

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
December 2, 2020**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, December 2, 2020.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Sandy Whitman; and Councilor Rob Mooney.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Interim Town Manager Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Permit Coordinator Sandy Cross; Deputy Town Clerk Kristiana Nickens; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Public Relations Administrative Assistant Betsy Trimble and Assistant to the Town Manager Alyson Flynn.

Mayor Kingston called the meeting to order at 7:00 p.m. He noted that Councilor Nancy Caviness was attending the meeting remotely. He asked for a motion to remove the closed session from the agenda.

Mayor Pro Tempore Thibodeau moved to amend the agenda by removing the closed session item.

Motion carried 5-0 via roll call.

Mayor Kingston asked Lieutenant Melissa Clark to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston thanked everyone that was viewing the meeting remotely and to ensure an orderly meeting, he asked the audience to follow the guidelines for those that wished to submit comments during the Public Comment period. He noted that if the comments were submitted via email it would be read into the record and if comments were submitted for a later comment, it could be done through the question and answer function in Zoom and would be read into the record. He stated that the meeting recording would be available on the Town's YouTube channel as soon as possible after the meeting.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that with regard to the new fire ordinance that was adopted in July 2020, his first thought was why. He asked when one says "fire pit" or "pit fires" in the terms of the definition of fire pits, if there was a history of a huge problem in the Town. He asked if there had been a major fire caused by a pit fire or open burn. He pointed out that in the 40+ years of living in Duck, there was a campground that had hundreds of campfires. He wondered why the ordinance had to be created. He stated that looking at all of the definitions, he thought "contain fire" meant a burn building, outdoor fireplace, or barbecue grill. He added that he understood the term "open burning", but "pit fire" had a definition in the fire ordinance, and he always heard of "fire pits" and wondered if he had a fire pit, if it was allowed versus a pit fire.

Ben Vorndran stated that pit fire was defined as cooking, picnics, recreational fires, and campfires. He noted that there was another definition for "recreational fires", which was described as burning yard debris or rubbish. He added that the Code went into what was prohibited such as a bonfire, pit fire, recreational fires, and open burns. He noted that another thing he saw that came into play was that some of those were allowed, such as contained fires which included barbecue grills as well as outdoor fireplaces, but one could not do anything within 10 feet for a barbecue. He stated that it was the first thing that came to his mind, adding that there was probably thousands of barbecue stands/grills that were within 10 feet of a structure, if not more.

Ben Vorndran stated that the second part was that one could only use a barbecue grill from 8:00 a.m. to 6:00 p.m. He stated that most people barbecue for dinner time and not lunch time. He wondered why the Town could not handle the issue after 6:00 p.m. and wasn't sure why there was a time constraint.

Ben Vorndran stated that "all combustible" was nitpicky as he thought if one reviewed the definitions of bigger fire departments or national fire, it was noted that human beings are combustible, so if everyone was to have a barbecue, they would be under violation of the ordinance. He stated that the other thing that he wasn't sure how it came into play were hazards or hazardous materials. He noted that the ordinance mentioned single dwelling or single level versus multi-level. He wasn't sure what the difference was, adding that it could not be in a flammable container, which he felt didn't make sense. He pointed out that he purchased flam lockers in the past to put flammable items in, but the way he was reading the ordinance made it seem like it was illegal to put something flammable in a flam locker.

Ben Vorndran stated that he's lived in Duck most of his life and with regard to fire pits and campfires, people see them for a social or family gathering. He thought it was a good place since people put their cell phones down and talk to one another and there was more interaction with people. He stated that he looked at it as everyone sitting down at a campfire or pit fire reminiscing about what they did at the beach or how they spent their vacation. He pointed out that Duck was taking away an element by barring them. He stated that it really came down to if it was a reason the Town wanted someone to receive a ticket or have problems, adding that it would be another reason not to come to Duck.

Ben Vorndran wondered why Council wanted to create this issue as he didn't understand it. He stated that with regard to campfires, former President George Washington used campfires when he was being overwhelmed to let the British army know that people were there, but in reality, they weren't. He added that campfires were part of the United States' history as well as s'mores, which was a sad gathering. He wondered if there was any history or problem where the issue had to be brought up to make it a law or to prohibit it as well as how the Town was going to handle all of the people with their barbecues next to their homes. He wondered if the police would have to go to the houses after 6:00 p.m. to tell people they can't barbecue. He stated that it seemed a little much to him, adding that he looked forward to any feedback or comments in the hopes that the ordinance can be changed.

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

SPECIAL PRESENTATION

Employee Recognition Program

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 at a Duck business of their choosing.

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman went on to present Police Lieutenant Melissa Clark with her 10-year service recognition certificate and \$100 gift certificate.

Introduction of New Police Officers

Police Chief Ackerman introduced new police officers Jeremy Davis and Kyle Kuhar to Council and the audience.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in police officers Jeremy Davis and Kyle Kuhar.

Mayor Kingston and Council welcomed Officer Davis and Officer Kuhar to the Town.

Introduction of Sandy Cross as Senior Planner

Interim Town Manager Joe Heard was recognized to speak. Interim Town Manager Heard stated that Permit Coordinator Sandy Cross had taken over a variety of duties over the past six years within the Planning and Community Development field. He stated that Permit Coordinator Cross displayed the necessary attributes to serve in the Senior Planner position. He went on to introduce Sandy Cross as the new Senior Planner.

Mayor Kingston and Council congratulated Senior Planner Cross.

CONSENT AGENDA

Minutes from the October 7, 2020, Regular Meeting; Minutes from the November 4, 2020, Regular Meeting; Resolution 20-11, a Resolution Expressing the Town Council's Support and Authorizing the Interim Town Manager to Submit a BRIC Grant Application; Resolution 20-12, a Resolution Requesting Assistance, Supporting, and Accepting Responsibility for a Grant Through the NCDWR Coastal Storm Damage Mitigation Fund for the Town of Duck Beach Nourishment Project; and Budget Amendments

Councilor Whitman moved to approve the consent agenda as presented.

Motion carried 5-0 via roll call.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of 2021 Council Meeting Date Schedule

Interim Town Manager Heard stated that the draft 2021 Council meeting date schedule was before Council. He pointed out that the annual Retreat would be held on Wednesday, February 17, 2021 and Thursday, February 18, 2021 and the budget presentation would be held on April 21, 2021.

Mayor Pro Tempore Thibodeau noted that the dates all fell in line with meeting dates and times in the past. She thought Council could discuss changing the time of the meetings from 7:00 p.m. to 6:00 p.m. Mayor Kingston stated that Council could discuss the time change after approving the calendar.

Councilor Whitman moved to adopt the schedule as presented.

Motion carried 5-0 via roll call.

Mayor Kingston thought there were quite a few Council members that would like to entertain moving the start time of the meetings from 7:00 p.m. to 6:00 p.m. Mayor Pro Tempore Thibodeau stated that she had heard it discussed, particularly because Council has had some very late meetings. She stated that since the new year would be starting, it would be a good time to change the time. She noted that the meetings were always held at 7:00 p.m., but she was fine with changing it to 6:00 p.m.

Mayor Kingston thought it was worth trying. He stated that Council could hold the meetings at 6:00 p.m. for three months and then change it back if needed. He stated that he polled some of the staff and they were in favor of having the meeting start at 6:00 p.m. He suggested doing it on a trial basis to see how it works out.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs pointed out that since the schedule was the published one, Council would have to have times published. He suggested having a motion to clarify how long the meeting time change would be or if it would be an entire year with the possibility of coming back later to change it after three months.

Councilor Mooney thought it was a good idea to change the time. Councilor Caviness stated she was in favor of the time change.

Mayor Kingston pointed out that Town Attorney Hobbs had suggested that it could be done for the entire year and then revisit it after three months. Town Attorney Hobbs pointed out that Council could always change their published calendar at any time. He clarified that the mid-month meetings would remain at 1:00 p.m. Mayor Kingston stated he was correct.

Councilor Whitman moved to change the time of the regular Council meetings from 7:00 p.m. to 6:00 p.m. for 2021.

Motion carried 5-0 via roll call.

Discussion/Consideration of Awarding Contracts and Authorizing the Interim Town Manager to Execute Contracts for Maintenance of the Duck Town Hall/Town Park Property, Duck Village Sidewalks, and Duck Trail

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that a Request for Proposal was put out to bid on October 1, 2020 seeking qualified contractors to provide landscaping and maintenance services related to the annual upkeep of the Duck Trail and multi-use path, the Duck Town Park and sound side boardwalk, and the Duck Village sidewalks. She stated that a bid opening was held on October 29, 2020; however, only one bid package was received. She added that Town staff re-advertised the Request for Proposal with a second bid opening on November 18, 2020. She noted that three complete bids were received from Coinjock Lawn Care for \$99,900, Caribbean Landscaping for \$120,000, and Julie's Outdoor Enhancement for \$273,100.

Senior Planner Cross stated that the base budget for landscaping appeared to be approved at \$125,000 and with this budget amount in mind, Town staff focused their review of references on the two low bid applications – Coinjock Lawn Care and Caribbean Landscaping. She noted that while Coinjock was the overall low bidder, staff initiated reference requests to all three references for both contractors. She stated that while Coinjock was the low bidder on all three projects, Caribbean was very close in cost relative to the Town Park and boardwalk area as well as the Duck Village sidewalks.

Senior Planner Cross stated that staff was recommending Coinjock Lawn Care for the Town Park and boardwalk and Duck Trail; and Caribbean Landscaping for Duck Village sidewalks.

Mayor Kingston stated that he did not agree with the recommendation. He pointed out that Coinjock Lawn Care had bid originally when no one else had, adding that they wanted to keep the work. He stated that the second time, two others were allowed to bid with one out of the Town's budget and the other pretty close. He thought the Town had a positive history with Coinjock Lawn Care and if they haven't done some things, then shame on Council for not managing it. He added that they were the low bidder on all three areas and were very competent. He recommended that Coinjock Lawn Care receive the contract. He pointed out that the reason the Town goes out for bids was to receive low bids and Coinjock was the lowest bidder. He thought it would be difficult to manage two landscaping companies and thought there would be a lot more issues by splitting the projects. He reiterated that he was in favor of awarding the contract to Coinjock Lawn Care, adding that they could be managed on a closer basis since they have a history with the Town.

Councilor Whitman stated that both contractors seemed very competent, but he had a problem with the \$3,500 difference.

Mayor Pro Tempore Thibodeau thought the reason the Town took the time to split the project was to take the time to get the details as the Town has evolved and changed. She stated that the Town has done very well overall with Coinjock Lawn Care. She thought the public had wondered why the Town did not take the contract out to bid as it has been a project that has been in the works for months. She understood the idea to split the project in order to have the opportunity to work with another landscaper in the areas that were identified as specific to their project. She pointed out that the delineation of the project areas was very clear. She knew Coinjock Lawn Care has been great and she liked them a lot, but they have had some changeover. She stated that she did not have a problem with the \$3,500 difference and would be in favor of the recommendation.

Councilor Mooney agreed with Mayor Pro Tempore Thibodeau's comments. He noted that the question wasn't about the management but the capability. He thought it was a good idea to have two contractors.

Councilor Caviness stated that she had no strong feelings either way. She stated that she appreciated the perspective of Council, adding that work in the Village has been failing over the years. She stated that she wanted to take Senior Planner Cross' recommendation on improving the Village area.

Town Attorney Hobbs asked if the proposal for the CPI increase was meant to be mandatory or negotiable. Senior Planner Cross stated that it was standard as per previous contracts and could be either. Town Attorney Hobbs stated that he had some language that would be consistent with the Request for Proposal. He asked if the CPI would cover any year whether it was during the term or during an optional extended term. Senior Planner Cross thought it would be for the term and any additional years. Town Attorney Hobbs suggested that the language read as follows: "...beginning January 1, 2022, during the initial term and any optional extended term of the contract, the annual rates for the services shall be adjusted by any increase in the consumer price index for all urban

consumers (1982-1984=100), with the maximum increase of 3% per calendar year..." He asked if that was what Senior Planner Cross was thinking as to how it was done in the past. Senior Planner Cross thought it sounded similar. Town Attorney Hobbs thought the revised language would work better.

Mayor Kingston stated that because the Town does not have a Public Works department, it has depended on Coinjock Lawn Care for special things such as storm clean up. He thought taking away some of their business would lessen their impact to the Town, which could put the Town in a position where it would have to look for other support. He pointed out multiple projects that Coinjock Lawn Care had done over and above their contracted work. He thought there was an advantage to having a single contractor.

Mayor Pro Tempore Thibodeau moved to authorize the Interim Town Manager to execute a contract with Coinjock Lawn Care for maintenance of the Town Hall/Town Park property and Duck trail.

Motion carried 5-0 via roll call.

Mayor Pro Tempore Thibodeau moved to authorize the Interim Town Manager to execute a contract with Caribbean Landscaping for the maintenance of the Duck Village sidewalks and landscaping.

Motion carried 3-2 via roll call with Mayor Kingston and Councilor Whitman dissenting.

NEW BUSINESS

There was no New Business to discuss.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he did not have anything to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

Interim Town Manager Heard gave a brief overview of the past month's permit activities to Council and the audience.

Police Chief Ackerman gave a brief overview of the past month's police activities to Council and the audience.

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.

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

MAYOR'S AGENDA

Mayor Kingston stated that he had attended his chairman and mayors meeting earlier in the day. He stated that the County and State have ramped back up with a lot of concern expressed by Sheila Davies regarding the majority of the COVID-19 cases coming from community spread and a lot of the conversation has been what could be done, but there have not really been any answers other than personal responsibility as well as the increased use of masks. He thought Duck had a pretty big mask compliance, adding that some of the other towns mentioned they had compliance as well. He thought the majority of the cases were residents of Dare County getting together with friends.

Mayor Kingston stated that the chairman and mayors also discussed the vaccine as it was on its way and the priority of the State was working with Dare County with regard to prioritization and the first would be hospitals. He noted that Outer Banks Hospital was not sure if they would be on the list as it was not accepting patients. He stated that the second priority would most likely be first responders, but a lot has to still be discussed.

Mayor Kingston stated that he had a NC League of Municipalities Finance Committee meeting on November 30, 2020, which included a review of their audit, which was fairly clean with their financials being very solid. He stated that he has a board meeting the week of December 7, 2020, which may conflict with some of the Town's activities. He stated that the DCBA was holding their annual meeting on December 5, 2020 in the Paul F. Keller Meeting Hall, which he would be attending as well as presenting information regarding the Town.

Mayor Kingston stated that on December 3, 2020, he would be meeting with the assessors for the Town Manager search via Zoom. He thanked Town staff and Duck Fire Department for the holiday decorations that were recently put up. He thanked Director Legner and Public Relations Administrative Assistant Betsy Trimble for their work and development of the Yuletide Celebration that will be held virtually.

Mayor Kingston stated that with regard to the schedule for the week of December 7, 2020, Council would adjourn this meeting and would have a special meeting on Friday, December 4, 2020 with Developmental Associates to narrow down the pool of candidates for the Town Manager position. He noted that it was putting Council in a predicament as they didn't know if the applicants would be in person or via Zoom, adding that the meetings would need to be scheduled at least 48 hours in advance. He noted that there would also be a closed session held with Attorney John Leidy on either December 10 or 11, 2020. He stated that he would be speaking to Steven Straus to find out the availability of the applicants in order to see when they would be interviewed.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau echoed Mayor Kingston's compliment on the holiday decorations. She thanked Town staff for all of their hard work to keep things running smoothly.

Councilor Caviness thanked the community for their support of the Advice 5k Turkey Trot that could not be held this year. She stated that, thanks to the generosity of people, she was able to raise \$12,500 for the endowment without the actual event.

Councilor Mooney wished everyone a happy holiday.

Councilor Whitman wished everyone a happy holiday.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Director Legner stated that no additional public comments had come in.

There being no comments, Mayor Kingston closed the time for public comments.


Mayor Kingston noted that the next meeting would be the Special Meeting on Friday, December 4, 2020 at 2:30 p.m.

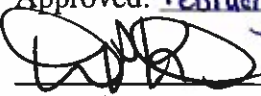
ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0 via roll call.

The time was 8:55 p.m.


Lori A. Ackerman, Town Clerk

Approved: February 3, 2021

Don Kingston, Mayor

