

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
July 6, 2022**

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

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

COUNCIL MEMBERS ABSENT: Councilor Rob Mooney.

OTHERS PRESENT: Town Manager Drew Havens; Police Lieutenant Melissa Clark; Fire Chief Donna Black; Town Attorney Robert Hobbs; Public Information and Events Director Christian Legner; Finance and Human Resources Administrator Jessica Barnes; Donna Creef of Creef Consulting; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Director of Community Development Joseph Heard and Police Chief Jeffrey Ackerman.

Mayor Kingston called the meeting to order at 6:01 p.m. He noted that Councilor Rob Mooney was excused from the meeting.

Mayor Kingston asked Police Lieutenant Melissa Clark 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 May 4, 2022, Regular Meeting, Minutes from the May 18, 2022, Mid-Month Meeting; Minutes from the June 1, 2022, Regular Meeting; Minutes from the June 15, 2022, Mid-Month Meeting; Resolution 22-10, a Resolution of the Town Council of the Town of Duck, North Carolina, Authorizing the Conveyance of Obsolete Property to Ukraine; Resolution 22-11, a Resolution of the Town Council of the Town of Duck, North Carolina, Adopting Uniform Guidance Conflict of Interest Policy

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that, upon the advice of Town Attorney Robert Hobbs, the last paragraph of Resolution 22-10 needed to be changed to be clearer as to where the ballistic vests will be going. He noted that they would be donated to Samaritan's Purse, who will transmit them to the war fighting effort in Ukraine.

Mayor Pro Tempore Thibodeau moved to approve the consent agenda as amended.

Motion carried 4-0.

SPECIAL PRESENTATIONS

Introduction of the 2022 Lifeguards

Mirek Dabrowski, Director of Ocean Rescue, was recognized to speak. Mr. Dabrowski introduced each member of Ocean Rescue to Council and the audience.

Mayor Kingston and Council thanked the lifeguards for everything they do to keep people safe on the beach.

Presentation by the Employee Committee on the Town's New Core Values

Town Manager Havens stated that Finance and Human Resources Administrator Jessica Barnes worked on the project that began last fall. He stated that one of the things he wanted to accomplish within the first couple years of working for the Town was to come up with an agreed-upon set of internal values that all staff could agree that they would live by. He stated that it has been a long process, but also rewarding to see how the staff responded and stepped up in seeing some leadership shown by a lot of members of staff.

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes went on to give a short presentation on the Town's new core values to Council and the audience. Deputy Town Clerk Kristiana Nickens, Community Planner James Gould, Police Officer John Gilreath, and Firefighter Gregory Fiala also contributed to the presentation by reading the values to Council and the audience.

Mayor Kingston commended the Employee Committee on their work on the core values.

Councilor Schiano suggested that the new core values be in the Town's newsletter for the public to read. Mayor Pro Tempore Thibodeau agreed, adding that it also could be added to the Town's website.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 22-04, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending the Certification Requirements for the Town's Flood Damage Prevention Ordinance

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs. Town Attorney Hobbs stated that the meeting was open and that Donna Creef would give a presentation.

Donna Creef of Creef Consulting was recognized to speak. Ms. Creef stated that the proposed text amendment modifies Subsection 150.26(C)(1) of the Town's Flood Damage Prevention Ordinance by changing the elevation certificate requirements in the shaded X and unshaded X zones.

Donna Creef stated that in May 2020, comprehensive amendments to the Town's Flood Damage Prevention Ordinance were adopted by the Town Council in conjunction with the new FEMA flood maps for Dare County. She stated that a local elevation standard of 10 feet was adopted for shaded X and unshaded X zones, adding that the 2020 amendments required a pre-construction and post-construction elevation certificate in all flood zones including the shaded and unshaded X zones. She noted that the Town now has two years of experience with enforcement in the local elevation standard and the use of surveys with topographic elevations of lot grades have been identified as an alternative to finished construction elevation certificates. She pointed out that many properties in the shaded and unshaded X zones are substantially higher in grade than the location elevation standard of 10 feet. She noted that elevation certificates general cost \$350 to \$650 to complete, whereas spot elevations cost approximately \$75 if they are done as part of an overall survey package.

Donna Creef stated that under the Community Rating System, there was no benefit to the Town for requiring finished construction elevation certificates in shaded and unshaded X zones. She added that under the new flood insurance rating system, elevation certificates are not mandated for insurance rating purposes. She stated that although elevation certificates were beneficial from an informational standpoint, from an economic standpoint for property owners, the use of spot elevations on a survey represent a better option and accomplish the goal of compliance for the Town.

Donna Creef stated that the Planning Board discussed the issue at their April 13, 2022 meeting and reviewed the draft language from Town staff. She stated that the Planning Board voted unanimously to recommend approval of the ordinance and staff was also recommending approval.

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

Town Attorney Hobbs asked if any members of the Planning Board wished to give a presentation.

James Cofield of 101 Bias Lane East was recognized to speak. Mr. Cofield stated that he was the Chairman of the Planning Board and they held a hearing a couple of months ago without much to do and the Board recommended approval of the proposal. He noted that it was not a controversial proposal and was straightforward.

Town Attorney Hobbs asked if any members of the public wished to address the proposal.

Duke Geraghty of the Outer Banks Homebuilders Association was recognized to speak. Mr. Geraghty agreed with the Planning Board's decision to recommend approval of the ordinance. He noted that it would save homeowners between \$600 to \$1,000 per home.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and reminded Council that they were sitting as a legislative body and in order to adopt the ordinance on the first read, it would require a super majority vote, which was four members. He turned the meeting over to Mayor Kingston for deliberation.

Mayor Pro Tempore Thibodeau thought the request was straightforward and a win-win.

Councilor Schiano stated that it was always good when Council could eliminate a regulation and save someone money.

Councilor Whitman noted that the Planning Board worked very hard on the ordinance.

Councilor Schiano moved to approve Ordinance 22-04 as presented.

Motion carried 4-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Resolution 22-09, a Resolution Adopting an Updated Emergency Operations Plan

Fire Chief Donna Black was recognized to speak. Fire Chief Black stated that she was asking Council to adopt the updated Emergency Operations Plan as well as Resolution 22-09. She explained that training was completed with Dare County Emergency Management as a county-wide exercise and then the department heads met in May and reviewed the Town's operations plan and made the necessary changes and updates. She stated that a roundtable discussion was completed at Council's June 15, 2022 meeting to talk through the most-likely scenario, which was a hurricane. She noted that the best example of the Town's emergency planning was the recent 4th of July parade. She pointed out that there was an Incident Action Plan that she would be happy to share with Council, adding that it best reflected what the Town does with emergency operations and Town planning.

Fire Chief Black pointed out that very few changes were made to the Emergency Operations Plan with some being grammatical and the biggest change was to Annex A, which was how essential personnel were defined.

Mayor Pro Tempore Thibodeau thanked Fire Chief Black for the work on the Plan.

Councilor Schiano asked how the Plan was tested during the course of a year to make sure everyone could come together the way they are supposed to. He further asked if there was a process for it. Fire Chief Black stated that a tabletop exercise is held annually. She added that staff use the annexes and appendices from the Emergency Operations Plan and train with it. Councilor Schiano wondered if other resources should be put together to support staff. Fire Chief Black pointed out that Drew Pearson and James Wooten at the Dare County Emergency Operations Center hold exercises multiple times per year.

Town Manager Havens explained that for major events such as the 4th of July parade and the Jazz Festival, the Town operates under the Incident Management System and is used by all staff during those events. He noted that there will be additional practice in that office staff is being encouraged to have a “go bag” so they can work remotely in a seamless fashion.

Mayor Kingston understood that the Plan was used for the 4th of July parade. He asked if there were any lessons learned that would cause the plan to be adjusted. Town Manager Havens stated that it was used for the 4th of July parade, adding that staff has not met to complete the debrief, but he was confident that there will be lessons learned.

Mayor Pro Tempore Thibodeau moved to approve Resolution 22-09 as presented.

Motion carried 4-0.

NEW BUSINESS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 22-05, an Ordinance Amending Several Sections of the Duck Town Code to Accommodate the Addition of Residential Duplex Structures as a Permitted Use in the C-1 Neighborhood Commercial Conventional Zoning District

Donna Creef stated that Marty Barnette on behalf of property owner Andrew Meredith submitted a zoning text amendment application to add residential duplex structures to the C-1 zoning district as a permitted use. She pointed out that as part of the application, a definition of duplex needed to be added to the Zoning Ordinance since there is not one in the current ordinance. She added that there was a definition of duplex in Chapter 50: Solid Waste, which can be used for the Zoning Ordinance. She noted that Mr. Meredith owns a watersports rental business at 1448 Duck Road and if the requested use is added to the C-1 zoning regulations, then it will apply to all properties zoned C-1 in Duck

Village and not just Mr. Meredith's property. She stated that the permitted/prohibited use table in Section 156.040 will also need to be amended if the request was approved.

Donna Creef stated that in 2014, the Town approved an amendment to the special use permit for Drew Meredith's watersports business to add a structure to be used with 1,200 square feet of commercial space on the first floor and a 600 square foot accessory apartment on the second floor. She stated that both uses were permitted in the C-1 zoning district and recently it was discovered by the Planning staff that the first-floor commercial use was being used for residential purposes. She noted that the watersports activities continue on the site as well.

Donna Creef stated that in 2004, the Town amended the VC, C-1, and C-2 zoning districts to remove single family residential structures from those districts. She pointed out that staff reviewed the 2004 meeting minutes for the Planning Board and Town Council and the intent was to have the commercial districts be developed for commercial purposes only. She added that in recognition of the residential uses that existed in 2004 at the time of the amendments, the non-conforming regulations in the zoning ordinance were amended to include language allowing for the expansion and reconstruction of residential structures in the VC, C-1, and C-2 districts.

Donna Creef stated that the Planning Board discussed the issue at their June 8, 2022 meeting and reviewed the draft language from staff. The Board voted 5-0 to recommend the language be added to Sections 156.002, 156.033, and 156.040 of the Town Code. She added that staff was also recommending approval.

Mayor Kingston asked if duplexes were allowed in the V-C district. Donna Creef stated that duplexes were allowed.

Councilor Schiano asked if this was the only C-1 district in Duck. Donna Creef stated that there was a smaller one located further north in Town. Councilor Schiano asked if the amendment was approved, someone could buy properties and turn them into duplexes within the guidelines of the zoning requirements. Ms. Creef stated that they could if they had the minimum lot size and could meet the parking standards. She pointed out that they would have to expand their wastewater system. Councilor Schiano did not think it was a bad thing but was curious as to whether it could be done.

Councilor Whitman asked if the lots were all 22,000 square feet. Donna Creef stated that some were while others were not. She explained that most of the lots that were developed as single-family were less than 25,000 square feet. She noted that Drew Meredith's was above that so it will work for him.

Councilor Schiano moved to authorize a public hearing for Council's August 3, 2022 meeting on Ordinance 22-05 as presented.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs introduced Tyler Gilliam to Council and the audience. He stated that Tyler was his firm's summer law clerk and is a rising third year law student at Wake Forest University and was a graduate of the University of Missouri. He pointed out that Mr. Gilliam has worked on a potential ordinance to amend the Town's code that should be coming before Council at a future meeting.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

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

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

Police Lieutenant Melissa Clark was recognized to speak. Police Lieutenant Clark gave an overview of the past month's police activities to Council and the audience.

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

June FY 2022 Financial Presentation

Administrator Barnes gave a short presentation on the June Fiscal Year 2022 financials to Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that he had his mayors/chairmen meeting on June 28, 2022, which was hosted by the Town of Kill Devil Hills. He stated that Dare County Chairman Bob Woodard could not attend but the other mayors had a good discussion. He reminded Council that the Town of Southern Shores suspended their barricades over the weekend and received both positive and negative feedback to the barricades. He stated that he wasn't sure they would continue to put them out over the coming weekends.

Mayor Kingston reminded Council that it was time for Town Manager Haven's performance review, which was in process. He noted that no action was required by Council until they receive Town Manager Havens' input, which was due by July 20, 2022, and then Council would have a couple of weeks to prepare for the August 3, 2022 meeting.

Mayor Kingston thanked Town staff for a great 4th of July parade. He stated that he was happy to have it back after it being canceled due to COVID-19. He stated there was no doubt that the public enjoyed the parade and thought it was very well attended this year.

Mayor Kingston stated that Town of Nags Head Mayor Ben Cahoon had sent out an email to all the coastal mayors up and down the North Carolina coast regarding holes on the beach and the issue they were having with respect to people digging holes and leaving the beach, damaging individuals as well as equipment. He pointed out that over the years, Duck has had that problem and if Surf Rescue could not get people to fill the holes back in, the lifeguards have to do it. He stated that it was an issue and Mayor Cahoon was asking the coastal mayors if they wanted to take some legislative action and look for some rules and regulations to control the situation by making it an offense which would give the towns more police power. He noted that Mayor Cahoon was getting a lot of positive feedback, adding that he gave feedback that Duck was dealing with the issue and he would support legislation, but needed to get consensus of Council to make sure that Council wanted to see a greater level of legislation and enforcement on the beach, whether digging holes on the beach is outlawed, regulated, or people would be forced to fill the holes in. He asked Council for their thoughts on whether or not they wished to pursue the issue.

Councilor Whitman stated that he would be in support of legislation. He stated that after some of the actions he witnessed in the last few years, he had to contact Surf Rescue Director Mirek Dabrowski to have the lifeguards come and fill in holes. He added that he witnessed people digging holes, filling them with water and putting their children in the hole. He added that some of the holes are so deep that the sides cave in, noting that holes in the beach was an accident waiting to happen.

Mayor Pro Tempore Thibodeau wasn't sure exactly what the legislature could do about the issue but if it helped empower and educate the public about the safety hazards, then she was in favor of pursuing it.

Councilor Schiano asked if the Town was legislating deep holes or holes on the beach in general. Mayor Kingston stated it would be determined. Councilor Schiano stated that it didn't seem like common sense prevailed anymore. He added that he hated to ban small children from digging and building sandcastles. He noted that Council did not want to get that ridiculous, but when someone digs a hole that is four feet deep, it was pretty dangerous. Mayor Kingston agreed. Councilor Schiano stated that the holes were dangerous even after they were filled in. He thought Council needed to be careful with the issue.

Councilor Whitman stated that he has witnessed families on the beach with shovels in order to dig the holes. He pointed out that they were not the plastic shovels they were using.

Mayor Pro Tempore Thibodeau thought there was a lot of frustration and people were digging to help with their frustration, but she was not sure what motivated them to dig

holes. She pointed out that it was an interesting phenomenon, adding that she does not get to the beach to see holes being dug by people. She stated that she liked the approach of notifying the lifeguards so they have more authority. She noted that if she saw someone digging a hole on the beach, she would educate them by letting them know that there was a rule about filling the hole in. She thought that common sense and helping each other know the rules without being confrontational was a good thing.

Mayor Pro Tempore Thibodeau understood Councilor Schiano's comments and would support the effort to look into it but wanted to see what was coming out of it. She stated that she did not want it to go overboard with regulations and making it seem like people could not have any fun, but education was important. She noted that she witnessed a young man bury himself in the sand, adding that it looked scary to her.

Mayor Kingston pointed out that Mayor Cahoon's email noted that there were 52 cases where 31 people died from beach holes that collapsed on them. Councilor Schiano pointed out that they were more deaths than from shark bites. Mayor Kingston agreed. Mayor Pro Tempore Thibodeau pointed out that it was not even just the beach, adding that there were fatalities in Utah.

Town Manager Havens stated that the Town's ordinance included a prohibition against digging holes, but it was a civil penalty, adding that the Town would have to find who to issue the penalty to. He thought Mayor Kingston wanted to make this a state statute and then it would be ticket or summons that would be issued. He thought Mayor Kingston was looking to make it a criminal offense. Mayor Kingston agreed.

Town Attorney Hobbs stated that it would be worth looking at, adding that it may be something that could potentially be a local act. He noted that there may be other coastal states that have some similar type of legislation that may be looked at. He pointed out that North Carolina was not the only state that has this same issue and part of the process could be looking at what other coastal states have done on both coasts to address the issue.

Mayor Kingston thought he received enough direction from Council and thought Duck would be looking to participate in something that was reasonable. He thought it would be a year away from anything developing, but he did not want to move forward until he received Council's input.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau thanked the Public Safety department for their hard work and leadership, adding that she was so proud to be a member of the Town. She stated that it was great to see everyone at the 4th of July parade and thanked staff and the volunteers for their hard work with the parade. She gave a short update on the Visitor's Bureau meeting to Council and the audience.

Councilor Whitman thanked Town staff and everyone that helped out with the 4th of July parade to make it a success. He stated Council recently received a letter from Planning Board member Marc Murray and he thought it was something that Council should look into and discuss it at a future Council meeting. He added that with regard to the public hearings that Council has been holding, it seemed that the general public that gets up to speak was attacking staff. He felt there should be some sort of separation between staff and the people making the comments.

Mayor Kingston stated that he discussed Marc Murray's letter with Town Manager Havens and thought Town Manager Havens would be having a discussion with Town Attorney Hobbs. He thought Council needed to understand what the state statute was to make sure Duck was in compliance, especially with regard to quasi-judicial hearings. He thought it sounded like the Town's process of taking recommendations from the Planning Board was not what should be happening and he knew it has been that way over the years. He thought the action item would be for Town Attorney Hobbs to come back at a future Council meeting.

Town Attorney Hobbs stated that he and Town Manager Havens have been discussing the issue and would be looking into it further in order to make a recommendation.

Councilor Schiano thanked staff for their work with the 4th of July parade, adding that people he spoke to loved the parade and were happy it was back. He stated that there was not a Government Access Committee meeting so he had no update to give. He stated that he had an issue he wished to discuss with regard to assist chairs. He explained that his neighbor recently broke his hip and called on the fire department to help get down his stairs because they do not have an elevator. He added that it was promptly done and his neighbor was pleased and thankful for the service, but his neighbor's wife raised a question in that her understanding was that the chair was transported with the ambulance whenever it goes out on a call. He added that one time when his neighbor had to come down his stairs, the ambulance was on a call and the stair chair was not available, so he had to be physically carried down the stairs. He stated that his neighbor's wife's question was if the Town should consider buying a second chair so there would always be one at the fire department in the instance where an ambulance is not available. He noted that his neighbor was willing to contribute to the cost of it and he thought a lot of people would be willing to contribute, but he was not sure if the Town should not have a chair on hand as part of its equipment. He asked if the Town should purchase another chair so there is always one available at Public Safety even if the ambulance is out on a call.

Town Manager Havens stated the chair was known as a stair chair and was typical equipment for Dare County EMS ambulances. He explained that a patient assist was when someone calls asking for help to get from one floor to another in their home, which was an EMS call. He added that Dare County EMS would be dispatched as the primary agency and Duck Fire Department would be dispatched to assist. He pointed out that the Town does not own a stair chair and could not carry one on the fire engine due to space considerations. He noted that if the Town had one, it would be used but would need to be

stored at the fire department, put into a pickup truck, and taken to the scene to be used, assuming that the Town arrives before the ambulance.

Councilor Schiano asked when his neighbor was brought down, it was Dare County EMS that assisted him. Town Manager Havens stated he was correct.

Fire Chief Black explained that Dare County EMS along with Duck Fire Department were most likely the ones that helped Councilor Schiano's neighbor. She stated that a stair chair can be utilized with a minimum of two people. She pointed out that the fire department is always willing to help whenever needed, they just do not own a stair chair. She added that with a patient assist, it was a medical determined called until the fire department hears otherwise. She noted that if the fire department had a stair chair, they could store it in the station and use it as needed and could also assess whether or not EMS would need to be called. She pointed out that, until this year, they have not had the staffing capability to come before Council asking for a stair chair due to the cost. She reiterated that it would still be a Dare County EMS call unless the fire department was comfortable that they could handle the situation alone.

Councilor Schiano stated that he did not understand that it was a Dare County EMS call and was not sure if his neighbor understood that since both Dare County EMS and Duck Fire Department were both present. He stated that he would be supportive if Fire Chief Black felt it was something that could be used and would be good to have. He added that if it was not the case, he would be fine with it. Fire Chief Black stated that the fire department would not turn down the opportunity for the department to have one if there was money to purchase one. She pointed out that patient assist calls were generally low priority calls.

Mayor Pro Tempore Thibodeau asked how much the stair chairs cost. Fire Chief Black stated that refurbished ones were \$2,600 to \$3,500 and brand new were several thousand dollars more. She added that she would want to discuss it with Chief Collins to see if she has a better location to obtain one.

Councilor Schiano stated that he would be in favor of exploring the possibility of purchasing a stair chair and having staff come back to Council regarding affordability and if it is a purchase that should be done.

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 Regular Meeting on Wednesday, August 3, 2022 at 6:00 p.m.

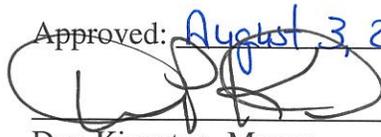
ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 7:42 p.m.


Lori A. Ackerman, Town Clerk

Approved: August 3, 2022

Don Kingston, Mayor

