

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

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, November 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; Police Chief Phillip Ferguson; Fire Chief Donna Black; Town Attorney Robert Hobbs; and Town Clerk Lori Kopec.

OTHERS ABSENT: None.

Mayor Morrison called the meeting to order at 7:01 p.m. Mayor Morrison led the Pledge of Allegiance and moment of silence.

PUBLIC COMMENTS

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

APPROVAL OF MINUTES

Mayor Morrison opened the approval of minutes from the October 7, 2009 regular meeting. Mayor Morrison directed Council to review the minutes from the October 7, 2009 regular meeting for changes.

Mayor Pro Tempore Thibodeau moved to approve the October 7, 2009 minutes as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing the Mayor to Execute Easement Agreements related to the Soundside Boardwalk Project

Town Manager Layton stated that Council had copies of two (2) easements that were signed by Dare County. He stated that there were minor differences in them as compared to the others, but was nothing that was out of the ordinary. He stated that he hoped to bring the easement agreement for Duck United Methodist Church to Council at their December 2, 2009 meeting.

Councilor Smith moved to authorize the Mayor to execute the easement agreements related to the soundside boardwalk project as presented.

Motion carried 5-0.

Councilor Caviness clarified that the zoning projects for Duck United Methodist Church and the Outer Banks Surf Shop had agreements that they would be cooperating with the Town on the boardwalk project. Town Manager Layton stated that she was correct. He thought in both cases it was a matter of semantics. He added that the surf shop may need to be reminded of their agreement with regard to the easement.

Discussion/Consideration of a Recommendation from the Planning Board on an Ordinance to amend Town Code Section 156.071, Non-Conforming Lots of Record

Mayor Morrison stated that the Town Council had previously held a public hearing related to the request from the South Snow Geese HOA to amend Town Code Section 156.071, non-conforming lots of record. After holding the public hearing, Council voted to deny the request and instead requested that the Planning Board examine the entire impact of changing the Town Code as it related to this section. He noted that the Planning Board completed their review of the issue and recommended no change to the Code. He added that Director Garman would give a short overview on the issue.

Director Garman gave a short presentation on the Planning Board's discussion of the items as well as staff's analysis of the issue to the Council and audience.

Mayor Morrison asked if any member of the Planning Board wished to add to Director Garman's presentation.

John Fricker of 105 Carrol Drive was recognized to speak. Mr. Fricker noted that the Planning Board had voted 5-0 for no change to the ordinance after two (2) meetings that included representatives of the South Snow Geese HOA and the building industry. He stated that he thought that any increase of any number of lots would be inconsistent with the Town's Land Use Plan. He stated that he did not want to take lot coverage away from property owners.

Jon Britt of 1308 Duck Road was recognized to speak. Mr. Britt stated that the Planning Board had struggled with the issue. He added that they felt bad for the owners but could not find a way to work around the issue without making things worse.

Mayor Pro Tempore Thibodeau appreciated Director Garman's overview as well as the time the Planning Board took to research the issue. She agreed that changing something by taking something away was not the right approach. She stated that she hoped there would be an allowance for smaller lots, but it seemed contrary to the Land Use Plan. She thought the Town should consider having some type of allowance for the smaller lots that have been constrained by their original platting so there would be some type of leniency when it came to access ways or allowing owners to put in a ramp. She believed that the thirty percent (30%) lot coverage on the smaller lots could render them functionally obsolete.

Councilor Smith appreciated the Planning Board looking at the issue. He thought that the Board's decision not to act was a responsible one. He noted that the standard had been in place since the lots were recorded. He stated that the issue was one of "buyer beware". He stated that the Town has an avenue for hardships, which was for an owner to go before the Board of Adjustment. He stated that he agreed with the Planning Board's decision.

Councilor Caviness stated that she supported the density threshold that was established in the Land Use Plan. She stated that she appreciated the concerns but thought "functional

obsolescence” was a scary term to define. She thought keeping an eye on density and threshold and not breaking from it was important not only from a development standpoint but also in terms of the Town’s natural resources.

Councilor Wessel thanked the Planning Board for researching the issue. He stated that he appreciated staff coming up with seven (7) options. He felt that the issue was a no-win one. He thought that the option to do nothing was the only viable choice and supported the Planning Board’s recommendation.

Mayor Morrison appreciated all the work Town staff had completed on the issue. He thought the Town of Duck was privileged to have an excellent Planning Board. He stated that the Board had studied the issue extensively and added that he supported their recommendation.

Mayor Morrison moved to accept the recommendation of the Planning Board regarding the proposal to amend Town Code Section 156.071, non-conforming lots of record.

Motion carried 5-0.

Discussion/Consideration of Authorizing the Town Manager to Extend the Lease of the Town’s Administrative Offices for One Year to Expire April 30, 2011

Town Manager Layton stated that a few years ago, Allis Holdings came to the Town to renew the lease on the Town’s Administrative Offices. He stated that as a result of that, Jim and Bill Braithwaite (owners of Allis Holdings) requested a one (1) year lease with two (2) one (1) year renewals. He stated that the lease stated that the Town needed to let Allis Holdings know six (6) months in advance if it will continue the lease. He stated that the lease was originally signed April 30, 2008. He stated that the Town needed to let Allis Holdings know if it wanted to continue renting the spaces. He stated that he did not anticipate Town Hall being completed before April 30, 2011.

Mayor Pro Tempore Thibodeau asked if the rent would be increasing. Town Manager Layton stated that it would not.

Councilor Caviness moved to authorize the Town Manager to extend the lease of the Town’s Administrative Offices for one (1) year to expire on April 30, 2011.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Ordinance 09-08, An Ordinance of the Town Council of the Town of Duck, North Carolina, Amending Chapter 72, Schedule I (A)(3) of the Town of Duck, North Carolina, Code of Ordinances to add the Streets in the Sandhills Subdivision to the List of Private Streets where the Police Department May Enforce Parking Regulations

Town Manager Layton stated that the Town had received a request from Chuck Burdick, president of the Sandhills Homeowners Association, to have the streets in the Sandhills Subdivision added to the list of private streets where the Police Department may enforce parking regulations. He noted that while other regulations related to private streets, such as speed limits may not be enforced by the Police Department, the North Carolina General Statutes provide the

authority for Towns to enforce no parking regulations on private streets. He stated that in order to grant the Police Department this authority, the Town needed to adopt an ordinance specifying the subdivision or specific streets where the regulations will be enforced. He stated that Ordinance 09-08 would add the Sandhills Subdivision to the list.

Mayor Pro Tempore Thibodeau asked if the Town would erect signs stating that parking was not allowed. Town Manager Layton stated that the Town had the signs but staff did not erect them. He added that Town staff gives the signs to the Homeowner Association to put up.

Councilor Wessel moved to adopt Ordinance 09-08 as presented.

Motion carried 5-0.

Discussion/Consideration of Referring the Following Items for Discussion and Recommendation of the Town of Duck Planning Board: Loss of Non-conforming Status of Signs – Appraised Value versus Replacement Value and Specific Penalties for Tree and Vegetation Management Ordinance Violations

Director Garman stated that at their October 14, 2009 meeting, the Planning Board discussed two (2) items – the loss of non-conforming status of signs, appraised value versus replacement value, and the specific penalties for tree and vegetation management ordinance violations. He stated that the Planning Board had requested the opportunity to further discuss the items and provide Council with a recommendation to clarify the issues.

Mayor Pro Tempore Thibodeau asked if there had been violations to the vegetation ordinance. Director Garman stated that there had not.

Councilor Smith felt the fee for violating the vegetation ordinance should be substantial enough to deter people from cutting down a tree.

Councilor Caviness asked if there was a part of the ordinance where the Town had the ability to identify heritage trees. Town Manager Layton stated there was. Mayor Pro Tempore Thibodeau thought the Town should be mindful that trees designated as heritage trees do not last forever and will eventually need to come down. Councilor Smith thought the heritage trees could be identified with a plaque.

Mayor Pro Tempore Thibodeau moved to refer the items to the Planning Board for discussion and recommendation.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney 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 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 permit activities to Council and the audience.

Town Manager Layton and Director Garman discussed the pedestrian safety audit to Council and the audience, asking for volunteers to help out by physically walking the Duck Trail and looking at some of the more obvious issues. Town Manager Layton stated that he would like to bring the results of the study to the Council Retreat.

Update on FY 2009 Audit

Town Manager Layton stated that on December 2, 2009, Lisa Murphy from Johnson Burgess Mizelle and Straub will be at the Council meeting to give a presentation on the FY 2009 audit. He noted that it was a totally clean audit with no issues.

Financial Statement for the Month of October for FY 2010

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

Town Manager Layton gave a short update on the Tuckahoe stormwater project to Council and the audience.

MAYOR'S AGENDA

Mayor Morrison stated he had nothing to report.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau stated she had nothing to report.

Councilor Caviness congratulated the newly elected Council. She added that it had been an honor and privilege to serve on Council. Mayor Morrison stated that it was an honor and privilege to have had Councilor Caviness on Council and that she would be missed very much.

Councilor Smith congratulated Don Kingston and Chuck Burdick on their election to Council. He stated that it had been an honor serving on Council and he enjoyed the professionalism, friendship and participation. Mayor Morrison stated that Councilor Smith would be missed and that he was an excellent Council Member.

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(6) of the North Carolina General Statutes to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public

officer or employee; and in accordance with Section 143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

Motion carried 5-0.

The time was 8:17 p.m.

Upon return from Closed Session, Mayor Pro Tempore Thibodeau noted that there were a few changes to Town Manager Layton's contract – Section 3A provided for a lump sum cash payment equal to twelve (12) months of aggregate compensation which was up from nine (9). She stated that new language was inserted in Section 13, Item 7, adding the following language: "...objectives as outlined in the position description..."

Mayor Morrison stated that Town Manager Layton would receive a four percent (4%) increase in salary and a \$3,000 cash bonus.

Mayor Morrison moved to release the Closed Session minutes from the September 2, 2009 meeting.

Motion carried 5-0.

OTHER BUSINESS

Mayor Morrison stated that the next meeting would be the regular meeting on Wednesday, December 2, 2009 at 7:00 p.m.

ADJOURNMENT

Mayor Morrison to adjourn the meeting.

Motion carried 5-0.

The time was 10: 13 p.m.

/s/ Lori A. Kopec, Town Clerk

Approved: December 2, 2009

/s/ Dave Wessel, Mayor