

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
January 13, 2010**

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, January 13, 2010.

**COUNCIL MEMBERS PRESENT:** Mayor Dave Wessel; Mayor Pro Tempore Don Kingston; Councilor Neil Morrison; Councilor Monica Thibodeau; and Councilor Chuck Burdick.

**Council Members ABSENT:** None.

**OTHERS PRESENT:** Town Manager Christopher J. Layton; Director of Community Development Andy Garman; Police Chief Phillip Ferguson; Fire Lieutenant Jeffrey Del Monte; Attorney Ben Gallop; and Permit Coordinator Sandy Cady.

**OTHERS ABSENT:** Fire Chief Donna Black; Town Attorney Robert Hobbs and Town Clerk Lori Kopec.

Mayor Wessel called the meeting to order at 7:00 p.m. Mayor Wessel asked Police Chief Ferguson to lead the Pledge of Allegiance. Mayor Wessel led the moment of silence.

**PUBLIC COMMENTS**

Mayor Wessel opened the floor for public comments.

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

**APPROVAL OF MINUTES**

Mayor Wessel opened the approval of minutes from the December 2, 2009 regular meeting. Mayor Wessel directed Council to review the minutes from the December 2, 2009 regular meeting for changes.

Councilor Thibodeau moved to approve the December 2, 2009 minutes as presented.

Motion carried 5-0.

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

**Presentation of FY 2009 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, 2009 to Council and the audience.

Mayor Wessel thanked Lisa Murphy for her presentation.

**Discussion/Consideration of Nominations to the Dare County Tourism Board**

Mayor Wessel stated that he had recently tendered his resignation as the Town's representative to the Dare County Tourism Board. He stated that the Dare County Board of Commissioners had asked the Council to nominate three (3) individuals for the Board of Commissioners to consider as the next representative to the Tourism Board. He noted that Councilor Thibodeau had indicated a desire to serve on the Board.

Mayor Wessel nominated Councilor Thibodeau to serve as the Town of Duck's representative on the Dare County Tourism Board. He asked for discussion on additional nominees.

Councilor Morrison asked if the appointment would be to serve out the remainder of Mayor Wessel's term. Mayor Wessel thought that was the case.

Councilor Burdick noted that the Nags Head Commissioners specifically sent a letter recommending their nomination to the Board. Mayor Wessel thought the Council could do the same but thought they still needed to send in three (3) names.

Mayor Pro Tempore Kingston stated that he would endorse Councilor Thibodeau for the position. Councilor Thibodeau noted that Mayor Pro Tempore Kingston had mentioned to her that he would be willing to put his name in. Councilor Morrison stated he would be willing to have his name put in as well.

Councilor Burdick moved to nominate Monica Thibodeau, Don Kingston and Neil Morrison for consideration by the Dare County Board of Commissioners to serve on the Dare County Tourism Board.

Motion carried 5-0.

**Discussion/Consideration of Renewing the Mutual Aid Agreement between the Town of Kitty Hawk and the Town of Duck for Building Inspection Services**

Town Manager Layton stated that the Towns of Kitty Hawk and Duck have previously entered into a mutual aid agreement for building inspection services. He added that the agreement allowed each Town to utilize the services of the other's Building Inspector if needed due to illness, vacation or other issues as necessary, and as availability allows. He noted that there was no exchange of compensation for the Building Inspector's services between the Towns as part of the agreement. He stated that the agreement would be for a one (1) year period with a one (1) year renewal if agreed to by the Town Managers of each Town. He stated that the Town of Kitty Hawk already approved the agreement at their January 4, 2010 meeting.

Councilor Thibodeau moved to approve the mutual aid agreement between the Town of Kitty Hawk and the Town of Duck for building inspection services as presented.

Motion carried 5-0.

**NEW BUSINESS**

**Discussion/Consideration of Resolution No. 10-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Requesting that North Carolina Coastal Towns and Counties join with the Town of Duck in asking that FEMA's National Flood Insurance program (NFIP) Support Flood Insurance Claims to Structures Suffering Gradual Coastal Erosion**

Mayor Wessel noted that the Dare County, along with the Towns of Nags Head and Kill Devil Hills had already passed resolutions on the issue. Town Manager Layton noted that the Town of Kitty Hawk had passed one as well.

Councilor Burdick stated that he had read in the newspaper that the resolution would only apply to homes declared uninhabitable and not repairable or salvageable. Town Manager Layton stated that “uninhabitable” was undefined. He added that the resolution was speaking to houses exposed on the beach where the septic system has been irreparably damaged or has washed away.

Town Manager Layton stated that the National Flood Insurance program will provide monetary support for the removal of a structure on the oceanfront only after it has been completely submerged in the ocean. He stated that once erosion has occurred to the point that a structure was completely submerged and was no longer habitable, it becomes a public nuisance in an area of the public trust. He added that owners of structures in this predicament were usually unwilling to remove the structure from the public trust until the house was completely submerged in the ocean so they could take advantage of the NFIP funding. He stated that Dare County and its municipalities were appealing to FEMA to change the rules to allow for the removal of homes when they are declared uninhabitable so as to provide an incentive for the removal of them.

Mayor Pro Tempore Kingston moved to approve Resolution 10-01 as presented.

Motion carried 5-0.

**Discussion/Consideration of Authorizing the Mayor to Sign a Letter of Support for the Broadband Technology Opportunities Program Grants Application submitted by the Kenan Institute as the Lead Agency for the Northeast North Carolina Initiative (NENCI)**

Mayor Wessel noted that a draft letter was in Council’s packets along with a FAQ list. Town Manager Layton stated that he did not have anything to add. He stated that his knowledge on the issue was limited to what was in Council’s packets. He stated that it was something that Dare County was looking into and seemed to fit nicely with some of the initiatives of the Chamber of Commerce and creating future initiatives. He stated that they were trying to obtain a middle mile of fiber optics to the Outer Banks. He stated that the Chamber of Commerce was trying to push through the last mile in order to deploy the broadband infrastructure. He added that this was an effort on behalf of NENCI. He thought it was a good plan to try to obtain stimulus money for the project. He pointed out that they were not asking for any funds from the Town and guessed that when the time comes, what gets filtered down to each town would be minimal.

Mayor Wessel noted that there wasn’t any cost to the Town for supporting the development of the middle mile technology. Mayor Pro Tempore Kingston clarified that the initiative was time sensitive. He asked if the County or other towns have supported it. Town Manager Layton stated that he was not aware of any other towns that have brought the issue forward.

Councilors Thibodeau and Morrison had minor grammatical changes to the letter.

Councilor Morrison moved to authorize the Mayor to sign the letter of support for the broadband technology opportunities program with the changes made.

Motion carried 5-0.

**Discussion/Consideration of a Request from the Planning Board for a Temporary Moratorium on the Issuance of Building Permits related to the Construction of Wind Turbines**

Director Garman stated that the Planning Board had a lengthy discussion at their January 6, 2010 meeting regarding the wind turbine and renewable energy ordinance. He stated that it was anticipated that there would be further discussion at the Council Retreat. He stated that the Town has been in the process of looking into an ordinance for wind turbines for quite some time by conducting public input sessions, discussions and attending various forums. He stated that staff continues to be approached by people who are interested in wind turbines but did not know how immediate the interest was, and added that some could be constructed under the Town's existing regulations if they were under thirty-five (35) feet and met the current setback requirements.

Director Garman noted that Paul Quinlan had attended the December 2, 2009 meeting and gave a presentation, which included a lot of additional standards above and beyond just setbacks that the Town should consider in the ordinance. He stated that it was the Planning Board's thought that until there was a chance to thoroughly research the issue and come up with standards, the Town shouldn't get into the business of issuing permits for wind turbines. He stated that that was where the idea of the moratorium came about.

Director Garman stated that the Planning Board made a motion to recommend that the Council consider the adoption of a moratorium for a period of ninety (90) days or greater. He noted that the moratorium would require a public hearing and staff was proposing to have one at Council's February 3, 2010 meeting if it was the desire of the Council.

Attorney Gallop explained that if the moratorium would be extended past sixty (60) days, the Town must use the same advertising requirements that would be used to adopt an ordinance or a change to the zoning ordinance that prohibited it. He stated that with a moratorium, Council would have to make specific findings, but if they decided to make a text amendment to the Zoning Ordinance that would just prohibits wind turbines, it could sit on the books until Council was ready to adopt an ordinance that changed it. He stated that doing it that way, it could save the Council from renewals without having to make a number of findings in order to adopt a moratorium. He stated that if staff thought there would be applications coming in, the moratorium would give the Town the benefit and if it was for less than sixty (60) days a hearing could be completed after seven (7) days of notice.

Town Manager Layton pointed out that Council would not be having a mid-month meeting, so the Town would not meet the seven (7) day requirement for advertising.

Councilor Morrison asked if there were any current applications for wind turbines. Director Garman stated that there weren't. He clarified that if a text amendment was done, it would have to go before the Planning Board. Attorney Gallop asked if there would be a Planning Board meeting before the next Council meeting. Director Garman explained that the process for a text amendment was that it would go before the Planning Board and then to Council. He stated that if the Town just had to meet the notice and hearing requirements for the ninety (90) day moratorium, it wouldn't have to go before the Planning Board, whereas a text amendment would. Attorney Gallop stated that Council may wish to do both a moratorium and text amendment.

Town Manager Layton clarified that another alternative could be that Council could put in a place a one hundred-eighty (180) day moratorium versus the ninety (90) day one to give them more time. Attorney Gallop stated that they could but would have to find that the time period was

reasonable based on the problem. He added that one hundred-eighty (180) days to draft a wind ordinance could be challenged.

Councilor Burdick stated that the sense he got from the Planning Board meeting was that there was still a lot of input necessary and that was their driving force behind recommending the moratorium. He thought having a moratorium and text amendment could be the best approach for the Town.

John Fricker of 105 Carrol Drive was recognized to speak. Mr. Fricker stated that the subject of the moratorium only came up as a result of inquiries for wind turbines that were thirty-five (35) feet or less and because those that were over thirty-five (35) feet would not be allowed under the Town's current ordinance. Councilor Burdick pointed out that Director Garman had shown the Planning Board examples of wind turbines that could be installed in Town that meet the current ordinance.

Councilor Thibodeau stated that the direction of the discussions Council was having and the fact that they were discussing a moratorium and text change was being done without a full discussion from the Council as to how they all felt about a moratorium. She stated that she would like more discussion on the issue. She noted that she had attended the Planning Board meeting and that the issue was that a new technology had emerged with regard to wind turbines under thirty-five (35) feet, which seemed to have created some type of urgency. She stated that the Planning Board had completed a lot of hard work and research on the issue. She stated that even a moratorium recommendation wasn't a fully unanimous one by the Planning Board. She stated that her concern with the moratorium was the fact that it was a negative issue and thought it was giving the impression that Council was against wind turbines. She noted that the way the Council was discussing the issue; it seemed they were going along with the idea of stopping it immediately. She noted that she was not fully in support of putting out to the public that Council was trying to squash something rather than taking the time to examine it.

Director Garman noted that no one person on the Planning Board was for or against the technology; it was just that they were unprepared to deal with the type of technology. He didn't think any individual member of the Planning Board really expressed their own personal values or values they thought, based on their research, about the technology.

Town Manager Layton noted that the Planning Board voted 3-2 to bring the issue to Council, which was the reason it was before Council. He stated that if it was something Council felt was a necessary protection to allow the Planning Board to look into the issue more fully, then the action was something that was needed so the Planning Board could complete their due diligence.

Councilor Morrison asked if the issue would be discussed at the Retreat. Town Manager Layton stated that there would be further discussion with the Planning Board on renewable energy. He added that it would not be restricted to wind turbines and would be an open dialogue. He noted that it was partially intended to help start the discussion and was independent of the moratorium or any other zoning text amendment. He stated that it was designed to have another discussion between the two (2) bodies regarding overall goals and objectives to any kind of ordinance.

Jon Britt of 1308 Duck Road was recognized to speak. Mr. Britt stated that part of the reason the issue was before the Council was because the Planning Board met the previous week. He noted that the Board was split on what to do with the issue. He hoped there would be time at the Retreat to discuss it.

Town Manager Layton clarified the issue regarding the height of a wind turbine. He stated that if the wind turbine was over thirty-five (35) feet, the Town could not issue a building permit because it would violate the height restriction, however, if the was less than thirty-five (35) feet, it would be considered an accessory structure and a permit could be issued for it.

Councilor Burdick noted that a wind turbine that was this small was different technology in that it was vertical access. Mayor Wessel noted that the top of it would never change with regard to the elevation. Councilor Morrison asked if the issue could wait until after the Retreat to take any action on the moratorium.

Mayor Wessel asked if the feeling from the Planning Board was that if there were a text amendment allowing sixty (60) days as a temporary halt, with one (1) or two (2) months' discussion after the Retreat would be enough time to resolve the issue and come up with a recommendation.

Ron Forlano of 1378 Duck Road was recognized to speak. Mr. Forlano stated that the Planning Board had been studying the issue since the early summer with many discussions. He added that this will not be an easy decision. He pointed out that not one Planning Board member felt negative regarding alternative energy, but whether it belonged in a residential or commercial district. He thought that sixty (60) days would not be enough time. Jon Britt agreed with Mr. Forlano. Mayor Wessel clarified that Ron Forlano was looking for Council to impose a moratorium of more than sixty (60) days. Ron Forlano stated that he was correct.

Attorney Gallop pointed out that the text amendment would stay on the books until the Council decided to change it, whereas the moratorium would provide a buffer to allow time to put a text amendment in place.

Councilor Thibodeau appreciated the discussion that was occurring with members of the Planning Board with them clarifying that it was not something that was being done in a negative way. She thought that the Planning Board was still looking for input from Council as well as direction.

Town Manager Layton noted that staff needed direction with regard to advertising requirements. He stated that staff needed to know which option Council preferred so they could go ahead and start advertising. He suggested that if Council wanted to impose a moratorium; that they look to do it at their February 3, 2010 meeting. He added that the zoning text amendment would first have to go before the Planning Board.

Attorney Gallop proposed that a motion be made to set the date for a public hearing on a moratorium for a sixty (60) or ninety (90) day period at Council's February 3, 2010 meeting and to direct staff to prepare a text amendment regarding the prohibition of wind turbines until further notice and have it sent to the Planning Board in a manner that would return the issue back to Council before the moratorium expired.

Town Manager Layton suggested that two (2) motions be made and recommended the ninety (90) day moratorium rather than sixty (60) to be safe.

Councilor Morrison moved to set a public hearing for the Council's February 3, 2010 meeting to discuss and consider a ninety (90) day moratorium on the issuance of building permits for the construction of wind turbines less than thirty-five (35) feet.

Motion carried 5-0.

Councilor Burdick moved to have the Planning Board prepare a text amendment to prohibit wind turbines of any kind.

Councilor Thibodeau stated she was not in favor of Councilor Burdick's motion. She thought the moratorium was enough and was not in favor of a complete ban since there wasn't urgency on the issue at this point. Mayor Wessel stated that he tended to agree with Councilor Thibodeau's comments.

Councilor Thibodeau stated that she was in favor of the Planning Board staying on task and working on a renewable energy ordinance. Councilor Morrison stated that he agreed with Councilor Thibodeau's comments.

Councilor Burdick withdrew his motion.

### **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 Lieutenant Jeffrey Del Monte was recognized to speak. Fire Lieutenant Del Monte 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.

#### **Update on NC 12/Tuckahoe/South Duck Stormwater Project**

Town Manager Layton stated that the big issue staff has been working through was utilities. He stated that all of the utilities have been located, plans have been updated to deal with the utility relocation and now staff was in the middle of the process of getting Dominion Power, Charter Communications and Century Link to move their utilities. He stated that he will be holding a meeting on Friday, January 15, 2010 with the utility companies and NCDOT and hoped to have a better timeline after the meeting when everything will happen and what will be happening while the Town waits for the utility relocations to occur. He added that he would update Council at the Retreat as to how the meeting went.

#### **Update on Duck Trail Stormwater Project at Sound Sea Village/Caffey's Inlet**

Town Manager Layton stated that staff had been working towards looking at a long-term solution for the standing water on the Duck Trail. He stated that there were a couple options staff was looking at. He added that the survey and underground utility work had been completed with the engineers reviewing the data. He hoped that they would give staff a thumbs up on which direction they will recommend and thought it would include the idea of using pervious concrete along with a French drain. He hoped that by the March 3, 2010 Council meeting, he would be

coming back to Council with an implementation schedule and bids or just the implementation schedule in order to get the project started. He anticipated taking a prominent section of the area and installing the solution to see how it works before installing the other sections.

### **Possible Navy Reserves Sea Bees Project**

Town Manager Layton stated that due to the earthquake in Haiti, the project was off the table. He stated that it may occur in the next three (3) months as that was the next opportunity for the Navy Reserves Sea Bees unit to be able to participate.

Mayor Wessel asked Town Manager Layton to thank Ben Vorndran on Council's behalf for trying to set this project up. Town Manager Layton stated that he would.

### **Financial Statement for the Month of December for FY 2010**

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

### **MAYOR'S AGENDA**

Mayor Wessel thanked Council and the Planning Board for accommodating his schedule change request with regard to the meetings being switched.

### **COUNCIL MEMBERS' AGENDA**

Councilor Thibodeau stated she had nothing to report.

Councilor Morrison stated he had nothing to report.

Mayor Pro Tempore Kingston stated he had nothing to report.

Councilor Burdick stated that there were several problems throughout the summer with street and ice cream vendors. He stated that people have come to him with complaints about the noise and loss of business. He stated that the ordinance as it currently read seemed to only allow vendors in the business district. He thought the issue should be addressed.

Town Manager Layton suggested that if Council wanted staff to look into the issue and report back at a future meeting, that they direct staff to research the issue. Councilor Thibodeau suggested including in the staff report what the issues have been. She felt the more information given, the better.

Town Manager Layton stated that his understanding was that the issue encountered by staff was resolved. He stated that the issues that Councilor Burdick was referring to were somewhat different in that they were about competition and noise. He stated that he wasn't sure staff received any noise complaints other than a few that complained about the trucks operating late in the evening, which were resolved. He stated that if Council had concerns, it would be something that staff could report back.

Councilor Burdick moved to have staff review the situation with itinerant merchants and bring back a report with what the experiences have been as well as what recommendations they would make.

Motion carried 5-0.

**CLOSED SESSION**

Mayor Pro Tempore Kingston moved to enter into Closed Session pursuant to §143-318.11(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 regarding matters not currently in litigation.

Motion carried 5-0.

The time was 8:46 p.m.

**OTHER BUSINESS**

Upon return from Closed Session, Town Manager Layton handed out the Retreat agenda. He stated that everything for the Retreat would be provided to Council at the Retreat.

Mayor Wessel stated that Stan White was hosting a meeting on January 26, 2010 in Manteo with NCDOT to discuss transportation issues and projects in Dare County. He added that he did not think he could attend the meeting and asked Mayor Pro Tempore Kingston to attend on his behalf.

Mayor Wessel stated that the next meeting would be the Retreat on Monday, January 18, 2010 and Tuesday, January 19, 2010 at 9:00 a.m. at the Sanderling Inn.

**ADJOURNMENT**

Councilor Morrison moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:12 p.m.

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/s/ Sandy M. Cady, Permit Coordinator

Approved: February 3, 2010

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/s/ Dave Wessel, Mayor