

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

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

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; 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 7:12 p.m. He asked Police Officer Tammy Bybee 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.

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 and Police Chief Cueto went on to present a certificate to Police Officer Tammy Bybee.

CONSENT AGENDA

Minutes from the October 5, 2015, Regular Meeting, Memorandum of Agreement between Dare County Municipalities and the County of Dare Concerning Emergency Coordination

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Request for Authorization for a Public Hearing on Ordinance 15-13 regarding the Definition of Building Height

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that at its May 6, 2015 meeting, the Council authorized the Planning Board to review the Town's current definition and standards for measuring building height. He stated that after several months of review and discussion, the Planning Board developed a proposal to clarify the definition of *Building Height* in Section 156.002 of the Zoning Ordinance. He explained that the clarification also necessitated the addition of a definition for the term *Average Finished Grade*. He stated that the Planning Board's recommendation did not make substantive changes to the existing building height standards, but were intended to clarify how the existing standards should be applied in different situations. He stated that staff and the Planning Board have recommended approval of the proposed text amendment.

Councilor Burdick moved to authorize a public hearing on Ordinance 15-13 regarding the definition of building height for the Council's December 2, 2015 meeting.

Motion carried 5-0.

Discussion/Consideration about Authorizing Planning Board Review of Measuring Building Height at the Roof Mid-Point

Director Heard stated that during its recent review of the Town's definition of *Building Height*, the Planning Board gave significant consideration to a proposal that would change the method of measurement from the highest point of the roof to the building height at the midpoint of a roof, i.e., the average of eaves and peak. He added that the Planning Board was requesting Council's direction on whether or not to proceed with further consideration of measuring building height at the midpoint of the roof.

Mayor Pro Tempore Thibodeau stated that she understood the flexibility that would be achieved when the height measurement was changed. She remembered that historically, the Town of Southern Shores had a lower roof line at one point with most roofs looking flat, but then they changed the regulation. She thought it would be interesting to investigate. She stated that she didn't want the Town to create a lot of non-conformities and was worried that the Sanderling Inn had to do an alternate plan in order to

accommodate the Town's height requirement. She added that there was a lot of public concern about any kind of latitude in height, despite the fact that it could give the building a nicer look. She thought that the Planning Board understood the sensitivity of the issue. She asked if there was a lot of discussion about it. She added that if it was looked at, the Council could decide to keep things the way they are. Director Heard stated that the Planning Board took care in how they worded the request to Council. He added that it was not a recommendation from the Planning Board, but they were simply asking to spend more time looking at the pros and cons and how they could develop the concept. He thought the intent of the Planning Board was to see if this was something that Council had sufficient interest in them pursuing so they don't spend the next few months looking at something that Council had no intention of considering.

Mayor Kingston stated that he was concerned about what the rationale was for the change. He added that the height limit has been 35 feet for many years. He stated that he didn't understand why the Board wanted to look at changing the height. He didn't think aesthetics was a good rationale for a change.

Councilor Burdick stated that he was having difficulty with the issue. He added that the Town set a precedent with the Sanderling Inn and received a lot of comments from the public about it. He felt that this would give the wrong signal to the public.

Councilor Caviness stated that her sense was that this was not a priority at this time.

Councilor Britt stated that he agreed with Mayor Pro Tempore Thibodeau's comments. He stated that he would be in favor of the Planning Board looking at the issue to see what they come up with. He added that the Board has done some really good work in the past.

Mayor Kingston asked if Council was saying that the Town should look at building height greater than 35 feet. He added that that was what the Planning Board was proposing. He stated that it would mean that the Town was looking to exceed the 35 foot height limit for new construction and reconstruction. Director Heard noted that there would be instances where a building could have a higher roofline than what is presently allowed in Town.

Councilor Burdick stated that it would be creating loopholes. He added that he had a problem with changing the height limit. He stated that there was a standard in place that everyone understood. He noted that there were a few rare exceptions, but none that would allow a significant height difference. He thought there would be a lot of fallout over the issue. He stated that he hated to see the Planning Board spend a lot of time on the issue if Council could not see a benefit to doing it.

Mayor Kingston noted that Council sent the Sanderling Inn back when they came before Council to have them meet the Town's height limit. He reiterated that he could not understand the rationale for this issue.

Mayor Pro Tempore Thibodeau thought that there have been some flatter roofs in Town in order to meet the height limitation. She thought that people that have built their homes would be upset over the new rules if they were to be put into effect. She stated that she would like the Planning Board to explore new ideas but thought the community would be against the height limit change.

It was *consensus* of Council not to authorize the Planning Board to review measuring building height at the roof mid-point.

NEW BUSINESS

Discussion/Consideration of Resolution 15-07, a Resolution of the Town Council of the Town of Duck, North Carolina, Authorizing Acquisition by Condemnation of Beach Nourishment Easements on Certain Properties Located in the Town of Duck

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 117 of 120 easements. He noted that while staff continue to pursue easement agreements with the owners of the properties at 139 Buffell Head Road, 143 Buffell head Road and 153 Buffell head Road, without the use of the Town's condemnation authority, in order to keep the project on schedule and due to what appears to be impasses with these property owners, he was recommending that Council approve Resolution 15-07, which would allow Town Attorney Hobbs and Town staff to begin the easement condemnation process.

Town Attorney Hobbs thought Town staff has done everything possible to get the easements in. He hoped the Town would receive the last three easements before he has to file a complaint. He noted that there was a timeframe necessary in order to authorize him and Town staff to proceed with the condemnation. He hoped that during the timeframe, the easements would be received. He stated that if they weren't, a complaint would be filed and as soon as that was done and the deposit was made, the Town would immediately acquire the easement. He pointed out that Resolution 15-07 called for a ten year term. He stated that he and staff had discussed various options in that regard and felt it was the best compromise.

Councilor Burdick asked if the existing easements that were received had a time limit on them. Town Attorney Hobbs stated that many of them were perpetual, while some were negotiated with the property owners and many of the others were for ten years and one or two were for five years. He added that he and Town staff have done an enormous amount of negotiation in offering a variety of opportunities for property owners to submit their comments and wording that they wanted in the easements. He stated that the Town has been very flexible with the property owners.

Mayor Pro Tempore Thibodeau asked if Town Attorney Hobbs was keeping a spreadsheet with all of the special exceptions that were passed in case of re-nourishment. Town Attorney Hobbs stated that he was.

Mayor Kingston asked if there was anything the property owner could do between now and when they would be served other than to sign the easement. He asked if they could seek an injunction. Town Attorney Hobbs didn't think there was anything that could be done. He added that anyone could sue but generally the statutes require the Town to give a fair amount of notice with 30 days before filing a complaint. He stated that the property owner would receive the notice ahead of time and he hoped that the notice itself would spur some action on the property owners.

Mayor Pro Tempore Thibodeau moved to adopt Resolution 15-07 as presented.

Motion carried 5-0.

Discussion/Consideration of a Change Order to the Service Agreement between CPE-NC and the Town of Duck dated May 4, 2015, to Allow a 2015 Beach Profile Monitoring Analysis

Town Manager Layton stated that as part of the beach nourishment project, the Town conducted two beach profile monitoring analyses; one in September 2013 and one in May 2015. He stated that these analyses were performed along all of the Town's oceanfront and resulted in the 2015 Dare County Pre-Construction Topographic and Hydrographic Survey Report. He added that the data from the analyses was also used in planning, engineering and modeling of the beach nourishment project area. He stated that due to erosion observed during this past summer and as a result of the erosion caused by Hurricane Joaquin, Town staff requested a change order proposal from CPE-NC to conduct an updated beach monitoring analysis report and to conduct an updated SBEACH analysis. He pointed out that the cost for the SBEACH analysis was \$5,061 and the cost for the beach monitoring analysis was \$14,223, for a total of \$19,284. He stated that if Council approved the change order request, a budget amendment transferring that amount from Contingency will be presented at their December 2, 2015 regular meeting.

Councilor Caviness asked if CPE-NC would perform an SBEACH analysis once the project is completed. Town Manager Layton stated that it was likely that they would but he didn't think they would be required to do an SBEACH analysis, but could be something that the Town could request. He added that they would be required to monitor and obtain profile surveys. He pointed out that it was part of the Town's long-term beach management strategy so it would have the data sets necessary to make informed decisions about whether or not to move forward with additional projects.

Councilor Britt asked if there was a big change, especially in the nourishment area, it would change the plan or if there would be time to change the plan. Town Manager

Layton stated that it was possible. He added that CPE-NC did not expect there to be many changes.

Mayor Kingston asked what the timeframe would be. Town Manager Layton thought if he gave CPE-NC notice to proceed, they would mobilize and the Town would have data around the first of the year or shortly after.

Mayor Pro Tempore Thibodeau clarified that the SBEACH portion of the project was for the vulnerability and running models. She added that what the Town was talking about doing was getting a new snapshot after the nor'easter and hurricane that come through a few weeks back. She added that a survey was done in May 2015 and the new survey would talk about the difference seen after the storms and down the road a new survey would be completed every couple of years. Town Manager Layton thought it may be every year. He added that it would have to be done every year in the project area. Mayor Pro Tempore Thibodeau asked if for the future, surveying would be done annually for the project area alone or the entire beach. Town Manager Layton stated that it would likely be done on a case by case basis. He expected that during the project time, he would receive an annual profile survey.

Councilor Burdick thought it would give the Town the opportunity to immediately see storm impacts. He thought there would be some good insight in preparation for the future. Town Manager Layton thought that the survey would be done more than once annually if there was a storm back to back or if there were changes that needed to be followed up on. He thought, at a minimum, surveys should be done on an annual basis.

Councilor Burdick moved to authorize the Town Manager to execute the change order as presented.

Motion carried 5-0.

Discussion/Consideration of a Date for the Annual Council Retreat

Town Manager Layton stated that each year Council holds a Retreat and typically, the Retreat was held during the same period and in lieu of the February Mid-Month meeting. He noted that this year, Mayor Pro Tempore Thibodeau was scheduled to be out of town for the majority of February and Council needed to determine a date for the Retreat.

Councilor Burdick noted that he would also be out of town for most of February. He thought he would be away from January 30, 2016 and returning around February 23-24, 2016. Mayor Pro Tempore Thibodeau stated that she would be away from February 7, 2016 through February 27, 2016.

Mayor Kingston asked Councilors Caviness and Britt if they had conflicts. Councilors Caviness and Britt stated that it would depend on the date chosen. Mayor Pro Tempore Thibodeau apologized for the inconvenience and appreciated Council's flexibility.

Mayor Kingston suggested the last week of January. Councilor Burdick stated that he may be leaving Town as early as January 28, 2016.

Councilor Burdick suggested holding the Retreat the first week of March. Mayor Kingston asked if January 27 and 28, 2016 would work. Councilor Burdick stated that those dates would not work for him.

Councilor Britt suggested holding the Retreat in March. Town Manager Layton stated that March would be fine but it would shift his budget work. He added that he could work with it. He noted that he used the Retreat as an opportunity to discuss new initiatives that may be put in the budget. He thought it would take him a little longer for the budget but didn't think it would be an issue.

Mayor Kingston asked if March 8-9, 2016 would work. Mayor Pro Tempore Thibodeau asked if the Mid-Month meeting would be canceled. Mayor Kingston thought there wouldn't be a reason to have the Mid-Month meeting.

It was *consensus* of Council to hold the Annual Retreat on March 8 and 9, 2016.

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 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 Council had in their packets the latest letter from CP&E. He stated that things were moving according to schedule and was a few days

behind, but overall, nothing that was of great concern. He expected the bids to go out on time but there would also be information available on Dare County's website ahead of time to allow potential contractors to start looking at the items and start preparing.

Town Manager Layton stated that the Towns of Duck, Kitty Hawk and Kill Devil Hills, along with Dare County had a meeting recently and things were moving as scheduled. He stated that they expect to be meeting the deadlines in terms of going before the Local Government Commission in February and entering into contract in the March timeframe with an April start date. He noted that there wasn't a schedule for an exact start date for work, but as soon as he has the information, he will pass it along to everyone affected including property owners and rental companies.

Mayor Kingston stated that the last meeting was very encouraging as the scheduled meetings were compressed from the standpoint of the activity that will be occurring between now and April, 2016. He stated that there would be a meeting in November to review the pre-bid documents. He stated that the Local Government Commission would come into play with regard to the financing, most likely in the January/February timeframe. He thought it was encouraging that everyone was on track.

Town Manager Layton reviewed photographs of the beach nourishment project from North Topsail Beach with Council and the audience. He noted that there were some contractors who will not place sand within ten feet of a structure, which meant when they get to stairs or a structure, they would stay ten feet off unless they obtain a hold harmless agreement. He added that CP&E have obtained the hold harmless agreements in the past for those situations without issue.

Mayor Pro Tempore Thibodeau asked if the contractor would go through the Town and obtain the hold harmless agreements or they would go directly to the property owners. Town Manager Layton stated that the Town would facilitate it.

Mayor Kingston asked Town Manager Layton to give an explanation with regard to unexploded ordnances. Town Manager Layton stated that the Corps of Engineer's property was located in what used to be a bombing range that had non-explosive ordnances. He stated that staff met with the Corps and found out that the ordnances were inactive. He stated that staff was assured that there was no real issue on the Corps property; however, one of the recommendations that came from the Corps was that the contractor screen the sand because the borrow area in Duck may include some unexploded ordnance.

Councilor Britt asked if people were calling the Town to ask questions about the project. Town Manager Layton stated that staff was receiving telephone calls with people wanting a schedule for the project so they could plan their rental season. He stated that staff has explained that the project will not be in front of the houses for the whole three month period, which has helped. He added that there were people that were very interested in the schedule, which staff cannot give them yet.

Councilor Britt asked Mayor Pro Tempore Thibodeau if she has been receiving a lot of calls. Mayor Pro Tempore Thibodeau stated that her staff discussed it a lot. She stated that the Town of Nags Head did a great job with their public information with their beach nourishment project and was sure that Duck would do just as well. She stated that her company would rent as usual and once they knew the schedule, they would work on it on a case by case basis.

Councilor Burdick asked what the average time an individual property was directly affected by the beach nourishment project in the Town of Nags Head. Town Manager Layton stated that he was told that it was generally five to seven days. He explained that they typically work in 500-1000 foot segments. He added that there was an area on each side that was considered a safe zone and then the area where the work is actually done. He stated that it shifts down and takes about a week to build in front of the properties. He noted that the contractor builds out in the water before they move the sections. Councilor Burdick clarified that it was about a week impact on an individual property. Town Manager Layton stated he was correct.

Update on Consolidation Committee

Town Manager Layton stated that the managers and finance officers met two weeks ago and are putting some numbers together to have for the November 20, 2015 meeting of the larger group, which consisted of the Mayors and other Council representatives. He stated that the background would be provided at that point. He stated that some of the items that were discussed initially, such as fleet maintenance, was decided that consolidation would not work due to increased costs, facilities and personnel. He stated that one of the items that were currently being assessed was building inspections. He explained that Dare County provides an inspector for the Towns of Manteo and Southern Shores. He added that the reason it works was because there was a capacity for that person. He stated that another person would be needed in order to handle the work load for the other towns. He stated that more direction was needed because the idea was not to consolidate to shift responsibility for providing service to another entity but to see what could be consolidated in cooperation to save costs. He stated that they were putting numbers together, specifically for the Police Departments, as well as running some numbers to see what theoretical impacts would be seen based on some assumptions.

Financial Statement for October FY 2016

Town Manager Layton stated that he did not have the financial statements yet. He went on to review the beach activities report with Council and the audience.

MAYOR'S AGENDA

Mayor Kingston congratulated the rest of Council on the election. He stated that he had his Mayor's meeting coming up in November. He stated that Dare County was now considering a special tax district for the Buxton beach nourishment project. He stated that he would be attending the consolidation meeting with Councilor Burdick and Town

Manager Layton later in the month. He added that there was a beach nourishment conference call in late November, which would be a pre-bid advertisement conference call. He stated that he would be attending the NCBIWA conference in Wrightsville Beach in mid-November. He stated that he was looking forward to the Turkey Trot on Thanksgiving Day. He congratulated Town Manager Layton on his recent win for the First Flight High School Cross Country teams.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau thanked the citizens of Duck for re-electing her to Council. She reminded Council that Town Manager Layton's annual evaluation would be done at Council's mid-month meeting. She stated that she would like to have put on a future agenda an item where the Town's first Mayor, Paul Keller, would be honored in some way for all of his work with the incorporation of Duck as well as the Town Park.

Mayor Kingston stated that he and Mayor Pro Tempore Thibodeau had discussed honoring Paul Keller briefly and he and Town Manager Layton had discussed it earlier in the day. He thought they were all in agreement that it would be a good thing to do. He added that there was a sense of urgency in that it should be done sooner rather than later. He suggested having a subcommittee to help come up with ideas. He stated that Mr. Keller was instrumental in incorporation as well as being the Town's first Mayor and securing the Town property. He added that one of the thoughts was having the Town Park renamed as Town of Duck Keller Park or something similar. He thought it was worth having a subcommittee discussion and bring it back to Council at the November mid-month meeting.

Mayor Pro Tempore Thibodeau asked the rest of Council for their thoughts. She asked Mayor Kingston if he was thinking of a subcommittee of the Council members. Mayor Kingston thought it could be comprised of two Council members and Town Manager Layton. Councilor Burdick thought the idea of memorializing the Town Park was a good idea. Mayor Pro Tempore Thibodeau noted that it was an idea that Councilor Caviness had several years ago when Council was deciding what to call the Town park. Councilor Britt thought the subcommittee could bring ideas back at the mid-month meeting. Mayor Kingston stated that he would be happy to work with Mayor Pro Tempore Thibodeau and Town Manager Layton on it. Mayor Pro Tempore Thibodeau stated that she would welcome anyone's suggestions, whether it was Council, staff or the general public.

Councilor Burdick echoed Mayor Kingston's comments about the election.

Councilor Caviness thanked the citizens of Duck for their support in the election.

Councilor Britt echoed Council's comments about the election.

OTHER BUSINESS

Additional Public Comments

Ron Forlano of 1221 Duck Road was recognized to speak. Mr. Forlano thanked Council for serving the Town. He stated that Council had approved earlier in the meeting a \$20,000 expenditure for surveying the topography of the beach. He asked Council to consider making that expenditure an annual budget requirement. He thought it was a great service to everyone in Duck to know what was going on with the beach.

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

Mayor Kingston noted that the next meeting will be the Mid-Month Meeting on Wednesday, November 18, 2015 at 1:00 p.m.

ADJOURNMENT

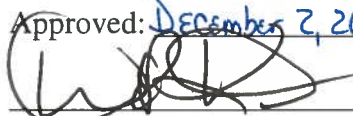
Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:32 p.m.



Lori A. Kopec, Town Clerk

Approved: December 2, 2015


Don Kingston, Mayor

