

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
January 4, 2023**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, January 4, 2023.

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; 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; Senior Planner Sandy Cross; Finance and Human Resources Administrator Jessica Barnes; Deputy Town Clerk Melissa Felthousen; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 6:00 p.m. He noted that Councilor Rob Mooney was excused from the meeting.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to introduce Melissa Felthousen as the Town's newest Deputy Town Clerk.

Mayor Kingston asked Town Clerk Lori Ackerman and Deputy Town Clerk Melissa Felthousen 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 asked that any comments regarding the public hearing be held off.

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin stated she was present to address public beach driving in Duck. She stated that she enjoys spending time on the beach, adding that having the general public drive on the beach would destroy her and other people's enjoyment on the beach. She recognized the need for officials to have access to the beach, noting that she supports the effort to figure out an effective way to address that need on an ongoing basis. She added that she was aware that beach driving in Duck was currently permitted by ordinance from October through April, but the lack of any significant public vehicular access has minimized the negative results of that rule.

Miriam Rollin noted that the recent proposal to allow public vehicular access by Barrier Island Station per the Town's CAMA permit application raises the need for a change in the Town's regulations. She pointed out that the regulations need to be changed to prohibit beach driving by the general public. She stated that she drafted a petition that was sent to Council and Town Manager Drew Havens, adding that she received 700 signatures from property owners throughout Duck. She added that other homeowners have spoken at previous Council meetings in October, November and December with others sending messages directly to Town Council opposing public driving on the beach. She pointed out that the petition states that vehicular access to Duck's beaches October through April will cause danger to children, adults, and pets; walking and relaxing on the beach both daytime and in the evening; would cause harm to turtle hatchlings, bird, crabs, and other wildlife on the beach; damage to the dune; and would cause pollution of several types such as air pollution, exhaust fumes, noise pollution, visual pollution, and light pollution in the evening.

Miriam Rollin stated that she was pleased that the Town announced that it would not move forward with the beach access at Barrier Island Station at this time and would discuss the issue at their Retreat in February.

Michael Rollin of 149 Plover Drive was recognized to speak. Mr. Rollin stated that he supported Miriam Rollin's comments as well as the petition. He urged Council that the residents of Duck's tax dollars should not be used to create or maintain any beach access that would allow vehicles to drive on the beach other than for official purposes. He noted that the tax dollars for the Town should not be used for increased police personnel and equipment resources that would be needed to begin to ensure adherence to any beach driving regulations.

Michael Rollin pointed out that the Town was getting ready to spend a lot of money for the beach renourishment project, adding that public driving on the beach would only erode the beach further, making the expenditure less effective. He called on Council after their Retreat in February to revise the beach driving ordinance and prohibit beach driving. He added that driving on the beach should only be permitted for official Town purposes, such as beach nourishment, surf rescue and other public safety, storm clean up and other beach maintenance, as well as Town officially sanctioned purposes such as turtle nest protection and research.

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

CONSENT AGENDA

Minutes from the December 7, 2022, Regular Meeting; Resolution 23-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting and Authorizing the Submission of a Paved Trails and Sidewalk Feasibility Study Grant for a Side Path along the West Side of NC Highway 12, South of Duck Village

Councilor Schiano moved to approve the consent agenda as presented.

Motion carried 4-0.

SPECIAL PRESENTATIONS

There were no special presentations at this time.

QUASI-JUDICIAL PUBLIC HEARING

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

LEGISLATIVE PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 22-10, an Ordinance Amending the Regulatory Standards for Dune Walkover Structures

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs opened the public hearing, noting that the Council would be sitting as a legislative body. He stated that Senior Planner Sandy Cross would give a presentation.

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that in August, 2022 there was an ordinance revision related to dune walkover structures that clarified some conflicts. She stated that the discussion resulted in an additional discussion regarding the elevation of dune walkways which currently require an 18-inch elevation requirement above the existing dune. She stated that the text amendment was brought back to Council and Council sent it to the Planning Board, adding that the Planning Board held a special meeting on August 19, 2022 where they visited the beach to see what was there as well as get a feel as to what the discussion was about. She stated that at the Planning Board's September meeting, they were presented with some options that were not satisfactory to them in that they wanted more flexibility.

Senior Planner Cross pointed out that there was a planned CAMA training on October 25, 2022, so the Planning Board discussion was bumped until after the training. She noted that as part of the CAMA training, there were three different sections that deal with dune walkovers and how they should be dealt with, adding that they were all very ambiguous. She stated that when she spoke to the representatives at CAMA, they stated that they left it ambiguous so the local permit officer could make the determination.

Senior Planner Cross stated that staff wanted flexibility but with a quantifying standard. She stated that when staff went back to the Planning Board in November, they brought forward a concept that would distinguish between primary and frontal dunes. She explained that frontal dunes were lower and primary dunes have an established elevation criteria. She added that the Town has a base flood elevations of BFE11 and BFE12,

meaning it would be anywhere from 17-18 feet for a primary dune. She noted that if the Town has a primary dune, the Planning Board recommended that a homeowner could rebuild their walkway or build a new walkway at the same level of the dune. She stated that if it was a frontal dune, it should be elevated 18 inches in order to allow for further growth and vegetation to grow.

Senior Planner Cross stated that an ordinance amendment was presented to Council that revised the existing language so that a homeowner could elevate their walkway if it was a frontal dune and if it was a primary dune, it could be left at grade. She noted that one other revision was made that had to do with the location of the walkways. She explained that staff proposed the removal of the following language from Section 94.04: "...and shall extend east of the seaward vegetation line..." because the Town does not currently do that.

Town Attorney Hobbs clarified that there were further changes to the ordinance. Senior Planner Cross stated that the revision was included in the draft ordinance.

Mayor Kingston asked if there was a minimum height on the primary dune. Senior Planner Cross stated that it has to be at an elevation of base flood plus six. She explained that it would be 17 or 18 feet and whoever was completing the construction would need to show that it meets that standard. Mayor Kingston clarified that it was above the primary dune no matter what the height was. Senior Planner Cross stated he was correct.

Councilor Schiano thought the exception was a replacement. He explained that if an existing walkway was in a valley between the primary dune, it would not have to be raised. Mayor Kingston agreed. Senior Planner Cross stated he was correct, adding that the Town would not require that if it was less than 50% since it was considered repair and maintenance. Councilor Schiano thought it may be to the Town's advantage to do that. Senior Planner Cross stated that staff encourages it.

Mayor Pro Tempore Thibodeau clarified that the local CAMA officials were the ones that would determine the primary and frontal dunes as well as working with the applicant. Senior Planner Cross stated that if there were questions, the applicant would be required to provide staff with data. She added that if she could look at contours and clearly show that it exceeds the primary dune elevation, then she would work with the contractors. She stated that if there was a question, she would err on the side of the contractor showing her before she makes a determination.

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

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

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

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 two-thirds vote of all members, which was four members. He turned the meeting over to Mayor Kingston for deliberation.

Councilor Whitman moved to approve Ordinance 22-10 as presented.

Motion carried 4-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

There was no Old Business to discuss at this time.

NEW BUSINESS

There was no New Business to discuss at this time.

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

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.

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.

Public Information and Events Director Kay Nickens was recognized to speak. Director Nickens gave a brief overview of 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.

December FY 2023 Financial Presentation

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

MAYOR'S AGENDA

Mayor Kingston stated that the mayors/chairmen meeting will be on January 17, 2023 in Kill Devil Hills. He stated that he was looking forward to the January 18, 2023 mid-month meeting. He noted that the League of Municipalities puts out their goals for the coming year and the Mayor is generally designated to vote on the goals. He stated that he has been designated this year and would be voting by January 15, 2023. He pointed out that the Town has to select 10 goals out of 15-20. He added that if Council had any input on which goals should be checked, to get back to him quickly. He stated that he was looking forward to the upcoming celebration of community with Town staff later in the month.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau pointed out that she was interacting with some constituents earlier in her capacity as Mayor Pro Tempore and was happy to hear how satisfied the public was with Town staff. She agreed and it was nice that the public acknowledges the high functioning staff and was something she appreciated. She noted that there was not an update on the beach nourishment project and asked Town Manager Havens if the contract had been renegotiated. Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that he has the extension agreement that Dare County and Weeks Marine had signed. Mayor Pro Tempore clarified that it was as planned. Town Manager Havens stated she was correct, adding that the end date was still prior to Memorial Day. Mayor Pro Tempore Thibodeau noted that she would not be at the January 18, 2023 mid-month meeting.

Councilor Whitman stated he had nothing to report.

Councilor Schiano stated he had nothing to report.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis thanked Council for passing Ordinance 22-10. He stated that the Planning Board had a lot of meetings and could not have completed their work without the help of Director Heard and Senior Planner Cross.

Tom Burton of 109 Sandpiper Cove was recognized to speak. Mr. Burton thanked Police Chief Ackerman for his presentation as it was very helpful. He stated that Sanderling South and North were starting to get their ducks in a row regarding the speed and how to address it. He noted that they were thinking about putting it before their boards in February to say where they stood with it and to see where Duck and the NC Department of Transportation stands with it. He thanked Police Chief Ackerman for the slide in his presentation regarding the number of vehicles that come through Duck. He pointed out that there were 114,000 vehicles driving north and 58,000 vehicles driving south for the month of December. He noted that there were 110 violations which equated to 3.6 tickets per day. He wondered if there was a speed trap. He added that the percentage of 3.6 tickets equated to 110 tickets per month versus 172,000 vehicles driving through Duck was .0006. He stated that with regard to the comment regarding it costing the Town money for an officer to write a ticket, he thought every time a ticket was not written meant the price of his home decreased and therefore the tax on his home decreased. He applauded the police department for having as many officers as they do running traffic.

Tom Burton stated that when looking at the math, he was shocked to see only 110 tickets written in a month with regard to the number of vehicles that travel through the Town. He pointed out that from the Sanderling Inn south to Sanderling South's subdivision, the speed limit was back to 45 MPH. He added that the Town of Southern Shores had decided to keep their speed limit at 35 MPH all year. He wasn't sure if they had more pedestrians or side streets, but he hoped Duck would look at having the speed limit changed in the Sanderling area.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that he was looking forward to hearing about the pathway heading south. He thought it would be great for safety and people movement. He stated that the amount of foot traffic and bicycle traffic was on the south side of Town and was congested on one side. He thought if that area could be opened up, it would be great.

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

Mayor Kingston noted that the next meeting would be the Mid-Month meeting on Wednesday, January 18, 2023 at 1:00 p.m.

CLOSED SESSION

Mayor Pro Tempore Thibodeau moved to enter closed session pursuant to §143-318.11(5) to establish or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property located at 1165 Duck Road, owned by Larry Herron, Thomas Herron, Deborah Herron, Vicky Herron, and Catherine Herron, by purchase, option, exchange, or lease, and other similar matters related to the acquisition of real property.

Motion carried 4-0.

The time was 7:13 p.m.

Upon return from closed session, Town Attorney Hobbs stated that the Council gave direction to the Town Manager and Town Attorney regarding the terms on the possible acquisition of real property.

ADJOURNMENT

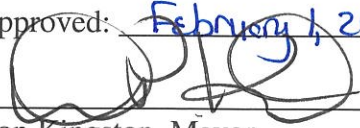
Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 8:27 p.m.



Leri A. Ackerman, Town Clerk

Approved: February 1, 2023


Don Kingston, Mayor

