

**TOWN OF DUCK  
TOWN COUNCIL  
RETREAT  
February 21 & 22, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 8:45 a.m. on Wednesday, February 21, 2018.

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

**OTHERS PRESENT:** Town Manager Christopher Layton, Director of Community Development Joe Heard; Fire Chief Donna Black; Deputy Fire Chief William Walker; Police Chief John Cueto; Police Lieutenant Jeffrey Ackerman; Director of Marketing and Information Christian Legner; Public Relations Assistant Betsy Trimble; Town Attorney Robert Hobbs; Permit Coordinator Sandy Cross; Ocean Rescue Director Mirek Dabrowski; Planning Board Chair Joe Blakaitis; Planning Board Vice Chair Marc Murray; Planning Board Member Tim McKeithan; Planning Board Member James Cofield; Planning Board Member Sandy Whitman; Chris Dewitt and Ricky Wiatt of VHB, Inc.; Chris Turner of the North Carolina Wildlife Resources Commission; Ken Willson and Julien Devisse of APTIM; and Town Clerk Lori Ackerman.

**ABSENT:** None.

Mayor Kingston called the meeting to order at 9:00 a.m. He welcomed everyone to the Retreat.

**DEPARTMENTAL UPDATES**

**Community Development**

Director of Community Development Joe Heard was recognized to speak. Director Heard gave a short presentation on the Community Development Department and what they do to Council and the audience.

Mayor Kingston thanked Director Heard for his presentation.

**Discussion of Memorandum from the Duck Planning Board regarding Standards Regulating the Maximum Size/Occupancy of Residences**

Mayor Kingston stated that Council would be holding a joint session with the Planning Board, with the objective being for Council to provide additional direction to the Planning Board with respect to the issue of maximum size/occupancy of residences. He noted that it was not a public hearing and would be a discussion between staff, Council and the Planning Board.

Planning Board Chair Joe Blakaitis was recognized to speak. Chair Blakaitis opened the joint meeting between the Planning Board and Town Council at 10:03 a.m.

Director Heard stated that on December 1, 2004, Council adopted Ordinance 04-29, which established standards for maximum number of bedrooms in a residence, based on the size of the lot on which the residence was located. He stated that on June 19, 2015, the NC General Assembly passed legislation that stated in part: “Any zoning and development regulation ordinance relating to building design elements...may not be applied to any structures subject to regulation under the North Carolina Residential Code for one and two-family dwellings.”

Director Heard stated that the law also stated the following: “the phrase ‘building design elements’ means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms.” He stated that after consulting with Town Attorney Hobbs, the UNC School of Government and APA-NC Legislative Committee, it was determined that the State’s restriction on regulating “the number and types of rooms” negated the Town’s authority to establish a maximum number of bedrooms for single-family residences based on lot size.

Director Heard stated that on September 2, 2015, Council voted unanimously to adopt revisions to Section 156.126, Standards for Residential Density Based on Lot Size, consistent with recently adopted State standards, eliminating the Town’s ability to regulate the number of bedrooms in a residence. He noted that the adopted ordinance was recommended by the Planning Board. He added that the ordinance replaced the Town’s previous limitations on the maximum number of bedrooms in a residence with standards that establish a maximum number of occupants for residences based on the size of the lot. He stated that the determination of residential density was based on the maximum occupancy permitted by the septic permit issued by the Dare County Health Department.

Director Heard stated that earlier in the year, staff received an application to construct a 12-bedroom, 28 occupant residence in the Palmer’s Island subdivision. He stated that, based on the standards referenced, the permit was denied and staff provided the applicant with the maximum density parameters. He added that several weeks later, the applicant submitted revised building plans featuring a nearly identical floor plan with three of the former bedrooms labeled as a library, billiard room and workout room. He noted that even after being contacted by him about the discrepancies, the Health Department issued a revised septic permit for a 9-bedroom, 18-occupant residence at the request of the applicant. He added that because the allowable density was based on this permit, the Town had no choice but to issue the building permit for the residence, and construction is now nearing completion.

Director Heard stated that Town Attorney Hobbs expressed concerns about the ability to defend the occupancy standards based on bedrooms. He added that it was Town Attorney Hobbs' opinion that the Health Department septic permit was partially, if not substantially, based on the number of bedrooms and felt it was a little tricky in terms of defending that. He pointed out that staff discovered that the Health Department did not consistently use reasoning in determining the number of bedrooms and how many occupants when looking at the permit, which effectively undermined the Town's ordinance.

Director Heard stated that Town Attorney Hobbs felt that the Town may be better served by adopting standards that were set and enforced by the Town. He stated that there was a high-risk approach, which would be in direct conflict with State law that would limit based on bedrooms. He added that the medium risk approach was similar to the one that was currently in place and would include adopting standards based on anything that was indirectly tied to bedrooms. He stated that the low risk approaches were things that the General Statutes clearly allow the Town to do and would be safe from a legal standpoint. He explained that they would be things such as limiting the size of residences, limiting the scale of development through different development standards, limiting density by counting occupancy standards and not tying it to the septic permit, and limiting parking based on lot size.

Director Heard stated that the Planning Board and staff came up with the following options for consideration:

- Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space
- Regulating maximum size based on a tiered system
- Establishing a maximum size for residences in tiers based on floor area ratio

Mayor Kingston asked if the maximum size for residences in tiers based on floor area ratio would include heated and unheated space. Director Heard stated that the Town would regulate both or either, but generally most communities regulate heated space. He added that it could be done either way.

- Establish a maximum size standard with allowances to construct a larger residence if certain design criteria or development standards are met

Mayor Pro Tempore Thibodeau clarified that any of the limitations would be together with the existing zoning in place. She further clarified that it was an overlay on to some general standard restrictions that were currently in place. Director Heard stated she was correct. He thought it was an option that Council may have some changes, as they may want to offer greater flexibility with regard to the size of the house if they were going above and beyond the standards.

- Limiting size through development standards

Mayor Pro Tempore Thibodeau asked why this approach would not work. She thought most of the lots in Duck were 15,000-20,000 square feet. Director Heard stated that it would be for a substantially larger lot, such as a 7,500-square foot lot that was only 50 feet wide.

- Limiting density by Town-adopted occupancy standards

Vice Chair Marc Murray was recognized to speak. Vice Chair Murray asked why enforcement would be more difficult than the ordinance that the Town replaced previously. Director Heard explained that people would be converting something in their home to create another bedroom. He added that it was easy to track versus looking at the vehicles in a driveway and seeing if they were exceeding the occupancy requirement. Vice Chair Murray asked how the permit would be enforced. He noted that people could put as many people in a house as they want and have been able to do it. Director Heard stated that it would not be through a permit, but through a Town standard for maximum occupancy and would not be tied to the Health Department permit.

Councilor Caviness clarified that Director Heard was suggesting that this kind of standard would have to be an ongoing inspection. Director Heard stated that it would be; otherwise the Town could only tie it to the Health Department permit. He noted that at the time of development, it would be the only way that staff can look at something and decide if it was in compliance. He added that it would be an ongoing enforcement.

Member Cofield understood Vice Chair Murray's question. He thought it was logically impossible to enforce that kind of permit. He added that subjective judgments could be made. He thought what the Board wanted to do was to make sure that the regulatory enforcement was done at the point of permitting and not after the fact. He reiterated that Vice Chair Murray's point was valid. He reiterated that it was a subjective judgment and was a tougher standard. Director Heard agreed. He added that he was presenting items that have come up or options that have been identified but not suggesting that all of them were the best approach.

- Limiting parking based on lot size

Mayor Pro Tempore Thibodeau stated that she did not understand limiting parking based on lot size. Councilor Caviness stated that she did and felt it was backwards. Mayor Pro Tempore Thibodeau asked for clarification. Councilor Caviness explained that there were setbacks, lot coverage and a designated area that needed to be allocated for parking and whatever remained was where it could be filled. Mayor Pro Tempore Thibodeau disagreed, adding that if there were eight cars, it would bring in 16 people. Town Manager Layton stated that it was the concept. Mayor Kingston pointed out that the number of people in a car would vary.

Director Heard stated that at their meeting on December 13, 2017, the Planning Board began its reconsideration of maximum standards for size and/or density of single-family residences. The Board reviewed the information about the current ordinance, legal concerns, and standards for maximum size (square footage) of residences and discussed concerns about the potential impacts of limiting the maximum size of residences. He added that the conversation led the Board to discuss the intent of the limitations on residential construction.

Councilor Burdick thought Director Heard asked a good question in that he wanted to know what Council's real objectives were. He thought that was what Council needed to figure out so that the Planning Board could look at the objective and then decide on the options to meet the objective as opposed to it just being nebulous. He noted that in all discussions, there was always a discussion on housing density. He believed that it was for maintaining reasonable size houses on reasonable sized properties. He explained that the height restriction was in place so that there would not be any six-floor mansions and a lot restriction so that only so much of a lot could be built on. He stated that Council and the Planning Board were getting caught up with the problem of large lots. He added that in order to keep the density down, the Town was controlling bedrooms and came to a maximum of eight. He pointed out that now the question was how the Town could control density and what other standards were needed beside lot coverage and building height, since it was basically the two limiters in place, in order to achieve a reasonable density standard.

Town Manager Layton stated that one of the very first actions that the first Council took after incorporation was to impose a moratorium on large houses while they worked out what it meant. He stated that it was a value to the Town from the beginning and the Town Vision talks of scale. He pointed out that that was the reason Council and the Planning Board were now discussing this serious issue.

Mayor Pro Tempore Thibodeau thanked Town Manager Layton for bringing up the history. She added that the Town has been at this for a while and in 2003-2004, there was a lot more building going on in Duck. She stated that she had challenged anyone to look at homes to see the difference between a six and eight-bedroom home, but there was a fear that things could get out of control. She added that, looking at the overview Director Heard presented, Council and the Planning Board has seen that Duck was building about 10 homes a year and for the last two years, the Town has been under the new State regulation whereby there was a discussion by Council regarding the State saying that the Town could not limit the number of bedrooms. She added that Council talked about it and decided to let the Health Department regulations take care of things because the Health Department's rule was that there had to be a certain amount of land in order to build a certain sized home, adding that the Town also had lot coverage regulations. She stated that this was what Duck decided to do when the State imposed the new rule.

Mayor Pro Tempore Thibodeau pointed out that, after two years, there has been one home that's creating an issue. She stated that she wanted to de-emphasize the fear factor

on the scalability of it. She noted that 10 homes were built in a year and people were improving their homes. She cautioned Council and the Planning Board against a lot of regulation that will take away a lot of the value. She stated that people have been very pleased with where the Town has come over the last 15 years. She stated that Council and the Planning Board needed to be careful about trying to take people's personal property rights and making them fit into some kind of box.

Chair Blakaitis agreed with Mayor Pro Tempore Thibodeau's comments as well as Town Manager Layton's and Councilor Burdick's. He added that it was exactly what the Planning Board was looking for. He stated that the Board has had a lot of time to discuss all of the different alternatives and felt that the purpose at this meeting was to get more direction from Council and get their thoughts so the Board could come up with something that the Town would like.

Councilor Burdick agreed with Mayor Pro Tempore Thibodeau's comments with an exception – he thought the discussion has been to try to stay away from mini hotels. Mayor Pro Tempore Thibodeau stated that she took exception with Councilor Burdick's comment regarding mini hotels. Councilor Burdick understood Mayor Pro Tempore Thibodeau's concern. Mayor Pro Tempore Thibodeau pointed out that they were rental homes and wasn't sure what a mini hotel was unless Councilor Burdick was referencing places in Kill Devil Hills with 18-22 bedrooms. Councilor Burdick stated that that was what he was referencing. Mayor Pro Tempore Thibodeau stated that it could not be done in Duck. Councilor Burdick stated that he did not know what someone could do on a two-acre lot, adding that there were a couple in Town. Mayor Pro Tempore Thibodeau agreed that there were two large lots in Town. Councilor Burdick disagreed, adding that he wasn't sure how many were in Town. He thought the question was that the biggest problem area was Palmer's Island. Mayor Pro Tempore Thibodeau agreed, adding that Duck has some big lots. Councilor Burdick stated that the second issue was that it had a different height restriction, so it was already set up within the Town's ordinance that people in Palmer's Island can build big homes. Mayor Pro Tempore Thibodeau agreed, adding that it was a very small percentage of the community. She questioned trying to make new regulations just to take care of a street with 11 homes on it that were mostly already built.

Councilor Britt pointed out that all of the lots in Palmer's Island were big, so it was not like a big house could potentially be built next to a small house. He stated that the house in question did not look out of place. He thought the Town needed to protect the rights of people that own larger lots. He agreed with Mayor Pro Tempore Thibodeau in that he did not like the term "mini hotel". He thought the Town needed to be careful not to over-regulate and react to a collection of large homes that were under a different set of restrictions and were isolated so they didn't really affect the neighboring properties. He reiterated that Council and the Planning Board needed to be careful and agreed with Mayor Pro Tempore Thibodeau's comments.

Councilor Burdick noted that he wasn't disagreeing, but was reflecting that a lot of the discussion that was held was over the fact that Council did not want huge houses. He

agreed that they were isolated to one area in Town. He thought the overriding issue that he had a problem with was that the Town has a regulation in place based on Dare County that was useless to Duck. He added that if Dare County would do what the Town thought they would do, it would not be an issue. He asked if there was some substitute that would be reasonable and enforceable but not by using the septic system.

Vice Chair Murray pointed out that Dare County Health Department's regulation was only useless not on large lots, but extremely large lots like the house in question, as there has to be room for the septic that would be permitted. He added that this particular issue was only limited to Palmer's Island. He stated that there may be a few outlying oceanfront lots that may be larger, but they would not be to the extreme nature because of the Health Department's requirement for space for the septic system.

Councilor Burdick stated that with regard to the septic systems, it also has changed things in Town. Vice Chair Murray explained that the Health Department's requirements presently accommodate the new septic systems as well as to repair them. He added that the Health Department was subject to different but recent State regulations that were causing them to require more space to be used, even in the case of engineered septic systems. Mayor Pro Tempore Thibodeau pointed out that the State has clamped down on the Health Department. Councilor Britt agreed.

Member Cofield thought that the Town was trying to encourage owner-occupancy. Mayor Pro Tempore Thibodeau disagreed. Member Cofield asked if the Town was not trying to encourage having year-round residents. Mayor Pro Tempore Thibodeau explained that the Town could not tell people what to do with their homes. She added that they will rent them, have people stay in the homes and use them as well. She didn't think the Town could encourage and legislate owner-occupied homes. Member Cofield stated that he liked the Town of Nags Head's approach, without over-regulating, of which the planning and design elements were tied to the house. He stated that with that approach, a large house could be built on a large lot as well as doing other things to compensate for a large house on a large lot. He thought that was the approach Duck should be taking as a lot of things could be done that would not make it detrimental to the community.

Councilor Caviness stated that she found interesting the point that Mayor Pro Tempore Thibodeau had made when she said it was hard to look at a house and figure out if it was a four or six-bedroom house. She stated that she was less concerned with the number of bedrooms in a house, adding that if there was a 4,000-square foot house that someone was building or renovating as a permanent residence, that maybe they only wanted to have three bedrooms. She stated that if they wanted it as a vacation home, they would be interested in the maximum number of bedrooms since there would be a lot of visitors. She stated that if the number of bedrooms was going to be dictated by the septic capacity, then it should be done. She thought, as a community, people find objectionable houses that are too close together or too many cars at a house. She thought people were less concerned about the number of bedrooms, provided that there will be enough parking, trash cans and they don't create negative, secondary impacts. She stated that she would

rather see the setbacks and height being defined and whatever a homeowner wants to do on the inside of their home, they can do.

Mayor Pro Tempore Thibodeau agreed with Councilor Caviness. She stated that homeowners should be able to do what they want on the outside of their homes as well. She added that someone may like a contemporary look and those design elements become subjective. She thought it was about personal property rights. She noted that the lot size would dictate with the restrictions in place. She pointed out that there have been 10 houses built in Duck each year and didn't think anyone had a problem with it except for the one being discussed because it happens to be on a large lot. She wasn't sure Duck had a big problem. She added that Duck was popular and there has been a lot done to make it popular. She stated that people want to build in Duck; the value of the lots were higher than the average in all of Dare County; and it was because it was a nice place to live. She stated that people will put a lot of money into their homes and will build something they think is beautiful.

Chair Blakaitis stated that he was hearing that Council and the Planning Board needed to be careful and not to let exceptions rule what might be done at the Planning Board level. Councilor Britt agreed.

Mayor Kingston pointed out that, historically, the Town wanted to control density, occupancy and coverage by bedrooms. He added that it did not work. He agreed with Councilor Burdick that the Town agreed that the Dare County Health Department would control it. He thought the Town needed to control it. He further thought the Planning Board needed to look at the middle set of options and give Council what they originally had, but at the same time giving flexibility to the person building their home. He thought there were a lot of standards in place and agreed that he didn't care how many bedrooms were in a house, as long as the other standards were met.

Chair Blakaitis stated that the Planning Board had a lot of options in front of them and could probably take from some of them and create something that was good for Duck.

Councilor Burdick believed that Council and the Planning Board wanted to maintain the character of Duck in the basic density. He thought things like setbacks were important. He further thought having a lot of cars parked all over a property was not something that the Town wanted. He stated that Council and the Planning Board needed to find regulations that were reasonable and allow them. He stated that he didn't care about the size of the house, as long as it was not out of proportion with the houses around it.

Chair Blakaitis asked Councilor Burdick if he was suggesting that the Board look at setbacks. He noted that the setbacks in Town were pretty good currently. Councilor Burdick suggested that the Board look at it and ask if it was reasonable for what was trying to be maintained. Mayor Pro Tempore Thibodeau added that the Board should look at if there has been a problem other than this one house.



Mayor Kingston didn't think the Planning Board needed to take a step back and look at setbacks and height as it was already in place. Councilor Burdick agreed, adding that it was in place unless there was something obvious that the Planning Board could come up with. Mayor Kingston thought the control needed to be brought back to the Town versus Dare County and thought there was something that would replace what the Town had originally. He added that Council thought they had it with the septic systems through Dare County but it didn't work. He stated that there were a lot of options that could be explored that would give the Town back what it needs and at the same time giving people flexibility with what they build.

Chair Blakaitis pointed out that no one knows if the Town can keep what is in place, as it could work for the Town in the future. He added that it was the exception that the Town had that fired the first shot. Mayor Pro Tempore Thibodeau agreed. Vice Chair Murray stated that if the Town set an occupancy limit based on lot size that was consistent with the ordinance as it currently read, it may be difficult to enforce but was not impossible to enforce on a complaint-driven basis when the Town enforces most of their ordinances. He stated that if a problem develops, a letter could be sent, along with a notice of violation and then the Town could start fining the homeowner. He asked if that would be something that Council would be in favor of. Mayor Kingston, Councilor Britt and Councilor Burdick did not see a need. Councilor Britt stated that he was not a fan of that as it would make staff have to worry about how many people are in a house and the amount of complaints coming in from that would be overwhelming.

Vice Chair Murray thought it could be tied to parking since parking would be something that would be visible. He stated that he asked the question because he was hearing that the Planning Board should not do something but also do something, which was hard for the Board. Councilor Britt stated that nine or 10 houses built a year and the exception being a 50,000-square foot lot in Palmer's Island, made him a fan of Option E – limiting size through development standards. He added that he did not want to see a square footage limit put on houses as he thought it would limit architectural creativity and would take away options for people that want to build a large house with four bedrooms. He pointed out that the Town's bread and butter were via the rental homes and that was why there were buildings such as the one being discussed. He reiterated that he was not a fan of the square footage regulations and didn't think the Town had enough issues to go down that road.

Chair Blakaitis thought the Town encouraged people to both live and build in Duck. Mayor Kingston thought there were options that the Planning Board could look at, such as the one about square footage of area. He thought it gave a lot of flexibility to people building homes and didn't limit them on bedrooms. He thought there were some things that the Planning Board could look at to see if the Town could control. He reminded Council and the Planning Board that there were also subdivision covenants that control a lot of things.

Mayor Pro Tempore Thibodeau pointed out that the Town did have controls, setback requirements, parking requirements and septic permitting. She stated that it was very

simple and the Town's zoning should just be limited to parking, lot coverage and what the Health Department regulates. She thought the Town had them in place. Mayor Kingston asked why the number of bedrooms was in the ordinance initially if there weren't going to be additional controls. Councilor Britt pointed out that it was 13-14 years ago. Mayor Kingston disagreed. Councilor Britt stated that it was a different time. Mayor Pro Tempore Thibodeau agreed, adding that people were afraid. She added that the Town originally started with nine bedrooms and the next Council changed it to eight bedrooms. Chair Blakaitis thought the simple answer was that the Town had it because it could. Mayor Kingston agreed, adding that it went away a few years ago to maintain control of density.

Councilor Caviness stated that she wasn't sure that some of the other restrictions were as tight. She stated that she did not remember what the setbacks were as well as the lot coverage. Chair Blakaitis stated that setbacks and lot coverage were some of the first things that Council passed. He thought there was very little modification to it. Councilor Britt reminded Council and the Planning Board that the year before incorporation, there was a rash of applications to get ahead of things which created a knee jerk reaction by the first Council. Mayor Pro Tempore Thibodeau pointed out that there was also the issue of nonconformities that the Council was concerned about.

Councilor Caviness stated that if one drives onto those streets and sees the big cluster of homes that tried to beat the system, most were on Scarborough Lane. She added that it was those houses that have too many cars and not enough parking for the size of the house. She stated that they were the ones that created the most trouble because they were so large and didn't fit. She added that as time went on and things changed, the scale of houses on that street looked fine but the ones built after that had better allowances for all of the secondary issues.

Councilor Britt pointed out that it wasn't necessarily that the houses were huge, they just didn't have the same rules for setbacks and parking. Councilor Caviness noted that the houses were huge and didn't have the other rules so they looked twice as big. Mayor Kingston noted that Council would not be having this discussion as the same rules would be in place at the General Assembly – not changing the number the bedrooms – which was the rule Duck had. He stated that it forced Council's hand to come up with an alternative, which was now letting the County control what was done. Councilor Britt stated that Duck was not letting the County control what was done – setbacks, parking and lot coverage was something that Duck controlled. Mayor Pro Tempore Thibodeau agreed. Councilor Britt stated that when the regulation changed two years ago, Council said they would allow the Health Department to regulate things, but all of the other rules in Duck were still in place. He added that the Health Department would regulate it except for lots of this size.

Mayor Kingston stated that Council and the Planning Board were having the discussion because of it. Mayor Pro Tempore Thibodeau stated that it was because it was an anomaly. Mayor Kingston wasn't sure it was an exception. Councilor Burdick stated that he didn't see it as an anomaly. He added that there were big and small lots and thought

the Town's objective has always been to maintain things in proportion to lot size. He stated that he would like to see the Town do just that – maintain things in proportion to lot size. He added that it should be simple. He pointed out that it used to be simple but the Town lost it and what was currently in place sounded simple but was ineffective. Mayor Pro Tempore Thibodeau stated that it was ineffective for this one lot. She thought people would drive by it and not see anything unusual. Councilor Britt pointed out that there have been no other examples of where it's been ineffective except for that lot.

Mayor Pro Tempore Thibodeau reiterated that 10 homes are built each year. Councilor Burdick thought there was more going on than building 10 houses a year; rather there were people who have bought houses 15-20 years ago and were now upgrading them and they were also expanding the homes from four bedrooms to six bedrooms or adding a pool. He stated that it was testing what the Town has in place for limits. He noted that he didn't see anything wrong with finding something reasonable that would replace the number of bedrooms rule.

Councilor Caviness explained that with the redevelopment, homeowners were still constrained by setbacks, lot coverage, height and parking. Chair Blakaitis stated that they were the Town's existing standards. Councilor Caviness agreed. She added that as an older neighborhood transforms from all beach boxes, they were still restricted by the Town's standards. She added that in 15 years, the entire neighborhood may look different. Councilor Burdick stated that there were a couple of neighborhoods with acre lots and they could put at least 10-bedroom homes on those lots. He added that they would not look out of proportion because of the size of the lot. Mayor Pro Tempore Thibodeau reminded Councilor Burdick that he felt that proportion was important. Councilor Burdick agreed.

Mayor Kingston asked why the Town was so concerned when it could no longer control the number of bedrooms and then rushed to change it to septic that was controlled by Dare County. He thought that something should be brought forward that was comparable that would give more control within the Town. He understood all of the standards, requirements, and setbacks, but the Town depended upon the bedroom rule for many years until the General Assembly said it could no longer be done. He thought the Town needed to look at a replacement, not something that over-regulates, but controls it within the Town.

Councilor Britt stated that it could not be done indirectly by septic or parking. He added that the Town was still indirectly regulating the number of bedrooms and has been told it's not a good thing to do. He thought that the building market is different than it was 15 years ago and maybe the current standards that addressed proportionality was all that was needed.

Vice Chair Murray thought that the idea was to maintain the Town's character and maintaining the situation where the Town has a lot to offer to a lot of different stakeholders. He noted that the fact that more homes have been built and the vast majority of lot sizes will restrict people, that if there were a few outliers that were in scale

to the lot they are built on, it wouldn't be a problem. Councilor Burdick stated that he liked the idea that the Town controlled things and not Dare County. Mayor Pro Tempore Thibodeau noted that the Town was controlling things. Chair Blakaitis stated that the Town was not controlling it presently. Mayor Pro Tempore Thibodeau stated that it was controlled with lot coverage and parking. Chair Blakaitis disagreed, adding that the standard as it read, the Town was not controlling it because it was relying on the Health Department to come in and make a judgment. Mayor Pro Tempore Thibodeau clarified that Chair Blakaitis was saying that the Town was not covering anything. Chair Blakaitis stated that he was not. Mayor Pro Tempore Thibodeau pointed out that the Town was covering the lot coverage and parking. She added that the Town was doing things. Chair Blakaitis agreed, adding that the Town was doing a lot. Mayor Pro Tempore Thibodeau explained that the lots themselves restrict what people could build on them. Councilor Burdick pointed out that the Town was not controlling density. Vice Chair Murray stated that it wouldn't be controlled anyway.

Councilor Burdick stated that he didn't have an answer, adding that the Town was using the Health Department to control density. Mayor Pro Tempore Thibodeau asked if Councilor Burdick meant occupancy. Councilor Burdick stated that she was correct. Mayor Pro Tempore Thibodeau asked Councilor Burdick to state it that way because she didn't think the Town was controlling occupancy in the summer. Councilor Caviness pointed out that occupancy was what was triggering all of the trouble – traffic, parking, trash, etc. Mayor Pro Tempore Thibodeau pointed out that it was for 10 weeks each year.

Town Manager Layton thought, at a bare minimum, the septic issue would need to be removed from the current ordinance, since it was unenforceable. He stated that replacing it may be exactly the standards that are in place. He thought the Planning Board needed to look at that piece and figure out whether what was being done was as simple as just removing that and leaving it with the current standards or if there was some tweaking that would be required to make sure the standards were still applicable in their current form. He thought it was the direction he saw Council going.

Councilor Burdick stated that there was a parking regulation that stated that one had to have a parking place for every bedroom plus one and they had to be directly accessible and not stacked. He added that the regulation was changed and he had two houses that had to meet that standard. He stated that today, the occupancy and number of bedrooms could be increased because one does not have to have as much parking as in the past. He noted that there was a parking regulation where it has been allowed to have an increase in occupancy. Mayor Pro Tempore Thibodeau explained that a lot of that was due to the parking looking bad because it was too much, so Council brought it back and allowed the stacking. She added that it was done for aesthetics and runoff. Chair Blakaitis pointed out that even that changes since people invite so many people to come visit them that there is hardly any parking.

Chair Blakaitis thought the Planning Board heard some direction from Council and knew what needed to be done. Mayor Kingston thought the Planning Board needed to look at something that could be done to give the Town the control and remove Dare County.

Vice Chair Murray asked if the Health Department's involvement bothered Council on principle or because it hasn't been enforced. Mayor Kingston stated that it would not be a single criteria. He added that there would have to be regulation. Vice Chair Murray stated that it would not be a homerun by incorporating the Health Department, but it helped. He asked again if it bothered Council if it was in the ordinance. Mayor Pro Tempore Thibodeau thought if it wasn't in there, it was implicit that it was there. She added that one could not build a house without the Health Department approval. She stated that whether it was in the ordinance or not, it would always be there.

Town Attorney Hobbs stated that Council should control its own destiny in that there should not be an ordinance that relies upon another body's decision making to achieve one of the Town's goals. Chair Blakaitis agreed. Town Attorney Hobbs suggested removing that provision from the ordinance and come up with something else that works towards the Town's goals rather than laying someone else's criteria that was used for another purpose to meet the Town's goals.

Mayor Pro Tempore Thibodeau clarified that the Health Department regulations would always be in place, regardless of what the Town does. Councilor Britt stated that one would still have to get a Health Department permit. Mayor Pro Tempore Thibodeau pointed out that it would always be there and would be a factor in controlling what was built on a lot. Councilor Caviness thought it was to an extent.

Councilor Britt moved to refer the issue back to the Planning Board with all of the clarity given to work on an ordinance.

Motion carried 5-0.

Vice Chair Murray moved to end the joint session with the Town Council. Member McKeithan seconded.

Motion carried 5-0.

Mayor Kingston thanked the Planning Board members for their participation. He called for a 15-minute break. The time was 11:02 a.m.

Mayor Kingston reconvened the meeting.

## **UPDATES FROM VHB ENGINEERING, NC**

### **Comprehensive Pedestrian Plan Improvements**

Ricky Wiatt of VHB Engineering, NC was recognized to speak. Mr. Wiatt gave a short presentation on the Town's Comprehensive Pedestrian Plan improvements to Council and the audience.

Mayor Kingston thanked Ricky Wiatt for his presentation.

**Duck Living Shoreline Design**

Chris Dewitt of VHB Engineering, NC was recognized to speak. Mr. Dewitt gave a short presentation on the Duck Living Shoreline design project to Council and the audience.

Mayor Kingston thanked Chris Dewitt for his presentation. He recessed the meeting for lunch. The time was 12:16 p.m.

Mayor Kingston reconvened the meeting.

**PRESENTATION BY THE NORTH CAROLINA WILDLIFE RESOURCES COMMISSION ON COYOTES**

Chris Turner of the North Carolina Wildlife Resources Commission was recognized to speak. Mr. Turner gave a presentation on the issue of coyotes on the Outer Banks to Council and the audience. He then took questions from Council and the audience.

Mayor Kingston thanked Chris Turner for his presentation. He called for a 15-minute break. The time was 2:34 p.m.

Mayor Kingston reconvened the meeting.

**UPDATE ON TOWN OF DUCK BEACH NOURISHMENT PROJECT/BEACH PROFILE SURVEYS**

Julien Devisse and Ken Willson of APTIM were recognized to speak. Mr. Devisse and Mr. Willson gave an update on the beach nourishment project and the beach profile surveys to Council and the audience. They then took questions from Council and the audience.

Mayor Kingston thanked Julien Devisse and Ken Willson for their presentation.

**Review of Current Ordinance regarding Dune Walkovers**

Director Heard, Permit Coordinator Cross and Ocean Rescue Director Mirek Dabrowski were recognized to speak. Director Heard, Permit Coordinator Cross and Ocean Rescue Director Dabrowski gave a presentation on the current ordinance regarding dune walkovers to Council and the audience. They then took questions from Council.

Councilor Burdick moved to adopt a third row of sand fencing, spacing to be determined by Town staff and have it completed as rapidly as possible, in the beach nourishment area.

Motion carried 5-0.

It was *consensus* of Council to move forward with scraping in the beach nourishment area.

Mayor Kingston thanked Director Heard, Permit Coordinator Cross and Ocean Rescue Director Dabrowski for their presentation. He recessed the meeting until Thursday, February 22, 2018 at 8:45 a.m.

The time was 4:40 p.m.

### **RECONVENE**

The Town Council for the Town of Duck reconvened at the Paul F. Keller Meeting Hall at 8:45 a.m. on Thursday, February 22, 2018.

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

OTHERS PRESENT: Town Manager Christopher Layton; Director of Community Development Joe Heard; Fire Chief Donna Black; Deputy Fire Chief William Walker; Police Chief John Cueto; Police Lieutenant Jeffrey Ackerman; Ocean Rescue Director Mirek Dabrowski; Attorney Andrew Howle; Director of Marketing and Special Events Christian Legner; Public Relations Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

ABSENT: Town Attorney Robert Hobbs.

Mayor Kingston called the meeting to order at 9:01 a.m.

### **DEPARTMENTAL UPDATES**

#### **Police**

Police Chief John Cueto was recognized to speak. Police Chief Cueto gave a presentation on the Duck Police Department's activities, the need for additional officers as well as what they hope to accomplish in the future to Council and the audience.

#### **Golf Cart Regulation**

Police Chief Cueto gave a short presentation on golf cart regulations to Council and the audience.

Attorney Andrew Howle was recognized to speak. Attorney Howle explained the difference between low speed vehicles and golf carts as well as what is allowed and prohibited on streets to Council and the audience. He then took questions from Council.

It was *consensus* of Council to bring an ordinance regarding the regulation of golf carts back at the March 7, 2018 meeting.

Mayor Kingston thanked Chief Cueto for his presentations. He called for a 5-minute break. The time was 10:17 a.m.

Mayor Kingston reconvened the meeting.

### **Fire**

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a presentation on the Fire Department activities and the need for additional employees to Council and the audience. She then took questions from Council.

Mayor Kingston thanked Fire Chief Black for her presentation. He called for a 5-minute break. The time was 11:47 a.m.

Mayor Kingston reconvened the meeting.

### **Surf Rescue**

Ocean Rescue Director Mirek Dabrowski was recognized to speak. Ocean Rescue Director Dabrowski gave a short presentation on the activities of his surf rescue staff to Council and the audience.

Fire Chief Black and Ocean Rescue Director Dabrowski gave a short presentation on the need for a boat for the Public Safety Department to Council and the audience.

Mayor Kingston thanked Ocean Rescue Director Dabrowski and Fire Chief Black for their presentations. He stated that, personally, he didn't think the need was there for a boat based upon the investment that the Town would have to make. He added that there were other agencies that have water responsibilities and thought it should not be a priority for the Town.

Councilor Britt stated that he did not disagree with the numbers as there were not a lot of boat calls, even though they tend to be serious. He added that the discussion stemmed from the last year when he was the first on scene at an incident. He stated that he will always be available to help with a water rescue even though he was no longer in the water sports business, but has access to a ramp and the resources. He thought it was something that should be put on the Town's radar and will stand by the fact that several businesses in Duck put a lot of people out in the water and things happen. He stated that it would be nice to have a response and thought there were ways to make the response quicker, but thought it also took dedication. He agreed that the Town needed to prioritize things, but wanted it to be discussed now.



Councilor Burdick stated that he could see a need with a serious accident. He added that if the Town had a boat available to respond to calls would help improve the response time to a situation. He thought in this case, given that the incidents were likely to come from the rental boat operations in Town, it would probably be good to try to get them organized so they could respond. Councilor Britt thought it was a good idea, but thought the companies need to know that they can call for help if needed. Councilor Burdick thought the companies needed to know that Surf Rescue, the Fire Department and Police Department were all resources available to them immediately when needed. He added that he thought they should be organized. Councilor Britt thought it was a good first step.

Mayor Pro Tempore Thibodeau thought it would be interesting to see if the Town or Duck Merchants Association could help pull the companies together if they need it. She thought it made sense.

Councilor Burdick thought working with Surf Rescue would be a good step for the companies. Councilor Britt agreed. Fire Chief Black stated that it would be a coordinated effort between Police, Fire and Surf Rescue. She thought it was a great opportunity to get the companies on board as it would take the worry off of them.

It was *consensus* of Council to move forward with putting together a plan.

Mayor Kingston didn't think that Council was looking to make a major investment in a boat at this point in time. He recessed the meeting for lunch. The time was 1:04 p.m.

Mayor Kingston reconvened the meeting.

## **DEPARTMENTAL UPDATES**

### **PR/Events**

Director of Marketing and Special Events Christian Legner and Public Relations Assistant Betsy Trimble were recognized to speak. Director Legner and Public Relations Assistant Trimble gave a presentation on the activities and events going on in Town to Council and the audience. They then took questions from Council.

Mayor Kingston thanked Director Legner and Public Relations Assistant Trimble for their presentation. He called for a 15-minute break. The time was 2:52 p.m.

Mayor Kingston reconvened the meeting.

## **FINANCIAL OVERVIEW**

### **FY 2018 and Preliminary FY 2019 Analysis/Update and Draft FY 2019 Capital Improvements Program**

Town Manager Christopher Layton was recognized to speak. Town Manager Layton gave an analysis and update on Fiscal Year 2018 as well as a preliminary Fiscal Year 2019 analysis and the draft FY 2019 Capital Improvements program to Council and the audience, touching on budgetary goals, building permits, the beach nourishment project, revenues and expenditures. He then took questions from Council and the audience.

Mayor Kingston thanked Town Manager Layton for his presentation.


Mayor Kingston thanked the audience, staff and all of the presenters for their work. He felt that everyone did a great job. He noted that the next meeting would be the Regular Meeting on Wednesday, March 7, 2018 at 7:00 p.m.

**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0. The time was 4:54 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: April 4, 2018  
  
Don Kingston, Mayor

