

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
January 15, 2014**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 1:00 p.m. on Wednesday, January 15, 2014.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Chuck Burdick; Councilor Nancy Caviness; and Councilor Jon Britt.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief Phillip Ferguson; Fire Chief Donna Black; Director of Community Development Andy Garman; Building Inspector Cory Tate; Town Attorney Robert Hobbs; Public Information Officer Denise Walsh; and Town Clerk Lori Kopec.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 1:04 p.m. He asked Mayor Pro Tempore Monica Thibodeau to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments.

Teresa Cullen of 122 Martin Lane was recognized to speak. Ms. Cullen stated that she was representing the Sanderling Property Owners Association. She noted that there were two distinct associations in Sanderling and she was only speaking for the northern end. She stated that she wished to submit eight pages of detailed study questions to the Council and Town Manager Layton. She went on to read the cover letter that was attached to the questions regarding the beach nourishment project. She then handed out the questions to Town Manager Layton. She asked that Council consider tabling any vote on Resolution 14-01 as they were very concerned about it. She stated that she would like the vote tabled until more people could be made aware of it.

Brian Carter of 111 Royal Tern Lane was recognized to speak. Mr. Carter asked why Council was putting Resolution 14-01 forward. He stated that he was under the impression that the municipalities had the right already and thought it was redundant to be asking for it with regard to beach nourishment.

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

**CONSENT AGENDA**

**Minutes from the November 20, 2013, Mid-Month Meeting; Minutes from the December 4, 2013, Regular Meeting**

Mayor Pro Tempore Thibodeau moved to approve the Consent Agenda as presented.

Motion carried 5-0.

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

### **Discussion/Consideration of Changing the Date of the Town Council Annual Retreat**

Mayor Kingston stated that there have been some scheduling conflicts and the Retreat was changed to be held in March. He stated that he corresponded with Council and it was decided that the dates would be moved back to the original dates of February 19-20, 2014.

Mayor Pro Tempore Thibodeau moved to authorize the change of the Town Council Annual Retreat to February 19-20, 2014.

Motion carried 5-0.

### **Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with Sandski, LLC, for the Continued Provision of Surf Rescue Services**

Town Manager Layton stated that the Town has contracted with Sandski, LLC since its incorporation for ocean rescue services. He stated that the current contract expired on October 31, 2013 and added that he has been negotiating with Mirek Dabrowski a new contract, which was designed to enhance the level of service for ocean rescue services. He explained that there was one major change to the contract in that there would be a fixed lifeguard stand added during the first five years of the new contract, which was driving the cost increase for it. He stated that the other cost associated with the contract was a cost of living increase. He stated that the way the contract worked was that there were fewer guards at the beginning of the season and as the high season approaches, more guards would be brought in and one fixed stand would be added this year. He noted that it was not specified where the stand would be in order to allow the freedom to change the location if need be.

Town Manager Layton stated that one change to the contract was the change of the service of the contract so a guard was added over the next three years and then re-evaluate things in 2017 and determine whether or not another guard would need to be added. He stated that some of the timing was based on the beach nourishment project, adding that some stands had to be moved due to there being no beach in some areas. He thought once the Town got to the end of the contract, it would be at the level of service it should be at, but it made sense to re-evaluate it after a few years and determine if guards will need to be added. He passed out an alternative contract to Council that was the same except that the contract would be re-evaluated in 2017.

Councilor Burdick wanted to know why three lifeguards were being added. Mirek Dabrowski was recognized to speak. Mr. Dabrowski stated that this was not something that happened overnight, but something he and Town Manager Layton had discussed for years but held back due to budget constraints. He stated that it was now at a point where the Town needed more lifeguards due to the increase in the summer population.

Town Manager Layton stated that he and Mirek Dabrowski have talked about adding lifeguard stands over the last few years and have made it work; however, they knew the contract was coming up and felt it was a good time to address the issue. He stated that, ideally, they would like to see an additional five fixed stands at some point but did not expect it to happen any time soon. He thought having additional fixed stands during the season would help with response time and protecting people on the beach.

Mayor Pro Tempore Thibodeau clarified that, over the length of the contract, the extra stands would be put up north of the pier. Mirek Dabrowski stated that it wasn't just north of the pier, but thought one would be located between North and South Snow Geese, one at Carolina Dunes and at Christopher Drive and possibly one around Tuckahoe somewhere in the future. Mayor Pro Tempore Thibodeau thought that, in the future when the beach is nourished, there would be room to put the stands in the northern areas. Mirek Dabrowski stated that it was difficult to put the stands in that area now due to high tide.

Town Manager Layton stated that adding fixed stands was driving the cost of the contract. He added that the contract would allow the Town to amend it at any moment; to remove money or to change service. He thought the contract presented would accomplish the goals.

Mayor Kingston clarified that during the peak time; there would be nine stands on the beach. Mirek Dabrowski stated he was correct and added that there would be seven stands during the off-peak times.

Councilor Burdick stated that it would make sense to put the additional lifeguard stands in the contract when the Town had the space to do it after the beach nourishment project is completed. He thought that would be sometime around 2016. Mirek Dabrowski stated that he wasn't going to add two extra stands, but five. He thought if the population continued to grow, he could put a stand in at Caffey's Inlet and Ocean Pines.

Mayor Kingston noted that there wasn't anyone on the beach in Carolina Dunes due to the tide. He asked where the people migrate to and if there was coverage available to them. Mirek Dabrowski stated that they do come out when the beach is open, but they stay close to the dune. He added that he will put a four-wheeler out north of that area and keep one on the south side in order to respond to calls.

Councilor Caviness clarified that the Sound Sea lifeguard stand was the most northern stand on the beach. Mirek Dabrowski stated that the stand at Caffey's Inlet was. Councilor Caviness noted that the population in the Sanderling subdivision was a lot different than a few years ago. She asked if the renovations to the Sanderling Inn were driving the need for a stand in that area. Mirek Dabrowski thought that the renovations have caused an increase in the population. Councilor Caviness asked what the counts were on the beach during the peak season. Mirek Dabrowski stated that the busiest days were Monday through Wednesday and added that there were anywhere from 5,000 to 7,000 people on the beach.

Mayor Pro Tempore Thibodeau asked how many lifeguards were working on a normal day. Mirek Dabrowski stated that he had his entire staff of 12 on the beach. Mayor Pro Tempore Thibodeau asked if all of his staff was available during the peak of summer. Mirek Dabrowski stated that they were and added that he could get 15 guards working the beach if it was needed. Mayor Pro Tempore Thibodeau asked how many guards were on the beach at the beginning of the season. Mirek Dabrowski stated that he was three shy and added three in the second or third week of June. He noted that he starts out with nine lifeguards.

Councilor Burdick stated that it would have been good to present beach population charts to show the concentration of people on the beach. Mirek Dabrowski stated that it has been done. Town Manager Layton stated that it was typically done at the Council Retreat.

Mayor Pro Tempore Thibodeau understood that it was a fluid thing and that things change with regard to where lifeguards and stands should be located. She added that the beach changes as do subdivision populations so it was difficult to be definitive about where people go. She clarified that a guard could be put on the southern beach since there wasn't room on the northern end. Mirek Dabrowski stated that he would like to have a stand at Christopher Drive as it would fill a gap. Mayor Pro Tempore Thibodeau thought for 2015, there may not be a big enough beach to have stands up north. Mr. Dabrowski agreed, adding that he could do population counts this summer specific to the areas that they were looking at, i.e., Ocean Pines and Sanderling subdivisions.

Councilor Burdick noted that there was a fairly dense population near the north side of the pier. Mirek Dabrowski agreed, adding that it would change. Town Manager Layton didn't think there would be an issue with putting a stand north of the pier.

Councilor Caviness stated that this wasn't just about population counts. She thought Mirek's job wasn't about how many people were on the beach, but the quality of the guards and their response time as well as the fluid nature of people's behavior on the beach. She stated that she would support the contract as presented.

Mayor Pro Tempore Thibodeau thought this was the appropriate time to discuss issues and ask questions of Mirek Dabrowski. She asked if there was a policy of a certain number of four wheeler patrols that the lifeguards did. Mirek Dabrowski stated that he did not have a specific policy as to how many runs needed to be done, but he did have recommendations on what needed to be done and generally liked to have between three and four runs per day.

Councilor Burdick moved to authorize the Town Manager to execute the amended contract as presented.

Motion carried 5-0.

## **NEW BUSINESS**

### **Discussion/Consideration of Resolution No. 14-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Requesting the North Carolina General Assembly to Consider Adoption of Certain Legislation Authorizing the Town to Acquire Property for the Purposes Stated in G.S. 40A-3(b1)(10) and (11) and to be Able to Make such Acquisitions via the Procedures Allowed by G.S. 40A-42(a)(2)**

Town Manager Layton stated that as the Town moved forward with the beach nourishment project, a necessary part of the process was the attainment of easements from oceanfront property owners who were in the project area. He stated that it was expected that the Town would obtain the majority of the easements without any issue; however, to ensure that the project remained on schedule, it may be necessary for the Town to obtain some of the easements through a condemnation process. He stated that in order to utilize the condemnation processes allowed by the North Carolina General Statutes, the Town must be added to the list of entities authorized to condemn property for beach nourishment. He stated that Resolution 14-01 would request that the General Assembly add the Town to the list of entities authorized to condemn property for beach nourishment.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the proposed resolution was a tiny portion of the two statutes that are sought to be amended. He

stated that the full statute gave a lot more information to clarify the need for it. He explained that in North Carolina, towns only have the authority and powers granted by the General Assembly and were not automatic. He added that the condemnation power held by towns was only for specific purposes and not universal. He stated that unless a statute sets forth the power or the purpose for which the town would like to use eminent domain, a town would not have that power. He stated that a town could use eminent domain to condemn property for roads and streets, public enterprises such as airports, public transportation, parks and playgrounds, storm sewer drainage systems, hospital facilities and cemeteries, libraries, city halls, fire stations, drainage programs for waterways, historic properties in designated areas and public works. He stated that there were two other powers that dealt with beach nourishment and public beach accesses. He noted that those powers were not granted by the General Assembly to every town in the State, but just to the ones listed in the proposed bill. He stated that two of the towns were the ones the Town was cooperating with on the beach nourishment project – the Towns of Kitty Hawk and Kill Devil Hills.

Town Attorney Hobbs stated that just because a town is granted the power did not mean it would use it. He stated that if every property owner was cooperative and provided easements voluntarily to the Town, it would not need to use eminent domain to acquire the easements. He noted that there was no way to know at this point how cooperative all of the property owners will be. He stated that the General Assembly was not in session 365 days per year and when they were in session, there were only certain time periods when a bill could be introduced. He stated that the Town did not want to be in a situation where they had a specific time schedule to do the project and find that certain property owners were not willing to grant an easement, especially when the General Assembly was not in session.

Councilor Britt asked if there was a history with this bill with other towns and what they had to do. Town Attorney Hobbs stated that the Town of Nags Head had to use the power to condemn certain easements in order to complete their beach nourishment project. Town Manager Layton noted that before the Town could obtain financing through the Local Government Commission, the easements would need to be in place.

Councilor Burdick thought the only question was if there was any reason not to do it. He could not think of any reason not to. He thought the Town should move forward with adopting the resolution.

Mayor Kingston understood that Dare County had obtained easements for the Towns of Kitty Hawk and Kill Devil Hills over the years. Town Attorney Hobbs stated that some of the easements were required through the County many years ago through a Federal program. Town Manager Layton added that the Town of Kill Devil Hills had one easement remaining and was not sure where the Town of Kitty Hawk was with theirs. He stated that Duck had a lot of work to do with the easements.

Councilor Burdick asked how many easements would need to be obtained. Town Attorney Hobbs thought there were approximately 90 properties, adding that he was close to 1/3 done but planned to speed the process up and complete it in the next month.

Mayor Pro Tempore Thibodeau asked how long the Town would need to submit the resolution to the General Assembly to be accepted. Town Attorney Hobbs stated that he wasn't sure of the deadline but the sooner it was in place, the better. Town Attorney Hobbs noted that Section 2 of the proposed bill added the Town of Duck to the list of municipalities to use "quick take" – the

easement being obtained by eminent domain would occur as soon as the Town filed a complaint to start the process.

Mayor Pro Tempore Thibodeau asked if the Town got into details with a homeowner about their property with regard to the easement process. Town Attorney Hobbs stated that Town staff would send out a letter explaining what would happen. He added that the easement letter would have a description of what would be conveyed. Town Manager Layton noted that the easements would not convey a property to the Town, but authorized the Town to put sand on the property. Town Attorney Hobbs stated that once the easement was condemned, the Town maintained the right to maintain the sand on the property as long as the easement was in place.

Mayor Kingston asked how this differed from the Town replenishing the dunes with sand fencing and/or plantings. Town Attorney Hobbs stated that it would depend on where it was being done. Town Manager Layton stated that with sand fencing and plantings, the Town stayed on the public part of the beach, which was at the toe of the dune. He added that staff obtains written authorizations from homeowners allowing the fencing and planting. He noted that with regard to beach nourishment, the Town could not simply obtain a letter from the homeowner for it.

Councilor Burdick moved to approve Resolution 14-01 as presented.

Motion carried 5-0.

Mayor Kingston asked if Senator Cook and Representative Tine should be contacted since the Town would need sponsors. Town Manager Layton stated that the next step would be to draft a letter asking for the legislation to be introduced and requesting that they sponsor it. He guessed that since this was a local bill, there would not be an issue. Mayor Kingston suggested including the action in future correspondence regarding beach nourishment.

### **Overview of Dare County Multi-Jurisdictional Hazard Mitigation Plan Implementation Status Report and Future Planning Requirements**

Director Garman stated that FEMA required all local Hazard Mitigation Plans to be updated on a five-year cycle. He stated that the Town's Hazard Mitigation Plan was last revised in 2010 and was scheduled to be updated again in 2015. He explained that for the 2010 update cycle, one multi-jurisdictional Hazard Mitigation Plan was developed for Dare County and its six incorporated towns. He stated that in this process, each town independently conducted its own vulnerability assessment and mitigation action plan with County staff compiling the document for submission to FEMA. He anticipated that a similar process would be conducted for the 2015 update. He stated that staff met with the County in December and began discussions on the next update cycle and to meet the 2015 submission deadline, each town would need to begin the update process in 2014.

Director Garman asked Council to let staff know if they had any comments or questions regarding the table in their packets. He asked that Council let him know before he submits it to the County and the Town's CRS coordinator. He noted that another committee will need to be put together. He added that the last committee consisted of the Planning Board, Town staff including the Police Chief, Fire Chief, himself and Building Inspector Cory Tate. He stated that the same committee could be established if Council wished.

Mayor Kingston moved to establish a committee consisting of the Planning Board, Director Garman, Building Inspector Cory Tate, Police Chief Phillip Ferguson, Fire Chief Donna Black and Councilor Burdick.

Motion carried 5-0.

Town Manager Layton noted that CRS will be an agenda item for the Retreat.

**Update on the North Carolina Rate Bureau's Proposed Increase for Homeowners Insurance**

Town Manager Layton stated that six months after the last increase was approved, the North Carolina Rate Bureau, which represented the interests of the insurance industry, submitted another rate increase request to the Department of Insurance. He stated that the requested rate increase for Duck would be 35%, if approved. He noted that unlike the previous request, the Insurance Commissioner indicated that he was not in favor of the filing and publicly requested that it be withdrawn. He stated that comments on the filing can be submitted through January 24, 2014.

Town Manager Layton stated that Willo Kelly would be attending the Retreat to update everyone on the latest information on the issue. He added that Town staff sent out an email blast regarding the issue so people could submit their comments to the Department of Insurance. Councilor Burdick stated that Willo Kelly had emphasized that it was critical to get as many letters out as possible to the Insurance Commissioner. He added that it was the only chance the Town had for any input and thought adding Council input would be good.

Mayor Kingston suggested that a letter be sent from Town Council to the Insurance Commissioner. He further suggested that a sample letter be put on the Town's website as well. Town Manager Layton stated that it would be done.

Councilor Burdick moved to have the Town respond formally to the insurance rate increase.

Motion carried 5-0.

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

Town Attorney Hobbs stated that he had nothing to report.

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

**Update on Departmental Activities**

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a brief overview of the past month's fire 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.

Director of Community Development Andy Garman was recognized to speak. Director Garman gave a brief overview of the past month's permit activities to Council and the audience.

Public Information Officer Denise Walsh was recognized to speak. Public Information Officer Walsh gave a brief overview of the past month's activities to Council and the audience.

### **Project Update on Beach Nourishment Project**

Town Manager Layton reviewed the latest update from Coastal Planning and Engineering regarding the progress on the beach nourishment permitting and engineering project. He noted that CP&E had completed approximately 34.2% of the project and completed the beach profile survey as well as the initial off-shore sand search reconnaissance survey. He stated that CP&E continues to coordinate activities with Town staff and develop the required environmental documents.

Town Manager Layton stated that he and Mayor Kingston participated in a coordination meeting with Dare County, the Town of Kitty Hawk and the Town of Kill Devil Hills, CP&E and Carter and Associates recently. He explained that the meeting focused on actions that will be required to ensure that the project could be bid and completed in such a way as to realize the anticipated savings of 17%. He went on to review the revised schedule with Council and the audience.

### **Update on UNC SOG Training Opportunities for Council Members**

Town Manager Layton stated that the General Assembly requires all elected officials to attend ethics training every time they are elected or re-elected. He stated that the next opportunity for it will be in May 2014 and thought the webinar could be held in the Meeting Hall. He added that the elected officials from the other towns could be invited to attend. He stated that Essentials of Municipal Government would also be held and asked that if any Council member wished to attend that, to let him or Town Clerk Kopec know.

### **Financial Statements for the Month of December for FY 2014**

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

### **MAYOR'S AGENDA**

Mayor Kingston stated that the mayors meetings were back on track, with the first one he had attended on January 14<sup>th</sup>. He stated that it was a good opportunity to meet the new mayors of Southern Shores, Kitty Hawk and Nags Head. He stated that he invited Senator Bill Cook, Representative Paul Tine and Willo Kelly to the Council Retreat. He added that Representative Tine and Willo Kelly indicated that they would be attending; however, Senator Cook would not be able to attend, but would be attending Council's March 5, 2014 meeting. Town Manager Layton stated that he will suggest to Council at their February 5, 2014 meeting that the March 5, 2014 meeting begin at 5:30 p.m. instead of 7:00 p.m. to accommodate Senator Cook's schedule. Mayor Kingston stated that, with regard to the Mid-Currituck Bridge, the RPO was dealing with it and he had received an email from John Wander asking for support. He added that something would be put out on the Town's webpage so people could send support letters to the RPO. He noted that the letters will need to be received between January 14 and February 12, 2014. He stated that the Town would be sending a letter similar to the one that was sent previously. He stated that he and Town Manager Layton had signed up for the UNC Emergency Management course.

### **COUNCIL MEMBERS' AGENDA**



Mayor Pro Tempore Thibodeau gave out some statistics on the Outer Banks home sale market to Council and the audience. She stated that she would be attending the Visitors Bureau meeting on January 16, 2014. She expressed her sympathy on the passing of Buck Thornton, Charlie Nash and Heather Scarborough.

Councilor Burdick stated he had nothing to report.

Councilor Caviness stated that she would be attending her first Government Access Committee meeting on January 16, 2014. She stated that with regard to the upcoming Retreat, she suggested that the position of the Planning Board liaison be moved to the February 5, 2014 as an agenda item as opposed to being included in the Retreat. Mayor Kingston suggested that it be an agenda item at the February 5, 2014 meeting. He asked Town Manager Layton to provide Council with some background on how the Council got the position originally. Town Manager Layton stated that he would. Mayor Kingston further asked Town Manager Layton to find out what the other towns and Dare County have with regard to a liaison and what legal issues may arise from having Council representation on the Planning Board. Councilor Burdick thought Council needed to hear the Planning Board's input. Mayor Pro Tempore Thibodeau agreed. Mayor Kingston thought if there was to be a discussion, the Chair or Vice Chair of the Planning Board should be present.

Councilor Britt stated he had nothing to report.

**OTHER BUSINESS**

Mayor Kingston stated that the next meeting would be the regular meeting on Wednesday, February 5, 2014 at 7:00 p.m.

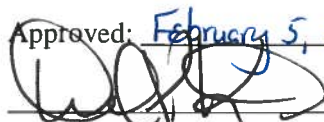
**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 3:19 p.m.

  
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Lori A. Kopec, Town Clerk

Approved: February 5, 2014  
  
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Don Kingston, Mayor

