

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
December 2, 2015**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, December 2, 2015.

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

COUNCIL MEMBERS ABSENT: Councilor Jon Britt.

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 Ackerman.

OTHERS ABSENT: None.

Town Manager Layton called the meeting to order at 7:05 p.m. He asked Don Kingston to lead the Pledge of Allegiance. Town Manager Layton led the moment of silence.

SWEARING IN OF NEW COUNCIL MEMBERS

Town Manager Layton stated that the new Council members would be sworn in followed by the election of the Mayor and Mayor Pro Tempore. He noted that Councilor Jon Britt was excused from the meeting but had been sworn in earlier. He turned the meeting over to Town Clerk Kopec.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman swore in each Council member one at a time.

ELECTION OF TOWN COUNCIL OFFICERS

Election of Mayor

Town Manager Layton opened the nominations for Mayor of Duck.

Mayor Pro Tempore Thibodeau moved to nominate Don Kingston as Mayor. Town Manager Layton asked for other nominations. There being no other nominations, Town Manager Layton closed the nominations. Town Manager Layton moved to re-appoint Don Kingston as Mayor.

Motion carried 4-0.

Town Manager Layton turned the meeting over to Mayor Kingston.

Election of Mayor Pro Tempore

Mayor Kingston opened the nominations for Mayor Pro Tempore of Duck. Councilor Burdick moved to nominate Monica Thibodeau as Mayor Pro Tempore. Mayor Kingston asked for other nominations. There being none, he moved to elect Monica Thibodeau as Mayor Pro Tempore.

Motion carried 4-0.

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 Sergeant Melissa Clark.

CONSENT AGENDA

Minutes from the November 4, 2015, Regular Meeting and Budget Amendment

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 4-0.

PUBLIC HEARINGS

Public Hearing on Ordinance 15-13, Regarding the Definition of Building Height

Mayor Kingston noted that the public hearing has been canceled and would be rescheduled for Council's January 6, 2016 meeting.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Resolution 15-08, a Resolution of the Council of the Town of Duck, North Carolina, Naming the Meeting Hall in Honor of Paul F. Keller

Town Manager Layton stated that, at Council's November 18, 2015 meeting, a motion was approved to name the Meeting Hall in honor of Paul Keller. He noted that Mr. Keller was instrumental in seeing the Town's incorporation come to fruition and served as the Town's first Mayor as well as the chairman to the Municipal Property Master Plan Study Committee. He stated that staff was working with Mr. Keller on a date for a dedication ceremony. He didn't expect it to be before January 10, 2016 due to Mr. Keller's desire to have his family present for it. He added that new signage for the Meeting Hall has been ordered and would be installed. He recommended that Council approve Resolution 15-08.

Mayor Kingston asked Town Manager Layton to read the resolution. Town Manager Layton went on to read the resolution to Council and the audience.

Mayor Kingston moved to approve Resolution 15-08 as presented.

Motion carried 4-0.

NEW BUSINESS

Discussion/Consideration of the Appointment of Council Members to Serve on/as the Following:

Government Access Channel Committee

Mayor Kingston stated that an appointment would need to be made for the Government Access Committee.

Mayor Kingston moved to nominate Mayor Pro Tempore Thibodeau for the Government Access Committee.

Motion carried 4-0.

Planning Board – Council Liaison

Mayor Kingston asked for volunteers or nominations for the Council Liaison for the Planning Board.

Mayor Kingston moved to nominate Councilor Burdick to continue serving as the Council Liaison for the Planning Board.

Motion carried 4-0.

Shoreline Management Committee

Mayor Kingston asked for volunteers or nominations for the Shoreline Management Committee.

Councilor Burdick moved to nominate Mayor Kingston to continue serving on the Shoreline Management Committee.

Motion carried 4-0.

Transportation Advisory Committee

Mayor Kingston asked for volunteers or nominations for the Transportation Advisory Committee.

Mayor Pro Tempore Thibodeau moved to nominate Councilor Britt to continue serving on the Transportation Advisory Committee.

Motion carried 4-0.

Check Signatory – Two Council Members

Mayor Kingston noted that the check signatory was traditionally the Mayor and Mayor Pro Tempore. He suggested that he and Mayor Pro Tempore Thibodeau be the signatories.

Mayor Kingston nominated himself and Mayor Pro Tempore Thibodeau to continue as the check signatories for the Town.

Motion carried 4-0.

Discussion/Consideration of 2016 Council Meeting Date Schedule

Mayor Kingston stated that the draft 2016 Council meeting date schedule was before Council, adding that there were no conflicts with regard to the holidays in 2016. He pointed out that the Town holiday party would be held on Friday, January 22, 2016 and the Annual Retreat would be held on Tuesday, March 8, 2016 and Wednesday, March 9, 2016.

Councilor Burdick moved to adopt the schedule as presented.

Motion carried 4-0.

Discussion/Consideration of Authorizing the Planning Board to Develop a Text Amendment to Bring the Town's Land Use Standards into Compliance with a Recent NC Supreme Court Decision

Director Heard stated that during its recent decision in the *Byrd vs. Franklin County* case, the North Carolina Supreme Court found that a zoning ordinance may not regulate unlisted land uses by simply stating that "the ordinance prohibits all land uses that are not explicitly allowed". He added that communities were still allowed to prohibit certain uses, could permit a variety of uses and permit different types of uses with conditions;

however, under the Supreme Court's decision, any use not specifically addressed in the ordinance was considered to be a permitted use.

Director Heard stated that since the Town's zoning ordinance was inconsistent with the North Carolina Supreme Court's recent decision in the *Byrd vs. Franklin County* case, staff was requesting authorization to work with the Planning Board and Town Attorney Hobbs to review the Town's current land use regulations and recommend amendments that preserve the Town's current standards, while maintaining compliance with the Supreme Court's decision.

Director Heard explained that the intent of the review was not to change the types of uses that were permitted in different zoning districts or the standards under which they were permitted by the Town, but to develop a way of comprehensively addressing many hundreds of potential land uses that were not referenced explicitly in the Town's zoning ordinance.

Councilor Burdick moved to authorize the Planning Board, Town Attorney and Director of Community Development to review the Town's current land use regulations and recommend amendments that preserve the Town's current standards, while maintaining compliance with the Supreme Court's decision.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs congratulated Council on their election. He went on to give an update on the beach nourishment condemnation process to Council and the audience.

Councilor Burdick asked what the drop dead date was for receiving the last easements. Town Attorney Hobbs stated that he had not come up with the date yet but prepared the 30-day notices and left a blank space for the filing date. He added that he gave them to Ben Gallop, who would be working with him on it since he was an experienced litigator and has handled these kinds of cases along with John Leidy for the Town of Nags Head. He stated that Attorney Gallop would take over to the extent that an action would be filed and would finalize them. He stated that it would be sent out by the Town and then if the date arrives and the easements were still not in hand, the complaints would then be filed.

Councilor Burdick pointed out that there were three towns involved in the beach nourishment project. He asked where the Towns of Kitty Hawk and Kill Devil Hills stood. He further asked what date the Town had to have things done in order for the contract bidding to proceed. He thought there was a timeline that showed that it needed to be started by early January so the project could be put out for bidding. Town Attorney Hobbs stated that he did not have any information on the other two towns as far as where they were with the process. Councilor Burdick asked if it affected Duck being able to go out for bidding. Town Manager Layton stated that he did not anticipate it affecting going

out for bidding. He added that where it would potentially be an issue is that the Town has its CAMA permit, but one of the requirements was site control. He stated that while it wouldn't necessarily impact the bidding, it could impact the start dates for actual construction if Duck or the other towns do not have the site control in place. He noted that there may be workarounds to it that were not viable, but in Duck's case; staff originally expected it to go out to bid roughly in the timeframe originally planned, but may be a few weeks behind. He expected things to start in March so staff was looking at the first of January timeframe to get it in place. He felt that the Town was in good shape to meet Duck's requirements. He added that the Town of Kitty Hawk was having some issues with their easements and there wasn't an indication of how they were going to deal with the issues. He believed they were prepared to condemn if they needed to, but have not started the process. He stated that Duck was not looking at the contractors starting work until the end of April, so there was still time. He added that if the Town of Kitty Hawk was not prepared, the one year window would open and either the Town of Duck or the Town of Kill Devil Hills would be at the beginning of the project.

Councilor Burdick clarified that the Town was planning to go out in January to solicit bids and could do it with or without the easements. Town Manager Layton stated that it could be done. Councilor Burdick clarified that it would not hold Duck up. Town Manager Layton stated he was correct. Councilor Burdick clarified that the hang up without having the easements would be that the work could not be completed. Town Manager Layton stated he was correct as the Town would not have the authority to do the work. He thought that theoretically, it could be taken to a point with wherever there was public trust and have sand put there. He added that the real issue came to the area of the fore dune which falls into a "no-man's land" and goes back to the property owner in terms of the public trust. He noted that that was where the easements were required. He stated that it could be a work around but wasn't a good one and not one that Duck anticipated having to deal with.

Councilor Burdick clarified that the Town was in good shape. Town Manager Layton stated that the Town was. He added that part of the legislation that Duck was added to, the first piece gave the Town the authority for eminent domain and the second was for the quick take portion, which meant that once the Town filed and deposited money in escrow, then the easement was considered the Town of Duck's and would have site control. Councilor Burdick asked if Council had to do anything else. Town Manager Layton stated that everything was done on Council's part through the resolution that was passed.

Town Attorney Hobbs stated that while there is still discussion with the two remaining property owners, a 30-day notice was developed and would need to be fine-tuned and then get it to the Town to issue a letter and it will have the date to file the complaints. He added that easements could be received up until that date and if not, then the complaint would be filed and the easement would be acquired. Councilor Burdick asked if there was any reason not to do it in order to push the process along. Town Attorney Hobbs stated that there wasn't. Town Manager Layton pointed out that there was a 30-day

requirement before the Town could go onto the property to survey. He added that Duck was in that timeframe now.

Councilor Burdick clarified that the Town was waiting for the 30-day period to end. Town Manager Layton agreed, adding that the Town was working diligently. Councilor Burdick asked when the 30-day period ended for the survey notice. Town Manager Layton believed it was December 18, 2015.

Mayor Pro Tempore Thibodeau clarified that the bidding process would happen; a contract was let and even if all of the towns weren't ready to go, the project could still begin. Town Manager Layton stated she was correct. He added that the only risk was that the bidding, and hopefully contract, would have a one-year window to get the project completed. He stated that where the Town could run into issues would be if something came up that wouldn't allow the work to be done in that window and the dredge companies felt there was a risk. He thought there would be individual contracts and the economy of scale was doing the bidding together. He thought the dialogue with the dredge companies would happen and they would base it on whatever risk they have. He added that if something were to happen and one of the towns decided not to go through, he didn't think it would impact the other two towns.

Councilor Burdick thought the concern was not to delay the bidding process. Mayor Pro Tempore Thibodeau didn't think it was going to be delayed. Mayor Kingston added that the bidding process was ready to go. Councilor Burdick thought it was the next key move in the project. Town Manager Layton stated that he and Mayor Kingston would be attending a meeting on December 15, 2015 at 2:00 p.m. with CP&E for a pre-bid meeting. Councilor Burdick thought it was great, adding that he was receiving a lot of feedback from the community that people were anxious to see the project begin.

Councilor Burdick asked if the permitting was through the individual towns. Town Manager Layton stated that it was. Mayor Kingston noted that all three permits have been issued. He added that everything was on schedule and felt that the Town of Kitty Hawk will come through and not delay anything.

Councilor Caviness thought it was an understandable concern among the public and felt that it was a good point to clarify that if there was an issue with the other two municipalities, it wouldn't create a huge impact for Duck. Councilor Burdick thought it was important to put information out in the weekly email news blasts. Mayor Kingston noted that at this point in time, there weren't any issues with any of the towns.

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 one other part of the bid package, was that the Army Corps of Engineers has approached CP&E and with the Town's permission, has included a part of the bid package as an alternative, to have some sand placed in their near shore, in the water, because they have obtained money to study something and needed sand to be placed. He added that the Town happened to have a project that would be placing sand. He noted that it would be located south of the pier and would not be placing the sand on their instruments. He stated that he would be meeting with Jeff Waters of the Army Corps of Engineers on December 15, 2015 at 11:00 a.m. with CP&E. He explained that if they were to do the project on their own, they would have to have access as well as the items that Duck would be paying extra for in order to do the project. He stated that the intent of the meeting was to discuss any possible concessions to what the Town's cost may be and what they are asking the Town to pay for in order to do the project.

Update on Consolidation Committee

Town Manager Layton stated that there wasn't much to report. He stated that there was a lot of discussion at a meeting on November 20, 2015 regarding the results of what the managers discussed, which was that there was a lot of cooperation among the municipalities. He thought that what came out of the meeting was that in order to truly consolidate; a larger conversation would be needed. He explained that each of the towns had developed and became incorporated entities based on individual criteria and there didn't seem to be a real desire to give up any of that at this time. He noted that it didn't mean that there wasn't a lot of cooperation; an example of one of the new items that were being discussed was the Town of Kill Devil Hills was completing a project for fleet fueling. He added that in order for Duck to take advantage of a similar situation, it would have to go to Manteo, which did not make sense. He stated that it made sense to cooperate on certain projects, but in looking at large scale items, such as a police department, what it meant was basically creating a new County-wide police department. He noted that the police departments already had mutual aid agreements and there was cooperation with the fire departments. He stated that to take the next step, it would involve a larger discussion since it was totally different. He stated that there was not a desire to give up services.

Town Manager Layton stated that Dare County Manager Bobby Outten would be summarizing the discussions into a report which will be disseminated to the various Councils and if anyone wished to take the next step, then that would be the time to do it.

Councilor Burdick thought the committee ended up with a possible meeting in about 60 days, depending on what came out of the report. He thought the key element was that there was a tremendous amount of cooperation going on currently that people do not know about. He thought the County has decided on taking the lead in publicizing on what is happening, which was fundamental. He stated that public perception was that taxpayer's dollars were being wasted because the towns didn't work together, but in reality they all do work together in various areas. He pointed out that the police and fire departments were great examples of true collaboration at no cost to any of the departments. He thought that one of the difficulties with collaboration was that the six towns and the County were too separated. He thought there was a lot of collaboration going on between the Towns of Duck, Southern Shores and Kitty Hawk because they were close together. He stated that it was the same between the Town of Manteo and Dare County as well as the Towns of Nags Head and Kill Devil Hills. He thought that the two center towns should look into how to help themselves since they were so close together.

Councilor Burdick thought everyone came out of the meeting feeling that each town has done a poor job of publicizing how well the towns work together. He felt that was a priority for all of the towns to discuss so the public understands it better. He thought from that standpoint, everyone was comfortable with the meeting.

Financial Statement for November FY 2016

Town Manager Layton reviewed the financial statements with Council and the audience. He noted that he did not have the Occupancy Tax numbers yet, but would forward to Council once he receives it. He went on to review the beach activities report with Council and the audience.

MAYOR'S AGENDA

Mayor Kingston thanked Council and Town staff for their support on being Mayor for another two year term. He stated that he will be attending the beach nourishment meeting on December 15, 2015; his Mayor's meeting on December 15, 2015; a DCBA meeting on December 4, 2015 and was looking forward to the Yuletide Celebration and Fire Department holiday party on December 5, 2015. He congratulated Councilor Caviness and Fire Chief Black on the Turkey Trot. He stated that he would be a judge at the Beach Food Pantry Chef's Cook-off on December 4, 2015.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau thanked everyone for their support on continuing to be the Mayor Pro Tempore for Duck. She congratulated Councilor Caviness and Fire Chief

Black on the Turkey Trot. She noted that she put her name in to run for Dare County Commissioner next November.

Councilor Burdick stated that he was pleased to be on Council for another two year term. He congratulated Councilor Caviness on the Turkey Trot. He stated that he was looking forward to the Yuletide Celebration and Fire Department holiday party.

Councilor Caviness stated that it was an honor to serve on Council and was looking forward to another two years. She thanked the Town for partnering with Advice Five Cents for the Turkey Trot.

OTHER BUSINESS

Additional Public Comments

Bob Fitchett of 113 Cofield Court was recognized to speak. Mr. Fitchett stated that Council was doing a fine job in Duck. He stated that he previously lived in Duck and moved away, but had moved back and was happy to be back.

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


Mayor Kingston noted that the next meeting will be the Regular Meeting on Wednesday, January 6, 2016 at 7:00 p.m.

ADJOURNMENT

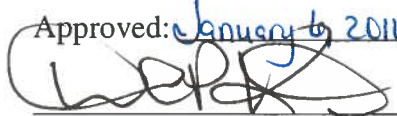
Councilor Burdick moved to adjourn the meeting.

Motion carried 4-0.

The time was 9:24 p.m.



Lori A. Ackerman, Town Clerk

Approved: January 6, 2016


Don Kingston, Mayor

