park Blvd., next door to her. They park at all hours of the day and night and she doesn't like people leaving their cars there. She would like some help with that as well. The town manager asked that she call him or the police chief tomorrow to talk about it a little further to come up with a plan.

Mayor Macon made a motion for a short recess to go out and look at the new fire truck. MOTION CARRIED UNANIMOUSLY.

Mayor Macon called the meeting back to order.

ADOPT THE CONSENT AGENDA

MPT Wilcox made a motion to approve the consent agenda with the amendment to the minutes of July 28, 2009 as presented by the attorney. MOTION CARRIED UNANIMOUSLY.

The town clerk explained the town attorney is asking for a correction to the minutes of July 28, 2009 and that the following be inserted on page 2 of 9:

“The Town’s Attorney, Mr. Coggins said there is a distinction between the Rhode Island case and the NC Statute dealing with “vested rights”. The Rhode Island case dealt with a building permit which by ordinance “expires” by a certain date. In the Rhode Island case, the Court pointed to no language preventing an extension beyond the period of expiration. That is not the case with our Vested Rights Statute, which provides that the life of the permit “shall be vested for a period...not exceeding five years”, which “shall terminate at the end of the applicable vesting period...” [NCGS 160A-385.1(d)(2), (3) and (6)]. This language strongly implies the Town has no power, no ability to extend the life of a permit. Instead, only the General Assembly has that power. He recommended that if the Council agreed to extend the time of the permit, that Park Place be required to fully indemnify, hold harmless and defend the Town against any claims based on an allegation the Town had no power to extend the time. He suggested third parties could bring an action against the Town and he wanted the Town protected in that event.”

Approval of the minutes:

Regular Meeting	August 11, 2009
Special Meeting	August 25, 2009

Set a public hearing date for October 13, 2009 at 7:30 p.m., or soon thereafter, to amend the Town Code to address regulations, as deemed appropriate, for the proposed day dock facility at the Carolina Beach Marina.

Set a public hearing date for October 13, 2009 at 7:30 p.m., or soon thereafter, to consider amending Article 3.8-1 Table of Permitted Uses, to allow open air commercial platforms in Highway Business (HB).

Set a public hearing date for October 13, 2009 at 7:30 p.m., or soon thereafter, to consider a Conditional Use Permit to consider approval of a 5 year “vested right” site specific development plan for a proposed Fairfield Inn located at 1 Cape Fear Blvd. (PIN #313015-54-4836-000), 5 Cape Fear Blvd. (PIN #313015-54-5877-000), 8 Cape Fear Blvd. (PIN #313015-55-5014-000), 45 Cape Fear Blvd. (PIN #313011-55-4065-000), 1 Carolina Beach Avenue S. (PIN #313015-54-5992-000), 7 Carolina Beach Avenue S. (PIN #313015-54-5870-000), 9 Carolina Beach Avenue S. (PIN #313015-54-5778-000), and 102 Cape Fear Blvd. (PIN #313011-55-3038-000).

Set a public hearing date for October 13, 2009 at 7:30 p.m., or soon thereafter, to consider amending Section 12.2 of the Zoning Ordinance to address the types, standards, and definitions of eating and/or drinking establishments in Carolina Beach; and Article 19 and 21 to address remedies for violations associated with eating and/or drinking establishments as well as all other land uses in Carolina Beach.

Recess tonight's meeting to September 15, 2009 at 7:30 p.m., or soon thereafter, to hold a public hearing regarding the Town's repair and replacement of sewer lift station #1, transactions and any finance contracts in connection with the same, pursuant to the town's authority provided by NCGS 160A-4, -11, -12, and -20; Article I of the Town Charter, Town Code Section 16; and any other applicable provision of law.

Recess tonight's meeting to September 15, 2009 at 7:30 p.m., or soon thereafter, to hold a public hearing regarding the purchase by the Town of property identified as New Hanover County Parcel ID #R08818-016-011-000 or known more commonly as 309 Carolina Beach Avenue North and transactions and any finance contracts in connection with the same, pursuant to the Town's authority provided by NCGS 143-318.11 and 106A-4, -11, -12; Article I of the Town Charter and any other applicable provision of law.

TABLED DISCUSSION REGARDING POTENTIAL PURCHASE OF 1710 CAROLINA BEACH AVENUE NORTH

Mr. Owens said this item was tabled from the last meeting where there was a request to purchase 1710 Carolina Beach Avenue North. Council requested he investigate certain items and provide for information on this lot. The offering price is \$270,000, the lot size is 50X125 and is essentially 50X75 on the average. There is a 60 foot setback for the most part encompasses the entire lot with a little bit of the front of the lot, the western most part of the lot actually not being in the 60 foot. Some of the potential uses that were discussed were gravel or clay parking - if run parallel, 2 parking spaces maximum or if installed on the lot, maybe 5-7 parking spaces with a handicap space using 2 of those. There are two lots there that have since been recombined for tax purposes. They are owned by Michael and Delores Kirkbride and the tax value is \$838,488. It appeared to be purchased in 2004 for \$150,000. There is a CAMA permit and a building permit still active for that lot. If the town were to purchase it and finance it, it would be roughly \$60,000 per year at a 4% interest loan for 59 months. Parking proceeds would be minimal with an estimated revenue of \$5,250 on 5 parking spaces. Maintenance costs should be minimal. Feasibility - any enjoyment would typically be experienced by surrounding properties and only in a passive nature. It is his opinion that the return on the investment by the Town will be minimal and that the lot would be better served if purchased by adjacent property owners. He spoke with the property owners today and said they would consider 20% down with no interest or payment for 2 years that would be \$54,000 which they felt would give the town time to seek grants to purchase the remainder of the property. The Town can go more than 59 months if you wanted to purchase it but you would have to go to Local Government Commission for their

approval. If you did 20 years at 4% it would be about \$20,000 per year. He gave Council a copy of the use standards for areas that are in front of the 60 foot line along with some information surveys and an appraisal. The applicant is here if you have any questions for them.

Councilwoman Efird asked about the expense to build a gazebo. Mr. Owens said a walkover would be close to \$10,000 and a gazebo about \$10,000-\$15,000.

Councilman Gilbert asked the town manager if he talked to any of the adjacent property owners about partnering with the town or sharing costs. Mr. Owens's answer was no.

Dee Kirkbride, 417 Marina Street, followed up on what the town manager said about the 20% down. She said that she and her husband were trying to figure out a way that would be a win for the town and allow some time for the town to look into getting the grant money. There seems to be a lot of grant money out there but it takes some time and effort. In addition to this two year period, they would be happy to pay for the fee or commission for the grant writer and happy to administer it or a committee to make sure we get in there and get some of those parks funds that are available. If you put the 20% down and the grant money was there and you assume the number of parking spots at 5 and you put that money in that would net a 9.7% return per year. If you assume 7 spaces, then the revenue goes up to \$7,350 roughly and the return goes up to 13.6% per year just on that 20% down payment assuming the grant money was there. Those are examples of a way it could be feasible as an investment.

Councilwoman Efird asked when her permits expire. Ms. Kirkbride said the CAMA permit is December 2010 and the Carolina Beach building permit is October of this year but it is her understanding it can be renewed as long as she has a valid CAMA permit. Councilwoman Efird asked if they would consider a lesser price and Ms. Kirkbride said yes and even different terms.

MPT Wilcox said they should take this into strong consideration or they may regret it in a couple of years.

Councilman Gilbert feels this is a great opportunity for the town and would like Council to discuss it in closed session. He knows of many properties that are considered distressed with respect to ocean hazard areas that those property owners would probably love to be able to sell those to the town and adjacent property owners would probably love to have some open space. With the opportunity to discuss and negotiate, it's a great opportunity for the town but there are probably a lot of people out there who would like the same opportunity. Any kind of finite negotiations with respect to interest rates he would like to talk about in closed session to hammer out an offer.

Councilwoman Efird suggested they discuss this in closed session and give them an answer.

The Town Attorney, Steve Coggins, said he seems to recall in reading through the minutes that there may have been some reference to litigation concerning the property in the past and, if that is true, he would like for Council to be informed about what that was if they are going to make any kind of definitive decision.

Ms. Kirkbride said there were two pieces of property that were in litigation, 1710 and 1704 and that was with CAMA and was dropped. The only litigation for 1710 was regarding a Board of Adjustment variance that was denied and they took it to the Court of Appeals which they granted but it was dropped and both properties have been settled.

Mayor Macon said they would take it up in closed session.

UPDATE ON CONSTRUCTION OF DINGY DOCK AT THE END OF SANDPIPER LANE AND CANAL DRIVE, AND TRANSIENT AREA AT THE MUNICIPAL MARINA

The town manager said he didn't have a whole lot to update at this time and suggested that Council table this item.

MPT Wilcox said he talked with Bobby Collins and he seems to be willing to negotiate the placement of the dingy dock. According to him he just got a letter, no sketch, and that there wasn't enough information for him to give an approval. They discussed some details and he might want a letter of intent from the town with regard to his future use of 15 foot type of approval. Mr. Owens said he e-mailed a sketch to him. MPT Wilcox suggested they table this until he can get information to Mr. Collins and get some feedback from him.

The town manager said the plans for the transient area at the municipal marina are due shortly and they will bid it back out and hopefully get it constructed sometime this year.

Council was in general agreement to table this item.

CONSIDER AMENDING THE TOWN CODE, CHAPTER 9 MOTOR VEHICLES AND TRAFFIC; ARTICLE VII WRECKER/TOWING SERVICES & IMPOUNDMENT

The town manager said there are two versions of an ordinance for their consideration tonight which he will summarize. He noted that in Version 1, under Section 9-153(e) has changed. It should say, "*The location to which the vehicle was towed, the name of the person who requested that the vehicle be towed and the original signature of the requesting party for each separate vehicle towed.*" He will get into why Version 1 is different than Version 2, there was some language that was excluded and that was very similar to the original language that Council saw at the last meeting. He did go back and take a look at the different ordinances that Mr. McDonald gave them, as well as

Wilmington's, Asheville's and Raleigh's ordinances. For the most part, what he is proposing is very similar to some of the things they do with regard to towing. In summary, the proposed changes to the current ordinance are:

1. *A responsible party, as outlined in the ordinance, must request the towing of a vehicle from private property **(Only in Version 1 of the proposed code change.)***

2. *The responsible party must submit, in writing, a request to tow a vehicle from private property **(Only in Version 1 of the proposed code change.)***

Mr. Owens said you must have someone request the tow and have an original signature. Version 2 does not put that burden on the property owner and would act similar to what we are doing now where you would have a contract with a tow company and they would tow on properties as long as they met some other criteria. This would be done on an individual basis by the property owner, HOA, management company, etc. The Wilmington, Raleigh and Asheville ordinances are similar but they didn't necessarily require an original signature, they didn't get into who requested the tow. They called it non-consensual or trespass towing and as long as you met the posting requirements and other requirements then a person could tow the vehicle.

3. *The request must have an original signature of the responsible party, pertinent information must be displayed on a form as provided by the Carolina Beach Police Department **(Only in Version 1 of the proposed code change.)***

Mr. Owens said this is mainly only in Version 1, there is a form in Version 2 that you would have to fill out and fax to the Town within 45 minutes of a trespass tow. Those are the main differences, one requires an original signature and one doesn't.

MPT Wilcox said if someone issues a contract and a signature at the beginning of the season and says if anyone is parking on that lot, tow it away. That doesn't really fall into either one of these.

Mr. Owens said that is right. It falls more under Version 2. Version 1 is more personal with having someone sign for each tow.

4. *The request for towing must be quickly faxed (45 minutes) to the police department in conjunction with the trespass towing.*

Mr. Owens said this is in both versions. There will be a form the town would have with a lot of pertinent information that they would have to fill out and fax back to the police department so when somebody calls and says my car has been stolen the police will know if it has been towed or not.

5. *Each tow company shall receive a sign permit for each posted lot for a charge of \$25. A list of posted properties shall be submitted at the time of the permit.*

Mr. Owens said that is a one time permit and they would list the number of lots where they are doing this type of towing. The town would go by a look at all the different lots to make sure they understand and met the requirements of the posting. All the lots that they control would be on this master list. At one time he had the permit by lot but made it a one time permit - that is something they could entertain.

Councilman Gilbert asked if he had 5 wall signs, would he have to pay \$25 per sign.

The town attorney said he thinks not unless they were different types of signs.

MPT Wilcox said the state law on signage is confusing. It is talking about the person who is doing the parking, parking illegally, but then it says in order to tow you have to have certain things and one of them is a sign. He guesses it's clear that a tow company shouldn't tow off of a property unless the signs are correct and would be in violation if they do. Would it be just the tow company in violation or the property owner as well?

Mr. Owens said just the tow company, the property owner doesn't have any shared responsibility that he understands.

6. *The vehicle must be completely secured on the site of the private property.*

7. *The tow truck operator must drop a vehicle when approached by the owner at the site or if contracted prior to the vehicle leaving the island provided that payment can be made at that time.*

Mr. Owens said this is about city limits and if they are contacted by the property owner in a reasonable amount of time they would have to come back and drop that vehicle either on-site or whether they have actually left the island or not - municipal limits.

8. *Tow truck operators must allow the vehicle operator to retrieve personal property from the automobile upon the request of the vehicle operator.*

9. *Tow truck operators and tow truck companies must accept all major forms of payment as defined by the ordinance change. Payment must be accepted on-site or at the premises of the towing operation.*

This is very similar to other municipalities.

10. *The facility or lot that the vehicle is stored must be within 20 miles of the Town limits, must be lighted, and must be a secure and fenced location.*

This is very similar to Wilmington, Asheville had a 10 mile radius. He felt that 20 miles was the distance most of these things are. They can ask the tow company owners who are here how far they are.

MPT Wilcox asked if they are required to tow it directly to the location.

Mr. Owens said that is something that should be added in either version - *must be towed directly to the impound facility*

11. *The tow service must have someone capable of releasing the car from a lot and on call 24 hours a day. Operator must be able to retrieve a vehicle within 15 minutes and release the vehicle within 45 minutes.*

Somebody has to be able to release that car 24 hours a day. It doesn't say that somebody necessarily has to be there for 24 hours a day but says they have to be able to release it and within an adequate time frame, basically within 15 minutes that they can retrieve their vehicle and released within 45 minutes.

12. *Vehicle storage fees shall not apply to a trespass tow within the first 24 hours. After 24 hours, the fee shall be similar to other storage fees for a vehicle and can not exceed 25% of the base towing charge per day following the first 24 hours.*

After the first 24 hours, you can give a standard charge but it cannot exceed 25% of the normal tow which he believes is \$120.

13. *The North Carolina General Statutes spells out a particular penalty for violating the NCGSs with regard to towing. In short, the parties may be cited for a Class 3 Misdemeanor and upon being found guilty may be fined up to \$10 at the discretion of the judge. The state citation and court appearance would also require the payment for the cost of court.*

These are the primary changes and there is very little difference between the two other than a more personal approach in having to have a vehicle towed - original signature, original request for each vehicle on Version 1 and not on Version 2.

MPT Wilcox asked if they think the spirit of the state law that requires some type of written consent is met under Version 2.

Mr. Owens said he is not an attorney but he feels either one would meet the intent of state law.

MPT Wilcox said the big question he has had in the number of conversations with Mr. McDonald is the understanding of what constitutes written notice. It is his opinion that it should be very narrowly defined and should be every spot every time a car is towed but that is not what it says, it just says written notice. If a property owner has a contract and gives written notice to tow on an annual basis, that's written notice. Maybe the attorney could tell us if that is adequate.

Councilman Gilbert said in the versions of the ordinance you keep using written permission, that's not what the general statute says. What the general statute says is a

written request. He referred to General Statute 20-219.2, “...a vehicle parked in a privately owned parking space in violation of this section may be removed from such space upon the written request of the parking space owner or lessee to a place of storage and the registered owner of such motor vehicle shall become liable for removal and storage charges.” Looking at requests and the dialogue that Raleigh’s mayor and council have had, focusing on that seems to be pretty mitigating. Permission to him is something different than an actual written request.

Mr. Owens said he thinks that is a good point, we need to use consistent language with the general statute.

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

John Tiganella, President of Sea Colony HOA, 1311 S. Lake Park Blvd., said he does have one of the towing companies working for him. They had a few problems in the beginning but they worked it out. He put a few restrictions on Mr. Rozak and there has been no problem with towing since then. He asked their property manager when this was in the paper, etc., to check with their attorney and he said that what was going on here didn’t apply to Sea Colony’s parking lots. Is that correct or not? Mr. Owens said it does apply. Mr. Tiganella said he gave Mr. Rozak, after the last item he read in the paper, a letter giving him permission. He brought a copy of it tonight. They have a tough time keeping people out of their lots and using their beach access even though they are right next to a public beach access which they must pay to use. He doesn’t understand why those parking lots aren’t free for people to use first come, first serve. They don’t have problems at Sea Colony with towing anymore. Mr. Rozak is very cooperative. Mr. Tiganella met with him and his drivers and told them what he wanted at Sea Colony and they agreed. He declined giving them a copy of his letter of permission as he did not want it to become public property.

Mayor Macon thanked him for coming to speak and said the revenue from the parking lots are used to buy more parking lots. The parking lots are important for our continuation of beach renourishment because if you had beach accesses

Councilman Gilbert asked if the parking spaces are owned by the condominium owners or by the HOA.

Mr. Tiganella said they are common areas. The only areas that are under the buildings are assigned to the first floor units which are limited common areas (verbiage in their bylaws that says the area under the buildings can be used by those first floor units as parking). The rest of the parking lot is common area and open to first come, first serve.

Mark Miller, 72 Seafarer Drive, said they work very hard to get the tourists down to Carolina Beach and he hates to see them get towed off. A lot of the tourists who come down, they don’t know where Wilmington is, they know where Carolina Beach is so if they are going to tow the car, why can’t they at least keep them at Carolina Beach so the

people don't have to get a cab and figure out where they have to go? At least they could do it locally if they have to tow someone.

Fred Phelps, representing the North Pier, said that a couple of months ago there was a Town Council meeting about vending. Vending is hard to do and to get a vending permit you had to have a business here. Tow truck service is not hard, you should have a business here, keep it on the island and not take it to Wilmington.

Greg Miller, President of Tidewinds HOA, 102 Carolina Beach Avenue South, said he hasn't seen tow truck operators sitting around like vultures waiting to swoop in on cars. They see the transition time on Saturday and Sunday, renters are coming and going, and he hasn't seen a single car towed during that time. Most of the cars he has seen towed are at night or during the week and you visibly see people park in a place where they don't have any business parking, get out and go to the beach and you know they are not staying there. They don't rent their condo but a lot of the owners do rent and we don't have a parking pass. We didn't do that on purpose. They have a unique situation. They have a couple of people who are full-time residents. They contracted earlier this year with Earl's Car Care and asked him that we would have a specific owner, we identified every owner of the 9 units, and these are the only people who can authorize you to tow someone and they have to identify the car (make and color) and the particular place that it is in and we haven't had any trouble. Everything has worked great. There were a couple of incidents but no particular issues at all. Most of the time if you tell people, if you see them, they will get towed and they move. We put in new signs this spring at each space that identifies it is for this unit only (one space per unit). Parking is precious to them. The only thing he would hate about the ordinance is this issue of having to have an owner there to sign something and have to fax it in there. If someone parks there, they clearly know they are wrong and why should the owner be put to a whole lot of extra work to have somebody move something when they know they are wrong when they park there. He would hate to see that part in there. The other part about having a bona fide owner do the call, with them that works great. It will be an issue for those who rent their units. He has been there for 6 years and hasn't seen predatory towing but he is sure it happens. The people who do rent they have asked them to tell their realty companies (who issue passes) to put that pass on their car when they pull it in there and leave it there until they leave and they haven't had any trouble.

Kathy Lane, 115 Carolina Beach Avenue South, Boardwalk Condominiums, said she is representing the homeowners and also the Motsingers at 107 Carolina Beach Avenue South. She said that she attended the meeting about 3 weeks ago and sent an e-mail to all of the council members and asked that they contact her to understand where they stood on this and thanked Dan Wilcox and Alan Gilbert for meeting with her. She said their location is somewhat unique. They are at the corner of Carolina Beach Avenue South and Hamlet Avenue, which is a public access/parking lot. They are almost like an invitation to park there. When she first bought her condo in 2002, they are 20 yards from public access and people would park under the building and if anyone said anything to them, they would get an earful. After the first time she told someone they couldn't park under the building, her space was egged the next time she came down. They have had

some real issues with illegal parkers. She shouldn't have to argue with them, it's private property. Vandalism has occurred on a regular basis. They finally quit painting the building unless it is something vulgar, they got tired of doing it. They finally decided on permit parking only. Owners and guests must display a parking permit. They all have assigned spaces in the common area and each owner gets two spaces. They have asked the owners who rent out their units and their management companies not to issue more than two passes because they will use someone else's space. The passes must be visible. They put up signs, larger than 2x2, at Hamlet Avenue side, Carolina Beach Avenue South side and four other signs that say no parking, private parking, no trespassing. They contracted with a towing company and they enforce the rules. The towing company regularly patrols their property. They will call if someone is in a space without a permit in a car. If she sees a car there, she will call. She doesn't think it is her place to go knocking on 8 other doors to find out if there is someone staying there. This program is working for them and would hate to see something mess that up. They have asked them to tow on a regular basis if they don't have a permit. They have asked that the rental management companies tell their guests, first and last thing, put the parking pass in their window or you will get towed. She feels calling towing companies predatory is too strong because this is how they make their living. What's the difference between the parking attendant the town hires to patrol the parking lots if there is not a tag in that car, they get a ticket. There are rules and if you don't follow them, there are consequences. She wants that towing company to provide that service to their building. She thinks they provide a necessary service to the island. Regarding the two different proposals, the waiting period before you can tow - you already don't trust them. Are you going to trust them to time that car another 30 minutes or hour? If they are there, they are in violation. It doesn't matter how long they have been there. She is opposed to any kind of time stipulation that the towing company has to come back and thinks that is asking a lot of them. They shouldn't have to mark tires and come back later. So far as it being a hospitality issue, she is trying to figure out how that is a problem for private property owners. Island residents and day trippers take their chances even though the signs clearly state that they should not park there. This should not be their problem. It is not their responsibility to find that person and ask them to move. It's a public misuse of private property and she sees some degree of trying to let that overrule the rights of private property owners and feels that might be a little unconstitutional. She is asking them not to make it the responsibility of the owners to stop the violators and would put them in an unsafe position. She has been there during arguments and it's not fun. Right now if you don't have a permit, you can't park here. It's very simple. If it is not allowed for them to continue like they are doing with the permit parking and having the tow truck come through occasionally and tow those who don't have it, you're pretty much giving people the attitude that they can park anywhere they want to with the unreasonable requirements being put on the homeowners. They agree that towing companies should accept credit cards and should be a little easier for that owner to get his car back, be it a local drop area or something within 20 miles and maybe even returning it for a fee if that were possible. The responsibility should fall on the violator, not the tow company or property owner to be more hospitable.

Cindy Myers, Breaker's owner, 1801 Canal Drive, is on Board of Directors. Everyone has pretty much said the same thing so she won't keep going over it. She thanked the police department. As busy as the Fourth of July was, it was one of the quietest they have had down there. As property owners they come to the beach to relax. She doesn't want to have to check every person who comes in, whether they are legal or not, and sometimes it gets to be that way. If they do see someone illegally parking, they do call the tow companies because they know they are trolling the area. They would rather for them to come then than have to get over the bridge and come back and then the person has left. Their intent is not to have renters that are legally there or owners legally there towed, their intent is to keep the day trippers and the people going out on Freeman Park and parking, using their lots so that when they do come in at night they do have adequate parking. They have 72 units with common area parking. There are two parking passes per unit. Those are given to visitors and renters and the owners have permanent stickers. They have lines of communication with the tow truck driver which is what they want done and not done as far as checking the cars very carefully for the pass. A lot of it is just good communication. Once it is posted and they have a signed contract and it has been stated what they need, they shouldn't have to continually every weekend to police their parking lots. That's why they hired them. They haven't really hired them, they don't get any revenue. It's to step up, be proactive about the problem so that when they come in they can actually enjoy. You talk about being hospitable to the tourists, well, how do you feel as a tourist if you come down and you're getting in at midnight and you paid \$800 to rent a unit with your family and your children are tired and you have to run around and find a parking place because someone doesn't want to pay to park or walk half a block to camp at Freeman Park all night.

Bob Lewis, 670 St. Joseph Street, said there was a question about the size of the sign at a previous meeting, where the signs were placed, how high the sign was going to be and is everybody in compliance or not with that so is the towing actually illegal because of where the signs are or not. He asked if that is in the ordinance today so that the public might know what that might be so there is no question for anybody who does put signs up.

Mr. Owens said the sign restrictions have never changed, no changes to size restrictions, and, yes they are in violations if they do not have those signs posted.

Mr. Lewis feels it would be good for the public if that information was in the newspaper, what the signs have to be, how big they have to be. There seems to be some question about signs not being at a height you can read them at.

Mr. Owens said they have to be 2' x 2', 6 feet above the ground. He knows there are some out there that aren't and that is one of the reasons they came up with the permit situation. They can't say we didn't know.

Kathy Lane asked if that is 6 feet minimum or maximum. Mr. Owens said not less than 6 feet above ground level and not more than 8 feet above ground level.

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

MPT Wilcox asked for something from the town attorney regarding the written request situation. Does he have an interpretation of the state statute whether that can be an annual request or does it need to be a case by case request?

Mr. Coggins said it would be strictly his opinion because there is no case law applying this statute. There are a number of municipalities that have taken certain actions in the ordinances that have been shown to you that he has a hard time saying it's clearly rooted in the statutory law. He has stated before that 20-219.2 is impossible to understand because of its hybrid nature. It's part criminal, part regulatory, and part civil remedy and different parts of it are to be construed in different ways so he can't tell them with any clarity what a judge would rule that a written request means for each towing event or can it simply be a standing, written contract for instance. He would guess a standing, written contract is sufficient because certainly the legislature could have said, (a) may be removed from such space upon the written request of the parking space owner or lessee with respect to the vehicle in violation. They could have easily said that but they didn't. It talks about the sign has to be at the entrance and it says that the spaces within the lot be clearly marked by signs setting forth the name of the individual lessee or owner. It doesn't say the renter. It doesn't say the person who has rights assigned to it by the lessee or the owner. The statute, in and of itself, is a mess.

MPT Wilcox asked if the town would be better off in their ordinance, if they were going to be consistent with the statute, that some written request be required?

Mr. Coggins said he thinks that a written request of some type is required. Merely an oral request would be in violation. There has to be something in writing. The question is, is a standing written request in the form of a contract or a letter, for instance, is that sufficient? His guess is that it probably is. One thing he does want to volunteer to Council and the representatives of the HOAs here is a statute that hasn't been discussed or brought to your attention and that is in Chapter 160A which is a statute that governs cities and municipalities and it is in our street ordinance that provides that a town upon request of a HOA or the owner of an apartment can request the town to adopt an ordinance specific to that particular parking lot, apartment complex, condominium association, etc., that specifies that the town can regulate parking within that particular lot. That may be something that a HOA, for instance, that's at ground zero at the CBD or Freeman Park at the height of the season may want to consider doing it and at the point the statute says by that ordinance the owner of the violating vehicle has actually designated Chief Younginer as their agent for the purposes of removing their own vehicle. That is actually something what the legislature has done to give the town a tool that is not provided very well at 20-219.2.

MPT Wilcox asked if there are any tow companies present who are offering a return tow for a fee to return the vehicle back to the owner from the impound lot? No one responded.

Mr. Coggins said that because there has to be a specific statute that says that the town can regulate parking on private property only upon the express written request of the owner of that private lot he thinks says a lot. It says that in the absence of their express specific request it raises serious question about the power of the municipality to regulate that kind of activity on private property. That being said, you have to be very careful how you construe and apply 20-219.2.

Councilman Gilbert said he has read 20-219.2 pretty thoroughly over the last couple of months and he can't find in all the research he has done on Asheville, Raleigh, Wilmington, none of them reference in their statute what you just referenced. In referencing trespass towing, nonconsensual towing, predatory towing, looking at what other legislatures, what our U. S. Congress has done with respect to consumer protection, they call it predatory towing ordinance or basically legislation. Looking at New Jersey and California who are on the consumer protection side of it, were very aggressive in their legislation. North Carolina the bill that is going through that he would say is more aggressive to consumer protection hasn't gone through the committee. So 20-219.2 seems to be it. Raleigh took an interesting spin on it. He feels the punishment doesn't meet the crime. The General Statute has made it a Class 3 Misdemeanor if you trespass park, if you park in somebody's assigned parking place. Something that is either leased or assigned or paid for or owned, it's a \$10 fine. What is happening if you are in violation of a Class 3 Misdemeanor you end up paying hundreds of dollars in response to that. There have been people he has talked to on the consumer protection end of it, one is Roy Cooper's office, in looking at what Raleigh was trying to do to protect their citizens they just looked at it and said if you are in violation of 20-219.2, you're basically in violation and it's a \$500 fine. That's on the consumer protection side. He can't figure out in staff's Version 1 and Version 2 the consumer protection side of it. He doesn't see how that mother picking up her daughter at the babysitter would have been protected by any of this other than if you are saying the written request. Permission is not a written request. In the spirit of the General Statute, if you wrote your version with respect to written request, he can see how that mother would have been protected. It's probably similar and, if he gets it wrong please correct him, Sea Colony. If he got it right, basically you have given direction to your towing contractor to meet a certain guideline. He hasn't seen that from anybody else. When looking at this legislation, the HOAs are on one side and the consumer advocates are on the other side. With respect to Tidewinds, they have a scenario that he thinks is consistent with the General Statute that the parking space is assigned to someone, leased or owned, and it is a request. Written or not, in the spirit of the General Statute, that is more the consumer protection end of it. He just doesn't see where they are going that is protecting. He can see what Raleigh did but he doesn't see in our versions, other than if you call it a written request, he can see there is going to be some time delay. He guesses he is a little confused. He sees some folks out there that are doing is probably correctly. He sees where Kathy's group didn't enforce towing for a number of years because his friends would park there and they would never get towed. For a number of years the surfers would park there and then one day they started enforcing it so the surfers got towed and they didn't park there anymore. The signs are pretty clear. Going from none to all is a bit different. Looking at all these

ordinances, Asheville probably had the most aggressive ordinance, looking at our ordinance and how we can friendly it up it just seems to him that if the General Statute says \$10 is a fine for illegally parking, people are paying hundreds of dollars as punitive and we should look at how to lessen. He thinks the folks at Sea Colony answered some of the challenges - the contractual obligation between the homeowners but he really doesn't see, if you read this ordinance, this is about a parking space. It's about somebody owning or leasing a parking space and the only people who can have somebody towed out of that parking space is the person it's leased to and it says that their name has to be on it. He thinks this General Statute was written specifically with private parking lots that lease a space to an individual or company, it could be a parking deck in Wilmington and it says BB&T. The only people that can have somebody towed at a BB&T parking space is BB&T. In here it says written request but he thinks this legislation is written around something a little bit different than what they are doing and if they go by the spirit of this then, is that what they are supposed to be doing and that is the challenge he has. We had a predatory issue, they had a new company on board here. He thinks the folks at Sea Colony understood some of the challenges from the consumer protection end. Tidewinds has a different philosophy. He is questioning Version 1, Version 2 - unless it says written request in there, he doesn't see the consumer protection side of it because the written request basically says the owner of that parking space is the only person who has the right to have somebody towed. That is what Raleigh did and the other folks who have referenced 20-219.2, they go by this General Statute. He is confused how any of these versions protect the predatory nature of it and he thinks all the HOAs need to find some level of compromise on the consumer protection end of it just like the folks at Sea Colony did. The ordinances still need to be fine tuned with respect to the General Statute.

MPT Wilcox said he is not in the towing business but he kind of takes offense to the label of predatory towing mostly because he was called a predatory developer during the election and he wasn't even a developer. He's not sure they have a predatory towing problem or a towing problem. He thinks they have had a couple of high profile cases that have been in the paper a lot. He thinks they had a situation with the Arts and Activities Committee where there was a breakdown with the people who own the lot and the towing company about what should or shouldn't be towed but he is not so sure they have the problem it has been made out to be. He thinks there should be a written request on file, a general written request, stating all the necessary information. With respect to Mr. Gilbert's comments about an owner of a single space, an HOA is the owner of a single space. They own all those spaces if it's on common property and therefore that statute applies to pretty much everything we are doing. He thinks it is really wrong of us to be looking at placing an additional burden on the property owners because somebody goes in and irresponsibly parks. He can't imagine driving in from out of town and getting in at 1:00 a.m. and having to sit outside and not be able to get into his parking spot because somebody is there and the property manager couldn't take care of it or the contract with the towing company wasn't sufficient. He is not sure he understands the consumer protection part of it. He is all for consumer protection but he is also for property rights and if someone is parked in your spot and it's your private property he thinks you have the right to have them removed. They are the ones in the wrong, not the property owners. He thinks the other problem is, if we ask 10 different people speak on this issue, we

probably would find 10 different people who have good systems and everyone is a little different. Some of them have stickers they put in their windows, some don't use passes, some put them on the dashboard, some have different kinds of communication with the tow companies, some have a blanket agreement but he thinks what they do is they work on it until they tweak it to fit their individual situation. He doesn't think there is a one size fits all and most of the people have done a pretty good job of it. For those few who haven't done a good job of it, he's not sure what authority the Town has, other than making sure you are following the state statute, to go hold your hand and make sure that you act responsibly. He would like to see the ordinance include a blanket written agreement on file and that the vehicles should be towed directly to the impound lot and he wouldn't be any kind of time limit. He thinks you are opening a can of worms if you are talking about someone coming in, the tow company comes by and sees the car there, they have to mark the tire and come back in 45 minutes. He guarantees everyone of those disputes will end in they weren't there for 45 minutes, they were only there for 30 minutes.

Councilman Gilbert asked how you get around, Raleigh was pretty clever with their ordinance because they referenced the General Statute. The General Statute says that signs can be no smaller than 24"x 24" prominently displayed at the entrance thereto and the parking spaces within the lot be clearly marked by signs setting forth the name of each individual lessee or owner. If Sea Colony owns all of them, how do you get around not putting a sign on every single parking place?

Mr. Coggins said it would have been very easy for the legislature to have had the ordinances say, "...and each parking space within the lot", but he noted the omission of the phrase "and each parking space".

Councilman Gilbert said he is going by what the mayor of Raleigh and the legislation has already talked about. He knows Mr. Coggins interpretation. In reading this and understanding the ordinance that was put through in Raleigh and it seems to be enforced pretty well, it's not saying in addition to it - lot be clearly designated as such by a sign no smaller than 24"x 24" prominently displayed at the entrance thereto and the parking spaces within the lot be clearly marked by signs setting forth the name of each individual lessee or owner.

MPT Wilcox said it doesn't say per space, it says should be clearly marked in the parking lot. If you have a 100 spaces there that belong to the HOA, you have two signs up that say these are HOA parking spaces, you have identified who they all belong to.

Councilman Gilbert said what Mr. Wilcox is saying is since it is in common ownership, the signs are sufficient.

MPT Wilcox gave an illustration with the old Food Lion at Federal Point, all those parking spaces belong to one person. Are they expected to put a sign at everyone of those parking spaces? Is that realistic?

Councilman Gilbert said we have our capital embracing this ordinance something a little bit different then were in and the confusion he is having is we have something that is open to some level of interpretation and that is the way Raleigh went with it and their council so he is looking for some level of precedence. That was an interpretation by a few other folks too. He's not saying it's right or wrong.

Councilman Johnson asked the town manager about the fees whether they are pretty much in order with Wilmington, Raleigh, etc. He doesn't understand the difference between the drop without tow and the release of the vehicle if it is on site.

Mr. Owens said he had no idea. He thinks they are a little bit different. They are fees they set a year ago. He tried to clarify that as a standard rotational call. If there is an accident, you call and the tow truck comes and it's getting ready to hook up and for some reason or another they decide not to tow it, that's a release. The drop without tow would be for a trespass tow. They can make it the same cost.

Councilman Gilbert suggested if the vehicle hasn't been moved, there is no drop fee. If it is lifted, there's no drop fee. Wilmington did this. Raleigh has a limit of \$100 so you look at a trespass towing, it's limited to \$100. They also limited the daily storage fee, which didn't start until after 24 hours and it wouldn't exceed \$25. Looking at the trespass towing, the nonconsensual towing, most of the communities in North Carolina embraced a lower fee for the nonconsensual towing and a consideration on the drop fee. He would ask just for that side of it, the difference being is that, in considering this in anybody's motion, maybe look at Wilmington. If you're on site the drop fee would be similar to Wilmington's with zero charge and consider only \$100 for the actual towing vs. the maximum of \$120 and then the daily fee set at a maximum of \$50. He likes Raleigh's \$25 on the consumer end because he doesn't think the punishment really fit's the third class misdemeanor on that end of it or fit's the crime.

Mr. Owens said under 9-153(2)(c) and #8, after the signage part of it, no matter what they do tonight there is some discrepancy between what was in the ordinance and the new portion that he started to address, times that people had to respond. Depending on what they do he would like to make sure they clear that up too. 9-153(2)(c) talks about the person must answer the phone must respond to the location within 30 minutes of the call, it talks about the operator and #8 he put somebody basically on 24 hours a day, must be able to address the call within 15 minutes and release within 45 minutes. Depending on what they do, he wants to make sure that those are changed to match each other.

MPT Wilcox made a motion to adopt Ordinance O9-806, Version 2 with the following changes: the changes the town manager just described, changes to the table rates that the existing #7 be moved to #8, that #6 be called a drop without tow and that be at a rate of \$25, that #7 be added and be a drop within town limits and that be at a rate of \$50, that a request needs to be on file and can be a blanket request, and that the cars be towed directly to the impound lot (Exhibit 2).

Councilman Gilbert asked if he felt 20 miles was reasonable or would 15 miles be more reasonable?

MPT Wilcox said his motion is to leave it at 20 miles.

The town manager will also use the term “written request”.

Councilman Gilbert said reading over Version 2 doesn't see the consumer protection side of it and could be fine tuned better.

Mayor Macon feels the tow truck drivers understood where we were coming from and they are making attempts to not tow somebody who has the right to be there and we have drawn attention to the situation and don't want that going on as much as possible.

MPT Wilcox said towers need to make sure the property owners have the proper signage or they cannot tow or they will be in violation.

MOTION CARRIED 4-1 WITH COUNCILMAN GILBERT VOTING NO.

CONSIDER AMENDING THE ZONING ORDINANCE, ARTICLE 3 ZONING DISTRICT REGULATIONS; SECTION 3.9(5)a DIMENSIONAL STANDARDS FOR THE VARIOUS ZONING DISTRICTS TO CLARIFY AND ALLOW HVAC UNITS TO ENCROACH INTO SETBACKS A MINIMUM OF FOUR (4) FEET WITHOUT REGARD TO WHETHER THEY ARE ELEVATED OR ON THE GROUND

The Zoning Administrator, Jeremy Hardison, presented this item.. He stated the current ordinance for intrusions into the required setback for elevated heat pumps, heating and air-conditioning units and meter platforms may intrude into the required setback. He showed examples. This ordinance was brought to Council to clarify and remove the words “elevated” and “platforms” to allow these types of intrusions into the setback in all zones.

MPT Wilcox suggested that the next sentence in the amendment be changed to read, “if supported by a platform”.

Mr. Hardison said the other change recommended pertains to the toe or termination of a set of stairs may encroach 2 ½' into the setback and change that to state just the termination of a set of stairs and strike out the “toe”. There are two attachments, one is in current paragraph form and the other is in table form.

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

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

Councilwoman Efirm made a motion to adopt Ordinance No. 09-808 (Exhibit 3) with change in second sentence using attachment 2. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE ZONING ORDINANCE; ARTICLE IV OVERLAY DISTRICTS AND OTHER SPECIAL DISTRICTS; INSPECTION DEPARTMENT TO REQUIRE FOUNDATION SURVEYS ONLY WHEN PROPOSED DEVELOPMENT IS WITHIN TWO (2) FEET OF A SETBACK LINE AND TO CODIFY THE CURRENT REQUIREMENT FOR “AS-BUILT SURVEYS”

Mr. Hardison presented this item. He said this is regarding two issues, as-built surveys and foundation surveys. In 1997 Council started requiring as-built surveys once the final stage of development is done to ensure everything meets the ordinance. In looking back and trying to find that language, he found the minutes and ordinance that was adopted but he had a hard time finding it in the zoning ordinance. At that time it appears to be an administrative error that it was never recorded properly in the ordinance and that is why it is being brought back if Council wishes to have that requirement. Also before you is the foundation survey which has never been adopted formally as an ordinance but was more of a policy that the Board of Adjustment asked staff to implement after a couple of “after the fact” setback variance requests. It has worked well since they began requiring foundation surveys in 2007. Currently they require both so that if there are any mistakes in the footprint or pilings they can catch them at that time, the foundation stage, rather than if they only require an as-built survey the error may be found later when it is too costly to correct. One of the options staff gave Planning and Zoning Commission was a foundation survey would be required only if any portion of a structure is only within 2 feet of a setback line. After discussion, the Commission felt because the banks require them and recommended requiring the foundation survey regardless of where the building is situation on the lot. Attachment #2 before you is the Planning and Zoning Commission recommendation.

Gary Ferguson, Planning Director, said they are trying to do two things. They want to codify an ordinance. They have one in the as-built survey requirements. The as-built was apparently adopted by Council but it never made it into the books. It was just an oversight. The second part of this was should they require a foundation survey. A situation came up 3 months ago where a guy was trying to locate his house, it was a modular, and he was putting on a large lot in the R-3 district. He had plenty of setbacks and were easily being met and he didn't have a foundation survey. Staff started looking for the requirement for foundation surveys, it's not clear there. Staff started thinking that maybe in certain instances you shouldn't have to get a foundation survey. That was the initial thought. Then staff started talking to banks, based on a conversation with a home builder who said they should start talking to mortgage companies because they are going to mandate that you have a foundation survey before they make their first draw. You end up with 4 surveys if you are in a flood zone and they are trying to maybe minimize those but obviously not put people at risk in terms of building over a setback or doing

something not quite correctly. After discussing it with the lending companies and P&Z, they were agreeing that let's just move away from the 2 feet and just always require foundation surveys.

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

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

Mayor Macon made a motion to adopt Attachment 2, Ordinance No. 09-809 (Exhibit 4) and finds that it is consistent with the Land Use Plan. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING THE ZONING ORDINANCE TO ADD SECTION 1.8(C) - DEFINITIONS IN ITALICS WHICH WILL ALERT THE READER THAT ITALICIZED WORDS HAVE SPECIAL MEANING AS DEFINED IN THE ZONING ORDINANCE

Ed Parvin made the presentation. He said this is mostly an administrative change. When you are reading the zoning ordinance, when you see an italicized word this will alert you that it has a special meaning that the Town has looked at and defined specifically in one of its articles. There are two points he wants to make with this ordinance and first is why do we go through this process? An example is a phone call he got a couple of weeks ago from a gentleman who wanted to change his address. We just went through a pretty painful process over the last 3 years to change everyone's address to make sure they're consistent with 911 for emergencies to make sure you can be found easily. Staff though perhaps they had made an error or mistake and he asked him why he wanted to change it and he said he had been reading our zoning ordinance and his front setback, R-1 zone, corner lot, was 20 feet and he wanted his front to be on the other side. It took a while to explain to him that our zoning ordinance defines what your front is, which is the narrowest side of the lot, not where your address is. Once he found that out, he didn't need an address change, he just needed to know what a front yard was the Town of Carolina Beach. This ordinance change does that. It would highlight that front yard and identify it as something special. That's why they made the change. The second point he wanted to bring up is something the attorney sent to him late today. Staff does a lot of zoning changes and they might miss putting some of these words in italics and, if it's not in italics and is a defined word that you can't use it in a different context. The town attorney wanted to put something in there for the Town's protection. If Council likes the idea of using italics, they give staff the flexibility to add a disclaimer statement in the zoning ordinance. They would work with the attorney to come up with that language in addition to what they presented with 1.8. This would be done only in the zoning ordinance. Planning's research fellow has already gone through the zoning ordinance and completely changed all the words to italics in a separate version. He also changed words that shouldn't be in italics to ensure that only defined words are in italics.

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

Councilwoman Efird made a motion to close the public hearing. MOTION CARRIED UNANIMOUSLY.

MPT Wilcox made a motion to adopt Ordinance No. 09-810 (Exhibit 4) and that the attorney draft a disclaimer regarding the official nature of the italicized words giving staff the latitude to work with the Tow and it is consistent with the Land Use Plan. MOTION CARRIED UNANIMOUSLY.

CONSIDER AMENDING ARTICLE 11 SIGN AND HANDBILL REGULATIONS TO CLARIFY THAT BANNER SIGNS SHALL BE PERMITTED FOR TWO (2) CONSECUTIVE WEEKS BUT NO LONGER THAN FOUR (4) WEEKS PER YEAR AS A TEMPORARY SIGN BY PERMIT

Gary Ferguson presented this item. He said this has been discussed at several Council meetings beginning in June and July. This is a clarification issue. We have an ordinance in place right now that speaks to the length of time that a banner sign, which is a temporary sign, can be displayed and that limits it to 4 weeks. It doesn't get into the specifics of how those 4 weeks can be calculated based on a daily basis, a bi-weekly basis, a weekly basis, etc. This ordinance does one simple thing, it clarifies it. You can keep the banner up for 2 consecutive weeks but no more than 4 weeks in a given year. During this discussion they also talked about concerns with revamping the entire sign regulations. Perhaps they are out of kilter and need to be reevaluated. There are two articles staff provided to Council that illustrate almost two different kinds of opinions on signs. One is more anti signs and the other one says signs do have certain kinds of benefits to the business community. So they tried to present some kind of balance about signs in general. During the Planning and Zoning Commission last month they got into a discussion about this. They offered them the same thing he is discussing with Council right now and asked which approach they would like to take. Would they like to do a wholesale, reexamination of the sign regulations and leave banners the way they are right now which is a little bit in limbo or would they rather address the clarification issue with banners, make it clear how long banners can be up in Carolina Beach and then if they think there is a need to come back and revisit the entire sign regulations, staff can do that with them. Out of the 6 members, 3 supported looking at the entire sign regulations and the other 3 supported what Council has in front of them now, an amendment that clarifies how long a banner can be up. That particular provision is supported by staff. Both groups obviously thought they could reexamine the entire ordinance but 3 did not want to forgo clarifying the banner regulations.

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

Bob Lewis, 670 St. Joseph Street and shareholder in Last Resort, said the whole thing about banners probably came up because he brought it up. All they requested was a 28 day banner permit which, by law, should have been granted to them and it took forever for them to get one but when they finally did..., there are other 28 day banner permits issued in 2006 but for whatever reason they couldn't get one. That kind of started the ball rolling and since that time he has talked to other business owners. For them the banners aren't really going to increase their business significantly or reduce it significantly. Having it for 4 weeks, 12 weeks or a year isn't really going to make a difference but it made a difference to about 7 or 8 business owners he spoke with such as Carolina Beach Furniture Company. She's in a business and the economy is down and she is trying to decide what to do and uses banners to bring people in when she has a sale. It creates a lot of activity and she sells a lot of furniture. So this is all about creating jobs, retaining jobs in the community and he has heard a number of things from people and almost everything seems to be geared toward the small business owners. He doesn't hear anyone talk about banners for non-profits, banners used by the Town, Chamber of Commerce, Boardwalk Makeover Group, etc. So were going to clarify a thing on banners and restrict it to 4 weeks or however you want to word it. How does that impact the business owner, the small business owner in specific? It's not the Marriott, they don't care if you have a banner or not, it's all the small business owners who are trying to drive revenues by using the banner to talk about sales, etc. In the discussion on the P&Z, we were actually talking about the non-profits because they heard, what do we do with the non-profits like the soccer team who might have Pepsi or McDonald's advertising out on their field. Or maybe it's the skate park that might have somebody who wants to sponsor the skate park and they want to put up McDonald's banners. Do we eliminate all those? Do we eliminate everybody from putting any banner up about every bake sale, church social, once a month fish fry's, etc. because you're never going to be able to get those 4 consecutive weeks once a year. If the ordinance says you can only have one time a year, 2 consecutive weeks up to 4 weeks, then you eliminate a lot of people who have been able to put anything up. If you want to have a no banner zone, he heard Dan Wilcox say he doesn't like the idea of driving into the town and our whole gateway is full of banners. He agrees 100%. Maybe there is a no banner zone and banners are specifically one banner per property or whatever it might be. The other issue was the banners get tattered, some of them are homemade. Very few businesses he has seen today in our community have a tattered looking banner. They have a good looking banner because that promotes their business, their image. Somebody who has a bake sale or street sale, maybe they put up a homemade banner but everybody else has professional banners made. Then we go back over to Gary's suggestion that maybe all the businesses should get neon signs or everybody getting a digital sign so it could change everyday. Does that make it even more cluttered looking than the banners would initially? Now we have feathered flags that are 10-20 feet tall. There's nothing in the ordinance against them so you can just have those as long as long as they don't have an image on them, doesn't have a product on them or name so all those things could be everywhere. Now there are businesses saying if that's the only way I can do something to get attention to my business, maybe I'll go out and buy a bunch of them and stick them in my lot because I'm allow to do that because nobody cares if you have those. So they thought maybe they should go through all the sign ordinance, come back with a solution that is going to fit everybody, the small

businessman, the individual residents, the non-profits that want to put for profit signs, make it comprehensive so everybody knows the rules, everybody can get a permit, everybody should go get a permit if you want to put a banner up. And those banners that are up that don't have a permit need to be taken down. Somebody needs to enforce the banner rule. If you are going to run the legislation, give direction to Planning and Zoning Department and say you want them a maximum of 4 weeks, then we better have somebody enforcing that. A simple way is to use some technology, using Microsoft Office, put a permit in there on a schedule, you know when the permit is up, send the business owner an e-mail which tells them it is no longer valid and must be taken down. It's a simple process. There are only about 100 businesses in town. It's not a lot to manage. Those are his opinions. He thinks some people think that because it has been an issue so long, we were going to have this joint meeting with Planning and Zoning, individual business people, residents, Council, maybe do an education and come up with a solution that would be more encompassing so people aren't really jumping on the bandwagon to come out to the meeting tonight. It's still an issue.

MPT Wilcox said this originally came up because some people wanted to do 30 different days for a banner and staff was interpreting it as a 4 week period. He can understand how a 4 week period or two 2 week periods or three 2 week periods could be done in a scheduling program. How would you do 30 different days like that?

Mr. Lewis said he thinks it probably has to be limited to something.

MPT Wilcox said it would have to be some group set in order to enforce it.

Mr. Lewis said yes but if you talk to somebody like Carol over at Carolina Beach Furniture, she would be looking for something that is not just summer related, because she has sales all year long, once a quarter for up to 4 weeks would probably work for her. Most businesses said once a quarter for 2 weeks. You could actually manage that. You could charge for each permit by quarter so it's \$25 per quarter revenue that could be generated. They didn't have any other solutions so he thinks P&Z started saying 365 days because the economy is affecting everyone. One of the confusing things for him at the last Planning and Zoning meeting is that Gary and the Chairman of P&Z came back with the impression that Council wanted them to pass some type of recommendation back to Council to say exactly the way he has written the legislation, that's what you want. He was kind of astounded that it would even come back to them. He looks at the Planning and Zoning Commission to be a review committee. It's not passing or approving legislation. It's listening, like the first approvals and say, okay that makes sense. Now you can go back on to Council. So some of them were a little bit confused about why it would even come back to them and the direction was, this is what Council wants, 2 consecutive weeks up to a maximum of 4 weeks. They want you recommendation to do that. The reason it was split was because he didn't think it made any sense.

MPT Wilcox said he didn't agree with that. He wanted it to go back because he didn't think 365 days was reasonable.

Mr. Lewis said he wants the whole thing to go back for review.

Councilman Gilbert said he was blown away that the Planning and Zoning Commissioners recommended 365 days a year. We are spending hundreds of thousands of dollars on beautification and that nobody really embraced the visual clutter, the esthetic impact that signage can make or break a community and he felt education would help. He really wants to give direction to staff to say two consecutive weeks, 4 weeks. He thinks the responsible thing to do is for the collective community to get together and look at how signs and banners can help or hurt a community and Council to make that decision, especially after spending hundreds of thousands of taxpayers' dollars for beautification.

Mr. Ferguson said he thinks they need to look at a no banner zone and is not sure the two signs up there are legal because they are past the size.

Birdie Clark, 233 Florida Avenue, speaking as a citizen said she would like to have some input in any changes made in signage because she agrees with Councilman Gilbert who said we are putting out some money to do some things, we need to look at it. She has had an opportunity to travel all across the country this past spring and was amazed at places like Santa Fe. You just don't put stuff there. Talking about telling people how to build their houses and what to do with their property, you have to look like an adobe before you can put your house up there. She applauds that because Santa Fe looks great. She commented about the awful billboard that went up at the Food Lion as you come in - we need to get a handle on this thing. She can appreciate Planning and Zoning wanting to do this and Council wanting to do it but she would like to see people like Island Women and anybody being able to get in on the discussion. She doesn't know if that is a public hearing or invited to the workshop or however. We need to look at what we are doing. She doesn't want to hurt people that are trying to make money but you have to look at the greater thing. We have a town that needs to look great when people come into it. Looking at places across the country, people are controlling things that are going up. There are places with the extreme like "South of the Border" signs. She would like to see the citizens be able to get in on this discussion as well, not just through all the representatives. Regarding clarification, any clarification at this point would help. Then we can move on to the next.

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

Councilman Gilbert made a motion to approve Ordinance No. 09-811 (Exhibit 5) and is consistent with the Land Use Plan and long range plans to qualify banners for 4 weeks, 2 consecutive weeks pending further discussion on the ordinance in the future.

MPT Wilcox said he would like to see Council give a little bit more latitude, maybe a 1 week period every 6 months which would be 6 one week periods per year. It doesn't seem like it would be that difficult to enforce and would be his preference.

Mr. Ferguson said when you look at other banner regulations in other towns, typically what you will find, which is what he explained to Mr. Lewis, the banner allowance is meant for grand openings and he thinks everyone can agree with that. It is not meant to be a continuous banner. There are examples in town where people did not site their signs properly or could have done a better job in advertising themselves on the street and they are trying to use the banner as a supplement to their advertising purposes.

Mayor Macon said this is being made way too complicated. All we are doing is clarifying the ordinance. They can come back, have a meeting and come up with a solution.

MOTION CARRIED 3-2 WITH MPT WILCOX AND COUNCILWOMAN EFIRD VOTING NO.

REVIEW ALL UPCOMING TOWN COUNCIL MEETING DATES AND CONSIDER SETTING A WORKSHOP DATE AT 9:00 A.M. ON NOVEMBER 10, 2009 AT THE CAROLINA BEACH FIRE DEPARTMENT TO DISCUSS:

- *Possible expansion of fire department*
- *Current lifeguard program & discuss any changes that the Council would like to consider*
- *Update from Lanier Parking & seek direction from the Council on items that they would like to see implemented for next season*

Tim Owens said he knows there is some discrepancy in the dates and times but he is asking to set a workshop on October 27th at 9:00 a.m. This workshop is to address possible expansion of the fire department, parking and the lifeguard service and whether they want to do some different things for both of those in the upcoming year.

Council agreed to meet on November 10, 2009, normal Council meeting day, at 9:00 a.m.

DISCUSSION AND OUTLINE OF DATES ASSOCIATED WITH THE CLOSING OF PROPERTY LOCATED AT 309 CAROLINA BEACH AVENUE NORTH AND ADOPTION OF REIMBURSEMENT RESOLUTION, AND DISCUSSION AND OUTLINE OF DATES ASSOCIATED WITH THE BIDDING AND FINANCING OF LIFT STATION NO. 1

Tim Owens said he just tried to outline two different items, one is the purchase of 309 Carolina Beach Avenue North which is four 50' x 125' lots they have been looking at with one fronting Canal and the other fronting CBAN. The bid price for the old Arcadius project was \$475,000. There is a lot of information there and a lot of different dates we have to hit. The intent is to try to close by September 28, 2009. The action needed to take place there, the Finance Officer will touch base on this, is the reimbursement

resolution. The other one is an LGC application for financing lift station no. 1. They took care of some of the action at the last meeting on Friday. On the 15th of this month, they will have to take some additional action on both of these items in order to keep them moving forward.

Dawn Johnson, Finance Officer, said the reimbursement resolution is in case they have to spend any money for the lots before they actually obtain financing. If they adopt the reimbursement resolution, they will be able to reimburse themselves from the financing fund. She would need Council to adopt Resolution No. 09-987 for those reimbursements in case they are incurred.

Councilwoman Efird made a motion to adopt Resolution No. 09-987 (Exhibit 6). MOTION CARRIED UNANIMOUSLY.

DISCUSSION REGARDING AMENDING THE CURRENT CONTRACT WITH WASTE INDUSTRIES FOR 5+ YEARS AND SET A PUBLIC HEARING AT THE OCTOBER 13, 2009 TOWN COUNCIL MEETING TO ADJUST SOLID WASTE RATES BASED ON THE AMENDED CONTRACT WITH WASTE INDUSTRIES

Tim Owens said he is asking to set a public hearing date to consider adjusting rates for October 13th. He didn't have a chance to give Council a revised contract, which he received after the packet went out. He would assume it would be very similar to what they have in their packet, a one or two page document which the Town Attorney would have to review.

Mayor Macon made a motion to set a public hearing for October 13, 2009 to adjust solid waste rates and to review amended contract with Waste Industries. MOTION CARRIED 4-1 WITH COUNCILMAN GILBERT VOTING NO.

DISCUSSION AND DIRECTION REGARDING THE PURCHASE OF REPLENISHERS FOR THE NEWLY INSTALLED LUKE PARKING MACHINES

Mr. Owens said we purchased a number of machines and Lanier Parking was trying to keep that under a certain budget and when they did they basically eliminated the boxes that hold change. That was something he did not know or anyone would have thought to ask that question. It was a situation where you would guess there would be change. They found out that they do not and he is recommending is that they buy those replenishers. It will cost approximately \$7,100 and he is asking for a budget of \$8,000 to come from the Tourism Fund Undesignated Fund Balance. That will cover all the shipping.

Mayor Macon made a motion to approve the request of the town manager to add replenishers to the machines. MOTION CARRIED UNANIMOUSLY.

SET A RIBBON CUTTING DATE FOR THE NEW LAKE PARK ENTRYWAY PROJECT

Mr. Owens said he is asking to set it on September 25th at 10:00 a.m. for a formal ribbon cutting at the CVS corner of Lake Park Blvd./Dow Road. The contractor who did the job has to be in Raleigh later that afternoon. They will formally invite the folks listed on the memo as well as advertise in the newspaper. People can park at the Town Hall and he will contact the church adjacent to Town Hall for permission to park there.

NON-AGENDA ITEMS

Councilwoman Efirm said she has received a lot complimentary remarks about the Boardwalk season and the beautification this year and she is very pleased that everything has gone so well. She also complimented Dan Wilcox on the good work he has done with this and without him it would have never gotten started.

Lynn Prusa, Town Clerk, reminded Council that the NC League of Municipalities Conference in Greenville is coming up on October 24th, which is a Saturday but typically you don't go up on a Saturday and you arrive on the 25th through the 27th. She would like to try to firm everything up within the next week. They can be thinking about those dates and let her know for sure, one way or the other, if they will be attending. There is also the National League of Cities in November 10th through the 14th in San Antonio. Let her know if they are interested in that.

Councilman Gilbert agreed with Councilwoman Efirm on the success of the summer with the amusements and thanked all of the businesses who stay open year round.

MPT Wilcox said, along those lines, one of the things on the plate for Boardwalk Makeover this winter season is to being their efforts to try to increase the length of their season. Christmas by the Sea is going to be one event, which is a month long event. A number of business owners have already agreed to stay open at least on the weekends during the winter for this event. They have talked to the amusement people about coming back a little early next year and are trying to get some momentum to get the businesses to open up at least on weekends and nice days a little bit earlier in the year, close a little bit later in the year.

Councilman Gilbert said that retail in December on the island is as good as in July for the shops that are open. October and November are the most challenging. If they can do anything during that time to start branding some events in the CBD, same goes for January and February, would help.

Mayor Macon said he wanted to thank the rest of Council and staff and all the town employees because it has been an amazing ride. We don't always agree but we all manage to work together and allow everyone to voice their different opinions and not hold grudges and work together to make the Town of Carolina Beach a better place. A

special thanks to Dan and his boardwalk volunteers because that has been an amazing process. The town manager and staff is working so hard to make things happen out in the field, you make us look good and make it look easy for us and it's not. The town has looked awesome and he really appreciates it. Being in the retail/restaurant business, he receives comments have been great and people talk about how in Raleigh when you mention Carolina Beach, everybody wants to jump in on the conversation and talk about what a great experience they've had. That's something they haven't always had and it's nice to reach that level again.

MPT Wilcox said all the guys on the ground - the town manager has been there every time they've needed him, always comes to a meeting, always shows up at the Boardwalk and without that they couldn't have made that happen. Brian, all the guys out there doing environmental, all of Operations, it's like everybody took ownership in this project which is what made it successful.

Mayor Macon made a motion to go into closed session to discuss real estate and attorney/client matters in compliance with NCGS 143-318.11(a) 3 and 5. MOTION CARRIED UNANIMOUSLY.

Mayor Macon made a motion to go back into open session. MOTION CARRIED UNANIMOUSLY.

Mayor Macon said no action was taken in closed session.

ADJOURNMENT

Councilwoman Efird made a motion to adjourn. MOTION CARRIED UNANIMOUSLY.

Respectfully submitted,

Lynn N. Prusa
Town Clerk

Approved: _____