

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
February 5, 2020**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, February 5, 2020.

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

COUNCIL MEMBERS ABSENT: Mayor Pro Tempore Monica Thibodeau.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Deputy Fire Chief Clarence Batschelet; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Attorney Ben Gallop; Director of Marketing and Special Events Christian Legner; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black and Public Relations Administrative Assistant Betsy Trimble.

Mayor Kingston called the meeting to order at 7:03 p.m. He asked Councilor Sandy Whitman to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

It was *consensus* of Council to add Resolution 20-01 to the Consent Agenda.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any comments regarding the public hearing be held off.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that the trial for beach access was coming up and he wanted to reiterate his feelings and thoughts on it. He stated that he did not agree with some of the comments that Bob Hovey had made as well as the pressure he was putting on the Town as he didn't think it was correct. He noted that he did not know Mr. Hovey and did not know his true character. He stated that some of the comments that Bob Hovey made were that the whole development in Duck was made in planning in order to make the most money off of the properties. He added that he has never seen Mr. Hovey come in front of Council and tell them that he has a financial gain to make from the issue. He pointed out that Bob Hovey purchased property in Duck in a subdivision where it was cheaper with the knowledge that there was no ocean or sound access. He stated that Mr. Hovey gains financial control from it as well as from his business which he runs from the ocean. He stated that Bob Hovey has been trying to raise money as he claims that he doesn't have money. He pointed out that Mr. Hovey doesn't live in Duck but owns a house in Town while living in Kill Devil Hills. He noted that Bob Hovey opened a store in Kill Devil

Hills, which he thought if Mr. Hovey had that kind of money, he should have the financial means to do things. He didn't think Bob Hovey was putting the "full boar" on what he was trying to do, which bothered him. He added that Mr. Hovey has made a comment about the Army Corps of Engineers property being a good place to access the beach. He wondered how Bob Hovey thought it would be paid for as he couldn't imagine what the cost would be to build and maintain an access.

Chuck Burdick of 148 Whistling Swan Drive was recognized to speak. Mr. Burdick gave a Dare County Tourism Board update to Council and the audience.

Police Chief John Cueto was recognized to speak. Police Chief Cueto went on to present Police Officers Justin Naquin and Timothy Armstrong with their Advanced Law Enforcement certificates.

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

CONSENT AGENDA

Minutes from the January 15, 2020, Regular Meeting; Resolution 20-01: a Resolution of the Town Council of the Town of Duck, North Carolina, in Support of Alligator River Bridge Improvements

Councilor Caviness moved to approve the consent agenda as presented.

Motion carried 4-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 19-10, an Ordinance Amending Subsection 156.124(C)(2)(d) of the Duck Town Code by Further Defining the Locations and Circumstances where Swimming Pools are Required to be Constructed Flush with the Adjacent Grade on an Oceanfront Property

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant – Finch & Company, Inc. – has proposed to amend Subsection 156.124(C)(2)(d) of the Town Code by further defining the locations and circumstances where swimming pools are required to be constructed flush with the adjacent grade on an oceanfront property. He explained that the proposed ordinance clarified that all pools within CAMA's Ocean Hazard Setback must be constructed flush with the adjacent grade of the property. He noted that for pools within the broader Ocean

Erodible Area, the proposal amends the standards to state that only pools located in an area below the regulatory flood protection elevation must be constructed flush with the adjacent grade of the property. He added that swimming pools above the regulatory flood protection elevation could be installed at an elevation higher than the adjacent grade. He noted that if the property in the area where the pool was located was at an elevation that was higher than the regulatory flood protection elevation, it could be built higher; however, if it was lower than the flood protection area, it would still have to be built at grade.

Director Heard stated that the amendment was moving the line where an elevated pool could be built from the ocean hazard setback which, for most properties in Town, was 60 feet west of the first line of stable natural vegetation. He noted that, typically, it would be beyond the toe of the dune and moved 60 feet from that point to an area that was typically 180 feet west of the ocean erodible area. He stated that there would be an opportunity and flexibility for a property owner to construct an elevated pool if they chose to.

Director Heard stated that the section of the ordinance where the amendment was located was a section that was added to the Town Code in 2013. He noted that some of the Council members, including those in attendance at this meeting, may recall that the Town had some concerns following Hurricane Sandy as there were a number of pools that were set in the dune that were built many years ago and were undermined as a result of the storm. He stated that the property owners went and put the pools back where they were, and the Town took a hard look at it and felt that it was not the best idea moving forward. He stated that Council then tasked the Planning Board to review it over a period of months in which the Board developed a recommendation. He noted that the swimming pools was one little piece of it but the entire ordinance deals with the proper location for structures in, on, and around the primary oceanfront dune system. He added that it was intended to minimize the impacts of those structures, whether it was a house, a pool or dune deck on the dune system so it could continue to serve in all the ways that it does. He pointed out that it was an attractive feature that also helps protect a lot of the properties in Town.

Director Heard stated that the text amendment was the first amendment to the ordinance that was passed in 2013. He stated that the Planning Board evaluated the proposal at their January 8, 2020 meeting and voted to recommend approval of the text amendment, redefining the locations and circumstances where swimming pools are required to be constructed flush with the adjacent grade on an oceanfront property. He stated that the Board members voting in favor of the amendment noted that the proposed change complied with the intent of the original ordinance and did not permit elevated or pile-supported pools within the primary dunes. He added that the amendment offered greater flexibility for property owners regarding the location of above-ground pools. He noted that Vice Chair James Cofield voted against the proposed text amendment, stating that the proposed amendment and this section of the ordinance should be evaluated more comprehensively and that he did not support a piecemeal change.

Director Heard stated that even though it wasn't formally recommended by the Planning Board, staff would like to request Council's consideration to authorize staff and the Planning Board to review the entire section of the zoning ordinance and make recommendations as necessary to improve the ordinance.

Mayor Kingston clarified that, in looking at the Planning Board's recommendation where they forwarded the amendment to Council, that point was raised but at this point in time, the Board didn't think it was necessary. Director Heard stated that there was a member of the public that had made that point. He added that there was also conversation among the Board members who participated in the hearing with all of them expressing an interest in doing that; however, the Board did not formally ask that it be forwarded to Council for them to review in the future.

Councilor Mooney stated that he did not understand why the Planning Board spent so much time after Hurricane Sandy to look at the issue. He asked what changed between then and now that the Town would want to alter its position. Director Heard stated that the applicant will explain why they submitted the application for the text amendment. He noted that it was not a proposal that was generated by Town staff but was something that the applicant submitted and had the right to request the Planning Board and Council look at it. He stated that there was an individual occurrence where something came up that was not anticipated and did not fit neatly within the confines of the existing ordinance, so the applicant made a proposal to the Town to request a change and in reviewing it, Town staff and the Planning Board found that the proposed change still honored the intent of the original ordinance, but provided some additional flexibility for homeowners in some very limited situations.

Councilor Mooney stated that he still did not understand what changed between then and now. He understood it was a citizen that wanted to make a change. He asked if that was how the Town was going to handle things – to make changes if people decide they wanted to do something different. He thought there may be a good explanation for it, but he didn't understand. Director Heard stated that it was how a lot of the changes have worked over the years, adding that most of the changes that have been made were things that were suggested. He stated that the Town adopted ordinances and it was a good idea to evaluate things to see how they work and sometimes staff runs across a similar issue over and over, causing staff to recommend a change for Council to authorize. He stated that sometimes it was something the Planning Board or community members may bring up and they would make the recommendation. He stated that the Town generally does not view the ordinances as set in stone and never subject to change as staff understands that things happen and circumstances come up that no one thought about at the time the ordinance was adopted. He added that there may be things that Council decided was worthy of a change, noting that that was what the Council was being asked to consider at this meeting.

Mayor Kingston asked if it was a better definition of a broad ordinance. Director Heard stated that it could be. He explained that in this instance there was a circumstance that came up where it did not fit neatly in the current ordinance and in this case, the applicant

made a change that would be in their favor. He added that staff and the Planning Board evaluated it and there needed to be a recognition that the change did not apply to just one single property but would apply in any instances where this would come up. Mayor Kingston clarified that there were no implications from the CAMA regulations. Director Heard stated that the proposed change would not impact or conflict with anything that CAMA has in place. Mayor Kingston asked if the issue was evaluated by the Town's engineers. Director Heard stated that the Town's engineers have completed evaluations of the specific project in question, but not on the ordinance itself. He added that they did not have any concerns. Mayor Kingston asked if the Town's engineers evaluated this particular situation. Director Heard stated that the Town's engineer was involved in it and took a look at different proposals that the applicant had, so it was evaluated during that process.

Councilor Caviness asked if it triggered a perspective that the ordinance in its entirety may be better reviewed, or if it would be prudent to wait for the ordinance in a fuller package to be considered as opposed to just this one section. She asked Director Heard if he was of the opinion that it would be a better approach. Director Heard didn't think it mattered either way. He stated that there were some benefits to it, but the amendment could stand on its own. He noted that the applicant would be presenting some information on why they wanted Council to consider it as a stand-alone as opposed to waiting a few months for a more comprehensive approach. Town Attorney Hobbs pointed out that a more comprehensive approach could still make further modifications to what was being proposed at this meeting.

Councilor Mooney asked what the Town's engineers had to say about the proposal. Director Heard stated that they reviewed a specific proposal and not one that was directly related to the ordinance. Councilor Mooney clarified that the specific proposal was what was causing the text amendment to be generated. Director Heard stated that it was. Councilor Mooney asked what the Town's engineers had to say about it. Director Heard stated that the issues they were dealing with was the V zone certification, the flood zone requirement, and whether the pool could meet those standards, as well as other concerns regarding the building code. Councilor Mooney asked if the Town's engineers had a recommendation or opinion about the project. Director Heard stated that they worked with the applicant's engineer and accepted the information and studies that were presented to them as valid and agreed with the analysis of the situation. He noted that the only issue remaining was the fact that the Town's ordinance itself prevented construction of an above-ground pool in this area presently. He added that the Town's current standard prevents the applicant from moving forward and they were asking for a change in order to be allowed to do that. He stated that the other issues have been addressed in terms of the Town engineer's review.

Councilor Caviness stated that she remembered the discussion around Hurricane Sandy as it was to try to obtain control of the disturbance and destruction of the dune with buildings, no matter what the structure was. She clarified that the Town's engineers concurred that this change would not cause further damage to the dune. Director Heard stated that in this instance, that was correct, as it was not anywhere near the dune. He

explained that the 60-foot distance was still protecting the dune, but what was changing was that it was moving from 180 to 60 feet in terms of where an above-ground pool could be located.

Councilor Whitman asked if putting the pools above grade would eliminate the need for digging into a dune. Director Heard stated that the applicant brought that up at the Planning Board meeting as it would be one of the potential benefits of the text amendment. He noted that currently, if a homeowner is required to put a pool in at grade and there was only a 30-foot setback for a pool at grade, Town staff has seen several instances where the pool was cut into the toe of the dune in order to be set at grade. He added that the text amendment would provide an option for a homeowner to put the pool back further and do something elevated so they wouldn't have to cut into the dune.

Mayor Kingston clarified that the pool was part of the structure and that the structure was fine in the location it was in. Director Heard stated that it was attached to the structure with a deck that comes off of the structure and surrounds the pool. He noted that there were no issues with regard to building setback with regard to the house or the pool.

Councilor Mooney clarified that the elevation was the safeguard as it would save the dune due to the elevated aspect of the pool. Director Heard stated that it would not necessarily, but it did give a homeowner an option. He added that a homeowner still has the option of digging into the dune at the ground level. He stated that the text amendment gives the homeowner an option of doing something different where it could be located back further from the dune and be an elevated pool or it could be located back further and not be elevated. Councilor Mooney stated that he saw the photographs of the pools on Buffell Head Road that were out on the beach after Hurricane Sandy. He asked if staff knew if they were elevated or flush. Director Heard stated that a lot of them were built on a support structure with some built into the dune.

Town Manager Layton recalled when the ordinance was discussed, it was to get at what Councilor Mooney was alluding to, which was that there were many pools that were in the dune and as a result of erosion, they ended up becoming hazards to the beach. He stated that the genesis of the ordinance was to limit and, to the extent possible, prevent it from happening. He noted that in this instance, staff was not looking at a structure being in the dune system as it was further out and that was where staff wanted to discuss it more. He added that this was an instance that was not anticipated with regard to the original ordinance discussion. He stated that it didn't have a bearing on the dune itself, so trying to get clarification was what the Council going forward would want to know why it needed to be discussed further. He thought from a staff perspective, as it was discussed, the biggest issues were trying to meet the V zone certification as well as dealing with the fact that the ordinance as it was currently written, would not allow a homeowner to do what they want to do.

Councilor Mooney clarified that the text amendment would not allow any encroachment on the west side of the dune within the 60-foot limit. Director Heard stated that it would not change as it was prevented presently by the ordinance. He explained that there was a

setback that all pools have to meet, which prevents the construction where no one could go in and install a pool in or on the dune like was done in years past. He noted that this proposal will not change that as that restriction was in place and would remain in place after the text amendment. Councilor Mooney clarified that the text amendment was only dealing with the elevation of the pool if the level was below flood level. Director Heard stated he was correct, adding that it would move back further west of the dune and if it was above the flood elevation level, an elevated pool would be permitted. Councilor Mooney clarified that the problem with the pools that ended up on the beach or in the ocean after Hurricane Sandy was exacerbated by the elevation of the pools. He pointed out that no one seemed to know. Director Heard stated that he wasn't sure but added that the ordinance prevents it from happening in the future. Town Manager Layton thought it was less the elevation but more the lack of a setback and the dune eroding away causing the pools to collapse.

Town Attorney Hobbs asked if the applicant or a representative would like to make a presentation.

Marc Murray of 115 Sea Hawk Drive West was recognized to speak. Mr. Murray stated that he would be able to answer some of the questions that had been asked. He noted that Director Heard was coming at things from a zoning perspective whereas most of the questions asked were building code questions with regard to elevated pools and the V zone certificate requirements. He pointed out that the ordinance in 2013 did prohibit pile supported pools. He explained that pile supported pools were required by the V zone requirements when a pool is built in an area below the flood elevation where excessive sand scour was anticipated during a storm event. He stated that pile supported pools did exactly what they were designed to do; the dune went away, and the pool stayed in place. He added that the Town realized that it was a nuisance to the public because the owners did not want to demolish their pools because the beach nourishment project was coming up and beach pushes were allowed, which became a problem that the Town wanted to deal with by adopting the ordinance in 2013.

Marc Murray stated that because of the ordinance in 2013, pile supported pools were prohibited and the language to make pools flush with grade was added as a component of that because the thought was that if the pools could not be supported, they would be flush with grade. He explained that the reason that this change has come up was because he was in a situation with a very high lot and the pool has been moved west. He added that the required setback was 30 feet and the pool has been moved an additional 30 feet back to make it west of the 60-foot CAMA setback. He stated that the characteristic of the site that made it unique was that not only was the adjacent grade where the pool would be built on was above the flood elevation, it was also above the regulatory flood protection elevation, meaning that it was the flood protection elevation determined by FEMA plus the Town's one foot.

Marc Murray clarified that the pool and the house were parallel to one another but were required by the V zone certificate to be structurally separate. He added that the pool could be damaged in a storm, but it would not affect the house as the deck was designed

to break away. He pointed out that with an elevated pool in a V zone, the main concern that the engineers try to certify is that it would not divert flood water and create adverse consequences to the building or to the adjacent buildings. He stated that the issue he noticed was that, for the modeling that the engineer uses for it when the elevation of grade was above base flood and design flood, the flood water at that level was minimal.

Marc Murray noted that he was on the Planning Board in 2013 and the members were looking at pools that had been in the dune but went away and did not foresee lots of size and depth that would allow a pool and house to both be set back this far west. He added that changing the ordinance would incentivize homeowners and contractors to build further west if they have lots that are of a significant elevation, as they would not have to dig into the dune.

Town Attorney Hobbs asked if there were any comments from members of the Planning Board. There were none.

Town Attorney Hobbs asked if anyone from the audience wished to address the proposed ordinance. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that it will require at least four votes to approve the ordinance on the first read. He added that if it did not pass on the first read, it would come back to Council for a second reading, which would require a majority vote necessary for approval.

Councilor Mooney thought a lot of the questions were answered, but there were other questions. He thought there needed to be some further review on the issue.

Town Attorney Hobbs suggested that if Council wanted to consider a more comprehensive review, it could be done in the form of a separate motion after the consideration of the ordinance.

Mayor Kingston thought the ordinance had been pretty comprehensively reviewed by staff, the Planning Board, the engineers, and the applicant. He agreed that there may be some changes needed for refinement, but it looked solid from the standpoint of any changes made to the ordinance. He thought the elevation and the distance from the dune was a good alternative for homeowners in the future. He saw no reason to reject the zoning ordinance but was in favor of further review on some of the other elements of the ordinance as suggested by Town staff.

Councilor Whitman stated that he sat through the discussion at the Planning Board level and what Council was hearing tonight was the same that was heard at the Planning Board meeting, where they voted in favor of the ordinance.

Councilor Caviness appreciated the remark that the ordinance had the potential to incentivize building further away from the dune. She thought that was a good thing. She

stated that she was not in favor of piecemealing the ordinance. She stated that what Council would be looking at was not about the support of the pool, but something else.

Councilor Mooney agreed with Councilor Caviness' comments about staying further west of the dune as it was a good thing. He stated that he was concerned with piecemealing as he did not want the ordinance to become a piecemeal dismantling of the work that has been done in the wake of a storm. He noted that just because Duck has not had a storm of great magnitude before or since did not mean it could not happen again. He added that the question he was trying to get an answer to was that the pools that were destroyed after Hurricane Sandy were elevated and if the elevation contributed to their landing on the beach. He wondered if that was the case, then what would prevent it from happening now. He reiterated that he was in favor of looking at the issue further and finding that answer.

Mayor Kingston stated that when one looks back at Hurricane Sandy, one also has to look at the area of Town that had the greatest erosion prior to the storm, which was the reason beach nourishment was done in that area because Duck lost 1,500 feet of property. He added that when those pools were first installed, they were well back but ended up in the dunes. He didn't think the Town lost any pools that were not in the dunes, but the erosion from Hurricane Sandy added to the problem.

Councilor Mooney stated that his question was if the elevation of the pools contributed to what happened to them. He stated that it was a concern because if the Town started allowing elevated pools to be built on oceanfront property, and a large storm comes through and gets underneath those pools, what would prevent that from happening.

Mayor Kingston pointed out that the applicant had stated that a lot of the structure underneath was because of the sand. Councilor Mooney pointed out that the Town no longer allows that. Mayor Kingston agreed. Councilor Mooney noted that Marc Murray had commented that the structures underneath did their job, but since the Town no longer allows that, he wondered what was protecting them.

Town Attorney Hobbs reopened the public hearing.

Councilor Mooney asked if prior to the change in the ordinance in 2013, the structure underneath the pools that was meant to anchor the pool was no longer a viable alternative. Marc Murray stated he was correct. Councilor Mooney asked what the process was for pools constructed in that area. He further asked what holds the pool in place. Mr. Murray stated that pools, decks, boardwalks, and dune walkovers were all uninsurable structures and were required to meet one of two requirements in the V zone – that they will stand in any storm event or that they will not cause damage to the adjacent structures if they come apart or move. He noted that that was the option that the Town has sought. He stated that they were disposable and that was why the decks have to be detached from them. He added that if it was damaged, it would have to be taken out, which was on the homeowner. He stated that the Town has said that it was not in favor of pile supported foundations underneath them because then it was stuck there. He

explained that the pilings that hold up the pile supported foundation either have to be 16 feet below grade or below sea level, which means that no matter how much erosion happens, the pools and the homes have to be built at that depth as well. He stated that the uninsurable structures were designed to be disposable to some degree. He noted that, whether or not the structure was elevated could cause them to be more or less damaged, an erosion event such as Hurricane Sandy, was irrelevant because they were no longer sustainable. He added that it was the Town's point in 2013, in that the pool needed to be torn down because they were sitting out on the beach.

Councilor Caviness asked Marc Murray if he was of the opinion that an elevated pool, at least in the instance of these two lots, would not be a structure that would pose damage to the neighboring property. Marc Murray stated that it would not be subject to floodwater due to the elevation.

Councilor Whitman asked if the elevated pools were made of concrete or fiberglass. Marc Murray stated that they were both.

Mayor Kingston asked if the pool in the application made of fiberglass. Marc Murray stated that it was made of concrete.

Susan Beaulieu of 105 Skimmer Way was recognized to speak. Ms. Beaulieu asked if the home on the application was a rental home. Marc Murray stated that it was. Ms. Beaulieu asked how liability was covered with regard to insurance if the pool was an uninsurable structure. Marc Murray explained that it was not uninsurable from a liability standpoint but was from a loss replacement standpoint. Susan Beaulieu asked how large the pool was. Marc Murray stated that it was 14x28 feet. Ms. Beaulieu asked if the pool would be set in the sand. Mr. Murray stated that the V zone requirement dictated that the pool walls and bottom would not move. He added that there has to be a buoyancy calculation with the pool empty as it was above ground even though it would not be. Susan Beaulieu clarified that it would be similar to a vault. Marc Murray stated she was correct, adding that it would not move and has been certified by the engineer not to move.

Olin Finch of 116 Sandy Ridge Road was recognized to speak. Mr. Finch stated that the text amendment was not just for one pool but was an enhancement to the Town Code to encourage people to build pools further from the dunes.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Kingston moved to adopt Ordinance 19-10 as presented.

Motion carried 4-0.

Director Heard explained that staff has run across several instances in the past few years with oceanfront homeowners that did not have an existing pool and were seeking to add a pool. He added that the only good location, due to the septic system and size of the lot,

was on the ocean side. He stated that there have been some instances of cutting into the dune to keep the pool at grade, which was not something that Council just considered with the text amendment that was passed, but it was an instance where it was a situation that was not consistent with the intent of the original ordinance or the interest of the Town moving forward. He explained that the reason staff wanted to have it looked at comprehensively was to evaluate things as there may be other things that could be identified that need to be looked at.

Councilor Whitman moved to send the ordinance to the Planning Board to take a further look at the entire thing.

Councilor Caviness stated that she was in favor of the ordinance being evaluated but hoped that it would be evaluated through a lens of enhancing mitigation and improve the problem in order to protect the oceanfront.

Motion carried 4-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Presentation of the FY 2019 Audit

Lisa Murphy from Johnson, Mizelle, Straub and Murphy was recognized to speak. Ms. Murphy went on to give an overview of the Town's financial statements for the year ended June 30, 2019 to Council and the audience.

Councilor Caviness moved to accept the FY 2019 Audit as presented.

Motion carried 4-0.

Mayor Kingston thanked Lisa Murphy for her presentation.

NEW BUSINESS

Discussion/Consideration of an Agreement for Professional Services between VHB Engineering NC, P.C. and the Town of Duck, North Carolina, for Engineering Design of Phase IV Pedestrian Improvements

Town Manager Layton stated that, as with past phases of the Comprehensive Pedestrian Plan improvements in which the Town has contracted with VHB Engineering NC for final design, bidding and construction management services, authority was being sought for the Town Manager to execute a contract with VHB for Phase IV of the Comprehensive Pedestrian Plan. He noted that, unlike previous projects, the Town will need to obtain permits from the Army Corps of Engineers and the North Carolina Department of Environmental Quality for the project due to construction in the CAMA Area of Environmental Concern. He added that the cost of the services related to the project was \$138,085 and was anticipated as a part of the FY 2020 budget. He stated that

funds were expected to be available in the current pedestrian improvements line item to cover the costs.

Mayor Kingston asked if there was a termination clause in the agreement. Town Manager Layton stated that there wasn't, adding that the Town would be paying for services rendered.

Mayor Kingston moved to authorize the Town Manager to enter into an agreement with VHB Engineering NC, P.C. for engineering design of Phase IV pedestrian improvements as presented.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had no report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

Deputy Fire Chief Clarence Batschelet was recognized to speak. Deputy Fire Chief Batschelet gave a brief overview of the past month's fire activities to Council and the audience.

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

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

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

Council Retreat February 19 and 20, 2020

Town Manager Layton reminded Council that the annual Retreat would be held on February 19 and 20, 2020 at 9:00 a.m. He noted that Jennifer Harris from the North Carolina Turnpike Authority would be present to give an update on the Mid-Currituck Bridge.

Update on the Assistant to the Town Manager Position

Town Manager Layton stated that he completed a second round of interviews the previous week and was prepared to make an offer to one of the candidates. He added that he selected an individual who he felt would fit in very well and hoped to make an introduction as soon as the Council Retreat.

Update on the Board of Adjustment Vacancy

Town Manager Layton stated that staff has advertised for the Board of Adjustment vacancy and would be accepting applications until February 21, 2020. He noted that of the individuals that were interested in the Planning Board position, eight have indicated that they were interested in the Board of Adjustment position. He added that one individual indicated that he did not want to have his application forwarded for that position. He stated that Council would be provided with all of the applications in their March 4, 2020 agenda packet.

Town Manager Layton stated that at the last Council meeting when Randy Morton was selected, it left the Board of Adjustment with two alternate positions consisting of Robert Wetzel and Patti Bossert. He explained that typically Council would appoint an alternate to serve as a full member and in the past Council had the discretion to do so. He added that typically, a senior member would be appointed to a full member, and if Council followed that process, then the vacant position to be filled would be an alternate position. He stated that there was an opening for a full member as well as an alternate and Council would need to decide when they go through the appointment process in March.

Financial Statement for January of FY 2020

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

MAYOR'S AGENDA

Mayor Kingston stated that his mayors meeting would be held on February 18, 2020 in Duck. He stated that he has a League of Municipalities finance meeting the week of February 17, 2020. He stated that he was looking forward to the Chamber of Commerce meeting on February 6, 2020. He thanked Town staff for the great Winter Celebration that was held recently. He stated that he was looking forward to the upcoming Retreat.

COUNCIL MEMBER'S AGENDA

Councilor Caviness stated she had nothing to report.

Councilor Whitman stated he had nothing to report.

Councilor Mooney stated he had nothing to report.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

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

Mayor Kingston noted that the next meeting would be the annual Retreat on Wednesday, February 19, 2020 and Thursday, February 20, 2020 at 9:00 a.m.

CLOSED SESSION

Councilor Caviness moved to enter closed session pursuant to North Carolina General Statute 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in a manner preserving the attorney client privilege with regard to the Hovey v. Sand Dollar Shores Homeowners Association, Inc. and the Town of Duck.

Motion carried 4-0.

The time was 9:20 p.m.


Upon return from closed session, Mayor Kingston stated that Council gave direction to the Town Attorney on the matter.


ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 10:14 p.m.


Lori A. Ackerman, Town Clerk

Approved: March 4, 2020

Don Kingston, Mayor

