

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
May 6, 2015**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, May 6, 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; Deputy Fire Chief William Walker; Town Attorney Robert Hobbs; Public Information Officer Denise Walsh; Administrative Assistant Bethany Morr; and Town Clerk Lori Kopec.

OTHERS ABSENT: Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 7:02 p.m. He asked Councilor Nancy Caviness to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston noted that the two public hearings on the agenda were deferred until the June 3, 2015 meeting.

PUBLIC COMMENTS

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

SPECIAL PRESENTATIONS

Employee Service Recognition Program Recipients

Mayor Kingston stated that in December, 2011, Council had adopted an employee service recognition program that would acknowledge the service of employees of the Town at five year intervals by providing them with a certificate of recognition as well as a gift certificate in the amount of \$50 at a Duck business of their choosing.

Mayor Kingston, Town Manager Layton, First Sergeant Jeff Ackerman and Sergeant Melissa Clark went on to present a certificate to Police Officer Jason Rigler.

CONSENT AGENDA

Minutes from the April 1, 2015, Regular Meeting; Minutes from the April 15, 2015, Mid-Month Meeting

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 15-05, an Ordinance Amending the Buildings and Structures Ordinance of the Town of Duck, North Carolina by Defining the Activities that Constitute “Commencement of Work”

The public hearing was deferred until Council’s June 3, 2015 meeting.

Public Hearing/Discussion/Consideration of Ordinance 15-06, an Ordinance Amending Tree and Vegetation Preservation and Planning Standards in the Zoning Ordinance of the Town of Duck, North Carolina

The public hearing was deferred until Council’s June 3, 2015 meeting.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 15-07, an Ordinance Amending the Definition of “Building Height” by Clarifying how Building Height is Measured in Different Flood Zones

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that Council had voted unanimously at its December 3, 2014 meeting to authorize the Planning Board to evaluate and prepare recommendations regarding several potential text amendments identified by Community Development staff.

Director Heard stated that the text amendment proposal would amend the definition of “building height” in the Zoning Ordinance by clarifying how building height is measured in different flood zones. He noted that the proposed definition was consistent with recent changes to the “free and clear of obstruction” definition in the Flood Damage Prevention Ordinance. He added that staff and the Planning Board recommended approval of the proposed text amendment.

Councilor Britt moved to authorize the public hearing for the June 3, 2015 Council meeting as presented.

Motion carried 5-0.

Update on Senate Bill 369, “The Sales Tax Fairness Act” and Senate Bill 608, “Simple and Fair Formula for Sales Tax Distribution”

Town Manager Layton stated that he didn’t have any new information on the bills because they were still sitting in Committee and there hasn’t been any action since they were first introduced, except to refer them to Committee. He noted that these bills, because they are finance related, did not have to follow the same process for crossover day. He added that while crossover day has happened, the two bills were not subject to it and can stay where they are until they are ready to be acted upon.

Town Manager Layton stated that there appeared to be concerns with Senate Bill 369, which was the most egregious to Duck and Dare County. He added that it didn’t look like it was going anywhere this year; however, the Town should be prepared for it to resurface in the future. He

stated that just because it doesn't make it through this year, it could come back for re-introduction at a future session.

Town Manager Layton stated that with regard to Senate Bill 608, it was a little friendlier because it had a hold harmless clause in it. He added that there wasn't a lot of information available on it but it was receiving more discussion. He thought there was some overall discussion that the two bills may end up being worked out together. He noted that Senate Bill 608 relied on an increase in taxes on some things are not currently taxed, in order to generate more revenue. He stated that a tax increase was one of the biggest concerns with the bill.

Town Manager Layton stated that both bills, from the League of Municipalities' perspective, were bad, mainly because they take the sales tax revenue that was dedicated to the towns and puts the revenue in the sole control of the General Assembly. He added that it took away the provision that the 2% sales tax of the 6.75% would come back to the towns. He stated that there was some discussion of the two bills prior to Duck's meeting with Dare County on the proposed sales tax increase of \$0.025 cents, but added that a lot of information came from the discussion.

Town Manager Layton noted that Dare County was the most impacted county with regard to the bills and Duck was the most impacted town in Dare County. He stated that he would continue to monitor things and bring any action items back to Council.

NEW BUSINESS

Discussion/Consideration of the Planning Board's Request to Comprehensively Review How the Town Measures Building Height

Director Heard stated that during its April 8, 2015 meeting, the Planning Board discussed several concerns with how the Town measured building height. He stated that after the discussion, the Board asked the Community Development staff and Chair Joe Blakaitis to draft a memorandum to the Council requesting authorization to comprehensively review the Town's standards for measuring building height.

Councilor Burdick felt the request was a good one in order to see if there was compatibility with what Duck was doing with the rest of the towns and if it was making reasonable sense. He recommended authorizing the Planning Board to look at the issue.

Mayor Pro Tempore Thibodeau appreciated the Planning Board bringing the issue up and wanting to explore the subject.

Councilor Caviness thought the Planning Board needed to be applauded for adding to their workload. She added that she was supportive of the request.

Joe Blakaitis, Chairman of the Planning Board, was recognized to speak. Mr. Blakaitis stated that there were so many aspects to the rules in comparison to the other towns. He added that every time it comes up via a submission, it causes a lot of anguish on the Board. He felt the Board needed to look at it in order to make things easier.

Councilor Britt moved to authorize the Planning Board to proceed with a comprehensive review of how the Town manages building height.

Motion carried 5-0.

Discussion/Consideration of Dare County Funding Initiative for Oregon Inlet

Town Manager Layton stated that on April 29, 2015, he and Mayor Kingston attended a meeting called by the Chairman of the Dare County Board of Commissioners to discuss a funding initiative of the County for Oregon Inlet. He stated that the County has had legislation introduced that would allow for \$0.025 cent sales tax increase to fund a portion of the annual costs to dredge Oregon Inlet. He noted that the sales tax increase would generate approximately \$3.5 million annually. He added that at this time, it did not look as if the NC General Assembly would pass the legislation authorizing the sales tax.

Town Manager Layton stated that the County was considering requesting legislation that would allow occupancy tax funds collected for beach nourishment – 2% of the current total 6% occupancy tax – to be used for inlet dredging. He stated that the County had a draft plan that would provide the Towns with funding for the current beach nourishment projects and funding for the maintenance of these projects by leveraging the occupancy tax collected for beach nourishment purposes, likely through the issuance of debt for the dredging of Oregon Inlet. He noted that the County has asked for Council's opinion.

Mayor Kingston stated that the meeting he and Town Manager Layton attended had County Manager Bobby Outten reviewing a few scenarios with cutting the budget and then showing a \$0.003 cent increase across the board to cover things. He noted that there wasn't an overwhelming endorsement and was more cooling on the part of the mayors and managers. He noted that the General Assembly was still bringing up the fact that Dare County has money set aside for beach planting and that it was a rich county and wanted to be excluded.

Councilor Burdick clarified that the quarter percent was dead because it had to go to referendum. Councilor Caviness disagreed, adding that it would need to be approved by the General Assembly. Councilor Burdick clarified that it also had to be approved by a referendum. Mayor Kingston stated that it wasn't a sales tax, adding that the Town could do a \$0.025 sales tax and it has been approved by the House via a vote of 112 to 3, but it has to go to the Senate and that could be where the issue would lie. Councilor Britt clarified that it would be an issue because it wasn't put to a referendum. Mayor Pro Tempore Thibodeau thought the Senate was interested in any county being able to implement their special sales tax because everyone has local needs. She added that anyone that wanted to put the \$0.025 on there would have to have a referendum.

Town Manager Layton thought there were concerns about giving Dare County that authority on the Senate side. Councilor Caviness asked if there was a sense that the \$0.025 increase would play into the politics of the other issue that was going on. Town Manager Layton stated that there was a bit of discussion on it. He added that Dare County had a 7.75% sales tax previously and the one cent from it had a sunset provision, which ran out. He stated that there was reluctance from the current leadership in the Senate to acknowledge the one cent. He stated that it was hard to say how it was playing into the other issues, but there was an issue with sales tax.

Councilor Burdick stated that his concern was being able to fund the maintenance part of the projects that the Town had. He added that his concern included what would happen if the Town had to fund more new projects. He stated that if the Town could barely fund the maintenance project, any new projects would suffer. Mayor Pro Tempore Thibodeau stated that it was never a given that the Town would get the funds just because it had a need. She wasn't sure if the Town was ever guaranteed anything.

Councilor Burdick stated that he didn't understand it as guaranteed, but supposedly the fund was building and should be able to take care of the maintenance. He thought it was perceived that there would be other occasional projects that would come along that would need to be funded. He stated that taking \$12 million out of the fund did not seem like a reasonable way to go. Mayor Kingston stated that the question was raised, but there was no real answer to it. He thought when Town Manager Layton reviewed the chart, Council would see what happens to the fund decreasing and increasing over time.

Councilor Caviness stated that she didn't disagree in some manner with the County wanting to expand the scope of how the money was used. She added that there was a soundside need and other areas of the Outer Banks that weren't impacted by ocean issues but by sound problems with regard to the dredging of the inlet. She stated that she could appreciate that and the County wanting to raise money for beach nourishment and that it may need to include dredging and soundside nourishment.

Mayor Pro Tempore Thibodeau asked if it was set in stone or confirmed as to what was needed to dredge the inlet. She stated that it was news to her that the County had a five year plan based on the idea that the Bonner Bridge would negate the need for dredging. She asked if the \$3.5 million was enough to match the state money. She further asked if there had been confirmation from the Corps that they will do it for \$7 million a year. Councilor Caviness didn't think so. Town Manager Layton stated that he did not have the answer and trusted what the County told him. He added that he hasn't seen any details, but knew that this would be sufficient to help them manage. Councilor Britt clarified that it was for two years. Town Manager Layton stated he was correct.

Town Manager Layton went on to review a spreadsheet of the concept of what Dare County was proposing with Council and the audience. He noted that it may change over the next two years.

Councilor Britt asked if the thought from the County was that the General Assembly would be more likely to support it since it was money that was already raised. Town Manager Layton stated that he couldn't answer the question. He thought the other concept was running into trouble and the County recognized that they hadn't used the money and conceptually it wasn't a bad idea.

Councilor Burdick asked what Mayor Kingston and Town Manager Layton wanted from Council. Mayor Kingston thought he and Town Manager Layton wanted to share the information. He added that no decisions would be made. He stated that his position with the County was that he couldn't speak on behalf of the Council. He thought he and Town Manager Layton wanted to be sure Council had the information on what's transpired so far. Town Manager Layton stated that he originally had planned to bring a whole concept to Council and ask for consensus of opinion. He added that, based on the discussion at the meeting, there were definite concerns and Mayor Kingston wasn't going to make the decision without getting direction from Council, but then it changed so it became more of an informational discussion.

Mayor Kingston noted that either approach would need to have General Assembly approval and, if that couldn't be done, then they would be back to a general tax increase from Dare County. Town Manager Layton pointed out that a tax increase by the County impacted everyone, but also the Town would lose significantly in sales tax revenue, which hurts the shared revenues.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that his firm was working on finalizing the beach nourishment easements. He added that the majority have been completed and are ready to be placed in the hands of the property owners to be signed. He stated that he was still working on a few others to finish it up.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

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

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 currently finalizing a Major CAMA permit application. He stated that CAMA requires with some projects, that all of the easements be included in the permit application before they would begin to review it; which was a change from how they have done things on most projects in the past. He stated that the easements were coming together and he was double checking some things as well as preparing a cover letter to go with them. He hoped to have the letters in the mail to the property owners no later than the end of the week of May 11, 2015.

Town Manager Layton stated that part of the project was getting under contract with Coastal Planning and Engineering for pre-construction services. He explained that it was a contract that was with Dare County because part of the funding would be for this part of the project. He stated that it would help the Town with the bidding. He stated that the County was due to approve the contract on Monday, May 4, 2015, but he had not received confirmation on it.

Town Manager Layton stated that he met with the Carters regarding financing and went back over the models. He added that they were starting to prepare the documents that the Town would use to finance the project; primarily focusing on the RFP's with the banks. He stated that they would come back with recommendations related to that. He noted that one of the big issues that needed to be considered was whether they would require the 1.25% payback rate or showing that the Town has in the bank a quarter to a half of the amount of the debt payment. He stated that it becomes a moot point because the Town has sufficient occupancy and sales tax that far exceed the Town's anticipated debt payment.

Town Manager Layton noted that one of the things that would impact the budget was what the Carters would recommend for the project. He added that he met with the auditors earlier in the day to make sure they were comfortable with things. He noted that all of the towns would do it this way. He explained that the Town would do it when the actual project is set up and enter into

the financing agreement in that a Capital Projects Fund will be set up so it could be tracked even though the money would be going through the County because it would ultimately fit in the Town's depreciation schedule. He stated that, with regard to a slight change to the budget – rather than creating a separate Capital Projects Fund – there was concern about what would be spent for debt service, adding that a Debt Service Fund would be set up. He stated that he would be setting up a Special Revenue Fund for this purpose and it would be tracked. He added that it would be less difficult to maintain than a Capital Projects Fund but would get at all the controls that will need to be in place.

Town Manager Layton stated that CP&E would be going out on the beach soon to perform updated beach profile surveys. He stated that they would be getting the data set before they complete their final plans to make sure they were consistent with what the most recent survey data showed. He added that he authorized CP&E to finish the rest of the beach, so they would be completing north and south of the project area to get the data set for the Town. He stated that the Town has sufficient funds in the Beach Management Project Fund. He added that as part of the project, the Town will have to monitor the beach project area every year, but the data set will not be needed every year.

Police Chief Search

Town Manager Layton reminded Council that he had received 131 applications for the position and interviewed thirteen. He stated that the panel decided to bring seven back for a second interview, which will be much more in depth. He noted that they would begin the week of May 11, 2015, and span a period of two weeks, at which point he hoped to come to a unanimous decision or be ready to finalize something. He stated that the interview panel felt good about the applicants and it was a matter of getting more in depth and making sure the applicants would be a good fit for the Town.

Update on Solid Waste/Recycling Contracts

Town Manager Layton stated that the Town's contracts with Waste Management and Tidewater Fibre Recycling will expire in September, 2015. He stated that he had requested updated unit pricing from both companies as well as a proposal from Bay Disposal for solid waste and recycling services. He stated that he would bring a recommendation to Council for the services later in the summer.

Financial Statements for the Month of April for FY 2015

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

MAYOR'S AGENDA

Mayor Kingston stated that he has his monthly mayor's lunch on May 19, 2015. He stated that he, Town Manager Layton and the Police Department participated in a meeting with Currituck County, Dare County, NC Department of Transportation, the Town of Southern Shores and the Town of Kitty Hawk on seasonal traffic issues. He added that he had written Council a letter last week as a result of the meeting he and Town Manager Layton attended. He stated that NCDOT did a lot of positive things that should be put in effect around June 10, 2015. He explained that if a driver was coming up NC 12 from Kitty Hawk, approaching the BP gas station, there will be no turn on red at the intersection so it will no longer be blocked. He stated that there would be "Do Not Block Intersection" signs posted on the arms of the traffic lights at major intersections on US

Highway 158. He stated that there will be lane assignments as one approaches the Wright Memorial Bridge, with people staying in the right lane for Kitty Hawk and south and the left lane for Duck and north. He stated that they hoped to have people funneled into the correct lanes before they approach the bridge. He added that there will be a law enforcement presence, of which the Duck Police Department would be participating, along with Southern Shores, Kitty Hawk, Currituck Sheriff, Dare County Sheriff and the North Carolina Highway Patrol, manning the intersection of NC12 and US Highway 158 on Saturdays and Sundays to keep people from blocking the intersection. He stated that the traffic signal system will be changed to be in sync; traffic cameras will be in placed up NC 12 and into Currituck County; a travel time sign will be put up on US Highway 158 in Currituck, with an estimated time from the point of the sign to the intersection of US Highway 158 and NC 12; alternate travel route sign will be put up to take drivers through Elizabeth City and coming to the Outer Banks through Williamston. He stated that there were a lot of proactive measures that will take place. He felt that NCDOT has stepped up with a lot of the issues.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau gave an update on her attendance at the North Carolina Land of Water Working Group meeting to Council and the audience.

Councilor Burdick thought that the traffic issue was moving nicely, based on the meeting attended in Currituck a few months back. He added that a lot of the suggestions that Mayor Kingston discussed came out of the meeting. He thanked the Fire Department for spending the morning with him recently to show him what they did and how they did it.

Councilor Caviness gave an update on the Tourism Bureau activities to Council and the audience.

Councilor Britt gave a Duck Merchants Association meeting update to Council and the audience.

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 the mid-month meeting on Wednesday, May 20, 2015 at 1:00 p.m.

ADJOURNMENT

Councilor Burdick moved to adjourn the meeting.


Motion carried 5-0.

The time was 9:15 p.m.



Lori A. Kopec, Town Clerk

Approved: June 3, 2015



Don Kingston, Mayor

