

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

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, July 2, 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; 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 7:06 p.m. He asked Director of Community Development Andy Garman 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 regarding the public hearing be held off.

Mayor Kingston gave an update on Hurricane Arthur to Council and the audience.

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

CONSENT AGENDA

Minutes from the May 21, 2014, Mid-Month Meeting; Minutes from the June 4, 2014, Regular Meeting; Memorandum of Agreement between the Town of Duck and Dare County and its Municipalities to allow the Sharing of Resources and Allow a Coordinated Response to the Effects of Natural and Technological Disasters; Interlocal Agreement for Hurricane/Disaster Debris Removal between the Town of Duck and Dare County

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of CUP 14-003, an Application by Michael Strader, Jr. P.E. of Quible & Associates, P.C. on Behalf of FMC/NV Sanderling SPE, LLC for a Conditional Use Permit Amendment to Allow the Addition of 24 Guest Rooms at the Sanderling Resort and Spa, Located at 1461 Duck Road

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs was recognized to speak. 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, Dick McAuliffe, John Chenowith, Chris Nason and Michael Strader.

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

Director Garman stated that Michael Strader, on behalf of FMC/NV Sanderling SPE, LLC was requesting a conditional use permit amendment for the Sanderling Resort and Spa, in order to add 24 additional guest rooms to the property at 1461 Duck Road. He stated that 18 guest rooms would be included within a new third story addition to the north inn building and six guest rooms would be added within the existing building envelope of the main inn building. He noted that the applicant was proposing 24 additional parking spaces and other ancillary improvements to support the new rooms. He pointed out that all proposed improvements would be within the Town's current maximum building height limitation of 35 feet. He stated that the Planning Board reviewed the conditional use permit application at their June 11, 2014 meeting and recommended approval with conditions. He added that staff was also recommending approval.

Town Attorney Hobbs asked Council if they had any questions.

Mayor Pro Tempore Thibodeau asked what was added in the northeast corner of the building. Director Garman stated that it was a stand pipe so the fire department would not have to pull hoses so far. He explained that it was a pressurized line that the fire department could hook up to in the far corner of the building.

Director Garman noted that the applicant would need to modify the crosswalk to reflect a rectangular flashing beacon. He stated that they currently had one that flashed constantly. He stated that based on the recent pedestrian study, recommended light treatments were looked at and the Sanderling would address their light treatments.

Councilor Burdick stated that he looked at the light at the crosswalk earlier because he was concerned that the light that the Sanderling was going to use was a push button activated system that only worked if a pedestrian pushed the button. He thought it was not as safe as the existing flashing light at the crosswalk. He wondered if there was some way to put the light on a motion sensor so it would automatically trigger when a pedestrian enters the crosswalk. He stated that what the Sanderling currently had in place did a very good job of alerting motorists of pedestrians trying to cross Duck Road. He added that if the system was changed to a push button system, it would become a safety hazard as he felt that people would not push the button. He stated that he was not sure he was in favor of the new light.

Director Garman stated that the concern regarding the current system was that it was a constant flashing light and people tended to ignore it. Councilor Burdick disagreed and added that he didn't think people ignored it based on his observation and that they were cognizant of it. He pointed out that he watched to see if it was the case and noted that people slowed down to let pedestrians cross. He stated that he was concerned that the Sanderling would be going to a safety system that wasn't as safe as what currently existed. He suggested that the Sanderling look at another way to trigger the light when someone enters the crosswalk automatically. He recalled the discussion that was had with Police Chief Ferguson was that there was a real concern regarding that crosswalk. He didn't think the Sanderling was going in the right direction.

Mayor Kingston asked what NCDOT's assessment was as to which system would be more effective. Director Garman stated that there was a long discussion with the pedestrian plan and the traffic engineers that worked on the pedestrian plan recommended the system that was in the Sanderling's application because they wanted the pedestrian to push the button in order to cross the crosswalk. Councilor Burdick stated that he was still concerned that the pedestrians will not push the button to cross the street. He reiterated that the existing light was effective.

Mayor Pro Tempore Thibodeau wondered if there could be a yellow flashing light on either end of the property so people would know to be cautious. Town Manager Layton stated that it was currently in place. He added that NCDOT installed lights that warn of the crosswalk. Mayor Pro Tempore Thibodeau understood and stated that she was suggesting an additional blinking light. She thought as a compromise, the Sanderling could have the blinking light as well as a blinking yellow caution light in addition to the button.

Mayor Kingston asked if the existing light blinked red or yellow. Director Garman stated that it was a yellow light and was just a warning and not one that required vehicles to stop. Councilor Burdick asked if it would activate a stop light or a warning light. Director Garman stated that it would activate a warning light. Councilor Burdick thought the Sanderling would be moving backwards.

Councilor Caviness stated that in the pedestrian steering committee meetings, there was a lot of discussion regarding the light and NCDOT said the problem with the existing system was that motorists become desensitized to it. She stated that it may not be Councilor Burdick's experience, but pointed out that the traffic engineers stated that motorists become desensitized to them and their recommendation was to have the button activated light. She thought Council should be consistent with regard to their decision on the light since the traffic engineers recommended the button activated lights throughout Town.

Town Attorney Hobbs stated that Council can deliberate after all evidence was received. He stated that now was the time for questions.

Town Attorney Hobbs asked a representative from the Sanderling to make a presentation.

Dick McAuliffe was recognized to speak. Mr. McAuliffe thought Director Garman did a good job in explaining what the project was, the modifications that were made since the last time the Sanderling was in front of Council, as well as addressing the height requirement. He stated that they have revised their plans and thought architecturally, Chris Nason did a good job of presenting something that ties in as well as they had hoped. He stated that they addressed the wastewater concerns, parking concerns and tried to keep in mind everything that the Planning Board and Council had wanted. He noted that the Sanderling has on either end of the property

yellow caution signs in place. He added that at the crosswalks, they had in place an encroachment agreement with NCDOT for the lighting that currently exists.

Town Attorney Hobbs asked Council if they had questions for Dick McAuliffe.

Councilor Burdick stated that the reason for his comments was because he constantly receives comments about the pedestrians in Town and how they do not use the crosswalks. He stated that he had a hard time believing it would be any better at the Sanderling than it was in the rest of Town. He stated that he was looking for an optimum way to protect the Town. Dick McAuliffe stated that he understood Councilor Burdick's concerns as they had the same conversation and their big concern was the speed limit change from 45mph to 35mph.

Mayor Pro Tempore Thibodeau suggested the Sanderling have some internal education for the guests regarding the use of the crosswalks or have fencing that would funnel people to the crosswalks. Dick McAuliffe stated that the pedestrians are already funneled to the crosswalks because of the landscaping and vegetation.

Councilor Burdick stated that it was noted in the proposal that there would not be any additional burden on public utilities or services. He noted that the Sanderling Inn would be increasing their guest rooms by 25%. He thought that it would mean greater water and trash use. He thought there was some impact. Dick McAuliffe stated that there would be some impact. Councilor Burdick stated that it was indicated that there would be no change in hotel employees, but couldn't understand how they could add 25% more hotel capacity and not need additional employees. Dick McAuliffe stated that the only additions would be two additional housekeeping staff.

Councilor Burdick stated that adding employees would impact the number of parking spaces that the hotel would need. Dick McAuliffe stated that the housekeeping staff that is utilized come to the Sanderling via vans that the hotel leases or owns. He added that they were coming from Elizabeth City or the homes that the Sanderling owns and leases in Kill Devil Hills. He pointed out that none of their seasonal staff have their own vehicles. Councilor Burdick clarified that none of the seasonal staff was included in the number of hotel employees. Mr. McAuliffe stated that they would be seasonal staff that did not drive. Councilor Burdick clarified that they were not included in the total number of employees. He noted that the parking spaces were based, in part, on the number of employees. Mr. McAuliffe reiterated that there were no additional spaces needed because there would not be any additional employees that would need to park at the Sanderling.

Councilor Burdick asked if that was through the Town's policy. Director Garman stated that staff did not typically look at whether the employees were driving or not to the business. He stated that it was probably not consistent with the Town's policy but in looking at the application, the Sanderling provided 239 parking spaces when the requirement was 237. He noted that the rule was one parking space for every three employees, giving the Sanderling six employees for the two additional spaces. Councilor Burdick stated that 25% more rooms would mean at least six to seven additional employees, which were not included in the total number of employees.

Mayor Kingston clarified that Councilor Burdick was saying that hotel guests were not being accounted. Councilor Burdick stated that he wasn't referring to the guests, but the parking spaces that they needed for the hotel employees. He added that they allowed for 27 employees, which would mean nine spaces would be needed. Dick McAuliffe reiterated again that hotel staff that

would be servicing the housekeeping did not drive their own vehicles to the hotel. He added that it would be a moot point with regard to the parking calculations.

Michael Strader of Quible and Associates was recognized to speak. Mr. Strader explained that all of the hotel employees were included in the parking calculations. He added that there were 27 employees and there was the potential to add two more employees. He stated that the 27 listed on the parking schedule would become 29 and the required parking spaces would be increased to ten, meaning one additional parking space would be required. He asked Council to disregard how the employees traveled to the hotel as the Town's code did not specify how they would get to the hotel. Councilor Burdick clarified that it did increase the requirement. Michael Strader stated that it did.

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.

Councilor Burdick moved to approve Conditional Use Permit 14-003 as presented with the findings and amendments noted.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Overview of the Town of Duck Emergency Operations Plan

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a short presentation on the 2014 Emergency Operations Plan to Council and the audience.

Mayor Pro Tempore Thibodeau had a change to Page 23 of the Plan.

Mayor Kingston had an addition to Page 24 of the Plan.

Town Manager Layton noted that, due to Hurricane Arthur, the Town of Duck annual Fourth of July parade has been canceled. He noted that it would not be rescheduled.

Councilor Britt moved to approve the Town of Duck Emergency Operations Plan as amended.

Motion carried 5-0.

NEW BUSINESS

Discussion of Town of Duck Agenda

Mayor Kingston noted that the issue was something that Councilor Caviness had put forward.

Councilor Caviness stated that one of the observations and suggestions she had made in terms of the Council agenda was to move some of the items that are towards the end of the meetings – the staff reports and the financials – to the beginning of the meeting. She stated that the primary reason was because that's where the "meat and potatoes" of the Town operations were discussed and reviewed. She thought that people that attended the meetings that leave after a presentation or public hearing do not get to hear those items that are at the end of the meeting. She stated that as the Town looked at ways to keep the public informed, it seemed that it would be prudent to

have that information at the beginning of the meetings. She stated that it was the basis for her recommendation.

Mayor Kingston stated that the department updates were ones that were reported to Council and that if there was anything of significance from the departments, they would be put near the beginning of the meeting. He thought that the items near the end of the meetings were just staff updating Council.

Councilor Burdick stated that he found a lack of feedback from the community at the end of the meetings. He added that comments are heard at the beginning but nothing at the end as to how people felt about what happened at the meetings. He suggested moving the public comment section to the end of the meeting so people would have an opportunity to speak after hearing everything at the meeting. He stated that the public comment section could stay at the beginning of the meeting if there was a valid agenda item that Council wanted people to comment on before the items is heard.

Mayor Kingston pointed out that one municipality has a public comment section at the beginning and end of their meeting. He added that people could come forward with their comments at the beginning, voice their comments at the public hearings and at the end; Other Business is on the agenda where anyone could comment. Councilor Burdick asked why the public is not given the opportunity to speak during Other Business. Mayor Pro Tempore Thibodeau pointed out that the public did not get to speak at the end of Council meetings. She added that the public does not get to speak near the end of a meeting unless it's a mid-month meeting. She stated that the regular Council meetings are very formal and the only time the public can speak is during the Public Comment section. Mayor Kingston stated that he asks at the end of each meeting if there is any other business to come before the Council. Mayor Pro Tempore Thibodeau thought it was only for Council to respond. Councilor Britt agreed.

Mayor Pro Tempore Thibodeau asked how unusual it would be to have a public comment section at the beginning and end of each meeting. She thought there may be people that would want to weigh in on an item Council discussed. She stated that some people are pressed for time and want to get their comments in at the beginning of the meeting. She wasn't sure Council would get the same feedback if the public was made to wait until the end of the meeting. She wondered if having the public comment section at the beginning and the end would be too much to ask. She thought an alternative could be that Other Business could apply to Council or the public. Mayor Kingston thought Councilor Burdick wanted public comments at the beginning and end of the meetings.

Councilor Burdick thought Mayor Pro Tempore Thibodeau's comments about people wanting to make their comments at the beginning of the meetings was a good point. He stated that his point was that Council was not receiving feedback after the meetings because there was no time set aside on the agenda to hear comments. He thought it would be good to give people an opportunity to speak at the end of the meetings.

Councilor Caviness stated that Planning Board Chairman Joe Blakaitis attended most of the Council meetings and stayed until the end. She asked him for his opinion. Joe Blakaitis was recognized to speak. Mr. Blakaitis thought Council lost their audience toward the end of some meetings. He thought it would be counterproductive to have a public comment section at the end of the meetings.

Mayor Pro Tempore Thibodeau asked Councilor Caviness on her thoughts regarding the public comment section. Councilor Caviness stated that she liked the idea and concept of having two public comment sections, but also liked the idea of having some type of mechanism to allow people to weigh in about other issues. She stated that she has felt frustrated at meetings when staff makes their presentations with significant information and there was no public in the audience. She added that often it was information that the public had commented about either earlier in the meeting or at a previous meeting. She felt that members of the public were doing themselves a disservice by not getting the bigger picture of what the Town did.

Mayor Pro Tempore Thibodeau clarified that all of the departmental reports should be near the beginning of the meetings. Councilor Caviness stated she was correct. Mayor Pro Tempore Thibodeau stated that she was envisioning the graphs and presentations by members of Public Safety being presented early.

Councilor Britt understood Councilor Caviness' concerns, but didn't know what to put behind it. He added that people come for the public hearings and voice their concerns. He thought Mayor Kingston could let the public know during the opening comments that they should stay for the meeting. He stated that he would like to see a public comment section at the end of the meeting. Councilor Caviness added that if the meeting was running late, a second public comment section didn't have to be held. She reiterated that the staff was getting the short end of the stick in the meetings. Mayor Pro Tempore Thibodeau stated that the Town of Southern Shores has their staff reports first, which seemed to keep people at the meetings.

Councilor Burdick asked Town Manager Layton how he and Town staff felt about the issue. Town Manager Layton stated that staff wanted to provide their reports when the public was present, but added that it wasn't a big deal. He thought it was impolite to the public to not take care of business before staff updates. He thought Town business needed to be taken care of first at the meetings. He noted that the Emergency Operations Plan could have been put under Town Manager Presentations, but it had risen to a higher level. He thought when there were important topics to discuss; it would be brought up on the agenda. He stated that staff was providing Council with normal, run of the mill reports. He thought it was important for Council to see the staff members and important for staff to be accountable to Council and the public. He noted that the reports were designed to deal with both Council and the general public; mostly the Council. He reiterated that he felt it was impolite to keep the public waiting on action items – particularly public hearings.

Town Manager Layton stated that as far as the public comment section, he did not see any harm in having two, but wouldn't remove it from the beginning of the meeting. He didn't think people would be lining up at the end of the meeting to speak. He stated that it's been his experience with various councils that if someone wanted to really to speak about an item that Council discussed; they would be given an opportunity to do so. He noted that whatever Council decided to do, they would have to come back at their August meeting to amend the ordinance since the current agenda is codified.

Mayor Kingston thought this meeting was a good example in that there was a public hearing with a chance for people to speak. He stated that even after the public hearing ended, some members of the public were still present.

Councilor Burdick proposed adding a public comment section at the end of the Council meetings. Mayor Kingston didn't think the public comment section should be eliminated at the beginning of the meeting. Mayor Pro Tempore Thibodeau clarified that Councilor Burdick wished to add a

second public comment section at the end of the meeting. Councilor Burdick thought there was a reason for having two – one for people to comment on things on the agenda and the other to give feedback as to what happened at the meeting. Mayor Pro Tempore Thibodeau asked if they would both be referred to as public comments. Town Manager Layton stated that they would. Councilor Burdick suggested that the second one be referred to Public Feedback.

Councilor Caviness asked if the addition of a second public comment section would mean a change to the Town's ordinance. Town Manager Layton stated that it would. He thought that during the Mayor's Agenda, it could be indicated that comments from the public could be heard then without changing the agenda. Councilor Caviness asked Councilor Burdick if he would be willing to amend his proposals to have the comments on a trial basis during the Mayor's Agenda. Councilor Burdick stated that he would as it would meet the objective he was looking for. Councilor Britt thought it should be a trial basis to see if it works.

Town Attorney Hobbs stated that the meeting could be run and if the Council wanted comments during the Mayor's Agenda on a trial basis, it could be codified at a later time if it works.

It was *consensus* of Council to have the comments on a trial basis.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs introduced Jimmy Jordan to Council. He explained that each summer his firm hires two law students to help with research and other matters dealing with their clients. He stated that Mr. Jordan was present to see how things were done in the Town.

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.

Police Chief Phillip Ferguson was recognized to speak. Police Chief Ferguson gave a brief overview of the past month's activities to Council and the audience.

Fire Chief Black gave a brief overview of the past month's fire 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 a letter 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 the report was through the beginning of June. He stated that as of end of May, beginning of June, CP&E had completed 63.7% of the permitting and engineering and 5.2% of the sand search. He stated that the sand search is now up significantly higher because the boat was out in June. He added that they have not completed the samples yet but they have completed the mapping and other investigations of the terrains.

Town Manager Layton stated that the Town reached its \$250,000 cost in order to be reimbursed from Dare County and has been submitted. He stated that a draft environmental assessment and essential fish habitat draft will be submitted to the agencies by the end of July and was the key documents to the permitting as well as where the Town is seeing most of its cost savings for permitting and engineering with the Towns of Kitty Hawk and Kill Devil Hills.

Town Manager Layton stated that the bill for eminent domain has passed the House and was working its way on the Senate side. He expected the bill to go through without any issues.

Town Manager Layton stated they had a meeting with Dare County, the Town of Kill Devil Hills and the Town of Kitty Hawk regarding where all stood with the projects. He stated that Duck was further along than Kill Devil Hills in some of the decision making, and substantially further along than Kitty Hawk. He stated that one of the things that Council will need to be prepared to discuss in depth after August, was the concern that the funding that was set aside for Kitty Hawk and Kill Devil Hills wasn't sufficient. He added that the question becomes where the money would be coming from and it was looking like Duck would be the Town it would be coming from; which will mean that the Town will have to look at its project and some of the decisions that have been made. He reminded Council that they decided on the hybrid design as the preferred alternative.

Town Manager Layton stated that the Town's position was that, even though the Town reduced the length of the project slightly, it was still using the same volume of sand. He added that the Town has not increased the volume of sand; the volume of sand that was allotted to the Town was being used and that was where all of the Town's cost estimates were based. He stated that the Town had the advantage as everyone was given roughly a 75 cubic yard allotment, which was what the Town of Nags Head had for their beach nourishment project. He thought that for the projects to meet an effectiveness level, the Town's effectiveness level was in the 92% range with what the Council approved. He stated that there was concern that the Town of Kitty Hawk and the Town of Kill Devil Hills had to have more robust projects in order to reach that level of effectiveness, which would cost more money than what was originally allotted to them.

Town Manager Layton stated that notices have been made and the Town agreed in their interlocal agreement that Dare County reserves the right to remove funding if they felt it was warranted. He reiterated that Council will need to have more discussion on the issue and he would know more in August.

Mayor Pro Tempore Thibodeau asked if Dare County may allocate additional dollars so all three towns could have good effectiveness levels. Mayor Kingston thought it was up in the air at this time. He stated that the Town of Kill Devil Hills' project has gotten larger and the solution with the Town of Kitty Hawk looked like it would be much greater and more expensive. He thought he would have more answers after the meeting in August. He noted that Duck was ahead of the other two towns.

Financial Statements for the Month of June for FY 2014

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

MAYOR'S AGENDA

Mayor Kingston stated that he's been preoccupied with Hurricane Arthur over the last couple of days and has attended Control Group meetings twice and would probably meet again on Friday,

July 4th and Saturday, July 5th based upon the outcome of the hurricane. He stated that he will be tentatively attending his mayor's lunch on Tuesday, July 8, 2014. He stated that the 4th of July parade was canceled, but thanked Town staff for their work on it.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau had nothing to report.

Councilor Burdick thought Chief Black did an excellent job updating the Emergency Operations Plan. He asked why the Town of Duck flag was not flown at the Public Safety Building. Chief Black stated that she would put one up.

Councilor Caviness had nothing to report.

Councilor Britt had nothing to report.

OTHER BUSINESS

Mayor Kingston asked the public for comments.

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated it was too bad that the parade couldn't be rescheduled. He thought a rain date could be considered in the future.

Mayor Kingston stated that the next meeting would be the regular meeting on Wednesday, August 6, 2014 at 7:00 p.m.

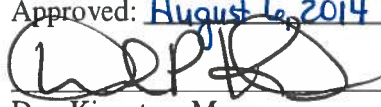
ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:52 p.m.


Lori A. Kopec, Town Clerk

Approved: August 6, 2014

Don Kingston, Mayor

