

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
September 3, 2014**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, September 3, 2014.

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

COUNCIL MEMBERS ABSENT: Councilor Jon Britt.

OTHERS PRESENT: Town Manager Christopher Layton; Police Sergeant Melissa Clark; Deputy Fire Chief William Walker; Town Attorney Robert Hobbs; Public Information Officer Denise Walsh; and Town Clerk Lori Kopec.

OTHERS ABSENT: Police Chief Phillip Ferguson and Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 7:08 p.m. He asked Police Sergeant Melissa Clark to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston noted that Councilor Jon Britt was excused from the meeting and that there would not be a Closed Session.

PUBLIC COMMENTS

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

CONSENT AGENDA

Minutes from the August 6, 2014, Regular Meeting; Budget Amendments; Resolution 14-11, a Resolution of the Council of the Town of Duck, North Carolina, Proclaiming the Month of September as World Alzheimer's Disease Awareness Month

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 4-0.

SPECIAL PRESENTATIONS

Employee Service Recognition Program Recipients

Mayor Kingston noted that Fire Captain Jeffrey Del Monte was to receive his five year service recognition certificate; however, he was unable to attend the meeting so it would be presented to him at Council's October 1, 2014 meeting.

Recognition of Andrew Garman for his Service to the Town as Director of Community Development

Mayor Kingston stated that Andrew Garman left employment with the Town of Duck as Director of Community Development at the end of July, 2014, after serving seven years with the Town. He stated that at Council's August 6, 2014 meeting, a resolution was adopted thanking him for his service to the Town; however, Mr. Garman was unable to attend that meeting.

Town Manager Layton read the resolution honoring Andrew Garman to Council and the audience. He then presented Mr. Garman with a framed resolution.

Planning Board Chair Joe Blakaitis was recognized to speak. Mr. Blakaitis presented Andrew Garman with a plaque on behalf of the Town, thanking him for his service over the past seven years.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Ordinance 14-04, an Ordinance Amending Title IX: General Regulations, Chapter 93: Parks, of the Town of Duck Code of Ordinances to Promulgate Rules for the Duck Town Park, Boardwalk and Boat Piers

Town Manager Layton stated that the Council had previously directed the Municipal Property Master Plan Advisory Committee to examine the existing rules for the use of the Town park, boardwalk and boat piers due to the extension of the boardwalk south to the Aqua restaurant and the construction of an additional boat pier in the southern end of the Village Commercial area of Town. He added that Council had requested the Committee to review the Town's ordinances related to the use of the outdoor facilities of the Town for special events, specifically the Town park, and make a recommendation regarding the facilities. He stated that the Committee was recommending that the use of the facilities be generally prohibited for events that were not in partnership with the Town; however, allow requests to be made in writing on forms provided by the Town as long as the following conditions were met – (1) the event would be held during the period between November 1 and May 31 of each year; (2) the event would be open to the general public free of charge; (3) the event would be deemed to be for the good of the community; (4) the event would be sponsored by or benefitted a not-for-profit organization; and, (5) the event would be in partnership with the Town. He noted that all other recommended changes to the ordinance were housekeeping in nature.

Councilor Burdick noted that the November 1st date was kept in the ordinance, which would preclude any event conflicting with the Jazz Festival. He thought that the Town may decide to hold an event for Memorial Day weekend, which would overlap the May 31st date. Town Manager Layton stated that it was possible, but the Committee felt that the extra 30 days would be fine since the Town has not held any events during that time period. He stated that the policy and use rules allow the Town to not allow an event if it conflicted with a Town event. He thought the risk was small in terms of an issue. Councilor Burdick thought it wouldn't make a difference if the date was changed to October 1st instead of November 1st since it was already decided that if the Town held an event, it would preclude anyone else from holding one. Town Manager Layton stated he was correct. Councilor Burdick thought if the Town was trying to widen the usage, the date should be changed to October 1st. Town Manager Layton noted that it was a Council policy and it could be done. He suggested changing the date to October 15th. Councilor Burdick stated that if the Town's objective was maximized availability, it would make sense.

Mayor Pro Tempore Thibodeau stated that she understood that Council had the ultimate authority. She stated that if someone wanted to hold an event the Thursday before the Jazz Festival, it could be entertained. She clarified that no events could happen outside the dates in the ordinance. She

wondered if it was too restrictive. Town Manager Layton stated that it wasn't. He added that the ordinance should be looked at as a general guideline. He thought that someone reading the ordinance should look at it in terms of when the best times would be to hold a special event. He added that the event could be on October 1st but the chances of Town staff allowing that before the Jazz Festival was extremely slim. He added that it would be the same during the summer months due to the number of Town events that were held. He noted that if the event was approved, it would have to be one that was in partnership with the Town, which was how the whole idea of the ordinance came about. He stated that the Committee wanted to discourage events that weren't in association with the Town. He stated that the May 31st date was added because it more reflected the Town's current schedule. He added that the date could be changed if Council wished, but he would not recommend doing anything before October 15th.

Mayor Kingston assumed that any planned event involving Town personnel, such as the Jazz Festival, would take up staff's time. He thought the November 1st date was fine with him as it gave Town staff a greater opportunity to have some down time after the Jazz Festival. He stated that he did not see any issue with the November 1st date.

Councilor Burdick thought the November 1st date depended on the Town's objective. He stated that if the Town's objective was to maximize the use of the facilities for appropriate events, then the down time for staff would be necessary. He stated that the summer use was between June and August. He added that anything outside of those months would be considered the off-season and the Town could promote the use of the facilities. He noted that the Town could restrict any dates that it wished for any event to be held. He wondered if there should be a restriction in the ordinance since Town Manager Layton had the capacity to manage the situation. Mayor Kingston suggested a separate section noting that the Town Manager and Council had the discretion with regard to the events outside of the dates listed. Councilor Burdick agreed.

Town Attorney Hobbs thought the discretion was already in the ordinance. He added that even if applications came in during the approved timeframe, the Town Manager would still have some discretion. He asked if there was an argument that the Town Manager would have the authority beyond the dates in the ordinance. He suggested keeping the dates in the ordinance and make it a preference instead. Mayor Pro Tempore Thibodeau thought it was a good idea.

Councilor Burdick stated that if someone wanted to hold an event in September, there really would be no reason to say no. Mayor Pro Tempore Thibodeau thought the unknown was how much Council was expecting Town staff to be involved. She envisioned that it wouldn't have to tax staff, but the resources would clearly be taxed by having extra people in Town. She thought it would be nice to think that it could be a stand-alone event that would not burden staff. Councilor Burdick stated that he read the application and the onus would be on the applicant wanting to hold the event and not Town staff. Mayor Pro Tempore Thibodeau agreed. She added that she hoped there wouldn't be a burden on Town staff. Councilor Burdick thought the application was worded so that it wouldn't be a burden to staff. He clarified that the application wanted minimum Town staff involvement. Town Manager Layton stated he was correct.

Councilor Caviness thought there should be minimal impact on Town staff. She added that there needed to be an awareness when there was a special event, there would be an impact on Public Safety, because it would mean crowd and traffic control. Town Manager Layton stated that as the MP2AC Committee discussed the issue, he thought they focused on the facilities being built to be used but not designed to have a "free for all". He added that they knew there was supposed to be some kind of control in place via the use policies and application form. He stated that the Committee discovered as they discussed the issue was that it would be extremely rare when there

would be an event that didn't require something from Town staff at some level. He hoped that there would be events that could be held without any Town involvement, but there had to be some level of involvement to monitor what happened at the facilities. He thought as the Committee discussed it, they came to a consensus that if it was something that was not going to involve the Town, it would be the exception and not the rule. He stated that the policy was written to reflect that. He noted that the Committee felt there was enough flexibility in the rules to allow a good idea to happen, but they also realized that if it was a good idea, the Town would probably want to be involved.

Town Manager Layton stated that as far as the language in the policies regarding November 1 to May 31 was concerned, he thought in general it reflected that if it was an event that did not involve the Town, those would be the windows that staff and the Committee were comfortable with. He added that it was likely if an event was held in between the windows, except for rare exceptions, it would be held in conjunction with the Town and would be called a Town event and so the dates would not apply.

Councilor Burdick thought the policy was well written and he didn't have a problem with it. Mayor Pro Tempore Thibodeau added that Council wanted to make sure it was thought through. Councilor Burdick asked what the main objective was when the Committee was writing the policy. He saw it as the Town promoting the use of the facilities and not wanting it sitting if there were reasonable uses that could be made. He stated that he was looking at it from a standpoint as to how the Town could widen the use period. Town Manager Layton clarified that this use policy was different than the original facility use policy. He added that the biggest distinction was that a monitor was hired outside of normal staff operations for using the Meeting Hall and the first floor conference room of the Administrative Offices; however, it would not work for a large, outdoor event. He stated that they could not envision having monitors for large events so anything would end up falling on staff to play a key role.

Mayor Kingston thought the Town wanted to control commercialization. Town Manager Layton agreed. He thought the policy cut down on that.

Mayor Pro Tempore Thibodeau asked if Town staff received a lot of requests to use the facilities. Town Manager Layton stated that they have not.

Mayor Kingston called for a five minute recess due to video technical difficulties. The time was 7:36 p.m.

Mayor Kingston reconvened the meeting.

Councilor Burdick asked what inquiries have been received to date. Town Manager Layton stated that most of the inquiries have been related to concerts or fundraisers as well as one from Relay for Life. He added that concerts that were proposed were not very well developed and included requests to sell alcohol through beer trucks, which the Town would frown upon. He stated that there have been requests for art events and some of them could work fine whether it was in partnership with the Town or by itself through the Duck Merchants Association. He noted that in the case of an art show, Town staff would want the Merchants Association to sign off on it so the Town would not be looked at as taking away business from merchants in Duck. He stated that none of the events ever got to the point that they were ready for prime time and the people voluntarily pulled the requests.

Councilor Burdick stated he liked the language that Town Attorney Hobbs had suggested. Town Attorney Hobbs suggested that the following language be used in the ordinance: "...however, permission to hold a special event may be requested in writing from the Town Manager on forms provided by the Town. Events to be held during the period between November 1 and May 31 of each year are preferred. The event shall be open to the public, be free of charge, be deemed for the good of the community, be sponsored by or to benefit a not-for-profit organization, and/or be in partnership with the Town."

Councilor Burdick moved to approved Ordinance 14-04 as presented with the new language added.

Motion carried 4-0.

Discussion/Consideration of Rules of Use for Special Events within the Duck Town Park

Town Manager Layton stated that, in conjunction with the ordinance changes recommended by the MP2AC Committee, the Committee was also recommending that Council approve the Rules of Use for Special Events and Special Events Permit Application. He explained that the rules establish the information required for a special event to be considered by the Town. He stated that in addition to the general criteria established in Ordinance 14-04, an applicant would need to provide a sketch plan map, a security plan, a certificate of liability insurance in the amount of \$1,000,000 naming the Town as an additional insured, and a 501(c)(3) certificate, if necessary. He stated that the rules would also establish fees related to the request. He noted that the fees included a \$25.00 non-refundable application, a \$200 refundable deposit, fees for the events - \$150 for a Duck not-for-profit, \$300 for an Outer Banks not-for-profit, and \$1,000 for a non-Outer Banks based not-for-profit. He stated that the rules established guidelines for submission of the event application and that the applicant would use the Special Events Permit Application to make the request.

Mayor Kingston asked if applicants should be charged if they wanted to hook up electricity through the Town. Town Manager Layton stated that it would be considered as part of the fee the applicant would pay.

Councilor Burdick asked how the rules and application compared to what the Whalehead Club and the Nags Head Event Site had. Town Manager Layton stated that the rules were similar, adding that the Town's fees were in a reasonable range but slightly lower than the Whalehead Club and the Nags Head Event Site. Councilor Burdick asked if there needed to be additional wording to give the Town wiggle room with regard to other fees such as utilities. Councilor Caviness thought it was covered. Town Manager Layton agreed and didn't anticipate anything that would be out of the ordinary.

Mayor Kingston asked if there should be a section regarding attendance. Councilor Caviness noted that it was in the policy. Town Manager Layton agreed.

Councilor Caviness stated that she has to submit a special events application each year for the Turkey Trot. She added that this application was an enhanced version of the one she submits to the Town and was keeping in line to what has been expected of an event organizer to obtain approval from the Town to hold an event. She stated that it had the necessary add-ons with regard to having an event at the Town's property. She stated that she had an initial conversation with Town Manager Layton about the application because the Turkey Trot would be celebrating its 20th anniversary and she wanted to have an enhanced event across the Thanksgiving weekend

to celebrate the Town and the race. She noted that one would be to try to use the Town facilities. Town Manager Layton thought it would be the Town's first test.

Town Attorney Hobbs suggested the first paragraph be changed to mirror the revised language in Ordinance 14-04 for consistency.

Mayor Pro Tempore Thibodeau clarified that if the policy were to be changed, it would come before Council. Town Manager Layton stated she was correct.

Councilor Caviness asked if the application would be used for an event held on Town property and there would be a separate special event permit that would be used for events held in Town but not on Town property. Town Manager Layton stated she was correct. He stated that it was separate from the special event ordinance that was passed several months ago.

Mayor Kingston moved to approve the Rules of Use for Special Events with the amended language.

Motion carried 4-0.

Overview of Watch for Me NC Program

Town Manager Layton explained that the Watch for Me NC Program was a key component for the Town's Comprehensive Pedestrian Study, which was expected to be on Council's October 1, 2014 agenda for approval.

Sergeant Melissa Clark was recognized to speak. Sergeant Clark went on to give a short presentation on the Watch for Me NC Program to Council and the audience, which promotes safety and educational messages directed towards drivers, pedestrians and bicyclists as well as enforcement efforts by area police to crack down on some of the violations of traffic safety laws. She noted that local programs were led by municipal, county or regional government staff with the involvement of many others, including pedestrian and bicycle advocates, city planners, law enforcement agencies, engineers, public health professionals, elected officials and others.

Mayor Kingston asked if the program was tied in with Dare County's initiative on bicycle and pedestrian safety. Sergeant Clark stated that it was and was part of a grant.

Councilor Burdick stated that Duck had a pedestrian education problem. He added that people will stand at a crosswalk and drivers weren't sure whether to stop or not. Sergeant Clark agreed. Councilor Burdick noted that emergency stops were made because people are standing at a crosswalk but they don't cross the road. He stated he wasn't sure how the issue could be handled. Sergeant Clark stated that the Police Department had a Segway to hand out information on the boardwalk and officers will be on bicycles as well as on foot to hand out information to educate people. She noted that the law states that a person has to be physically in the crosswalk for a vehicle to stop for the pedestrian. Councilor Burdick pointed out that the law was not universal in the United States or the world. He added that in many places, if the pedestrian was standing in the crosswalk, even on the side of the road, the vehicle has to stop. He stated that the North Carolina law was confusing people as to whether or not they should stop.

Mayor Kingston thanked Sergeant Clark for her presentation.

Town Manager Layton stated that he would let Council know before staff starts an education process on the issue so they could be prepared if any questions or concerns arise.

NEW BUSINESS

Discussion/Consideration of Resolution 14-10, a Resolution of the Town Council of the Town of Duck, North Carolina, Opposing Off-shore Fracking and Oil Drilling

Matt Walker of the Outer Banks Surfider Foundation was recognized to speak. Mr. Walker stated that he was present to request that Council consider adopting Resolution 14-10, which opposed off-shore fracking and oil drilling. He stated that the no off-shore oil drilling moratorium would expire in 2017 and the Foundation believed that the North Carolina General Assembly was gearing up to make a push to allow fracking and oil drilling off the coast of North Carolina. He stated that the Foundation was asking all of the local towns as well as the Outer Banks Chamber of Commerce, the Outer Banks Wedding Association and the Outer Banks Visitors Bureau to adopt resolutions opposing off-shore fracking and oil drilling.

Mayor Kingston asked who has approved the resolution to date. Matt Walker stated that the Town of Kill Devil Hills, the Town of Nags Head, the Outer Banks Chamber of Commerce and the Outer Banks Visitors Bureau have all approved resolutions. Mayor Kingston asked if Dare County had passed a resolution. Mr. Walker stated that they want to go to each town before going to Dare County. Mayor Kingston asked if any towns have given any pushback on the resolution. Mr. Walker stated that they have not. Mayor Kingston asked if the Foundation has gone to any towns south of the Outer Banks. Mr. Walker stated that it was their next step.

Mayor Pro Tempore Thibodeau moved to approve Resolution 14-10 as presented.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that his firm was in the home stretch with regard to the beach nourishment project and the various properties that will be affected in the areas to be part of the project. He stated that they had about 20-25 more properties to complete and were working on language for the easements that will be sent out to the property owners.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

Town Manager Layton gave a brief overview of the past month's permit activities to Council and the audience.

Deputy Fire Chief Bill Walker was recognized to speak. Deputy Fire Chief Walker gave a brief overview of the past month's fire activities to Council and the audience.

Police Sergeant Clark gave a brief overview of the past month's police 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 the latest letter from CP&E, which provided an update and would be on the Town's website. He stated that they anticipated completion of the draft environmental assessment by the end of September and then it would be submitted to the U.S. Army Corps of Engineers and Bureau of Ocean Energy Management. He stated that as far as the marine sand search, CP&E continue to look at the vibracore samples for the Duck area and have not come to a conclusion on the viability of it. He didn't think they were ready to say it would not work but they were concerned about some finds. He stated that he and Mayor Kingston had a meeting on September 9, 2014 as well as the other towns and Dare County to discuss the updated estimates for the project and financing scenarios. He noted that, depending on what comes out of that meeting, the Town may be in a position to discuss the next steps with the Municipal Service Districts and that phase of the project, with the idea of tentatively setting an October mid-month Council meeting to get into the details.

Town Manager Layton reviewed the beach management activities with Council and the audience.

Update on Director of Community Development Position

Town Manager Layton stated that he has hired Joe Heard for the position of Director of Community Development. He stated that Mr. Heard currently held the same position for the Town of Kitty Hawk and thought Joe was a great choice. He stated that he performed a two phase interview process, with the second interviews consisting of a committee of him, Building Inspector Cory Tate, Permit Coordinator Sandy Cross and Planning Board Chair Joe Blakaitis. He stated that they all felt very good about Joe and his anticipated start date will be September 29, 2014. He noted that he received 130 resumes for the position from 26 states and one from the United Kingdom. He added that 42 of the applicants were AICP certified, 59 had master's degrees of some level, 8 were lawyers and 7 were landscape architects.

ICMA Annual Conference, September 14-17, 2014

Town Manager Layton stated that he would be attending the annual ICMA conference on September 14-17, 2014 in Charlotte, North Carolina.

South Snow Geese Stormwater Improvements

Town Manager Layton stated that stormwater improvements at the entrance of the South Snow Geese subdivision were approved as part of the FY 2015 budget. He stated that the bid period began on August 28, 2014 and bids would be opened on September 18, 2014. He added that if there was an acceptable bid to the Town, a contract for the work would be on Council's October 1, 2014 meeting agenda.

Financial Statements for the Month of August for FY 2015

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

MAYOR'S AGENDA

Mayor Kingston stated that he would be hosting the mayor's meeting on Tuesday, September 9, 2014. He stated that he and Town Manager Layton met with Mike Johnson and Drew Horn of the Dare County Game and Wildlife regarding the duck blind off Jaycrest Road. He stated that it was time for renewal of applications for duck blinds so they came in to address the letter and to let them know the owner of the blind was re-applying for the duck blind and that it was legal and did not have to be moved. He added that they were going to try negotiating with the owner to have it moved further out or to another location. He stated that he had a conversation with the U.S. Army Corps of Engineers on a project they were doing on the bombing range that the Army took over in the 1970's. He noted that they were trying to assess what should be done with respect to mediation in that area. He noted that they had also spoken to Mayor Pro Tempore Thibodeau and Councilor Britt. He stated that he would be on vacation starting on October 2, 2014 and added that Mayor Pro Tempore Thibodeau would be available in his absence.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau gave a Visitor's Bureau update. She stated that she had read that Harris Teeter was looking to provide reflective vests to their employees that have to walk or bike at night in light of the recent accident in Corolla. She thought that anything the Town could do as well would be great. She suggested getting the Duck merchants together if a program is put in place, in order to provide something to people that have to walk and bike to and from work.

Councilor Burdick congratulated Public Information Officer Walsh on the success of the summer events.

Councilor Caviness thanked Public Information Officer Walsh and staff for bringing more diversity to the events held in Town. She stated that the Turkey Trot registration opened on September 2, 2014 at 6:00 a.m. and was filled by 6:43 a.m.; which was faster than previous years and with more people.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston asked the public for comments. There being none, he closed the time for public comments.

Town Attorney Hobbs stated that the eminent domain bill was ratified by the General Assembly on July 25, 2014.

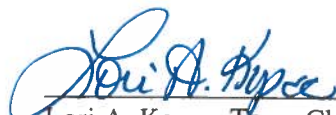
Mayor Kingston stated that the next meeting would be the regular meeting on Wednesday, October 1, 2014 at 7:00 p.m.

ADJOURNMENT

Councilor Burdick moved to adjourn the meeting.

Motion carried 4-0.

The time was 9:07 p.m.


Lori A. Kopec, Town Clerk

Approved: October 17 2014
[Signature]
Don Kingston, Mayor

