

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
November 7, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, November 7, 2018.

**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 Captain Clarence Batschelet; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 7:05 p.m. He asked Fire Captain Clarence Batschelet 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 October 3, 2018, Regular Meeting**

Councilor Caviness moved to approve the consent agenda as presented.

Motion carried 5-0.

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

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance 18-06, a Proposal to Amend Section 156.126 of the Zoning Ordinance by Revising Standards for the Scale of Single-Family Residential Development**

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that Council was considering possibly setting a public hearing date for the

December 5, 2018 meeting. He stated that the draft ordinance was one that Council discussed a few months ago and sent it back to the Planning Board. He stated that at Council's September 5, 2018 meeting, the Planning Board had forwarded a draft ordinance that looked at addressing the issue of maximum house sizes and proposed an ordinance that laid out using the tiers that the Town has had in place for many years. He stated that maximum size houses with allowances to build larger houses if certain greater development standards were met.

Director Heard stated that the Planning Board moved the draft ordinance forward and Council held a public hearing and at the end of the public comment period, Council opted to send it back to the Planning Board for more consideration. He noted that several items were discussed, one being that the Board was instructed to look at how to best deal with houses in the largest tier of lots (25,000 square feet and above) as there may be a better approach or number in addressing the issues of the buildings on those properties. He added that they were also looking at potentially greater size allowances in the tier below it (20,000 – 24,999 square feet). He stated that the final item was to evaluate the necessity of the maximum septic tank capacity standard.

Director Heard stated that the Planning Board went back and at their last two meetings, they considered those items that were brought up by Council and developed an ordinance that directly addressed the issues; however, during their discussion at their October 10, 2018 meeting, the Board opted to simplify their approach on what they were recommending to Council and proposed an approach that they felt more directly addressed the key issue that they identified, which was dealing with large rental properties. He stated that the Planning Board understood that the Town could not directly regulate whether a house was a rental or not and regulating house size was one way of doing that indirectly, but in their evaluation of the situation, the Board felt that the most direct way of regulating it was to regulate things related to occupancy.

Director Heard stated that the Planning Board opted to propose the draft ordinance that was in Council's packets, which establishes standards for the capacity of septic systems based on the size of lots. He added that they were using the same five tiers that the Town has had in place. He explained that for lots of 9,999 square feet or less, the septic capacity would be 600 gallons per day; 10,000-14,999 square feet, the septic capacity would be 720 gallons per day; 15,000-19,999 square feet, the septic capacity would be 840 gallons per day; 20,000-24,999 square feet, the septic capacity would be 960 gallons per day; and 25,000 or greater square feet, the septic capacity would be 1,080 gallons per day. He noted that the 1,080 gallons per day standard in the largest tier would permit a 9 bedroom, 18-occupant residence.

Director Heard stated that Council would simply replace the table in the ordinance that regulates occupancy based on the Health Department permit with the new standards that would be Town standards and not be subject directly to the whim of the Health Department.

Director Heard noted that Council had in their packets a copy of the recommendation provided by Town Attorney Robert Hobbs and Attorney Ben Gallop regarding the issue. He added that they expressed concerns that they had about the use of septic capacity. He stated that there was also background information on building size – size of lots and existing houses – for Council to review. He stated that at their October 10, 2018 meeting, the Planning Board voted unanimously to recommend approval of the draft ordinance.

Mayor Kingston asked what the differentiation was between what the Town had with Dare County versus it coming to the Town with regard to septic capacity. Director Heard stated that under the current ordinance that was tied to the Dare County Health Department, the Town has to abide by whatever the Health Department has issued for the septic permit. He added that even if a situation were to arise that would cause the Town to look at it again and there were things that led him to believe that there was more going on at the property than what the permit was issued, then the Town would have to abide by what the Health Department issued. He noted that in this case, being a Town standard, the Town would have the authority to directly look at something of that nature. He added that the Town would still use the Health Department permit as the base if staff was issuing a permit for a new residence as that was where the size of the septic system capacity would be outlined. Mayor Kingston clarified that the Town would take precedence over Dare County. Director Heard stated that the way the ordinance was drafted, that would be the intent.

Councilor Burdick asked about the table the Town had regarding square footage of houses compared to the new table and what the issue was with the last two tiers as far as what the thinking process was at that time. Director Heard stated that at Council's September meeting, the proposal before Council had tiers with maximum size standards and it set a base of standards by tier ranging from 3,500 square feet to 7,000 square feet. He thought the key thing in the Planning Board's proposal was that they had placed an overall maximum square footage of 7,000 square feet across the board. He noted that it allowed some of the houses in the middle tiers to take advantage of the allowances the Planning Board was proposing to create larger houses. He explained that a lot size of 15,000 to 19,999 square feet could potentially go up from 4,500 square feet to 7,000 square feet. He added that in the next tier – 20,000 to 24,999 square feet, it could go from 5,500 to 7,000 square feet. He stated that the highest tier was already capped at 7,000 square feet and because it was capped, there was no allowance or incentive for property owners of the largest properties in Town to do anything. He stated that there were some comments and Council had expressed an interest in having the Planning Board take a look at it. He stated that the draft ordinance the Planning Board was discussing was to raise it to 8,500 square feet for the largest over 25,000 square foot properties.

Councilor Burdick pointed out that the table showed two residences that have greater than 10,000 square foot homes on them and 10 residences that were between 7,000 and 10,000 square feet. He asked if the two tables were crossed, would the homes be allowed to be built under the new proposal. Director Heard stated that under the new proposal, it dealt only with septic systems. Councilor Burdick stated that he understood but asked if

it would not prohibit houses greater than 10,000 square feet. Director Heard stated that it would not prohibit the size of houses at all. Councilor Burdick clarified that the home could be as large as 20,000 square feet. Director Heard stated that it would be allowed. Councilor Burdick clarified that it could be done as long as the homeowner did not add a lot of bedrooms. Mayor Kingston pointed out that the Town could not control bedrooms.

Councilor Britt stated that it was a nine-bedroom cap. Councilor Burdick pointed out that it was a nine-bedroom cap in terms of bedrooms but not in terms of the size of the house. Councilor Britt agreed as the proposal would not regulate size, but number of bedrooms.

Mayor Pro Tempore Thibodeau clarified that the jurisdiction for septic capacity starts with the Health Department and the Town, when issuing permits, looks at what the Health Department has done and if it was over the guidelines, then the Town pulls it back and lets the homeowner know that even if they have enough space, it could not be done. She further clarified that it would apply to any tier. She added that the Town would have the ultimate jurisdiction after the Health Department has made their comments. Director Heard stated she was correct. He noted that the Health Department was not bound by the Town's standards, so it was possible that someone could come in and submit something with a higher septic capacity to accommodate a 12-bedroom, 28-occupant house. He stated that with that scenario, the Town would receive that as part of the development permit issued to the Town and would look at it and let the homeowner know that the septic capacity proposed exceeded what the Town would allow and the homeowner would have to go back and redesign and obtain a new Health Department permit that would comply with the Town's standards.

Mayor Pro Tempore Thibodeau stated that if the Health Department stated that a homeowner could only build a certain amount, the Town could not regulate it and tell the homeowner they could do more. She stated that the Health Department would be the base and if it was too much, the Town would deny the permit. Director Heard stated she was correct, adding that the homeowner would have to abide by the Health Department standards. Town Manager Layton pointed out that the Town would not issue a permit to build a house if it did not meet the standard.

Councilor Burdick stated that he was confused. He stated that if someone wanted to build a 12-bedroom home and they went to the Health Department and received a permit, it would exceed the upper limit the Town has in place. He asked if the Town was allowed to set a tighter limit than the Health Department. Town Manager Layton stated that the draft ordinance in front of Council would do just that.

Councilor Burdick asked Town Attorney Hobbs if the Town was allowed to set a tighter limit. He pointed out that the Town was allowed to set tighter limits than CAMA but could not set looser limits. He asked if the same applied with the draft ordinance. Town Attorney Hobbs stated that it has to be determined as it has not been litigated. He stated that he and Attorney Ben Gallop gave an opinion that it was possible that septic regulations were exclusively under the purview of the Health Department and the Town may not be allowed to regulate that in addition to having the State or the Health

Department regulate it. He noted that it was set forth as one of the points in his opinion letter. He added that since it has not been litigated, he didn't have a clear answer, but it was a risk.

Councilor Burdick asked what the League of Municipalities stated about it. Town Manager Layton stated that previously, Director Heard had contacted David Owens of the School of Government and he indicated that at some level, the Town did have the authority. Director Heard agreed. He stated that when the current ordinance was adopted a few years ago, the question was asked at that point and they provided an email that outlined that they felt it was something the Town could do.

Mayor Kingston noted that there was the risk of overpopulation of a house, but only under the septic capacity. He added that if the Town approved a home for a certain occupancy limit and it was over-occupied, there would be a risk of environmental contamination because the septic would not be able to handle it. He asked how it would be policed. Director Heard stated that the Planning Board discussed some of the challenges with regard to that and their main concerns would be if someone wanted to add occupancy to a house after the fact, the Town would have no way to track it. Town Manager Layton added that from an enforcement standpoint, the only opportunity for enforcement the Town could do would be from the initial building permit.

Mayor Kingston stated that it appeared to him that Council had come full circle because they were discussing septic again, which they wanted to get away from. He asked why the Planning Board steered away from scaling by lot size, which was what Council had asked them to look at. Director Heard stated that Planning Board Chairman Joe Blakaitis was present and could answer that question.

Councilor Burdick thought Mayor Kingston had asked a good question because the Town was trying to limit density and size. He noted that the proposal in front of Council did not deal with size. Mayor Pro Tempore Thibodeau didn't think Council was trying to limit size. Councilor Burdick disagreed. Mayor Pro Tempore Thibodeau stated that that was why the Planning Board got away from square footage. Councilor Burdick disagreed. Mayor Kingston stated that Councilor Burdick was correct to an extent. Councilor Burdick asked why Council couldn't put the two together. He asked Town Attorney Hobbs if it could be done. He added that Council was discussing house size only and felt the sizes could be adjusted where Council was comfortable in that the Town was not limiting people that should not be limited given an appropriate lot size and have what was proposed with the septic system as a way to control the density aspect. He pointed out that a homeowner could still build a big house but couldn't put a lot of people in it.

Director Heard stated that the Planning Board was looking at an approach that was simple and felt the draft ordinance was fairly straightforward and thought it was very similar to what the Town already has in place. He noted that they had identified the concern regarding occupancy and the number of people/rental rooms as a primary concern that they were trying to address. He stated that the Planning Board felt that this approach got at that more directly than regulating building size. He noted that regulating building size

had other benefits for the Town and their arguments made for using that approach from a legal standpoint as well as consistency with the Town's Land Use Plan and Vision. He added that there could be points made for including that as a component but in this case, the Planning Board felt it was a more direct of way of getting at the key issue.

Mayor Pro Tempore Thibodeau pointed out that the Town already regulates building size with the setbacks and parking requirements as well as other factors that the Town has set. She noted that, in effect, the Town was regulating size in some respects. Councilor Burdick thought Council did not go down the road of calculating what the limits were when taking setbacks into consideration.

Mayor Kingston asked Joe Blakaitis to summarize the Planning Board's discussion. Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated that the question was asked as to why the Planning Board did not stay with the tiers for square footage. He explained that the reason Council received the draft ordinance was because the Planning Board had a lot of potential when it came to discussing the maximum square footages. He added that when the Board got to 7,000 – 8,000 square feet, it became difficult as the Planning Board members became very divided on the issue. He stated that at the end of the discussion, Councilor Britt had brought up what Mayor Pro Tempore Thibodeau had brought up at the Council Retreat, which was to keep it simple and not let one situation dictate a huge recommended change to the ordinance. He stated that the idea was, if the ordinance was working at the time, it just didn't work for the one house due to the Health Department and the Town would have to do something to gain control while keeping it simple, so the Planning Board came up with scrapping all of the sizes in relation to the tiers and going back to gallons per day. He stated that that was why Council had the new ordinance in front of them. He noted that some Board members felt it was a violation of the CAMA Land Use Plan and the Town Vision. He added that they felt there was no reason to have either if the Town wasn't going to abide by them. He stated that the Board members were stuck around the 7,000 – 8,000 square footage for house size and ended up agreeing to allow any size house with the new ordinance.

Councilor Britt noted that the Town previously allowed any size house to be built as it was regulated by setbacks, lot coverage and parking. He stated that the Planning Board had a discussion about keeping it simple and the Town never got to the place it was due to house size, it was because of the discrepancy with the definition of an office or bedroom. He added that if it was switched back to put it in the Town's control, it would be doing exactly what was done before, but changing the way it was done in terms of regulating it. He stated that after a long discussion, the Planning Board agreed that it was how it should be done.

Joe Blakaitis stated that he wished all of Council had attended a special meeting that the Town of Southern Shores had conducted earlier in the day. He stated that he, Sandy Whitman and Tim McKeithan of the Planning Board had attended the meeting and it was well received. He explained that the citizens were against a large house that was to be built and Ben Gallop was present as the Town of Southern Shores' attorney and made an excellent presentation to everyone present including their Council, who were not making

any decisions on the issue. He stated that Attorney Gallop's objections to the large house were met and received by Council regarding what they thought could possibly be challenged. He added that Attorney Gallop also had a letter from David Owens of the School of Government to the Southern Shores Council that simply stated that what they were thinking about doing now was okay. He stated that Mayor Tom Bennett had a program where he wanted to contact the legislature in the hopes of changing it back. He stated that it was a good meeting with good presentations.

Mayor Kingston pointed out that the Town of Southern Shores has a cap of 6,000 square feet. Joe Blakaitis agreed, adding that they realize that it may not be doing them as much as they want. He stated that one of the Council members made a motion to send the issue back to their Planning Board that had six parts to it, but the main part was that as it went up in square footage, it would still stop at 6,000 square feet. He thought it was interesting as it had some possibilities.

Councilor Caviness stated that the suggestion of greater setbacks for the larger houses did not seem to work with the Planning Board. Joe Blakaitis stated that the Board discussed it with regard to the tiers and thought it would have worked if they stuck with tiers. Councilor Caviness stated that if one was talking about life safety, it meant public safety and life safety, and bigger homes should have bigger setbacks. Mr. Blakaitis agreed, adding that there was a lot of discussion regarding the environmental concerns, fire, and septic capacity. He stated that there was discussion regarding making a new zoning district for oceanfront homes. He stated that the Planning Board did what Council asked them to do.

Mayor Kingston clarified that the Southern Shores Council's resolution was to send it back to their Planning Board. Joe Blakaitis stated that because the motion was long, it was hard to understand. Mayor Kingston asked if the motion passed. Joe Blakaitis stated that the motion passed to send it back to the Planning Board.

Councilor Burdick asked Joe Blakaitis if the Planning Board had continued with the discussion on house size, the Board would have eventually reached some kind of consensus. Joe Blakaitis stated that they would have as long as it wasn't 10,000 square foot. He stated that they agreed with 8,500 square feet. Town Manager Layton clarified that it was the consensus. Joe Blakaitis stated he was correct.

Councilor Burdick stated that the Town had two objectives that it was fighting to satisfy – to keep reasonable sized buildings in Town and the other was to maintain control of the density within the buildings. He thought if the Town could get by the legal hurdles of the septic systems, that would satisfy the problem of density, but then there would be no limit on the size of the house as long as they were built within the setbacks.

Mayor Pro Tempore Thibodeau thought the Town had controls on the size of buildings with the regulations on parking, septic and setbacks. She reiterated that the Town had controls on building size. She pointed out that the discussion regarding one home in a subdivision that had large lots was what prompted the issue. She noted that in normal

circumstances, there hasn't been any problems. Councilor Burdick disagreed, pointing out that the data that Director Heard presented to Council showed 10 ten homes that were between 7,000 – 10,000 square feet and two that were above 10,000 square feet. Mayor Pro Tempore Thibodeau asked Councilor Burdick what his point was. Councilor Burdick stated that it says that what the Town has in place did not limit the size of houses. Mayor Pro Tempore Thibodeau pointed out that it worked if it was within the size that was permitted. She asked Councilor Burdick if they were obtrusive to him. Councilor Burdick stated that Director Heard knew about them.

Mayor Pro Tempore Thibodeau asked a second time if the homes were obtrusive. Joe Blakaitis thought the houses were built before the ordinance was adopted. Director Heard stated that not all, but most were. He stated that they were obtrusive as one would know which houses they were as they stood out and people comment about them. He stated that while talking about the largest lot, every lot in Palmer's Island were in that category and there were also 74 other lots throughout the Town that were that size as well. He added that the Palmer's Island subdivision was not even 20% of all of the big lots in Duck. He stated that the Planning Board spent some time discussing the possibility of establishing a special zone for Palmer's Island as a way to address the issue. He pointed out that Council only received a few comments at their public hearing but were all related to that subdivision.

Joe Blakaitis stated that the Planning Board did not want to allow the Palmer's Island subdivision to rule them. Director Heard stated that the Planning Board identified that the issue wasn't just Palmer's Island and that there were other properties in Town that have the same opportunities and why should they be limited any more than Palmer's Island or vice versa. Councilor Burdick pointed out that it went against the Town's Vision.

Mayor Kingston noted that Council was trending away from the Land Use Plan and Vision. Joe Blakaitis explained that the reason the Planning Board sent the ordinance to Council was because they would not and could not agree on the square footage. Councilor Britt noted that it was also under Council's directive to keep it simple and as most similar as what was in place, which was a direction.

Mayor Kingston agreed with Council Burdick's comments and thought Council needed to look at some integration of septic and lot size. He thought it needed to be looked at deeper so that it was not single threaded again. Councilor Burdick thought given the number of lots in Town, large homes could be built in areas that were generally smaller while recognizing that people may be trying to combine lots to be able to build a bigger house, but the Town would end up with 10,000 square foot houses in spite of the restriction on the septic systems. He thought it was one of the things that Council wanted to avoid.

Town Manager Layton stated that there was discussion at Council's public hearing about the septic and at that point, there was a two-tiered approach. He noted that there was less concern with that in terms of the exposure of the Town as opposed to it being standalone.



Town Attorney Hobbs stated that in that regulation, it was one small component but many other factors. He stated that whether a court would allow the Town to regulate using all of the other factors, even if it took a blind eye to the one factor, it would be up to the court, but at least there would be many other factors that the Town could apply and utilize. He stated that if a house was prohibited and the owner challenged it, the Town could point to two factors – one factor that had nothing to do with septic and the other being septic – the Town could still fall back on the first factor if the court determined that the septic factor could be used. He added that a regulation that was solely septic, if the court feels it was a problem, then the Town would not have anything else to fall back on. He stated that ever since the statute was modified in 2015, there have been concerns about the number of bedrooms. He stated that the statute read that any zoning or development regulation ordinance relating to building design elements may not be applied to structures subject to regulation of the residential building code for one to two family dwellings. He added that it also read that regulations that prohibited this subsection may not be applied directly or indirectly in any zoning district. He added that the legislature went on to define the term “building design elements” as including the number and types of room. He stated that when there was discussion about the term and a mention of concern about the number of rooms, then the Town was quoting from the statute by saying that the Town could not regulate it either directly or indirectly. He stated that his advice and opinion was regarding legislative and statutory interpretation, which was what a court would do, and the court would have to decide whether the Town adopted a regulation that was in violation of the statute. He stated that he would give Council advice that it did as an indirect regulation of the number of rooms as pointed out by the discussions that were had. He reiterated that he could only give Council advice and could not tell them what to do. He noted that David Owens was a highly respected member of the School of Government and ultimately if this was challenged, Mr. Owens would not be the arbiter or the person that makes the decision on the case. He stated that when the issue was discussed at the public hearing, he told Council numerous times that he had reservations about the use of septic capacity whether it was one factor or one of many factors. He wasn’t sure how a court would agree or disagree about the use of the septic capacity being an indirect way of regulating rooms, but because those words were used in conjunction with this discussion, that concept is still in the back of people’s minds.

Mayor Kingston stated that based upon the risks and what Town Attorney Hobbs was saying, it appeared that Council was not ready to send the ordinance forward for a public hearing. He suggested that a temporary cap be looked at such as 5,000 or 6,000 square feet and put that out for public hearing while Council reworked the ordinance. He didn’t think Council was where they wanted to be. Councilor Burdick agreed. Mayor Kingston stated that the cap may give the Town a safeguard and there was no reason to put a cap on it. Town Attorney Hobbs stated that Council could not do that. He stated that Council could not impose a moratorium. Mayor Kingston pointed out that it wasn’t a moratorium. Mayor Pro Tempore Thibodeau stated that it was. Mayor Kingston thought it was a text amendment. Director Heard stated that it would be a text amendment. Mayor Kingston stated that it would be a safeguard for a short period of time while Council worked through it.

Mayor Pro Tempore Thibodeau pointed out that the Town has had the ordinance in place for a couple of years and had one instance where it caused an issue in an area that has large lots. She pointed out that Duck was fairly developed and would maintain that it had a nice, quiet, coastal feel regardless of what people say. She thought Council was meeting the Vision and thought it was a knee-jerk reaction that she could not support putting an arbitrary cap on an issue that wasn't really a big issue other than the fact that Council was trying to have a thorough conversation on it. She commended the Planning Board for their long meetings and Council deciding and talking through it as it was a complicated issue. She noted that Duck was not like every other town, it did not have to look at what other towns were doing and have fairly regulated lot sizes and it has been working well. She stated that the Health Department did permit the septic capacity as well as the setbacks. She didn't think the Town had an emergency situation.

Town Attorney Hobbs stated that the suggestion about the cap was diametrically different from what the Planning Board had sent forward. He thought it would be appropriate to send the matter back to the Planning Board with that instruction, let them deliberate, and bring back something to Council for recommendation. He explained that the Planning Board brought the recommendation to Council and he thought Mayor Kingston's suggestion was something totally different, so it should go back to the Planning Board for recommendation and consideration first before it comes back to Council for further consideration by Council.

Mayor Kingston asked Director Heard how many lots were above 7,000 square feet. Mayor Pro Tempore Thibodeau stated that it was 74. Mayor Kingston clarified that not all of them were developed. Director Heard stated that there were 88 lots in total with 14 lots in the Palmer's Island subdivision and 74 in other areas of Town. Mayor Kingston clarified that there have been recent inquiries on those lots. Director Heard stated he was correct.

Councilor Burdick thought it was a coming issue and agreed with Mayor Pro Tempore Thibodeau that it has not been an issue up to now, but the way the Town was building out was by building bigger houses and combining lots because the Town was 96% built out. He stated that people were going to put the biggest house they can put on a lot regardless of what was around them. He stated that the feedback he was receiving was people were concerned about density and the size of the houses. He liked the proposal on the septic systems, assuming the Town could make it work. He stated that it was bypassing the other issue and thought that in the future, it would be a problem. He agreed that it has not been a problem since it's been isolated to Palmer's Island. He pointed out that he has a lot that was 33,000 square feet and could put a large house on it, but he put in what the septic capacity could hold. He stated that it wasn't the right thing to do in his neighborhood. He stated that he would like to send it back to the Planning Board and ask them to find a way to control size – not rooms – as well as control occupancy.

Mayor Kingston agreed with sending it back to the Planning Board but disagreed that the Town didn't have a short-term issue because the Town was exposed. He pointed out that all the Town had was the septic capacity. He was suggesting a cap while the Town

worked through the issue. He thought it would take another two to three months to work through it.

Councilor Burdick asked if the ordinance could be moved forward so the Town was not left with anything. He didn't think Council disagreed with the proposal on the septic system and move it to the public hearing and then see if Council could agree on a cap – whether it was 8,500 or 10,000 square feet – temporarily. He noted that 10,000 square feet would fit just about everywhere in Duck. Director Heard thought it was subjective at that point as there were only two homes of that size in Town. Councilor Burdick stated that the Planning Board had argued about 8,500 square feet and he would be in favor of what they argued about. He thought the Planning Board would come up with a different idea and fix the setbacks in a way that meets the thinking Council had.

Councilor Britt pointed out that Council did not come to this issue based on house size; it was based on the problem with the septic systems. He agreed with Councilor Burdick in sending it to a public hearing and not making any changes, and then give a direction – which he disagreed with – at looking at capping house size. He thought if Council was concerned about doing something now, he agreed with Town Attorney Hobbs' comments.

Mayor Kingston pointed out that Town Attorney Hobbs didn't mention anything about a cap, but that the risk was on the septic. Town Attorney Hobbs agreed, adding that if Council was going to make changes of that nature, he recommended that it go back to the Planning Board if Council was considering a cap. He stated that while the issue was discussed at the Planning Board level, the recommendation did not come back from the Planning Board. He noted that it was just a suggestion. He added that if Council wanted to add a cap, they could ask staff to bring an alternative to the next meeting, but it would be without any input from the Planning Board.

Mayor Kingston asked if Council could not go back to the prior ordinance that came before Council that was sent to the Planning Board, which capped it at 7,000 square feet. He asked if that ordinance could be resurrected. Director Heard stated that Council held a public hearing on that particular proposal and tabled action on that ordinance to send it back for further review and consideration by the Planning Board.

Mayor Kingston clarified that Council could send it forward at this meeting in order to give the Town some short-term protection while the rest was sent back to the Planning Board. Town Attorney Hobbs stated that he did not recall that, but Council already had a public hearing on the ordinance. Mayor Kingston agreed, adding that Council took no action because Councilor Burdick was not present for the meeting. He thought it could be sent forward at this meeting, which would give the Town short-term protection while Council tries to integrate some of the other issues into a discussion of what they really wanted to accomplish.

Councilor Britt stated that he would be in favor of forwarding what the Planning Board sent Council based on septic and treat the square footage as another issue. He stated that

he did not want to go back to an ordinance that Council was not in favor of and send it back to the Planning Board only to be okay with it. He stated that he would not support that. Mayor Kingston pointed out that Town Attorney Hobbs had just stated that the septic was not defensible and that there was a risk. He added that the discussion Council had on the tiers was the upper end since it stopped at 7,000 square feet. He stated that the whole discussion was regarding the larger lots. He thought that putting that in at this time would give the Town some short-term protection while the Town works through the issues of septic and lot size. He noted that it was a suggestion but added that the ordinance already went to a public hearing.

Mayor Pro Tempore Thibodeau stated that at the public hearing, Council heard from the public, particularly from people that owned the larger lots who were adamantly opposed to it because it prohibited them from exercising their rights on the fact that they had a larger piece of property and could probably fit more on there in a nicely scaled manner. She wasn't sure what Mayor Kingston was suggesting, but Council did hear pushback from the public on that ordinance and it seemed to be directly related to the area of the higher size that Council seems to be stuck on.

Mayor Kingston thought Council heard from one resident and two builders at the public hearing but have not really heard what the public and full-time residents say about house size, density and environment. Councilor Burdick stated that he has heard about it and was the reason he brought it up. He added that people were concerned about the physical size of houses and that was why he looked at it in that there were two issues that Council needed to deal with. He thought the Planning Board did a good job in dealing with the one issue, but the other one needed to be addressed. He stated that he was worried it would cause major problems before the Town gets control of it. He thought the Town was starting to hear people wanting to build large houses. Mayor Pro Tempore Thibodeau and Councilor Britt noted that people want to build large houses on large lots. She added that it was not affecting the average lots. She stated that Council was really discussing the large lots only and that was where Council heard the pushback on the ordinance. Mayor Kingston pointed out that the public comments were from one homeowner who may want to increase the size of his home and two builders. He added that Council did not hear from any other Duck residents. Councilor Burdick stated that he had listened to the meeting.

Councilor Caviness thought one of the issues was if all the large lots were in one area so that when one went into that neighborhood, and all of the homes were of the same scale, it would not be objectionable. She thought if Council took a more forward-looking approach and start thinking about lots being combined or a large lot in a neighborhood where there was a lot of smaller homes, that was where some of the objections would come from. She noted that not every large house brings problems, but all of the problems that people associate with larger houses were more cars, more trash, more noise and more light. She added that not every large house violates that but there was the potential for it. She thought what Council had before them didn't sound like it was defensible. She stated that it seemed like it had the absolute language that the legislature stated that the Town could not do. She stated that if Council was trying to grapple with the issue, she thought

it should be sent back to the Planning Board and try to come up with some solution that addresses density but also tries to address the idea of the large house. She thought the suggestion of the greater setback with a bigger house was one that needed to be looked at. She added that if a large house caught fire with the same setbacks that a smaller house has, it would be a huge problem, which scared her. She stated that she would like to see something that would be a hybrid but understood the immediate concern as well as the long-range concern.

Councilor Burdick clarified that Town Attorney Hobbs was saying that what the Town proposed was within the wording of the legislation that it would imply that the Town was regulating rooms. Town Attorney Hobbs thought it was a matter of interpretation. He thought the totality of the circumstances and when there was a mention in the legislation regarding an indirect regulation and it mentions the number of rooms, if the intent of what has been put forward to Council, at least in part, a consideration of trying to limit the number of rooms, which is what he heard, then at a minimum there was an intention of trying to do something that was in violation of the statute. Councilor Burdick thought Council was trying to limit the number of occupants and not rooms. Town Attorney Hobbs stated that he couldn't predict with any certainty how a court would look at the language and apply it to Duck's situation as far as this regulation went. He added that he could only give advice and Council could certainly take it or leave it.

Councilor Burdick stated that he was trying to make sure he understood clearly what Town Attorney Hobbs was telling Council. He thought the Planning Board discussion hinged on the number of occupants in a house and didn't say anything about the number of bedrooms. Councilor Britt thought Council got to this point because there was a house that had 12 bedrooms and the primary issue was density. He added that it was density and not house size, adding that the Town has never regulated house size since house size was regulated by setbacks and the size of lots. He agreed with Councilor Caviness' comments about large houses as there were a lot of things with large houses in terms of fire protection that could be done. He stated that Council got to this point because of density and he thought they had something before them that addressed density and thought it should be put up for a public hearing and hear what people have to say. He thought house size was a separate issue and could be sent to the Planning Board. He reiterated that Council got to this point due to the concern about density. He thought density was a larger concern over house size. He stated that he was in favor of putting the ordinance before a public hearing as it was and if Council wanted to have the Planning Board address the house size cap or tiers, then they could see where it goes, but at this point he thought Council needed to address what was in front of them, which was to get it out to the public. He noted that, regardless of what Town Attorney Hobbs stated, it has not been challenged and Council didn't know if it would be challenged. He stated that he did not mind stating that he agreed with controlling density on that level and was fine with taking that chance.

Mayor Kingston disagreed with Councilor Britt's comments. He stated that, on the advice of Town Attorney Hobbs, it was not defensible at this point in time since it was a high risk. He thought there was a short-term risk for the Town with respect to some people

coming in and building large homes. He reiterated that there was a public hearing scheduled on the ordinance and suggested that it be put forward at this meeting to put something in place, which will come at house size and density, and then send back to the Planning Board with the integration of some of the ideas that have been discussed. He thought Council had something in front of them, it went to public hearing and the issue was the upper tier, and he thought it would give the Town some protection through 7,000 square feet on lot size. He thought by putting that in place, it could be amended as the Town moves forward. He stated that if Council goes through this process by sending it back to the Planning Board, in 60-90 days Council will be debating the issue again. He added that Council will have to go through that debate, but that time would be passing through and it's been proven that septic would not solve the problem. He suggested that Council move forward with the prior ordinance and then send back to the Planning Board what was approved and the septic scheme they crafted and see what what's left for integration.

Councilor Burdick stated he was confused. He asked Mayor Kingston if he was in favor of moving forward with the septic. Mayor Kingston stated that he was not but wanted to move forward with the prior ordinance that went to public hearing already. Councilor Britt noted that there was a cap in the previous ordinance regarding septic, so there was still septic language being proposed. He stated that he was not in agreement with sending the previous ordinance forward.

Councilor Burdick asked why the ordinance couldn't move forward with both. Mayor Pro Tempore Thibodeau explained that Mayor Kingston wanted to pass the ordinance that a public hearing was held on back in September. Mayor Kingston agreed, adding that it already had a public hearing and would give the Town a safeguard in the short-term. Councilor Burdick asked if it could be done even if it was tabled. Mayor Kingston stated that it shouldn't make any difference. Town Attorney Hobbs thought Council deferred action on it. Mayor Kingston noted that no motion was made. Town Attorney Hobbs noted that no action was taken. He assumed there was no motion at all.

Councilor Burdick asked what the motion was at the September meeting. Councilor Britt stated that it was sent back to the Planning Board. Mayor Kingston added that Council did not make a motion. Councilor Britt agreed. Director Heard stated that septic was incorporated into the draft ordinance as it was one of the criteria for large houses, so it would only be applied to someone looking to build a house above and beyond the basic standards within each tier. He added that it was an overall cap of 1,080 gallons per day, which was the maximum that was in the proposed ordinance for the largest lots. Councilor Britt pointed out that it was the only thing that could be challenged. Mayor Kingston thought Council's only concern at the September meeting was the highest tier since that was where the public comments were coming from. Councilor Burdick asked about house size. Mayor Pro Tempore Thibodeau stated that the maximum was 7,000 square feet, which would render some homeowners nonconforming if they wanted to do anything new with their home.

Mayor Kingston stated that he was trying to avoid a 60-90-day delay and come up with some type of temporary solution that would give the Town some level of protection as it moved forward. Councilor Britt suggested scheduling a technical continuance for 30 days from now in order to give the public a chance to give input on it. He stated that he didn't like the idea that Council had stated they weren't going to do anything with this and now that's changed. He added that he wanted to get the public's input on it. Mayor Kingston stated that the public had the opportunity at the last public hearing. Mayor Pro Tempore Thibodeau pointed out that Council heard nothing but objections to it.

Mayor Kingston asked Council if they wished to move forward. Councilor Caviness stated that there have been other ordinances passed where Council has gone back to make revisions on things that have not worked well. She thought tweaking the top tier could help if Council were to pass the ordinance as it was presented, Council could always go back and make appropriate revisions. Mayor Kingston stated that the ordinance came forward with support from the Planning Board. Director Heard stated that it did, adding that it was a 3-2 vote, but was recommended by the Planning Board.

Mayor Pro Tempore Thibodeau thought if Council was going to try to do an ordinance that hasn't been looked at in a while, she suggested amending it to increase the cap from 7,000 square feet to 9,000 square feet because she felt it was unfair to the larger property owners. She didn't see the need since everything else was working. She thought the Town was unfairly hurting and targeting the larger lots. She stated that if Council could live with 9,000 square feet temporarily and then revisit it, she thought it would get at Mayor Kingston's concern. She thought he was concerned that someone was going to come in and build a 12,000 square foot home. Mayor Kingston stated that it was an unknown. He added that the Planning Board came back with 8,500 square feet. Mayor Pro Tempore Thibodeau stated that the Board could not agree on the square footage. Director Heard stated that the Planning Board discussed a cap and asked him to draft the ordinance in front of Council.

Mayor Pro Tempore Thibodeau reiterated that the Planning Board could not agree on 8,500 square feet so she suggested 9,000 square feet. Councilor Burdick stated that he was fine with it as it at least put something out there and avoided the 10,000 to 12,000 square foot homes in the interim until the Planning Board looks at it again.

Mayor Kingston asked if anyone had a copy of the ordinance. Director Heard stated that he would provide one as well as a copy of the minutes from the September 5, 2018 meeting in order to be clear on the action that was and wasn't taken. Town Manager Layton read the motion from the minutes of the September 5, 2018 meeting to Council and the audience.

Mayor Kingston asked what action Council could take at this meeting. Town Attorney Hobbs stated that he would stick with his original advice in that if Council wanted to reconsider the proposal, it should go back to the Planning Board or make changes to it. He stated that, regarding the minutes, he heard that there wasn't a motion but there seemed to be concerns about the proposal. He stated that the safest approach would be to

send it back to the Planning Board for another look because that was the direction Council gave the last time and Council could determine at this meeting that the Planning Board did not go in the direction that was given. He added that he wasn't going to tell Council that they could not adopt the previous ordinance since they already met the requirements that came before them.

Councilor Burdick asked if the ordinance could be modified. Town Attorney Hobbs stated that Council could make slight modifications but not a full revision as that would need to go back to the Planning Board. Mayor Kingston stated that Council could make the top tier change from 7,000 to 8,500 square feet. Town Manager Layton stated that the original cap was 7,000 square feet. He asked if there was an allowance for an additional 1,500 square feet based on the criteria. Director Heard stated that the original tier of lots 9,999 square feet or less had a maximum size of 3,500 square feet and were not eligible for the additional provision for large residences because they were nonconforming lots. He added that the next tier of 10,000 – 14,999 square feet had a maximum size of 4,000 square feet and because they were nonconforming, they were also not eligible for the large residential criteria. He stated that the next tier of 15,000 to 19,999 square feet was at 4,500 square feet and could go up to 7,000 square feet under the large residence approach. He stated that lots that were 20,000 to 24,999 square feet were 5,500 square feet and could be done under an administrative permit with no special criteria and could go up to 7,000 square feet as a cap. He stated that lots of 25,000 square feet or greater were 7,000 square feet as the standard maximum size and since the cap was set at 7,000 square feet, they had no provisions to allow them to build any greater. He stated that the Planning Board discussed having a cap of 8,500 square feet if they met the large residence criteria standards.

Mayor Pro Tempore Thibodeau pointed out that the Planning Board did not agree on the 8,500 square foot cap. Councilor Britt stated she was correct. Director Heard stated that that was the direction the Planning Board gave him to prepare the draft that they had discussed in October. He added that they did not end up voting to approve that draft, but that was the direction they gave him.

Mayor Kingston thought it would be a minor modification for Council to change the cap from 7,000 to 8,500 square feet. Councilor Burdick suggested having the cap set at 9,000 square feet. Councilor Britt stated that he objected to regulating house size as it was not why Council originally brought up the issue. He added that the Town was penalizing large lot owners. He stated that the issue was brought up because of a concern over density and too many bedrooms and not house size. He stated that he disagreed with regulating the cap on house size.

Mayor Kingston moved to go back to the prior version of Ordinance 18-06, amending maximum house size from 7,000 to 8,500 square feet.

Town Attorney Hobbs reminded Council that this would be the first vote and read on the ordinance and to adopt an ordinance on the first read, there would need to be 2/3 or 4



votes in favor of the ordinance. He added that if that is not achieved, then the ordinance would fail and would come back to the next meeting for a second read.

Councilor Caviness asked if there could be a second public hearing. Town Attorney Hobbs stated that there could be. Councilor Caviness asked Mayor Kingston if he would consider having another public hearing at Council's December 5, 2018 meeting. Mayor Kingston thought the next public hearing should be on a new scheme that Council works through with the Planning Board that incorporated a lot of the items rather than having a public hearing on this one and then going back to septic. He stated that he would like to see Council get something in place and then move forward with asking the Planning Board to take another look at integrating the suggestions that were made.

Councilor Britt suggested scheduling another public hearing since one was already being planned, with the 8,500 square feet cap and see what happens. He stated that he may be okay with that. Councilor Caviness thought a compromise would be to have the public hearing in December with the one that was presented at this meeting, have a public hearing on the first version in December and if further instruction has to be sent to the Planning Board to look at other aspects, it would take time. She didn't think they would be able to get back to Council in 30 days with incorporating all of Council's thoughts from this meeting. She thought it was potentially the most transparent and fairest way to do things. Town Attorney Hobbs noted that if Council did have a second public hearing, it should be on the original text and ask staff to bring back some alternatives to consider which would not be a major change to the original ordinance.

Town Manager Layton clarified that it would still require a super majority vote for the first read. Town Attorney Hobbs stated he was correct. Councilor Burdick pointed out that Council already had the first read. Town Manager Layton and Councilor Caviness disagreed. Mayor Kingston stated that Council did not take a vote on it.

Mayor Pro Tempore Thibodeau asked why it would be the exact language as the first ordinance. Town Attorney Hobbs stated that it was the proposal that came up from the Planning Board. Councilor Burdick clarified that it could be modified in the meeting. Councilor Britt stated that it would be based on the public input.

Mayor Kingston withdrew his motion.

Town Manager Layton clarified that Council was looking to do the original Ordinance 18-06 as a public hearing. Councilor Britt stated that Council would be scheduling a public hearing for the ordinance. Town Manager Layton clarified that it would be with no changes from what was originally proposed. Councilor Britt stated he was correct.

Councilor Caviness moved to put up for public hearing the original version of Ordinance 18-06 for Council's December 5, 2018 meeting for consideration by the Council.

Motion carried 4-1 with Mayor Kingston dissenting.

Mayor Kingston asked Council if they wanted to give any direction to the Planning Board based upon the text amendment that they presented at this meeting or if it should be deferred until the public hearing. Councilor Caviness thought in the past, when Council had something come before them and they knew that there may be some objection in a section, there has been some language that was already created to help Council. She thought it would be helpful to have some guidance regarding the upper tier to help move the discussion along. Mayor Pro Tempore Thibodeau thought Council will be grappling with Town Attorney Hobbs' comments regarding the ability to regulate the septic size. Town Attorney Hobbs stated that Council could have one factor and decide if they wanted to do that if they felt that the other factors were sufficient. Councilor Burdick stated that he wanted the other factors left in.

### **Overview of the Strategy for the Review of and Updates to the Town of Duck CAMA Land Use Plan**

Director Heard stated that it has been 13 years since the Town adopted the CAMA Land Use Plan. He stated that there have been a number of changes in the development of the Town, philosophies of the Council members, as well as things that did not exist 13 years ago. He stated that because of the number of changes that have occurred, it was agreed that it was appropriate for the Plan to be revisited and brought up to date.

Director Heard stated that he and Town Manager Layton have had conversations about the best way start the update. He stated that there was a proposal before Council, noting that Council set aside money in this year's budget to retain a Planning consultant to facilitate the update. He stated that he would like Council to consider how they wanted to go about having an advisory group for this effort. He recommended a creation of a Land Use Plan advisory committee with approximately seven members consisting of a member of Council, a member of the Planning Board, a member of the Board of Adjustment, a representative from the Duck Merchants Association, a representative from a neighborhood association and two at-large members.

Director Heard stated that he was asking for authorization to prepare a Request for Qualifications that would go out to planning consultants in North Carolina to see who would be interested in helping the Town with the project.

Councilor Britt asked how a representative from a neighborhood association would be found since there were so many. Councilor Burdick asked which association would be chosen. Director Heard stated that the thought was to have some balance. He added that if there was a member from the business community, there should also be a direct interest in the neighborhood side of things. He stated that how the individual is selected was a different process. He added that staff could provide information on the current board members.

Mayor Pro Tempore Thibodeau asked if the idea was to have a professional property manager that does homeowners associations. Director Heard stated that it would be an option to consider. Councilor Britt stated he was not in favor of that. Councilor Burdick

thought it was a good suggestion. Director Heard stated that the individual would have a broader perspective than just dealing with an individual.

Mayor Pro Tempore Thibodeau asked what the timetable would be for it. Director Heard stated that the overall project would likely go into the next fiscal year. Town Manager Layton expected to get the RFQ out, get the consultant on board and get a resolution passed to create the advisory committee which would give staff time to solicit interest and then start the work. He stated that the project would not be finished for about a year or more after it starts. He stated that staff was looking for approval to start on the Request for Qualifications and then a contract would come back to Council for their approval.

Councilor Caviness stated that she would like to see someone from the Municipal Property Master Plan Committee or the Pedestrian Plan Committee on this new committee. Town Manager Layton stated that staff would solicit interest from those individuals.

It was *consensus* of Council to move forward and bring a resolution back to the December 5, 2018 meeting.

**Discussion/Consideration of Authorizing the Town Manager to Enter into an Agreement with VHB Engineering, N.C., for the Environmental Assessment for Lease Modification and Replacement of the Public Safety Building**

Town Manager Layton stated that in order to move forward with the lease modification request by the Town related to the current Public Safety building located at the Duck Field Research Facility, the Army Corps of Engineers was requiring that the Town conduct an Environmental Assessment of the proposed location. He stated that the environmental assessment will be completed in coordination with the Army Corps of Engineers and will result in a Finding of No Significant Impact decision by the Army Corps of Engineers. He noted that the cost of the study was estimated to be \$50,000.

Town Manger Layton stated that at Council's October 3, 2018 meeting, he reported that the Army Corps of Engineers would require an agreement with the Town to cover review costs associated with the lease modification request. He noted that these costs included the legal review, appraisal of the property, and the Finding of No Significant Impact decision. He stated that the Army Corps of Engineers has opted not to require a formal agreement but would be sending a letter outlining the requirements. He noted that the anticipated cost of these items was \$40,000 - \$50,000. He added that if Council authorized him to enter into the agreement with VHB, a budget amendment would be prepared to cover the costs of the two items for approval at Council's December 5, 2018 meeting.

Mayor Pro Tempore Thibodeau stated that, initially when Council was looking at this concept, she was under the impression that the Town was asking the Army Corps of Engineers to use the adjacent property. She noted that it now looks like the Town was asking for more property. Town Manager Layton stated she was correct. He explained

that in giving part of the property back, the Town was still retaining a piece of it. He stated that it was additional property and part of the environmental assessment included the current property as well as the additional property that the Town was requesting because ultimately the environmental assessment will identify any possible issues that the Town would have to mitigate on the existing property when it was given back since it would have to be returned to its previous state.

Town Manager Layton stated that if Council was in agreement of the authority to execute the agreement with VHB, he would then come back to Council at their December 5, 2018 with a budget amendment that would transfer \$45,000 and \$50,000 from the Fund Balance.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to enter into an agreement with VHB for the environmental assessment for lease modification and replacement of the Public Safety building as presented.

Motion carried 5-0.

## **NEW BUSINESS**

### **Discussion/Consideration of Nominations to the Dare County Tourism Board**

Town Manager Layton stated that Councilor Caviness' term as the Town's representative to the Dare County Tourism Board will expire on December 31, 2018. He stated that the Dare County Commissioners were requesting names of three individuals to be nominated for the position. He noted that Councilor Caviness was not eligible for re-appointment and that Mayor Pro Tempore Thibodeau and Councilor Burdick had expressed interest in serving on the Board.

It was *consensus* of Council to recommend Councilor Burdick, Mayor Pro Tempore Thibodeau and Councilor Britt to serve on the Dare County Tourism Board.

### **Discussion/Consideration of Resolution 18-08, a Resolution of the Town Council of the Town of Duck, North Carolina, Waiving Certain Fees Associated with Building Permits for the Repair of Certain Structures Damaged by Tropical Storm Michael**

Town Manager Layton stated that Tropical Storm Michael caused significant damage to sound side structures within the Town, with 114 docks and piers impacted as well as several homes suffering water damage to low-lying areas. He pointed out that as was done in the past, it was recommended that Council waive the permit fees for the repair to damages specifically caused by Tropical Storm Michael to encourage the timely repair of the structures.

Mayor Pro Tempore Thibodeau asked how it would affect homeowners that have already completed repairs. Town Manager Layton stated that staff have calculated it but have not collected the fees.

Councilor Caviness moved to adopt Resolution 18-08 as presented.

Motion carried 5-0.

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

Town Attorney Hobbs stated that he had no report.

**ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER**

**Update on Departmental Activities**

Fire Captain Clarence Batschelet was recognized to speak. Fire Captain Batschelet 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.

Director of Public Information, Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of upcoming activities to Council and the audience.

**Establishment of Council Annual Retreat Date**

Town Manager Layton stated that each year, Council holds a retreat to establish goals and initiatives for the forthcoming fiscal year. He noted that the retreat was typically held in the same timeframe as the February mid-month meeting, which would be February 20-21, 2019. He asked Council for their thoughts on the date or if they wished to choose an alternative date.

Mayor Kingston stated that he had a conflict on the first day due to a North Carolina League of Municipalities board meeting, but if the rest of Council was fine with the date, he would forego the meeting.

Councilor Burdick stated that he had a conflict and asked if it could be pushed a week forward to February 27-28, 2019.

Councilor Britt stated that he would be away the week of February 27-28, 2019. He noted that he had already rearranged his schedule to be present at the Retreat on February 20-21, 2019.

Mayor Pro Tempore Thibodeau asked when it would be on the calendar. She noted that Council usually reviews their calendar at the beginning of each year. Town Manager Layton stated that he usually brings the annual calendar to Council at their December meeting. Mayor Kingston noted that the Retreat is generally held instead of the mid-month meeting.

Councilor Britt stated that he would prefer it to be held on February 20-21, 2019. Councilor Burdick suggested it be held February 13-14, 2019. Councilor Britt stated that he would be fine with that. Councilor Caviness didn't think it would work for Town staff. Town Manager Layton stated that staff would do its best to make it work.

Councilor Burdick stated that if it was a problem for the rest of Council, he would work around it. Councilor Britt stated that he would be fine with it being held on February 13-14, 2019. Councilor Caviness wasn't sure if Fire Chief Donna Black would be available for that time.

Town Manager Layton stated that he would bring it back to Council with the annual calendar with the dates noted so Council can decide on a date. He added that he would be out of the country for spring break and will be asking Council to change the date for his budget presentation. Councilor Burdick stated that he would be fine with having the Retreat on February 20-21, 2019.

It was *consensus* of Council to hold the annual Retreat on February 20-21, 2019.

### **Financial Statement for month of October for FY2019**

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

### **MAYOR'S AGENDA**

Mayor Kingston stated that he and some of the other mayors as well as some of the other managers will be working to see what could be done in the coming year with respect to the number of bedrooms issue and the impact on the Outer Banks. He stated that they were waiting until the election to see who was elected and as that moves along, they were hoping to contact some of the legislators to help. He stated that he has his mayor's lunch on November 20, 2018 in Kill Devil Hills. He stated that he has his regional grassroots roundtable on November 27, 2018 in the Meeting Hall from 11:30 a.m. to 1:00 p.m. He added that he sent an invitation to all of the other mayors as well as the mayors for District 1 of the League. He stated that he would also be forwarding the invitation to all of Council and staff. He wasn't sure what the participation would be, but there will be members from the League of Municipalities to assist and make presentations. He stated that he has a League board meeting on December 12, 2018. He thanked Director Legner and Public Relations Assistant Betsy Trimble as well as Town staff for their work with the jazz festival. He noted that Town Manager Layton's review would be held on

December 5, 2018. He stated that he was looking forward to the upcoming turkey trot and the yuletide celebration.

**COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau stated that the deadline for CurrentTV Destination Dare topics was coming up. She stated that Skip Wallace was the interim manager and was getting stricter with the deadlines. She stated that the deadline for the grant application was also coming up. She stated that she was looking forward to the upcoming beach planting and expressed her congratulations to those that were recently elected.

Councilor Britt stated that he was looking forward to the upcoming turkey trot and thanked Mayor Kingston for all that he does for the Town.

Councilor Caviness stated that it has been a privilege to serve on the Dare County Tourism Board for the past four years.

Councilor Burdick stated that he was looking forward to Thanksgiving and the turkey trot.

**OTHER BUSINESS**

**Additional 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.


Mayor Kingston noted that the next meeting will be the regular meeting on Wednesday, December 5, 2018 at 7:00 p.m.

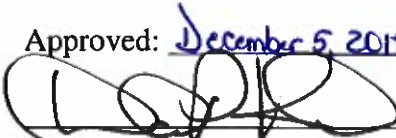
**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:01 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: December 5, 2018  
  
Don Kingston, Mayor

