

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
April 2, 2014**

The Town Council for the Town of Duck reconvened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, April 2, 2014.

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief Phillip Ferguson; Fire Chief Donna Black; Director of Community Development Andy Garman; 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 7:03 p.m. He asked Sarah Shotton of the First Flight High School Civics Class to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston 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 Kingston closed the time for public comments.

CONSENT AGENDA

Minutes from the February 19 and 20, 2014, Annual Council Retreat; Minutes from the Reconvened February 19 and 20, 2014 Annual Council Retreat; and Resolution No. 14-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Proclaiming April “Paint the Town Purple” Month in Support of Relay for Life of Dare County and the American Cancer Society

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

SPECIAL PRESENTATIONS

Presentations by the First Flight High School Civics Class

Town Manager Layton stated that there would be two presentations given by the First Flight High School Civics class. He stated that it was a wonderful program that the class puts on and went on to introduce First Flight High School Civics teacher Mr. Herman to Council and the audience.

First Flight High School Civics teacher Mr. Herman was recognized to speak. Mr. Herman thanked Council for allowing his students to give the presentations. He added that it was an

opportunity for the students to get involved in local events and try to make a difference. He stated that he has encouraged his students to speak to the various Councils and Board of Commissioners to present their proposals in the hope that some get enacted.

Town Manager Layton directed the students that were giving a presentation on the kayak/paddling trail to come forward. The students introduced themselves and gave a short presentation on the creation of a kayak/paddling trail along the soundside in Duck that would span the length of the boardwalk and included trail markers with information on the Town's array of wildlife and history. They added that shops, public docking areas, and the park would be identified by the signage and pamphlets could be available to detail the exact location of the trail and all of the points of interest. The students felt that the aim of the trail would increase kayak-based tourism as well as increase business to the Town of Duck. They noted that they have contacted Southeast Coast Saltwater Paddling Trail in the hope that they would endorse the project and become a partner.

Mayor Kingston thought the project the students were proposing was very exciting and quite a project for the Town of Duck. He thought it was a great idea.

Mayor Pro Tempore Thibodeau asked if research was completed as to how high the signs would be out of the water. The students stated that they looked into it but did not know the exact heights. They believed it would be seven feet below installation and would be high enough to withstand both low and high tides.

Councilor Caviness asked if other communities were visited that had a similar type of recreational opportunity. The students stated that they did not; however, they did contact the Southeast Paddling Association and sent them a copy of the proposal. The Association was considering endorsing the project.

Councilor Burdick thought it was a nice concept that was compatible with what the Town was trying to do with the boardwalk.

Mayor Kingston thanked the students for their presentation.

Town Manager Layton stated that the paddling trail proposal fits in with what the staff had discussed previously with regard to the boardwalk. He stated that with the last section of the boardwalk being completed this year, staff wanted to focus the next phase on education, information and signage. He stated that the expenditures that the students quoted were small enough that it could be funded; however, the most difficult part would be designing the signage. He thought the overall concept would be easy to implement over the next fiscal year. He thought it had a lot of merit and was part of the 2022 Vision.

Councilor Burdick moved to have Town staff move forward with the proposal with investigating the implementation.

Motion carried 5-0.

Town Manager Layton directed the students that were giving a presentation on the dog park to come forward. The students introduced themselves and gave a short presentation on building a community friendly dog park. They stated that the park would be open to local residents as well as people vacationing in Duck and was a great way for people to interact. They noted that the

project would help promote friendly interactions between people with similar interests and would also promote a healthy lifestyle for dogs and their owners.

Mayor Kingston asked how large dog parks were in general. The students stated that they were anywhere from one to two acres.

Councilor Burdick asked if the area the students were targeting a habitable one. Town Manager Layton stated that the area the students were referencing an area closer to Duck Road and while there were trees that would need to be worked around, it was in the Willow Swamp area, which would need to be filled. He reiterated that the area was closer to Duck Road and was more suitable. Councilor Burdick asked what the cost would be for a dog park. Town Manager Layton stated that it was approximately \$22,000. Councilor Burdick asked if the majority of the cost was due to the fencing. Town Manager Layton stated that it was the fencing, site preparation and benches.

Mayor Pro Tempore Thibodeau asked the students if they visited the Kitty Hawk Dog Park. The students stated that they had. Town Manager Layton stated that he has used the Kitty Hawk Dog Park. Councilor Burdick asked if the park was funded via memberships. Town Manager Layton didn't believe so and added that there was a registration process, but wasn't sure if there was a fee associated with it. He noted that the overall project was done through Dare County and wasn't sure what the Town of Kitty Hawk added monetarily to it. He stated that it was part of their skate park project.

Councilor Burdick asked if the dog park was subject to grant funding. Town Manager Layton thought it possibly could be and thought it could be eligible for either a PARTF or Tourism Bureau grant. He suggested that if Council had an interest in the dog park being pursued, that staff be allowed to follow up and work it into the Capital Improvements Program.

Mayor Kingston suggested that it be brought before the MP2AC Committee. Town Manager Layton stated that he could do that. Mayor Pro Tempore Thibodeau thought it would be good for the Committee to review it. Councilor Caviness stated that she would like to hear their feedback on it.

Councilor Britt moved to refer the possibility of a dog park to the Municipal Property Master Plan Advisory Committee for their consideration.

Motion carried 5-0.

Mayor Kingston thanked the students for their presentation.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of ZTA 14-001 – an Application for a Zoning Text Amendment by Michael Strader, P.E. of Quible & Associates, P.C., on Behalf of FMC/NV Sanderling SPE, LLC, to Amend the Zoning Ordinance of the Town of Duck, North Carolina, Pertaining to Maximum Building Height in the C-2 General Commercial Zoning District – Town Code Section 156.034(D)(6) to Increase the Maximum Building Height in the District from 35 Feet to 45 Feet for Hotel Buildings with Roof Pitches 5:12 or Greater and Limited to Three Stories

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs was recognized to speak. Town Attorney Hobbs stated that the public hearing was open. He asked Director of Community Development Andy Garman to give a presentation on behalf of Town staff.

Director Garman stated that Council had before them a height amendment submitted by Sanderling SPE, LLC for the property at 1461 Duck Road, which was in the C-2 General Commercial Zoning District. He stated that the applicant would like to add another story to their north end building and, in order to do that, they would need to amend the Town's height regulation for the zoning district. He stated that the applicant has asked for 45 feet with the current height limit being 35 feet.

Director Garman stated that the applicant provided elevations as well as an elevation study of the proposed building. He stated that the Planning Board discussed the item at its February and March regular meetings and noted that the initial request from the applicant was to have the height limit raised to 52 feet and after the first meeting with the Planning Board, the applicant came back with a revised request for 45 feet. He stated that the Board had a long discussion on it and the Planning Board voted 3-2 to recommend denial of the request. He went on to read a portion of the minutes from the Planning Board meeting regarding their decision to deny the request. He thought one of the key points made by the Board was that they felt a precedent would be set by the request and were uncomfortable voting in favor of increasing the height.

Mayor Kingston stated that there was a lot of discussion on the base of measuring buildings. He asked where the Town stood. Director Garman stated that buildings are measured depending on whether a building is in a flood zone or not. He explained that if a building was not in a flood zone, it was measured from grade or if the building was located below base flood elevation, it would also be measured from grade. He added that if a building was in a flood zone and was elevated to meet the minimum flood elevation, then it would be measured from the flood zone. He stated that with regard to the applicant's property, the minimum flood elevation was 12 feet. He noted that the main Inn was completely elevated and sat approximately 14 feet above sea level, which was six feet above grade, so staff would measure from base flood elevation. He stated that for the north end of the building, it was below the base flood elevation because it was built prior to being included in the flood zone, so staff would measure from grade.

Dick McAuliffe of Sanderling SPE, LLC was recognized to speak. Mr. McAuliffe stated that he wanted to lay out the goals and intentions for the Sanderling Inn with regard to the text amendment. Mr. McAuliffe stated he was brought in back in 2008, along with a new management company, to take control of the operations of the Sanderling Resort as it was underperforming financially, with a number of deferred maintenance issues, and the property was losing money. He stated that they were brought in to mitigate the situation and turn things around as well as restore the property and profitability. He stated that they embarked on a major capital initiative campaign and in 2009 they underwent an extensive exterior renovation to the grounds; in 2010 they put in a significant amount of money into the Sanderling Spa; an extensive room renovation and met with the Planning Board and Council to obtain approval for the permanent pavilion structure.

Dick McAuliffe stated that in 2012 the ownership entity decided to sell the property and was subsequently purchased by the Northview Hotel Group for \$13.8 million. He stated that they then embarked on an aggressive renovation plan and process in order to continue the evolution of the property and put \$6 million into capital improvements over the winter of 2012/2013 and opened the property in 2013 and were able to address a number of issues for a great repositioning

of the resort. He stated that they were looking at additional rooms on the third floor of the north Inn but were also looking to perform a complete guest room renovation that would be more involved than the previous renovations. He stated that they were also looking at renovating the homes to enhance the kitchens, life safety and storage issues, as well as some deferred maintenance issues that the Resort continued to deal with. He noted that the Resort was very important to the community and was recognized by Forbes Magazine with a four star designation, had received a Triple A four diamond rating for five consecutive years, was part of the Southern Living hotel collection, was recognized by Conde Nast Magazine as the number three rated mainland spa in the United States, and one of Travel and Leisure Magazine's 500 World's Best hotels. He stated that these were all very important recognitions not only for the Sanderling Inn, but also the Town of Duck. He stated that they were attempting to continue the growth of the resort, the revenue stream and to make it an even more viable destination resort. He stated that if they were successful in their goal of adding additional guest rooms, it would result in approximately \$2 million total revenues for the resort. He noted that it would generate an additional \$75,000 in tax revenue for Dare County and the Town of Duck. He added that this was a project that they felt very strongly about.

Dick McAuliffe stated that there had been talk about new ownership and them wanting to come in and change the way things were done. He stated that they started discussions with Director Garman over two years ago regarding the potential of adding a third floor to the north Inn. He noted that this did not come about due to a change of ownership, but based on discussions that have been done for quite a while as they continue to grow their business and enhance their revenue stream. He thought the project would be beneficial not only in the high season but also in the shoulder and off-season as it would be good for the local business community in that there would be increased occupancy.

Michael Strader of Quible and Associates was recognized to speak. Mr. Strader stated that he and Chris Nason of Beacon Architecture would be available to answer questions Council may have on the project.

Councilor Burdick didn't think Council was discussing whether the Sanderling could add 16 rooms on the third floor, but how it would be done. He thought that was the issue that Council faced. He asked how that could be accomplished. Chris Nason of Beacon Architecture was recognized to speak. Mr. Nason stated that they had met with Town staff and looked at working within the existing height regulations. He added that they made a determination that a flat roof or flat roof solution would not be in the best interest of the Sanderling or the Town. He stated that they chose to approach the project with the intent of adding a third floor and not allowing for a fourth floor and getting a pitched roof on the structure. He felt that it was an aesthetic benefit to the Sanderling and the Town. He stated that they did not wish to do a flat roof solution as it was not aesthetically a Village look. Councilor Burdick clarified that the project could be done with a flat roof. Chris Nason stated he was correct.

Mayor Kingston asked if there were other areas within the property that could be used for those rooms. Dick McAuliffe stated there wasn't any area on the north end. He added that as far as any other opportunities to go up, there weren't any due to the existing height. He stated that the south end was already at three stories. He noted that one of the reasons that they told Director Garman that they would agree to limit it to three stories would be so no one would fear they would want to build further up. He stated that they converted some office space in the south end on the ground level into guest rooms and have had discussions regarding other areas they may be able to use that would not require any text amendments as far as height. Mayor Kingston asked if the Sanderling could look at an additional building and/or expansion rather than going up a story.

Dick McAuliffe stated that there wasn't any room on the footprint as the property exists to add additional rooms without going up a story.

Mayor Pro Tempore Thibodeau clarified that the south building had three stories. Dick McAuliffe stated that she was correct. Chris Nason stated that the main Inn was elevated and while it was only two stories, it was roughly six to seven feet higher than the south building. He stated that, aesthetically, it was keeping with what currently existed.

Councilor Burdick stated that he looked at the property and tried to envision what the additional floor would look like. He thought the issue was that it wasn't the third floor but where the roof line was and how it would be. He noted that the applicant suggested a 5:12 pitch, and asked if the applicant considered lowering the pitch. Chris Nason stated that they looked different roof pitches, but if the pitch was too low, different roof materials, such as metal, would be needed, and would not work as the goal was to match the original pitches.

Mayor Pro Tempore Thibodeau thought in reading through the comments received, she thought the concern was regarding view sheds and proximity to neighboring properties. She asked if the applicant wished to comment about views. She further asked if they did an analysis on it. Michael Strader stated that Council had an aerial photo that showed the Salt Houses. He stated the Salt Houses were approximately 100 feet from the North Inn. He added that the north Inn expansion was not within the view shed factors. Chris Nason stated that the Salt Houses views would not be blocked as their height limit was 52 feet. Mayor Pro Tempore Thibodeau asked if the Salt Houses were currently at 52 feet in height. Michael Strader stated that they were over 48 feet. Chris Nason stated that if something happened to them, they could be rebuilt to 52 feet.

Mayor Kingston noted that the properties that Mayor Pro Tempore Thibodeau was questioning were previously owned by Dare County prior to the Town incorporating and did not have any bearing from the standpoint of the Town's ordinances. Chris Nason pointed out that the Sanderling structures were also in place before the Town incorporated. He added that the Sanderling inherited a more onerous set of rules for a commercial establishment than the houses.

Town Attorney Hobbs asked members of the Planning Board to address the application.

John Fricker was recognized to speak. Mr. Fricker stated that the members of the Planning Board were aware that Council was provided copies of the February and March meeting minutes, which accurately represented what each Board member said.

Town Attorney Hobbs asked if any members of the public wished to make a presentation.

John Gaw was recognized to speak. Mr. Gaw stated that he was the attorney representing the Sanderling Property Owners Association. He stated that he had been listening to the remarks by the applicant on what has been a historically contentious land use planning issue that has been happening on the Outer Banks. He stated that in this application, the applicant had not included some of the protections that a community could have when they choose to increase the height limit above a standard that has been set. He stated that the Town of Nags Head has a provision in their hotel zone for increasing the height above 35 feet for hotel structures and included a ratio of height to setback, so that every foot that is above 35 feet would mean an increase in the setback by a specific distance. He stated that it was a way of getting some benefit to the community in exchange for a benefit of the developer being allowed to increase the height.

John Gaw stated that a good land use protection tool was a provision amending the ordinance in that district to include a provision that allowed a special use permit procedure. He stated that he wasn't suggesting having this done in this case, he thought it was a way that communities have tried to address adverse impacts. He stated that his clients were opposed to the application. He noted that the Sanderling Property Owners Association was the development that adjoined the Sanderling Inn to the south. He added that it was one of Duck's largest residential communities.

John Gaw stated that the Salt Houses were built before the Town incorporated and were built using Dare County's Land Use Plan. He stated that those structures would not be allowed to be built under the Town's regulations. He stated that his client was concerned about the impact that the increase in height would have on their project. He stated that he read the agenda packet materials and thought they thoroughly addressed many of the issues that Council was dealing with, such as increased pedestrian traffic, increased trip counts to the site, the impact of the aesthetics in terms of the community, and an increase in vehicular traffic. He pointed out that any time a commercial development was enlarged or increased in the midst of surrounding residential communities, it would have an impact.

John Gaw stated that he wanted to focus on the unintended consequences that this project will cause. He stated that whenever there is a zoning amendment or the land use regulations are changed, there was always the potential of unintended consequences. He stated that he found it interesting that the North Inn was below the minimum flood level. He stated that the unintended consequence was that if the building was destroyed such that the cost to repair exceeded 50% of the value, it would have to comply with all of the current standards of the Town. He explained that the applicant would have to build it back to the minimum flood elevation. He stated that the building would be 45 feet in height that was measured by the Town's ordinance, but the total height would be 45 feet plus 12 making it 57 feet high. He cautioned Council of the unintended consequences with this project.

John Gaw stated he was happy to hear from the applicant how successful the Sanderling Inn has been and how it has improved. He thought it was a great resort that was good for the community and the Outer Banks. He commended the Sanderling Inn on everything they have done to make the Resort more economically feasible. He asked Council not to let the applicant's comments confuse them in that the Town had its own image and did not get its identity from the accolades and awards that the Sanderling receives. He stated that Duck was a great community and has gone to great lengths to try to identify what it wanted to be as a community.

John Gaw stated that the benefit of the project for the applicant was that they would make more money, have more people come to their resort and hold larger functions. He added that it was a good thing and very plausible. He stated that it didn't make the Town look nicer or make the residential community around it look nicer, but would increase the traffic level. He stated that it would also increase pedestrian traffic and would slow the vehicles on the road. He stated that he did not see where the benefit was to the community at large, except for the \$75,000 a year in increased tax revenue. He stated that once a town has a commercial zone, it was much easier to have a commercial district changed from a C-1 to a C-2 or C-2 to C-3 to allow for a greater development potential. He encouraged Council to deny approval of the application.

Mayor Pro Tempore Thibodeau clarified that the Sanderling Property Owners Association would be in favor of the applicant working within the current height restrictions by having a flat roof. John Gaw stated that they were opposed to the height increase and thought the result would be to stay with the 35 foot height limit and work with that.

Ed Sadler of 161 Buffellhead Road was recognized to speak. Mr. Sadler stated that there were a lot of three story homes in Duck that did not have flat roofs. He noted that his home was three stories and didn't have a flat roof. He stated that the Town of Duck was very good to him when he had to move his home a few years back and received a variance for it. He stated that he was extremely grateful and fortunate for the variance. He thought Duck was a wonderful community and liked how it looked. He stated that he did not want Duck to look like its neighbors to the north or some of the neighbors to the south. He thought keeping a consistent 35 foot height limit was a good idea for the Town as well as for the future of Duck. He stated that he liked the Sanderling Inn and appreciated what the new management has done. He stated that if they needed the extra rooms, they could get them without increasing the height; it was just a matter of architectural design.

Paul Keller of 125 Wiroans Court was recognized to speak. Mr. Keller stated that his family had been coming to the Outer Banks since the early 1970's and loved it so much, they bought a place in 1975 in Kill Devil Hills before moving to Duck. He stated that he enjoys going to the Sanderling Inn and had nothing against them. He thought Council needed to remember that the Town was a new one that was six miles long with a portion being only a mile wide. He stated that he was concerned about the skyline in Duck with the proposed height increase. He suggested that Council reject the proposed increase.

Robert Bortz of the Ships Watch subdivision was recognized to speak. Mr. Bortz noted that Council was looking at an exemption for one building in the entire Town as well as looking at the Sanderling Inn as good neighbors. He stated that what the Sanderling have done in the last 20 years has been an improvement and brought in revenue as well as making the resort a better place to be. He thought Council should put trust in the applicant to make a decision on this one issue and not be concerned about what may happen in the future, as that decision could be made when the issue comes up. He stated that he was in favor of allowing the height increase.

Gene Schwarz of 103 Quail Way was recognized to speak. Mr. Schwarz stated that about five to six years ago, there was a proposal for the Town Hall and a cupola for the building that exceeded 35 feet. He stated that Council at that time reacted extremely negatively to it and said it would set a bad example. He added that if Council allowed the height increase for the Sanderling Inn, it would be setting a bad example. He added that another entity could come before Council in the future and they would be faced with the fact that they allowed the Sanderling Inn to increase the size of their building. He noted that people at the Sanderling Inn knew the rules when they bought the property and one of the reasons the Town incorporated was to make its own decisions and didn't want Food Lion to come in. He asked Council to remember that when the Town incorporated, it wanted Duck to say small.

Dick McAuliffe stated that he wanted to respond to the comments from the public. Mr. McAuliffe stated that as far as the zoning questions that were raised, the Sanderling Inn was in a C-2 zoning district, which was the only one in the Town. He stated that they were looking to increase one building in order to accommodate additional guest rooms. He added that the Sanderling Inn was 4.5 miles from the Village Commercial District and were on the edge of Currituck County. He stated that as far as sight lines for any of the homes in the Sanderling community, they completed extensive surveys with Chris Nason and Quible & Associates. He added that there was not a visual impact from any home in the Sanderling community if they were to be granted the text amendment and increase the height of the building. He stated that they were very aware of the traffic issue and what it did to people coming into the Town on a Saturday. He added that they have been extremely proactive in their reservation sales department by almost eliminating Saturday check-ins.

John Wander of 119 Sandcastle Court was recognized to speak. Mr. Wander stated that there was a lot of pressure in the past on widening NC12. He stated that the Mid-Currituck Bridge would not be constructed any time in the near future and thought anything the Town did to increase congestion on NC12 would add to the pressure as well as requests for left turn lanes, widening sections of NC12 and creating additional problems.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that when considering the modified language with the 45 height limit, it would have to be passed on a first read by a 2/3 vote, which meant four Council members would have to vote in favor of the ordinance. He stated that if that wasn't the case, it would require a second read.

Mayor Kingston appreciated the presentations and comments from the public. He stated that he did not see any compelling reason to accept the change in height for the Town. He thought the Town had a history and looking at the Vision, it stated that Council wished to maintain Duck the way it was today. He thought Council needed to look out for the Town of Duck. He appreciated the Sanderling, but Duck was not just the Sanderling and there were many concerns from the public with only one in favor of the height increase. He stated that the Planning Board denied the request and he did not see any reason to accept the height increase and would vote against the text amendment.

Mayor Pro Tempore Thibodeau appreciated the public input and presentations. She stated that she did not agree with everything that was said. She added that the concern regarding the density with 16 rooms creating a huge issue was not something she agreed with. She pointed out that Corolla had over 4,000 undeveloped lots and thought Council was fooling themselves if they didn't think that would not create a traffic issue in the future. She agreed that NC12 should not be widened and the Town has to be careful with regard to development. She didn't think the 16 rooms would create an issue that would be disruptive as there were currently three new homes being built that would have the same effect as these rooms. She stated that the Town has conservation zoning on the Army Corps property to make it difficult for development. She thought the Sanderling and properties in Duck as well as the businesses all blend together to make the Town very unique. She stated that Sanderling was a beautiful building and has been more enhanced by all of the work that has been done to it. She thought the building should be embraced as part of Duck's character. She stated that the one issue she couldn't get past was setting a precedent as she knew height has always been an issue in Town. She stated that because of that, she would not be supporting the text amendment.

Councilor Burdick stated that he struggled with the issue and took the time to tour the property as well as reading all of the comments that were received. He stated that from a business standpoint, it made sense. He stated that he too had the concern regarding setting a precedent, but thought the architect could come up with a reasonable design that would meet the 35 foot height limit. He thought if the Sanderling really wanted to add 16 rooms, they needed to be creative in order to do it. He added that he could not support the text amendment.

Councilor Britt appreciated what the Sanderling does for the community but could not support the text amendment.

Councilor Caviness stated that she was concerned about a precedent being set and would not be in favor of approving the text amendment.

Mayor Kingston moved to deny ZTA 14-001 as presented.

Motion carried 5-0.

Mayor Kingston called for a 5 minute recess. The time was 8:47 p.m.

Mayor Kingston reconvened the meeting.

Public Hearing/Discussion/Consideration of CUP 14-001 – an Application by Martin Barnette, PLS of BILD Surveying on Behalf of Andrew Meredith, Property Owner, to Consider an Amendment to a Conditional Use Permit for Redevelopment of a Portion of the Property Located at 1448 Duck Road

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs 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 Clerk Lori Kopec proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Andy Garman and Martin Barnette.

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Garman would give an overview.

Director Garman stated that this was a Conditional Use Permit amendment to add an addition to the property at 1448 Duck Road, which was the current site of the North Duck Watersports business. He stated that the existing property was used as a watersports business and received a Conditional Use Permit in 1993 from Dare County. He stated that the property has undergone quite a few changes in the last few years with Hurricane Irene impacting the property significantly. He stated that after Hurricane Irene, a number of older structures on the property were damaged and subsequently removed by the applicant. He added that a boat basin and bulkheads were rebuilt at that time and quite a few enhancements were made including landscaping. He stated that the applicant had two structures that remained on the north side of the property, which was at grade, which was 3-5 feet above sea level. He stated that the existing buildings have flooded on a number of occasions and because of that, the applicant wished to take down the buildings and replace them with one building consisting of 1,200 square feet of retail space and a 600 square foot accessory apartment on the second floor.

Director Garman stated that the applicant would continue to run the boat rental business on the south side of the property and would add a conforming building to the current building code and flood elevation standards on the north side of the property. He stated that they would have a drive aisle with parking spaces to support the retail business and apartment. He stated that they would be replacing the septic system, which was approved by the Health Department. He stated that the applicant designed a stormwater system to support the new building, parking area and

driveway. He stated that staff felt the application met all of the requirements and the Planning Board discussed the item at their March 12, 2014 meeting and voted unanimously to recommend approval.

Town Attorney Hobbs asked Council if they had any questions. There were none.

Town Attorney Hobbs asked Martin Barnette to make a presentation. Martin Barnette was recognized to speak. Mr. Barnette stated that he was available to answer any questions Council had regarding the project. He stated that the retail space was very modest and the parking would be very well defined.

Town Attorney Hobbs asked Council if they had questions for Martin Barnette.

Councilor Burdick clarified that a concrete driveway was going to be added. Martin Barnette stated that he was correct, adding that the driveway from NC12 to the building would be concrete. Councilor Burdick asked if consideration was given to using permeable materials instead of concrete. Mr. Barnette stated that they had, adding that the project was very modest and the stormwater runoff was one half of a foot in depth with a 3:1 slope. Councilor Burdick thought permeable materials would be an excellent application considering the property is against the shoreline. He added that avoiding any drainage into the shoreline was critical. Mr. Barnette thought cost was a factor. Councilor Burdick stated that his concern was the amount of concrete being added. Mr. Barnette stated that the stormwater would drain to the retention area.

Mayor Kingston asked if the concrete existed on the property currently. Martin Barnette stated that the parking area was all pea gravel. He added that the driveway would be concrete, primarily for emergency vehicles to access the property.

Councilor Burdick clarified that the concrete was for emergency vehicles. Martin Barnette stated that the parking area would not be all pea gravel as it would need to be a more substantial material to accommodate emergency vehicles. Director Garman added that the drive aisle surface needed to withstand heavy vehicles, whether it was concrete or another material. He stated that it could not be gravel, based on the Town's ordinance. Councilor Burdick thought it had been eliminated from the ordinance. Director Garman stated that it had not been eliminated.

Mayor Pro Tempore Thibodeau stated that she could see the benefit of having concrete where it meets Duck Road. Councilor Burdick agreed. He added that he had a problem with the concrete going to the building. He thought it was a lot of concrete for the site. Martin Barnette thought the developer would want as much gravel as possible on the site.

Councilor Burdick stated that he was caught between what the Town had to do versus what was allowed. Director Garman stated that concrete was not required, but staff proposed concrete for the drive aisle and gravel for the parking spaces. Councilor Burdick asked if there was a requirement for concrete beyond the drive aisle. Director Garman stated that there wasn't, but there was a requirement for a material other than gravel as it has withstood heavy vehicles.

Mayor Kingston clarified that there were no issues with coverage. Director Garman stated there were not. Mayor Kingston asked if the apartment would be occupied. Martin Barnette stated that he wasn't certain, but thought it would be the manager's office.

There being no one else wishing to speak, Town Attorney Hobbs closed the evidentiary portion of the hearing and turned the hearing back over to Mayor Kingston.

Mayor Kingston moved to adopt CUP 14-001 as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

There was no Old Business to discuss.

NEW BUSINESS

Discussion/Consideration of Ordinance No. 14-01, an Ordinance Regulating the Use of the Official Town Seal

Town Manager Layton stated that in December 2013, Council had adopted a new official Town seal. He stated that the previous seal used by the Town was not formally regulated and it was recommended that the use of the new seal – which was trademarked with the State of North Carolina – be subjected to regulations governing its use. He stated that Ordinance 14-01 would put in place the regulations pertaining to the new seal.

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 14-01 as presented.

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

Director Garman gave a brief overview of the past month's permit 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 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.

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 stated that Council had two letters from CP&E in front of them that gave an update on where they were with regard to the beach nourishment project. He stated that CP&E had obtained their permit from the Bureau of Ocean Energy Management to explore the sand borrow areas to make a determination. He stated that they were hoping to start that on April 8, 2014. He stated that CP&E was virtually done with some of the project maps and looking at

some of the impacts. He had originally hoped to have that information available for Council's Retreat, but the models were not far enough along. He added that they were finalizing them now and he proposed that they be presented at Council's May 21, 2014 meeting.

Town Manager Layton stated that, along with the maps, he would need direction from Council at the May 21, 2014 meeting on the length of the project. He expected that the maps would clearly show where the project limits needed to be and it needed to be determined through Council so CP&E could take the next step and complete the engineering alternatives.

Councilor Burdick asked if the proposal would include the feathering on both ends. Town Manager Layton stated that there would be discussion regarding the feathering. He added that the idea was to focus on the limits of the project knowing that there would be alternatives that will need to be looked at.

Council Ethics Training May, 14, 2014 – 10:00 A.M.

Town Manager Layton reminded Council that North Carolina General Statutes require all Council members receive ethics training each year after an election in which they were elected to their positions. He stated that the UNC School of Government offers the training that meets the requirements and it will be offered on Wednesday, May 14, 2014 at 10:00 a.m. in the Meeting Hall.

Financial Statements for the Month of March for FY 2014

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

MAYOR'S AGENDA

Mayor Kingston stated that he would be attending his mayor's lunch on Tuesday, April 8, 2014.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau gave a short update on the Visitor's Bureau meeting to Council and the audience.

Councilor Burdick asked if there were any ideas in regard to the Visitor's Bureau events site that could be used in Duck for the off season. Mayor Pro Tempore Thibodeau stated that she would keep it in mind and get information as the staff moves forward. Councilor Burdick thought it would be a good learning experience to give Duck some direction on what could be done.

Councilor Caviness stated that she had her orientation for the Government Access Channel Committee. She gave a short update on the activities of the Government Access Channel Committee to Council and the audience.

Councilor Britt gave a short update on the recent Merchants' Association meeting to Council and the audience.

OTHER BUSINESS

Mayor Kingston stated that the next meeting would be the mid-month meeting on Wednesday, April 16, 2014 at 1:00 p.m.

ADJOURNMENT

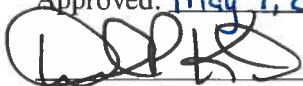
Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:25 p.m.



Lori A. Kopec, Town Clerk

Approved: May 7, 2014


Don Kingston, Mayor

