

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
February 4, 2015**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, February 4, 2015.

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

**COUNCIL MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Town Manager Christopher Layton; Director of Community Development Joseph Heard; Police First Sergeant Jeffrey Ackerman; Police Sergeant Melissa Clark; Fire Chief Donna Black; 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 7:02 p.m. He asked Town of Kill Devil Hills Deputy Police Chief Dana Harris to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments.

First Sergeant Jeffrey Ackerman and Sergeant Melissa Clark were recognized to speak. First Sergeant Ackerman stated that he and Sergeant Clark wanted to take a few minutes to recognize some of the officers for achievements that they achieved recently. He noted that Town of Kill Devil Hills Deputy Chief Dana Harris was present on behalf of the Fraternal Order of Police Lodge #71.

First Sergeant Ackerman, Sergeant Clark and Deputy Chief Harris recognized Officer Joseph Knight, Officer Jason Rigler, Officer Jason Garrett, Officer Chuck Edwards and Officer Tara Poulin for various achievements. First Sergeant Ackerman and Sergeant Clark also recognized each other for achievements.

Mayor Kingston and Council congratulated each officer for their achievements.

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

**CONSENT AGENDA**

**Budget Amendments**

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 5-0.

## OLD BUSINESS

### Discussion/Consideration of Authorizing the Following Text Amendments for Public Hearing

#### An Ordinance Amending the Subdivision Ordinance of the Town of Duck, North Carolina, by Incorporating Standards for Exempt Plats

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that during Council's December 3, 2014 meeting, they voted unanimously to authorize the Planning Board to evaluate and prepare recommendations regarding several text amendments identified by the Community Development staff. He stated that this proposal would amend the Town's Subdivision Ordinance with the addition of Section 155.01(E), Exemptions. He noted that the proposed text amendment was intended to provide clear standards for exempt plats and bring the Subdivision Ordinance into compliance with the North Carolina General Statutes. He stated that the Planning Board recommended approval of the proposed text amendment.

Councilor Burdick stated that the draft ordinance looked fine. He asked if there was a better way for the Town to incorporate into its ordinances a reference to the state requirements instead of trying to repeat it every time the legislature changes something. Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that it could be done that way. He thought the Planning Board's goal was to send it out verbatim with the ordinance so that multiple documents do not have to be given to people to try to understand the requirements and exemptions. He stated that if the verbatim language of the statute was incorporated in the ordinance, one would have to monitor the statute in case there were any changes as they would have to be made to the ordinance as soon as possible so they would be consistent with the statute. He stated that he did not have any legal issue with having the statute verbatim set forth in the ordinance if the Planning Board felt it was important to have in the ordinance.

Councilor Burdick asked if there was way to reference the state statute in the ordinance. Town Attorney Hobbs stated that the language was taken from the state statute. Councilor Burdick clarified that the Town was quoting the language and it should help make it clear to people. Town Attorney Hobbs stated that if someone had a question as to where the reference came from, the statute could be shown. He added that it wasn't like Duck had any discretion. Councilor Burdick thought it should be identified as the state statute. Town Attorney Hobbs stated that a reference could be added to the statute with the following language: "...this provision is presumed to be G.S. 168-376, subsection a..." Councilor Burdick thought it would make things more clear.

Councilor Burdick clarified that it would fall back on the Department of Community Development to monitor it in case the state statute changed. Director Heard stated he was correct. He added that staff keeps up with what the legislature does.

Councilor Burdick suggested that the reference be put in the draft ordinance. Town Attorney Hobbs stated that it could be put after the title and subsection. He suggested the following language: "...presumed to section 168-376, subsection a, provisions of this chapter may not apply..."

Mayor Kingston asked if the language would be better as a cross reference. Town Attorney Hobbs stated that it wouldn't hurt and would add a statutory reference so people will know where it came from. He didn't see any problem with adding the language.

Councilor Caviness asked if the additional language had to be put in before the public hearing. Town Attorney Hobbs stated that the changes could be made after the public hearing.

Councilor Caviness moved to authorize the public hearing for March 4, 2015.

Motion carried 5-0.

**An Ordinance Amending the Flood Damage Prevention Ordinance of the Town of Duck, North Carolina**

Director Heard stated that the proposal would amend the definition of Free and Clear of Obstruction in the Town's Flood Damage Prevention Ordinance to be more consistent with the intent of protecting structures from floodwaters in the VE flood zones. He stated that it was noted during the Planning Board's discussion that the definition in the proposed amendment would more accurately address the Town's intent of maintaining a two-foot elevation above the ground for structures in the VE flood zones. He added that the standard provided credit toward the Town's CRS flood insurance rating. He stated that the Planning Board and staff were recommending approval of the proposed text amendment.

Mayor Pro Tempore Thibodeau asked how the ordinance would affect properties that were built under the previous standards. Director Heard stated that it would have to be a significant repair or improvement and greater than 50% of the value of the structure. He stated that under that scenario, the structure would be required to be brought up to the current standards. Mayor Pro Tempore Thibodeau thought there were some cases when the ordinance was amended previously where people wanted to add on to their homes, they had to adjust for the higher freeboard. Director Heard stated that it would apply to those situations. He added that there were some options that staff can work with. He noted that someone who had an extremely significant project, i.e. where they were doubling the size of the house, they could break it into pieces by doing part of it one year and the rest during another year.

Councilor Burdick moved to authorize the public hearing for March 4, 2015.

Motion carried 5-0.

**An Ordinance Amending the Zoning Ordinance of the Town of Duck, North Carolina, by Correcting Several Minor Errors**

Director Heard stated that the proposed text amendment would correct several typographical errors in the Town's Zoning Ordinance. He added that the Planning Board noted that making these minor corrections would clarify the standards of the Zoning Ordinance for everyone involved in the development process including staff, property owners, contractors and developers. He stated that the Planning Board and staff were recommending approval of the proposed text amendment.

Councilor Burdick asked if this amendment required a public hearing. Town Attorney Hobbs stated that it did because it involved zoning.

Councilor Caviness moved to authorize the public hearing for March 4, 2015.

Motion carried 5-0.

## **NEW BUSINESS**

### **Discussion/Consideration of FY 2016 Budget Schedule**

Town Manager Layton reviewed the recommended budget schedule for FY 2016 with Council and the audience. He noted that in February, budget requests would be issued from established departments and agencies; in March the requests would be due to him and he would develop revenue estimates and then meet with the departments and agencies to review the requests; in April he would submit the proposed FY 2016 budget to Council and then schedule work sessions; in May there would be work sessions on an as-needed basis and the Notice for Public Hearing would be published; and finally in June, a public hearing and adoption of the budget would be done. He noted that there were some complications due to the beach nourishment project, but he didn't expect anything out of the ordinary.

Mayor Kingston moved to approve the Proposed FY 2016 budget adoption schedule as presented.

Motion carried 5-0.

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

Town Attorney Hobbs stated that they were close to getting the easement with Allis Holdings. He added that they had to make some changes to the survey to be consistent with the Army Corps of Engineers restricted area around the property. He stated that he received some language feedback that wasn't substantive in nature and thought he would have things wrapped up within the next week.

Town Attorney Hobbs stated that he was still working on the easements for the beach nourishment project. He hoped to have it wrapped up soon.

### **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 First Sergeant Ackerman and Sergeant Clark 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 the letter in Council's packet was from January. He noted that the notifications for the March 4, 2015 public hearing have gone out to the property owners in the proposed MSD's. He stated that he has received a few calls, but nothing out of the ordinary. He

added that the calls with questions have been very easy to answer. He stated that approximately 930 letters went out.

Town Manager Layton stated that in previous reports, he spoke of how the initial permit application had been submitted to the Army Corps of Engineers. He added that the Army Corps of Engineers has issued a public notice for the project, seeking input and comments through February 16, 2015. He stated that it has not gone to CAMA yet, so that will be another process that has to be finished. He stated that permits still have to be applied for through the Bureau of Ocean Energy Management for the borrow area. He noted that there was close to a year left before the Town will receive its permit for the project. He stated that as soon as staff heard about the public notice, an alert was put out on the Town's website as well as through its e-news.

Town Manager Layton stated that CP&E was still finalizing the borrow area, with it being about 93% completed. He added that there was still some significant amount of work that needed to be completed on the permitting side, but everything was on schedule.

Town Manger Layton stated that CP&E will be present at Council's Retreat to give an update on where they were with the project. He stated that he and Mayor Kingston had met with the other mayors and managers on February 3, 2015 to discuss beach nourishment. He stated that they discussed finalizing the Interlocal agreement for the funding of the project and doing it in such a way that it would meet the requirements of bond council. He expected a version of it coming back to Council at their March 4, 2015 meeting with the desire to have it adopted as quickly as possible. He pointed out that there was nothing out of the ordinary with it.

Councilor Burdick asked how the other towns were progressing in regard to Duck's project so that the Town received the maximum efficiency. Town Manager Layton stated that each town was where it was expected to be at this point. He added that the Town of Kitty Hawk will be holding their public hearing on their MSD's on February 9, 2015. He noted that it will leave wiggle room in terms of them moving forward with the project. He guessed that they may change their minds after the public hearing. He stated that the Town of Kill Devil Hills was preparing to have a public hearing, but they haven't advertised it yet. He stated that in terms of the financial aspect, all is coming together.

Town Manager Layton stated that on the engineering side, each town is on the same page, with the Town of Kitty Hawk a little behind. He stated that once the public hearings were held and decisions were made, the Town of Kitty Hawk will catch up so each town could bid the project out together.

Councilor Burdick asked if there was overlap in the borrow area. Town Manager Layton stated that there was still some question with regard to the borrow area. He stated that the borrow area off of Duck was slightly finer than the area off of Kill Devil Hills. He stated that the towns and CP&E were permitting both areas, but it was more likely that Duck would use the Kill Devil Hills borrow area since there was plenty of sand to cover all of the projects.

Mayor Kingston stated that he sent Council Ken Willson's presentation and the designs were pretty well finalized for all three towns. He thought it was encouraging that the Town was within 12 months of the bids being opened.

Mayor Pro Tempore Thibodeau clarified that the borrow areas off of Duck may not be the best sand source. Town Manager Layton stated she was correct, adding that the grain sizes were finer. He explained that if the sand was too fine, it caused issues, so CP&E were looking for a certain

size that was compatible to what's presently on the beach as well as an ideal size in terms of building it. Mayor Pro Tempore Thibodeau thought it would be nice if it was sand that was close by but understood that CP&E had to go with the best quality.

Town Manager Layton stated that staff has engaged the local Corps of Engineers on issues related to the nourishment project and they have been talking directly with Ken Willson regarding the taper that would go on the south end onto their property. He thought there would be some compromising regarding the tapers since the Corps has a lot of instruments in that area.

### **Council Retreat**

Town Manager Layton reminded Council that the date for the Council Retreat was February 18-19, 2015. He stated that the draft agenda was in Council's packets. He thought everyone has been contacted and has been working very hard. He stated that all staff will be working diligently on their presentations.

### **Police Chief Search**

Town Manager Layton stated that he was getting resumes and applications in for the Police Chief position. He thought he received approximately 30-35 to date. He stated that he did a cursory review only and found it was an interesting cross-section that was applying for the position. He added that he was looking forward to receiving more applications.

Councilor Burdick asked when the closing date was. Town Manager Layton stated that it was March 16, 2015.

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

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

### **MAYOR'S AGENDA**

Mayor Kingston stated that they've had difficulty between the County Chairman and the mayors with regard to scheduling their monthly meeting, but they have scheduled it for later in February. He noted that Dare County Chairman Bob Woodard would be attending the Council Retreat on February 19, 2015 and would give an update on some of the County initiatives.

Mayor Kingston stated that he and Town Manager Layton have been invited to a meeting with the Currituck chairman and Currituck County manager, along with the Towns of Southern Shores and Kitty Hawk to discuss traffic issues and hear feedback from the NCDOT meeting that was held in Jarvisburg.

Mayor Kingston thanked Town staff for the winter celebration's success. He added that he was looking forward to the upcoming Council Retreat.

### **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau stated that she was the new representative on the Government Access Channel Committee. She went on to give an update on the recent meeting to Council and the audience.

Councilor Burdick congratulated Town staff on the winter celebration. He stated that he has received a lot of positive feedback on the reconstruction of the Wings building as well as the Snow Geese project.

Councilor Caviness stated she had nothing to report.

Councilor Britt stated that it was nice to see the recognition by the Duck Police Department on all of their achievements.

**OTHER BUSINESS**

**Additional Public Comments**

Mayor Kingston asked the public for comments.

Darcy Williams from Palmers Island was recognized to speak. Ms. Williams stated that she was upset that there was no way for her to obtain tickets for the upcoming Duck and Wine Festival. She thought that the coordinators should allow locals to purchase tickets before out-of-towners since the Festival basically shuts down the Town boardwalk.

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

Mayor Kingston noted that the next meeting would be the Council Retreat on Wednesday, February 18, 2015 and Thursday, February 19, 2015 at 9:00 a.m.

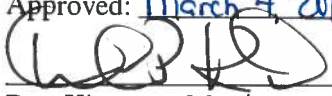
**ADJOURNMENT**

Councilor Burdick moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:41 p.m.

  
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Lori A. Kopec, Town Clerk

Approved: March 4, 2015  
  
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Don Kingston, Mayor

