

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
December 7, 2011**

The Town Council for the Town of Duck convened at the Duck Municipal Offices at 7:00 p.m. on Wednesday, December 7, 2011.

**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:** Councilor-elect Nancy Caviness; Town Manager Christopher Layton; Director of Community Development Andy Garman; First Sergeant Jeffrey Ackerman; Fire Chief Donna Black; Attorney Ben Gallop; and Town Clerk Lori Kopec.

**OTHERS ABSENT:** Police Chief Phillip Ferguson and Town Attorney Robert Hobbs.

Mayor Wessel called the meeting to order at 7:00 p.m. He let the Pledge of Allegiance and moment of silence.

**SWEARING IN OF NEW COUNCIL MEMBERS**

Mayor Wessel stated that the new Council members would be sworn in followed by the election of the Mayor and Mayor Pro Tempore. He turned the meeting over to Town Clerk Kopec.

Town Clerk Lori Kopec was recognized to speak. She swore in each Council member one at a time.

**ELECTION OF TOWN COUNCIL OFFICERS**

**Election of Mayor**

Town Manager Layton opened the nominations for Mayor of Duck.

Mayor Wessel stated that it had been an honor and privilege to serve as Mayor for the past two years, but for personal and professional reasons, he would like to step down as Mayor.

Mayor Wessel moved to nominate Don Kingston as Mayor. Town Manager Layton asked for other nominations. There being no other nominations, Town Manager Layton closed the nominations. Town Manager Layton moved to elect Don Kingston as Mayor.

Motion carried 5-0.

Town Manager Layton turned the meeting over to Mayor Kingston.

Mayor Kingston stated that he was honored to be elected Mayor and looked forward to serving the community and Council the next two years.

**Election of Mayor Pro Tempore**

Mayor Kingston opened the nominations for Mayor Pro Tempore of Duck. He moved to nominate Monica Thibodeau as Mayor Pro Tempore. Mayor Kingston asked for other nominations. There being none, he moved to elect Monica Thibodeau as Mayor Pro Tempore.

Motion carried 5-0.

### **SPECIAL PRESENTATION**

#### **Discussion/Consideration of Resolution #11-08, a Resolution of the Town Council of the Town of Duck, North Carolina, Honoring and Thanking Neil Morrison for his Service to the Town of Duck**

Mayor Pro Tempore Thibodeau moved to approve Resolution 11-08 as presented.

Motion carried 5-0.

Town Manager Layton read Resolution 11-08 to Council and the audience. Mayor Kingston presented Mr. Morrison with a plaque in commemoration of his service to the Town.

Mayor Kingston invited Council to share any personal comments regarding Neil Morrison.

Mayor Pro Tempore Thibodeau stated that Neil Morrison served the Town so well and represented the Town beautifully on so many levels, such as the Tourism Board. She stated that she had enjoyed working with him and thanked him for everything he had done.

Councilor Burdick thanked Neil Morrison for his contributions to the Town as well as his assistance in building consensus on many of the difficult items Council had to deal with.

Councilor Wessel thanked Neil Morrison and found being Mayor after him a difficult act to follow, but thought Mr. Morrison had accomplished a lot for the Town in the past nine years.

Councilor Caviness stated that it was an honor to serve with Neil Morrison in the past and thanked him for so many of the things that the Town has today.

Mayor Kingston thanked Neil Morrison, adding that he would be missed and that Council wished him well and hoped to see him at future Council meetings.

### **PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments.

Michael Sackett of 186 Schooner Ridge Drive was recognized to speak. Mr. Sackett stated that he wished to introduce an amendment to change the Code of Ordinances for allowing Bed and Breakfast homes on secondary roads. He went on to read supporting language that allowing this change would not be detrimental to the surrounding neighborhood or community at large, but would lead to a significant increase in tourist revenue. He noted that since the Town did not have any motels or hotels for the public to stay at for vacations, many visitors bypass Duck for other areas on the Outer Banks. He added that because of Duck's zoning regulations, it was sending tourists to other areas because there aren't places for people to stay. He felt that the Town should be looking for ways to welcome visitors to stay in Duck.

Paul Keller of 125 Wiroans Court was recognized to speak. Mr. Keller noted that the Town of Duck had a hotel – the Sanderling Inn – that tourists do stay at every year.

There being no one else wishing to comment, Mayor Kingston closed the time for public comments.

### **APPROVAL OF MINUTES**

Mayor Kingston opened the approval of minutes from the November 2, 2011 regular meeting. He directed Council to review the minutes from the November 2, 2011 regular meeting for changes.

Mayor Pro Tempore Thibodeau moved to approve the November 2, 2011 minutes as presented.

Motion carried 5-0.

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

#### **Discussion/Consideration of Dates for the Council Retreat, Town Hall – Community/Meeting Hall Grand Opening and Holiday Party**

Town Manager Layton stated that Council would need to establish dates for the Retreat, the Town Hall – Community/Meeting Hall grand opening and the Town’s holiday party. He noted that Council tries to hold its Retreat at the January mid-month meeting and that the Retreat typically lasts a day and a half to two days. He stated that he would be out of town January 20-24, 2012. He expected that Council could have their first meeting at the Meeting Hall for January 4, 2012, but staff would not be transitioning their operations until January 13, 2012.

Town Manager Layton stated that Council could hold the Retreat at their February mid month meeting as well as the ribbon cutting for the grand opening. He asked that after a date has been established, that Council send him topics of discussion for the Retreat so staff could get an agenda together. It was *consensus* of Council to hold the Retreat on Wednesday, February 15 and Thursday, February 16, 2012 at the Meeting Hall building with the ribbon cutting held on February 16, 2012 after the Retreat.

Town Manager Layton asked Council to give him some dates for the Town’s holiday party. He suggested that the party be held around January 13 or 14, 2012. Mayor Pro Tempore Thibodeau and Councilor Burdick stated that they were not available then. Town Manager Layton suggested that it be held later in the month of January. It was *consensus* of Council to hold the Town’s holiday party on Friday, January 27, 2012 at the Meeting Hall building.

### **NEW BUSINESS**

#### **Discussion/Consideration of the Appointment of Council Members to Serve on/as the Following: Government Access Channel Committee; Shoreline Management Committee; Planning Board – Council Liaison; Check Signatory – two Council Members**

Mayor Kingston stated that appointments would need to be made for the Government Access Committee, the Shoreline Management Committee, the Council Liaison for the Planning Board and two (2) Council members would need to be designated as check signatories.

Mayor Kingston asked for volunteers or nominations for the Government Access Committee.

Councilor Caviness stated that she was interested but because it meets on Tuesdays, she would have a conflict. Mayor Kingston stated that he would be happy to continue serving on the Committee.

Mayor Kingston asked for volunteers or nominations for the Shoreline Management Committee.

Councilor Wessel stated that he would like to continue serving on the Shoreline Management Committee.

Mayor Kingston asked for volunteers or nominations for the Council Liaison to the Planning Board.

Councilor Burdick stated that he would like to continue serving as the Council Liaison.

Mayor Kingston noted that the check signatory was traditionally the Mayor and Mayor Pro Tempore. He suggested that he and Mayor Pro Tempore Thibodeau be the signatories.

Mayor Kingston asked for volunteers or nominations for the liaison to the Duck Community and Business Alliance.

Mayor Kingston stated that he had been the liaison for the last two years and would like to continue serving.

Councilor Burdick moved to appoint Mayor Kingston to the Government Access Channel Committee; Councilor Wessel to the Shoreline Management Committee; Councilor Burdick as the Council Liaison for the Planning Board; Mayor Kingston and Mayor Pro Tempore Thibodeau as the check signatories; and Mayor Kingston as the liaison to the Duck Community and Business Alliance.

Motion carried 5-0.

**Discussion/Consideration of Resolution No. 11-09, a Resolution of the Town Council of the Town of Duck, North Carolina, Requesting State Grand Funding Assistance to Develop a Comprehensive Pedestrian Plan for the Town of Duck**

Town Manager Layton stated that for the past few years, Town staff had included a pedestrian planning study in the Capital Improvements Program list of projects. He added that the Town also previously applied for planning grants from NCDOT Bicycle and Pedestrian Division to fund the study, but had been unsuccessful in obtaining the funding. He stated that Resolution 11-09 would authorize Town staff to submit a grant application to NCDOT Bicycle and Pedestrian Division to request \$24,800 in grant funds for a pedestrian planning study to begin in the fall of 2012. He noted that a match of \$6,200 would be required from the Town if the grant is awarded. He stated that Town staff would utilize the grant to hire a consultant to develop a comprehensive pedestrian plan for the Town and would include short and long term projects as well as exploring needed safety, way finding and aesthetic improvements.

Councilor Caviness asked if the project began in late summer or early fall of 2012 and had to be completed by the summer of 2013, there would be adequate times to study the extremes. Town

Manager Layton stated that it would depend on the final scope of the work. Director Garman stated that NCDOT would notify the Town around the May 2012 timeframe if the grant was awarded.

Councilor Wessel asked if the Town had applied for the same amount grant two previous times. Town Manager Layton stated he was correct. Councilor Wessel wondered if a smaller amount would be approved. Director Garman stated that the amounts were prescribed by NCDOT.

Mayor Pro Tempore Thibodeau moved to approve Resolution 11-09 as presented.

Motion carried 5-0.

**Discussion/Consideration of an Implementation Status Report Update on the Town of Duck CAMA Core Land Use Plan**

Town Manager Layton stated that every two years the Town was required to provide a status update to the Coastal Resources Commission and CAMA staff regarding what Duck has completed in terms of implementation of its CAMA Core Land Use Plan. He stated that the Town was in the second year of its cycle and staff will be submitting a list of items to the CRC for their consideration. He noted that no action would be needed by the Council on this agenda item.

Director Garman went on to review the list and status of action items for the update with Council and the audience.

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance No. 11-08, an Ordinance Regulating Eating Establishments**

Town Manager Layton noted that the ordinance would create a limit of live outdoor entertainment to 10:00 p.m. with regard to the districts that would be covered by this change. He stated that staff would like Council to consider making this change applicable Town-wide so that live outdoor entertainment and disc jockeys would be prohibited after 10:00 p.m. He added that it may help with some of the bigger complaints staff receives about noise.

Director Garman stated that the Council had previously approved a work plan of the Planning Board that included examining the Town's Zoning Ordinance as it related to restaurants. He stated that the Planning Board was requested to examine standards related to take-out restaurants and outdoor dining areas. He noted that the Planning Board had held two public input sessions on the draft ordinance in October and November and actively sought input from the business community. He went on to review the draft ordinance with Council and the audience, recommending that Council authorize a public hearing on the ordinance at its January 4, 2012 meeting.

Mayor Pro Tempore Thibodeau asked if every existing restaurant would be subject to obtaining a Conditional Use Permit. Director Garman stated that they would not as they would be allowed to continue as they always have. He added that the new definition would replace the existing definition of a restaurant. He pointed out that all restaurants in the Village Commercial District were currently subject to Conditional Use Permits with most of them having them already in place. He stated that, until an existing restaurant makes any changes, they would be grandfathered.

Mayor Kingston asked if Coastal Cravings' drive-through window would be prohibited in the future. Director Garman stated that it was prohibited now under the current ordinance and if they were ever to cease operations for more than 10 months, they would have to remove the drive-through. Mayor Kingston asked if they were grandfathered. Director Garman stated that they were and were treated as non-conforming uses.

Councilor Wessel asked if fudge and/or candy shops were purposely left out of the ordinance. Director Garman stated that they were not purposely left out. Councilor Wessel noted that the ordinance had specified a number of food-related places, but not these. Councilor Burdick asked if there should be some type of catch-all phrase put in the ordinance. Director Garman stated that the ordinance was designed to catch items that were prepared on site and served as opposed to items that were pre-packaged.

John Fricker of 105 Carrol Drive was recognized to speak. Mr. Fricker suggested adding language that would state: "... including, but not limited to..." Councilor Wessel thought it was a good suggestion. Director Garman stated he would make the change to the language.

Councilor Wessel suggested a change to Page 2, Item 1 of the draft ordinance. He suggested that the new language read: "...beverages that are ready for consumption..." Director Garman stated that it should read: "...beverages in a ready for consumption state..."

Councilor Burdick moved to authorize a public hearing on Ordinance 11-08 at the Council's January 4, 2012 meeting with the changes noted.

Mayor Pro Tempore Thibodeau stated that she was very pleased with the amount of public input and hoped that there would be just as much public outreach for the public hearing.

Motion carried 5-0.

Mayor Kingston asked for input regarding the noise ordinance that Town Manager Layton had brought up. He asked if the language should be expanded and be sent back to the Planning Board. Councilor Burdick thought it should be done. Mayor Pro Tempore Thibodeau thought it would be wise to send it back to the Planning Board to see what they recommend.

Councilor Wessel moved to direct Town staff and/or the Planning Board to consider the changes to the ordinances required to extend the 10:00 p.m. noise limitations on a Town-wide basis.

Motion carried 5-0.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY**

Attorney Gallop congratulated Council and stated that he had nothing to report.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER**

##### **Update on Departmental Activities**

First Sergeant Jeffery Ackerman was recognized to speak. First Sergeant Ackerman 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.

#### **Update on Boardwalk Project/Repairs**

Town Manager Layton stated that he received an email earlier in the day with a contract for the southern extension of the boardwalk. He asked Council to authorize him to execute the contract. He noted that it would allow the construction of the boardwalk from the southern terminus and extend it through to the Wings property. He hoped to have the project completed before the summer.

Councilor Burdick moved to authorize the Town Manger to execute the contract for the grant as presented.

Motion carried 5-0.

Town Manager Layton stated that the repairs to the boardwalk and pier have been completed. He stated that the Town was now at the phase where the lighting portion can be worked on and completed. He expected to have the remaining solar installations in place by the end of the week of December 12, 2011. He stated that after the first of the year, Town staff will be able to submit for reimbursement funds from the Tourism Bureau and PART-F for the project.

#### **Update on Beach Erosion Study**

Town Manager Layton stated that the Corps of Engineers were moving along with their portion of the project, but were still having issues due to the stormy season and were concerned about having the baseline data on the beach as only storm condition data. He stated that it delayed some of their bathymetry and LIDAR studies. He added that they were back on track and all of the data collection should be completed. He stated that they were now in the process of pulling the information together. He noted that they would be presenting their findings to Council at their Retreat. He stated that Town staff had reviewed the Request for Qualifications portion of the second and third phases of the study and that five submittals were received and of the five, staff selected three consulting firms to interview and ultimately chose Coastal Planning and Engineering to begin on a Scope of Work. He stated that Coastal Planning were currently working with the Town of Kill Devil Hills and were based out of Wilmington, North Carolina.

#### **Update on Essentials of Municipal Government Class, Ethics Training**

Town Manager Layton stated that, under North Carolina law, all Council Members must complete a minimum of two hours of ethics training within 12 months of their election or re-election. He noted that by the end of 2012, each of the members of Council must meet this requirement. He stated that only two opportunities currently were provided – the “Essentials of Municipal Government” class and the North Carolina League of Municipalities Annual Conference. He pointed out that the NCLM Annual Conference will be held in late October in Charlotte, North Carolina and the UNC School of Government was currently developing an online ethics class that will meet the requirement for training and should be available sometime in 2012.

#### **Financial Statements for the Month of November for FY 2012**

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

### **Budget Amendments**

Town Manager Layton stated that the budget amendment appropriated \$3,594 for grants awarded to the Town by the Governor's Crime Commission and the Albemarle Commission for visual crime control aids and training for Building Inspector Cory Tate. He added that the budget amendment also appropriated \$133,076 in FEMA grants to cover the costs associated with the repairs to the soundside boardwalk and the Town park. Additionally, he stated that the amendment transferred \$6,481 from the Contingency Fund to cover the costs associated with the reimbursement to the Duck United Methodist Church for repairs to its HVAC system.

Mayor Pro Tempore Thibodeau moved to approve the budget amendments as presented.

Motion carried 5-0.

### **MAYOR'S AGENDA**

Mayor Kingston congratulated Town staff and the businesses that put together the yuletide celebration in Duck on such short notice. He thought it was a great success. He stated that he was looking forward to serving as Mayor for the next two years.

### **COUNCIL MEMBERS' AGENDA**

Councilor Caviness stated that she had noticed a decrease in Council attendance and that a lot of the meetings have gone extraordinarily late. She suggested Council consider limiting the number of public hearings held at the meetings; that Council consider using a consent agenda for routine matters; and that Council also consider moving the department updates to the mid month meeting each month. She thought these suggestions would help make it so the meetings weren't so long each month for Town staff and the audience. Mayor Kingston thought they were good suggestions and thought Council should look into the consent agenda and moving forward from there. Mayor Pro Tempore Thibodeau clarified that the financial statements would be put in the consent agenda. Councilor Caviness stated that they would not. Councilor Wessel stated that he liked the idea of a consent agenda. He added that having no more than one public hearing a month may not be a good idea because the applicant may have to wait too long. Councilor Caviness stated that if public hearings could not be limited, then the second half of the meeting should be shortened in order to get more citizen participation.

Councilor Wessel welcomed Councilor Caviness back onto Council. He congratulated Mayor Kingston and Mayor Pro Tempore Thibodeau on their possible upcoming attendance at the NOAA meeting in February, 2012. He stated that NOAA preferred either the Mayor or Mayor Pro Tempore to consider attending.

Mayor Pro Tempore Thibodeau gave an update on the recent Outer Banks Visitor's Bureau meeting. She thanked Neil Morrison for his service to the Town and thanked the audience for voting in the election.

Councilor Burdick stated that he was looking at the figures that were provided to Council regarding the Jazz Festival and, while the festival is getting more and more successful, the costs were going up. He thought Council and Town staff needed to brainstorm on how to make it a

festival where the Town breaks even in the future. He stated that if it continues to grow, the costs will also continue to grow. He suggested that it be discussed at Council's Retreat in February on how the funding could be improved.

**OTHER BUSINESS**

Mayor Kingston stated that the next meeting would be the regular meeting on Wednesday, January 4, 2012 at 7:00 p.m. and noted that it would be the first meeting Council will hold at the new Meeting Hall.

**ADJOURNMENT**

Councilor Wessel moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:03 p.m.

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/s/ Lori A. Kopec, Town Clerk

Approved: January 4, 2012\_\_\_\_\_

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/s/ Don Kingston, Mayor