

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
November 2, 2022**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, October 5, 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; Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Deputy Fire Chief Clarence Batschelet; Town Attorney Robert Hobbs; Public Information and Events Director Kristiana Nickens; Finance and Human Resources Administrator Jessica Barnes; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 6:01 p.m.

Mayor Kingston asked Sergeant Joe Knight and 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.

Scott Kessler of 1377 Duck Road was recognized to speak. Mr. Kessler stated that he wanted to read a letter that his wife had typed since she was out of town. He stated that when his wife found out about the access to the beach as well as the different issues, she became upset. He stated that she had written the following: "Dear Town of Duck officials. I am horrified to hear that there is consideration on the part of the Town of Duck to allow vehicular access to our beaches. As a full-time resident and frequent user of our quiet and peaceful beaches, which we are currently paying big bucks to renourish, I cannot conceive of any earthly reason to allow vehicles other than turtle folks and rescue folks on our beach. I also cannot believe that this has not received more press. Allowing homeowners and full-time residents the chance to weigh in on this terrible idea, it is not okay with me to have vehicles destroying our beach, endangering us and our pets, and getting stuck and needing to be towed. Please reconsider this ill-conceived idea. Kristin Kessler".

John Klamut of 133 Olde Duck Beach Road was recognized to speak. Mr. Klamut thanked the Town for the announcement of the decision to use the Port Trinitie subdivision and an access in Southern Shores for the beach nourishment project. He thanked Town Manager Havens, adding that he has written him several letters as well as Town Council and received very prompt and transparent responses.

John Klamut stated that now that the Town has found a way to complete the beach nourishment project without using the Barrier Island Station access, he thought the Town needed to secure a long-lasting agreement with the Army Corps of Engineers for permanent access to the beach. He noted that the Army Corps of Engineers site was the best site for access since the Public Safety building was located there, it was midway in the Town, and it has been used for many years. He added that the Town provides services to the Army Corps of Engineers. He thought a 30-40-foot-wide access road would help the Town's partnership. He stated that the Olde Duck Beach Homeowners Association wrote to their congressmen and senators as well as having a conference call with Senator Thom Tillis and Dr. Greg Murphy's staff on October 31, 2022 and they have pledged to help. He stated that they told Senator Tillis and Dr. Murphy's staff that they were not the implementers but they said they would work hard to get the Army Corps of Engineers, Town Council and Town staff together to work on the issues. He thought it was good and suggested one or more of the Council members take personal responsibility for the Army Corps of Engineers relationship because it was important to the Town.

John Klamut stated that his homeowners association was against the Town doing anything to increase the number of vehicles on the beach. He thought if Council looked at the Town Vision, it had the following language: "We respect and value our delicate, yet dynamic barrier island environment, clean waters and beaches, maritime forests, wetlands and dunes. Duck is a pedestrian first community that is safe and easy to navigate by walking and cycling." *-The three-minute time ended at this point in his public comment.*

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin stated that she wanted to address beach driving. She stated that she recognized the need for official vehicular access to the beach by the Town and supported an effort to figure out an effective way to address that need on an ongoing basis including the Army Corps of Engineers' site. She pointed out that there was no proposal that would be more damaging to the unique, beautiful, and fragile beach than the driving of private vehicles. She noted that beach driving was permitted by Town ordinance October through April, but the lack of any significant public vehicular access has minimized the negative results of the rule. She stated that the recent proposal to allow public vehicular access via Barrier Island Station per the Town's CAMA permit application would be detrimental and was advanced without an opportunity for public input.

Miriam Rollin stated that in opposition to the Town/Barrier Island Station proposal, she drafted a petition which was sent to Council and Town Manager Havens. She pointed out that she sent out the petition after 5:00 p.m. on Sunday, October 30, 2022 and received

hundreds of owners of more than 150 properties across the Town that had signed it. She asked that the petition be included as part of her public comment.

Miriam Rollin noted that others sent messages privately to the Town opposing Barrier Island Station's vehicular access to the beach and some had copied her on those messages. She stated that the petition stated that vehicular access to Duck's beaches via Barrier Island Station October through April would cause danger to children, adults and pets walking and relaxing on the beach both during the day and in the evening; would cause harm to turtle hatchlings, birds, crabs and other wildlife on the beach; would damage the dune especially during high tide; and would cause pollution on the beach such as air, noise, exhaust fumes, engine noises, visual, vehicles, lights, and headlights. She stated that she was appreciative of the Town in announcing that they would not move forward with the Barrier Island Station vehicular access at this time, adding that she was appreciative that Council would be discussing vehicular beach access at their annual Retreat in February. She stated that she was calling on the Town after the review in February, to revise the beach driving ordinance and, like the Towns of Southern Shores and Kitty Hawk, prohibit driving on the beach except for official Town vehicles.

Rita Muncy of 127 Olde Duck Beach Road was recognized to speak. Ms. Muncy stated that she agreed with the other comments that were given. She stated that she was opposed to any beach access at all, adding that she will allow it for life saving. She pointed out that since Council had considered allowing Barrier Island Station to have a beach access, it seemed that they were "giving the store away." She noted that she has not heard of any concessions by Barrier Island Station except that one could drive over their dune. She added that while it suited them, they have not given a lot to the Town in return. She reiterated that access to the beach should be prohibited.

Rita Muncy stated that her community was next to Barrier Island Station and they have installed lights that are extremely bright making it hard to sleep at night. She stated that Barrier Island Station has not been responsive to the complaints about the lights and should be using yellow lights that are not as bright. She pointed out that their bright white lights are offensive to her, reiterating that Barrier Island Station has not responded to their complaints. She stated that if they could not respond to such a small item, she wondered how they would respond to complaints or issues with driving on the beach.

Rita Muncy stated that the Army Corps of Engineers has closed off their portion of the beach in the past for experiments to protect their instruments, adding that they could do it again and for any of their own reasons. She thought that one of the reasons could be because they do not like people from Barrier Island Station driving on the beach and will close off that section of the beach. She added that if that happens, the people south of Barrier Island Station will have a lot of vehicles joyriding on the beach because they cannot go further north. *-The three-minute time ended at this point in her public comment.*

Greg Beckwith of 147 Plover Drive was recognized to speak. Mr. Beckwith stated he owns property in Duck as well as Carova and Swan Beach which were both 4-wheel

drive areas. He thought all vehicular traffic should be allowed to operate, but not in the Town of Duck. He stated that he was fishing at the end of Plover Drive recently and the water was right at the beach stairs, pointing out that it will be hard for a vehicle to travel. He stated that if Council allows public beach access, they will undermine the bedrock of the decisions of the appellate courts in the State of North Carolina versus Hovey matter. He stated that that decision was rested in large part on the fact that the Town did not have public beach access. He felt that Council would be making a huge mistake by opening up a beach access to a limited number of people.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to read the public comments that came in to Council and the audience.

Christy Hrozencik of 141 Bayberry Drive was recognized. Ms. Hrozencik wrote the following: "To the Town Council and Town Manager, Duck, NC, regarding Barrier Island Station Vehicular Beach Access. I am writing to express my opposition to granting vehicle access to the beach during the months of October to April or anytime at all via Barrier Island Station. On Wednesday, October 12, 2022 while sitting on the beach, a beach buggy style vehicle came driving down the beach. It was immediately apparent the driver was inexperienced driving on the sand. The vehicle was going too fast and at times swerving in the sand, the driver struggling to maintain control. At one point the driver lost control of the vehicle driving over a chair and tackle box causing damage to both. Thankfully no one was sitting in the chair. The driver had no concern for the damage done and sped off continuing to struggle controlling the vehicle. We reported the incident to a lifeguard. An incident like this will be the first of many and worse it will only be a matter of time before someone is injured or worse killed. We can appreciate the Barrier Island Station Association wanting to enhance off-season rentals by offering this feature, however this imposes a safety issue on us all. The Town of Duck will become part of lawsuits and will take on a liability being a party to allowing this. Further, there are numerous environmental concerns. Duck's natural beauty in the Spring and Fall as well as Town features/activities offer off season visitors a unique experience. I strongly urge the Town of Duck Council to oppose granting vehicle access as it is not necessary for the beach nourishment project. Respectfully, Christy Hrozencik, Duck Property Owner."

Patricia Nelson of 112 Olde Duck Road was recognized. Ms. Nelson wrote the following: "Hello Town Council Members, Town Manager Drew Havens, I am Patty Nelson. I own a home at 112 Olde Duck Road, Duck, NC 27949. I spoke at the October 5, 2022 public comment period representing the Olde Duck Beach Owners Association. I'm sorry that I can't attend this Town Council meeting in person. On Tuesday, November 1, 2022 some members of our Board had a conference call with the staff of Senator Tillis, and Congressman Murphy's office. We asked for their assistance in getting the US Army Corps of Engineers Federal Research Facility Leadership and The Town of Duck Leadership to develop a long-term agreement for access to the beach for both Surf & Rescue and future beach nourishment projects through the USACE FRF property. They were willing to reach out to the two parties and see what dialogue could be encouraged. Since the 2022 beach nourishment project is moving forward with access through the

Port Trinitie neighborhood and the Southern Shores beach access, there is no immediate need for beach access through Barrier Island Station. If a long-term agreement can be obtained with the USACE FRF then there would not be a need for the Barrier Island Station vehicular access at all. I would request that the Town of Duck hold off on installing the Barrier Island Station ramp until other avenues are exhausted. Thank you for your consideration to this matter.”

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

### **CONSENT AGENDA**

**Minutes from the September 7, 2022, Regular Meeting; Service Agreement with Coastal Protection Engineering to Update the Town’s NC Resilient Coastal Communities Program Phase 2: Planning, Project Identification, and Prioritization using Funds Provided by NC Division of Coastal Management; Ordinance 22-09, a Grant Ordinance for the Town of Duck, North Carolina, American Rescue Plan Act of 2021: Coronavirus State and Local Fiscal Recovery Funds; Amendment to the Employment Agreement between the Town of Duck and Andrew Havens; Resolution 22-16, a Resolution of the Town Council of the Town of Duck, North Carolina, Showing Appreciation and Support for Dare County Elections Staff and Precinct Workers; Agreement for Professional Services between VHB Engineering NC, LLC and the Town of Duck for a Neighborhood Stormwater Management Study under NC Resilient Coastal Communities Program Phase 3 Grant Program; and Budget Amendment**

Councilor Schiano moved to approve the consent agenda as presented.

Motion carried 5-0.

### **SPECIAL PRESENTATIONS**

#### **Employee Recognition Program**

Mayor Kingston stated that in December 2011, Council adopted an employee service recognition program that would acknowledge the service of employees of the Town at five-year intervals by providing them with a certificate of recognition as well as a gift certificate at a Duck business of their choosing.

Mayor Kingston, Police Chief Jeffrey Ackerman, Police Lieutenant Melissa Clark, and Town Manager Drew Havens went on to present Police Sergeant Joseph Knight with his 10-year service recognition certificate and \$100 gift certificate.

#### **Presentation by OBX GOFAR regarding the 2023 Turkey Trot**

Samantha Lock of OBX GOFAR and Chris Sawin of the Outer Banks Community Foundation were recognized to speak. Ms. Lock and Mr. Sawin went on to give a short presentation on the potential to hold a turkey trot in Duck in 2023 on Thanksgiving Day to Council and the audience. They then took questions from Council.

Mayor Kingston thanked Samantha Lock and Chris Sawin for their presentation.

### **QUASI-JUDICIAL PUBLIC HEARING**

There were no quasi-judicial public hearings at this time.

### **LEGISLATIVE PUBLIC HEARINGS**

There were no Legislative Public Hearings at this time.

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

There was no Old Business to discuss.

### **NEW BUSINESS**

#### **Discussion/Consideration of a Request from Waste Management of Virginia, Inc. for a \$1.10 per Residential Unit per Month Fee Increase Effective December 1, 2022**

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that the Town has had a relationship with Waste Management since it incorporated. He explained the request in front of Council was to consider a request from Waste Management for a \$1.10 per residential unit per month fee increase. He stated that the current contract the Town has with Waste Management was effective on October 1, 2020 and ends on September 30, 2023, adding that an inflation escalator was built into the contract that was capped at 2.5% based on the Consumer Price Index change.

Town Manager Havens stated that the Town's current per unit residential rate was \$22.06 per month and was adjusted on October 1, 2022. He stated that Waste Management was requesting an additional \$1.10 per residential unit for a total of \$23.16 per month, which equates to an additional cost of \$2,502.50 per month and for the balance of the fiscal year, it was an additional \$17,518.00.

Rob Clendenin of Waste Management was recognized to speak. Mr. Clendenin stated that he knew what the contract stated, but they were struggling to maintain services based on cost increases that were unprecedented. He stated that they have struggled through the COVID-19 pandemic while maintaining what they consider essential services, but he has not seen inflation as high as it is now since 1970. He noted that when the contract was signed three years ago, 2.5% was pretty reasonable, adding that that he did not expect the cost of steel for their containers and trucks would have increased 200% since January 2020. He noted that their front-line labor costs have increased more than 60% since 2020.

He pointed out that fuel was also up by 60% and the resin and plastics that the trash cans were made of have increased 50% since 2020. He added that the index that tracks their costs was the PPI – Producer Price Index – which indicates what happens to the CPI. He stated that the PPI for trucking has increased 31% since January 2020.

Rob Clendenin stated that the requested cost increase was not close to covering what Waste Management's cost increases were, but they felt it was a number that was reasonable enough that could be considered by the Town and would agree to the request.

Mayor Kingston asked what the impact would be if the Town did not agree to the increase. He asked how it would affect service between now and the end of the fiscal year. Rob Clendenin stated that there would be no change. He explained that he has worked for Waste Management for 28 years and worked with a lot of contracts that lose money, adding that they do not fail to perform contracts. Mayor Kingston asked if Waste Management was experiencing excessive turnover. Mr. Clendenin stated that they were maintaining, but as a region, they were down tremendously. He thought they were short 200 drivers in the Virginia/Northeast North Carolina/Maryland/Washington, DC region. He added that the business unit that services Duck was holding its own.

Councilor Mooney asked Rob Clendenin how many other municipalities he was making the same appeal to and if it was done previously, what the result was. Rob Clendenin stated that they were making the appeal to all of their residential customers with mixed responses.

Mayor Kingston clarified that the request was for an additional 5% on top of the 2.5%. Rob Clendenin stated he was correct.

Mayor Kingston asked if Council had to make a decision on the issue at this meeting. Town Manager Havens stated that they would.

Councilor Schiano did not think the request was unreasonable, adding that he understood the need. He thought it was the time to do something. Councilor Whitman agreed with Councilor Schiano.

Mayor Kingston stated that Duck had been partners with Waste Management for many years, and although it was an unusual suggestion, Council understood what the economy was doing. He thought it was a reasonable request.

Mayor Pro Tempore Thibodeau stated that she was not surprised to see the issue on the agenda, adding that she was in favor of it.

Mayor Pro Tempore Thibodeau moved to approve a request from Waste Management for a \$1.10 per residential unit per month fee increase, effective December 1, 2022 as presented, and authorize the Town Manager and Town Attorney to negotiate the contract amendment to reflect the increase.

Motion carried 5-0.

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

Town Attorney Hobbs stated that he had nothing to report.

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

**Departmental Updates**

Director of Community Development Joseph Heard was recognized to speak. Director Heard gave an 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.

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

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

**October FY 2023 Financial Presentation**

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the October Fiscal Year 2023 financials to Council and the audience.

**MAYOR'S AGENDA**

Mayor Kingston stated that the mayors/chairmen meeting will be on November 15, 2022 in Southern Shores. He stated that he has his North Carolina Local Leadership Foundation meeting on November 17, 2022, adding that he would be stepping down from the board after serving as president for the past two years. He stated that he was looking forward to the yuletide celebration on December 2, 2022. He reminded everyone that Election Day was on November 8, 2022 and encouraged everyone to vote. He thanked Former Director of Public Information and Events Christian Legner as well as Public Relations Assistant Betsy Trimble and all staff on a successful jazz festival.

**COUNCIL MEMBER'S AGENDA**



Mayor Pro Tempore Thibodeau echoed Mayor Kingston's thanks on the jazz festival. She stated that she was excited about the prospect of bringing the Turkey Trot back next year. She noted that the Outer Banks Visitors Bureau would be holding a tourism summit in Nags Head on November 3, 2022.

Councilor Mooney stated he had nothing to report.

Councilor Whitman thanked Town staff for a great jazz festival as well as the Duck Fire Department on the Fire Prevention event. He stated that Friday, November 4, 2022 was the last volunteer trash pick-up date and beach grass planting would be starting on Friday, November 11, 2022.

Councilor Schiano gave a Government Access Channel update to Council and the audience.

## **OTHER BUSINESS**

### **Additional Public Comments**

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

Mayor Kingston noted that the next meeting would be the Regular meeting on Wednesday, December 7, 2022 at 6:00 p.m.

## **CLOSED SESSION**

Mayor Pro Tempore Thibodeau moved to enter closed session in accordance with Section 143-318.11(a)(1) of the North Carolina General Statutes to prevent the disclosure of information that is privileged or confidential, pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

Motion carried 5-0.

The time was 7:40 p.m.

Upon return from closed session, Town Attorney Hobbs stated that the Council reviewed and approved closed session minutes from the following meetings:

November 19, 2020  
November 17, 2021  
April 20, 2022  
August 3, 2022  
October 5, 2022


He noted that these minutes would remain sealed as per current Town policy.

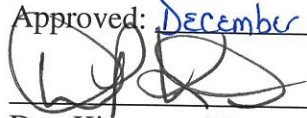
**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 7:49 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: December 7, 2022  
  
Don Kingston, Mayor

