

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
January 7, 2009**

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, January 7, 2009.

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

**Council Members ABSENT:** Councilor Nancy Caviness.

**OTHERS PRESENT:** Town Manager Christopher J. Layton; Director of Community Development Andy Garman; Fire Chief Donna Black; Police Chief Phillip Ferguson; Permit Coordinator Sandy Cady; Attorney Ben Gallop; Town Attorney Robert Hobbs; and Town Clerk Lori Kopec.

**OTHERS ABSENT:** None.

Mayor Morrison called the meeting to order at 7:03 p.m. Mayor Morrison asked Police Chief Phillip Ferguson to lead the Pledge of Allegiance. Mayor Morrison led the moment of silence.

**PUBLIC COMMENTS**

Mayor Morrison opened the floor for public comments.

Ron Forlano of 1378 Duck Road was recognized to speak. Mr. Forlano stated that he was speaking on behalf of the Carolina Dunes Homeowners Association regarding the meeting space at the Duck Volunteer Fire Department. He stated that many homeowner associations, the Duck Civic Association and Duck Community and Business Alliance had been using the second floor of the Fire Department for their meetings. He stated that he was told to ask Council to do something to allow the Carolina Dunes Homeowners Association back into the Fire Department as they were told they could no longer use that space due to training sessions. He asked if the HOA and other associations use the Council chambers for their meetings. He stated that he had a problem with not being able to hold meetings at the Fire Department because the building and its contents were paid for by the taxpayers of Duck and to not be allowed in for any reason was wrong. He noted that Carolina Dunes pays a small contribution to the Fire Department whenever they have a meeting there, but wasn't sure why they did. He again asked Council to let the various associations use the Council chambers for their meetings.

Mayor Morrison asked Mr. Forlano how many meetings the Carolina Dunes Homeowner Association had each year. Ron Forlano thought there was one or two each year. He stated that the smaller associations met in a private house and would not need a large room. He felt that Carolina Dunes would fit in the Council Chambers room.

Councilor Wessel asked if Carolina Dunes HOA met every Columbus Day weekend. Ron Forlano stated that he wasn't sure. Town Manager Layton suggested that a member of the HOA contact the Town early to reserve the Council chambers for their meeting. He noted that the room was used by other associations and some book a year in advance. He noted that Town Clerk Lori Kopec was the point of contact for booking the room.

Fire Chief Donna Black was recognized to speak. Fire Chief Black stated that the decision to stop holding meetings at the Fire Department was made on behalf of the Fire Department Board as there was not a lot of space for both Police and Fire personnel. She added that the Fire Department has training and storage on the second floor and that overnight personnel use the space for sleeping and cooking. She noted that the second floor was not ADA compliant as well.

Mayor Morrison clarified that several homeowner associations use the Council chambers. He added that there could be more than one meeting held in a day. Town Manager Layton agreed. He stated that Town Clerk Kopec schedules the room and contacts the Police Department so they can open and close the office for the meetings.

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

### **APPROVAL OF MINUTES**

Mayor Morrison opened the approval of minutes from the December 3, 2008 regular meeting and the December 17, 2008 mid-month meeting. Mayor Morrison directed Council to review the minutes from the December 3, 2008 regular meeting for changes.

Mayor Pro Tempore Thibodeau had one change to Page 9 of the minutes.

Mayor Pro Tempore Thibodeau moved to approve the December 3, 2008 minutes as amended.

Mayor Morrison had one change to Page 8 of the minutes.

Motion carried 4-0.

Mayor Morrison directed Council to review the minutes from the December 17, 2008 mid-month meeting for changes.

Councilor Wessel moved to approve the December 17, 2008 minutes as presented.

Motion carried 4-0.

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

Mayor Morrison asked to have Item 5B under New Business moved up to be Item 4A1 under Old Business. It was *consensus* of Council to move the item up in the agenda.

### **Discussion/Consideration of Issues Related to the NC Beach Insurance Plan and Homeowner Insurance Rates**

Attorney Ben Gallop was recognized to speak. Attorney Gallop stated that Dare County and Nags Head had voted to challenge a few decisions made by the Insurance Commissioner that related to their constituent's insurance. He stated that on November 21, 2008, the Insurance Commissioner approved two (2) different increases related to the FAIR and beach plans. He stated that the beach plan would apply only to the coastal portion of Dare County and was meant to be an insurance of last resort for homeowners and/or wind and hail insurance. He stated that in most cases it was primarily used for wind and hail insurance. He stated that they changed the wind/hail insurance to have a two percent (2%) per occurrence deductible, which was a

significant increase. He explained that for any wind and hail event, a homeowner would have to pay a two percent (2%) deductible on the value of their house prior to insurance paying any money. He stated that it was not tied to hurricanes or anything that was any different for anyone else.

Attorney Gallop stated that the other increase was on the surcharges. He explained that all insurance companies in North Carolina who provide homeowners insurance have to become members of the Beach Plan and then they combine together to provide insurance coverage jointly to people on the beach. He stated that it was designed to make it so that no one was in a position where they could not obtain insurance. He stated that in return, the insurance companies were allowed to deny coverage for wind and hail. He explained that the beach plan takes the coverage and tries to be outside the voluntary market, but unfortunately, there wasn't a voluntary market for wind and hail policies on the beach. He added that they went to the Insurance Commissioner and let him know that they were receiving more applications so there must be a failure in the voluntary market and they need to be able to have higher rates through surcharges. He noted that homeowner increases were from fifteen to twenty-five percent (15-25%) above the standard voluntary rate. He added that for wind and hail, it was from five to fifteen percent (5-15%), which was a significant increase.

Attorney Gallop stated that Dare County and the Town of Nags Head have filed an action in four (4) different venues to challenge those rulings. He stated that they were also going to file a challenge to a decision that was made on December 18, 2008 that was made by the Insurance Commissioner related to homeowner's rates across the State. He added that the North Carolina Rate Bureau went to the Insurance Commissioner to request a 19.5% increase across the board for voluntary rates with the Insurance Commissioner allowing a 4.5% or 6% increase. He stated that Dare County and the Town of Nags Head felt the Commissioner didn't have the facts based on what he did. He went on to pass out a map and document that the Insurance Commissioner distributed and reviewed it with Council and the audience.

Attorney Gallop noted that Washington County had joined Dare County and Nags Head, put in a financial contribution and asked to be a named party. He added that the Town of Southern Shores and Currituck County did the same. He stated that the expectation was that there was a lot of interest in New Hanover and Brunswick Counties as some of them were in the thirty (30) percentile for increases. He stated that the request from the other towns and counties was to gather as many municipalities and counties who would be interested in making a financial contribution and/or joining as a named party to make a show of support and solidarity. He thought Dare County Attorney Bobby Outten's position was that the more in support, the better. He stated that if Council had any legal issues or questions, he would prefer to go into closed session.

Mayor Morrison asked what the latest estimate was on the cost of the challenges. Attorney Gallop stated that the initial cost would be approximately \$50,000. He noted that Dare County would make up the difference between what the other towns do not bring in, but if everyone joins and contributes, it would be returned back pro-rata based upon what each entity contributed. Mayor Morrison asked how much was pledged so far. Attorney Gallop stated that the Town of Nags Head pledged \$10,000, the Town of Southern Shores pledged \$10,000, Currituck County pledged \$10,000 and Washington County pledged \$5,000. Mayor Morrison asked if the Town of Kill Devil Hills had pledged anything. Attorney Gallop stated he wasn't sure if they had, but thought that they would pledge between \$5,000 and \$10,000. Mayor Morrison noted that it was already close to the \$50,000 mark.

Mayor Morrison asked what Bobby Outten's current view was on the chances of success. Attorney Gallop stated that it would depend on the terms of getting an overall favorable action to occur. He stated that the success potential for the judicial action was unclear with a fair amount of deference given to the Insurance Commissioner's decision. He thought it was less than a 50/50 chance of going through the process.

Mayor Pro Tempore Thibodeau asked if there was any precedent for this type of challenge to the Insurance Commissioner's rates. Attorney Gallop stated there wasn't and that it wasn't typical to have a third party challenge the case.

Councilor Wessel noted that some of the counties would be ordered to pay higher rates than Dare County. He asked if there was any word on those counties in joining the suit. Attorney Gallop understood that New Hanover and Brunswick Counties were very interested, but had not voted to join yet. He added that Representative Tim Spear was looking towards a legislative moratorium or a fix to challenge it legislatively.

Councilor Smith asked when the hearings would be held. Attorney Gallop stated that there had not been a response from the other side to date. Councilor Smith asked when the rates would go into effect. Attorney Gallop stated that one goes into effect February 1, 2009 and the other on April 1, 2009 with the new rate changes on May 1, 2009. Councilor Smith clarified that the litigation would put a hold on any changes that would go into effect. Attorney Gallop stated that he did not believe it would. Councilor Smith thought it would have to happen fast.

Mayor Morrison asked if the increases would apply to other policies. Attorney Gallop stated that they would apply to all homeowners insurance across the State. Mayor Morrison clarified that the Town could become a named party to the lawsuit and/or pledge a certain amount of funds. He stated that Duck could become a named party without pledging any funds. Attorney Gallop stated that the Town of Southern Shores had asked the same question at their meeting and Bobby Outten responded that Dare County would not let any municipality get hurt. Mayor Morrison asked what would need to be done to become a named party. Town Attorney Robert Hobbs thought it would be through a resolution. Attorney Gallop disagreed and noted that the Council could take a vote on it.

Mayor Morrison stated that he was inclined to become a named party but withhold any decision on pledging funds at this time since the amount is almost at the \$50,000 mark. Mayor Pro Tempore Thibodeau thought it was a good idea to become a named party but felt that the Town should pledge funds as well. She suggested that the Town pledge \$2,500.

Councilor Wessel clarified that the other towns and counties were not writing a check but were saying they were pledging funds. Attorney Gallop stated that they were pledging a certain dollar amount. Councilor Wessel agreed with Mayor Morrison to become a named party but also agreed with Mayor Pro Tempore Thibodeau that the Town should pledge funds. He suggested the Town pledge \$2,500 and upon success, pledge an additional \$2,500.

Councilor Smith asked where the \$50,000 figure came from. Attorney Gallop stated it was the initial cost for the outside counsel that was hired, which included the cost of filing and getting ready for the initial hearings. Councilor Smith clarified that Duck had the highest tax base of any municipality. Town Manager Layton disagreed and stated that Duck had the highest per parcel and not the highest tax base. Council Smith stated that Duck had a lot at stake. He stated he would like to see Duck as a named party and pledge \$5,000. He didn't think the Town should

come in under some of the other towns. Mayor Pro Tempore Thibodeau agreed. Attorney Gallop noted that a motion could be made on what Council wished to do.

Mayor Pro Tempore Thibodeau moved to have Duck named in the suit and pledge \$5,000 toward the legal expenses.

Councilor Wessel stated he would feel more comfortable voting after having a closed session and hearing the legal concerns. Attorney Gallop stated that he had some items to provide to Council in closed session and that it should not take longer than five (5) minutes.

Mayor Pro Tempore Thibodeau withdrew her motion.

Mayor Pro Tempore Thibodeau moved to enter closed session in accordance with Section 143-11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney/client privilege between the attorney and the public body, which privilege is hereby acknowledged.

Motion carried 4-0.

The time was 7:53 p.m.

Upon return from closed session, Mayor Pro Tempore Thibodeau moved to have the Town of Duck join in the suit described by Attorney Gallop and pledge \$5,000 to the cause.

Motion carried 4-0.

Attorney Gallop stated that since this was a third-party representation with an outside counsel representing numerous different parties, a second motion would be needed with regard to joint representation and conflict waiver agreement.

Mayor Morrison moved to authorize Hornthal, Riley, Ellis and Maland to sign the joint representation and conflict waiver agreement on the Town's behalf.

Motion carried 4-0.

### **Presentation of FY 2008 Audit**

Lisa Murphy from Johnson, Burgess, Mizelle and Straub was recognized to speak. Ms. Murphy went on to give an overview of the Town's Financial Statements for the year ended June 30, 2008 to Council and the audience.

Mayor Morrison thanked Lisa Murphy for her presentation.

### **Discussion/Consideration of Authorizing the Town Manager to Re-Execute a Memorandum of Agreement with the North Carolina Department of Transportation related to Disaster Debris Removal**

Town Manager Layton stated that the issue was almost exactly the same agreement that Council authorized him to execute in September 2008, which allows the Town to enter into an agreement with NCDOT to be reimbursed for the cleanup of roads if the Town chooses to take that approach. He noted that it did not include NC 12, although the Town does have some

responsibility on the multi-use path. He stated that the agreement would go from an annual agreement to one that's in place until the Town opts out. He recommended that the agreement be executed.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to execute the MOA with NCDOT.

Motion carried 4-0.

## **NEW BUSINESS**

### **Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with Coinjock Farms for the Planting of Beach Grass**

Town Manager Layton stated that the money was available through a budget amendment and was money from the interest earned on the beach nourishment money that the Shoreline Commission had released to the towns for beach planting and sand fencing projects. He stated that Duck had a total of \$34,247.91 for FY 2009 and needed to spend it by the end of the year. He stated that Permit Coordinator Sandy Cady has tried to spread the money out as best as she could, noting that not every subdivision would benefit. He stated that beach planting would be focused on first with the sand fencing being worked on in the late spring.

Permit Coordinator Sandy Cady was recognized to speak. Permit Coordinator Cady gave a short review on the process to decide which properties would receive beach planting and/or sand fencing to Council and the audience. She recommended that the contract for the planting and fencing be awarded to Coinjock Farms.

Councilor Smith moved to authorize the Town Manager to enter into a contract with Coinjock Farms for the planting of beach grass.

Motion carried 4-0.

### **Discussion/Consideration of Resolution 09-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting the Natural and Economic Resources of Coastal North Carolina**

Mayor Morrison stated that the resolution was approved by the Dare County Board of Commissioners and was before Council for their consideration.

Town Manager Layton stated that the main reason he wanted to put the resolution in front of Council was due to it referring to beach nourishment. He noted that the Town does not have public beach accesses. He added that under a State system, if the State had a pool of money in place, they wouldn't be bound by the same rule if it was their own program. He thought the argument could be made that while Duck doesn't meet the definition of public beaches under the Corps of Engineers for FEMA, it does have community access points that function in virtually the same way.

Councilor Wessel moved to adopt Resolution 09-01 as presented.

Motion carried 4-0.

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

Town Attorney Robert Hobbs stated 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 as well as discussing the property check program and new video services 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. Fire Chief Black noted that the decision to stop allowing meetings at the Fire Department was one that was coming for a few years now. Town Manager Layton noted that the Fire Department building was not owned by the Town and it was the Fire Department Board's decision on stopping the meetings and not the Town's.

Town Manager Layton gave a brief overview on the building permit activities to Council and the audience. Director of Community Development Andy Garman was recognized to speak. Director Garman went on to give a short overview of a survey on renewable energy that will be available to the public within the next month.

### **Update on NC 12/Tuckahoe/South Duck Storm water Project**

Town Manager Layton stated that he received communication from NCDOT indicating that they anticipate that they would have to defer the project until next fall and they expect to let the bid out in July and having an availability date of December 1, 2009 for construction to begin.

### **Update on Proposed Sound Sea Village Area Storm water Project**

Town Manager Layton stated that staff had been trying to work with the Sanderling subdivision to obtain permission to use a pond owned by their homeowner association. However, they sent a letter to the Town denying the permission. He stated that the Town still has a bad problem in that area that needs to be resolved. He stated that staff is exploring a couple of options with one being a piece of property near the area that was not a buildable lot and could be used for storm water collection. He stated that the property was appraised at \$37,500 and while he hadn't spoken with the owner, Henry Blaha relayed to Town Manager Layton that the owner was asking \$50,000 to purchase it. He stated that it had a lot of potential for a rain garden to provide the storm water improvements and in the future, to be used as a public access point since it was sound front property. He stated he would like to do some research before coming back to Council. He stated that if he were to recommend entering into negotiations for the property, he would anticipate that the Town would use the existing storm water funds and defer the improvements.

### **Town Council Retreat Agenda**

Town Manager Layton noted that there was a list of items in Council's packets of what he was proposing to put on the Retreat agenda. He stated that if Council had additional items, to please get them to him as soon as possible.

### **Financial Statement for the Month of December for FY 2009**

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

**MAYOR'S AGENDA**

Mayor Morrison stated that on Monday, January 5, 2009, the Dare County Tourism Board selected Councilor Wessel to be Duck's representative. He and the rest of Council congratulated him on his appointment.

**COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau stated she had nothing to report.

Councilor Smith stated he had nothing to report.

Councilor Wessel stated he had nothing to report.

**OTHER BUSINESS**

Mayor Morrison stated that the next meeting would be the regular meeting at 7:00 p.m. on Wednesday, February 4, 2009.

**ADJOURNMENT**

Mayor Morrison moved to adjourn the meeting.

Motion carried 4-0.

The time was 9:14 p.m.

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/s/Lori A. Kopec, Town Clerk

Approved: February 4, 2009\_\_\_\_\_

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/s/Neil Morrison, Mayor