

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
June 1, 2022**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, June 1, 2022.

**COUNCIL MEMBERS PRESENT:** Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; Councilor Rob Mooney; and Councilor Tony Schiano.

**COUNCIL MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Town Manager Drew Havens; Police Chief Jeffrey Ackerman; Deputy Fire Chief Clarence Batschelet; Town Attorney Robert Hobbs; Public Information and Events Director Christian Legner; Finance and Human Resources Administrator Jessica Barnes; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** Director of Community Development Joseph Heard and Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 6:00 p.m.

Mayor Kingston asked Town Manager Drew Havens to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments. He noted that comments will be limited to three minutes as there was a timer for the time limit. He added that the public could email public comments, but they must be received by 4:00 p.m. on the day of the Council meeting. He noted that written comments must also be limited to three minutes when read aloud. There being no one wishing to speak, Mayor Kingston closed the time for public comments.

**CONSENT AGENDA**

**Minutes from the April 20, 2022, Mid-Month Meeting and Budget Amendment**

Councilor Schiano moved to approve the consent agenda as presented.

Motion carried 5-0.

**SPECIAL PRESENTATIONS**

There were no Special Presentations.

## **PUBLIC HEARINGS**

There were no Public Hearings.

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

### **Discussion/Consideration of the Proposed FY 2023 Budget**

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that the budget had been presented to Council two other times with no comments received from the public on it. He stated that he was asking Council to adopt the budget as presented.

Mayor Pro Tempore Thibodeau stated that she liked the Capital Improvement Plan document as it was extremely clear and helpful. She added that the budget ordinance gave a nice summary of things. She asked if the budget document would be in an easy place on the website for people to look at it. Town Manager Havens stated that the entire budget document will be on the Town's website and was very comprehensive so anyone could understand where the money was coming and going as well as why.

Councilor Schiano stated that the budget was very well prepared and was extremely accurate with regard to expenditures. He thought the revenues were conservative, which was good.

Mayor Kingston thought this year's process with the changes made was streamlined and efficient.

Mayor Pro Tempore Thibodeau moved to adopt the FY 2023 budget as presented.

Motion carried 5-0.

## **NEW BUSINESS**

### **Discussion/Consideration of Authorizing a Public Hearing on Ordinance 22-04, an Ordinance Amending the Elevation Certificate Requirements in the Town's Flood Damage Prevention Ordinance**

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that the Planning Board had reviewed a proposed text amendment that would change the elevation certificate requirements in the Flood Damage Prevention ordinance. She explained that the amendment would remove the requirement for finished construction elevation certificates for properties located in shaded X and X zones; instead, a current or as-built survey certifying that the structure and/or parcel was compliant with the

regulatory flood protection elevation or the local elevation of 10 feet NAVD may be submitted. She stated that the Planning Board had voted 5-0 at their April 13, 2022 meeting to recommend approval of the proposed ordinance. She added that she was asking for authorization for a public hearing on the ordinance.

Mayor Kingston asked if it was an either/or situation. Senior Planner Cross stated he was correct adding that it could be opened for discussion. Mayor Kingston clarified that the developer could go either way with the certificate or survey. Senior Planner Cross stated that they could provide an elevation certificate, adding that, as a Floodplain Manager, she would err on the side of an elevation certificate. She explained that even with risk rating 2.0, there was a lot of different things that go into that and a lot of people that are not sure how that all plays out in terms of money. She added that if a homeowner did not have an elevation certificate and was getting rated under risk rating 2.0, it could help them if they had that detail because there was a lot more detail on an elevation certificate than on a survey.

Councilor Mooney clarified that, ultimately, there was no change in the 10-foot elevation that was previously adopted. Senior Planner Cross stated that the Planning Board was not recommending a change to the local elevation standard but recommending a change to elevation certificate requirements of the floodplain damage prevention ordinance.

Councilor Schiano clarified that the main benefit was to save money. Senior Planner Cross stated that it would save money for those people in a shaded X or unshaded X flood zone. She noted that the Town would still require it if the homeowner was in a special flood hazard area.

Councilor Mooney clarified that Council needed to know whether or not a hearing needed to be held on the ordinance. Mayor Kingston stated he was correct.

Councilor Whitman moved to authorize a public hearing for Council's July 6, 2022 meeting on Ordinance 22-04 as presented.

Motion carried 5-0.

### **Discussion/Consideration regarding Delivery Noise Complaints**

Town Manager Havens stated that the Town has received complaints last year and this year from a resident who lives adjacent to a commercial use. He stated that the complaint was that the ice delivery was making an inordinate amount of noise. He explained that with the ice deliveries, they happen early in the morning or late at night around 2:00 a.m. to 4:00 a.m., with the bags of ice thrown from the truck to the ground to break the ice up in order to get it back into the freezer for sale. He stated that that noise was what was disturbing to the resident, adding that the Town's ordinance as it was currently written requires either one complaint from one resident backed up by a police officer in order to go through the process of charging someone criminally, or complaints from two different people living in two different homes. He pointed out that the Town has only heard from

one homeowner and the police have tried to help mitigate the sound that has been happening at the business.

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman explained that the issue has been ongoing for about two seasons, initially the Police Department worked with the ice company to try to deaden the sound and that the ice company designed a special board. He stated that what happens was when the ice leaves the plant in Virginia, it is not completely frozen and as it rides in the truck, it freezes solid. He added that in order for the ice company to maximize the number of bags that they put in the cooler, they need to break the ice up. He stated that they use a board to slide the ice down to hit the concrete to break up the ice. He stated that the police worked with them to design a board that had cushioning at the bottom to help deaden the sound. He added that they lined the board with insulation to make an impact. He thought an impact was made but it was still bothering the homeowner and the issue the police have had regarding their response was they could have two different officers respond at two different times with two different opinions about whether it meets the elements of the noise violation ordinance. He found that most officers believe it is a legitimate commercial function and were uncomfortable filing a criminal charge, especially against the driver who was just doing his job.

Police Chief Ackerman stated that the police have been very reluctant to take criminal action and have tried to do everything to make the situation better but have run out of options at this point. He added that they have tried to work with the company to persuade them to change their delivery times but were told that they couldn't do that while still completing all of their deliveries from Corolla to Hatteras.

Town Manager Havens stated that the memorandum in Council's packets laid out three options, which were as follows:

1. Do nothing other than make another attempt at working with the vendor causing the issue to reduce the noise they are making.
2. Modify the noise ordinance to include a statement prohibiting all delivery noise between certain hours.
3. Add an ordinance in the Business Regulations section that restricts the time deliveries can be made to all businesses.

Town Manager Havens stated that the police as well as certain Council members that are out in the early morning hours see the trucks coming in to make their deliveries. He stated that it was not uncommon to see them around 5:30 a.m., adding that this was the only complaint the Town has received about delivery noise. He noted that the delivery drivers were trying to get out of Town before traffic backs up, especially with the food deliveries. He stated that he and Town staff were looking for direction from Council on the issue.

Mayor Kingston thought it was a single person, single complaint, and single incident. He added that he was not sure how often it was occurring. He stated that to make a change,

the impact to the business community as well as the difficulty in making deliveries, especially in the summertime, did not make sense. He thought one incident did not call for a major change and thought working with the ice delivery company would be the best solution.

Police Chief Ackerman pointed out that the ice delivery was completed twice per week with two businesses in Duck that use the same vendor. He added that there have been no complaints from the business on the south end of Town.

Mayor Kingston asked if the platform worked. Police Chief Ackerman thought it made a big difference but not to the resident as he felt it was still too loud. He noted that the vendor got to the point where there was nothing more that could be offered to improve the situation.

Councilor Whitman asked what the hours were that allowed deliveries. Town Manager Havens stated that there were no restrictions. Mayor Pro Tempore Thibodeau pointed out that the trash trucks come to Duck really early. She stated that it seemed like it was difficult to police any restrictions. She pointed out that there was one complaint about the trash several years ago for residents and was not sure if that was when Council developed the regulation that there needed to be a complaint from two different people. She asked if it came up with the resident. Town Manager Havens stated that the resident is aware of the wording of the ordinance and he and the police have spoken with him. Mayor Pro Tempore Thibodeau stated that she hated that it was frustrating to the resident.

Councilor Schiano stated that he had looked up the survey that the Town put out and Duck does not seem to have any complaints before 6:00 p.m. or after 2:00 a.m. other than this one. He stated that he can sympathize with someone that has to hear the noise every time ice is delivered. He thought putting a curfew on deliveries may be a little strong. He asked if anyone talked to the people at Wee Winks to see if they could influence the vendor. Police Chief Ackerman stated that the vendor was not willing to offer anything and were not doing anything outside of the norm with operating their business. He noted that they were not uncooperative but could not offer anything more from their standpoint. Councilor Schiano asked if they were spoken to again and asked them to reinstitute their board policy, they would do it. Police Chief Ackerman stated that they have kept that from the beginning, adding that the ice company was very receptive to it. He pointed out that the ice company came up with the design for the board and built it at their expense.

Councilor Whitman asked for clarification on where the noise was coming from. Police Chief Ackerman explained that it was a two-person operation, with one person unloading the truck and the other person loading the ice onto a dolly. He added that the noise was a thud each time the ice bag reaches the bottom of the board, noting that it was in a wide-open area with very little tree cover so that sound carries. He pointed out that it has been very difficult because the Town's ordinance criminalizes the activity. Councilor Schiano stated that it was not a criminal activity. Police Chief Ackerman stated that the difficulty for the police was that this was not loud music or a late-night party but was someone

trying to make a living and so it has been difficult to appease both sides because there are not a lot of options.

Councilor Whitman asked what would happen if the ice delivery driver unloaded the truck closer to where the three ice boxes were instead of the single one. He added that the front porch facing the ABC store had three boxes and only one box in the back. He asked what would happen if the delivery driver unloaded the ice closer to NC 12 since that side of the building would block some of the sound. Police Chief Ackerman stated that he could talk to the driver about it. Town Manager Havens pointed out that the ramp access was on the east side of the building. Councilor Whitman thought they could push it another 20 feet.

Mayor Pro Tempore Thibodeau thought the ramp access has been looked at, adding that moving the truck or moving the boxes to get them away from the back of the building may be an option. Police Chief Ackerman thought the vendor's perspective was the least amount of manpower in order to get the work accomplished. He noted that at first, they thought the bigger issue was their truck running, so they decided to turn the truck off, which caused the refrigeration to be turned off. Councilor Mooney clarified that that was not the complaint. Police Chief Ackerman stated he was correct, adding that they tried to eliminate all the noise that they could.

Mayor Kingston thought Council needed to be realistic and take into consideration that not only businesses need to be open and ready to go, but residents and visitors were up early and want those services, including ice. He added that to put a business at a disadvantage because they cannot get a delivery early in the morning was not right. He pointed out that it was a single incident and thought the Town could work with the ice company to see what could be done, whether it was changing the location of the truck, moving the ice, or softening the sound when the ice bags hit the ground. He thought it was the most feasible thing for a single incident. He pointed out changing the ordinance did not make sense with respect to the impact on residents, businesses, and visitors.

Councilor Schiano asked for the time that the trash trucks start picking up in Town. Mayor Pro Tempore Thibodeau stated that they were in Town early. Councilor Schiano asked if it was 7:00 a.m. Mayor Pro Tempore Thibodeau stated that the commercial trash trucks come earlier than that. Town Manager Havens stated that the commercial trash trucks come at 6:00 a.m., adding that Council authorized them to start at 5:30 a.m. He stated that the goal was to get all of the big trucks off Duck Road before traffic starts backing up. Councilor Whitman pointed out that food delivery trucks were out before 6:00 a.m. with the compressors running on their trucks. Mayor Kingston thought some of the other towns allow trash to be picked up around 3:00-4:00 a.m.

Mayor Pro Tempore Thibodeau asked if the ice deliveries were twice a week for the entire year. Police Chief Ackerman thought they get ice deliveries outside of the season but it did not seem to be an issue. He thought it was the quantity of ice they bring in during the summer as well as the frequency, adding that the vendor sells a lot of ice. Mayor Pro Tempore Thibodeau clarified that it takes longer. Police Chief Ackerman

stated she was correct. Mayor Pro Tempore Thibodeau stated that she would agree with continuing to work with the location and vendor. She thought rearranging the truck location so that it was closer to NC 12 could be a solution. She further thought it was premature to try to change it at this point. She stated that she was glad that the police were sensitive to the criminal aspects.

Mayor Kingston thought most of the comments have been consensus with not changing the ordinance and working with vendor to see what could be done about the situation. He thought it was the consensus of Council.

Councilor Mooney wondered if there was another way to mitigate the noise, such as putting up a frame with a blanket like moving companies use between the house and the ice delivery location in order to muffle the sound in addition to the padded board. Police Chief Ackerman stated that he has been working with the ice company owner and he was open to suggestions. Councilor Mooney thought it would interrupt the sound. Police Chief Ackerman thought it was a reasonable suggestion and would take it back to the ice company owner.

Mayor Kingston stated that Council would leave it in Town Manager Havens' and Police Chief Ackerman's hands. Town Manager Havens stated that they would keep working on the issue and discuss the suggestions with the vendor.

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that he had nothing to report.

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

**Departmental Updates**

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

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave an overview of the past month's police activities to Council and the audience.

Senior Planner Cross gave a brief overview of the past month's permit activities to Council and the audience.

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.

## **May FY 2022 Financial Presentation**

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the April Fiscal Year 2022 financials to Council and the audience.

Town Manager Havens stated that he had received an email earlier in the day congratulating Town Clerk Lori Ackerman for receiving her redesignation as a North Carolina Certified Municipal Clerk from the North Carolina Association of Municipal Clerks and the School of Government. He noted that it was a five-year designation and requires her to participate in continuing education in order to keep up with the changing requirements. Town Manager Havens and Council went on to congratulate Town Clerk Ackerman on her designation.

Town Manager Havens stated that Duck, the other towns, and Dare County in the beach nourishment project area have an opportunity to apply for a one-to-one grant. He stated that Ken Willson of Coastal Protection Engineering would begin to do sand reconnaissance. He explained that the Town will be good with pulling sand from Borrow Area A, which is where the sand is coming from for the renourishment project, but as the Town looks to the future, it will need to start looking for additional sand.

Town Manager Havens stated that there were a couple of places that Coastal Protection Engineering was considering doing some reconnaissance. He stated that Borrow Area C was used for the 2017 nourishment project. He noted that for the upcoming nourishment project as well as the one after that, Borrow Area A would be used, which was off the coast of Kill Devil Hills. He added that Coastal Protection Engineering was looking to complete some reconnaissance to see if they could find sand sources north of Duck. He pointed out that the polygons that were before Council were offshore in Currituck County and up near the North Carolina/Virginia border.

Town Manager Havens stated that there has been one meeting about the project, adding that he was on a call with the county manager, a representative from Currituck County, as well as representatives from the other towns on May 31, 2022. He added that he had a subsequent conversation with the county manager to figure out the benefit to this, adding that they were looking at trying to secure sand for 10 years from now. He stated that one of the questions asked was if the reconnaissance would get stale. He explained that if they were trying to identify a source of sand that would be used in 10 years, would there be a time where the Town would have to re-spend some of the money to go and update it. He added that there will be some updating, but the Town would not have to go through the whole process. He pointed out that the total was approximately two million dollars, which was for the reconnaissance and the design of the borrow excavation. He asked, assuming that the other towns agree that they want to participate, if Duck wanted to do that as well. He was not sure what Currituck County would be doing, adding that the county manager seemed to like the idea. He stated that he liked the idea of knowing where the sand would be coming from in the future but was unsure that the grant would be available in the future. He pointed out that it was an opportunity to get two million



dollars' worth of work done for a million dollars, split among the towns and Dare County. He noted that he did not know what level of participation in the county will be, and if Currituck County gets involved, the more people the million could be divided up, the lower the Town's investment would be. He stated that the question for Council was if they were interested and if they wanted staff to continue to have conversations and try to get to the point where the grant could be applied for. He added that Coastal Planning Engineering would be applying for the grant and will offer their services, noting that they needed to know by June 8, 2022 whether or not the Town wanted to participate.

Councilor Whitman asked what would happen if Currituck County decided they wanted to use the borrow areas in five years. Town Manager Havens stated that Currituck County could permit to use the same borrow area. He pointed out that Currituck County has made no indication that they want to be involved in a beach nourishment project.

Councilor Schiano was not sure if it was true, but he heard that the position of Currituck County was that they will always be a beachfront but would be further west. Town Manager Havens thought it was true in theory.

Mayor Kingston thought one of the big points was understanding that Nags Head through Southern Shores has completed 100% of their beaches with Duck completing 1.6-1.7 miles of 6.2 miles of beach. He stated that if Duck's beach starts to erode over the next five to 10 years, that sand will be needed. He thought it was worthwhile for Duck to participate with Dare County and the other towns whether Currituck County participates or not. He thought the Town was building a capital reserve fund for beach nourishment, adding that it would be hard for the Council to decide between now and June 8, 2022. He thought Town Manager Havens should deal with the county and make the right judgment for the Town.

Councilor Schiano clarified that the offshore sand reserve was on a first come, first serve basis. Town Manager Havens stated that it was. Mayor Kingston pointed out that beach nourishment projects will always be around.

Mayor Pro Tempore Thibodeau stated that the Town has learned a lot over the last two projects with one being that there was not a lot of sand to be had. She agreed that it was fruitful to be looking around. She asked how the size of the polygon shown compared to Borrow Area A. Town Manager Havens stated that Borrow Area is A was pretty large. Mayor Pro Tempore Thibodeau thought it made sense to do the reconnaissance.

Mayor Kingston asked if the areas shown had ever been explored. Town Manger Havens stated that they have not. Mayor Kingston recommended that Town Manager Havens take the lead on the issue. Town Manager Havens thought if official action was needed, he did not think it would be needed to apply for the grant. Town Attorney Hobbs pointed out that it may require a budget amendment.

It was *consensus* of Council to have the Town Manager handle the negotiations.

## **MAYOR'S AGENDA**

Mayor Kingston stated that he has his mayors/chairmen meeting on June 21, 2022, which will be hosted by the Town of Kill Devil Hills. He stated that he attended his last North Carolina League of Municipalities board executive meeting in May. He stated that he has his Local Leadership Foundation meeting coming up later in the month.

Mayor Kingston stated that the Town Manager's annual review was coming up. He stated that it was usually done in late June to early August. He handed out a timeline to Council that he came up with, adding that he wanted to formalize the approach. He noted that the proposed schedule showed that blank review forms would be distributed at Council's July 6, 2022 meeting to Council and the Town Manager; the Town Manager would submit his completed review form by July 20, 2022 with comments to Council; Council submits their completed review the week of July 27, 2022 with Mayor Pro Tempore Thibodeau consolidating all of the comments; and the review completed in closed session at Council's August 3, 2022 meeting.

Mayor Kingston stated that he wanted to talk to Town Attorney Hobbs and Attorney John Leidy regarding Town Manager Havens' contract. He suggested to Council that as they get into the review, to look at a minor change to the contract. He pointed out that the Town Manager has a two-year contract and thought it should be adjusted.

## **COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau gave a short update on the Tourism Bureau meeting to Council and the audience. She stated that she had attended the Town's volunteer orientation meeting and was impressed with staff with their presentations.

Councilor Mooney pointed out that North Carolina Department of Transportation would be starting a project in Duck on June 7, 2022. He asked how long the project would last. Town Manager Havens stated that it was a resurfacing project on Duck Road in the area of Acorn Oak Avenue and would last a couple of days.

Councilor Whitman thanked Town staff for the Shakespeare play that was held recently. He thanked Town staff that have been completing in-house repairs such as installing sound boards in the Meeting Hall and repairing the boardwalk. He stated that he had also attended the volunteer orientation and thought staff did a great job.

Councilor Schiano gave a Government Access Committee meeting update to Council and the audience. He stated that the recent shooting in Texas was on everyone's mind and the committee discussed the Dare County situation, noting that they have remote access locks in all of their facilities so people cannot come in and out unless they already have access or are buzzed in. He thought it was good to know that they have these controls in place.

Mayor Kingston asked if there had been any additional training or exercises with Dare County with regard to active shooters. Police Chief Ackerman stated that there has been

no additional training since the incident in Texas. He pointed out that Dare County has had trainings multiple times in order to be ready for any incident.

**OTHER BUSINESS**

**Additional Public Comments**

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

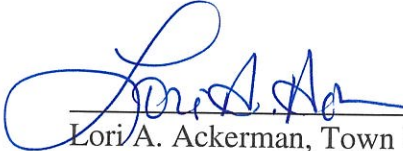
Mayor Kingston noted that the next meeting would be the Mid-Month Meeting on Wednesday, June 15, 2022 at 1:00 p.m.

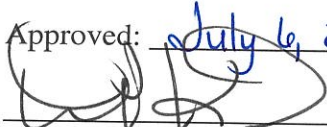
**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 7:53 p.m.

  
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Lori A. Ackerman, Town Clerk

Approved: July 6, 2022  
  
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Don Kingston, Mayor

