

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
June 4, 2008**

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, June 4, 2008.

COUNCIL MEMBERS PRESENT: Mayor Neil Morrison; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Bart Smith; and Councilor Dave Wessel.

Council Members ABSENT: None.

OTHERS PRESENT: Town Manager Christopher J. Layton; Director of Community Development Andy Garman; Police Chief Phillip Ferguson; Fire Chief Donna Black; Town Attorney Donald I. McRee; and Town Clerk Lori Kopec.

OTHERS ABSENT: None.

Mayor Morrison called the meeting to order at 7:03 p.m. Mayor Morrison asked former mayor Gene Schwarz to lead the Pledge of Allegiance. Mayor Morrison led the moment of silence.

Fire Chief Donna Black was recognized to speak. Fire Chief Black stated that she wanted to recognize volunteer firefighter Josh Ball for responding to a traffic accident and extrication on January 20, 2008 in Southern Shores. She stated that the Southern Shores Fire Department had recognized several of Duck's fire fighters at their meeting that had helped at the scene. She went on to recognize the fire fighters and then read a letter from the Southern Shores Fire Department and noted that Mr. Ball had received a medal of honor as well. Mayor Morrison thanked Mr. Ball.

**PUBLIC COMMENTS**

Mayor Morrison opened the floor for public comments. He asked that comments related to the public hearing be held off.

There being no one wishing to speak, Mayor Morrison closed the time for public comments.

**APPROVAL OF MINUTES**

Mayor Morrison opened the approval of minutes from the May 7, 2008 regular meeting and the May 21, 2008 mid month meeting. Mayor Morrison directed Council to review the minutes from the May 7, 2008 regular meeting for changes.

Mayor Pro Tempore Thibodeau moved to approve the May 7, 2008 minutes as presented.

Motion carried 5-0.

Mayor Morrison directed Council to review the minutes from the May 21, 2008 mid month meeting for changes.

Councilor Wessel clarified that the mid month meeting was known as the “regular” mid month meeting. Town Manager Layton stated it was.

Mayor Pro Tempore Thibodeau clarified that Fire Chief Donna Black was on call twenty-four (24) hours a day, seven (7) days a week as per Page 3 of the minutes. Mayor Morrison stated that Deputy Fire Chief Bill Walker had stated that, but he wasn't sure what he meant. Councilor Wessel stated that he understood it to be Deputy Chief Walker's personal opinion. Councilor Caviness stated she had spoken to Deputy Chief Walker and his intent was to express concern but not over-state.

Mayor Morrison had an addition to Page 1 of the minutes.

Councilor Smith moved to approve the May 21, 2008 minutes as amended.

Motion carried 5-0.

## **PUBLIC HEARINGS**

### **Public Hearing/Discussion/Consideration of Proposed FY 2009 Budget**

Mayor Morrison stated that Council would hold their public hearing on the proposed FY 2009 budget. He stated that the budget was initially presented to Council on April 23, 2008 and a work session was held on May 21, 2008, which was well attended. He noted that the public was invited to come to that meeting to speak which had a lot of audience participation. He stated that the public hearing was required for the proposed budget.

Mayor Pro Tempore Thibodeau stated that she welcomed everyone's comments.

Mayor Morrison opened the public hearing for the proposed FY 2009 budget. He asked for public comments.

John Summers of 123 Sea Hawk Drive West was recognized to speak. Mr. Summers stated that Duck has always been a “cash cow” and will continue to be one. He stated that when the Town was trying to get people to vote for incorporation, it was hard as they foresaw possible tax increases. He stated that the incorporation committee sold people on incorporation by telling them that there would not be any tax increases. He stated that the Town was now on the verge of throwing the concept out the window. He stated that the Town needed to show restraint. He stated that he had not seen any restraint in the Town in the past six (6) years. He stated that the only restraint shown was with the Duck Trail Committee. He noted that the Duck Trail Committee transferred their funds to pay the initial Town employees but that the Fire Department did not give the Town anything, opting instead to purchase a \$625,000 ladder truck. He stated that the funds that were marked for the Duck Trail were to be used to repave it. He noted that if the Town had not incorporated, the Trail would have been repaved. He stated that Town Manager Layton had suggested surveying the Trail to find the problems that needed to be repaired and that spot repairs were completed. He stated that one of the objectives of the Duck Trail Committee was to increase the trail on the west side of Duck Road outside of the Village district; a survey was completed and the cost was high, so the Committee did not recommend the increase, which showed restraint. He stated that restraint was the answer to the problem with the budget.

John Jenkins of 104 Dune Road was recognized to speak. Mr. Jenkins stated that there was a very unstable financial situation in the country. He agreed with John Summers' comment regarding restraint. He stated that he could not believe that with the financial situation as it stood, the proposed budget continued at the same operating levels that the Town has been operating. He stated that he had trouble accepting that taxes needed to be increased. He went on to read real estate statistics to Council and the audience. He stated that it was time for the Town to consider expenditures with restraint. He stated that he felt strongly that Phase III of the Municipal Property Master Plan should be deferred until conditions improve. He felt that the amphitheater and Town Hall were not needed. He urged Council to use restraint and passed out an article with ideas on development, cost control and reduction of costs regarding parks and recreation.

Gene Schwarz of 103 Quail Way was recognized to speak. Mr. Schwarz stated that he was the chairman of the Incorporation Committee and when the Committee went out to solicit signatures for incorporation, the major concern was an increase in taxes. He thought they did an outstanding job in convincing people that the Town would keep things under control. He showed a brochure to Council and the audience that was handed out to the citizens and noted that it stated that Duck would determine property and ad valorem taxes and that taxes could and would remain at or below the present level. He stated that there is an obligation to the year round residents to live up to that promise. He stated that the thirty percent (30%) tax increase was completely unwarranted. He thought it was time to exercise restraint and re-prioritize. He stated that Council was, as a government, fiscally responsible to the taxpayers. He urged Council to look at the budget and bring it to a reasonable level.

Jim Farmer of 116 Bunting Lane was recognized to speak. Mr. Farmer noted that he pays taxes but cannot vote in Duck. He stated that he has lived in Town for twenty-five (25) years and attended the first budget meeting that was held at the Fire Department. He stated that the first budget was \$1.6 million, which included a lot of fixed expenses. He stated that twenty-three percent (23%) for taxes was unheard of. He agreed with the other comments that the Town needs to show restraint. He suggested performing special assessments to build up the Contingency Fund. He complimented Council and staff on the detailed newsletter that was recently mailed out.

Bill Marsh of 112 Quail Way was recognized to speak. Mr. Marsh agreed that restraint was needed. He stated that he was adamantly opposed to the Town incorporating. He stated that residents were told before incorporation that there would be full restraint on the taxes and that the Town would be run with three (3) employees and the rest as volunteers. He stated that the Town has blown up into a humongous organization. He stated that the park was beautiful but felt things have gone overboard. He pointed out that the Town Hall had been voted against three (3) times by the people of Duck. He stated that it was now time to cut items from the budget, such as the Council compensation and the police cars. He urged Council to show restraint until the items could be afforded.

There being no one else wishing to speak, Mayor Morrison closed the public hearing.

Mayor Morrison opened the floor to Council for discussion. He noted that after the public hearing, Council could adopt the budget ordinance, make changes to it and adopt it or schedule another work session.

Mayor Pro Tempore Thibodeau stated she was not in favor of adopting the budget as presented. She stated she would like more discussion on how to reduce the budget. She thought Council was

at a crossroads with regard to the budget. She thought Council was deciding on fiscal policies. She reiterated that she would like more discussion.

Councilor Caviness asked what the proposed increase was for the Town of Kill Devil Hills. Town Manager Layton stated they were looking at dropping their increase by a half cent. Mayor Morrison asked what the Town of Southern Shores was doing. Town Attorney McRee stated that they had a budget hearing on June 3, 2008 and may adopt their budget on June 10, 2008. He added that the manager was proposing nine (9) cents. He stated that one (1) person spoke in favor of lowering the tax rate to nine (9) cents or lower with the rest speaking in favor of increasing taxes to pay for Capital Improvements.

Councilor Wessel stated that he had worked on the incorporation committee. He stated that the Town has grown beyond what the original idea of what Duck would be. He thought it was time to get back to the concept of Council controlling the destiny of the Town by controlling the budget. He agreed with Mayor Pro Tempore Thibodeau that more discussion on the budget was needed before a final vote.

Councilor Smith stated that the catalyst for the Town incorporating was the fact that Food Lion had purchased property in Duck. He stated that the Duck Civic Association as well as other concerned people pleaded with Dare County not to allow a grocery store to come in to Duck as it went against the Land Use policy, but were turned away. He stated that Paul Keller was the first one to have the idea of incorporating. He stated that no one could have known the Town would have been able to purchase the Food Lion property. He stated that because things came together, the Council was able to purchase the property for use as a park. He noted that without the park property, there would be no need for raising taxes. He stated that the actions of buying the Food Lion and Herron properties have put the Town somewhat in the position it's in today. He stated that when he looks at the budget and tax increase, he sees the park property as a valuable resource. He stated that it was never imagined that Duck would be able to purchase twelve (12) acres of property and turn it into a park that was the envy of all of Dare County. He stated that he receives compliments on the park constantly. He noted that opportunities had come along that now the Town was paying the price.

Councilor Caviness stated that she appreciated Councilor Smith's comments as well as the public comments regarding incorporation. She noted that what was outlined in the incorporation brochure was the beginning and information that could not remain a static promise. She stated that the community has grown and reacted to things that have happened. She stated that everything that has happened in Town has had an impact on the budget. She stated that five (5) essential services such as trash pick up were promised but that three (3) employees could not be expected to handle all of that. She agreed that the Town should not stray too far from the initial thoughts and values, but noted that Duck was not the same community it was in 2001.

Mayor Morrison stated that he didn't recall anyone saying the Town could operate with three (3) employees. He stated that taxes could either be too high or too low, but there had to be a certain level that can finance the vision for a community. He noted that each town in Dare County pays a twenty-six (26) cent ad valorem tax in addition to the tax that a town sets. He noted that Duck has the lowest tax rate in the County and went on to read the rates for the other towns. He felt that Duck was the showplace of Dare County. He added that the Town has a tourism based economy and the things that have been done have helped bring people to Duck. He stated that Town Manager Layton had indicated that the tax rate was too low and asked for an adjustment so the Town can afford to continue with the plan that is in place for completing the park and Town Hall facility. He pointed out that staff has to be out of the Administrative Offices building in two

(2) years and wondered where they would go. He stated that there had to be a place for staff to work. He noted that Council had looked at many alternatives but were unable to come up with anything for a Town hall. He stated that the Herron property was purchased for the sole purpose of constructing a Town hall.

Mayor Morrison stated that the latest Town newsletter was sent to 2,700 property owners which explained the budget and proposal for the tax increase in detail. He stated that nine (9) emails in opposition to raising the ad valorem tax were received. He went on to read a few emails both in opposition of the tax increase as well as in favor of the park property to Council and the audience. He stated that the tax increase Town Manager Layton was recommending was not thirty percent (30%), but was less than eight percent (8%). He explained that when figuring the percentage, the County's twenty-six (26) and the eleven seventy-five (11.75) together adding that an increase of two and three quarter ( $2\frac{3}{4}$ ) cents equaled a seven point eight percent (7.8%) increase. He didn't think it sounded like a large tax increase. He noted that sixty-five percent (65%) of Duck property owners would be paying less than two hundred dollars (\$200) if the tax increase was approved. He stated that he had spoken to someone recently who was upset over the last tax increase as it was going to force them to leave Duck. He thought it was a bad thing and asked Town Manager Layton to check the tax records to see how much of an increase the resident was getting. He added that the increase was only eight dollars (\$8.00) per year. He stated that if this resident could not afford an additional eight dollars (\$8.00) per year, there was something wrong.

Mayor Morrison thought the tax increase had been blown out of proportion and felt it was a very minor hardship for property owners. He stated that to not accept Town Manager Layton's suggestion on the tax increase would mean abandoning the vision for the Town. He felt it was a well thought out plan with the results seen wherever one looked. He stated that there were some places that could be cut in the budget, but thought that cutting items such as the amphitheater and the sound side boardwalk would be a terrible mistake. He pointed out that the sound side boardwalk would not cost the Town anything as Council anticipated that grants would pay for the entire amount. He stated that the funding for the amphitheater had already been secured via a grant of \$125,000 from the Dare County Tourism Bureau. He noted that this would pay fifty percent (50%) of the cost. He stated that by delaying the construction of the amphitheater, it would only mean higher costs with probably no grant money available. He thought that postponing the amphitheater was a mistake.

Mayor Morrison explained that Paul Keller and the Municipal Property Committee have worked for years to come up with a plan for the Municipal Property, seeing everything but the amphitheater through to completion. He stated that to turn down the grant funds because of current economics was a foolish mistake. He noted that his expertise was in economic and stock market cycles and added that cycles were normal in the economy. He stated that the country was in a recession but it would be followed by a recovery as it has always done. He stated that a person with courage acts when things are bad, explaining that one gets the best buys on the stock market when things are down. He stated that the same was true for the Town, explaining that it would get the best price on building the amphitheater now.

Mayor Pro Tempore Thibodeau asked how Council should proceed. Mayor Morrison suggested that Council discuss the budget as much as they wanted and then move to a work session. He asked how soon Council could hold a work session. Town Manager Layton stated that they could hold it as soon as possible. He added that the meeting could be recessed to be reconvened to another date.

Mayor Pro Tempore Thibodeau felt that the Town was at a different time than when it incorporated. She stated that the revaluation alone was significant in that it adjusted the property values. She thought there was a tax increase needed and felt there wasn't a way around it. She stated that the maintenance for the park seemed stable and thought maybe the plantings could be scaled back to make things look more natural. She noted that recycling services were great and pointed out that no one was paying any additional money for the program. She reiterated that some type of tax increase will be needed, but that she wanted to temper the increase rate. She thought the Town needed a year or more of just leveling off services. She commended Town Manager Layton and all Town staff for their level of service in running the Town. She didn't think there were any frivolous employees that worked for the Town or that the Town was being extravagant. She felt everyone was enjoying the services the Town offers.

Mayor Pro Tempore Thibodeau stated that the Town has had phenomenal growth but felt it was a good time to take a look at things. She believed there should be a phased approach taken to the Town Hall building as there has been a lot of good input and that it will be a good place for people to work and gather. She noted that the property for the Town Hall was an unexpected purchase with the vision of having a Town Hall there one day. She stated that she was not sure she was ready to say she was happy with the design and felt that work was still needed, including obtaining additional input from the public. She pointed out that the Town has become very distinctive and added that she was very proud of Duck.

Councilor Wessel reiterated his earlier comments about needing a work session. He thought that if Council did not have a line by line discussion, they could not reconfirm what their vision for the Town was. He stated that allowing the purchase of additional Police vehicles was debatable as to whether it should be done this year or next year. He added that the timeframe for the amphitheater was also debatable. He thought discussions were needed. He pointed out that even though the Town received seven (7) emails as well five (5) citizens who spoke calling for restraint, no one commented that the Town should spend more. He stated that six (6) people had spoke at the May 21, 2008 Council meeting asking that the budget be scaled back, with two (2) in favor of the proposed budget. He felt that one more open forum would help to put things into perspective.

Councilor Smith stated that Council has had the budget for a while. He stated that he warned from the beginning not to "count bullets" as it could get silly. He stated that there were things Council could look at in the budget to cut, but thought if Council decided to start nit-picking items costing \$100, they should just decide to meet every day for the following week for work sessions. He stated that a few things could be addressed and pushed off. He pointed out that in order for it to make a big difference; significant items would need to be cut. He suggested that Council decide before the next work session to go through the budget and come back with specific items that they want cut that would make a difference.

Mayor Morrison asked Council for their availability for the next work session. It was *consensus* of Council to meet on Friday, June 13, 2008 at 1:00 p.m. He stated that the reason for not keeping the initial promise of not raising taxes was due to the Food Lion and Herron properties becoming available as well as instituting a curbside recycling program. He stated that things change and a promise could not be made that wouldn't be broken for eternity. He stated that when things happen, adjustments have to be made. He noted that people who were in opposition of an issue tend to show up for meetings, but those that were in favor never show up. He stated that there was a vocal minority in Duck that opposed what the Town was trying to do. He stated it was time for Council to display courage and do what was right for the Town of Duck. He stated that he admired Town Manager Layton for having the courage to tell Council that taxes

needed to be increased to stay fiscally healthy and continue the services that the Town provides. He pointed out that Council did not have an easy job ahead of them.

Bill Marsh asked if the Council meeting would be properly advertised. He pointed out that the June 4, 2008 meeting was not properly advertised in the Town's newsletter. Mayor Morrison stated that it was a typographical error. Mr. Marsh agreed but pointed out that it was sent to 2,700 people with the wrong date listed. Councilor Smith thought something had went out advertising the correct date. Town Manager Layton stated that a notice was sent to the Town's subscriber list, letting them know of the error and the correct date. Councilor Caviness stated that it was also announced at the May 21, 2008 meeting that it was a typographical error. Mr. Marsh stated he understood, but he did not receive any correspondence on it. Town Manager Layton noted to Mr. Marsh that he was able to show up to the meeting without receiving any correspondence.

### **OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS**

#### **Discussion/Consideration of a Request for a Public Hearing on Ordinance 08-03, an Ordinance Amending the Zoning Ordinance of the Town of Duck, North Carolina, regarding Signs**

Director of Community Development Andy Garman was recognized to speak. Director Garman gave a short overview stating that the Planning Board had been working on changes to the Town of Duck Zoning Ordinance related to signs in response to concerns raised by the business community. He added that if Council wished, a public hearing could be held at their July 2, 2008 meeting.

Mayor Pro Tempore Thibodeau asked how many free standing signs were out of compliance. Director Garman stated he did not know. Mayor Pro Tempore Thibodeau asked what the reasoning was for the excerpt from the Town of Cary regarding the rules of interpretation in the Council packets. Director Garman stated it was put in there as an example of what other communities use as a standard. Mayor Pro Tempore Thibodeau clarified that staff would develop the guidelines on how to interpret the ordinance. Director Garman stated she was correct.

Town Manager Layton pointed out that the ordinance only related to courtyards and the interpretation of those signs and was not for all signs in general. Mayor Pro Tempore Thibodeau asked if he could envision doing it for all signs. Director Garman stated that the Board discussed coming up with a sign guideline manual that was more descriptive in nature.

Mayor Morrison moved to authorize a public hearing on Ordinance 08-03 for July 2, 2008.

Motion carried 5-0.

### **NEW BUSINESS**

#### **Discussion/Consideration of Resolution 08-05, a Resolution of the Town Council of the Town of Duck, North Carolina, Amending the Town of Duck Personnel Policies**

Town Manager Layton stated that the item was a housekeeping matter. He stated that although the Town currently has two (2) full-time Fire protection personnel, and may or may not have a third (3<sup>rd</sup>) by June 30, 2008, the Town's personnel policies do not provide the Fair Labor Standards Act's (FLSA) standard for the hours which Fire protection personnel should be paid if

they are non exempt employees. He stated that the two (2) current Fire protection employees were exempt, but the issue needed to be put in the personnel policies for consistency. He stated it would apply the FLSA standard for Fire protection personnel, which was two hundred twelve (212) hours in a twenty-eight (28) consecutive day work period. After that time, the employee would receive overtime. He noted that it was similar to the Police employees, where they have to work one hundred seventy-one (171) hours in a twenty-eight (28) consecutive day work period to receive overtime.

Mayor Pro Tempore Thibodeau moved to adopt Resolution 08-05 as presented.

Motion carried 5-0.

### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY**

Town Attorney McRee stated that he had nothing to report.

### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER**

#### **Update on Departmental Activities**

Police Chief Phillip Ferguson was recognized to speak. Police Chief Ferguson gave a brief overview of the past month's activities to Council and the audience.

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a brief overview of the past month's activities to Council and the audience.

Town Manager Layton gave a brief overview on the building permit activities to Council and the audience.

#### **Update on NC12/Tuckahoe Drive/South Duck Stormwater Project**

Town Manager Layton stated that staff has been trying to secure the final funding needed for the project from the State of North Carolina. He stated that he received resolutions in support of the project from Currituck County, the Town of Southern Shores, and the Outer Banks Chamber of Commerce. He stated that he expects to receive one from the Outer Banks Tourism Bureau as well as from the Outer Banks Association of Realtors. He noted that the resolutions have had a positive impact in helping to apply pressure needed for the project. He stated that an appropriation request for a third (3<sup>rd</sup>) of the remaining funding has been submitted by Senator Marc Basnight's office and he understood that funding had also been submitted by Representative Tim Spear's office. He added that next week, Stan White would be sitting down with the NCDOT district engineer to prioritize his projects. He believed the Town would come out fine in the end and guessed it would be even better due to the support of the NCDOT staff.

Mayor Pro Tempore Thibodeau clarified that Dare County also sent a resolution in support of the project. Town Manager Layton stated that they had but that he hadn't received a copy yet. Mayor Pro Tempore Thibodeau asked if Stan White receives copies of the resolutions. Town Manager Layton stated that Mr. White as well as NCDOT receives copies.

Mayor Morrison clarified that as time has passed, the cost of the project has escalated. Town Manager Layton stated he was correct. Mayor Morrison pointed out that the same would be true if the Town held off on building the amphitheater and Town hall. Town Manager Layton agreed.

### **Update on Meeting with the Army Corps of Engineers**

Town Manager Layton stated that he, Director Garman, CAMA LPO Sandy Cady, and Building Inspector Cory Tate all attended a meeting on May 23, 2008 with the Army Corps of Engineers. He added that Mayor Morrison and Planning Board Member Joe Blakaitis also attended. He stated that it was a good meeting and had not anticipated that the Army Corps of Engineers would provide solutions. Town Manager Layton and Director Garman went on to give a short overview of the meeting to Council and the audience. Town Manager Layton noted that the Army Corps of Engineers have offered to give a presentation to Council and the Planning Board. He suggested holding a joint meeting in the near future to view the presentation.

### **Financial Statement for the Month of May 2008**

Town Manager Layton reviewed the financial statements with Council and the audience.

### **MAYOR'S AGENDA**

Mayor Morrison stated he had nothing to report.

### **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau thanked the Fire Department for responding to a small incident behind her office recently. She stated that she was amazed and pleased with the quick response. She asked if the Town pays for the Tai Chi and Pilates classes. Town Manager Layton stated that it does. Mayor Pro Tempore Thibodeau asked if the Town sign could include an area code in front of the telephone number. Town Manager Layton stated that there weren't enough numbers to add an area code. Mayor Pro Tempore Thibodeau stated she would like to put an item on a future agenda regarding beach management.

Councilor Caviness stated she had nothing to report.

Councilor Smith stated he had nothing to report.

Councilor Wessel thanked Ron Forlano for serving as the Chairman of the Planning Board. Mayor Morrison noted that Mr. Forlano had done an outstanding job as the Chairman.

### **OTHER BUSINESS**

Public Relations Coordinator Kathy McCullough-Testa was recognized to speak. Public Relations Coordinator McCullough-Testa presented Council with a plaque from the Arts Council thanking the Town for its outstanding artistic achievement in a municipality. Mayor Morrison noted that some of the events that the Arts Council sponsors could be put on at an amphitheater.

Councilor Caviness stated that former Councilor Denver Lindley, Jr. was holding a show on his paintings at the Glen Eure Art Gallery on Sunday, June 8, 2008. Mayor Pro Tempore Thibodeau added that the show was being held for the month of June.

### **ADJOURNMENT**

There being no further business to discuss, Mayor Morrison recessed to reconvene the meeting until Friday, June 13, 2008 at 1:00 p.m.

The time was 9:05 p.m.

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Lori A. Kopec, Town Clerk

Approved: July 2, 2008\_\_\_\_\_

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Neil Morrison, Mayor