

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
March 1, 2023**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, March 1, 2023.

**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; Fire Chief Donna Black; Attorney Lauren Womble; Public Information and Events Director Kristiana Nickens; Finance and Human Resources Administrator Jessica Barnes; Deputy Town Clerk Melissa Felthousen; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** Town Attorney Robert Hobbs.

Mayor Kingston called the meeting to order at 6:00 p.m. He noted that Town Attorney Robert Hobbs was excused from the meeting.

Mayor Kingston moved to add a closed session to the end of the agenda.

Motion carried 5-0.

Mayor Kingston asked Fire Chief Donna Black and the members of the Duck Fire Department 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 related to the public hearings be held off.

Ron Blunck of 1356 Duck Road was recognized to speak. Mr. Blunck stated that he was also the association president for the Carolina Dunes Homeowners Association and the Duck HOA Forum founder. He stated that Council had an item under New Business regarding the purchase of property at 145 Buffell Head Road, which was an oceanfront property in the Carolina Dunes subdivision. He pointed out that he found out about the potential purchase after the contract was signed, which was a surprise, and he had some concerns about it.

Ron Blunck stated that he sent a document to all of Council with those concerns and wished to summarize the concerns he wrote about. He understood the purpose of the purchase, which was to support beach nourishment, lifeguard services, beach maintenance and clean up after storms, which the community did support. He pointed out that these activities cause noise and disruption – especially with the beach nourishment project – which the Carolina Dunes subdivision had a big concern over that were spelled out in the document he had sent to Council. He reiterated that he had no advance notice of the Town’s intent to purchase the property and added that the Town was not being transparent. He stated that the citizens expect more from the Town with being open and transparent with the community when it is impacted by an action that was being taken. He stated that they found out about it after the fact, adding that it was not good.

Ron Blunck stated that there were zoning restrictions in place and covenant restrictions, pointing out that Carolina Dunes is zoned residential and thought there was a violation for that. He added that he did retain an attorney who served a notice to Council regarding the violation of the covenants by going forward with the purchase. He noted that it was not the purchase itself that was an issue, but the usage of the property that they believe was a violation of the Carolina Dunes’ covenants. *-The three-minute time ended at this point in the reading of the comments.*

*Ron Blunck additionally submitted the following written comments:*

- “1. I am Ron Blunck.
  - a. I live at 1356 Duck Road in the Carolina Dunes subdivision. Carolina Dunes is the main hot spot for beach erosion and beach nourishment.
  - b. I am also the President of the Carolina Dunes Association and represent approximately 220 property owners in Carolina Dunes.
  - c. Lastly, I am the founder and coordinator for the Duck HOA and Property Owners Forum, an organization that focuses on communications and problem solving for many issues important to HOAs and property owners.
2. I am here to discuss a very important issue facing Carolina Dunes, and that is the Town’s purchase of 145 Buffell Head Road, which is an oceanfront property.
  - a. Mayor Kingston and Town Manager Havens emailed me early this month and asked to meet with me to discuss some issue. They didn’t say what the issue was. The Association Secretary and I met with them on February 6, 2023.
    1. The first and primary purpose was to support beach nourishment.
      - a. That support would include moving heavy equipment and large pipes over the dunes to and from the beach there. That would also include 24-hour a day movement of vendor workers. That would generate lots of noise and disruption for owners, guests and renters, and that would not be consistent with the residential zoning and residential covenants that are recorded in the Dare County land records for all properties in Carolina Dunes.



entity, the Town of Duck. There's another relevant factor. The Town has a long-stated goal of obtaining public access to the ocean as part of its Land Usage Plan (LUP), which was recently updated and continues to reference that goal. It seems to us that the LUP goal would increase the probability of success for any legal challenge to make this property a public access point. Property owners in Carolina Dunes, like property owners in other communities and subdivisions in the Town, are strongly opposed to any public access anywhere in our community.

- a. **Question for the Town:** How would the Town prevent the public from entering this property and going to the beach? We don't think signage or a chain across the driveway alone would be effective.
2. Even if the Town didn't make a formal public access designation at this property, it's likely members of the public would begin to use this property for public access to the beach anyway, and to publicly park along Buffell Head Road in the process. Parking is already not allowed anywhere in Carolina Dunes, but enforcement of that has always been spotty at best. We believe the Town has minimal history in enforcing the no-parking regulation. We wonder when the last time the Town ticketed an illegally parked vehicle or had one towed. The answer may be 'never'. So, we believe that Town's stated intentions to not let this property be used for public access simply won't materialize, and Carolina Dunes will suffer in the process.
  - a. **Question for the Town:** In Carolina Dunes, and other subdivisions, how many no-parking tickets have been written and how many vehicles have been towed in the last 2-3 years?
- v. We asked and were told the money to purchase this property (estimate purchase price of \$1.7 million) was coming from beach nourishment funds. We think this is another issue.
  1. As we understand it, funding for beach nourishment comes from:
    - a. State of NC taxes.
    - b. Dare County taxes.
    - c. Town of Duck taxes from Town property owners.
  2. In talking with Dare County, their funding cannot be used without their approval, and they would not approve money to purchase any property, including

145 Buffell Head Road. We would guess the State of NC would take the same position.

- a. **Question for the Town:** Precisely, how much money is in the 2023 nourishment budget for getting access to the beach, and how much of this money will be spent getting access through Southern Shores? Is there \$1.7 million left over to pay for this property?
3. So, we think taxes collected from Duck property owners would need to be used to make this purchase.
  - a. Maybe there is some grant money available to the Town that can be used. However, we doubt that there would be enough grant money specifically earmarked for purchase of any oceanfront property. Money is fungible, so even if there may be some grant money available, Duck property owners probably will still be paying for this purchase (or what the grant money would otherwise have been used for).
    - i. **Question for the Town:** When did the Town announce to Duck property owners that some of their taxes would be used to purchase an oceanfront property, and when did the Town conduct a public hearing on this?
4. Ultimately, we believe Duck property owner taxes are being used in whole or in part to fund the purchase of this property.
  - a. We're certain there are alternatives to getting the limited access to the beach for nourishment, limited lifeguard support and limited beach maintenance and cleanup that the Town is seeking but would cost the Town less than an \$1.7 million. We've had numerous conversations with community attorneys and have received several viable suggestions that would accomplish the Town's limited access need at a lower cost to taxpayers. Depending upon who ultimately owns the property, there are easement, covenant and lease options that could and should be explored before anyone purchases the property. That would be prudent from a Duck taxpayer standpoint and from the standpoint of being

'neighborly' with Carolina Dunes. We're available, along with our Carolina Dunes attorney, to discuss and explore these.

- vi. As I have said to Town officials on several occasions in the past, there's a significant property owner distrust of the Town. This perspective is reappearing again as we have recently discussed your plans to purchase this property. We have discussed this with the Carolina Dunes Association Board, with the Carolina Dunes owners and with the Duck HOA & Property Owner Forum members. There's a strong feeling the Town is not transparent, doesn't solicit feedback from property owners and is overly willing to spend taxpayer funds. This is not a good image to have, and we hope the Town will seriously review this and figure out ways to improve it, starting with the purchase of this property.
  - vii. **Question for the Town:** We assume you have formally assessed the environmental impact of using this property for your stated purposes. If you have, may we get a copy of your environmental impacts study? If not, don't you think you should do this before committing taxpayer funds to purchasing the property?
4. Here's what we're asking for:
- a. Delay discussion and approval of a purchase settlement.
    - i. As we understand it, there's no pressure or concern by the seller for a quick settlement. We'd suggest you talk with the seller about this.
    - ii. There's certainly no pressure for settlement before the next beach nourishment project, 5-7 years from now, as this property would not be used for the 2023 beach nourishment project.
    - iii. There's essentially no pressure for settlement for lifeguard support or support of beach maintenance and clean up as the Town currently has access for these purposes and this property would only be used as a secondary source for supporting them.
  - b. Answer the highlighted questions above.
  - c. Engage in a discussion with us and our attorney, to:
    - i. Review all the points and questions in my comments in this document and your answers to the questions.
    - ii. Cooperatively, review alternatives to gain appropriate and guaranteed access to the beach for the Town that also legally guarantees (in a permanent way that can't be changed with a future Town Council vote) that all access would be limited to what is acceptable to both Carolina Dunes and the Town.
      - 1. We were told the Town is considering enacting a Town ordinance limited the access usages. That would not be

acceptable as any Town ordinance can be changed at any time by a vote of the Town Council.

Lastly, our comments here present additional factors and concerns that supplement the legal notice our attorney, Bob Hornik, served the Town attorney (Robert Hobbs) last Friday regarding your stated usage violating the Carolina Dunes covenants.

We strongly encourage you to delay approving settlement on this property so we can jointly discuss possible alternative(s) that might be acceptable to both the Town and to property owners in Carolina Dunes. Respectfully submitted, Ron Blunck”

Carolynne Adams of 126 Pintail Drive was recognized to speak. Ms. Adams stated that her father, Charlie Pratt, was very involved with the Town during its incorporation, and an integral part of the planning when the boardwalk was first envisioned. She stated that she wanted to share that to show Council how important and loved the Town and Carolina Dunes was to her and her family. She chastised the Council for not fulfilling the promise that was repeated multiple times during their election campaigns. She pointed out that there was and continues to be a failure to communicate. She understood the perceived need for secrecy while securing the contract for the purchase of a property, adding that the secrecy still continues. She noted that the only way that she learned of the purchase was through an email from HOA president Ron Blunck. She pointed out that the HOA was voluntary and there were many property owners that do not participate and may not know the Town’s intentions.

Carolynne Adams stated that Council’s promise of fiduciary responsibility was on shaky ground, adding that if Council proceeded with the project it would result in great costs, not only for the purchase alone and constant maintenance but also for the expected legal repercussions. She pointed out that case law was only as good as the next case and anyone could sue for any reason. She stated that she was sure that Council visited the property and understood the Carolina Dunes community, which was a community with larger than average lots, full-time residents, part-time non-rental residents, and rentals. She noted that traffic was minimal compared to other neighborhoods. She stated that the Town’s acquisition of this property, regardless of intention, will result in increased traffic. She stated that it was reasonable to anticipate a considerable disruption to the neighborhood and there will no doubt be many implications and repercussions for years to come.

Carolynne Adams stated that for the Town of Duck property owners, this was a slippery slope and her neighborhood has been blindsided with little communication, no collaboration, and minimal planning. She stated that it was a dangerous scenario for the Town with big government flexing its muscles. She stated that the residents of Duck must stop this behavior and proceed as a town where it was meant to be as stated in one of the six unifying principles – a place where people feel connected by a shared motivation to preserve the unique nature of this special place. She requested that Council slow the process. *-The three-minute time ended at this point in the reading of the comments.*

Jeffrey Beaulieu of 105 Skimmer Way was recognized to speak. Mr. Beaulieu stated that he did not have the same concerns that were expressed by the individuals that live in the Carolina Dunes subdivision but realized that the property was under contract. He stated that he was surprised at how fast it moved. He stated that Council would be discussing how they would be able to control the property so that it was for governmental, beach nourishment, and Public Safety. He hoped to hear solid communication from Council on how it would be achieved. He hoped that Council would not be creating something that in the future would need to be revisited.

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

### **CONSENT AGENDA**

**Minutes from the February 1, 2023, Regular Meeting; Resolution 23-02, a Resolution of the Town Council of the Town of Duck, North Carolina, Amending Resolution 11-05 to Allow up to Eight Individuals to Serve on the Wall Décor Subcommittee; Resolution 23-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Requesting the North Carolina General Assembly to Revise and Expand the Good Samaritan Law GS90-96.2; Government and Education Access Channel 2023-2024 Proposed Budget**

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

Motion carried 5-0.

### **SPECIAL PRESENTATIONS**

#### **Presentation by Wally Overman and Patty O’Sullivan on the Wall That Heals**

Dare County Vice Chairman Wally Overman and Dare County Veteran Services Officer Patty O’Sullivan were recognized to speak. Mr. Overman and Ms. O’Sullivan went on to give a short presentation on the Wall that Heals to Council and the audience, explaining that it is a three-quarter scale replica of the Vietnam Veterans Memorial in Washington, DC that will visit 32 communities, with the final destination being the event site in Nags Head November 15-19, 2023.

Mayor Kingston thanked Wally Overman and Patty O’Sullivan for their presentation, adding that the Town would be sure to get the word out to the public about the Wall that Heals.

#### **Introduction of Firefighter Louis Brock**

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to introduce Louis Brock as the newest firefighter for the Duck Volunteer Fire Department to Council



and the audience, noting that his father, John Brock, was the first Fire Chief. Mayor Kingston and Council welcomed Firefighter Brock to the Town.

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

#### **Public Hearing/Discussion/Consideration of SUP23-001, an Application by Allis Holdings, LLC for a Special Use Permit to Expand the Waterfront Shops Shopping Center by Relocating an Existing Kayak and Stand-up Paddleboard Rental/Tour Business to an Existing 100 Square Foot Gazebo over the Currituck Sound in the Village Commercial District at 1240 Duck Road**

Mayor Kingston turned the meeting over to Attorney Lauren Womble.

Attorney Lauren Womble was recognized to speak. Attorney Womble stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. She stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine, and cross-examine witnesses. She asked if any member of Council needed to disclose any communications about the subject of the hearing that they may have had with the applicant or any person prior to the hearing.

Councilor Whitman stated that he was the Council Liaison for the Planning Board and had sat through the approval, but it would not have any effect on his vote for this public hearing.

Attorney Womble stated that anyone that would be presenting evidence in connection with the hearing would need to take an oath. She asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in the applicants and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Joseph Heard, James Cofield, David Klebitz, and Jim Gilreath.**

Attorney Womble opened the evidentiary portion of the hearing. She stated that Director Heard would give an overview.

Director of Community Development Joseph Heard was recognized to speak. Director Heard noted that the public hearing was properly advertised. He stated that the applicant was requesting an amendment to the existing conditional use permits to expand the Waterfront Shops shopping center with the addition of 100 square feet of retail space. He stated that the existing gazebo would accommodate the relocation of a kayak/stand-up paddleboard rental and launching facility from its current retail space in Building I, which

would be rented to another tenant. He added that the applicant was proposing to maintain the existing storage areas underneath the boardwalk/decking in order to accommodate the storage of kayaks and paddleboards to be rented.

Director Heard stated that the property at 1240 Duck Road was approximately six acres in size and zoned Village Commercial (VC). He explained that the property contained the Waterfront Shops, a shopping center comprised of 13 buildings totaling 32,530 square feet. He added that the shopping center contains 23,603 square feet of retail uses, 1,740 square feet of office space, and 7,187 square feet for two eating establishments – the Blue Point Restaurant and Coastal Cantina. He stated that the subject gazebo was constructed in 2021 after obtaining the necessary permits from the NC Division of Coastal Management and the Town of Duck.

Director Heard stated that the Waterfront Shops property wraps around three sides of Stan White Realty to the south and Tommy' Market to the north. He explained that the abutting property to the south contains a Dare County water tower on a 1.1-acre property that was also zoned Village Commercial and much of the property was marsh or wetlands. He added that immediately to the north was another Village Commercial property that formerly contained the office building for Resort Realty. He stated that the subject property was bordered by the Currituck Sound to the west and across Duck Road to the east was Duck Deli as well as a residence at 1221 Duck Road which were both zoned Village Commercial.

Director Heard stated that Subsection 156.155 of the Duck Town Code establishes review criteria for special use permit applications, with the following standard that should be considered as part of the Planning Board and Town Council's review:

1. The use meets all required conditions and specifications of the ordinance.
2. The use does not materially endanger the public health or safety.
3. The use will not substantially injure the value of adjoining property unless the use is a public necessity.
4. The use will be in harmony with the area in which it is located and be in general conformity with the Comprehensive and CAMA Land Use Plan.

Director Heard stated that as part of their recommendation, the Planning Board found that the proposed use was appropriately consistent with the type of uses allowed and encouraged in the Duck Village Character Area. He stated that the proposal did not appear to alter the existing character or function of the subject property or surrounding area of Duck Village and that the proposal was consistent with the relevant goal and policy objectives from the Comprehensive and CAMA Land Use Plan.

Director Heard stated that since the Planning Board found that the request complied with all required findings at their meeting on February 8, 2023, they voted unanimously to recommend approval of the special use permit application, subject to the following conditions:

1. Use of the gazebo is subject to the conditions of CAMA Major Permit #54-21 and the subsequent Letter of Refinement issued by the NC Division of Coastal Management.
2. Any new signs must be reviewed and approved under a separate permit by the Community Development Department.
3. Any lighting of the gazebo must be of a low intensity (no more than one foot candle) and shielded/directed downward to prevent light spillage to the adjoining properties and over waters of the Currituck Sound.
4. This special use permit will expire in 12 months from the date of approval if the proposed use has not commenced.

Attorney Womble asked Council if they had questions for Director Heard.

Mayor Pro Tempore Thibodeau clarified that the applicant has all of the permits from the state agencies that were required. Director Heard stated she was correct.

Attorney Womble asked if the applicant had any questions for Director Heard.

Jim Gilreath of Rose, Harrison, Gilreath & Powers was recognized to speak. Mr. Gilreath stated that he represented the applicant. He asked Director Heard if the Town's recommendation of the application met the four uses of the special use permit. Director Heard stated that they did. Mr. Gilreath clarified that there were no modifications required during the application process. Director Heard stated that the recommendations came from the Planning Board and staff and recommended the conditions he had listed. Mr. Gilreath asked Director Heard if he understood that the applicant had agreed to the conditions. Director Heard stated that he did, adding that it was agreed upon at the Planning Board meeting.

Attorney Womble asked the applicant to make a presentation.

Jim Gilreath recognized David Klebitz from Bissell Professional Group. David Klebitz gave a short background on himself to Council and the audience explaining his qualifications as a licensed professional engineer. Mr. Gilreath clarified that David Klebitz was engaged by Allis Holdings to cover the special use permit. David Klebitz stated he was correct. Mr. Gilreath asked if the four criteria were looked at. Mr. Klebitz stated that they were. Mr. Gilreath asked if the subject property complied with all of the standards. Mr. Klebitz stated that it did. Mr. Gilreath clarified that there were no lot coverage, setback, or parking issues. Mr. Klebitz stated that there were none. Mr. Gilreath asked if the change of use required any site approval. Mr. Klebitz stated that it did not. Mr. Gilreath asked how the retail expansion would be characterized. Mr. Klebitz stated that it would be very minor. Mr. Gilreath asked what would be going in the gazebo. Mr. Klebitz explained that it was a retail operation for kayak and paddleboard rentals. Mr. Gilreath asked if the use was compatible with the existing retail uses. Mr. Klebitz stated it was as it already existed and was relocating from one location to another within the Waterfront Shops.

Attorney Womble asked Council if they had questions for David Klebitz. There were none.

Attorney Womble asked if there were other presentations from the applicant. There were none.

Attorney Womble asked if any of the sworn witnesses wished to make a presentation.

James Cofield of 101 Bias Lane East was recognized to speak. Mr. Cofield stated that the Planning Board heard the application at their February 8, 2023 meeting and approved the application with a vote of 4-0. He noted that the Planning Board was convinced that the application met all of the conditions and specifications as well as the four criteria established for special use permits.

Attorney Womble asked Council if they had any final questions. There were none.

Attorney Womble closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. She noted that a vote of the majority of Council would be required to approve the application. She added that as part of Council's deliberation and if there was a motion to approve the application, there were various findings that would need to be made and it would be helpful if the motion referenced the findings as well as the four proposed conditions.

Councilor Schiano moved to approve SUP23-001 as presented with the findings as well as the four conditions.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of SUP23-002, an Application by Sea Bags, LLC for a Special Use Permit to Establish a Formula Business in the Village Commercial District at the Scarborough Lane Shoppes**

Attorney Womble stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. She stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine, and cross-examine witnesses. She asked if any member of Council needed to disclose any communications about the subject of the hearing that they may have had with the applicant or any person prior to the hearing.

Councilor Whitman stated that he was the Council Liaison for the Planning Board and had sat through the approval, but it would not have any effect on his vote for this public hearing.

Attorney Womble stated that anyone that would be presenting evidence in connection with the hearing would need to take an oath. She asked that anyone wishing to testify come forward to be sworn in.

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

**The following persons were sworn to provide testimony during the hearing: Joseph Heard, James Braithwaite, Matthew Price, David Klebitz, Jim Gilreath, Paul Gori, and James Cofield.**

Attorney Womble opened the evidentiary portion of the hearing. She stated that Director Heard would give an overview.

Director Heard noted that the public hearing was properly advertised. He stated that the applicant was requesting a special use permit to allow a formula business to occupy Unit D-5 of the Scarborough Lane Shoppes shopping center at 1171 Duck Road. He pointed out that the proposed business – Sea Bags – presently operates 45 retail stores nationwide.

Director Heard stated that the property at 1171 Duck Road was presently zoned Village Commercial (V-C) and contains the Scarborough Lane Shoppes shopping center. He pointed out that it was technically two properties totaling over four acres that function together as a group development containing over 30,000 square feet of predominantly retail space, including 34 commercial units in four buildings connected by elevated walkways.

Director Heard stated that the Scarborough Lane Shoppes wrap around the east, north, and west sides of a small property zoned Village Commercial that contains a residence and mixed-use building with studio/showroom, office, and two-bedroom apartment at 102 Scarborough Lane. He stated that further south across Scarborough Lane were several properties containing a mixture of commercial and residential uses in the Village Commercial district and abutting the property to the east were two properties located in the Town's Special (S-1) zoning district which contains a single-family residence and common amenities for the Sea Pines neighborhood. He noted that the adjoining property to the north contains Scarborough Faire, which was another multi-building, multi-tenant shopping center that was zoned Village Commercial and across Duck Road to the west were the Soundside Shoppes, which was a smaller shopping center containing seven commercial units in the Village Commercial district.

Director Heard pointed out that in Section 156.061 of the Town's Zoning ordinance, a "formula business" was defined as a type of business activity, including retail, office and restaurants and food service which (a) is required to maintain a standardized (substantially the same) array of services and/or merchandise, name, trademark, logo, service mark, symbol, sign, décor, architecture, building or site layout, uniform, color scheme, menus, or similar standardized feature; and (b) is substantially the same as 12 or

more such establishments, regardless of ownership or locations. He stated that the following types of businesses are noted as exceptions to the formula business standards: banks, post offices, churches or government facilities, as well as franchise or multi-branch real estate offices, utility services, or gas stations.

Director Heard explained that the intent of the Formula Business standards in Section 156.061 was to ensure that the Town remains unique and that formula or corporate chain businesses do not establish buildings, architectural features, signage, and products that can be found virtually anywhere. He stated that the goal of the ordinance was to require these businesses to create custom buildings with features that are unique to the Town of Duck. He added that the proposed Sea Bags business will be located within an existing building and no exterior changes will be required to the building. He stated that the unit where the business would be located is not visible from adjoining streets or outside the shopping center. He noted that the owners/managers of the Scarborough Lane Shoppes regulate the appearance of the center and modifications made to each unit. He stated that the appearance of the subject unit will continue to be consistent with the remainder of the units and the rest of the building. He stated that the applicant was proposing signage containing the corporate logo of the business but it will be visible only from the interior corridor of the building complex and not from the public right of way. He pointed out that it was staff's opinion that there will be minimal, if any, community impact as defined in the ordinance resulting from this particular formula business.

Director Heard stated that for approval of a special use permit for a formula business establishment, the Town Council must find that the applicant has provided substantial evidence that the following criteria have been met:

1. The formula business establishment will be compatible with existing surrounding uses and has been designed and will be operated in a non-obtrusive manner to preserve the community's distinctive character and ambiance.
2. The formula business establishment will not result in an over-concentration of formula business establishments in its immediate vicinity or the Town as a whole.
3. The formula business establishment will promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations.
4. The formula business establishment will contribute to a diverse and appropriate blend of businesses in the community and preserve the sea coast town ambience reflective of the history and people of the community.
5. The formula business establishment will be mutually beneficial to and would enhance the economic health of surrounding uses in the district.
6. The formula business establishment will contribute to an appropriate balance of business sizes in the community.
7. The proposed use, together with its design and improvement, is consistent with the unique character of the Town, and would preserve the distinctive visual appearance and shopping and dining experience of the Town for its residents and visitors.

8. The proposed intensity of uses on the site is appropriate given the uses permitted on the site and on adjoining sites including, but not limited to the following:
  - a. Size not to exceed 3,000 square feet of gross floor area and must be in a building that is shared with at least one other business that is not a formula business of any type.
  - b. Street facing frontage of any individual formula business shall not exceed 50 linear feet.

Director Heard stated that as part of their recommendation, the Planning Board found that the proposed formula business was consistent with the type of uses allowed and encouraged in the Duck Village Character Area. He added that the proposal does not appear to alter the existing character or function of the subject property or surrounding area of Duck Village and that the proposal was consistent with the relevant goal and policy objectives from the Comprehensive & Land Use Plan.

Director Heard stated that since the Planning Board found that the request complied with all required findings at their meeting on February 8, 2023, they voted unanimously to recommend approval of the special use permit application, subject to the following conditions:

1. Any signage or exterior building improvements utilizing the corporate logo or identification must be designed and maintained in a manner consistent with other businesses in the Scarborough Lane Shoppes.
2. Any new signs must be reviewed and approved under a separate permit by the Community Development Department.
3. This special use permit will expire in 12 months from the date of approval if the proposed use has not commenced.

Attorney Womble asked Council if they had questions for Director Heard. There were none.

Attorney Womble asked if the applicant had any questions for Director Heard. There were none.

Attorney Womble asked the applicant to make a presentation.

Paul Gori of 25 Custom House Wharf, Portland, Maine was recognized to speak. Mr. Gori stated that he was the vice president of retail stores for Sea Bags. He explained that Sea Bags was founded in 1999 in Portland, Maine and at their workshop there were several lobster boats that were part of their working culture for an authentic waterfront, which was what drew them to Duck. He stated they take recycled sailboat sails and turn them into totes, handbags, and accessories. He explained that they print on the sail or will sew an applique design on it, adding that they obtain their sails through the casual boater or sailor, yacht clubs and marinas, as well as their customers. He noted that customers can bring a sail in and they could trade the sail for a tote bag made from their

sail. He stated that the Duck community fits with Sea Bags and he would welcome the opportunity to open his business in Town.

Attorney Womble asked Council if they had questions for Paul Gori. There were none.

Attorney Womble asked if there were other presentations from the applicant. There were none.

Attorney Womble asked if any of the sworn witnesses wished to make a presentation.

James Cofield stated that he was the chairman of the Planning Board as well as a resident of the Town. He stated that the Planning Board met on February 8, 2023 and approved the application with a vote of 4-0. He noted that the Planning Board found that this would be a nice fit from the standpoint of compatibility within the Town, He stated that the authenticity of the product was a nice fit within Duck's commercial businesses. He added that the Planning Board agreed with the eight parameters that were presented for consideration and found that the application met all of the conditions and specifications.

Attorney Womble asked Council if they had any final questions. There were none.

Attorney Womble closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. She noted that a vote of the majority of Council would be required to approve the application. She added that as part of Council's deliberation and if there was a motion to approve the application, there were various findings that would need to be made and it would be helpful if the motion referenced the findings as well as the three proposed conditions.

Mayor Pro Tempore Thibodeau moved to approve SUP23-002 as presented with the findings as well as the three conditions.

Motion carried 5-0.

### **LEGISLATIVE PUBLIC HEARINGS**

There were no legislative public hearings at this time.

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

#### **Discussion/Consideration of Appointing Two Individuals to Serve on the Planning Board**

Mayor Kingston stated that there was an immediate opening on the Planning Board for the next two months due to the resignation of Tim McKeithan. He explained that there were two positions opening up for three-year terms as of May 1, 2023 as a result of terms expiring this year. He stated that eight applications came in and Council would complete three votes with the first vote for the two-month position and the other two would be for



two individuals for a three-year term. He asked those applicants in the audience to stand and be recognized. The following individuals were present for the meeting: Matthew Price, Bob Wetzel and Kevin Lingard.

Mayor Kingston opened the nominations for the two-month position, adding that each Council member would have one vote.

Councilor Mooney thought there were two Planning Board appointments in the past where Council had the applicants come before them and gave a presentation in order to learn more about them. He suggested that it be completed that way for the two open positions, especially since more than half of the applicants were not present for this meeting. He thought the Planning Board was the most important appointed board that the Town has and he wanted to see the applicants come before Council and complete a presentation so Council can learn more about them. He recommended that the matter be tabled until Council's April 5, 2023 meeting so the applicants could be present.

Mayor Kingston asked how the rest of Council felt about the recommendation.

Councilor Whitman pointed out that having the applicants be present at this meeting was not on the application.

Mayor Pro Tempore Thibodeau stated that since Tim McKeithan resigned from the Planning Board, they were without a member. She didn't disagree with the idea of getting a little bit more background on the applicants. She asked how Councilor Mooney felt about the applicants completing something in writing if they could not be present for the meeting.

Council Mooney stated that Council would be depending on the applicants to steer them in the right direction with regard to further development of the Town. He thought it was important to Council that they understood more about each applicant, adding that it should be important to the applicants to participate in the process. He hoped Council would postpone the matter until their April 5, 2023 meeting and whoever can be present should come to the meeting and if they cannot be present, he thought they could attend via Zoom.

Attorney Womble asked Council if they wished to address the immediate two-month vacancy at this meeting. She noted that if Council waited until their April meeting, they would be a month into it. She added that it was Council's discretion. Councilor Mooney didn't think the Planning Board being short one board member would be an issue.

Mayor Kingston asked Councilor Mooney what he wished to see in addition to what the applicants have already submitted on their applications. Councilor Mooney thought when there was an opening on the Planning Board a few years ago, everyone that applied came before Council and gave a presentation, discussed their background and experience as well as things that would qualify them as competent members of the Planning Board. He reiterated that in his opinion the Planning Board was one of the most important appointed

boards that the Town has and Council cannot afford to make a mistake and have to try to deliver the best product that they could for the people of the Town and he didn't see how it could be accomplished without further examination.

Mayor Pro Tempore Thibodeau asked if it would be possible for the applicants to do a Zoom presentation if they were not available to come to the meeting in person. Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that it would be possible.

Mayor Pro Tempore Thibodeau clarified that Councilor Mooney wanted to ask the applicants questions. Councilor Mooney stated that he would.

Councilor Schiano thought it made sense as he did not know all of the applicants that had applied and he would not mind having a discussion and hearing them speak and tell Council why they were interested in serving as well as their qualifications. He thought if something needed to be done with regard to the immediate opening, he was fine with it.

James Cofield pointed out that Tim McKeithan's resignation from the Planning Board was not until after the Planning Board's March 8, 2023 meeting, adding that the vacancy would not occur until after that meeting. Councilor Mooney clarified that the Planning Board would be without all five members for a couple of weeks. Attorney Womble asked when the Planning Board would meet in April. James Cofield stated that it was on April 12, 2023, which was after the Council meeting.

Mayor Kingston thought it was fair that Council only consider the eight applicants since a deadline was given for applications to be received for this meeting. He did not think Council should reopen it because the eight candidates were those that had expressed an interest and thought they would be considered at this meeting. Mayor Pro Tempore Thibodeau agreed. She thought Councilor Mooney wanted an opportunity to vet and meet the applicants and have them say something either in person or via Zoom as well as asking questions. She stated that it was an extra layer of investigation for Council. She did not disagree with Councilor Mooney's comments that it was an important position and Council should receive as much information as possible.

Councilor Mooney stated that with regard to the closing of the application period, he did not have a problem with that; but it was still another month before Council would consider the individuals. He added that if someone submits an application that was an overqualified, satisfactory person to Council, it could not be ignored. He stated that while the eight individuals that already applied will be prepared to talk to Council, if there was someone that has significant qualifications, he thought Council would be remiss in not allowing that person to apply.

Mayor Kingston understood Councilor Mooney's comments but felt it was only fair to the applicants that had responded to the request and made the cutoff as well as being prepared to serve. He didn't think it was fair to reopen the process and entertain another level of input. Councilor Mooney stated that Mayor Kingston could interpret it as being

unfair to the applicants, but Council needed to be fair to the people that they represent and make sure they get the best product possible.

Councilor Whitman thought if Council had made it clear in the application that Council wanted the applicants to speak to them and Council knew that the applications that came in were supposed to be voted on at this meeting, it should have been addressed to the applicants before this meeting. Councilor Schiano clarified that Councilor Whitman stated that Council wanted to speak with the applicants. Councilor Whitman stated he was correct. Councilor Schiano disagreed, adding that when the Council members decided to run for office, they did not know that the League of Women Voters would have individuals come before them. He thought it was appropriate for the Council to interview candidates for an important position. He added that with regard to opening the process up to new applicants, he thought if it was clearly stated that the process was closed, it would be closed. He didn't think there was any reason Council couldn't ask people to come. He pointed out that he did not know how to vote for the individuals and wanted to see and hear them instead of reading their applications.

Councilor Whitman pointed out that it was not what he was stating. He stated that the application does not have noted in it that individuals have to be present for this meeting. Councilor Schiano did not think the individuals that submitted an application were being penalized for that. Councilor Whitman reiterated that it was not part of the application that the individuals had to be at this meeting. He added that some of the applicants do not live in Town and were willing to come back once a month for the Planning Board meetings. He noted that one of the applicants was on vacation and if he had known he had to be at this meeting, he would have.

Mayor Pro Tempore Thibodeau felt that Council would not be penalizing the individuals that applied. She hoped they would come to the meeting, adding that they will be told that Council wants them to come to the April 5, 2023 meeting in person or via Zoom. She thought the only question was whether or not to close the application period.

Mayor Kingston asked if a motion was needed. Attorney Womble stated that Council can vote to table the item until their April 5, 2023 meeting. She thought Council needed to decide whether or not to close the time for receiving applications. She added that if Council just tabled it, they could continue to receive applications until it was decided. Councilor Whitman pointed out that the application period closed the week before. Attorney Womble stated that if Council wished to move forward and be willing to accept additional applications, there could be someone out of the eight that applied that may not be able to serve unexpectedly. She added that it was completely in Council's discretion to leave the application open or closed. She noted that if Council moved to table the matter, they could include addressing the application period in the motion.

Mayor Kingston pointed out that Council went through the application process, closed it, the applicants responded to what was asked for and now a second level was being asked. He thought staff should go back to the eight applicants to ask them to come back at the April Council meeting and give a presentation in person or via Zoom and set up a process

between now and the April meeting in order to appoint two individuals. He thought in theory the time to submit an application has closed and to be fair to those that made the deadline, it was fair to ask them to make a presentation. Councilor Mooney stated that no one said it would be fair.

Councilor Mooney moved to table the matter until Council's April 5, 2023 meeting and reopen the application period until the week before the April meeting.

Councilor Schiano thought he could support it under the concept of who would be harmed if there were more candidates. He thought it was okay. He wasn't sure if any other applications would come in, but it may happen. He asked if it would be readvertised. Town Clerk Ackerman stated that the original advertisement was for three weeks. Mayor Kingston stated that the Town gave people the opportunity over three weeks to apply and if they were inclined to do so, they would have applied before the deadline. He did not agree with opening the application period up but did agree with postponing the matter. He thought it was fair to the eight applicants that had applied.

Motion carried 3-2 with Mayor Kingston and Councilor Whitman dissenting.

Mayor Pro Tempore Thibodeau wasn't sure who sets up the application process. She asked if Town Manager Havens did it. Town Manager Havens stated that he would follow the direction of Council. Mayor Pro Tempore Thibodeau pointed out that it was done previously with and without a presentation from applicants. She thought next time there was an application process, Council should discuss it before it was done.

Councilor Mooney pointed out that, based on the motion that just passed, Council would be completing the application process. He suggested that Council discuss it now in order to provide staff with direction. Mayor Kingston agreed.

Town Manager Havens understood that Council wished to reopen the application process and to make people aware that they would need to be at Council's April 5, 2023 meeting. Mayor Kingston stated that they could attend via Zoom. Councilor Mooney stated that they would need to make a presentation and be prepared to answer questions and if they were unable to attend in person, they could attend via Zoom. He added that the application period would be open but the people that already applied would not have to apply again, but if a new individual wanted to apply, they could.

Town Manager Havens clarified that the application period would close one week prior to the April 5, 2023 Council meeting. Mayor Pro Tempore Thibodeau stated that it was the same timeframe that was in place for the first application period. Mayor Kingston thought there needed to be a limit on the time of the presentations.

Attorney Womble asked if Council had some key points they wanted the applicants to cover such as why they were interested, summarize their qualifications or that they think that their application speaks for itself. Councilor Mooney thought Council would have their own questions for each applicant. He thought limiting the time of their presentation

would limit Council's ability to make an informed decision. He stated that he was not concerned about how long each presentation would take. Attorney Womble asked Council what they would want the applicants to present. Councilor Mooney stated that they should be prepared to explain their professional experience and what they think qualifies them for the position. Councilor Whitman thought that should be on the application going forward.

Mayor Pro Tempore Thibodeau clarified that the presentation would be an introduction, an explanation of their qualifications, why they want to serve, and their ability to serve. Councilor Schiano thought there should be a time limit on how much time Council gives them to open and explain their qualifications, what their background was and why they want to serve on the Planning Board. He thought if not, the applicant would not know how much they will need to present. Mayor Pro Tempore Thibodeau stated that it would not have to be a five-minute presentation, adding that it could be longer or shorter based on the questions that will be asked.

Mayor Kingston thought Council needed to figure out what they expected the applicants to present. He agreed with the timeline and having three questions. He thought things needed to be determined now so staff could move forward on it.

Councilor Schiano thought it should be three questions: (1) Tell us your background and the association with Duck; (2) Tell us your qualifications and why you feel you are qualified for the position; and (3) Why do you want to serve on the Planning Board. Councilor Mooney clarified that it should be a five-minute presentation, not counting questions that Council will ask. Mayor Kingston stated that questions would be separate from the presentation. Attorney Womble stated that Council would have unlimited time to ask their questions and make further inquiry.

Mayor Pro Tempore Thibodeau stated that with regard to availability, some of the applicants were from out of town. She asked if Council was okay with that or if it went without saying that they would be available. Councilor Schiano stated that he was fine if an applicant had to be present via Zoom. Mayor Pro Tempore Thibodeau stated that she was referencing the applicant's ability to be present for Planning Board meetings. Councilor Whitman thought if they were willing to serve on the Planning Board, they should attend in person as it was a commitment. Attorney Womble pointed out that in the motion that was voted and approved, the applicant could appear in person or via Zoom. She added that in terms of future concerns for serving on the Planning Board that they would need to be physically present for meetings, Council could question the applicants at their April meeting. She noted that if Council wanted to change whether or not an applicant needed to attend the April meeting in person, a motion would need to be made and voted on.

Councilor Whitman moved to require that applicants for the Planning Board positions would need to attend in person and not via Zoom for the interview process with Town Council.

Motion carried 4-1 with Mayor Pro Tempore Thibodeau dissenting.

## **NEW BUSINESS**

### **Discussion/Consideration of Completing the Purchase of a Property Located at 145 Buffell Head Road for Governmental Use related to Beach Nourishment, Beach Maintenance, and Public Safety**

Town Manager Havens stated Council would be considering the completion of the purchase of a property at 145 Buffell Head Road. He stated that Council has discussed the property in the past and negotiations began for it. He explained that Town staff became aware of an oceanfront home on the market in December, 2022, adding that the property was between Pintail Drive and Widgeon Drive in the Carolina Dunes subdivision. He noted that the property was located within the beach nourishment project area. He stated that staff evaluated this location's potential to resolve the long-term need for access to the beach for beach nourishment. He pointed out that Council was aware of the efforts staff made to try to get onto the beach for nourishment construction activity as well as this year, access was in Southern Shores and was not guaranteed and likely not to happen any time in the future. He added that staff has been very active in pursuing access via easement in neighborhoods and were repeatedly denied. He stated that each neighborhood understood the necessity of beach nourishment but were not willing to provide access easements, which Council was aware of.

Town Manager Havens stated that staff saw the property on Buffell Head Road as an opportunity to provide a long-term resolution to the issue of access for beach nourishment for the contractors to be able to access the beach to perform the construction activity which was on a five-year cycle. He stated that the roadways into the Carolina Dunes subdivision that would be used to access the property were owned and maintained by the NC Department of Transportation.

Town Manager Havens explained that the lot itself was 75 feet wide, which was a sufficient width to allow for access for the equipment and temporary staging of equipment and materials. He noted that beach nourishment occurs every five years, so during the nourishment construction process, there would be a fairly significant amount of activity on the property for six to eight weeks. He stated that it would be equipment that would be moved from the street over the dune and onto the beach and then removed once the construction is finished. He added that during the construction process, light vehicles would drive back and forth on the beach by the construction company, the Town's engineers as well as service trucks for the port o' johns and fuel trucks that would be accessing the beach for the project.

Town Manager Havens pointed out that the property was currently developed as a single-family dwelling of 2,400 square feet that was built in 1984. He stated that the opportunity was presented to Council in closed session on January 4, 2023 and Council gave direction to him and Town Attorney Robert Hobbs regarding the negotiation for the purchase of the property. He stated that they negotiated a purchase price of \$1.6 million,

which was accepted by the sellers on January 20, 2023. He noted that the planned closing was in 60 days with a 45 day due diligence period built into the purchase agreement, with the due diligence period ending on March 6, 2023.

Town Manager Havens stated that the property would be restricted to government use – for beach nourishment, beach maintenance, grading of the accessways in the nourishment areas and others, as well as for the lifeguards, Fire and EMS, and Police. He stated that the plan was to have no structures on the site following the removal of the existing house after the 2023 rental season. He explained that North Carolina law requires the Town to honor any current rental agreements on the property and the intent would be to continue to take rental agreements for the summer of the 2023 season. He added that there would be no permanent or long-term storage of vehicles or materials on the site as it would only be for that was directly related to beach nourishment and beach maintenance, and not for storage for anything that belongs to the Town or its contractors.

Town Manager Havens stated that the driveway would be retained and repaired as necessary. He stated that there were no plans to expand any area that was currently paved with concrete. He added that the plan that was discussed would call for a bar gate or some sort of a cable or chain to restrict access to the driveway. He stated that the Town would maintain the lot in as much of a natural state possible and keep it in character with the neighborhood so as not to disturb any of the beach grass on the dunes. He stated that the Town will not modify the dune height other than what was required to complete beach nourishment, adding that occasionally the dune height and profile would need to be modified to allow for the heavier equipment to access the beach and would need to be permitted as part of the Town's beach nourishment permit application through CAMA, which would require that the dune be put back to its original profile following completion of the project.

Town Manager Havens explained that the funding for the purchase would come from the Beach Nourishment reserves, adding that the only reason this was brought before Council was that access to the beach was needed for the beach nourishment project. He stated that other than that need, there would have been no reason to discuss the purchase. He stated that there was a need to get on the beach to nourish it so it was a legitimate expense from the Beach Nourishment reserve funds. He noted that there were restrictions on the funds, one of which was the bond covenants that require the balance of the greater of \$1 million or an amount of MSD tax collected. He stated that it has to be in the Town's reserve fund as of December 1 of each year and after this purchase, the projection was that the Town would have \$1.5 million in the fund as of December 1, 2023, keeping the Town in compliance with the bond covenants.

Town Manager Havens stated that he was looking from Council whether or not they desired to continue to make the purchase, and if so, they would need to approve a budget amendment to fund the purchase by moving funds from the Beach Nourishment reserve to the General Fund. He stated that if Council desired to approve the purchase, they would need to make a motion on that. He noted that there was also consideration of

Ordinance 23-05 but thought it should be held until Council receives advice from Attorney Womble.

Mayor Kingston clarified that beach nourishment has been delayed until this year and if Southern Shores had not required additional sand, the Town would have been shut out with regard to accessing the beach due to there being no access in Duck. Town Manager Havens stated he was correct. He noted that the Town does have a temporary easement in the Port Trinitie subdivision with a small accessway that the contractor will be able to use for light vehicles to get their personnel on and off the beach.

Mayor Kingston asked if the Town has an obligation to maintain the beach once the nourishment project is completed. Town Manager Havens stated that he was not aware of any statutory obligation, adding that Council could at any time decide they no longer want to have beach nourishment. He added that there was revenue that was tied directly to it and if the project were to end completely, there would be ways to get the money back to the people that contributed to those funds.

Mayor Pro Tempore Thibodeau stated that, with regard to using MSD funds for the purchase, the bond holders have a minimum requirement. She asked if this has been discussed with Dare County and the Local Government Commission to make sure it was an appropriate use of the MSD funds. Town Manager Havens stated that it was an appropriate use. He explained that the way the language was created with the MSDs, it states that it was for beach nourishment. He noted that getting access to the beach was a part of that property, adding that the Town was paying for access to the beach currently through the mobilization and demobilization as well as the Town paying more per cubic yard, which was a factor that was driven by how far the dredge needs to move over the ocean and how far the contractor has to drive their equipment with the materials.

Mayor Pro Tempore Thibodeau thought that the idea of when the Town places a restriction on the use of the property, if Council moves forward with the purchase, the concern was that it could be changed at any time or challenged. She thought Town Manager Havens and Council needed to be fully aware of that and protect the integrity of what Council was trying to do. Town Manager Havens stated that Attorney Womble would give guidance on it. He noted that with regard to the draft ordinance, Council could adopt the ordinance and it was correct that a future Council could change it. He stated that the way the ordinance was structured, Council could adopt an ordinance and it required no notice or public hearing. He pointed out that the way the draft ordinance was structured, it would require mailed notices to adjacent property owners, posting on the property, and publication in the local newspaper, which was like land use decisions that were required to go through a public hearing. He stated that the Town has encumbered the process by requiring a public hearing, but it was true that even through that process, a future Council could change the restrictions. He wasn't sure why a future Council would want to make changes since there is no public access. He stated that he would never recommend to Council to have a public beach access and did not know of anyone that would be in favor of a public access.



Councilor Schiano stated that Council was understanding and sympathetic to the concerns of the residents of the Carolina Dunes subdivision regarding the project. He thought it was Council's sincere desire to address those concerns to everyone's satisfaction and he thought it could be done. He thought to have the public state that Council did not want to communicate or was not being transparent was not fair because it was within Council's purview to do what was done and it would not have been a smart decision to announce the intent to purchase a property because it would start a bidding war. He thought Council did things in a way that protected the Town and its fiscal situation.

Councilor Schiano stated that Council's objective was to secure control of the future of the Town in terms of what Council may need to do to maintain Duck's beaches, public safety and beach maintenance if the Town loses other accesses. He stated that since there were not very many properties that become available, there were not a lot of options and Council saw this as an option that became available and if they missed it, they weren't sure if another opportunity would present itself.

Councilor Schiano thought Council checked into it legally and public property can be owned by governmental entities but not be open for general use by the public. Town Manager Havens and Attorney Womble stated he was correct. Councilor Schiano pointed out that the Town could deny the public from using the property, adding that the Town could legally withstand a challenge. He stated that he did not think anyone on the Council was interested in creating public beach access, but thought in the future, it could happen and he was sympathetic to the concern that a future Council could decide to have a public access. He stated that his concern would be making something included or in addition to, that would ensure that, in perpetuity, this was the only purpose that the property would be used for. He noted that there was no parking on state roads, so no one could park at the property and the Town would ensure that no one will park on that property or that nothing is stored on the property.

Councilor Schiano stated that no structures would be put on the property. He asked with regard to the concrete driveway, if everyone in the neighborhood agreed that, aesthetically, it would be better not to have a driveway, the Town would remove it and make the property au natural and when the time comes, a path could be added on and removed after the work is completed. He stated that he wanted the property to look as good as possible so that the people that live in Carolina Dunes feel comfortable with it. Town Manager Havens stated that in terms of government restricting use of a property, the Army Corps of Engineers and Dare County own land in Duck that restricts access to the public.

Mayor Pro Tempore Thibodeau stated that in the Town's Vision and plans that Duck would pursue public beach accesses if they were available. She stated that, historically, one of the reasons Council did that was because of the Army Corps of Engineers property. She explained that the property, when the Town incorporated, was zoned Conservation-Public Recreation so that it would not be sold and developed into homes. She stated that if the Army Corps of Engineers ever left their property, it would be

something that the Town could pursue and have as an access. She thought that the ability for all residential owners in Duck to have access to the beach was something that would be good to have since there were streets in Town that do not have deeded beach access. She noted that nothing has changed with that over the years because they were privately owned properties and as the Town has grown and developed, it was something she would like communities to work through and have it facilitated by the Town. She reiterated that it was written that Council would pursue public beach access and it was because of the Army Corps of Engineers property or any subdivision that may want to make a public beach access.

Councilor Schiano stated that he, personally, was not in favor of pursuing public beach access in the Town. He stated that if the Army Corps of Engineers property became available and the Town were to purchase it in order to provide public access for residents, he would be in favor of that.

Councilor Mooney thought putting the Army Corps of Engineers property in some sort of conservancy could also be achieved for the property the Town is trying to purchase. He added that an irrevocable trust could be established that would prevent anyone from ever changing it, including future Councils.

Attorney Womble stated that Council has the proposed ordinance in front of them. She reminded Council that the structure would remain on the property through at least 2023, which means the property would be for residential use. She stated that Council had the ordinance before them for consideration and believed that it was there for Council to consider adopting and/or provide additional instruction for amendment. She stated that Council has the ability and time to consider further avenues that may be satisfactory to address the concerns, address some of the concerns that were heard at this meeting, move forward or provide further insight or instruction for Town staff. She stated that she would relay everything to Town Attorney Robert Hobbs and he will work diligently to address the concerns and meet them. She noted that Council was not required to adopt the draft ordinance at this meeting and had time to make further considerations if they wished.

Town Manager Havens stated that it was staff's recommendation to hold the ordinance until Council meets with their attorney to address the concerns that were mentioned.

Mayor Kingston moved to approve the budget amendment to fund the purchase by moving funds from the Beach Nourishment fund to the General Fund, as presented.

Mayor Pro Tempore Thibodeau pointed out that the due diligence period expires on March 6, 2023 and then 45 days after that to close. She clarified that that was the timeline. Attorney Womble stated that it was the timeline in the contract and sometimes they have to adjust depending on a variety of items. She stated that it was a projected closing date at this time and the second motion Council will make will be to give the Town Manager and Attorney the authority to move forward. She pointed out that it was

asking for discretion for non-substantive changes and the closing date would be an example of a non-substantive change.

Mayor Kingston pointed out that this was the logical first step in the process to make sure the funds were available.

Motion carried 5-0.

Mayor Kingston moved to approve the purchase contract for 145 Buffell Head Road and to authorize the Town Manager in his discretion, to consider and approve any non-substantive changes to the contract, including but not limited to, changes to dates and time periods and to authorize the Town Attorney to close the Town's purchase of the property.

Mayor Pro Tempore Thibodeau thought if Council approved this motion, that there was a "leap of faith" that the community has that Council could address how to restrict the use of the property. She pointed out that Council heard from some residents that there is a significant property owner distrust of the Town, which bothered her. She stated that she heard it before and did not understand it but welcomed anyone to call and talk to her personally about the distrust. She stated that she has served on the Council for a very long time and all of Council was a little different but very similar in their love for the community and have worked very hard on the citizen's behalf to save Carolina Dunes and the northern beach with the beach nourishment project. She thought there was a lot of room for discussion in terms of how it could be locked down and agreed with what others have talked about in terms of restricting the use of the property and thought it was important and would not be taken lightly.

Councilor Schiano agreed with Mayor Pro Tempore Thibodeau's comments and thought it was Council's objective to make sure that the interests were protected to the full extent possible; however, Council could not risk losing the deal. He stated that it would be nice if Council could come to that agreement before the deal closes, but it may not happen. He thought the deal needed to be closed and the Town's constituents would need to trust that Council was representing their best interests.

Mayor Kingston pointed out that, on the advice of the Attorney, Council has time to work through that. Councilor Schiano agreed. Mayor Kingston stated that there was a draft ordinance for Council's information and consideration.

Mayor Pro Tempore Thibodeau clarified that if the purchase were to go through and the rental house was on the property, the Town would continue to work through the property manager assigned and the liability for the Town would not be a concern. Town Manager Havens stated that he had asked that question to the Town's insurance company and was told that the Town would be covered other than adding the physical damage coverage.

Motion carried 5-0.

Mayor Kingston thought upon recommendation from Town Manager Havens and Attorney Womble, any further discussion on Ordinance 23-05 would be deferred. Attorney Womble stated that the ordinance was developed by staff based on comments from Council to show the concern and how serious those concerns that were raised to the Council were and they will continue to work through that and try to finalize it.

**Discussion/Consideration of an Amendment to the Contract between the Town of Duck and Sandski, LLC dba as Surf Rescue, to Provide Additional Funding to Provide Competitive Wages for Surf Rescue Personnel**

Town Manager Havens stated that Council heard from Surf Rescue Director Mirek Dabrowski at their Retreat regarding issues with compensation for lifeguards. He stated that this was a follow-up to that discussion, adding that there was some urgency because Surf Rescue Director Dabrowski was trying to recruit lifeguards for the upcoming season and was up against some competition.

Town Manager Havens stated that the action he was looking for was for Council to approve an amendment to the contract between the Town of Duck and Sandski, LLC, which was originally executed in 2019. He explained that the contract amendment will allow the Town to provide additional compensation so Surf Rescue Director Dabrowski could offer competitive wages for his staff.

Town Manager Havens noted that it was a five year contract that was executed in 2019 and there were escalators that were built into that contract. He stated that as Surf Rescue Director Dabrowski had described, there were some unforeseen economic pressures which increased wages at competing agencies. He stated that in 2022, Duck Surf Rescue lifeguards and all of the other towns were paid \$15.00 per hour and currently most have advertised for \$18.00 per hour with the National Park Service advertising at \$17.99 per hour.

Town Manager Havens stated that Surf Rescue Director Dabrowski was requesting an increase for all of his lifeguards by \$3.00 per hour, adding that what Council decides would not impact the wages being paid by Sandski, LLC to lifeguards serving other communities. He pointed out that Surf Rescue Director Dabrowski has contracts for the Town of Southern Shores and the National Park Service with the National Park Service approving the increase and the item was pending in the Town of Southern Shores.

Town Manger Havens stated that for the remainder of this fiscal year, it would be approximately \$30,000, adding that the total cost for the summer of 2023, the impact to Surf Rescue Director Dabrowski would be \$72,972. He noted that Surf Rescue Director Dabrowski was asking for \$60,000 for the summer of 2023 and then an additional \$30,000 to cover the summer of 2024. He explained that it would be an additional \$30,000 in Fiscal Year 2023 and an additional \$60,000 to be included in a contract amendment for Fiscal Year 2024. He stated that if Council approves the contract amendment, it would include that change.

Town Manager Havens explained that in Fiscal Year 2023, the figure was \$548,000 and with the additional \$30,000 it would be \$578,000. He stated that in Fiscal Year 2024, the figure was \$566,000 and with the additional \$60,000 it would be \$626,000. He stated that if Council wished to move forward with this, a budget amendment would have to be approved for the current fiscal year only for \$30,000 and then approve the contract amendment. He noted that Surf Rescue Director Dabrowski will be back in town at the end of the week and it was suggested that he attend Council's April 19, 2023 mid-month meeting to answer any lingering questions.

Councilor Whitman stated that he wanted Surf Rescue Director Dabrowski to stay competitive with the other towns, but he had an issue with the deployment. He explained that Surf Rescue Director Dabrowski does not use Duck's lifeguards in Southern Shores, but his last lifeguard stand in Duck was located at the Town of Southern Shores line, which bothered him. He felt that the Town's money should be spent exclusively in Duck. He stated that if the stand was moved further north, he may be okay with it. Town Manager Havens stated that he could not speak to Surf Rescue Director Dabrowski's deployment, but it would be good for him to hear Council's concerns and provide accurate information. Councilor Whitman stated that he wasn't asking Surf Rescue Director Dabrowski to jeopardize the safety of the people in Duck or Southern Shores, but if Duck was paying for it, it should stay in Duck.

Mayor Pro Tempore Thibodeau moved to approve the budget as proposed to add an additional \$30,000 for the contract in the current fiscal year.

Councilor Whitman pointed out that three years ago, Council approved \$10,000 per year for J-1 students from South America. He asked where that money went since those students never came to Duck. Mayor Pro Tempore Thibodeau wasn't sure if Council gave \$10,000 per year but gave him \$10,000 the first year and he told Council that it was spent to keep salaries competitive. Councilor Whitman noted that it was \$40,000 and not \$30,000.

Mayor Kingston thought Council should support Surf Rescue Director Dabrowski with regard to hiring lifeguards immediately, but wanted a longer discussion on the future on the beach and how he was deploying lifeguards. He agreed with Councilor Whitman's comments regarding having a lifeguard stand on the south end of the beach. He thought a conversation regarding where the lifeguard stands were and how many were needed was prudent as well as finetuning the contract for next year. Mayor Pro Tempore Thibodeau agreed.

Councilor Mooney thought at the April 19, 2023 meeting that Surf Rescue Director Dabrowski could be present to discuss all of the concerns Council has. He stated that the immediate increase needs to be done now or there won't be any lifeguards. He thought Council should provide more than \$30,000 in order to prevent future hiccups that may happen. He stated that Duck wanted to be able to attract the most qualified people it could. He pointed out that the Town's volunteers' time was valued at almost \$30.00 per hour and the Town was paying the lifeguards half of that. He added that the residents and

visitors needed to be protected while on the beach. He reiterated that he was in favor of providing more than \$30,000.

Councilor Whitman stated that if Duck provides more, it could start a war with the other towns. Councilor Mooney felt the other towns could do what they wanted. He stated that the motion could be a higher number if Council was going to discuss how much the lifeguards were going to be paid per hour. Mayor Kingston pointed out that Surf Rescue Director Dabrowski had presented at the Retreat that he needed \$30,000. Mayor Pro Tempore Thibodeau stated that she did not disagree with Councilor Mooney, but Council could not create a new figure for Surf Rescue Director Dabrowski. Mayor Kingston pointed out that it was a 20% increase in the rate. Councilor Schiano noted that Surf Rescue Director Dabrowski had indicated that he was confident that he could do the job by paying his lifeguards \$18.00 per hour. He thought that since the other towns were paying \$18.00 per hour, the Town was just laggards on the wages and thought they should be paid \$18.00 per hour. He added that if it was not enough, Council could make an adjustment.

Mayor Kingston pointed out that the motion was to amend the budget for this fiscal year and it seemed that Council would delay the conversation on the contract until the April 19, 2023 meeting. Mayor Pro Tempore Thibodeau asked if could be done. Mayor Kingston asked why it could not be done. Attorney Womble thought Council needed to vote on the budget amendment and then vote on the estimated money for the contract amendment to spend it. She stated that additional contract concerns for the next year would be handled at the April 19, 2023 meeting. Town Manager Havens agreed, explaining that Council would be approving a budget amendment for Fiscal Year 2023 which will cover Surf Rescue Director Dabrowski until June 30, 2023. He stated that Council would then amend the contract for Fiscal Year 2023 and if they wanted him to continue to pay \$18.00 per hour for the rest of this summer, they would need to amend it for Fiscal Year 2024. He noted that Council could amend the contract, which was subject to appropriation. He stated that during the budget process, if Council does not appropriate, then the Town could get out of the contract but would need to find another way to provision the service.

Mayor Kingston noted that the appropriation needed to be through some discussion with Surf Rescue Director Dabrowski, adding that before Council decides on anything for Fiscal Year 2024, there needed to be a discussion with him. Town Manager Havens stated that the April mid-month meeting will be when staff will be presenting the first draft of the budget, adding that it would be a good time for Surf Rescue Director Dabrowski be present for discussion with Council.

Councilor Mooney asked if deployment and resources are based on Surf Rescue Director Dabrowski's discretion in his contract. Town Manger Havens explained that the contract calls for a set number of lifeguard stands and breaks it down by the time of the year. Councilor Mooney asked who makes the decision, further asking if it was in his contract that the discretion was completely his. Town Manager Havens stated that he wasn't sure of the wording in the contract.

Mayor Kingston stated that he would like to see Surf Rescue Director Dabrowski come back to Council's April 19, 2023 meeting as he would like to see volumes by the beaches as well as rescues that were done. Town Manager Havens stated that he would ask Surf Rescue Director Dabrowski to bring data with him for the discussion.

Mayor Pro Tempore Thibodeau stated that her motion was to approve the \$30,000 for this fiscal year. She asked if Council was to approve the contract amendment, it would be added to the motion. Attorney Womble stated that one motion should be done at a time – approve the budget amendment first and then contract amendment for Fiscal Year 2023 only.

Mayor Kingston pointed out that Council was authorizing \$30,000 and not authorizing the pay level. He stated that Surf Rescue Director Dabrowski had wanted to pay \$18.00 per hour for his lifeguards, which equated to \$30,000. He clarified that Council was not authorizing individual pay. Town Manager Havens stated he was correct. Mayor Kingston pointed out that if Council gave Surf Rescue Director Dabrowski the \$30,000, he may pay one lifeguard \$17.00 per hour and another \$19.00 per hour, based upon experience and ability. Mayor Pro Tempore Thibodeau stated that Council has always given him that latitude with his contract. She added that she was hung up on the fact that the \$30,000 only gets him to the end of June.

Councilor Schiano clarified that the contract spans two fiscal years. Town Manager Havens stated he was correct. Mayor Pro Tempore Thibodeau noted that the summer spans two fiscal years. Town Manager Havens explained that Surf Rescue Director Dabrowski's season covers two fiscal years – May through June and then July through October. He stated that the Town's payments to Sandski, LLC were based on the fiscal year and not per season. He added that the only budget amendment needed was \$30,000 for this fiscal year. He stated that the contract did need to be amended to show the numbers for Fiscal Year 2023 and 2024, which was subject to appropriation. Mayor Kingston stated that he did not want to make a commitment to the future without having a discussion as well as trade-offs. Councilor Mooney pointed out that Paragraph C of the contract states that the location of the stands would be agreed to between the contractor and the Town, adding that the language was already there.

Motion carried 5-0.

Mayor Pro Tempore Thibodeau moved to approve a third amendment to the contract with Sandski, LLC, as presented by staff for Fiscal Year 2023 and 2024, with Fiscal Year 2024 subject to appropriation and to authorize staff to execute the amendment.

Motion carried 5-0.

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-01, a Proposed Text Amendment Amending the Definition of Lot Coverage found in**

**Section 156.002 of the Zoning Ordinance to Permit Alternative Ground Cover Materials such as Pervious Pavers, Artificial Turf, and Other Surfaces**

Director Heard stated that Ordinance 23-01 proposes to amend the definition of lot coverage found in Section 156.002 of the Zoning Ordinance to permit alternative ground cover materials such as pervious pavers, artificial turf, and other surfaces. He stated that if certified for permeability by a North Carolina licensed engineer or installed according to the manufacturer's specifications for the base and surface, these surfaces would be considered entirely pervious and would not be included in lot coverage calculations. He noted that proper maintenance would be required to ensure continued permeability in the future. He stated that the proposed text amendment broadens and clarifies that impervious portions of any innovative wastewater system would be counted as lot coverage, adding that the proposal also reorganizes the standards in a clearer, more readable format.

Director Heard stated that in recent years staff have received a number of proposals involving property owners seeking approval for lot coverage allowances for alternative surfaces such as permeable pavers and artificial turf. He noted that it can often be challenging to determine if/when/to what degree such alternatives should be granted relief as pervious or semi-pervious surfaces.

Director Heard stated at their November 9, 2022 meeting, the Planning Board discussed the potential amendments to the definition of lot coverage and 5% allowance for additional maximum lot coverage when stormwater management features are provided. He stated that the Board members reached a consensus to incorporate allowances and standards for the use of alternative ground cover into the definition of lot coverage that have been incorporated into the draft ordinance. He noted that the Board agreed that alternative ground cover should only be considered 100% permeable when certified by a licensed engineer or documentation of installation according to manufacturer's specifications be provided.

Director Heard pointed out that the Town's adopted Comprehensive & CAMA Land Use Plan does not contain recommendations related to the specific amendment being proposed but contained the goal, policies, and objectives that address general residential development intensity and stormwater management issues to be considered by the Council.

Director Heard noted that Council was given an additional copy of proposed Ordinance 23-01 that had three additional words that were proposed by Planning Board Chair James Cofield. He added that Mr. Cofield has asked for a clarification because this was an item that was discussed by the Planning Board that the definition include owner certification of compliance with the standards that the manufacturer has if they were using a permeable surface. He stated that the owner would certify that they have complied with that. He noted that staff already requires some documentation but the Board had additionally discussed owner certification. He stated that he was asking for Council's consideration of the draft ordinance.



Director Heard stated that the Planning Board discussed the issue at their February 8, 2023 meeting and reviewed the draft text amendment prepared by staff based on Board member comments from the November 9, 2022 meeting and voted 4-0 to recommend approval of the proposed text amendment to amend the definition of lot coverage found in Section 156.002. As part of their recommendation, the Planning Board members found that the proposed text amendment was consistent with the adopted Land Use Plan. He stated that he was asking Council to set a public hearing for the text amendment at their April 5, 2023 meeting.

Councilor Whitman asked if the three wording changes were sent to all of the Planning Board members. Director Heard stated that it was. Councilor Whitman asked if all Planning Board members agreed to the changes. Director Heard stated that he had not received any response from the Planning Board members, adding that it was sent out to the Planning Board immediately after it was sent to Council. Councilor Whitman clarified that there was no group discussion on it from the Planning Board. Director Heard stated that there was but the Planning Board did not get into that issue in defining it further and would be doing so at their next meeting on March 8, 2023 where they would be discussing the specifics of what owner certification means, but the Board as a whole did not discuss it. He pointed out that it was sent to the members but there were no comments from them. Councilor Whitman asked if it should go back to the Planning Board before it comes before Council for a public hearing. Director Heard stated that it could be done as there was no particular urgency. Councilor Whitman stated that he would be in favor of sending it back to the Planning Board. Mayor Pro Tempore Thibodeau agreed.

Councilor Whitman moved to send Ordinance 23-01 back to the Planning Board to discuss and come back at Council's April 5, 2023 meeting.

Attorney Womble noted that Council would have to schedule the public hearing at their April 5, 2023 meeting.

Motion carried 5-0.

**Discussion/Consideration of Ordinance 23-04, an Ordinance Declaring Speed Limits on State of North Carolina Roadways within the Town of Duck**

Town Manager Havens stated that Ordinance 23-04 was a follow-up from Council's Retreat. He reminded Council that they had discussed speed limits and Council's direction was to ask NCDOT to not seasonally adjust NC 12 from Snow Geese to the Currituck County line where it was seasonally adjusted from 35 mph to 45 mph in the off-season. He stated that Council looked at some maps and tables that showed different speed limits and where they were set by NCDOT, where they weren't, where there was some confusion or disparity between the Town's ordinance and what was in NCDOT's map. He stated that Council had before them an ordinance that would change the schedule of the speed limits within the ordinance and once that is adopted, he would take

it to NCDOT along with a series of documents that would need to be sent. He noted that if NCDOT controls the speed on their roads, Council may ask NCDOT to set certain speed limits. He stated that he was asking Council to adopt the new schedule of speed limits in the draft ordinance and once adopted, he would file the paperwork with NCDOT.

Mayor Pro Tempore Thibodeau stated that there was a 45 mph speed limit listed. Town Manager Havens stated that it was the current speed limit and the desired limit was 35 mph. Mayor Pro Tempore Thibodeau clarified that with regard to the 35 mph limit on NC 12 from Wampum north, Council had wanted to make that a constant 35 mph limit and by doing it in the ordinance, it would go to NCDOT to be sanctioned. Town Manager Havens explained that the reason it was worded differently was because currently there were two different speed zones – from Wampum to Snow Geese at 35 mph and Snow Geese to the Currituck County line at 45 mph. He stated that ordinance would indicate that Council wanted the speed limit in that area to be 35 mph year-round.

Mayor Kingston pointed out that the unintended consequence would be that street legal golf carts could travel all throughout Duck. Town Manager Havens stated he was correct, adding that the golf carts would do in the summer.

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 23-04 as presented and direct Town staff to file the necessary paperwork with the North Carolina Department of Transportation.

Motion carried 5-0.

**Discussion/Consideration of Authorizing the Town Manager to Execute a Contract for Duck Trail Improvements between Blue Heron Lane and Waxwing Lane, Adjoining the Sanderling Neighborhood with HHL, LLC**

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that as part of the Fiscal Year 2022-2023 budget, funding was approved for improvements to the Duck Trail shared use path paralleling Duck Road. She stated that bids for improvements north of Blue Heron Lane and south of Waxwing Lane were opened on February 17, 2023 with bids received from two contractors – Fred Smith Company and HHL, LLC. She noted that the bid with HHL, LLC was the low bidder at \$144,304.

Senior Planner Cross stated that Anlauf Engineering's cost estimate on the low end was \$115,253.44 with a 20% contingency due to unknowns in the current market bringing the project range up to \$138,301. She noted that the bids were valid for 45 days and both bids exceeded the \$120,000 budgeted for the Duck Trail repaving in Fiscal Year 2022-2023. She added that if the additional \$45,000 budgeted for stormwater improvements along the Duck Trail adjoining Sanderling was included, the total budgeted amount of \$165,000 should satisfy the budget needs to complete the last section of the trail in the Sanderling subdivision. She pointed out that the previous stormwater improvements along Sanderling have not proceeded due to a perceived lack of need that was expressed

by a relevant adjacent owner. She recommended that Council authorize the Town Manager to enter into a contract with HHL D, LLC, as presented.

Councilor Whitman asked if the project would finish the sidewalks in the Sanderling subdivision. Senior Planner Cross stated that it would.

Mayor Pro Tempore Thibodeau asked how soon the project would start. Senior Planner Cross hoped the contractor would start as soon as they receive the signed contract.

Councilor Whitman moved to authorize the Town Manager to execute a contract with HHL D, LLC for \$144,304, as presented.

Motion carried 5-0.

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

Attorney Womble stated that she had nothing to report.

#### **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.

Director Heard gave an overview of the past month's permit 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 Kay Nickens was recognized to speak. Director Nickens gave a brief overview of activities to Council and the audience.

##### **February FY 2023 Financial Presentation**

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

##### **MAYOR'S AGENDA**

Mayor Kingston stated that the mayors/chairmen meeting will be on March 21, 2023 in Manteo. He thanked Town staff for a great Retreat that was held recently.

## **COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau echoed Mayor Kingston's comments regarding the Retreat. She asked if there was any word on the beach nourishment changes other than the last email that was sent to Council. She noted that she was receiving questions about it and wanted to get it out to the public. Town Manager Havens stated that he received some updates earlier in the day and would send it out to Council in the morning. He noted that matting should be put down at the Army Corp of Engineers property later in the week and the subline would be installed. He added that they were still on time, around March 15, 2023, to begin the dredge operation. Mayor Pro Tempore Thibodeau asked if they would be working with the More Beach to Love website through Dare County or if the Town was putting out public information on its own. Town Manager Havens stated that Director Nickens would be following up with More Beach to Love. He added that the Town would be communicating that and Director Nickens provides information to them as well. He pointed out that the project was affecting the Towns of Southern Shores and Duck, with the contractor moving some of their equipment onto Hillcrest Drive to mobilize, and the focus being on getting the matting out on the Army Corps of Engineers property. He stated that Adam Priest from Coastal Protection Engineering has been coordinating with the staff at the Army Corps of Engineers. Mayor Pro Tempore Thibodeau clarified that the target date was March 15, 2023. Town Manager Havens stated that it was the target but could change within a few days on either side. He stated that it was the target date based on the last information he had received.

Councilor Mooney stated he had nothing to report.

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. 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 April 5, 2023 at 6:00 p.m.

## **CLOSED SESSION**

Mayor Pro Tempore Thibodeau moved to enter closed session in accordance with Section 143-318.11(a)(3) in order to confer with the Town Attorney regarding a matter within the attorney/client privilege and to preserve that privilege.

Motion carried 5-0.

The time was 9:20 p.m.


Upon return from closed session, Attorney Womble stated that Council met with the Attorney and discussed legal matters but there was nothing further to report.

**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:43 p.m.

  
Lori A. Ackerman, Town Clerk

Approved:   
Don Kingston, Mayor

