

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
October 5, 2015**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Monday, October 5, 2014.

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; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Public Information Officer Denise Walsh; Administrative Assistant Bethany Conery; and Town Clerk Lori Kopec.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:03 p.m. He asked John Wander to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments.

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

CONSENT AGENDA

Minutes from the September 2, 2015, Regular Meeting, Minutes from the September 17, 2015, Special Meeting and Budget Amendments

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of an Appointment to the Planning Board

Mayor Kingston stated that at its September 2, 2015 meeting, the Council established a framework for a process for the selection of an individual to serve the unexpired term of

John Fricker on the Planning Board, which included a scoring matrix. He stated that Council heard presentations on September 17, 2015 from six of the nine individuals that applied for the position. He stated that Council would open the floor for nominations with Council nominating any of the six individuals and then nominations would close and a vote would be taken. He thought a simple majority would win.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the procedure stated that anyone could make a nomination, then there could be a discussion and the presiding officer shall take a roll of all members and each member shall vote and the votes should not be tallied until each member has voted. He added that the nominee that receives the highest number of votes shall be appointed. He noted that it did not require a majority. He stated that he spoke to the School of Government and they concurred that that was how it was written and was based on one of the optional Rules of Procedure publications that they put out on procedures for City Councils.

Mayor Kingston clarified that Council could make all of the nominations at once, close the nominations and then vote. Town Attorney Hobbs stated he was correct. He explained that the nominations could be opened, they could be discussed and after all nominations were made, then the roll could be called for all Council members for each to vote and then the candidate that receives the highest number of votes would be appointed.

Mayor Kingston opened the floor for nominations.

Councilor Burdick nominated James Cofield. He thought Mr. Cofield had an excellent background, including experience that paralleled the Planning Board and would bring excellent diversity to the Board.

Mayor Pro Tempore Thibodeau nominated James Cofield. She added that there were some excellent candidates for the Planning Board position.

Councilor Caviness nominated James Cofield.

Councilor Britt nominated Kent Zimmerman.

Mayor Kingston nominated Sandy Whitman. He stated that Mr. Whitman was a long time property owner, Vice Chairman of the Board of Adjustment and a volunteer for many years. He added that Mr. Whitman frequently attended Council and Planning Board meetings and had a wealth of experience from serving on the Planning Board in Kingston, New York. He stated that he liked Mr. Whitman's knowledge of construction and electricity.

There being no other nominations, Mayor Kingston closed the nominations and called the roll.

Councilor Britt voted for Kent Zimmerman.

Councilor Caviness, Councilor Burdick and Mayor Pro Tempore Thibodeau voted for James Cofield.

Mayor Kingston voted for Sandy Whitman.

Mayor Kingston stated that James Cofield would be appointed to the Planning Board as he received the most votes. He thanked the other applicants that applied for the position.

Update on the Consolidation Committee Meeting

Town Manager Layton stated that on September 24, 2015, most of the Mayors from the six municipalities, plus the Chairman of Dare County, along with the Managers met and discussed initially the idea of consolidation. He stated that consolidation was probably a stronger term in many ways than what was intended. He thought the real purpose was to look at areas to cooperate, not necessarily to consolidate, but to cooperate where it would save money for all of the towns. He stated that examples that were put out that were already occurring was the beach nourishment project. He added that three towns and the County were cooperating to save 17% in costs. He stated that another example was the fact that Dare County did the taxes for all of the towns except for Nags Head. He stated that he has made the point before that the \$50-\$70,000 the Town spends with Dare County for a 99.9% collection rate was something Duck could not do on its own at that cost.

Town Manager Layton stated that Council had in their packets notes from the meeting that were prepared by Dare County Clerk Gary Gross. He stated that one of the questions that was asked initially was what was not open for discussion for consolidation. He added that very quickly it was essentially agreed that law enforcement and fire protection were not something that the majority of the towns wanted to discuss in terms of consolidation.

Town Manager Layton stated that items that were put out for possible consideration were consolidation of purchasing, vehicle maintenance, buildings and grounds, public works, consolidation of recycling, building inspections and tax collections, water services, project management or engineering, sharing of specialized equipment, CAMA permitting and IT resources. He added that the way the meeting was left was that the Town Managers would get together and discuss each of the items and bring back a report on November 20, 2015.

Town Manager Layton stated that the Managers met on September 29, 2015 and decided that the finance officers for each town would get together to look at some of the items. He added that they were willing to look at police in terms of answering the question regarding keeping the same level of services and the cost savings that would be seen. He noted that the finance officers had to make all kinds of assumptions. He pointed out that one assumption he made was that the Police Department had nine police officers – eight officers and the Chief. He believed that in order to provide 24/7 coverage of two officers for 365 days a year, eight officers plus the Chief was probably the minimum that the

Town needed. He stated that the finance officers would look at the cost associated with that and thought the only savings would be in some middle management position, but they weren't sure.

Town Manager Layton stated that the finance officers were going to look at the fire departments, but the number of volunteer agencies made it a difficult exercise and did not lend itself to running the numbers in the same way that they would for a police department.

Town Manager Layton stated that one of the items the finance officers discussed were vehicle maintenance. He explained that in the case of the Town of Duck, vehicle maintenance was contracted out and would have to be looked at if the Town had to go to the County for vehicle maintenance. He added that one of the barriers for it to be cheaper, was that the County believed that they would have to add additional employees and infrastructure to accommodate the additional vehicles. He stated that he wasn't sure if there would be any cost savings to do that.

Town Manager Layton stated that another item that was brought up was simple mowing in terms of buildings and grounds. He stated that the County stated that they would have to bring on more equipment and more people. He added that it begged the question on the cost savings in doing that. He stated that the way Duck would look at it would be to treat it as a bid process and choose the most responsive bidder at the best cost. He stated that at the beginning of the meeting, one of the questions that was asked of the Managers was if the towns were interested in consolidating any service. He stated that Nags Head indicated they were not interested, specifically with regard to police and fire services, but most likely with other services. He stated that the question was asked if it was the opinion of the Town Manager or the Council and the County was told it was the opinion of the Council. He noted that the Town of Kitty Hawk had the same response. He stated that the position that the Towns of Duck and Manteo took was that they were open minded but wanted the same level of service for the same amount of money. He thought it was an uphill battle for the County because all of the Towns were hesitant to release police and fire services.

Mayor Kingston asked what the response was from the Towns of Southern Shores and Kill Devil Hills. Town Manager Layton stated that the Town of Southern Shores was the same as the Town of Duck, but a little more lukewarm than the Town of Manteo. He stated that the Town of Kill Devil Hills was not interested in police and fire and didn't seem anxious to explore the other areas. He pointed out that the Towns of Kill Devil Hills and Nags Head needed to be players in order for there to be substantial savings.

Mayor Pro Tempore Thibodeau stated that she was involved in the meeting as an alternate since Mayor Kingston could not attend. She thought it was a political exercise because of the Town Hall meeting that the Board of Commissioners held when they first took office. She stated that this was one of the items that people were asking about and continue to ask about it. She thought the Towns were asked the question and the Commissioners want to look at it. She added that it was obvious at the meeting that the

big items were immediately off the table. She thought it was intriguing that the police departments were being discussed again. She noted that the Government Access Channel has great resources to do programming. She added that there was a lot of overlap and support between the Towns and County currently. She stated that one of the ideas was that the Government Access Channel programming could answer some of the questions as to what was already being done with regard to consolidation.

Councilor Burdick thought “consolidation” was the wrong term to use and thought “collaboration” was a better term. He thought there was a fair amount of discussion at the meeting that there should be collaboration on services, but no one wanted to give up service for a few cents. He added that there were some areas, such as purchasing, that may hold promise and thought the finance officers would look at it more closely. He stated that it included purchasing common equipment for the police and fire departments so it wouldn’t be just services. He felt that the collaboration in getting the towns together and how they will work together would be helpful in the long run and would solidify the relationships between the towns.

Town Manager Layton thought there was willingness and openness regarding collaboration on items and felt that beach nourishment was the best example.

Councilor Burdick thought it was interesting that there already a lot of collaboration with respect to the police and fire departments between the towns. He added that there was a lot of collaboration in place and the others at the meeting felt it wasn’t well publicized. He thought the Government Access Channel could make people aware of how the towns and the County were working together to achieve better results.

Councilor Britt thanked Mayor Pro Tempore Thibodeau, Councilor Burdick and Town Manager Layton for attending the meeting with an open mind and looking at all of the options available.

NEW BUSINESS

Overview of Condemnation Process for Beach Nourishment Easements

Town Manager Layton stated that over the past several months, Town Attorney Hobbs and Town staff have been working to secure all of the easements necessary for the Town of Duck’s beach nourishment project. He stated that to date, the Town received or expected to receive imminently, 115 of 120 easements. He noted that of the remaining five easements, dialogue was continuing with one property, while the remaining four – two with one property – have not responded to numerous attempts by staff to either establish or continue dialogue. He added that since time was of the essence, the Council may need to consider using its condemnation authority to secure the remaining easements.

Town Attorney Hobbs stated that he had put together a memorandum that was in Council’s packets that sets forth the procedure for condemnation. He noted that it was all

statutory and that the Town has its power of eminent domain for condemnation through the North Carolina General Statutes Chapter 40A. He stated that from Council's perspective, they had the option to send a 30-day written request after a resolution is passed to give to the property owner that the Town plans to enter the property – but not the structures – to perform any preliminary work that needed to be done before condemning. He stated that it was a situation where appraisals or surveys would be performed and would mean that the property would have to be physically entered. He noted that it was an option that could be done prior to formally starting the condemnation process. He added that a 30-day notice would have to be given to the property owner and would be done after a resolution was passed by Council to initiate it. He explained that it was optional.

Town Attorney Hobbs stated that the next step would be to make a determination of what monetary deposit that would be made with the court to represent just compensation. He thought the Town's position with staff has been that this project in most respects represented an enhancement of properties to try to protect existing structures and the existing ocean beach. He noted that it was not a situation where the Town can come in and acquire a majority of the property and exclude access to the property. He added that it was basically a non-exclusive easement to place sand on the area of the beach.

Town Attorney Hobbs stated that the Council would adopt a resolution authorizing the taking of the easement by condemnation. He stressed that Council was not condemning the property itself, but condemning exactly what it was receiving voluntarily from other property owners, which was an easement to place sand on the property. He stated that after Council adopts the resolution, the Town would give the property owners and lienholders a 30-day notice of intent to file a condemnation action before the complaint was filed before the Court. He added that after the 30 days have passed, the Court will file a complaint and memorandum of action to notify people that the condemnation has commenced and at that time, any just compensation estimated by the Town would be deposited with the Court.

Town Attorney Hobbs stated that after that point in time, due to the way the statute reads as well as the powers given to the Town by the General Assembly, the Town will acquire the easements immediately, which was known as a quick take. He stated that the owners and any other defendants would have the opportunity to file an answer within 120 days after being served with a complaint.

Councilor Burdick clarified that Council could do this by resolution to allow Town Attorney Hobbs to give notice and file the complaint. Town Attorney Hobbs stated that it would be all Council needed to do to start the condemnation process. Councilor Burdick clarified that with regard to the granting of the quick take, once it's done, that would be the end of the issue. Town Attorney Hobbs stated that it was end of the process of the Town filing the easement. He added that everything else beyond that would mean potential litigation over just compensation. Councilor Burdick clarified that at that point the Town would have the easement. Town Attorney Hobbs stated that the Town would have the easement once Council has authorized the filing, the 30-day notice was given

and the complaint was filed along with the just compensation and deposit. He added that upon filing the deposit, the easement would be acquired. Councilor Burdick clarified that, beyond that, the property owner could contest it, but the Town had the easement. Town Attorney Hobbs stated that anything beyond that did not affect anything the Town acquired.

Councilor Britt clarified that the property owner could contest the compensation. Town Attorney Hobbs stated he was correct. Councilor Burdick asked if there was any reason for Council not to proceed with it as soon as possible given the fact that Town staff cannot get ahold of four of the property owners. Town Attorney Hobbs stated that he and Town staff were not prepared at this meeting to present the resolution. He thought the property owners could be given another month to consider working with the Town and then Town Manager Layton could bring back a resolution at Council's November 4, 2015 meeting.

Councilor Britt clarified that there needed to be some time to get the ball rolling. Town Manager Layton stated he was correct. He added that it would give him enough space to get everything in order. He noted that a strongly worded letter just went out to the remaining property owners and he hoped it would get their attention.

Mayor Kingston clarified that in 30 days, the Town would send a 30 day notice and in the beginning of November the Town would send a notice to the property owners. Town Attorney Hobbs stated he was correct and at the next meeting, Council could be asked to adopt a resolution for the condemnation process and staff would send out a 30 day notice and after that 30 days, the complaint would be filed. Mayor Kingston clarified that if the Town filed the complaint in December, it would give the Town enough time to obtain a CAMA permit which was on schedule for February. Town Attorney Hobbs stated that after the acquisition of the easement, the Town acquired slight control in the easement upon the filing of the complaint. He added that the time for answer and other matters were not relevant to the site control. He explained that once the complaint was filed and funds deposited, the Town had site control, which met the requirements to obtain the permits.

Councilor Burdick asked if there was any advantage to the Town to adopt the resolution now in case Town staff did not get answers by the next meeting, so Town Attorney Hobbs could immediately exercise it in 30 days. Town Attorney Hobbs stated that he would not recommend doing so at this meeting as he and Town staff was not prepared to have a resolution at this meeting for Council to consider. Town Manager Layton suggested that Council authorize staff to take steps to get the resolution in order. Town Attorney Hobbs noted that the letter that recently went out to the property owners had a deadline in it, letting them know that they needed to respond before Council's November 4, 2015 meeting.

Mayor Pro Tempore Thibodeau asked if condemnation occurred, there was residual stigma that would go with the property if the owner decided to sell their property. Town Attorney Hobbs stated that there wasn't.

Councilor Burdick moved to authorize the Town Manager and the Town Attorney to prepare the necessary paperwork for a resolution to be considered at Council's November 4, 2015 meeting in order to move forward with condemnation.

Motion carried 5-0.

Discussion/Consideration of Changing/Canceling the October 21, 2015, Mid-Month Meeting

Town Manager Layton stated that staff had previously planned to provide Council with an update on the Comprehensive Pedestrian Plan, the Duck Trail Side Street Crossing Study and the planned Duck Trail and stormwater improvements at Council's October 21, 2015 Mid-Month meeting. He stated that Mayor Pro Tempore Thibodeau was expected to miss the meeting and Councilor Britt had a conflict with the Albemarle MPO TCC/TAC being scheduled for the same day. He noted that a vote was expected on the MPO's bicycle and pedestrian improvement priorities at the meeting, so Councilor Britt's presence was imperative. He stated that due to the importance of the updates and the desire to have all Council members hear the updates, Council was being asked to either reschedule their Mid-Month meeting for another date in October or cancel the October Mid-Month Meeting and have the updates presented at their November 18, 2015 Mid-Month Meeting.

Mayor Kingston asked if the updates could be done at the November 4, 2015 meeting. Town Manager Layton expected the discussion with questions to be over two hours.

Councilor Britt noted that they would be going over in detail the actual changes that may happen in the Village. He thought giving a little bit more time to let people know about the meeting would be best in order to get input.

Councilor Britt moved to cancel the October 21, 2015 Mid-Month Meeting.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had no report this month.

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

Director of Community Development Joe Heard was recognized to speak. 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.

Update on Beach Nourishment Project

Town Manager Layton stated that with the storm that the Outer Banks had recently, the Town felt like it dodged a bullet and even though there was erosion and water breaking on the dunes, but there wasn't significant overwash. He stated that there was much less damage with no damage to any of the ocean walkovers. He thought if the storm was 25-50 miles closer to the west, it would have been a different story. He thought it reinforced why the Town needed the beach nourishment project.

Town Manager Layton stated that erosion was occurring south of the Corps of Engineers pier to the extent that if the Town didn't know the long-term nature of the erosion patterns, one would think the erosion was south of the pier. He added that in the profile surveys, a lot of the sand has been pulled out. He noted that storms were good for bringing the sand back. He stated that he wasn't sure if it has happened yet, but there was a lot of concern from property owners south of the pier where the Town is seeing what could be a long-term trend. He stated that if it was a long-term trend, it would be a concern for the Town in that it would have to look at doing the project in those areas as well. He stated that one of the things the Town could do was a sampling and GENEIS model to see what's going on outside of the normal procedure. He added that the next profile survey would be after the first year of the beach nourishment project.

Town Manager Layton noted that Council had in their packets five letters from CP&E. He reviewed them with Council and the audience.

Financial Statement for September FY 2016

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

MAYOR'S AGENDA

Mayor Kingston stated that he has his mayor's lunch on October 20, 2015. He stated that he, Town Manager Layton and Chief Cueto will be attending a seasonal traffic follow up meeting in Southern Shores. He stated that he and Town Manager Layton will be attending a beach nourishment meeting on October 22, 2015. He noted that Town

Manager Layton's annual evaluation was coming up. He added that Mayor Pro Tempore Thibodeau will coordinate the evaluation, giving Town Manager Layton the month of October to do his self-evaluation and then Council will do his evaluation at Council's November 18, 2015 meeting during Closed Session. He stated that he was looking forward to Public Safety Night Out and the Jazz Festival.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau gave an update on the Government Access Committee meeting to Council and the audience.

Councilor Burdick noted that 300 truckloads of sand were put on the beach on Buffell Head Road in the last year and just about all of it was lost with regard to the recent storm. He stated that they did save a fair amount of the dune that would have been lost if the sand was not put there.

Councilor Caviness thanked Public Safety for everything that was done over the weekend with regard to the storm.

Councilor Britt stated he was looking forward to the Public Safety Night Out and would miss the Jazz Festival.

OTHER BUSINESS

Additional Public Comments

There were no public comments.

Mayor Kingston noted that the next meeting will be the Regular Meeting on Wednesday, November 4, 2015 at 7:00 p.m.

ADJOURNMENT

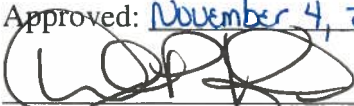
Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:12 p.m.



Lori A. Kopec, Town Clerk

Approved: November 4, 2015


Don Kingston, Mayor

