

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
March 4, 2009**

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, March 4, 2009.

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; Fire Captain Jared Smith; Police Chief Phillip Ferguson; Town Attorney Robert Hobbs; and Town Clerk Lori Kopec.

OTHERS ABSENT: Fire Chief Donna Black.

Mayor Morrison called the meeting to order at 7:00 p.m. Mayor Morrison asked Councilor Caviness to lead the Pledge of Allegiance. Mayor Morrison led the moment of silence.

PUBLIC COMMENTS

Mayor Morrison opened the floor for public comments.

Bob Hovey of 103 Osprey Ridge Road was recognized to speak. Mr. Hovey stated that he wished to talk about beach access and off-street parking. He handed out a pamphlet on the issues to Council asking them to give their consideration to it. He noted that the Town has a CAMA Core Land Use Plan that had a goal for the Town to provide public access opportunities to the beaches. He stated that he has stood before Council before regarding the beach access at the end of Plover Drive. He stated that while Plover Drive was a State road, the main issue was parking for the beach access. He added that the Town had passed a parking ordinance in 2006 that prohibited vehicles from parking on the roads in certain subdivisions in Duck. He asked Council to consider researching options and resources for having a public beach access at the end of Plover Drive.

Councilor Caviness asked if Mr. Hovey felt that there were contradictions regarding the parking in the ordinance. Bob Hovey didn't think there were, but thought there would be people that would be fine with a public beach access, but that they wouldn't want it in front of their home.

Mayor Morrison noted that there have been numerous communications between Mr. Hovey and members of the Town in the past few weeks. He added that he had made all of the information on the issue available to the Council.

Mayor Pro Tempore Thibodeau thought Mr. Hovey made some excellent points. She asked if the CAMA Land Use Plan objectives were template or something the Town had crafted. Councilor Caviness stated that the goals and objectives were not boiler plate language, but was all committee input. She stated that there were a variety of stakeholders that were part of the Land Use Plan Committee that came up with a number of objectives, some that were easily obtained and others that were not as easy. She thought the beach access goal was not something that

would be easy to achieve. She stated that if it was, it came with a number of challenges, such as handicap accessibility. She added that the more achievable goal was the community sound access, which was completed with the Town Park.

Mayor Pro Tempore Thibodeau noted that there was public beach access at the end of Plover Drive, but that there wasn't any parking. She stated that it was clearly a public beach access. Town Manager Layton pointed out that it was not a Town maintained access. Mayor Pro Tempore Thibodeau agreed and thought the big issue was parking. She stated that she would be interested in looking at what accesses could be walked to. She thought Mr. Hovey's issue was that the access was available, but that there wasn't any parking.

Councilor Wessel thought Mr. Hovey brought up the question of whether someone could drive to an access to drop items off and then go find a parking spot. He didn't think there was any reason not to allow people to drop items off at a deeded public access. Town Manager Layton didn't think there was anything that prohibited that.

Councilor Caviness thought the issue was the parking and the contradictions or inconsistencies in the way the ordinance was written as well as the feasibility of exploring the opportunity for beach access.

Councilor Wessel asked if the Town has a right-of-way for a subdivision that has a road that runs east and west. Town Manager Layton stated that the Town does not own any of the roads. Mayor Pro Tempore Thibodeau noted that the roads in Duck are owned by either the private subdivisions or the State. Councilor Wessel asked what rights go with the right-of-way. Town Manager Layton explained that for private roads, it wasn't an issue, but for the State maintained roads, the State does not allow anything in the right-of-way without express written permission.

Mayor Pro Tempore Thibodeau thought the issue of having a public access was to allow the public to get to the beach, regardless of whether the Town took it over or not. She stated that she wasn't sure what the goal would be for opening up a lot of public beach accesses. She questioned the rationale of the objective.

John Summers of 123 Sea Hawk Drive West was recognized to speak. Mr. Summers stated that it was a messy situation and had been discussed previously. He stated that all of the subdivisions that were platted before 1982/1983 had a stamp on it from Dare County that noted that all roads and rights-of-way in the subdivisions were public. He stated that the issue will come to the surface when the people on the west side of Duck Road find out about the issue, in that they will have access to any of the beaches in the earlier subdivisions.

Councilor Smith stated that he did not understand the argument. He stated that parking was a separate issue from dropping items off at a beach access. He pointed out that there wasn't room at the end of Plover Drive for any parking. He noted that the majority of the roads in Duck run east to west with eighty-five percent (85%) of the homes on the east side of the road, which was not a long walk to the beach. He agreed with Mr. Summers' comments that it would be a messy situation.

Mayor Pro Tempore Thibodeau, Councilor Caviness and Councilor Wessel stated that they would like the opportunity to think about the issue.

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 February 4, 2009 regular meeting. Mayor Morrison directed Council to review the minutes from the February 4, 2009 regular meeting for changes.

Councilor Wessel had a correction to Page 3 of the minutes.

Councilor Smith moved to approve the February 4, 2009 minutes as amended.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Appointments

Planning Board

Mayor Morrison stated that an individual needed to be appointed to serve on the Planning Board since Claiborne Yarbrough had resigned. He opened the floor to nominations. He added that the term would expire on May 1, 2010.

Mayor Pro Tempore Thibodeau moved to nominate Don Kingston.

Motion carried 5-0.

Board of Adjustment

Mayor Morrison stated that an individual needed to be appointed to serve on the Board of Adjustment as an alternate. He added that Ken Yarbrough had resigned from the Board. He opened the floor to nominations and noted that the term would expire on July 1, 2011.

Mayor Pro Tempore Thibodeau moved to nominate Brandon Rigsbee.

Motion carried 5-0.

Amendments to the FY 2009 Budget

Town Manager Layton stated that he had discussed at the Council Retreat that based on his end of year projections, he was predicting a \$277,000 shortfall in the Town's revenues. He recommended reducing the revenues by \$277,000 as well as reducing the expenditures by the same amount to achieve a balanced budget. He reviewed the changes with Council and the audience.

Mayor Pro Tempore Thibodeau clarified that a new ordinance was created. Town Manager Layton stated she was correct. He stated that the wanted to re-adopt the whole budget to reflect the changes.

Mayor Morrison moved to re-adopt the amended Fiscal Year 2009 budget ordinance as presented.

Motion carried 5-0.

Discussion/Consideration of Scheduling a Public Hearing for Electronic Message Board Signs and Vehicle Signs as Recommended by the Planning Board

Director Garman stated that the Council referred the issue to the Planning Board in November 2008. He stated that the ordinance would prohibit electronic message board or other types of digital signage within the Town. He added that it would create new standards to assist staff in enforcing regulations that prevent vehicles from being used as signage. He stated that it was recommended that the ordinance be scheduled for a public hearing.

Mayor Morrison asked if the ordinance covered the electronic speed limit signs that the Police Department put out on the side of the road. Director Garman stated that it did not. Mayor Morrison asked if it should be included. Director Garman stated that it didn't specifically address them, but there was something in the ordinance that allows signs to be authorized by the Town Manager for official Town business. He stated that it could be added if Council wished. Mayor Morrison asked if it was added, it would not be a substantial change. Town Attorney Hobbs stated he was correct.

Mayor Pro Tempore Thibodeau thought that the eighty (80) feet from the middle of the road would be difficult for some businesses that have parking on the road. Councilor Smith pointed out that the ordinance covered those businesses.

Councilor Wessel moved to schedule a public hearing on Ordinance 09-002 for April 8, 2009.

Mayor Pro Tempore Thibodeau asked if there was an easy way to make sure that the business community will be made aware of the public hearing. Director Garman stated that it will be advertised and sent to the businesses via email broadcast.

Motion carried 5-0.

Town Attorney Hobbs noted that there was an exemption in the sign ordinance for governmental signs, which included the speed limit signs.

NEW BUSINESS

Discussion/Consideration of Resolution 09-02, a Resolution of the Town Council of the Town of Duck, North Carolina, Establishing a Policy to Manage the Investment of the Town's Funds

Town Manager Layton stated that as part of the Fiscal Year 2008 audit, the Town's auditors recommended that the Council adopt an investment policy to provide guidance to Town staff in the investment of the Town's funds. He added that Resolution 09-02 established the policy in accordance with applicable laws and regulations. He went on to give a short overview of the resolution to Council and the audience.

Councilor Caviness moved to approve Resolution 09-02 as presented.

Motion carried 5-0.

Discussion/Consideration of Resolution 09-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Establishing a Policy Related to Internal Financial Controls

Town Manager Layton stated that the Town's auditors also recommended adopting an internal controls policy to help ensure that the Town's financial systems and operations were free of fraud and errors. He added that Resolution 09-03 established the policy in accordance with applicable laws and regulations. He went on to give a short overview of the resolution to Council and the audience.

Councilor Smith moved to approve Resolution 09-03 as presented.

Motion carried 5-0.

Discussion/Consideration of Authorizing the Town Manager to Enter into a Contract with Sandski, LLC for the Erection of Sand Fencing

Town Manager Layton stated that he was authorized to enter into a contract with Coinjock Farms for the beach planting back in January, 2009. He stated that this was the second part of it and the Town had bid out sand fencing for approximately 4,200 linear feet from the southern end of the Osprey subdivision to the northern end of the Carolina Dunes subdivision. He stated that staff felt it would make the biggest difference with the limited resources available. He stated that bids were solicited with Sandski, LLC coming in at the lowest at \$11,000. He recommended that the Town enter into a contract with Sandski, LLC for the sand fencing.

Mayor Pro Tempore Thibodeau asked what the timing would be for the sand fencing. Town Manager Layton stated it would be from May 1, 2009 through June 10, 2009.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to enter into a contract with Sandski, LLC for the erection of sand fencing.

Motion carried 5-0.

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

Fire Captain Jared Smith was recognized to speak. Fire Captain Smith gave a brief overview of the past month's activities to Council and the audience.

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.

Town Manager Layton gave a brief overview of the past month's building and permit activities to Council and the audience.

Financial Statement for the Month of February for FY 2009

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 she had nothing to report.

Councilor Caviness thanked staff for all of their presentations at the Retreat. She noted that Fire Chief Black had inquired about an ordinance that would envelope all sorts of safety situations. She wondered if it wasn't something that Council should consider as opposed to adopting spot ordinances. Town Attorney Hobbs stated that he had been at a conference at the School of Government and had discussed the issue with a professor. He stated that the professor was of the view that it would be easier to enforce if there was a laundry list of items and as more issues were encountered, the ordinance could be amended to add those items. He thought staff was setting forth some criteria and felt that was the best route to go.

Councilor Smith stated that the Government Access Channel budget had amendments to the 2008-2009 budget. He went on to review the amendments to Council and the audience, adding that each municipality has to approve the budget.

Councilor Wessel moved to approve the Government Access Channel budget amendments as presented.

Motion carried 5-0.

Councilor Wessel stated he had nothing to report.

OTHER BUSINESS

Mayor Morrison stated that the next meeting would be the mid month meeting on Wednesday, March 18, 2009 at 1:00 p.m.

ADJOURNMENT

Mayor Morrison moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:03 p.m.

/s/ Lori A. Kopec, Town Clerk

Approved: April 8, 2009_____

/s/ Neil Morrison, Mayor