

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

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, December 3, 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 Joseph Heard; Town Attorney Robert Hobbs; Public Information Officer Denise Walsh; Administrative Assistant Bethany Morr; and Town Clerk Lori Kopec.

**OTHERS ABSENT:** None.

Mayor Kingston called the meeting to order at 7:03 p.m. He asked Fire Chief Donna Black 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 hearings be held off. There being no one wishing to speak, Mayor Kingston closed the time for public comments.

**CONSENT AGENDA**

**Minutes from the November 5, 2014, Regular Meeting; Minutes from the November 19, 2014, Mid-Month Meeting**

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 5-0.

**PUBLIC HEARINGS**

**Public Hearing/Discussion/Consideration of SE 14-003, a Special Exception Application to Allow the Proposed Addition of an Elevator to the Existing Residence at 156 Lone Way to Encroach Two Feet into the Required Southern Side Setback of Ten Feet in the Single-Family Residential Zoning District**

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Robert 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: Joe Heard and Mark Martin.**

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

Director Heard stated that Peter and Kathy Lawson, who were the property owners of 156 Lone Way, were requesting a Special Exception to approve an elevator addition extending two feet into the required side setback of 10 feet in the RS-1 zoning district. He stated that the proposed addition would be located as close as eight feet from the southern side property line.

Director Heard stated that the property was relatively long and narrow – 50 feet wide and over 450 feet in depth. He noted that the width of the property was non-conforming, as the Town's current standards require a minimum width of 75 feet for new lots in the RS-1 district.

Director Heard stated that the site for the proposed use was adequate in size and shape and the proposed use would not negatively affect the adjacent properties or the surrounding area. He stated that the Special Exception would not be inconsistent with the objectives in the Town's CAMA Land Use Plan. He noted that the applicant demonstrated that the requirements of Section 156.054(C) of the Town Code were unreasonable or impractical due to unusual building design, lot shape or mature vegetation; and that there were practical siting constraints where the original placement of the dwelling on the lot prohibited reasonable improvements to meet the existing requirements. He stated that the proposed structural modifications met sound residential objectives to minimize the loss of privacy on neighboring properties; maximized the image of quality residential development to the street frontage; and avoided the reduction of light and air to neighboring properties.

Director Heard stated that the Planning Board had a meeting on November 12, 2014 and voted unanimously to recommend approval of the Special Exception. He added that staff was also recommending approval.

Town Attorney Hobbs asked Council if they had any questions.

Mayor Kingston asked if there was any input from the neighboring properties. Director Heard stated that he did not receive any input.

Town Attorney Hobbs asked a representative for the applicants to make a presentation.

Mark Martin of Sandmark Construction was recognized to speak. Mr. Martin stated that he talked to the owner for six to seven months about the project and tried to come up with alternative measures. He added that the way the house was originally built; there were bedrooms in the front. He stated that after they exhausted possibilities without spending too much money, they decided on the project in front of Council as it would have the least impact on the neighboring properties.

Town Attorney Hobbs asked Council if they had questions for Mark Martin. There were none.

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

Mayor Pro Tempore Thibodeau thought the way the applicant tried to work through things with the nature of the lot made sense for the Special Exception. She thought Council had discussed in the past allowing ramps, handicap access and other types of access for people with mobility issues. She thought Council was willing to make exceptions when it came to access.

Councilor Britt agreed with Mayor Pro Tempore Thibodeau's comments. He stated that it was discussed at Council's last Retreat. He stated that this application matched the criteria for a special exception and thought it should be granted.

Councilor Burdick thought it was reasonable given the circumstances and alternatives.

Councilor Britt moved to approve SE 14-003 as presented with the findings and conclusions in the staff report.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of SE 14-004, a Special Exception Application to Allow Several Proposed Parking Spaces on the Stan White Realty Property at 1236 Duck Road, to Encroach 2.9 Feet into the Required Ten Foot Setback from the Front Property Line and Five Feet into the Required Five Foot Setback from the Southern Side Property Line**

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 Kopec proceeded to swear in the applicants and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Joe Heard, Crouse Gray, Jim Braithwaite and David Klebitz.**

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

Director Heard stated that Stan and Susan White, property owners for 1236 Duck Road, were requesting a special exception permit to allow several areas of the proposed parking lot improvements to encroach into the minimum setback requirements in the V-C Zoning District. He stated that two ADA handicap accessible parking spaces at the front of the property would be located as close as 7.1 feet from the front property line, 2.9 feet into the minimum setback

requirement of ten feet. He noted that three additional parking spaces would encroach into the required five foot setback from the southern side property line.

Director Heard stated that the property contained an office building that was approximately 2,551 square feet in size and was constructed in 1983. He stated that the property was 15,000 square feet in size and was surrounded on three sides by the Waterfront Shops shopping center. He noted that there were some shared use encroachments onto the Waterfront Shops property, including two access drives to the north, four parking spaces, and a dumpster enclosure at the rear of the property.

Director Heard stated that the proposed improvements included removal of the existing access drive, reorientation of the parking area, and the addition of two parking spaces. He added that there would also be a new access connection to a driveway/parking area to the south on the Waterfront Shops property and stormwater management improvements.

Director Heard stated that the Planning Board noted in their findings that the proposed encroachment of two parking spaces into the front setback would have a negligible impact on the neighboring properties. He added that the Board found that the proposed removal of the wide access drive as part of the project would pull vehicles further from Duck Road than occurs on certain check-in days in the summer. He stated that the only property owner directly affected by the encroachment on the southern side of the property was the Waterfront Shops, adding that the Waterfront Shops and Stan White Realty have recorded an easement regarding the shared parking and access between the properties. He noted that Allis Holdings would construct the proposed parking improvements and supported the proposed special exception.

Director Heard stated that the Planning Board noted that with regard to the objectives specified in the CAMA Land Use Plan, that the Town could help facilitate the development of the shared access and parking arrangement through the approval of the Special Exception. He added that the Board found that the proposed improvements necessitating the Special Exception were intended to improve the internal circulation of the Waterfront Shops and Stan White Realty.

Director Heard stated that the Planning Board found that the location of the existing office building presented some challenges for the proposed parking layout as a minimal 20 foot maneuvering area behind the parking spaces would push two ADA spaces to the front of the property into the front setback. He added that the internal access drive to the proposed Waterfront Shops parking area to the south caused the loss of several parking spaces on the property and the need to move those spaces further to the west within the required side setback. He explained that, in both cases, the proposed improvements created a legitimate hardship that made it difficult for the applicant to locate enough parking within the required setbacks.

Director Heard stated that the Planning Board voted unanimously to recommend approval of the Special Exception application and staff also was recommending approval.

Town Attorney Hobbs asked Council if they had any questions.

Mayor Kingston stated that he liked the plan. He asked if a conflict was being created with regard to the pedestrian plan from the standpoint of the setbacks from the road. Director Heard stated that there would be 7.1 feet at the closest tip remaining on the front property and then there was the entire right-of-way for Duck Road. He thought the public improvements would be located within the right-of-way. He added that if they had to be moved over, a negotiation for an

easement would have to be completed. He reiterated that there would be 7.1 feet remaining before the right-of-way and public area. He did not anticipate a conflict.

Councilor Burdick thought the elimination of the entryway from the Stan White property into the road was a benefit for the Town. He assumed that it would have a positive effect on the flooding problem the Town was experiencing. He further assumed that it would be graded in such a way that water will not run into the street, but stay on the property. He asked how many parking spaces Stan White Realty would end up with. Director Heard stated that they would have nine. Councilor Burdick clarified that there wasn't an opportunity to locate any other spaces on the north or west side of the property. He added that the applicant still seemed to be short some parking spaces. Director Heard stated that the requirement was 15 parking spaces and the applicant presently had a non-conforming situation, but with the improvements, it would help. He thought some parking spaces could be put in the rear of the property, but there wasn't an opportunity on the northern side to add spaces. Councilor Burdick noted that there were dumpsters in the rear of the property. He thought the applicant should look at finding additional parking spaces on the property.

Councilor Caviness asked if the addition of the vegetation in the front of the parking spaces helped with the drainage issues. Director Heard presented a new document to Council that showed how the proposed improvements would tie in and potentially affect the Town's existing stormwater drainage system in that area. He added that it was his opinion that the issue would be improved. Councilor Caviness asked if the proposed vegetation and the presence of vehicles would not create sight problems for pedestrians and bicyclists in the path. Director Heard stated that it would not.

Town Attorney Hobbs asked a representative for the applicants to make a presentation.

Dave Klebitz of Bissell Professional Group was recognized to speak. Mr. Klebitz stated that he had nothing to add, but would be happy to answer questions.

Town Attorney Hobbs asked Council if they had questions for Dave Klebitz. Councilor Burdick asked if there was an opportunity for additional parking spaces on the west side of the building. Dave Klebitz stated that there may be an opportunity, but he did not study it as part of this project. Councilor Burdick thought there was an opportunity to maximize what was done.

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

Councilor Burdick thought the plan was reasonable from the standpoint of improving the safety and flooding issues around Stan White Realty. He commended them for the work they have completed. He stated that he would like to ask the applicant to look to see if they could add a couple additional parking spaces to minimize the fact that they were still short with regard to parking spaces even though the total of the whole area was fine. He thought it was a well thought out plan, especially with regard to the flooding issue.

Mayor Pro Tempore Thibodeau stated that she liked that the applicant was closing off a driveway. She thought it was a better improvement. She thought having the vegetation there seemed reasonable and would help with capturing the stormwater. She liked the idea of connecting the parking through the Stan White building as it would keep people off the road. She felt it was a good plan.

Mayor Kingston asked Councilor Burdick if he wanted his suggestion included in the motion. Councilor Burdick stated that he would like to include that the applicant needed to research and see if it was practicable to add any additional parking places.

Councilor Burdick moved to approve SE 14-004 with the provision that the applicant revise the parking situation to optimize the situation, where reasonable, with the findings and conclusions. He added that he wanted the applicant to add more spaces if it was feasible.

Town Attorney Hobbs noted that if Council was going to adopt the proposed findings and conclusions, those were the conditions that would have to be met.

Councilor Burdick revised his motion to approve SE 14-004, with the condition that the applicant research the parking and, if feasible, add additional identified spaces.

Town Attorney Hobbs clarified that it would be solely within the applicant's discretion whether or not they could reasonably do it. Councilor Burdick stated he was correct, adding that he would not require them to come back before Council. Town Manager Layton asked if it would be an administrative approval. Councilor Burdick stated that it would.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of CUP 14-004, a Conditional Use Permit Amendment Application to Allow the Construction of Four New Buildings Containing a Total of 3,840 Square Feet of Retail Space, a New 24 Space Parking Area, and a New Access Drive at the Waterfront Shops Located at 1240 Duck Road and the Adjoining Stan White Realty Property at 1236 Duck Road, as well as Additional Proposed Site Improvements including Wooden Walkways, Stormwater Management Measures, Lighting, Landscaping and Utilities Supporting the Proposed Development**

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 Kopec proceeded to swear in the applicants and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Joe Heard, Crouse Gray, Jim Braithwaite and David Klebitz.**

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

Director Heard stated that Allis Holdings, LLC and Stan White were requesting a Conditional Use Permit to allow the addition of four new buildings containing a total of 3,840 square feet of retail space, a new 24 space parking area and a new access drive at the Waterfront Shops, which was located at 1240 Duck Road. He stated that as part of the proposal the access and parking on

the adjoining property containing Stan White Realty at 1236 Duck Road would be amended and relocated. He stated that additional proposed site improvements included wooden walkways, stormwater management measures, lighting, landscaping and utilities.

Director Heard stated that staff noted that it was important for this Conditional Use Permit to include two properties; whereas the main improvements were located at the Waterfront Shops property. He added that as part of the project, there were significant sight improvements also being completed to 1236 Duck Road. He stated that some elements from each property had to be covered in the review.

Director Heard stated that the property at 1240 Duck Road was nearly six acres in size and zoned Village Commercial. He explained that the property contained the Waterfront Shops, which was a shopping center comprised of nine buildings totaling 25,631 square feet. He added that the shopping center contained 17,649 square feet of retail uses and 1,740 square feet of offices. He stated that the remaining 6,202 square feet was used by two eating establishments. He stated that the shopping center met the Town's definition of a group development and Conditional Use Permits were approved for the development in 2005 to accommodate the expansion of the Blue Point Restaurant and a conversion of retail space to restaurant use for Coastal Cantina. He added that the Conditional Use Permit was amended in 2012 to accommodate the expansion of Coastal Cantina and the associated addition of parking. He went on to review the staff analysis with Council and the audience.

Director Heard stated that the Planning Board reviewed the CUP at its November 12, 2014 meeting and recommended approval with conditions, which were noted in the staff report. He added that staff was also recommending approval.

Town Attorney Hobbs asked Council if they had any questions.

Councilor Burdick noted that one-third of the new parking area would be constructed with pervious materials. He asked why the other part of the parking area would not be pervious as well. Director Heard stated that the remaining portion of the parking lot had the stormwater directed to the rear of the property and added to the wetland filter. He added that it was not draining toward the front of the property. Councilor Burdick asked where the stormwater was draining. Dave Klebitz stated that with regard to the amount of pervious concrete, the amount would slightly exceed the Town's new requirement because it was being pushed to the east to help minimize any runoff that would end up on Duck Road. He noted that there was a drainage line that would be installed so that any stormwater west of the line would be designed to be collected and sent to the BMP that was provided to the west.

Councilor Burdick asked if the stormwater would be draining to the existing pond on the property. Dave Klebitz stated that it was draining to the stormwater wetland BMP located on the south side of the first building. He added that it was designed to manage the runoff from the parking area and all of the buildings. He stated that all of the buildings would have gutter systems put on to collect runoff and discharge to that BMP. Councilor Burdick clarified that it would be sized to take 1-2 inches of water. Mr. Klebitz stated that it would take 1 and 1½ inches, which was the State standard. Councilor Burdick clarified that there was no value to using more pervious concrete and have it drain so it maximized the value of the BMP. Mr. Klebitz stated that he didn't want to say that there wasn't any value; however, the pervious concrete surface was pretty expensive. He added that the pervious concrete was being provided to meet the Town of Duck's requirements. He noted that the State of North Carolina did not recognize the use the pervious concrete in this project as it was being used. He stated that while it should minimize

additional runoff, there wouldn't be any recognition from the State for doing it. Councilor Burdick stated that he wanted to see more pervious concrete, but added that what was to be installed would meet the Town's standard. He noted that it was a flood-prone area and wondered how the problem could be minimized.

Town Attorney Hobbs asked a representative for the applicants to make a presentation.

Dave Klebitz of Bissell Professional Group was recognized to speak. Mr. Klebitz stated that the applicant accepted the recommendations as presented with a few updates and two modifications. He stated a request for an encroachment agreement with NCDOT has been submitted; however, it has not been received as of yet. He stated that an improvement permit and construction authorization have been issued by the Dare County Department of Environmental Health and the applicant received the permit after the November 12, 2014 Planning Board meeting. He stated that a portion of the required mitigation payment has been made to the Great Dismal Swamp Restoration Bank. He added that there was a minor clerical error in some of the paperwork associated with it – the amount required to be paid was at 0.74 acres and the actual amount paid was 0.64 acres. He stated that applicant plans to pay for the difference. He stated that Condition 6 of the CUP had language to pay the NC Ecosystem Enhancement Program; however, there have been updates and payments were allowed to the Great Dismal Swamp Restoration Bank, which was where the payment was made. He asked that Condition 6 be modified to reflect the correction.

Dave Klebitz stated that Condition 8 referenced the elevation drawings and floor plans prepared by Coastal Cottages. He noted that it should be dated November 3, 2014. Town Attorney Hobbs pointed out that the correct date was listed in Condition 8. Mr. Klebitz stated that the applicant obtained the following permits – the U.S. Army Corps of Engineers issued a wetland fill permit; a 401 well certification has been issued by the State Division of Water Quality; and a consistency certification has been provided from the State Division of Coastal Management. He stated that a high density stormwater permit has been issued by the State of North Carolina for the project and the wastewater improvements have been approved by the Dare County Health Department. He noted that the only outstanding permit was the encroachment agreement from NCDOT.

David Klebitz reviewed the drainage system with Council and the audience, showing how it was compatible with what the Town has done and will be doing in that area.

Town Attorney Hobbs asked Council if they had questions for Dave Klebitz. Mayor Kingston asked if the buildings would be retail space on the first floor and storage for the second floor. Dave Klebitz stated that he was correct.

Councilor Caviness asked if the buildings would be elevated since they would be connected by decking. Dave Klebitz stated she was correct.

Town Attorney Hobbs clarified that Condition 6 would be the only one to be revised. Dave Klebitz stated he was correct.

Crouse Gray of Gray and Lloyd was recognized to speak. Mr. Gray stated that he was the attorney for the applicant. He stated that the applicant prepared and recorded a cross easement and cross parking agreement with the Stan White Realty property. He stated that he acknowledged Council's concerns regarding the applicant parking and wanting to put stuff there. He pointed out that they have the easements and there were extra parking spaces on the south side of the property. He stated that with regard to the stormwater plan; he received a proposed



easement agreement to access. He added that where the Town was installing the new drainage was not near where the drainage on the existing property would be; so there would not be any interference between the two projects.

Councilor Burdick clarified that an easement was being prepared for the Town. Town Attorney Hobbs stated that one was prepared for the drainage issue and his firm was working with the owner to clarify the location of the facilities. Crouse Gray noted that the location of where the Town would be putting the drainage was not near where the runoff would be coming from in the parking area. Councilor Burdick asked if the Town would receive the easement. Town Attorney Hobbs stated that the easement was being worked on and was a benefit to the Town in order to work on the water issue and not a part of the CUP. Councilor Burdick assumed that Town Attorney Hobbs was expecting the easement to go through. Town Manager Layton stated he was correct.

Jim Braithwaite of Allis Holdings, LLC was recognized to speak. Mr. Braithwaite stated that he was excited about providing a quality project and hoped it would be an attribute to Duck. He added that he would do his best to make sure the end result would be something the Town would be proud of.

Councilor Caviness asked where the fire hydrant would be located. Dave Klebitz stated that an additional fire hydrant would be located on the south side of the new, proposed buildings.

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

Councilor Burdick thought it was an excellent plan. He asked if one of the conditions be that the Town obtains the easement, as it was critical for the Town with regard to the drainage issue. Town Attorney Hobbs stated that he wasn't sure. He suggested re-opening the evidentiary portion.

Town Attorney Hobbs re-opened the evidentiary portion of the public hearing.

Director Heard understood that there would have to be some direct correlation to the project. He thought it would be something that would occur separate from the project. He didn't see a direct tie with what was being proposed. He added that whether Council approves the CUP or not, the Town will still have to consider separately, negotiating the easement.

Town Attorney Hobbs stated that it may not be appropriate to tie the two together. Mayor Pro Tempore Thibodeau stated that she did not feel comfortable requiring it. She thought the project should stand on its own merit and Council should not be asking for something outside of the realm of the project. Town Manager Layton noted that staff did not have a concern that the easement would not be received. Councilor Burdick stated that his question was if there was a need. Town Manager Layton stated he was comfortable with the route the Town was going without including the requirement. Councilor Burdick stated that he didn't have any issues with it.

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

Councilor Britt commended staff for their hard work. He thought it was a good plan and looked forward to seeing the project happen.

Councilor Burdick moved to adopt CUP 14-004 with the modification to Condition 6 and adopt the findings and conclusions in the proposed staff report.

Motion carried 5-0.

Mayor Kingston called for a five minute recess. The time was 8:43 p.m.

Mayor Kingston reconvened the meeting.

## **OLD BUSINESS**

### **Discussion/Consideration of Authorizing the Town Manager to Execute an Agreement for Professional Services between VHB Engineering of NC, P.C. and the Town of Duck, North Carolina, for Engineering Design of Pedestrian Improvements**

Town Manager Layton stated that Chris Dewitt of VHB Engineering of NC, P.C. would be reviewing the proposed contract in detail. He thought it was important because it was a substantial contract and was significantly more than what the Town originally anticipated in the CIP process. He noted that the CIP was a planning document, so there would be variations to it. He thought the project would be the most complicated one that the Town has undertaken, including the beach nourishment project. He stated that, with regard to utilities and complications, it was important to have an extremely detailed contract that gives the Town all of the information needed, not only to have the facts for the actual costs associated with the project but also as the Town works with property owners to put the improvements in place.

Town Manager Layton stated that the contract was specifically for the improvements within the Village, meaning the Plover/Four Seasons area past Sunset Grill and would involve the planning for the pedestrian paths, the sidewalks, the bicycle lane, lighting contracts, etc. He stated that originally the Town was budgeting in the CIP for the project at a cost of approximately \$150,000, knowing that it could be as high as \$175,000. He added that once Chris Dewitt started working with some of the subcontractors that will be used, the project cost increased to \$220,700. He noted that the Town had \$100,000 set aside for the project in the 2014/2015 Fiscal Year and wrote the project specifically that when the initial work was completed, the Town would appropriate the remaining amount through the budget process and obtain a Notice to Proceed, saving the Town from having to appropriate the entire amount this year and accrue it back and forth.

Councilor Burdick asked Town Manager Layton if he was anticipating starting to look for grants to cover the costs. Town Manager Layton stated that staff would look for grants, but did not anticipate looking for grants for the engineering part of the project. He noted that there weren't many grants for the engineering side of a project, but for the construction side. He reiterated that staff would look for grants and try to obtain them. He added that at this point, he did not anticipate any grant funding for the project.

Chris Dewitt of VHB Engineering of NC, P.C. was recognized to speak. Mr. Dewitt stated that he wanted to review what was contributing to the higher than anticipated costs for the project. He clarified that the extent of the project was from Four Seasons to Cook Drive and not to Sunset Grill. He added that he did not want any confusion with regard to the extent. Councilor Burdick

stated that he did not understand the change. He added that the starting point was Sunset Grill and was one of the problem areas in Town. He asked why it wasn't included. Chris Dewitt stated that it was pulled to manage the cost of the project. He added that to design the project all the way to Sunset Grill would have additional costs with the design and construction. He stated that Cook Drive seemed like a more logical stopping point.

Councilor Burdick noted that the Town had a significant problem at Sunset Grill. He didn't understand why it wasn't included in the project. Town Manager Layton apologized, adding that he thought the area of Sunset Grill was included in the project. He added that it would be an additional cost the Town would have to work through. Chris Dewitt stated that he could review what had been scoped out and if there were questions or further questions that he would need to have with Town staff, particularly on the project extension, he could do that.

Chris Dewitt stated that he was looking at developing a final set of settled design and construction plans for the improvements shown in the pedestrian plan, from Four Seasons to Cook Drive. He added that that was the section of the Village where sidewalks would be installed on both sides of the road, converting existing wide shoulders to directional bicycle lanes, adding some crosswalks, connecting to existing crosswalks, providing several pedestrian refuge islands as well as gateway median islands at the north end and south end just north of Cook Drive and near Four Seasons; illumination of crosswalks, and full set of improvements for the section of the roadway, including a section along the east side just south of Aqua Restaurant to extend the existing shoulders north of the crosswalk.

Chris Dewitt stated that, with the scope of work, the result would be a complete set of construction plans and documents, permits, applicable stormwater permits, approval by NCDOT, and applying things to put the Town in the position to bid out the work for construction. He stated that it was anticipated that construction improvements would likely have to be phased and the pedestrian plan talked of one way the improvements could be phased, but depending on the funding, there could be other ways to fund it. He noted that the idea was to take it, do a complete set of plans, get the permit and have it ready to go, and then depending on the available funding; look at what may be a logical phase and truncate the plans as part of the construction bid process. He stated that if the Town could obtain funding for the whole project, the whole project would be constructed at once.

Chris Dewitt stated that some of critical items that would be contributing to the cost had to do with the complicated nature of the corridor. He stated that some of the early things that needed to be done were data collection items located around the utilities; doing topographic and boundary surveys and completing a geotechnical analysis for the soil and groundwater in order to get an idea on how to manage the drainage. He stated that the contract was set up around a fiscal year since only a certain amount of funds could be allocated each fiscal year. He added that they targeted the up-front data collection items to be accomplished during the current fiscal year. He added that they would also be doing wetland delineation confirmation and some median tasks and develop the project based on that. He stated that with the end of the current fiscal year, it would be set to proceed to schematic design plans, final design plans, permitting, and agreements with NCDOT and follow up.

Chris Dewitt stated that one of the things included in the project was coordination with all of the property owners, basically setting aside time to go site by site and meet with the property owners once the data collection and base mapping tasks were completed, to talk about potential issues; conflicts with signs and landscaped beds; how the project may impact their individual properties

and emailing them one-on-one. He stated that there would have to be some coordination with NCDOT and NCDENR to get the necessary permits.

Mayor Pro Tempore Thibodeau asked if there would be a time limit on the extent of the permits that have to be obtained. Chris Dewitt stated that there were timeframes and they tended to be in the five year period. He added that they considered that when phasing the project as it made sense to permit it all now. He stated that if it went that far, getting an extension to an existing permit was a relatively easy process. Mayor Pro Tempore Thibodeau asked if VHB had experience in working on this type of project. Chris Dewitt stated that they did. Mayor Pro Tempore Thibodeau asked if VHB would be using local contractors. Chris Dewitt stated that they would and noted that the geotechnical contractors were from Elizabeth City. Mayor Pro Tempore Thibodeau asked if VHB was used to working with NCDOT. Chris Dewitt stated that they were.

Mayor Kingston noted that there would be a lot of data collection. He added that while pieces could be put out for bid, there would still be the other piece from Cook Drive to Sunset Grill that would have to be revisited. He stated that it seemed to him that it needed to be looked at now. Councilor Burdick agreed. Mayor Kingston thought it was a surprise. Mayor Pro Tempore Thibodeau agreed. Town Manager Layton apologized and stated that he and Chris Dewitt had discussions about phasing the project due to the CIP. He thought as they talked about the project scope and details of the contract, he was thinking of the CIP while Chris Dewitt was thinking of something slightly different. He thought it made sense, especially with the data collection, to do it while the subcontractors were in Town and to move forward. He suggested obtaining revised cost estimates from Chris Dewitt to add the data collection and other pieces and then bring the contract back to Council at their January meeting for a final discussion. Chris Dewitt apologized for the confusion.

Councilor Burdick thought it made no sense to do 90% of the work and come back to do the rest. Town Manager Layton stated that his intent was to bring it back for the whole section. He thought they could rectify the problem, adding that there will be an additional cost. He stated that as far as the first phase cost, he didn't expect it to be too substantial.

Town Attorney Hobbs asked if there was any urgency for the agreement to be approved at this meeting. He asked if Council could approve the agreement as is and have an amendment brought back in January for their approval. Town Manager Layton stated that it could wait until the January meeting. Chris Dewitt stated that given the fiscal year break with the fact that this fiscal year would be comprised of the data collection, there wasn't any urgency for Council to act at this meeting. Councilor Burdick suggested that the item be tabled until the January meeting.

Town Manager Layton stated that he would come back in January with a contract amendment that included the entire Village improvements. He added that some of the things that were important with regard to the project were the utilities locations for the underground utilities and the surveying, since it will have to be very specific and the Town may have to obtain encroachment agreements. Chris Dewitt noted that with regard to the surveying, it would include detailed topographical right-of-way improvements.

Councilor Burdick asked what the added legal costs would be. Town Manager Layton stated that were likely some mild wetland impacts that will need to be delineated and making sure the project would improve the stormwater issues and not contribute to it. He stated that it was anticipated that the Town would be using some StormTek chambers, like what was used for the Tuckahoe project. He added that it was a complicated project with a lot of moving parts and he wanted to make sure it was done correctly.

Mayor Pro Tempore Thibodeau asked if contacting the property owners would happen after the data collection or as part of the data collection. Chris Dewitt stated that there needed to be up front publication/notification as the project moved along. Mayor Pro Tempore Thibodeau clarified that VHB would have the data and then get more specific with each property owner. Chris Dewitt stated she was correct. Mayor Pro Tempore Thibodeau stated that there has been a lot of discussion from neighboring communities about Duck being a bottleneck to traffic. She asked if the islands in the middle, particularly the one on the southern end of Town, would cause more bottlenecks. Chris Dewitt stated that traffic simulation models were built into the contract to answer the questions regarding the islands and bottlenecks.

Councilor Caviness asked how the project would be phased. Chris Dewitt stated that they would work on one side of the road and then work on the other side, which is what the pedestrian plan suggested.

Mayor Kingston asked if VHB could do anything before the agreement was signed. Chris Dewitt stated that if VHB received approval on the existing agreement, they could kick the project off, and the data collection could be started. He stated that he would rather have it done at once since the subcontractors would be looking at a larger area. Town Manager Layton thought having a kick off in December would not be wise.

It was *consensus* of Council to table the issue until their January meeting.

## **NEW BUSINESS**

### **Discussion/Consideration of the Council 2015 Calendar**

Town Manager Layton stated that Council had a list of the meeting dates as well as some other pertinent dates that staff put together for Council's review and discussion. He noted that the key dates were the annual Retreat on February 18-19, 2015 and January 30, 2015 was the proposed volunteer recognition party. He stated that all of the other dates were the normal dates for the meetings. He stated that there weren't any major conflicts where a meeting would need to be changed. He noted that Council canceled their regular January meeting because it fell on January 2, 2014 and had it held at the regular January mid-month meeting. He suggested doing the same for the 2015 January meeting, unless something came up that needed to be discussed with Council.

Councilor Burdick thought the calendar was fine as presented. He added that he arranged his schedule around the January 7, 2015 meeting and would not be in favor of canceling it.

Mayor Kingston stated that he was in favor of canceling the January 7, 2015 meeting since there weren't any major items coming up.

Councilor Caviness moved to cancel the January 7, 2015 meeting unless it was necessary.

Motion carried 5-0.

Councilor Britt clarified that the March 4, 2015 meeting would be the one where Council would be discussing the MSDs. Town Manager Layton stated that the public hearing on them would be at that meeting.

Mayor Kingston moved to accept the Council 2015 calendar as amended.

Motion carried 5-0.

**Discussion/Consideration of Text Amendments to Refer to the Planning Board for Review and Recommendation**

Director Heard stated that staff identified a number of issues with the Town's current ordinances that may need to be considered for potential corrections or updates. He stated that at this time, staff was asking for Council's authorization to work with the Planning Board on each of the potential amendments identified. He explained that four of the potential text amendments were substantially administrative in nature – Code Sections 156.026, 156.128, 156.130 and 156.145 – were dealing with typographical errors and incorrect ordinance references. He noted that if Council authorized it, the amendments would be addressed immediately.

Director Heard stated that several other text amendments would involve minor changes to the existing standards in the Town Code – 150.05, 151.23, Chapter 155, 156.002, 156.110 and 156.125. He noted that these text amendments would likely be addressed by the Planning Board over the next couple of months.

Director Heard stated that the final potential text amendment was for wireless communication services and was a broader issue that would require more thorough and intensive review of Code 156.058. He added that this amendment would probably require several months before any recommended changes would reach Council.

Mayor Pro Tempore Thibodeau moved to give the list of text amendments to the staff and Planning Board to take on as they have time for it.

Motion carried 5-0.

**Discussion/Consideration of a Memorandum of Understanding between the Town of Kill Devil Hills and the Town of Duck, related to Building Inspections**

Town Manager Layton noted that the Memorandum of Understanding was changed to an Interlocal Agreement. He stated that Town Attorney Hobbs reviewed it and made it more official. He stated that the Town was creating a mutual aid agreement for building inspection services with the Town of Kill Devil Hills. He guessed that the Town would have more of a potential to use it than the Town of Kill Devil Hills since they have three building inspectors. He noted that the Town had a similar agreement with the Town of Kitty Hawk and have run into issues where Building Inspector Cory Tate and the Town of Kitty Hawk's building inspector were away at the same time. He hoped that this agreement would eliminate those issues.

Town Attorney Hobbs asked if the Town of Kill Devil Hills had seen the agreement. Town Manager Layton stated that they had, but had not approved it yet. He noted that their attorney reviewed it and had one minor typographical change to Section 9. He added that the correction has been made. Town Attorney Hobbs asked if there was a necessity for the motion to authorize Town Manager Layton and him to make any further non-substantive changes if the Town of Kill Devil Hills' board wanted something further. Town Manager Layton thought it was wise to be prepared for something like that.

Councilor Burdick moved to approve the Interlocal Agreement and authorize the Town Manager to execute and authorize the Town Manager and Town Attorney to make any non-substantive changes that may be requested by the Town of Kill Devil Hills' attorney.

Motion carried 5-0.

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

Town Attorney Hobbs stated that his firm has completed the final examinations for the properties affected by the beach nourishment project. He added that they were finalizing the form of the easement that they were planning to propose to the property owners and working on the engineering with the Town Manager to get it wrapped up.

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

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

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

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

Director Heard gave a brief overview of the past month's permit activities to Council and the audience.

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

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

Town Manager Layton stated that things were currently slow. He added that the meeting that was scheduled for December 2, 2014 with the rest of the towns was canceled. He stated that with the permitting and design, significant progress has been made. He stated that 81% of the permitting and design has been completed and 75% of the sand search has been completed. He stated that in terms of the borrow area for the sand search, CP&E has identified 2.7 million cubic yards that they thought was in the range for compatibility. He stated that in his discussions with Ken Willson; there was still concern regarding the size of the grains and so CP&E was continuing to analyze it as they move forward with the design. He thought that some of the 2.7 million cubic yards of sand will be used for the project, but CP&E still has to figure it out in terms of the design.

Town Manager Layton stated that he attended the NC Byways Conference and added that there were a lot of updates. He noted that one item that was discussed at length was the dredge window. Unfortunately, not a lot of progress has been made as far as changing policy overall, but he didn't think it should be interpreted to mean that the dredge for the Town's project would be narrowed. He thought the dredge will allow the project to continue during the summer months.

Town Manager Layton stated that he would be putting together the report for the Municipal Service Districts and will be preparing a draft letter as well.

### **Council Retreat**

Town Manager Layton stated that the date for the Council Retreat was February 18-19, 2015. He added that the earlier Council sends him items that they want covered, the better, in order to have time for staff to get everything prepared. He suggested that Council email him the topics they wished to see on the agenda.

### **Financial Statements for the Month of November for FY 2015**

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

### **MAYOR'S AGENDA**

Mayor Kingston stated that he, Town Manager Layton and Police Chief Ferguson met with staff from the Towns of Southern Shores and Kitty Hawk regarding the traffic issue. He stated that it was good discussion, but produced very little results. He thought the only thing that was decided was that there would be police officers at the intersection of U.S. 158 and NC 12. He added that the Town would probably participate in that on Saturdays to help move traffic. He noted that the Town of Kitty Hawk would be erecting a lighted sign as drivers come off the Wright Memorial Bridge, asking people not to block the intersection and maybe a No Right Turn sign onto Beach Road during certain hours. He stated that there really wasn't anything else that could be done between the three towns.

Mayor Kingston stated that he had his mayors' lunch and it would be interesting as it will be a farewell lunch with Commissioner Warren Judge since he is no longer Chairman of the Board of Commissioners. He added that Chairman Bob Woodard was invited to the lunch. He stated that he had a conversation with Chairman Woodard recently and congratulated him from the Town's standpoint. He stated that Chairman Woodard was excited about taking over the leadership and he also invited him to attend one of Duck's future Council meetings.

Mayor Kingston stated that he gave a presentation at the recent DCBA annual meeting and thanked Councilor Britt and Town Manager Layton for their support at the meeting. He stated that he received notification from the Dare County Tourism Board that Councilor Caviness had been selected to replace Mayor Pro Tempore Thibodeau. He congratulated Councilor Caviness and thanked Mayor Pro Tempore Thibodeau for her service to the Board. He noted that Councilor Caviness would be stepping down from the Government Access Committee and Mayor Pro Tempore Thibodeau would replace her. He congratulated Councilor Caviness and Fire Chief Black on the success of the annual Turkey Trot. He added that he was looking forward to the upcoming Yuletide Celebration.

### **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau congratulated Councilor Caviness for being selected to serve on the Dare County Tourism Board. She went on to give a Visitor's Bureau update. She thanked Councilor Caviness and Fire Chief Black on the success of the Turkey Trot.

Councilor Burdick congratulated Councilor Caviness on the Turkey Trot. He added that he was looking forward to the Yuletide Celebration.

Councilor Caviness stated that she was excited to serve on the Dare County Tourism Board. She thanked everyone in Town for their help with the Turkey Trot in making it a success.



Councilor Britt congratulated Councilor Caviness and added that he was excited about the Yuletide Celebration.

**OTHER BUSINESS**

**Additional Public Comments**

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

Mayor Kingston noted that the next meeting would be on Wednesday, January 21, 2015 at 1:00 p.m.

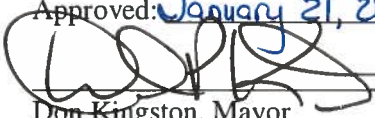
**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:20 p.m.

  
\_\_\_\_\_  
Lori A. Kopec, Town Clerk

Approved: January 21, 2015  
  
\_\_\_\_\_  
Don Kingston, Mayor

