

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

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

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:01 p.m. He asked Police Chief John Cueto and Town Clerk Lori Ackerman to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston welcomed Town of Southern Shores Councilor Jim Connors as well as Karen Brown and Pat Broom from the Outer Banks Chamber of Commerce to the meeting.

**PUBLIC COMMENTS**

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

**Presentation by the Outer Banks Chamber of Commerce Regarding the Community Housing Initiative**

Pat Broom from the Outer Banks Chamber of Commerce was recognized to speak. Ms. Broom gave a short presentation on the Chamber's community housing initiative to Council and the audience.

Mayor Kingston thanked Pat Broom for her presentation.

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

## **CONSENT AGENDA**

### **Minutes from the January 3, 2018, Regular Meeting; Resolution 18-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Opposing Offshore Drilling; Budget Amendments**

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 5-0.

Mayor Kingston stated that he spoke to Chairman Woodard earlier in the day. He explained that Chairman Woodard had planned to attend the Council meeting, but was called to a meeting at First Flight High School. He stated that he was coming to the Council meeting to look for the Town's support on the opposition to offshore drilling. He added that he told Chairman Woodard that Council would be passing a resolution on it at this meeting. He stated that Chairman Woodard passed along his appreciation.

## **PUBLIC HEARINGS**

### **Public Hearing/Discussion/Consideration of CUP 17-004, an Application for a Conditional Use Permit to Convert a Portion of the Existing Growlers to Go Retail Store into a Four-Seat Eating/Drinking Establishment in the Loblolly Pines Shopping Center at 1187 Duck Road**

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Joe Heard and Reid Carter.**

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant was requesting a conditional use permit to add a small,

four-seat eating/drinking establishment in the existing Growlers to Go store in the Loblolly Pines Shopping Center at 1187 Duck Road. He stated that the applicant was seeking to convert the 270 square feet of retail space to a small area for customers to consume drinks on site. He noted that the applicant had requested four to eight seats in his cover letter, but the property owner only authorized the applicant to seek approval for four seats. He added that the applicant was limited to four seats in order to meet the minimum parking requirements.

Director Heard stated that the property at 1187 Duck Road was presently zoned Village Commercial and contained the Loblolly Pines shopping center. He added that the Growlers to Go business was issued a Certificate of Occupancy in February 2017 to operate a retail store.

Director Heard stated that the applicant was proposing to convert a small portion of the existing retail business into an eating/drinking establishment. He explained that an eating/drinking establishment was a conditional use in the Village Commercial zoning district and that the existing use, which involves the retail sale of beer, will continue. He stated that the unit that Growlers to Go occupied was approximately 23 feet in width and 39 feet in depth for total of 897 square feet. He noted that even though the space within the unit will be redistributed differently, the size of the unit would remain the same under the proposed change of use.

Director Heard stated that the original development approval for the site included several uses, such as a grocery store and furniture stores, with less substantial parking requirements. He added that as units were converted to other types of uses, the amount of parking on the site has become nonconforming. He noted that there were significant discrepancies in the parking layout between the 1985 and 1986 site plans. He stated that the central parking area was laid out more like the 1985 site plan than the 1986 plan. He explained that this area could likely accommodate only 14-15 vehicles, rather than the 18 parking spaces noted in the 1986 plan. He stated that the six parking spaces designated as Parking Spaces 20 through 25 on the 1986 site plan were located within the southern side street setback and access directly from Poteskeet Drive. He stated that the parking spaces were/are not compliant with the development standards and should not be counted as valid parking spaces. He pointed out that with the corrections, it appeared that the existing site contains approximately 44 legitimate parking spaces, which was significantly less than the 53 spaces designed on the 1986 site plan.

Director Heard stated that at their meeting on January 10, 2018, the Planning Board reviewed the proposal for consistency with applicable Town standards. He stated that the Board members had several questions about the nonconforming aspects of the existing site layout and parking, but concluded that the proposed change of use would not exacerbate any of the nonconformities and could be approved. He noted that the Board's motion to approve added conditions establishing the maximum number of seats and clarifying how the parking standards were applied.

Director Heard stated that the Planning Board voted unanimously to recommend approval of the conditional use permit with the following conditions:

1. The eating/drinking establishment is limited to a maximum of four seats.
2. The applicant must obtain an On-Premise Malt Beverage Permit from the North Carolina Alcoholic Beverage Control Commission.
3. The Building Inspector and Fire Department must review and approve the layout of the customer area for compliance with applicable codes.
4. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
5. Although nonconforming, the existing parking layout does not have to be altered as the parking requirements for the new eating/drinking establishment are less than the previous retail use.
6. This conditional use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

Town Attorney Hobbs asked Council if they had questions. There were none.

Town Attorney Hobbs asked the applicant to make a presentation.

Reid Carter of 153 Speckle Trout Drive was recognized to speak. Mr. Carter stated that Growlers to Go opened in the summer of 2017 and had a very successful first year. He stated that when people come into his business, he and his staff are permitted to give them tastes of beer that he has on tap. He added that many people had asked if there was beer they could sit and drink but he wasn't allowed to do that because he had an ABC Off-Premise Permit, which was acceptable for what his business was doing.

Reid Carter thought it would be helpful to be able to serve patrons a glass of beer, but not change his store in order to make it a bar. He added that he would like to put in four chairs, which would be adequate for the number of people that come to his store. He noted that it was recommended strongly by his staff to make this change and at their recommendation, he went ahead and applied for the conditional use permit. He stated that he appreciated Council giving him consideration for it.

Town Attorney Hobbs asked Council if they had questions for the applicant. There were none.

Town Attorney Hobbs asked if any of the sworn witnesses wished to give a presentation or comment on the application. There were none.

Town Attorney Hobbs asked if anyone wished to address the application.

Mayor Pro Tempore Thibodeau clarified that if the conditional use permit was granted, it would go indefinitely with the use of the property. Director Heard stated she was correct. Mayor Pro Tempore Thibodeau thought it would expire if the applicant did not initiate it. Director Heard stated she was correct.

There being no one else wishing to speak, Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that a vote of the majority – three Council members – would be needed to approve the application. He added that if Council adopted the approval, they would need to include specific findings and conditions.

Mayor Pro Tempore Thibodeau moved to approve CUP 17-004 as presented, with the conditions set forth by the Planning Board.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of Ordinance 17-16, an Ordinance to Add Standards for Exempt Plats and Expedited Review for Certain Types of Subdivisions**

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

Town Attorney Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director Heard stated that the proposed ordinance added standards for subdivision plat review in the Subdivision Ordinance (Chapter 155) consistent with recently adopted North Carolina Session Law 2017-10. He noted that the following amendments were proposed:

1. Add subdivisions resulting from probated wills to the list of exempt plats in Subsection 155.01.
2. Add an expedited review process for certain types of small subdivisions with larger lot sizes in Subsection 155.02.

Director Heard stated that at their December 13, 2017 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment that would add standards for exempt subdivisions and expedited review of certain other subdivisions to bring the Town's Subdivision Ordinance into compliance with recently adopted State law. He added that staff was also recommending approval.

Town Attorney Hobbs asked Council if they had questions. There were none.

Town Attorney Hobbs asked if members of the Planning Board wished to make a presentation. There were none.

Town Attorney Hobbs asked if any members of the public wanted to address the proposal. There were none.

Town Attorney Hobbs asked if there were any final questions or comments. 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 a vote of the majority – four Council members – would be needed to approve the ordinance on the first read; otherwise, it would require two readings.

Councilor Britt moved to approve Ordinance 17-16 as presented.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of Ordinance 17-17, an Ordinance to Add a Review process for Building Inspection Decisions**

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

Town Attorney Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director Heard stated that the proposed ordinance would add an informal review process from a building inspector's decision in the Buildings & Structures Ordinance (Chapter 151), consistent with the recently adopted North Carolina Session Law 2017-130. He explained that the amendments were proposed to be added as Subsection 155.33, *Review of Decision*:

1. Establish an internal appeal process for building inspections.
2. Establish a process and five-day timeframe for such reviews.

Director Heard stated that at their December 13, 2017 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment that would add an informal review process from a building inspector's decision in Chapter 151 *Buildings & Structures* in compliance with recently adopted State law. He added that staff was also recommending approval.

Town Attorney Hobbs asked Council if they had questions. There were none.

Town Attorney Hobbs asked if members of the Planning Board wished to make a presentation. There were none.

Town Attorney Hobbs asked if any members of the public wanted to address the proposal. There were none.

Town Attorney Hobbs asked if there were any final questions or comments. 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 a vote of the majority – four Council members – would be needed to approve the ordinance on the first read; otherwise, it would require two readings.

Mayor Pro Tempore Thibodeau moved to approve Ordinance 17-17 as presented.

Motion carried 5-0.

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

### **Presentation of Fiscal Year 2017 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, 2017 to Council and the audience.

Councilor Burdick moved to accept the FY 2017 Audit as presented.

Motion carried 5-0.

Mayor Kingston thanked Lisa Murphy for her presentation.

## **NEW BUSINESS**

There was no New Business to discuss.

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

Town Attorney Hobbs stated he had no report.

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

### **Update on Departmental Activities**

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

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

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

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

### **FY 2019 Budget Adoption Schedule**

Town Manager Layton reviewed the recommended budget schedule for FY 2019 with Council and the audience. He noted that in February, budget requests would be issued from established departments and agencies; in March the requests would be due to him and he would develop revenue estimates and then meet with the departments and agencies to review the requests; in April he would submit the proposed FY 2019 budget to Council and then schedule work sessions; in May there would be work sessions on an as-needed basis and the Notice for Public Hearing would be published; and finally in June, a public hearing and adoption of the budget would be done.

Mayor Kingston moved to approve the Proposed FY 2019 budget adoption schedule as presented.

Motion carried 5-0.

### **Council Retreat February 21<sup>st</sup> and 22<sup>nd</sup>**

Town Manager Layton reminded Council and the audience that the annual Retreat will be held on February 21 and 22, 2018. He added that Council had the draft agenda in their packets.

### **Financial Statement for January FY 2018**

Town Manager Layton reviewed the financial statements, beach activities and beach nourishment reports with Council and the audience.

### **MAYOR'S AGENDA**

Mayor Kingston stated that he has his mayor's meeting on February 20, 2018 in Kitty Hawk, which was delayed from January due to the weather. He added that he has a NCLM Board meeting on February 15, 2018 in Raleigh. He thanked Town Clerk Ackerman for scheduling the Ethics Training for Wednesday, June 20, 2018 at 10:00 a.m. He noted that there was a possibility that there may be a mid-month meeting that afternoon at 1:00 p.m. He thanked Town staff for a successful Winter Celebration party. He added that he was looking forward to the upcoming Retreat and encouraged the public to attend.

### **COUNCIL MEMBERS' AGENDA**



Mayor Pro Tempore Thibodeau stated that she was sorry she missed the Winter Celebration. She stated that she was excited to be helping with the upcoming beach planting and encouraged the public to join in helping. She thought that the Town would get the Government Access grant in by the upcoming deadline. She added that she was looking forward to the Retreat

Councilor Britt stated that he was looking forward to the Retreat. He stated that he has helped with the beach planting and hoped the public would also come out to help. He added that he had a great time at the Winter Celebration.

Councilor Caviness stated that May 10, 2018 was the annual Dare County Tourism Summit. She noted that the Duck Merchants Association meetings for 2018 will start on February 15, 2018.

Councilor Burdick stated that he would be on vacation for two weeks, but would be back in time for the Retreat.

**OTHER BUSINESS**

**Additional Public Comments**

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


Mayor Kingston noted that the next meeting will be the annual Retreat on Wednesday, February 21, 2018 at 8:45 a.m.

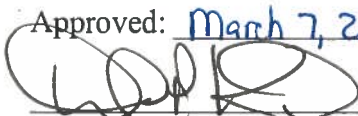
**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:56 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: March 7, 2018  
  
Don Kingston, Mayor

