

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

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, March 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 Mayor Pro Tempore Monica Thibodeau to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any comments related to the public hearings be held off.

Lorelei DiBernardo of the League of Women Voters was recognized to speak. Ms. DiBernardo handed out the 2015 Citizens Guide to Council. She thanked Council for their generous contribution to the League.

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

CONSENT AGENDA

Minutes from the January 21, 2015, Regular Meeting; Minutes from the February 4, 2015, Regular Meeting; and Budget Amendments

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of the Establishment of Two Municipal Service Districts (MSDs) related to the Town of Duck Beach Nourishment Project

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the public hearing was open. He asked Town Manager Layton to give a presentation.

Town Manager Christopher Layton was recognized to speak. Town Manager Layton stated that the Town has been working on the engineering and planning for the Town's Beach Nourishment Project. He stated that as part of the project, the Town was proposing to establish two Municipal Service Districts (MSDs) to assist with the funding of the debt service on the Town's portion of the project's cost. He noted that the total cost was estimated to be \$14,589,000, with Dare County providing \$7.7 million from the Dare County Shoreline Management Fund and the remaining \$6,889,000 being funded through the issuance of Special Obligation Bonds by the Town.

Town Manager Layton stated that with the additional annual funding being provided by Dare County and the Shoreline Management Fund, the Town's expected annual debt service for a five year payback will be \$1,221,390. He stated that under the proposed plan, 20% or \$244,278 annually of this debt service would be provided by the entire Town and the remaining 80% would be split between the oceanfront and non-oceanfront property owners in the project area, which would be an annual total of \$488,556 from oceanfront property owners and \$488,556 from non-oceanfront property owners. He noted that the amounts would be an equivalent of an additional ad valorem tax of \$0.463 per \$100 of assessed property value for oceanfront owners and \$0.148 per \$100 of assessed property value for non-oceanfront owners.

Town Manager Layton stated that the proposed project area was comprised of all properties contained within the Atlantic Ocean to the east and the Currituck Sound to the west, from and including 137 Spindrift Lane north to and including 140 Skimmer Way and including 1308 Duck Road north to and including 1456 Duck Road, including 133 and 135 Skimmer Way and including 100 through 112 Oyster catcher Lane.

Town Manager Layton stated that after the public hearing, Council will have the option to approve Resolution 15-01 as it was presented, modify the resolution and then adopt it or defer action on the resolution until a future meeting. He noted that the actual tax rates associated with the MSDs will be adopted as part of the FY 2016 Budget.

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

Town Attorney Hobbs opened the public hearing for the public to comment. He noted that Council was not required or obligated to respond to any questions or comments from the public.

John Hughes of 108 Sandy Ridge Road was recognized to speak. Mr. Hughes stated that he was in favor of the project and would support MSD A if it was expanded so that everyone in Town paid to help build up a fund in case of re-nourishment.

Fred Vallade of 102 Flight Drive was recognized to speak. Mr. Vallade stated that he was against beach nourishment. He thought if it affected everyone, everyone should be taxed the same amount.

Dick Allerton of Sanderling Property Owners Association was recognized to speak. Mr. Allerton stated that Town funds should not be used to pay for the project. He stated that he was concerned with the financial onus on the oceanfront property owners regarding the project.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Council.

Mayor Pro Tempore Thibodeau thought it was interesting that there hadn't been a lot of public comments, but there were differing opinions. She stated that the 20-40-40 formula was a good, workable solution because it allowed the entire Town to have some of the financial stake while not having things totally out of proportion to the people that would directly benefit from the project. She added that the oceanfront owners were greatly protected by the additional sand and will benefit greatly from the project. She stated that she was in favor of the project as presented.

Councilor Britt stated that he was in support of the 20-40-40 formula as each area benefits from it. He added that he appreciated all of the input that has been received.

Councilor Burdick stated that the project needed to be done and this was an equitable way to do it. He added that he was in support of the project as presented.

Mayor Kingston stated that Council has been involved in the process for multiple years with a lot of pros and cons as well as a lot of interaction with the public. He thought the 20-40-40 formula will work for the Town.

Resolution 15-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Establishing and Creating Two Municipal Service Districts for the Purposes of Beach Erosion Control and Flood and Hurricane Protection Works

Mayor Kingston moved to adopt Resolution 15-01 as presented.

Motion carried 5-0.

Mayor Kingston thanked the public for all of their input.

Public Hearing/Discussion Consideration of SE 2015-001, a Special Exception Application Submitted by Ken Green & Associates, LLC, Agent for Jeffrey T. Scott, Property Owner at 111 Bunting Lane to Allow an Increase in Building Height for an Addition to Match the Existing Building Height of 35.3 Feet where a Maximum Height of 35 Feet is Permitted in the RS-1 Zoning District

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Kopec proceeded to swear in staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joe Heard.

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

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant was seeking a special exception permit to allow the highest point of an addition to their existing residence at 111 Bunting Lane to encroach 0.3 feet above the maximum building height requirement of 35 feet in the Single-Family Residential (RS-1) zoning district. He stated that if Council approved the special exception request, the highest point of the roofline would be permitted to reach a height of 35.3 feet.

Director Heard stated that the Planning Board voted unanimously at their February 11, 2015 meeting to recommend approval of the special exception application and that staff was also recommending approval.

Town Attorney Hobbs asked Council if they had any questions.

Mayor Pro Tempore Thibodeau thought the request seemed reasonable. She asked if administrative latitude was not something that was available for height issues. Director Heard stated that the ordinance had provisions related to eaves encroaching into the setback. He added that staff could not grant a variance administratively. Mayor Pro Tempore Thibodeau asked if Council would see more special exceptions like this one in the future. Director Heard stated that there have been similar ones and there may be a chance that the Town could see others.

Mayor Kingston pointed out that no one on behalf of the applicant was present for the public hearing. He asked if the owner or the contractor were present at the Planning Board meeting. Director Heard stated that the contractor was present for the Planning Board meeting.

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 moved to adopt SE 2015-001, granting the special exception as presented.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 15-01, a Text Amendment to the Town's Subdivision Ordinance Proposing to Add Section 155.01(E), Exemptions, which would Establish Provisions for Exempt Plats Consistent with the Standards of the North Carolina General Statutes

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director Heard stated that the proposal would amend the Town's Subdivision Ordinance with the addition of Section 155.01(E), Exemptions, establishing standards for exempt plats consistent with the provisions of NC General Statute 160A-376.

Director Heard stated that the Planning Board voted unanimously at their January 14, 2015 meeting to recommend approval of the proposed text amendment and staff was also recommending approval.

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

Town Attorney Hobbs asked if members of the Planning Board wished to comment or make a presentation. There were none.

Town Attorney Hobbs asked if members of the public wished to make a statement. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Council.

Councilor Burdick moved adopt Ordinance 15-01 as presented.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 15-02, a Text Amendment Proposing to Amend the Definition of Free and Clear of Obstruction in Section 150.05 of the Town's Flood Damage Prevention Ordinance to Require that Structures in VE Flood Zones have Two Feet of Clearance above the "Highest Adjacent Grade", rather than "Finished Grade or Average Finished Grade"

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director Heard stated that the proposal would amend the definition of Free and Clear of Obstruction in Section 150.05 of the Town's Flood Damage Prevention Ordinance to require that structures in VE flood zones have two feet of clearance above the "highest adjacent grade", rather than the "finished grade or average finished grade".

Director Heard stated that the Planning Board voted unanimously at their January 14, 2015 meeting to recommend approval of the proposed text amendment and staff was also recommending approval.

Town Attorney Hobbs asked Council if they had any questions for Director Heard.

Councilor Burdick clarified that the VE zone included every oceanfront property, regardless of the height above the mean water line. Director Heard stated he was correct. Councilor Burdick clarified that if a structure was 12 feet or 20 feet, it made no difference. Director Heard stated that it there was no difference regarding the zone, but there was as far as whether a structure will need to be elevated further or not. Councilor Burdick asked if this would apply to renovations only. Director Heard stated that it would apply if repairs or renovations exceeded 50% of the value of the structure.

Town Attorney Hobbs asked if members of the Planning Board wished to comment or make a presentation. There were none.

Town Attorney Hobbs asked if members of the public wished to make a statement. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Council.

Councilor Caviness moved to adopt Ordinance 15-02 as presented.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 15-03, a Text Amendment Proposing to Correct and Clarify Several Typographical Errors in Sections 156.128(A), 156.130(D) and 156.145(F) of the Town's Zoning Ordinance

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director Heard stated that the proposal would correct several typographical errors by amending Section 156.128(A); Section 156.130(D)(8) and Section 156.145(F).

Director Heard stated that the Planning Board voted unanimously at their January 14, 2015 meeting to recommend approval of the proposed text amendment and staff was also recommending approval.

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

Town Attorney Hobbs asked if members of the Planning Board wished to comment or make a presentation. There were none.

Town Attorney Hobbs asked if members of the public wished to make a statement. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Council.

Councilor Britt moved adopt Ordinance 15-03 as presented.

Motion carried 5-0.

OLD BUSINESS

Discussion/Consideration of Authorizing the Following Text Amendment for Public Hearing: Text Amendment Regarding the Elimination and Correction of Unnecessary Wording in Section 156.026 Interpretation of District Boundaries

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 Section 156.026 to eliminate Subsection 156.026(D), referencing boundaries along railroad lines, in its entirety and all subsequent subsections would be renumbered accordingly. He added that the amendment would also change both references from "city" to "Town" in Subsection 156.026(C).

Director Heard stated that at its February 11, 2015 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment for public hearing.

Councilor Burdick moved to authorize the public hearing for April 1, 2015.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Items Related to the Government Access Channel

Proposed FY 2015-2016 Budget

Town Manager Layton stated that each year, the Government Education Access Channel provides a budget overview to each participating entity: Dare County, the Towns of Duck, Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, Manteo, Dare County schools, the College of the Albemarle, and the UNC Coastal Studies Institute. He stated that each member entity was required to approve the proposed budget. He noted that this year's request from the GEAC remains the same at \$1,000, and highlights of the budget included funding for two positions and a Local Programming Development Initiative and the development of local programming for each participating entity every two months as opposed to every month.

Mayor Kingston moved to approve the Proposed FY 2015-2016 GEAC Budget as presented.

Motion carried 5-0.

Amended Interlocal Agreement

Town Manager Layton stated that the amended Interlocal Agreement clarified how candidate forums were produced.

Mayor Kingston moved to approve the Amended Interlocal Agreement as presented.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

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 Jeff Ackerman and Sergeant Melissa Clark were recognized to speak. 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 Council had the latest letter from CP&E, which indicated that they were about 90% completed with the permitting and design and 95% completed with the sand search and borrow area. He stated that he received some additional comments from Fish and Wildlife and Marine Fisheries regarding the permit. He added that they posed some objections to some of the dredge windows in terms of its potential impact on sea turtles and other wildlife. He noted that it wasn't unexpected and the Town's consultants would be responding to the agencies.

Town Manager Layton stated that, originally there was to be an Interlocal agreement with Dare County; however, it wasn't ready yet so he will bring it back to Council at their April 1, 2015 meeting.

NCBIWA Annual Meeting

Town Manager Layton stated that the North Carolina Beach, Inlet and Waterway Association meeting will be held at the Town of Pine Knoll Shores on March 16 and 17, 2015. He noted that he was not able to attend, but if any Council members wished to attend, to let him or Town Clerk Kopec know.

Police Chief Search

Town Manager Layton stated that, to date, he has received approximately 100 applications for the Police Chief position. He stated that the position closes on March 16, 2015 and the process he was looking at would be to use Fire Chief Black and Master Police Officer Joe Knight to assist him in going through the applications and sort through to find applicants that will likely be good candidates for interviewing. He anticipated that after the candidates are interviewed, he would have a second set of people comprised of him, Fire Chief Black, an outside law enforcement person and Public Information Officer Walsh to perform the second round of interviews. He stated that a lot of applications were received and finding a good fit was paramount. He thought the process would not be unnecessarily rushed since First Sergeant Ackerman and Sergeant Clark, both candidates for the position, were doing a great job.

Financial Statements for the Month of February for FY 2015

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

MAYOR'S AGENDA

Mayor Kingston recognized Linda Nave in the audience. He noted that she was a member of the original Council. He stated that his mayor's lunch will be on March 17, 2015. He stated that Mike and Willo Kelly have asked him to judge their annual St. Patrick's Day parade on March 15, 2015. He stated that he, Town Manager Layton and either Mayor Pro Tempore Thibodeau or Councilor Britt will be meeting with the Army Corps of Engineers on March 12, 2015 in the Duck Meeting Hall. He noted that he was caught by surprise with the pending legislation for dredging Oregon Inlet. He explained that the bill that was pending would give the Dare County Board of Commissioners authority to spend as they see fit, occupancy taxes funds. He added that it created controversy for multiple reasons and suggested that the Town send a letter to Senator Bill Cook, stating its opposition to this legislation. It was *consensus* of Council to have a letter sent to Senator Cook.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau stated that she was glad to see that so many people had attended the meeting. She thanked those that participated and gave comments.

Councilor Burdick thanked Director Heard for leading Council through all of the public hearings.

Councilor Caviness stated that she wanted to follow up with a conversation she had with Lee Nettles of the Dare County Tourism Board. She stated that she relayed Council's concerns regarding the discrepancies on their brochure and website. She stated that Mr. Nettles was appreciative that the concerns were brought forward and he assured her that Duck was a strong partner in tourism but that he couldn't do anything about correcting the printed guide; however, he would make the necessary corrections to the website. She commended the Police Department and Fire Department for keeping everyone advised of the range of demands they have encountered.

Councilor Britt thanked Joe Blakaitis for his continued service on the Planning Board.

OTHER BUSINESS

Additional Public Comments

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


Mayor Kingston noted that the next meeting would be the Regular meeting on Wednesday, April 1, 2015 at 7:00 p.m.


ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:18 p.m.


Lori A. Kopec, Town Clerk

Approved: April 1, 2015

Don Kingston, Mayor

