

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
April 8, 2009**

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, April 8, 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 Chief Donna Black; Police Chief Phillip Ferguson; Town Attorney Robert Hobbs; Public Relations Coordinator Kathy McCullough-Testa; and Town Clerk Lori Kopec.

**OTHERS ABSENT:** None.

Mayor Morrison called the meeting to order at 7:01 p.m. Mayor Morrison asked Mayor Pro Tempore Thibodeau to lead the Pledge of Allegiance. Mayor Morrison led the moment of silence.

Mayor Morrison recognized Fire Chief Donna Black. Fire Chief Black recognized Bob Mack. She stated that Mr. Mack had vacationed recently with his wife on Ocracoke Island and came upon a situation which resulted in them saving a 19 year old man's life. She went on to present Mr. Mack with a merit award and certificate of appreciation. She also presented Susan Mack, Bob Mack's wife, with a certificate of appreciation. Mayor Morrison and Council congratulated Bob and Susan Mack. He added that later during the public hearing on the beach and dune ordinance, Mr. Mack would discuss what happened on Ocracoke Island.

**PUBLIC COMMENTS**

Mayor Morrison opened the floor for public comments. He asked that any comments related to the public hearings 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 February 18 and 19, 2009 Retreat, the March 4, 2009 regular meeting and the March 18, 2009 mid month meeting. Mayor Morrison directed Council to review the minutes from the February 18 and 19, 2009 Retreat for changes.

Councilors Wessel and Caviness had corrections to Page 5 of the minutes. Councilor Wessel had a clarification to Page 10 of the minutes. Town Attorney Hobbs had a correction to Page 1 of the minutes.

Mayor Pro Tempore Thibodeau moved to approve the February 18 and 19, 2009 minutes as amended.

Motion carried 5-0.

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

Councilor Caviness moved to approve the March 4, 2009 minutes as presented.

Motion carried 5-0.

Mayor Morrison directed Council to review the minutes from the March 18, 2009 mid month meeting for changes.

Councilor Smith moved to approve the March 18, 2009 minutes as presented.

Motion carried 5-0.

### **PUBLIC HEARINGS**

#### **Public Hearing/Discussion/Consideration of SE-09-001, a Special Exception Permit Application submitted by Bill Owen of Seaboard Surveying and Planning on behalf of Lambros Vlahos, Property Owner of 1195 Duck Road**

Mayor Morrison turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Kopec proceeded to swear in the applicants and staff for the public hearing. Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that the applicant would present an analysis.

Bill Owen of Seaboard Surveying and Planning was recognized to speak. Mr. Owen stated that he was representing the applicant who was wishing to develop a vegetable/produce stand next to Roadside Café. He stated that the applicant was requesting a waiver for the pavement to allow for a gravel parking lot. He stated that the reason for the request was that in order to meet the pervious pavement requirements, the site would have to be graded to the point where several large trees on the south side of the property would have to be removed. He added that by putting in gravel, it will have a pervious parking lot which would allow infiltration of storm water.

Mayor Pro Tempore Thibodeau clarified that the applicant was proposing a concrete apron from the property to the street. Bill Owen stated she was correct.

Councilor Smith asked what type of gravel would be used. Bill Owen stated it would be #5 crushed granite, which was similar to what was used in septic drain fields. Councilor Smith

asked what would be used on the gravel to designate the parking spaces. Mr. Owen stated that curb stops would be used.

Town Attorney Hobbs asked Director Garman to make a presentation.

Director Garman reviewed the staff report with Council and the audience. He added that staff and the Planning Board agreed with the applicant's request for using gravel. He explained that after a discussion with the Town engineer, the applicant would be installing a small swale on the north side of the driveway. He stated that staff recommended approval of the Special Exception waiver. He noted that the Planning Board had discussed the driveway in depth as there was a lot of concern that the additional driveway on Duck Road with close proximity to Duck Landing Lane and Roadside Café would create an additional traffic safety hazard. He stated that the Town's ordinance discourages a driveway situation like this but does not preclude it as there was no other alternative since the adjacent property owners were not willing to agree to provide access for a shared driveway.

Town Attorney Hobbs asked Director Garman and Bill Owen if they had any further comments. There being none, he closed the evidentiary portion of the hearing and turned the hearing back over to Mayor Morrison.

Mayor Morrison opened the floor to Council for discussion.

Mayor Pro Tempore Thibodeau stated that she appreciated the level of detail that was provided to Council. She thought making the change would keep a lot of character on the site, allow trees to remain and help with the drainage.

Councilor Smith asked where the roll-out trash cans would be located on the site for pick up. Director Garman stated that they would be collected from Duck Road.

Councilor Wessel stated that he shared the Planning Board's concern with installing an additional driveway on the site, adding that there wasn't any other alternative, which was unfortunate.

Mayor Pro Tempore Thibodeau moved to approve the Special Exception Major Waiver Permit with the printed findings of fact and conditions as presented.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of ZTA-Signs, Ordinance 09-02, an Amendment to the Zoning Ordinance of the Town of Duck, North Carolina to Prohibit Electronic Message Board Signs within the Town and to Modify Regulations Governing the Use of Signage on Vehicles**

Director Garman stated that the ordinance created a definition for electronic message board signs and prohibits them throughout the Town. He stated that it was the Planning Board's opinion that they did not meet the aesthetic that the Town was trying to achieve and felt they would be distracting to drivers. He stated that with regard to vehicle signs, it was an item that was brought forward to regulate vehicles that have signage. He explained that previously, the ordinance stated that a vehicle could not be parked that was being used as signage, but the draft ordinance now would create a distance from the center of the road that the vehicle would have to meet if it had signage on it. He stated that the Planning Board recommended approval and staff concurred.

Mayor Morrison opened the public hearing.

Paul Keller of 125 Wiroans Court was recognized to speak. Mr. Keller noted that Rule #5 in the Town's Land Use Plan stated that the Town should remain aesthetically pleasing, maintaining a coastal village image. He didn't think electronic signs should be allowed.

Frank McCargo of 108 East Crocker Street in Nags Head was recognized to speak. Mr. McCargo asked if the draft ordinance was the same one as the existing one that pertains to a vehicle that was being used specifically for a sign. Director Garman stated he was correct. Mr. McCargo clarified that if a vehicle was being used as the primary purpose for a sign only, then there would be a restriction. Director Garman stated it would be any vehicle that has a sign that's located within eighty (80) feet from the center line of the roadway. Town Manager Layton added that it would be whether it was a primary vehicle or not. Mr. McCargo asked if Director Garman and Council knew that State statutes existed.

Mayor Morrison stated he was unclear on what point Frank McCargo was trying to make. Frank McCargo stated that State statutes state that vehicles that were legal to be driven on highways were allowed to be driven on highways and the only time the State statutes regulates anything was if it became an impedance on a safety issue due to blocking trees or such. He added that State statutes supersede any town ordinances that exist. He noted that it was a gray area. He stated that he represented Sharkey's Bait and Tackle and that they have a truck with a sign on it that is a primary vehicle that is driven to and from the store. He stated that they have had some issues in regard to the truck and have tried to resolve them. He added that the vehicle has to be driven to make deliveries. Mayor Morrison noted that the purpose of the ordinance was to prevent people from parking right at the street with a sign on their vehicle when they could park closer to their businesses.

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis thought Mr. McCargo was being overly excited and should read the ordinance since his business had the ability to conform to both aspects of the draft ordinance – he could be outside or inside the eighty (80) foot rule. He didn't think there was a problem.

Chris Puma of Sharkey's Bait and Tackle was recognized to speak. Mr. Puma stated that he was the primary driver of the vehicle. He stated that the way the parking lot was laid out, it was hard for him to get his vehicle out of the parking lot and that he could only park in one (1) spot there.

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

Mayor Morrison opened the floor for Council discussion.

Mayor Pro Tempore Thibodeau stated that she could not see anyone objecting to adding the electronic messaging board to the ordinance. She stated that with regard to the vehicle signage portion, it was discussed at Council's last meeting. She added that she was concerned about properties that could not comply with the new regulations. She asked what measures would be used to determine what would be feasible or not with regard to properties that may have trouble complying. Director Garman stated it would be a physical requirement. He added that the eighty (80) foot requirement was from the center line of the road and would eliminate the first row of spaces as the area to park a vehicle with a sign. Town Manager Layton stated that he wanted to be very clear that where Sharkey's was presently parking their vehicle, it would not be allowed under the ordinance.

Director Garman noted that staff completed a GIS map of the entire Village Commercial corridor and felt that most sites would meet the eighty (80) foot rule with the exception of two (2). He added that the idea was not to single out one particular business.

Councilor Caviness stated that the bottom line purpose for the draft ordinance was directed at the vehicle that would deliberately park at the edge of the road due to the business owner being in a multi-group area and their signage not readily visible. She noted that people have tried to circumvent the sign ordinance by parking a vehicle at the road and felt that the draft ordinance was meant to deter that.

Councilor Smith moved to adopt Ordinance 09-02 as presented.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of ZTA-C-PR District, Ordinance 09-03, an Amendment to the Zoning Ordinance of the Town of Duck, North Carolina to include Town of Duck Uses and Facilities within the List of Permitted Uses included in the C-PR Zoning District**

Director Garman stated that the item was presented to Council at their Retreat on February 19, 2009. He stated that it was recently noticed that the Town administrative facilities were listed as a conditional use in the C-PR zoning district. He stated that Town Council and Staff realized that the ordinance should have been revised when the Town Park was rezoned as C-PR in order to create a new use classification in the district for Town uses and facilities. He added that parking standards have been proposed for future municipal uses at the park. He stated that the Planning Board voted to recommend approval and staff was also recommending approval.

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

Mayor Morrison opened the floor for Council discussion.

Mayor Pro Tempore Thibodeau stated she wanted a better understanding of the required parking. She noted that there were specific parking spaces per square footage and for employees. She added that a shared parking analysis was listed in the ordinance and stated that she wasn't sure an analysis would be needed on a consistent basis. Director Garman stated that when the Town developed the use of the park, it had to show that it would have enough parking for all the uses there. He stated that it gave the Town the ability to not have to develop each parking standard individually for each use.

Councilor Caviness moved to adopt Ordinance 09-03 as presented.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of Ordinance 09-04, an Amendment to the Town Code of the Town of Duck, North Carolina, Establishing a Beach and Dune Management Ordinance**

Director Garman stated that Council and staff reviewed the ordinance in detail at their March mid month meeting with a lot of discussion on it. He stated that all of the changes were incorporated into the new draft ordinance. He noted that with regard to Page 4 of the ordinance regarding

placement of tents and cabanas, staff tried to use their best judgment that met what Council was looking for. He stated that Ocean Rescue personnel would have the ability to ask a person to remove or relocate a structure that was preventing passage of emergency vehicles. He noted that Ocean Rescue would not be required to ask a person to move their tent, but could if there was an issue with it. He stated that with regard to the section on holes on the beach, he thought it was clear that Council did not want a standard based on a measurement of twelve (12) inches. He stated that it was not based on measurement. Town Manager Layton explained that the ordinance was not stating that people could not dig holes, but that if a hole was dug, it needed to be attended and would need to be filled in if the person left the beach.

Mayor Morrison opened the public hearing.

Bob Mack of 107 Ruddy Duck Lane was recognized to speak. Mr. Mack stated that he and his wife had recently vacationed on Ocracoke Island and came across a nineteen (19) year old who was buried face down in a hole up to his knees and not breathing. He stated that the gentleman was actively tunneling into the dune when it collapsed on him, suffocating him. Mr. Mack was able to pull the gentleman out and resuscitate him after quite a bit of trying. He stated that the ordinance was excellent and addressed a lot of the issues on the beach. He recommended that Item 4 should read: "...if in the opinion of Public Safety personnel, if they believe the hole is unsafe at that point, that they have the authority to tell the person to fill in the hole immediately..." He thought it should be an education process for the public to make them aware of the issue.

Al Morter of the Snow Geese South Homeowners Association was recognized to speak. Mr. Morter stated that they strongly supported the ordinance.

Lynne Alterman of 100 Ocean Crest Way was recognized to speak. Ms. Alterman stated that she would like to a Town campaign to educate the public about the ordinance. Bob Mack agreed with Ms. Alterman and stated that his lifeguards would be out on the beach this year educating the public.

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

Mayor Morrison opened the floor for Council discussion.

Mayor Morrison suggesting adding the following language: "...if in the opinion of Ocean Rescue personnel a hole presents an immediate danger, the Ocean Rescue personnel should have the authority to instruct a person to fill it in immediately..." Town Manager Layton suggested using Public Safety Personnel instead of Ocean Rescue personnel. Councilors Smith and Caviness stated that they would support the additional language.

Town Attorney Hobbs suggested the following language: "...mounding of sand, and (a) in the opinion of Public Safety personnel such alteration presents a present, dangerous condition, or (b) is left unattended for any period of time without restoring the beach to its original condition..."

Mayor Morrison noted that if Ocean Rescue personnel met with resistance from anyone, they should contact the Police Department for help.

Town Attorney Hobbs felt that Page 4 B 1 (a) had a very objective prohibition with regard to tents, cabanas and sunshades. He thought it could be less objective and more discretionary for Ocean Rescue. Director Garman suggested the following language: "...generally this may

include tents, cabanas or sunshades placed within fifteen (15) feet of the base of the seaward toe of the primary dune...”

Councilor Caviness moved to adopt Ordinance 09-04 as amended.

Motion carried 5-0.

**Public Hearing and Discussion of Updates related to the Town of Duck Portion of the 2009-2019 Dare County Solid Waste Management Plan**

Town Manager Layton stated that in accordance with the Solid Waste Management Act of 1989, every local government was required to develop a ten (10) year solid waste management plan. He stated that the Act also required the plans to be updated every three (3) years. He stated that as part of the process, a public meeting was required with a resolution that would be passed at a future meeting. He stated that the plan required the Town to look at it and update the information. He went on to review the plan with Council and the audience.

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

Mayor Morrison opened the floor for Council discussion.

Councilor Caviness asked if the holiday tree recycling needed to be added to the table. Town Manager Layton stated that he could add it. Councilor Caviness asked if the community decided to start an effort to go towards recyclable shopping bags, it would be added to the plan. Town Manager Layton stated it would.

Mayor Pro Tempore Thibodeau asked if the twenty-five percent (25%) goal was not met, it could be changed. Town Manager Layton stated that every three (3) years, Council had to discuss the goals, how they met them and if anything needed to be changed.

Mayor Morrison stated that Council looked forward to discussing the issue at their May 6, 2009 meeting.

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

**Appointment to the 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 Brandon Rigsbee had resigned from the Board as he had moved out of state. He opened the floor to nominations and noted that the term would expire on July 1, 2011.

Mayor Morrison moved to nominate Carol Powell.

Motion carried 5-0.

**Discussion/Consideration of Proposed “Market Day in Duck”**

Town Manager Layton stated that the idea was brought forward as a regional farmers market that would be held once a week during the summer at the park. He stated that there was a heated

discussion at the Retreat on the merits of the program and based on staff's research, they were proposing a five (5) week program that would coincide with the music event on Tuesday evenings. He added that it was a pilot project and staff was unsure if it would be a success or failure, but thought it was a unique idea.

Public Relations Coordinator Kathy McCullough-Testa was recognized to speak. Public Relations Coordinator McCullough-Testa stated that she completed additional research on the concept of a farmers market as well as the ways communities implement them. She stated that there was one (1) other farmers market in the area which was located in Manteo. She went on to give a short overview of the farmers market to Council and the audience.

Mayor Morrison noted that it was an interesting product mix for the farmers market. Mayor Pro Tempore Thibodeau stated that she could see the advantage of having a pilot program. She asked where the booths would be set up with regard to parking and the amphitheater construction. She wondered if by inviting select vendors in, it would make other vendors upset. She asked if it would be doubled in future years. Public Relations Coordinator McCullough-Testa stated that the booths would be located in the back parking lot on the gravel pave. She added that the majority of the people that would attend would either walk or bike to the park. Town Manager Layton stated that he didn't anticipate the actual staging areas for the amphitheater construction to affect the events going on at the park. Public Relations Coordinator McCullough-Testa stated that once she saw how the farmers market succeeded would determine if permit fees will be needed in the future.

Councilor Smith asked if the timeframe was discussed with the vendors. Public Relations Coordinator McCullough-Testa stated that she had. Councilor Smith asked what time the events started on Tuesday evenings. Public Relations Coordinator McCullough-Testa stated that they started at 6:00 p.m.

Ron Forlano of 1378 Duck Road was recognized to speak. Mr. Forlano asked if there was preferential treatment given to the vendors that were located in Town. Public Relations Coordinator McCullough-Testa stated that she was going to ask them and if they met the criteria, they would be part of the market.

Councilor Wessel thought it was a great idea but didn't think everyone would want to walk to the park in the summer heat. He suggested that each vendor only be allowed to bring in one (1) truck and thought it would be a good idea to have the vendors pay a fee this year. Councilor Smith asked what the reason was for the fee. Mayor Pro Tempore Thibodeau thought it would be to offset any administrative time. Councilor Wessel noted that the Town was renting retail space and had costs associated for maintaining that space. Councilor Smith thought the fee should be waived for the first year as the project could fail. Councilor Wessel appreciated Councilor Smith's comments but thought if a vendor was willing to do it for free, it didn't mean there was a propensity to purchase the space in the future.

Councilor Caviness stated that she didn't have any objections to the goals of the program but was not clear on how they could be achieved. She stated that she still had serious concerns and could not get behind the project at this time.

Town Manager Layton stated that staff did not want to do anything that would not be supported by Council.

Mayor Pro Tempore Thibodeau thought Councilor Caviness' points were well taken. She asked why the project was something that would only work in the summer. Public Relations Coordinator McCullough-Testa stated that it was due to traffic. Mayor Pro Tempore Thibodeau noted that the project was put out there to see if there was interest. Councilor Caviness thought the Town owed more loyalty to the local businesses than the competition.

Councilor Smith stated that he had concerns but noted that it was five (5) evenings that consisted of two (2) hours over the entire summer.

Mayor Morrison asked if any vendors had been lined up yet. Public Relations Coordinator McCullough-Testa stated that there weren't any at this time.

Mayor Morrison stated that he appreciated Councilor Caviness' concerns but thought it should be given a chance; however he wasn't convinced it would work. Councilor Wessel stated that he liked the general concept and the idea of trying it. Mayor Pro Tempore Thibodeau stated that she could get behind it as long as there was sensitivity to the local vendors.

Mayor Pro Tempore Thibodeau moved to implement a market day in Duck as a five (5) week pilot program.

Town Manager Layton stated that staff would report on it shortly after it ends.

Motion carried 4-1 with Councilor Caviness dissenting.

## **NEW BUSINESS**

### **Discussion/Consideration of an Interlocal Agreement for Building Inspector Services between the Towns of Duck and Southern Shores**

Town Manager Layton stated that the Town of Southern Shores had requested consideration of the Town entering into an interlocal agreement for building inspector services. He recommended that Council authorize the mayor to execute the agreement.

Mayor Pro Tempore Thibodeau moved to authorize the mayor to execute the interlocal agreement with the Town of Southern Shores.

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**

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

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.

### **Update on Amphitheater Project**

Town Manager Layton stated that the Town was on schedule to have the quotes in for the project on April 23, 2009. He stated that a pre-bid meeting was held on April 2, 2009 and had good attendance. He anticipated some very competitive quotes and hoped to bring a recommendation to move forward at Council's May 6, 2009 meeting.

### **NCLM Town Hall Day**

Town Manager Layton stated that Town Hall Day was coming up. Mayor Morrison noted that it was being held on May 6, 2009, which was the same day as the regular Council meeting. Town Manager Layton stated that if any Council Member wished to attend, to let Town Clerk Kopec know so she could register them.

### **Financial Statement for the Month of March 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 gave a short update on the insurance rate increase issue to Council and the audience.

Councilor Caviness stated she had nothing to report.

Councilor Smith stated he had nothing to report.

Councilor Wessel stated he had nothing to report.

### **CLOSED SESSION**

Mayor Pro Tempore Thibodeau moved to enter Closed Session in accordance with Section 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve attorney client privilege between the attorney and the public body, which privilege is hereby acknowledged.

Motion carried 5-0.

The time was 9:24 p.m.

### **OTHER BUSINESS**

Upon returning from Closed Session, Town Attorney Hobbs noted that Council did not take any action and that the Closed Session minutes would be sealed.

Mayor Morrison stated that the next meeting would be the mid month meeting on Thursday, April 23, 2009 at 1:00 p.m.

**ADJOURNMENT**

Mayor Morrison moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:41 p.m.

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/s/ Lori A. Kopec, Town Clerk

Approved: May 6, 2009\_\_\_\_\_

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/s/ Neil Morrison, Mayor