

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
May 6, 2009**

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, May 6, 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; Attorney Ben Gallop; and Administrative Assistant Christie Moseman.

OTHERS ABSENT: Town Attorney Robert Hobbs and Town Clerk Lori Kopec.

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

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 April 8, 2009 regular meeting and the April 23, 2009 mid month meeting. Mayor Morrison directed Council to review the minutes from the April 8, 2009 regular meeting for changes.

Mayor Pro Tempore Thibodeau moved to approve the April 8, 2009 minutes as presented.

Motion carried 5-0.

Mayor Morrison directed Council to review the minutes from the April 23, 2009 mid month meeting for changes.

Councilor Smith had one change to Page 3 of the minutes.

Mayor Pro Tempore Thibodeau moved to approve the April 23, 2009 minutes as amended.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of CUP 09-001, an Amendment to the Original Conditional Use Permit, CUP 07-005, submitted by Lynette Sumner on behalf of Wine Ducks, LLC, Owner of the Aqua-S Restaurant and the Property Located at 1174 Duck Road, to Add 18 Additional Restaurant Seats

Mayor Morrison turned the meeting over to Attorney Ben Gallop.

Attorney Ben Gallop was recognized to speak. Attorney Gallop 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 Manager Chris Layton proceeded to swear in the applicants and staff for the public hearing. Attorney Gallop opened the evidentiary portion of the hearing. He stated that Director Garman would present an analysis.

Director Garman stated that the issue was a Conditional Use Permit application submitted by Lynette Sumner on behalf of Wine Ducks, LLC. He stated that Ms. Sumner's intent was to add some additional restaurant seats to the Aqua-S Restaurant. He stated that in order to achieve that, the applicant had to prove she had adequate wastewater capacity, which Ms. Sumner has achieved. He added that the Health Department had authorized Ms. Sumner to add twenty (20) seats. He stated that she was asking the Town to allow eighteen (18) seats. He stated that in order to do that, she would have to provide an agreement with Greenleaf Gallery to use their parking after 6:00 p.m. He stated that the Planning Board recommended approval and that staff concurred.

Attorney Gallop asked Lynette Sumner to make a presentation.

Lynette Sumner stated that the request stemmed from the septic capacity and whether it was large enough to allow additional seating. She stated that she would like to have additional seats on the front outside deck so as to provide a waterside venue for Duck visitors and residents in the evenings. She stated that they have never maxed out their parking during their lunches as they have forty-eight (48) parking spaces currently. She noted that their bicycle rack is filled nightly during the warmer months. She stated that Rick Tupper of Greenleaf Gallery had indicated to her that his parking lot was never full, even during their peak times. She thought the shared parking was a good thing for Aqua-S, Greenleaf Gallery and the Town.

Attorney Gallop asked Director Garman and Lynette Sumner 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 asked if the May 1st renewal date would be another copy of the letter or if it would be a form. Director Garman stated it would be a duplicate letter with the current date on it. Mayor Morrison asked if that was a common practice. Director Garman stated that it gave the Town the reassurance for the applicant to honor the agreement.

Councilor Caviness asked if the agreement would convey if Greenleaf Gallery changed ownership. Director Garman thought Lynette Sumner would have to obtain the same agreement with the new owners. Lynette Sumner noted that she had in her notes from the Planning Board that thirty (30) days after occupancy, she would have to come back to the Town to let staff know what she had completed.

Mayor Pro Tempore Thibodeau asked if the inspection was a one-time inspection to look at the seating. Director Garman stated that the seats would be counted upon approval.

Councilor Wessel asked if there were any complaints from the adjacent property owner. He further asked if the outdoor dining would create more complaints. Lynette Sumner stated that the tenant that lives above Greenleaf Gallery had complained about the music that was playing at night but nothing about the dining. She added that she had not had any complaints from the adjacent property owner.

Councilor Caviness moved to approve Conditional Use Permit 09-001 with the printed findings of fact and conditions as presented.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 09-05, an Ordinance to Amend Town Code Section 156.061 of the Town of Duck Code of Ordinances related to Formula Businesses

Director Garman stated that the ordinance was sent to the Planning Board for their review and recommendation. He stated that it was recommended that the threshold for formula businesses be changed from eight (8) to twelve (12).

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 that she felt comfortable with the change based on the Planning Board's recommendation. She felt it went along with the intent of the original ordinance.

Councilor Caviness appreciated the Planning Board reviewing the ordinance and believed that the intent was not to exclude a local/regional business. She stated that she was still uncomfortable with chasing after a number. She stated that she didn't want the ordinance to be interpreted as the Town making exceptions. She reiterated that she was not comfortable with the ordinance.

Councilor Smith agreed with Councilor Caviness' comments. He stated that he had concerns about the ordinance and how the Town will react the next time another store like Kitty Hawk Kites comes to Duck. Councilor Caviness felt it would be a poor business decision to bring in another similar store. Councilor Smith pointed out that the ordinance did not say that formula businesses weren't allowed in Duck, but if it was considered one, it was taken into consideration and determined whether or not it was appropriate for the Town. He stated that by increasing the number, the Town doesn't have to deal with the issue.

Mayor Pro Tempore Thibodeau thought the number was arbitrary. She thought that when the ordinance was developed, the Town wanted to keep it a small number but was aimed at making sure that large-scale formula businesses such as 7-11 would not be allowed in Duck. She stated that the intent of the ordinance was so that Duck would not look like every other town. She stated that she would be comfortable with changing the number to twenty-five (25).

Councilor Wessel agreed with Mayor Pro Tempore Thibodeau's comments. He added that as long as it was a reasonably small number, he was comfortable with raising the number from eight (8) to twelve (12). He thought if the number was not raised, it would send a sign that Council was not interested in the businesses in Town being able to grow.

Attorney Gallop suggested adding General Statute § 160A-381 to the first paragraph of the ordinance.

Councilor Caviness asked if there were any negative comments from the Planning Board. Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated that Councilors Caviness and Smith had echoed the main concern the Planning Board had with regard to changing the number. He stated that one of the biggest issues the Planning Board deliberated was whether or not they could prove that Kitty Hawk Kites was a franchise business. He stated that when the Board had examined all of the Kitty Hawk Kites stores, they found each store was different. He stated that if it were any other business in Duck that was a solid franchise business, the Board would not have approved the ordinance amendment.

Mayor Pro Tempore Thibodeau moved to approved Ordinance 09-05, an Ordinance amending the Zoning Ordinance of the Town of Duck regarding formula businesses as amended with the Whereas statement Attorney Gallop had provided.

Councilor Smith noted that in Subsection D of the ordinance, Kitty Hawk Kites would go against the points in that section.

Motion carried 4-1 with Councilor Smith dissenting.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Resolution 09-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Approving Updates to the 2009-2019 Dare County Solid Waste Management Plan

Town Manager Layton stated that every three (3) years, the County and towns must update their solid waste management plans. He stated that part of the process was to hold a public meeting, which was held at Council's April 8, 2009 meeting. He added that the resolution would have to be adopted to approve the plan. He asked Council to approve the plan as presented.

Mayor Pro Tempore Thibodeau moved to adopt Resolution 09-04 as presented.

Motion carried 5-0.

Presentation of Renewable Energy Survey Results

Director Garman gave a short presentation on the renewable energy survey results to Council and the audience. He noted that the Planning Board had wanted to get the public's thoughts on

renewable energy and specifically – interest, preference, aesthetics, noise, shadows, the desire to encourage renewable energy, incentives and locations.

Mayor Morrison thanked Director Garman for his presentation.

Town Manager Layton stated that the next step would be to bring in a professional to provide an overview of the applications as an informational process.

Councilor Caviness felt it should be locale specific. She thought it would be difficult to know how applicable renewable energy would be with regard to the topography in Town.

Mayor Pro Tempore Thibodeau thought it would be helpful to have someone come in. She stated that she would be interested in what the other counties were doing with regard to renewable energy. Town Manager Layton noted that Currituck County and the Town of Kitty Hawk's ordinances were based on wind turbines exclusively. Director Garman pointed out that the Town could have more of a comprehensive ordinance rather than focusing on a specific item. Mayor Pro Tempore Thibodeau agreed that it should be comprehensive but wasn't sure staff had enough information yet.

Town Manager Layton recommended the next step could be that he and Director Garman put something together for the July or August work session and bring someone in to discuss the various technologies as well as a review of ordinances on renewable energy.

Councilor Caviness thought it could be something that would be of interest to the homeowners. She asked if it could be more of a community information session that could be held in the fall. Town Manager Layton suggested doing something earlier and trying to build on it.

Councilor Wessel thought it should be a community crafted event to provide multiple points of input. Councilor Smith thought from a work session standpoint it should be Council and the Planning Board working together listening to the experts to get a better idea of the answers before opening it to the community.

Ron Forlano of 1378 Duck Road was recognized to speak. Mr. Forlano agreed with Councilor Smith's suggestion. He stated that a lot of information will need to be gathered and Council and the Planning Board should be prepared. Joe Blakaitis cautioned that Council and staff should be wary of who they ask for information.

It was *consensus* of Council to set something up for the July or August work session on renewable energy.

NEW BUSINESS

Discussion/Consideration of Resolution 09-05, a Resolution of the Town Council of the Town of Duck, North Carolina, Proclaiming the Week of May 16-22, 2009, as National Safe Boating Week

Mayor Morrison stated that the local Coast Guard Auxiliary Flotilla had requested that the Town Council adopt a resolution proclaiming the week of May 16 through 22, 2009 as National Safe Boating Week.

Councilor Smith moved to adopt Resolution 09-05 as presented.

Motion carried 5-0.

Discussion/Consideration of Authorizing the Town Manager to Execute a Contract for the Town of Duck Park Amphitheater Project

Town Manager Layton stated that staff had sent out an invitation to quote for the amphitheater project in late March and held a well attended pre-bid meeting on April 3, 2009. He stated that staff went on site and spoke in depth with the bidders. He stated that the bids were due on April 23, 2009, with the Town receiving ten (10) bids. He stated that the people that were submitting quotes were told they needed to submit a quote based on the specifications that were listed and if they did not, they would be considered non-responsive. He stated that because staff was anticipating the cost to average around \$300,000, they asked the bidders to provide alternative quotes on how they could lower the cost. He recommended that he be allowed to execute a contract with Todd Coyle Construction for the amphitheater project at a cost not to exceed \$247,750.

Councilor Smith asked how many contractors were interviewed for the project. Town Manager Layton stated that three (3) were.

Councilor Wessel asked what the time and duration estimates were. Town Manager Layton stated they were all basically the same.

Councilor Caviness pointed out that the park was public space and environmentally sensitive. She asked if there was an acceptance and acknowledgement on the part of the contractor and crew regarding trash and such. Town Manager Layton stated that there was. He noted that Director Garman had visited a construction site that Todd Coyle was working on and the site was in excellent condition.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to execute a contract with Todd Coyle Construction for the amphitheater project.

Motion carried 5-0.

Mayor Morrison pointed out that the Town had received a grant of \$125,000 from the Dare County Tourism Board which would pay for half of the project.

Discussion/Consideration of Authorizing the Town Manager to Execute an Agreement with E.M. Corsa for the Reproduction of Certain Artwork

Town Manager Layton stated that the Town had previously commissioned E.M. Corsa for the development of the "summer duck" that was used by the Town for their brochures, t-shirts, banners and similar merchandise on a promotional level. He stated that Ms. Corsa currently holds the copyright for the artwork and since the artwork has had such a positive response, staff believed that it would benefit the Town to offer a limited amount of merchandise inventory for sale to the general public. He stated that in order to do this, the Town would need to have an agreement with Ms. Corsa. He added that the agreement would allow the Town to sell the merchandise with the stipulation that fifteen percent (15%) of the sales sent to Ms. Corsa on a monthly basis.

Councilor Caviness clarified that the summer duck would be the only image that would be on the merchandise. Town Manager Layton stated that she was correct. Councilor Smith suggested selling the merchandise before the summer concerts. Town Manager Layton stated that it could be something that could be done.

Councilor Caviness and Mayor Pro Tempore Thibodeau expressed concern for the administrative time involved in selling the merchandise. Town Manager Layton stated that that was the reason staff was staring very small.

Councilor Caviness asked who would be helping customers with the sales of the merchandise. Town Manager Layton stated that Town Clerk Lori Kopec and Permit Coordinator Sandy Cady would. Councilor Caviness stated that she was not comfortable with it and felt that Town Clerk Kopec and Permit Coordinator Cady would not be able to get any work done as it will take up a lot of their time. Town Manager Layton stated that he understood and noted that all staff would help out. He reminded Council that this would be one of the main duties of the receptionist once the Town Hall is built. He stated that if it does become a large task for staff, a part-time position may be considered.

Councilor Smith didn't think it should be advertised but that it should be more word of mouth. Town Manager Layton agreed and added that it would not be done in such a way that the merchandise would not be sold. He stated that it would be added to the website. Councilor Wessel suggested that it only be advertised on the website. Councilor Caviness stated that she was still uncomfortable with the sales taking a lot of time on staff.

Mayor Morrison moved to authorize the Town Manager to execute an agreement with E.M. Corsa for the reproduction of certain artwork.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Attorney Gallop 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 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 of the past month's building and permit activities to Council and the audience.

Update on Soundside Boardwalk Project

Town Manager Layton stated that staff had been working with Town Attorney Robert Hobbs on completing the easement agreements. He stated that he expected them back by the end of May.

After that, staff would sit down with the individual property owners to discuss the easement agreements, hoping to obtain sign offs from them.

Update on NC 12/Tuckahoe/South Duck Stormwater Project

Town Manager Layton stated that he had checked with NCDOT the previous week and was told that their plan was to bid the project at the turn of the fiscal year and move forward.

Financial Statement for the Month of April 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 stated that she had visited Senator Marc Basnight a few weeks prior and thanked him for the support for the stormwater project. She stated that she has been receiving many compliments from citizens on the flowers at the Town Park. Town Manager Layton noted that the flowers were not newly planted but were ones that were planted in 2008 that bloomed again.

Councilor Caviness stated she had nothing to report.

Councilor Smith stated that his brother had visited him recently with his children and he had brought them to the Town office. He stated that Town Clerk Kopec had given his nieces a choice of a little rubber duck that they could pick out. He felt it was a very nice touch and that his nieces really liked the ducks. He felt little things like that meant a lot to people. Town Manager Layton stated that staff has been giving ducks out to children for a few years.

Councilor Wessel stated he had nothing to report.

OTHER BUSINESS

Mayor Morrison reminded everyone that the Town celebrated its seventh (7th) birthday on May 1, 2009. He stated that he, Councilor Caviness and Town Manager Layton had attended Senator Basnight's meeting on the 1st where he had discussed the idea of charging people who use plastic and paper grocery bags. He stated that he also talked to Tim Spear and thanked him for the money he raised for the stormwater project.

Mayor Morrison stated that the next meeting would be the mid month meeting on Wednesday, May 20, 2009 at 1:00 p.m. He added that it would be the budget work session.

ADJOURNMENT

Mayor Morrison moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:05 p.m.

/s/ Lori A. Kopec, Town Clerk

Approved: June 3, 2009

/s/ Neil Morrison, Mayor