

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
October 4, 2017**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, October 4, 2017.

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Public Information Denise Walsh; Public Relations Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:06 p.m. He asked Master Police Officer Joe Knight 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.

Lisa Mann of 1216 Duck Road was recognized to speak. Ms. Mann stated that she was present to address the issue of public restrooms. She stated that the Town has provided a great resource with the boardwalk and beautiful public restrooms at Town Hall. She noted that her store – Beach Treasures – provides public restrooms as well. She stated that she has seen with the influx of people using the boardwalk, that there weren't enough public restrooms in Town. She noted that most of the stores do not make their restrooms available to the general public. She stated that she did not have a solution to the problem other than providing more public restrooms. She added that she wasn't sure if it was possible for there to be any type of regulation stating that there has to be adequate restroom facilities in each store and shopping center. She stated that the most effective sign that she has is a very small "Welcome, Public Restrooms Inside". She stated that there have been incidents where people cannot make it to the restroom when they cannot find an available restroom in a store. She thought there could be a solution achieved somehow, but wasn't sure how.

Lou Ann Jewell of 109 East Tuckahoe Drive was recognized to speak. Ms. Jewell stated that Currituck County was looking at adopting an ordinance regarding beach holes. She stated that she would like to see Duck adopt the same ordinance. She explained that the

beach holes were very big over the summer and were dangerous. She stated that even though the Town's website states that holes need to be filled in, people do not always do so. She reiterated that she would like to see the Town adopt an ordinance regarding beach holes.

Henry Blaha of 121 Ocean Bay Boulevard was recognized to speak. Mr. Blaha stated that he was on the original Land Use Committee in Duck where the committee met for a year and laid out what should and should not be allowed in Duck. He stated that he had an issue with the trash collection. He noted that he didn't have an issue with the trash collection being inefficient, it was that during the summer there was too much traffic due to the trash trucks in Town. He suggested that Council do what the Town of Nags Head does in the summer and have the trash trucks service the Town around 4:00-5:00 a.m. in order to avoid so much traffic on the road. He noted that while it was a minor request, it would save some aggravation for the citizens. He thought it would be an answer to improve things which would show that Council was doing something to improve things in Duck.

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

Police Chief John Cueto was recognized to speak. Police Chief Cueto recognized First Sergeant Jeffrey Ackerman. He read a short biography on First Sergeant Ackerman to Council and the audience. Police Chief Cueto recognized Town Clerk Lori Ackerman. Town Clerk Ackerman swore in First Sergeant Ackerman as the Town of Duck Police Department's newest Lieutenant. Town Clerk Ackerman then proceeded to pin Lieutenant Ackerman's badge on his uniform. Mayor Kingston congratulated Lieutenant Ackerman.

Police Chief Cueto introduced Police Officer John Gilreath as the newest officer for the Town of Duck to Council and the audience.

## **CONSENT AGENDA**

### **Minutes from the September 6, 2017, Regular Meeting**

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

## **SPECIAL PRESENTATIONS**

### **Employee Service Recognition Program Recipient**

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 and Police Chief Cueto went on to present a certificate to Master Police Officer Joe Knight.

## **PUBLIC HEARINGS**

### **Public Hearing/Discussion/Consideration of Ordinance 17-10, an Ordinance to Amend Subsection 156.124(C)(1) of the Zoning Ordinance with Standards Allowing Post and Rail and Post and Rope Improvements for Dune Walkovers within the Beach Nourishment Project Area**

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 Director Heard to give a presentation.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that at Council's July 5, 2017 meeting, there was discussion about the challenges of accessing the beach for people with physical handicaps or limited mobility. He noted that Council requested that the Community Development Department work with the Planning Board to evaluate options for providing greater accessibility for people with limited mobility.

Director Heard stated that at Council's July 5, 2017 meeting, Council discussed several different alternatives, such as allowing post and rope barriers, railings, or wooden walkways down the eastern side of the dune, but decided to adopt the gentler approach recommended by the Planning Board, which was beach access matting, as the initial step; however, Council requested that the Community Development Department work with the Planning Board to evaluate options for providing better access for people with limited mobility.

Director Heard stated that at its meeting on July 12, 2017, the Planning Board discussed a variety of issues and options relating to providing more convenient beach access for people with limited mobility. He pointed out that the following specific issues were discussed and addressed:

1. Due to the height of the dunes, narrow width of the beach accesses, and maximum slope standards for handicap ramps, it is unlikely that any community beach access will be able to accommodate complete ADA handicap access. So, the Planning Board focused on standards to improve access for people with lesser mobility limitations.

2. It was noted that beach access matting and planting vegetation will help guide people to stay on the beach access pathway while not disturbing other parts of the dune.
3. While helpful for keeping people on the pathway, sand fencing and post and rope structures will not provide physical support for individuals with mobility limitations.
4. The consensus of the Planning Board was that an allowance for a single railing adjoining the beach access pathway will provide physical support for individuals with mobility limitations, while minimizing impacts on the dune system.
5. This allowance will apply to community and individual beach accesses.
6. These standards will apply only in the beach nourishment area; however, it is understood that similar improvements are already permitted elsewhere along the oceanfront.
7. The concept of allowing special exception applications to consider additional access solutions on individual lots was discussed, but not recommended by the Planning Board at this time.

Director Heard stated that at its August 9, 2017 meeting, the Planning Board considered a draft ordinance allowing a single post and rope structure to be constructed on the east face of the primary dune to provide support for people accessing the beach. He added that after expressing their agreement with this concept, the Planning Board members discussed details for the design of such structures. He noted that the following specifications were added to the proposal:

1. To keep the structure simple and prevent obstructions for floodwater and blowing sand, the design should only include embedded posts and a top rail. Other support or decoration elements should not be added to the posts.
2. To provide proper support, each post should be embedded at least four feet into the ground.
3. For structural integrity, the span of each rail between the posts should not exceed 10 feet.
4. To provide support down the majority of the dune, but limit potential exposure of the posts due to erosion, the post and rail structure should stop 15 feet above the toe of the dune.
5. If erosion, migration of the dune, or other forces cause any portion of the post and rail structure to extend eastward of the toe of the dune or expose the

supporting posts, that section of the post and rail structure must be removed by the property owner.

Director Heard noted that after listening to the discussion, Councilor Burdick expressed a concern that these types of dune walkover structures were already permitted to be installed to serve oceanfront properties in other areas of the beach as well. He noted that Councilor Burdick pointed out a proliferation of such structures over the dunes could potentially decrease the stability of the dune system. He stated that while Councilor Burdick expressed his support for the proposed text amendment as a positive solution in the beach nourishment area, he also expressed interest in having the Town Council consider the larger issue in the future.

Director Heard stated that at their September 6, 2017 meeting, Council reviewed the Planning Board's recommendations and considered additional alternatives for dune access improvements. He explained that after much discussion, Council requested the Community Development staff to incorporate draft standards allowing post and rope structures to guide people in established beach accesses and limiting activity on the remaining areas of the dune as it stabilizes. He added that Council also asked staff to provide notice on the proposal to all neighborhood associations and oceanfront property owners within the beach nourishment project area.

Director Heard stated that at the Planning Board's request, the Community Development Department undertook an effort to identify other means of beach access for people with physical handicaps or limited mobility. He added that after searching improvements over many dozens of coastal communities throughout the country, the solutions identified were fairly consistent throughout the country. He stated that the improvements and initiatives used in other communities generally fall into the following categories:

- Beach Access Matting – the most common approach for providing a physical surface for people with handicaps or physical limitations.
- ADA Ramp Access – this approach works in areas with dunes of a low or minimal height or areas with a wide area for public beach access.
- ADA Ramps/Pathways into the Sea – this approach will not work in an area as volatile as the ocean beach as the ramp/matting would be undermined or covered.
- Beach Wheelchairs – available in many varieties of push or motorized wheelchairs, this option appears to be the most widely used among beach communities. Some offer special wheelchairs with floatation features to allow access into the ocean on calmer days.

Director Heard stated that at its meeting on August 9, 2017, the Planning Board voted unanimously to recommend approval of the proposed text amendment permitting the installation of a single railing down the eastern side of the primary dune to provide

greater support for people accessing the beach. He added that at its meeting on September 6, 2017, Council requested that the ordinance be considered during the public hearing to additionally include an allowance for standards for the installation of post and rope structures guiding access down the east side of the dune. He noted that staff was also recommending approval.

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

Mayor Pro Tempore Thibodeau stated that Director Heard gave Council the definitions of adding post and rails and clarified single post and rail structures as well as talking about the post and rope structure. She noted that post and rope could be on both sides while post and rail would be only on one side. She stated that she read through both definitions and felt comfortable reading them. She wondered if the definitions had been viewed by Town Attorney Hobbs and if there was anything more that could be done to describe them. She noted that the post and rope, by definition, could go on both sides.

Mayor Kingston asked what discussion Director Heard had regarding having the post and rail on only one side versus both sides. He asked what the Planning Board concluded or discussion that they had. Director Heard stated that the thought of post and rail was that it was purely a structure. He added that the issue that the Planning Board was tasked with was identifying ways to help people with limited mobility. He stated that that was what they were focusing their recommendation on. He explained that it didn't serve a great purpose to have two rails when a person could use one or the other. He reminded Council that the Planning Board's original thought process was to do as little as possible until staff can see how things stabilize. He added that the Planning Board wanted to minimize that and that was why they opted for a single rail as opposed to two. He explained that they were not considering the issue of channeling people in a certain way.

Mayor Kingston clarified that it would be an advantage to channel people between the rails to keep them off the dunes. Director Heard stated that it would serve that purpose if there were two rails. Mayor Kingston stated that people could come up the channel instead of coming across the dune where the rail was located. He thought it would be the opposite by being an advantage. Director Heard agreed, adding that it could serve a dual purpose.

Councilor Burdick stated that he read through all of the comments from the last meeting and it was a wide-ranging discussion. He thought that what Council had in front of them was a very simple approach to try to assist people by keeping them from roaming all over the dunes and help people to more easily get up and down the dunes. He thought the description achieved that. He stated that it seemed that the Town should have the same structure description in terms of all of the posts embedded so that there was the same structural stability and distance down to the toe. He thought that if the Town decided to use the post and rail system, it would really be used as a dual option, and it should be allowed to go down to the toe of the dune.

Town Attorney Hobbs asked if members of the Planning Board wished to make a presentation.

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis pointed out that when the Planning Board first started to consider the issue, they were very concerned, as was Council and staff, that the new dune not be disturbed and minimize the disturbance of the new dune. He added that that was the reason for the single rail system. He stated that there was no need for two rails, so the Board decided to put in the minimum number of posts and make it one rail as that was all that was needed. He stated that the other reason for the toe, was that the toe would get altered and one of the requirements in the Town's ordinance that was proposed was that the owner must repair or reduce the length of it if it becomes damaged at the toe. He noted that work was being created for an owner or homeowner association. He thought 10 or 15 feet would not really matter as when someone gets down to that level, they tend to keep going straight.

Mayor Pro Tempore Thibodeau thought Joe Blakaitis made some great points.

Town Attorney Hobbs asked if any members of the public wished to address the proposal.

Henry Blaha of 121 Ocean Bay Boulevard was recognized to speak. Mr. Blaha suggested that Council allow two rails as well as a single rail and walk up each one while carrying beach items and decide which one was the easiest to use.

Laura Holleman of 132 South Snow Geese Drive was recognized to speak. Ms. Holleman stated that she was very happy about the project. She noted that the before and after photographs of the sand hills were impressive. She added that people will be deterred from wandering all over the dunes by using structures that will benefit sand collection on the dunes.

Town Attorney Hobbs asked if Council had final questions.

Mayor Pro Tempore Thibodeau asked if the sand fencing on the dune of the nourished beach was permitted if it was installed laterally and properly. Director Heard stated she was correct. He noted that it was not permitted to be used as a channel all the way down the dune in the proposal, but the use would be encouraged in order for them to continue to do what it was made to do in capturing the sand. Councilor Britt clarified that it could go all the way down the slope. Director Heard stated he was correct.

Councilor Burdick pointed out that before the beach nourishment project was done, the Town was allowing sand fencing all the way down to the toe of the dune to try to preserve what little dune there was. He noted that it was not a change from what was done before. Mayor Pro Tempore Thibodeau agreed.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that at least four votes would be needed to approve the ordinance on a first read.

Councilor Britt thanked the public for both their oral and written comments. He stated that he read a lot of comments about people traversing along the top of the dunes and agreed with one of the comments – finish the sand fencing across the top and the planting that will be done. He thought the problem would take care of itself. He found that when people go down the slope, it will change; Council knew it would change and were told it would change. He added that by walking down the slope, it would be easier to walk down at an angle than to go straight down for some people. He stated that the issue was with single homes which would not present that much traffic. He added that when the issue was first discussed, Council wanted to do something for the community accesses, which has come up. He stated that he did not like the idea of every single home being able to have post and rails or post and ropes down to the toe of the dune. He stated that if one person does it, then it would proliferate and the re-nourished beach will not look good. He stated that he did not think it solved the purpose that the Town set out to solve, and thought with the way sand moves, a rail could be installed and after one sand storm, it would be at a different height. He pointed out that due to the sand, the height of the rails would constantly move and have to be adjusted. He thought the Town should look at doing it at community accesses, where there will be much more foot traffic with a much more dramatic effect on the dune. He added that the public could be guided using beach matting, which he did not have an issue with since it could be removed. He noted that the Town has not given the beach nourishment project six months yet. He reiterated that he was not a fan of putting posts down the slope of the dune.

Councilor Burdick stated that Councilor Britt made some good points. He thought it was valid that the Town needs to permit something that limited the flow of people across the face of the dune at community accesses. He added that he witnessed the impact at his beach access over the summer and it was minimal. He thought the traffic across the dune would not do much damage. He could see that the homeowners that were adjacent to it would like to limit people traversing across the front of the dune. He thought the Town needed to do something to help the semi-handicapped people to get up and down the dune. He agreed with Councilor Britt that Council did not want to go all the way to the toe of the dune because it would add maintenance and problems in the future. He liked the idea of initially restricting posts to the community accesses and limiting where they would be erected on the dune as well as limiting it to one post and rail or one post and rope system per access way. He thought it would help the Town accomplish 95% of what it was trying to do as well as seeing how the dunes will shift over the next six months. He reiterated that something should be done, but only the minimum.

Mayor Pro Tempore Thibodeau agreed with Councilors Britt and Burdick regarding keeping things to a minimum, recognizing that things will change but also allowing some type of assistance for people who may feel the need to grab onto something to move around a little easier. She agreed with keeping things minimized and felt that the Town should concentrate on community accesses and not allowing anything additional for



private accesses at this point. She stated that she would like to see what nature will do to the nourished dune and would support a post and rail system on community accesses with the limitation that the Planning Board considered and eliminate the idea of a post and rope system and if anyone wanted to help guide people, they could use the sand fencing. She added that the rail will serve a purpose, which she could get behind, but was trying to keep it as minimal as possible.

Mayor Kingston asked if Council was being fair to the oceanfront owners that paid for 40% of the project by not allowing them a similar type of access to the beach as the community accesses. He added that it would be for the same reasons – to keep people off the dunes and channel them as well as allowing renters and owners that may be handicapped or disabled to get onto the beach. He didn't think it was fair to ask them if they did not have the capability to come out of their homes and go down a community access. He asked how many community accesses versus individual homes were in Town. He understood Councilor Britt's concern regarding aesthetics, but as one traverses the beach in the non-nourished area, just about every home and community access has stairs and ramps, and it didn't detract in those areas. He thought part of the protection of the new dune was keeping people channeled. He thought Council needed to look at those homeowners and ask if it was fair to them by restricting their access to the beach.

Mayor Pro Tempore Thibodeau thought Mayor Kingston was bringing up two points – channeling and access for people that may have difficulty. She thought they were two separate issues and thought channeling could be handled with sand fencing. She pointed out that with regard to access, the Town went through a summer with the access as it was and didn't hear a tremendous backlash. She thought the Town was doing the community in general a service by letting things settle longer and perhaps revisiting the issue if it became one. She pointed out that people were getting down the beach as there were products available as well as the Town's public safety officials helping people get to the beach. She reiterated that she would like to keep things minimal with the idea of possibly changing it in the future. She felt that creating a set of regulations on shifting sands was premature.

Councilor Caviness appreciated all of the comments that were made that it was a dynamic situation and that it seemed somewhat premature for Council to make a hard and fast rule at this point. She noted that the Town spent an extraordinary amount of resources in doing the beach nourishment project with professionals saying that the more structures that are put on the dunes, the faster they would become destroyed. She stated that she would like to see the Town take some time in the nourishment area before it enacts anything and if anything needs to be done immediately to help with access, it should be restricted to community access points and then revisit the entire issue after some settling occurs. She stated that she had a strong opinion on the post and rail system versus the post and rope system. She explained that if the structures were being used as "access" or "assistance to mobility", she did not see how a rope would be helpful in any way, shape or form to help someone maneuver down the beach. She added that if someone truly needed assistance for leaning, the rail will be the only thing that will help, not the rope. She stated that she liked the look of the rope over the rail, but it would be more of a guide

than an assistance. She stated that if something was to be done for access or mobility, then something minimal should be done, shortened up from the toe, at the community access points. She thought it was prudent to wait.

Mayor Kingston agreed with Councilor Caviness' comments as to why anything should be done right now. He pointed out that the majority of people will not be going to the beach right now. He agreed with waiting six months and readdressing the issue in the spring in order to see what happens over the next six months with the dune. Councilor Burdick stated that if Council tables the issue, people will be free to do what they want. Mayor Kingston, Mayor Pro Tempore Thibodeau and Councilor Caviness disagreed. Mayor Pro Tempore Thibodeau pointed out that it was limited in July. Councilor Britt noted that people could install sand fencing. Councilor Burdick clarified that only sand fencing could be installed. Councilor Britt stated that beach matting could also be installed.

Councilor Caviness stated that if sand fencing and planting was proposed and planned for, and matting had the least impacts to the dune, she felt confident that it was the most prudent step to take while the Town waits for the dune to settle. She added that if the Town was still having issues, then it could be taken up again. She noted that a lot of due diligence was done up to this point to make a decision.

Town Manger Layton stated that he and Permit Coordinator Sandy Cross had discussed the issue earlier in the day and because the sand fence that the Town installed on top of the dune has been successful and due to concerns that once it becomes covered with sand, it may be worth considering installing one more set of sand fencing further down the dune. He noted that it would not be installed on the toe, but in the middle of the dune, which would help the sand coming up and would serve to help with the traversing of the dune. He noted that the catch would be an additional \$30,000. He added that if that was something Council wished to consider, staff could explore it more.

Councilor Caviness clarified that Town Manager Layton was talking about a planned approach to fence on the oceanside. Town Manager Layton explained that it would be installing another set of sand fencing in a different location. He stated that funds would be transferred from the beach nourishment project to fund it and have the Town install it. He thought it would help with the sand as well as help maintain some of the channeling and build up the dune. Councilor Caviness asked if it would help with future planting. Town Manager Layton stated that the planting would happen around it.

Mayor Pro Tempore Thibodeau thought it was a great idea. She thought the Town needed to think about investing more than \$30,000 for sand fencing. She thought the Town put millions of dollars into the project and sand fencing would anchor it more than anything. She stated that as much as she's concerned and appreciated the people needing access, the Town has been working around the issue. She stated that the Town should be investing more in preserving what it has and doing more sand fencing. She reiterated that she was in favor of spending more than \$30,000 for sand fencing with a bigger plan to keep the fencing going.

Town Manager Layton thought if the Town approached it incrementally, the sand fencing could be installed and in the meantime the fall beach grass would be planted. He added that Council could continue look at it and if they felt that more sand fencing was needed, it could be installed. Mayor Pro Tempore Thibodeau agreed. She added that it could be a Retreat item to study what has happened and what some of the experts were saying. Town Manager Layton stated that because the Town didn't know exactly how it will respond to another set of sand fencing, he would hate to put it in. Mayor Pro Tempore Thibodeau agreed, adding that she wasn't saying to do it right away, but Council should be thinking that that was where Town resources should be channeled.

Councilor Burdick thought it was important that Council make a short-term decision on the issue because it was now the season of northeast winds, which blows the sand away. He thought Town Manager Layton's suggestion was excellent. He added that Spencer Rodgers could be consulted and it could be explained to him what the Town was trying to do to see what comments he may have to optimize it.

Mayor Kingston asked if a motion to defer the ordinance was needed. Town Attorney Hobbs stated that it was not needed since it would die for lack of a motion. He explained that if Council wanted to revisit the issue, it would go through the entire process, including being sent to the Planning Board, with another public hearing.

It was *consensus* of Council to let the ordinance die.

Councilor Britt stated that he would like a uniform approach with more sand fencing. Councilor Burdick agreed, adding that Town Manager Layton had a good plan and everyone needed to see what happens.

Mayor Kingston asked Town Manager Layton if he wanted to come back with a proposal to Council. Town Manager Layton stated that he would rebid the sand fencing in order to check the availability and come back at the November 1, 2017 with a budget amendment and proposal.

Mayor Pro Tempore Thibodeau thought it was worth noting that it was not for lack of being concerned about access for people that cannot access the beach. She thought it was something that Council was concerned about and can address in the future.

Councilor Burdick noted that the Town was coming out of the peak season and the real issue was how to keep the dune stable over the winter. Mayor Pro Tempore Thibodeau pointed out that people like to use the beach all year long. Councilor Burdick agreed, adding that the access issue of helping people tended to be first among the residents. Mayor Pro Tempore Thibodeau stated that that was the reason the issue started. Councilor Burdick stated that if Council walked away from the issue, it would be doing nothing. Mayor Pro Tempore Thibodeau stated that Council was not walking away from it, it was being deferred.

Councilor Britt thought the community access point could be an item on the agenda for the Retreat. He stated that Council could look at the community accesses and if it was decided that they would like to do something, it would give them time to do something before the season starts. He added that he wouldn't want to do anything now with the community accesses. Mayor Kingston thought it was a good idea for the Retreat but thought all accesses should be included. Councilor Burdick pointed out that the people that live in Duck year-round were having problems now and it did nothing for them. Councilor Caviness thought discussing community access points was a timely topic since a lot of them were built before many of the neighborhoods were built out and were completely insufficient.

Mayor Kingston stated that Council would take no action on Ordinance 17-10 and Town Manager Layton would come back with a proposal at the November 1, 2017 meeting to look at additional sand fencing. He added that Council will look at a Retreat agenda item for access to the beach.

**Public Hearing/Discussion/Consideration of Ordinance 17-11, an Ordinance to Amend the Definition of "Lot Coverage" in Section 156.002 of the Zoning Ordinance by Exempting Public Sidewalks and Similar Public Improvements from Lot Coverage Calculations**

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 at Council's August 2, 2017 meeting, Council authorized the Planning Board and Community Development staff to develop a text amendment creating an exemption for public sidewalks on private properties from lot coverage calculations.

Director Heard explained that the Town planned to begin construction of public sidewalks along the east side of Duck Road in the Fall of 2017. He noted that in several instances, the sidewalk will meander onto private property, usually to avoid existing utility infrastructure. He added that the Town was seeking easements from those property owners. He stated that in order for those properties not to be penalized for allowing public sidewalks, the Planning Board was proposing to add an exemption for public sidewalks and similar public improvements to not count as lot coverage.

Director Heard stated that at the Planning Board's meeting on August 9, 2017, the Board voted unanimously to recommend approval of the proposed text amendment creating an exemption from lot coverage calculations for public sidewalks and similar public improvements extending onto private properties. He added that 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 make a presentation. There were none.

Town Attorney Hobbs asked if any members of the public wished to address the proposal. There were none.

Town Attorney Hobbs asked if Council had final questions. There were none.

There being no one wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that at least four votes would be needed to approve the ordinance on a first read.

Councilor Caviness moved to adopt Ordinance 17-11 as presented.

Motion carried 5-0.

### **OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS**

#### **Discussion/Consideration of Authorizing the Town Manager to Enter into a Contract with Barnhill Contracting Company, Inc. for Asphalt Path Maintenance and Repairs to the Duck Trail, the Entrance to the Army Corps of Engineers Field Research Facility and the Beach Nourishment Staging Area on the Field Research Facility Property**

Town Manager Layton stated that on August 11, 2017, the Town issued an Invitation to Bid for asphalt path maintenance and repairs to the Duck Trail, the entrance to the Army Corps of Engineers Field Research Facility and the beach nourishment staging area on the Field Research Facility property. He noted that the asphalt repairs and maintenance were for the area of the Duck Trail from Ships Watch Drive to Nor'Banks Drive. He stated that bids were open on September 7, 2017, and bids were received from Barnhill Contracting Company, Inc. for \$84,520 and RPC Contracting, Inc. for \$87,640. He recommended that Council authorize him to enter into a contract with Barnhill Contracting Company, Inc. for the work.

Town Manager Layton noted that the bids also included unit costs for asphalt repairs and maintenance. He added that it was the intent of staff to utilize any remaining funds for additional work on the Duck Trail based on these unit costs.

Mayor Kingston asked if there would be some minimal reimbursement from Great Lakes Dredge and Dock. Town Manager Layton stated that there would. He stated that there was still some negotiating going on, but he expected that Great Lakes would be paying for the repairs at the staging area only.

Councilor Burdick asked if the money for the Corps area was coming from the project. Town Manager Layton stated that it was coming from project funds. Councilor Burdick

clarified that the \$120,000 was budgeted from the General Fund. Town Manager Layton stated that it was a combination because the Town estimated what the costs would be and in terms of how the budget was set up, approximately \$25,000 was being transferred from the Reserve Fund to the General Fund to pay for this project. Councilor Burdick clarified that it was \$25,000 out of \$120,000. Town Manager Layton stated he was correct. He added that the total line item was \$120,000 but \$25,000 was coming from the Capital Reserve Fund.

Councilor Caviness asked what the timeframe for the project would be. Town Manager Layton stated that he hoped to be under contract in the next couple of days and Barnhill wanted to be aggressive with the project and he believed it would be 75 days from the date of the contract. He added that they would move very quickly.

Councilor Britt clarified that Barnhill wanted to complete the work before the weather gets cold. Town Manager Layton agreed, adding that if weather posed a problem, they're per-unit cost was very low. He stated that they would keep workers on site to keep them busy so the Town will benefit from that. He didn't expect the second phase of the project to be done in that timeframe as it will be an amendment to the contract. He expected the initial contract to be completed rapidly.

Mayor Pro Tempore Thibodeau asked if it would be happening in real time in that Barnhill would be out there doing the initial project that they bid on and while out there, the Town could see how far the rest of the dollars could go. Town Manager Layton stated she was correct.

Councilor Burdick moved to authorize the Town Manager to enter into a contract with Barnhill Contracting Company, Inc. as presented.

Councilor Caviness stated that she was in favor of the project, but noted that there will be a substantial amount of pedestrian area destroyed for a while. She added that it will not be safe for people who use the Duck Trail. Town Manager Layton stated that he will make sure that topper cones will be out to guide people in that area.

Motion carried 5-0.

## **NEW BUSINESS**

### **Discussion/Consideration of Authorizing the Town Staff to Develop an Ordinance related to the Regulation of Golf Carts**

Town Manager Layton stated that over the last few months, the Duck Police Department increasingly had to deal with the issue of golf carts being used inappropriately and in some cases, illegally, in Town, particularly on the Duck Trail. He explained that the issue was a safety issue where there have been a variety of incidents and found that one of the biggest issues was the fact that individuals using golf carts seem to believe that the Duck Trail and the shoulders on NC 12 in the Village area were designed specifically for golf

carts. He stated that there has been an incompatible combination of uses with pedestrians, bicyclists and golf carts that staff was now hoping to address somehow.

Police Chief Cueto gave a short presentation on the regulation of golf carts to Council and the audience. He stated that the Police Department would like Council to consider the adoption of a model ordinance regulating golf carts, both street legal and golf carts that were not street legal. He explained that while the Town was limited in how it can regulate golf carts on private roads and subdivisions, the Town could require a registration or permitting program that would assist in the dissemination of information on the proper use of golf carts within the Town.

Police Chief Cueto stated that the Police Department has taken considerable steps to control the usage of golf carts throughout the Town. He stated that it has been explained that this issue would require a multi-faceted approach to include appropriate signage, informational materials, and progressive law enforcement initiatives. He noted that the Police Department has installed “no golf carts” signs along the multi-use path, provided the appropriate materials to the property management agencies, the golf cart rental companies and homeowner associations. He added that officers have enforced the traffic laws when issuing verbal warnings, written warnings, citations and non-custodial arrest, when necessary. He explained that while the Police Department continues to engage in these certain aspects, it has become evident that existing Ordinance 11-05 was insufficient and that the Town should adopt an ordinance that provides specific guidelines to ensure the safe operation of golf carts in Duck.

Police Chief Cueto stated that the problem was not unique to the Town of Duck as many similar towns in North Carolina have wrestled with making their communities fun, but safe. He explained that in this regard, NCDOT has established a model golf cart ordinance and made it available to all towns and municipalities. He added that the model policy established definitions, rules and regulations, registrations, inspections, enforcements and exceptions. He noted that most recently, the Town of Carolina Beach adopted the model ordinance, as well as the Town of Beaufort and the Town of Trent Woods. He stated that in each instance, the NC model policy was adopted and modified to meet the needs and address issues specific to the community involved. He stated that the concept of this proposal set forth the adoption of the NC model policy to be amended to capture the character to the Town of Duck.

Police Chief Cueto stated that North Carolina General Statute Section 160A-300.6 was the statute that gives towns and municipalities the authority to regulate golf carts. He explained that the statute provides the authority to regulate golf carts on public roads only. He added that it would provide control of street legal golf carts, on public roads, and not extending it to unregistered golf carts on private streets. He noted that with this legislation enacted, NCDOT then provided the model policy that has been presented for consideration. He stated that elements of this proposal would begin with the adoption of the North Carolina model policy establishing a golf cart ordinance for the Town. He recommended that the policy be amended to require that street legal golf carts be registered and permitted by the Town. He added that since the Town had no official

capacity to regulate non-registered golf carts, the hope was to encourage registration of these vehicles with the Town, just the same as street legal golf carts. He stated that by installing a program that encourages community input, it would provide a mechanism for clear communication and adherence to state laws and Town ordinances.

Police Chief Cueto pointed out that North Carolina General Statute Section 160A-300.6 provides the authority to regulate golf carts on public streets and roads only. He added that it did not authorize any ability to regulate the use of a golf cart on a private road, such as an HOA or gated community. He noted that the matter becomes complicated since 30% of the side streets in Duck were state maintained, making them public roads. He stated that the Town would then have the authority to regulate golf carts in the HOA's having state maintained roads and require that they must be street legal.

Mayor Kingston asked Police Chief Cueto if he had visited out of town rental companies. Police Chief Cueto stated that he had not. He added that he knew it was a matter of discussion because there were six companies including those in Currituck County. He noted that if the Town required a registration, only vehicles that were registered with the Town would be permitted to be operated on Town streets. He stated that there were other towns that, if they rented a golf cart to an individual, they would have to have a permit to do so. Mayor Kingston asked if someone purchased a golf cart, would there be any kind of tracking by the State with respect to property taxes. Town Manager Layton stated that it would apply only if it was street legal, otherwise it would be tracked through sales tax.

Councilor Burdick stated that he looked at the registration as a means to an end rather than it being the end. He stated that it would be the Town's opportunity to ensure that the rental companies would be required to give an adequate amount of safety training to whomever was renting the golf cart. He added that it gave the Town the opportunity to get to the people that would be driving the golf carts; more so than just passing out brochures. He thought the safety training could be included in the ordinance that would be required by the lessor to the lessee, which would entail better operation of the vehicles. Police Chief Cueto agreed. He added that when one rents a street legal golf cart, it should be legally and safely operated on NC 12 and any other road in Duck. He stated that if someone rented or operated a non-street legal golf cart and did not have the safety equipment on it, individuals should be made aware that they cannot operate them on NC 12 or any state maintained roads. He stated that the other side of the issue was the transparency that would be provided in that they would know what would need to be done to operate the golf cart.

Councilor Britt clarified that if someone in Duck wanted to rent a street legal golf cart, they would have to register it with the Town or have a permit. Police Chief Cueto stated that there were two types of golf carts – one was street legal with all of the safety mechanisms, which the registration and permitting should be required with the Town so it can be insured that they have the information needed. He added that there would be some sort of sticker or placard that would say that the street legal golf cart could be operated on NC 12 within the Town. Councilor Britt asked if someone rented a golf cart from a company outside of Duck, and bring it to Duck without knowing about the



registration and permitting, a warning would be issued to let them know. Police Chief Cueto thought there were a few ways to deal with it, in that the rental company would have to have a signed document to the renter that stays with the vehicle. He added that it could be a placard or some sort of sticker that explains things. He stated that the alternative with the privately-owned golf cart would have the same understanding that they could not operate the vehicle on NC 12.

Town Manager Layton stated that staff did not want to spend a lot of time coming up with a full-blown plan until they knew that there was some comfort and direction from Council. He added that staff wanted to propose the idea of what was being considered and receive input from Council, and if approved, staff would flush out the details and bring it back at a future meeting. He stated that if Council was not interested, then staff could move on to something else. He asked Council if they wished to move forward and were comfortable with staff exploring the registration and permitting option. He noted that staff had some legal questions that would have to be discussed with Town Attorney Hobbs about what would be allowed on private streets. He stated that street legal versus non-street legal was pretty straightforward. He stated that staff believed that street legal or non-street legal could be required to be registered to operate within the Town. He thought it was ideally what staff would like to do in that having the golf carts registered would ensure that staff got the safety information out to the public. He stated that the questions staff had to work on were with the rental companies. He explained that if the golf cart is rented from a company in Currituck County, staff would want the vehicle to be registered whether it was street legal or not. He stated that the question would be how to do that. He reiterated that the idea would be that anything that was operated in Duck, there would be documentation that whomever was operating the golf cart, was aware of the safety issues surrounding the use of the vehicle.

Councilor Burdick asked if it was clear what the State statutes were with regard to how the Town could regulate golf carts. Town Attorney Hobbs stated that it was clear that the State was allowing municipalities to regulate golf carts. He stated that he wanted to look at the exact language with regard to what was being proposed in order to state if it was okay or not. He added that other towns, including Dare County, already have ordinances in place related to golf carts, so this would not be a novel idea.

Mayor Pro Tempore Thibodeau stated that she liked the idea of education as well as a forced education with regard to the registration. She thought there was a lot of administration involved with it, which concerned her and made her think of what was done for weddings in Town with regard to the registration form. She stated that it would be interesting to see what the volume would be. She stated that she was in favor of pursuing the idea and seeing where the Town could go with it. She thought there could be some kind of identifier to identify golf carts as street legal versus non-street legal. Town Manager Layton stated that street legal golf carts have license plates affixed to them.

Councilor Burdick wondered how much of an administrative disaster would be had with this or if there was a simplified approach to make it workable and reasonable. He stated

that the idea of pursuing it was good but it should be pursued in a way that it could be managed.

Mayor Kingston suggested giving staff a chance to develop it and look at it at a future meeting. Councilor Burdick agreed.

Councilor Caviness thought one of the biggest challenges would be that many of the golf carts were attached to a rental home as an amenity. She stated that a homeowner would know the rules, but the issue was conveying the correct information every week during the summer to renters. She stated that the homeowner could register the golf cart, but it didn't mean that the renters would be compliant. She thought the solutions with clings, signs and magnets would help people understand the issue and be easier to facilitate. Town Manager Layton thought the Town was flirting with disaster as there was no perfect solution at this time. He added that with regard to the clings and magnets, staff would want to do that, but have them on the golf carts so that there would be some basic level of understanding. He pointed out that the use of golf carts has accelerated to the point where they are on the Duck Trail on an almost daily basis. He added that a street legal cart was not designed to be driven on the trail. He thought that because of the confusion surrounding the use of the vehicles, staff was trying to prevent an issue of an accident with a golf cart.

Councilor Burdick pointed out that the Carolina Dunes subdivision seems to have a lot of teenagers driving golf carts all over the subdivision. He added that it was a real safety issue. Town Manager Layton agreed, adding that it was a sticky situation. He stated that the goal was not to prevent people from using the golf cart to get to the beach access, it was to prevent accidents. He stated that if Council were to adopt the model ordinance, one of the pieces in the ordinance was that if it wasn't a street legal golf cart, then it could not be operated on a State maintained road and staff would either have to turn a blind eye or people would be forced to get a street legal golf cart. He added that there needed to be further discussion on how to handle that.

Mayor Kingston moved to authorize Town staff to develop an ordinance related to the regulation of golf carts.

Town Manager Layton stated that the timeline would be by the annual Retreat.

Police Chief Cueto noted that, as Chief of Police, if he was subpoenaed, he could testify that he took every responsible step to ensure the safe operation of golf carts in Town.

Councilor Britt agreed that something needed to be done, but wasn't sure how it would be accomplished. Mayor Pro Tempore Thibodeau stated that as staff was thinking things through, they should feel free to have conversations with Council, community members and property managers. She thought it needed to be flushed out.

Motion carried 5-0.

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

Town Attorney Robert Hobbs introduced his colleague, Will Barone, to Council and the audience.

## **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 Cueto 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.

Director of Marketing and Events Denise Walsh was recognized to speak. Director Walsh gave a brief overview of the upcoming Jazz Festival activities to Council and the audience.

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

Town Manager Layton stated that the dune construction project held up very well during the recent storms. He added that a video was completed after Tropical Storm Jose passed by to answer any concerns about escarpments. He stated that the engineers have indicated that the project was doing what it was supposed to do and equilibration was still in effect and will be for a while.

### **Update on the Phase I of the Comprehensive Pedestrian Plan**

Town Manager Layton stated that there would be a meeting held in the next few weeks to get everything in place and he hoped to have a contract finalized and have the preliminary work started well before the next meeting.

### **NCBIWA Annual Conference November 13-14, 2017**

Town Manager Layton stated that the North Carolina Beach, Inlet and Waterway Association meeting will be held on November 13-14, 2017 in Wrightsville Beach. He added that if any Council member wished to attend, to let him or Town Clerk Ackerman know.

### **Financial Statements for September FY 2018**

Town Manager Layton reviewed the financial statements, beach activities and beach nourishment reports with Council and the audience.

### **MAYOR'S AGENDA**

Mayor Kingston thanked Town Manager Layton for representing him at the control group meeting while he was away the week before. He stated that he has his mayors meeting on October 17, 2017. He stated that he attended the North Carolina League of Municipalities annual meeting in Greenville back in September and found it a very worthwhile experience. He encouraged other members of Council to attend in future years. He added that it was a good three and a half days with a lot of information and content. He reminded Council that he was nominated by the Nominating Committee to serve on the Board of Directors, replacing Roland Vaughan, the mayor of Edenton. He added that he was elected and sworn in, serving a two-year term for District 1, which was all of the cities and towns for the 12 counties in northeast North Carolina. He thought it will be an interesting experience, adding that the first board meeting will be later in the month.

Mayor Kingston stated that he recently joined the North Carolina Mayors Association, which was an organization within the League of Municipalities. He added that the League did a tour around the regions to speak to the mayors in order to see if there was interest in doing it and organized a Mayor's Association with the first meeting held on the first day of the conference. He stated that the chairman of the first board was the mayor of Durham. He added that there were approximately 100 mayors in attendance at the first meeting. He thought it was a good opportunity for current and future mayors to be associated with, as other mayors could be contacted to discuss issues.

Mayor Kingston stated that he was looking forward to the jazz festival. He reminded the audience to get out and vote on November 7, 2017.

### **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau welcomed Mayor Kingston back from his vacation and was glad he didn't have to miss any big weather events. She stated that she has received great feedback from citizens regarding the recent newsletter that was mailed out and thanked staff for all of their hard work on it. She stated that she was excited about the upcoming jazz festival. She noted that the parade of homes was coming up over the weekend. She stated that the winter lights will be held at the Elizabethan Gardens in November through January.

Councilor Caviness stated she had nothing to report.

Councilor Britt stated that he would be out of town for the jazz festival. He thought Henry Blaha brought up a good point about the trash pickup in the summer. He felt it should be looked at.

Councilor Burdick stated that he had nice vacation and was looking forward to the jazz festival. He thanked Council for approving the letter to the State regarding the 35mph speed limit on the north side of town. He thought it was an important safety item.

**OTHER BUSINESS**

**Additional Public Comments**

Mayor Kingston opened the floor for public comments.

Henry Blaha was recognized to speak. Mr. Blaha recommended that Council go to the Sanderling subdivision to see the sand fencing and how a secondary sand dune was forming. He thought Council could think about using the Sound Sea subdivision beach access to place some of the sand fencing and see where the sand builds up since it will make it easier for people to traverse the dunes.

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

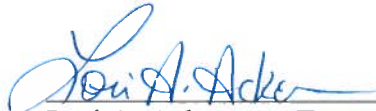
Mayor Kingston noted that the next meeting will be the Regular meeting on Wednesday, November 1, 2017 at 7:00 p.m.


**ADJOURNMENT**

Councilor Burdick moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:56 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: November 1, 2017  
  
Don Kingston, Mayor

