

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
April 5, 2023**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, April 5, 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; Deputy Fire Chief Clarence Batschelet; Town Attorney Robert Hobbs; Community Planner James Gould; Public Information and Events Director Kristiana Nickens; Finance and Human Resources Administrator Jessica Barnes; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black.

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

Mayor Kingston moved to amend the agenda by removing item C under Consent Agenda and putting it under New Business G.

Motion carried 5-0.

Mayor Kingston asked Town Clerk Lori Ackerman 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 hearing or the Planning Board positions be held off. There being no one wishing to speak, Mayor Kingston closed the time for public comments.

**CONSENT AGENDA**

**Minutes from the February 15-16, 2023, Annual Retreat; Minutes from the March 1, 2023, Regular Meeting; Guidelines for Proclamations and Resolutions; Contract Extension with CrowderGulf for Debris Removal; Resolution 23-04, a Resolution of**

**the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month**

Councilor Schiano moved to approve the consent agenda as presented.

Motion carried 5-0.

**SPECIAL PRESENTATIONS**

**Employee Recognition Program**

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

Mayor Kingston and Town Manager Drew Havens went on to present Town Clerk Lori Ackerman with her 20-year service recognition certificate and \$200 gift certificate.

**QUASI-JUDICIAL PUBLIC HEARING**

**Public Hearing/Discussion/Consideration of SUP23-003, an Application by Savage Land, LLC for a Special Use Permit to Expand the Existing Scarborough Lane Shoppes with the Addition of an Eating Establishment, including an Outdoor Dining/Entertainment Area in the Village Commercial District at 1171 Duck Road**

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs 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. He 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. He 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.

Town Attorney Hobbs stated that anyone that would be presenting evidence in connection with the hearing would need to take an oath. He 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, James Braithwaite, David Klebitz, Matthew Price, and Peebles Harrison.**

Town Attorney Hobbs opened the evidentiary portion of the hearing. He 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 a special use permit to expand the existing Scarborough Lane Shoppes shopping center at 1171 Duck Road with an outdoor dining/entertainment area at the rear of the property. He pointed out that special use permits were being sought for the following:

1. Amendment to the previously approved conditional use permits for the Scarborough Lane Shoppes group development by expanding the existing shopping center with an outdoor dining/entertainment area.
2. Addition of an eating establishment including an outdoor dining/entertainment area.

Director Heard stated that the property at 1171 Duck Road was zoned Village Commercial and contained the Scarborough Lane Shoppes shopping center, adding that it was technically two properties that totaled over four acres and functioned together as a single group development containing over 30,000 square feet of space, including 34 commercial units in four retail buildings connected by elevated, covered 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 a studio/showroom, office, and a 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, adding that abutting the property to the east were two properties located in the Town's Special zoning district, with one containing a single-family residence and the other containing common amenities for the Sea Pines neighborhood. He pointed out that much of the adjoining property to the north contained Scarborough Faire, which was another large, multi-building, multi-tenant shopping center that was also zoned Village Commercial. He added that adjoining the northern edge of the project area at the rear of the subject property were two parcels with frontage on Pamela Court in the Ocean Dunes neighborhood that each contained a single-family residence that were zoned Single-Family Residential. He stated that across Duck Road to the west were the Soundside Shoppes, which was a smaller shopping center containing seven commercial units and 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 standards that should be considered as part of the 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 noted that when granting a special use permit, the Town Council may prescribe appropriate conditions and safeguards to the location, nature and extent of the proposed use and its relation to the surrounding property, for purposes of ensuring that the conditions of permit approval will be complied with and to minimize any potentially injurious effect of the proposed use on adjoining properties, the character of the surrounding area, or the health, safety and general welfare of the community.

Director Heard stated that as part of their recommendation, the Planning Board found that the proposed outdoor dining/entertainment area was consistent with the type of uses allowed and encouraged in the Duck Village Character Area as well as being consistent with 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 March 8, 2023, they voted unanimously to recommend approval of the special use permit application, subject to the following conditions:

1. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
2. The applicant is required to obtain approval from the Dare County Environmental Health Department and a State food service permit for the food stand.
3. The applicant is required to obtain a septic permit for a change of use and the proposed grinder station from the Dare County Environmental Department.
4. The applicant must obtain a stormwater management permit from the NC Department of Environmental Quality and provide confirmation to the Town that their stormwater management plan for the site has been updated and approved.
5. The building must be constructed in substantial conformance with the elevation drawings and floor plans submitted with the SUP application, as prepared by Coastal Cottages, dated February 3, 2023.
6. The applicant must submit the final site plan and site plan review fees as provided for in the Town's adopted fee schedule concurrent with final engineer-stamped site plan drawings, as may be revised through the approval and special use process, with all required information referenced in the SUP conditions, prior to the issuance of a building permit for the project.

7. Operation of the outdoor entertainment area must comply with all standards of the Town's noise ordinance including limitations on the volume of sound. Music and other performances must cease by 10:00 p.m.
8. The applicant must submit and obtain approval of a lighting plan prior to the installation of any lighting. Light fixtures must be recessed or fully shielded and directed downward to avoid any light spillover onto adjoining properties. Lighting intensity is limited to a maximum of five foot-candles.
9. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
10. This special use permit will expire in 12 months from the date of approval if the approved use has not been initiated.

Town Attorney Hobbs asked Council if they had questions for Director Heard.

Mayor Kingston asked Director Heard to explain the food area. He asked if the food would be prepared onsite as well as the type of food and beverages that would be served. Director Heard stated that it would consist of food and beverages. He noted that the applicant would be able to discuss the type of food and how it was prepared in detail. Mayor Kingston asked if there would be outside seating. Director Heard stated that there would be outdoor seating on the second-floor deck area as well as informal seating in the outdoor entertainment area.

Councilor Schiano clarified that nothing would change with regard to ingress and egress. Director Heard stated he was correct.

Mayor Pro Tempore Thibodeau clarified that the walkway would be painted on the asphalt. Director Heard stated she was correct.

Councilor Schiano asked if people that bought food from Duck Pizza could sit in the outdoor seating area or if it was specific to the restaurant. Director Heard thought anyone could go over there, but the applicant would be able to explain it better.

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

Peebles Harrison of Rose, Harrison, Gilreath & Powers was recognized to speak. Mr. Harrison stated that he represented the applicant. He stated that they did not have any questions for Director Heard.

Town Attorney Hobbs asked the applicant to make a presentation.

Peebles Harrison 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. Harrison clarified that David Klebitz was engaged by Allis Holdings to cover the special use permit. David Klebitz stated he was correct. Mr. Harrison asked David Klebitz to summarize the project for Council. David Klebitz explained that the request was for two special use permits and

since the site has multiple existing buildings and an additional building was being added, it was considered a group development and was already permitted as a group development. He stated that one of the modifications they were asking for was to update the existing use permit for the group development to add an additional building to the site. He stated that the second use permit was for the eating establishment, which requires a use permit in the Village Commercial District. He pointed out that the request was for an amendment to an existing use permit and the addition of the new use permit for the eating establishment.

David Klebitz stated that the proposal was for a 385 square foot freestanding food and beverage stand in the northeastern corner of the property with 1,800 square feet of area set aside for outdoor dining and entertainment, which included a second level deck above the food stand and also included the grass area around the outside of the food stand and a 15x15 foot wooden stage without a roof that would be built on grade adjacent to that. Mr. Klebitz stated that there would be some minor parking improvements, noting that they were not reducing any parking, but restriping some existing lines and adding some concrete to make it an ADA compliant space.

David Klebitz stated that the setbacks were being made in the northeastern corner of the property. He pointed out that there were two adjoining residential lots and since they have residential uses, there was an additional setback of 20 feet. He stated that the rear setback was also 20 feet and they were approximately 56 feet off of the rear property line. He stated that the requirement was for 171 parking spaces to accommodate what currently exists as well as what was being proposed, pointing out that the site currently has 176 parking spaces.

David Klebitz stated that the applicant understood and agrees with the Town's noise ordinance with regard to the outdoor entertainment and that any entertainment noise needed to cease by 10:00 p.m.

David Klebitz stated that with regard to the questions on food service, the intent was for the vendor – Swells' a Brewing – to bring in their beer from their facility and serve single-service items and not prepare the food onsite. He noted that they did not want to limit it to single-service items because the health department does allow food to be prepared at the property. He added that there were no plans for that at this time, but they did not want to preclude that ability in the future should someone want to make and sell food items. He stated that the plan was that everything sold at the site would be brought in and then sold.

David Klebitz stated that with regard to seating, it was considered a food stand and came with a limitation of eight seats. He explained that everything else has to be open but that didn't mean that people could not bring a chair to that area or sit on the grass, but the facility could not have any more than eight seats permanently. He understood that the applicant did not intend to limit the ability of people in the shopping center from coming to listen to the music with food from another restaurant.

Town Attorney Hobbs asked Council if they had questions for David Klebitz.

Councilor Schiano asked if the eight seats were for the inside or the outside. David Klebitz stated that the seats could be wherever the applicant wanted them. Councilor Schiano asked about the deck. Mr. Klebitz stated it would be included in the eight seats.

Councilor Whitman asked if the building would be a freestanding building built from wood or would a prefabricated building be brought in. David Klebitz understood that it would be a freestanding building that would be constructed.

Matthew Price of 216 Sea Oats Trail in Southern Shores was recognized to speak. Mr. Price stated that it would be a freestanding building with all seating outside.

Councilor Whitman noted that beer would be served. He asked if a fence would be erected so the business would not go past the 1,800 square feet. Matt Price stated that they planned to have the area roped off.

Mayor Pro Tempore Thibodeau stated that she noticed in the conditions that there was a lighting plan. She stated that the stage area would be open. She asked if they would be installing a Sun Sail or some kind of shade structure. David Klebitz stated that they have not gotten into the lighting details but will meet the Town's ordinance. Matthew Price stated that he liked the idea of the Sun Sail, adding that he was trying to utilize the natural vegetation so the canopy of the live Oak tree would act as a natural shade roof.

Town Attorney Hobbs noted that the proposed order had 10 conditions. He asked if the proposed conditions were acceptable to the applicant. Matthew Price stated that they were.

Peebles Harrison asked David Klebitz if he had reviewed the March 8, 2023 minutes from the Planning Board. David Klebitz stated that he had. Mr. Harrison asked if Mr. Klebitz saw the special use permit criteria section that summarized the requirements of subsection 156.55 of the Town Code. Mr. Klebitz stated that he had. Mr. Harrison asked Mr. Klebitz if he agreed that the use would meet all of the requirements and conditions specified by the ordinance. David Klebitz stated that they would. Mr. Harrison asked if the use did not materially endanger the public health or safety. David Klebitz stated that it would not. Mr. Harrison asked if the use would not substantially injure the value of the adjoining property. Mr. Klebitz stated that it would not. Mr. Harrison asked if the use would be in general conformity with the Town's Comprehensive and Land Use Plan. David Klebitz stated that it would.

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

Town Attorney Hobbs 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 March 8, 2023 meeting and approved the application with a vote of 4-0. He noted that parking was not an issue with the application, adding that the planned dining and entertainment appeared to be consistent with similar dining and entertainment establishments in Duck. He stated that although the project increases the intensity of the site, it appeared that it did not raise any ingress or egress issues. He pointed out that the application complied with all relevant Town ordinances, adding that there were no public objections expressed at the Planning Board level.

Mayor Kingston asked if there was any differentiation in the use permit with respect to food preparation versus food being brought in. He further asked if it was a Health Department issue. James Cofield stated that none was represented at the Planning Board meeting. Director Heard stated that there was no difference in terms of how the Town would treat it.

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

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that a vote of the majority of Council would be required to approve the application. He 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 10 proposed conditions.

Mayor Pro Tempore Thibodeau had a question regarding the draft order granting the special use permit. She asked if it would cover both issues on the development or if there needed to be two separate ones.

Town Attorney Hobbs reopened the public hearing.

Director Heard stated that both special use permits could be covered under one motion.

Town Attorney Hobbs closed the public hearing.

Councilor Whitman moved to approve SUP23-003 as presented with the findings as well as the 10 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 were two openings on the Planning Board. Tim McKeithan has resigned and needs to be replaced and Randy Morton also resigned and needed to be replaced. He noted that both appointments would be effective May 1, 2023. He stated that at the March 1, 2023 Council meeting, Council considered several applications and at the request of Council, it was asked that the applicants come back to this meeting and respond to three questions in no longer than a five-minute timeframe. He stated that the positions were opened for additional applications. He noted that Randy Morton and Scott Miller had originally submitted applications, but Mr. Morton resigned from the Planning Board and Scott Miller withdrew his application. He stated that Allan Staley, Sanjeev Jairath, Dennis Wojcik, and Sandra McNinch submitted applications which brings the total to 10 for the two open positions. He asked Town Attorney Hobbs to explain the voting and procedure to fill the positions.

Town Attorney Hobbs stated that there were two positions to fill and, as per previous meetings, the presiding officer – the mayor – would open the floor for nominations and at that time the Council members would put forward and debate the names of possible appointees. He stated that when the debate ended, the mayor would call for a roll call vote and the Council members would individually vote. He stated that the votes would be tallied once all Council members had voted and the nominee that received the highest number of votes shall be appointed. He reminded Council that in previous appointments, the Town’s ordinance does not require that the appointee receive a majority, just simply the most number of votes.

Town Attorney Hobbs stated that as far as having two open positions, the Council may have two voting times – one for each position. He recommended that Council follow that procedure for this time.

Mayor Kingston stated that the applicants would answer the following questions in their presentations:

1. Give your background and your association with the Town of Duck.
2. Give your qualifications and why you feel you are qualified for the position on the Planning Board.
3. Why do you want to serve on the Planning Board?

Mayor Kingston asked that the applicants introduce themselves to Council and the audience and then give a five-minute presentation.

James Bartlett of 100 Pintail Drive was recognized to speak. Mr. Bartlett gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Councilor Whitman asked James Bartlett how long he has lived in the Town. James Bartlett stated it was approximately three years. Councilor Whitman asked Mr. Bartlett if he has done any volunteering in the Town. Mr. Bartlett stated that he has not volunteered in the Town but currently volunteers for the animal shelter and N.E.S.T.

Mayor Pro Tempore Thibodeau asked if there were any issues in the Town that piqued James Bartlett's interest or if he had any concerns as a citizen. James Bartlett stated that summer traffic was a concern as well as how to keep things moving through Town as tourism increases.

Matthew Price of 216 Sea Oats Trail in Southern Shores was recognized to speak. Mr. Price gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Councilor Mooney asked Matthew Price if he used to live in Duck. Matthew Price stated that he did. Councilor Mooney asked how long he lived on the Outer Banks. Mr. Price stated that it was over 40 years. Councilor Mooney asked if he still owned property in Duck. Mr. Price stated that he does.

Councilor Mooney noted that one of the by-laws for the Planning Board talks of conflict of interest. He asked if based on Matthew Price's employment and the number of applications his employer comes up with for different projects in the Town, how he would reconcile the potential conflict of interest. Matthew Price stated that he was his own employer and did not see them as opposing forces with the Town and would recuse himself if he felt there was a conflict of interest.

Mayor Pro Tempore Thibodeau asked if there were any issues or concerns that Matthew Price had. Matthew Price stated there was a greater change on the Outer Banks but not such a Town focused one. He added that traffic was going to be a continued issue. He thought the community aspect – neighbors helping neighbors, people being hospitable to each other – when there are more people here and things get a little tense at times. He stated that he saw those things starting to slip and would like to see that come back.

Robert Wetzel of 141 Betsy Court was recognized to speak. Mr. Wetzel gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Mayor Kingston asked Robert Wetzel how long he's been a member of the Board of Adjustment. Robert Wetzel stated that it was two years.

Councilor Mooney asked Robert Wetzel to reiterate why he thought his experience in his professional life would translate to what happens on the Planning Board. Robert Wetzel explained that the subject matter was different but it was the ability of taking a proposal that comes before the Planning Board, evaluating it in terms of how the plan meets the Town's Comprehensive and CAMA Land Use Plan, how it dovetails in with the Town's ordinances, using that analysis and analytical process and being able to articulate the

results of that analysis. He noted that it was very similar with what he was trained to do and what he spent a lot of his career doing. He thought the only difference was the subject matter.

Councilor Mooney asked Robert Wetzel if there was any call to evaluate some of the things that Council would ask the Planning Board members to look at in his professional life, such as reading blueprints or understanding the complexities of what needed to be done as well as what was acceptable within the Town's ordinances. Robert Wetzel stated that he did not have any work experience with regard to the nature of the proposals that come before the Planning Board. He thought it was something that one could learn and acquire through study and time as those different circumstances come before the Planning Board. He didn't believe that, while there could be some complexities involved, the subject matter was so difficult that a person like him could not learn and understand what the issues were.

Councilor Schiano clarified that, based on Robert Wetzel's role in terms of auditing and diving into analyzing systems, he has a good mind for details as well as poring over a lot of details and correlating things. Robert Wetzel stated that he did, adding that the ability to analyze and focus on details was one of the cornerstones of his professional success. He thought even more important was his ability to work with opposing sides, reach a consensus and being able to walk away from the end of it with everyone being generally happy with one another. He noted that they did not always agree and there were some heated arguments, just like there have been some heated discussions by Council lately, but at the end of the day they were able to come to a good common ground. He thought that and consistency and integrity were the cornerstones of the success of his career.

Brenda Chasen of 135 Spindrift Lane was recognized to speak. Ms. Chasen gave a short presentation to Council and the audience, answering the three questions and noting that she would like to serve on the Planning Board.

Mayor Pro Tempore Thibodeau asked if there were any issues in the Town that may need attention. Brenda Chasen stated that recycling bothered her because it was a single source. She added that it causes a lot of litter in the neighborhoods. She noted that she did not know what the answer was to solve the problem and wasn't sure if recyclables should be separated instead of being single source. She stated that she would bring a resolution before Council when she comes up with one.

Robert Webb of 1166 Duck Road was recognized to speak. Mr. Webb gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Councilor Schiano asked Robert Webb if he saw any reason, until he lives in Duck full-time, that it would be a problem attending the monthly meetings. Robert Webb stated that it would not, as he committed that he would be able to attend the monthly meetings.

Mayor Pro Tempore Thibodeau asked if there were any issues in Town that may need attention. Robert Webb stated that there were not any issues he saw.

Kevin Lingard of 116 Marlin Drive was recognized to speak. Mr. Lingard gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Councilor Mooney asked Kevin Lingard what foundation he was part of. Kevin Lingard stated that it was the Team Drea Foundation. He explained that a friend of his was diagnosed with ALS and was able to complete a marathon in all 50 states, adding that the foundation has raised over \$1 million for ALS research.

Mayor Pro Tempore Thibodeau asked if there were any issues in Town that may need attention. Kevin Lingard stated that parking was an issue and wondered if there could be more flexibility. He pointed out that businesses have to have a set number of parking spaces and wondered if there was a way to be more flexible with parking by looking at when some businesses were busy and some were slow and possibly sharing the parking.

Allan Staley of 123 West Tuckahoe Drive was recognized to speak. Mr. Staley gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Mayor Pro Tempore Thibodeau asked if there were any issues in Town that may need attention. Allan Staley thought what drew everyone to the community was what the Town is today. He thought there have been things that have been done historically that may not have jived with what Duck was and is. He thought maintaining the integrity of Duck would be where his mind would be by looking at the integrity of what the Town has historically and now and maintain that because it's a special community.

Councilor Mooney asked Allan Staley if he lived in Duck full-time. Allan Staley stated that he would be living in Town full-time beginning in May.

Sanjeev Jairath of 107 Buffell Head Road was recognized to speak. Mr. Jairath gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Councilor Whitman asked Sanjeev Jairath what made him decide to apply for the Planning Board after the second time for applications. Sanjeev Jairath stated it was his first time applying. Councilor Whitman pointed out that the application period was open a month before and Council postponed it for another month. He asked why Mr. Jairath applied after the second time the application period opened. Mr. Jairath reiterated that he only applied once. Councilor Whitman asked Mr. Jairath what intrigued him to apply.

Councilor Schiano pointed out that the time period for applying for the Planning Board positions was expanded, adding that it initially closed and then reopened for an additional

30 days. He stated that Sanjeev Jairath had not applied in the first round. Sanjeev Jairath stated that it was because he saw the opening the second time but not the first.

Mayor Pro Tempore Thibodeau asked if there were any issues in Town that may need attention. Sanjeev Jairath stated that when he bought his house, he wanted to add on an addition and was told he was in violation of the CAMA line. He stated that he started researching the CAMA line and zoning issues and was intrigued by them. He added that he was very pleased that Town staff helped him to understand and come to some decisions regarding his property. He noted that Duck has a fantastic staff and thought that whoever is appointed to the Planning Board will not have any problems due to the support of Town staff.

Dennis Wojcik of 103 Dune Road was recognized to speak. Mr. Wojcik gave a short presentation to Council and the audience, answering the three questions and noting that he would like to serve on the Planning Board.

Councilor Whitman asked Dennis Wojcik if he was appointed to the Planning Board, he would treat the Town staff with a kind manner and not like he had treated staff at a previous Planning Board meeting. Dennis Wojcik stated that he gave a presentation at a Planning Board meeting as well as a Town Council meeting on issues that he was very emotional about. He understood that he was very forward and as a member of the Planning Board he would make sure that his presentations were more well received.

Mayor Pro Tempore Thibodeau asked if there were any issues in Town that may need attention. Dennis Wojcik stated that traffic and parking were issues. He added that the maintenance of the Town boardwalk was a concern as he felt it and trash pickup were not up to how he would like to see it. He stated that he was extremely interested in the Town's grant project for the shoreline protection, adding that he would be very happy to somehow be involved in that.

Councilor Whitman asked Dennis Wojcik if he reported any issues or problems to Town staff when he walked the boardwalk. Dennis Wojcik stated that he had reported a broken board on the boardwalk.

Sandra McNinch of 102 Trinitie Drive was recognized to speak. Ms. McNinch gave a short presentation to Council and the audience, answering the three questions and noting that she would like to serve on the Planning Board.

Mayor Pro Tempore Thibodeau asked if there were any issues in Town that may need attention. Sandra McNinch stated that there were no particular issues besides traffic. She added that one issue was that she was having difficulty finding support services locally.

Mayor Kingston nominated Robert Wetzel.

Councilor Mooney pointed out that, apparently in 2005, there were bylaws that were generated for the Planning Board. He stated that Article 3, subsection 3 talked of

qualifications and stated that individuals on the Planning Board were encouraged to attend a training session from the School of Government. He stated that it could be circumvented by past professional experience. He thought the Town had not adhered to any of that in the past, adding that the Planning Board was required to produce an annual report, which he had never heard one. He thought there were some things that needed to be reinforced and/or changed. He stated that when Council starts their voting, they will need to consider that there was a possibility that some of the candidates will not have the professional experience that qualifies them get around attending the training with the School of Government. He noted that it was an expense for the Town and he didn't expect the member of the Planning Board to pay for that training.

Mayor Kingston thought looking at the 10 applicants, they all had relevant experience in one way or another. He thought that the Planning Board members, as they have been appointed, have gone through training. Councilor Mooney stated he was not referencing continuing education. Director Heard stated that the Town has presented opportunities to the Planning Board members to attend national conferences virtually. He added that it was all continuing education, noting that the Town was blessed with having David Owens, who retired from the School of Government and lives in Southern Shores. He pointed out that Mr. Owens has addressed the Planning Board and given them training.

Councilor Whitman stated that he had attended training when he served on the Planning Board. Councilor Mooney thought that the things that the current and past Planning Board members have attended were continuing education classes to supplement what would have been past experience in their professional lives and/or attended the training with the School of Government.

Mayor Kingston stated that he could not expect any of the 10 applicants to attend advanced training in order to apply for the Planning Board position. He thought if they were appointed, they could receive the essential training to be on the Planning Board. He thought that was more than adequate, reiterating that Council could not expect someone to attend training and then not be appointed to the Planning Board. Councilor Mooney stated that he was not suggesting that. Mayor Kingston pointed out that Councilor Mooney was discussing qualifications. Councilor Mooney disagreed, adding that he was asking if Council should appoint an individual to the Planning Board that did not have the kind of experience that the Planning Board describes in the bylaws. He added that they would then have to take the course. He stated that he would never suggest that an individual should take the course on the premise that they may or may not be appointed to the Planning Board. He stated that he was saying that if Council appointed individuals that were not sufficiently experienced in a very eclectic way, the Town would need to send them for the course. He pointed out that the bylaws and guidelines were established by a prior administration and instead of ignoring the issues, as has been done in the past, Council needed to be more adherent.

Mayor Pro Tempore Thibodeau did not disagree that training for the Planning Board was a very good idea and appreciated Councilor Mooney bringing forward the guidelines that were established in 2005 since so much time has gone by and she has yet to revisit them.

She did not disagree with anything that Councilor Mooney had stated except that she wasn't sure if she would know which applicant clearly requires the training or doesn't. She asked Councilor Mooney if he felt he was qualified to make that distinction. Councilor Mooney thought the statements that were heard from the applicants were that some had much more direct experience in this kind of work than others. He didn't disagree that anyone that gave a presentation has the capability of learning things very quickly. He stated that he was referencing what the guidelines stated, adding that they have been ignored in the past. He pointed out that the Town has ignored things in the past that were detrimental and the rules needed to be followed or changed. He reiterated that he was not suggesting that one person that gave a presentation did not possess the brain power to figure out what is going on. He asked if Council wanted to do the on-the-job training or have someone that could hit the ground running.

Mayor Pro Tempore Thibodeau asked Councilor Mooney if he was suggesting that once the voting was completed, another vote would be needed as to whether or not the individuals would need to attend the training or if he was suggesting that all Planning Board members would need to attend the training. Councilor Mooney stated he wasn't sure how Council would make the determination on whether or not the individuals possess the qualifications that would circumvent them having to attend the training. He thought that some of the individuals that gave a presentation clearly possessed the experience that was directly related to this kind of work, while some did not, but it didn't mean they could not handle serving on the Planning Board. He stated that Council was not going to apply a point system to see who possesses the necessary experience and who doesn't. He thought it was black and white, adding that it was written in their applications and Council listened to their descriptions of their past lives so they knew who did and who did not.

Mayor Kingston reiterated that the Town has had many Planning Boards over the last 20 years and to say that they have been detrimental was a negative comment. He thought people came from different backgrounds and were very effective. He pointed out that the Planning Board has always been subject to the approval of the Town Council, adding that they were an advisory group. He stated that the Town has had great staff over the years. He thought saying that people have been detrimental to the Planning Board was a negative comment. He thought looking at the applicants at this meeting, he felt they were all qualified, all have had different professions, but were very qualified to learn, serve and do the right things for Duck. He stated that he had a problem with Councilor Mooney stating that an applicant had to have certain qualifications beyond the Planning Board. He pointed out that it was like stating that someone had to have certain qualifications other than living in Duck to be on the Town Council. He noted that it wasn't true because each Council member has come from a diverse background. Councilor Mooney stated that he was not accusing the Planning Board of having made detrimental errors in the past, but there have been. He stated that Mayor Kingston was correct in that it comes to the Council and Council could say yes or no depending on whatever the evidence was regarding any project that comes before them. He didn't think that the mistakes that have been made came from the Planning Board, adding that he was pointing out a document that was adopted by the Town in 2005 and the things that have

been ignored. He pointed out that he has never seen an annual report from the Planning Board in three- and one-half years of being on Council. He stated that the difference with regard to qualifications of the Council itself was that it was an elected position and not an appointed one. He stated that Council's responsibility was to deliver the best product they can for the people of Duck. He thought that one of the things he was certain happened with the decision-making process to produce the bylaws was to produce the best product possible. He pointed out that part of that was that if someone did not possess the qualifications based on past experience, then they would have to attend training. He added that he was not trying to be derogatory about it and was not picking on anyone in particular, but he thought if the Town had rules, everyone had to play by them. He noted that if Council did not want to keep those rules, then they could always change them.

Councilor Whitman asked Councilor Mooney where he found the Planning Board bylaws document. He stated that he went through the Town's Code of Ordinances and all it stated was that an individual has to own property in Town in order to be on the Planning Board. Councilor Mooney asked Councilor Whitman if he looked under bylaws for the Planning Board. Councilor Whitman stated that he looked under Planning Board in the Code of Ordinances. Councilor Mooney suggested that he search Planning Board bylaws and he will find the document. Councilor Whitman asked Councilor Mooney if he got the bylaws from the Code of Ordinances. Councilor Mooney stated that he forgot where he got it from. Councilor Whitman stated that the bylaws Councilor Mooney had would be something he would have to look at the decision and should not have any effect on the voting at this meeting.

Councilor Schiano thought there were 10 interesting and qualified candidates, all that come with different skills, some were very directly related while others weren't, but transferable skills. He noted that if there was something in the bylaws that Council has not adhered to, it hasn't been adhered to in 18 years. He agreed with Councilor Whitman's comments that Council should not start applying it at this meeting. He stated that if it was there and Council thought it was important, then Council should look at it and do something about it. He noted that if Council decided that they want to send individuals to that type of training, it would be incumbent upon the Town to pay for it. Councilor Mooney and Mayor Pro Tempore Thibodeau agreed.

Councilor Schiano stated that there were always pluses and minuses when looking at candidates with some individuals having more skills, being extremely well-matched skill-wise, but may not be as well matched on another side. He noted that it was always a balancing act that Council tries to do to select the best people possible. He stated that Council was blessed with a very knowledgeable, competent staff who were well-versed in the laws, ordinances, and requirements, and who will communicate with the Planning Board officially. He noted that the Town has a core in the Planning Board that was very capable and well-versed. He thought if it was written in the bylaws, it was written when the Town was three years old and was starting from ground zero. He thought there wasn't much experience back then, but there was a lot more now.



Councilor Schiano thought Council should take into consideration all of the applicant's skills, some being the same, some being different, and try to make the best decision possible.

Mayor Kingston suggested that Council get back to the nomination process.

Mayor Pro Tempore Thibodeau nominated Matthew Price.

Councilor Mooney nominated Brenda Chasen.

Councilor Whitman nominated Robert Wetzel.

Councilor Schiano nominated Allan Staley.

Mayor Kingston closed the nominations noting it was now time to vote. He asked Town Manager Havens and Town Attorney Hobbs to record the votes.

Mayor Kingston and Councilor Whitman, and Councilor Schiano voted for Robert Wetzel. Mayor Pro Tempore Thibodeau voted for Matthew Price. Councilor Mooney voted for Brenda Chasen.

Motion carried for Robert Wetzel to be appointed to serve on the Planning Board with three votes.

Mayor Kingston noted that Robert Wetzel currently serves on the Board of Adjustment and with him being appointed to the Planning Board, it created an opening on the Board of Adjustment which will be addressed later in the meeting.

Mayor Kingston stated that the second individual needed to be nominated.

Mayor Kingston nominated Brenda Chasen.

Councilor Mooney nominated Brenda Chasen.

Councilor Whitman nominated Brenda Chasen.

Councilor Schiano nominated Dennis Wojcik.

Mayor Pro Tempore Thibodeau nominated James Bartlett.

Mayor Kingston closed the nominations.

Mayor Kingston, Councilor Mooney, and Councilor Whitman voted for Brenda Chasen. Councilor Schiano voted for Dennis Wojcik. Mayor Pro Tempore Thibodeau voted for James Bartlett.

Motion carried for Brenda Chasen to be appointed to serve on the Planning Board with three votes.

Mayor Kingston thanked everyone that applied. He thought all of the candidates were all very well qualified. He pointed out that now that there was an opening on the Board of Adjustment, Council will go through that process. He asked staff to advertise for the position.

Mayor Pro Tempore Thibodeau thanked the candidates for taking the time, adding that it was a pleasure meeting them all. She stated that she appreciated their involvement and continued commitment to the Town.

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-01, an Ordinance Amending the Definition of Lot Coverage in the Zoning Ordinance of the Town of Duck, North Carolina and Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-02, an Ordinance Amending Standards for Lot Coverage Calculations for Residential Properties in the Town of Duck, North Carolina**

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 and certified by the property owner, 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 added that the proposed text amendment broadens and clarifies that impervious portions of any innovative wastewater system was counted as lot coverage. He stated that the proposal also reorganizes the standards in a clearer, more readable format.

Director Heard stated that Ordinance 23-02 proposes to amend Subsections 156.030(D)(6), 156.031(D)(6), and 156.032(D)(6) of the Zoning Ordinance with a requirement for owner certification of the installation and maintenance of permeable surface materials according to the manufacturer's specifications. He noted that this requirement applied to situations where owners were seeking a 5% lot coverage bonus for implementing stormwater management features on residential properties.

Director Heard pointed out that in recent years, Community Development staff members have received an increasing number of proposals involving property owners seeking approval for lot coverage allowances for alternative surfaces such as permeable pavers and artificial turf. He stated that clarification was needed to assist staff in determining if/when/to what degree such alternatives should be granted relief as pervious or semi-pervious surfaces.

Director Heard stated that Council had voted unanimously at their March 1, 2023 meeting to send Ordinance 23-01 back to the Planning Board for full concurrence by the Board members regarding a wording amendment proposed by Planning Board Chairman James Cofield. He pointed out that none of the other Board members had approved the exact wording being proposed and following a final review and concurrence on the wording by the entire Planning Board, Council will act upon the request at a public hearing on May 3, 2023.

Director Heard stated that the Planning Board members engaged in their final review and consideration of Ordinance 23-02. He noted that there was substantial discussion concerning a potential provision creating an allowance for swimming pools in stormwater capacity calculations, but in the end, the Board decided not to include this provision. He added that the final draft of the ordinance simply adds an owner certification requirement if permeable materials are used.

Director Heard stated that the Planning Board discussed both ordinances at their March 8, 2023 meeting and voted unanimously to recommend approval of Ordinance 23-01 and Ordinance 23-02. He added that Council will need to hold a public hearing on the ordinances at their May 3, 2023 meeting.

Mayor Pro Tempore Thibodeau asked if it would be easy to obtain certification from a manufacturer. Director Heard explained that the maintenance part was new and the Town already requires owners to provide the Town with the manufacturer's specifications, which was easy to obtain.

Councilor Schiano moved to set the public hearing for Ordinance 23-01 and 23-02 for Council's May 3, 2023 meeting as presented.

Motion carried 5-0.

**Discussion/Consideration of Ordinance 23-03, an Ordinance Clarifying Standards and Enforcement Provisions for Solid Waste Collection in the Town of Duck, North Carolina**

Director Heard stated that during their recent efforts preparing the Duck Vision 2032 in October and annual strategic goal setting session in January, Council emphasized the importance of staff improving the enforcement of ordinance provisions related to the storage of trash on residential properties and the placement of trash and/or recycling carts at the street for pickup. He stated in an effort to implement the Council's objectives, staff reviewed the Town's ordinance related to solid waste to find ways to make it easier for all stakeholders and the public to understand and staff to enforce. He pointed out that, in general, draft Ordinance 23-03 contained a variety of updates and changes to Chapter 50 of the Duck Town Code, *Solid Waste*. He added that the amendments were being proposed by Town staff to organize the standards in a logical manner, eliminate duplication, and clarify the necessary standards.

Director Heard stated there were dozens of proposed amendments throughout the draft ordinance and summarized the most significant changes as follows:

- 50.02: Compliance is ultimately the responsibility of the property owner, not occupants.
- 50.03: Establish/clarify the minimum number of rollout carts required.
- 50.05: Consolidate/clarify the timing and location of roll cart placement for collection.
- 50.07: Outline trash storage standards and review of locations.
- 50.11: Clarify trash collection standards.

Director Heard stated that staff were currently reviewing the Town's ordinance related to trash to find ways to make it easier to understand and enforce. He pointed out that what will likely not change was the timing of the placement at and removal from the street of trash and recycling cans, nor the language requiring the carts to be covered to fully contain the materials in them. He stated that staff was recommending approval of Ordinance 23-03 as proposed.

Mayor Pro Tempore Thibodeau pointed out that there was a recommended action of either having a public hearing or voting on the proposed ordinance. She stated that she was happy to see the streamlining of the document, adding that there were some interesting items in the previous document that needed to be changed. She did not know if trash was a big enough issue to warrant a public hearing, but she was curious to hear what other Council members thought. She thought the draft ordinance was a huge improvement and made a lot of sense, reiterating that she didn't feel it needed a public hearing.

Mayor Kingston agreed with Mayor Pro Tempore Thibodeau's comments, adding that it was a good cleanup of the ordinance. He thought Council should move forward with adopting the ordinance and not having a public hearing. Councilor Mooney agreed. Mayor Pro Tempore Thibodeau pointed out that it has brought trash to the forefront along with some other things that property management companies have been experiencing in the last two weeks.

Councilor Schiano agreed that a public hearing was not needed. He thought the ordinance was well thought out. He clarified that the ordinance spoke specifically to trash and not recycling. Director Heard stated that the standards included recycling.

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 23-03 as presented.

Motion carried 5-0.

Mayor Kingston called for a 10-minute recess. The time was 8:31 p.m.

Mayor Kingston reconvened the meeting.

## **NEW BUSINESS**

### **Discussion/Consideration of Ordinance 23-06, an Ordinance Amending Ordinance 09-04 of The Town Council of the Town of Duck, North Carolina, Creating a Beach and Dune Management Ordinance**

Town Intern Hunter Braithwaite was recognized to speak. Town Intern Braithwaite gave a short presentation on the modifications to the Town's ordinance regarding driving on the beach. He pointed out that the draft ordinance changes the dates that beach driving is permitted from October 1 through April 30 and from December 1 through March 15. He added that the ordinance amendment included reducing the maximum speed limit on the beach from 20 mph to 15 mph and that Modified Utility Vehicles (MUTV) were now prohibited on the beach.

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 23-06 as presented. Mayor Kingston noted that the ordinance would be effective May 1, 2023.

Motion carried 5-0.

### **Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with Johnson, Mizelle, Straub, and Murphy, LLP for Audit Services for Fiscal Years 2023, 2024, and 2025**

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes stated that in preparation for the Town's financial audit for Fiscal Year 2023, Town staff advertised a Request for Proposals process to seek qualified independent auditors. She explained that staff issued the RFP on January 9, 2023 with a deadline of February 24, 2023, adding that the RFP was sent to Johnson, Mizelle, Straub, & Murphy, LLP and Potter & Company, PA. She noted that this was completed as a requirement for Single Audit compliance when the Town expends more than \$750,000 in Federal funds. She added that a Single Audit will be completed in Fiscal Year 2024, with the BRIC Project, as well as the Beach Nourishment Project, as the Town will expend more than \$750,000 in funds from FEMA.

Administrator Barnes stated that three proposals were received from the following: Johnson, Mizelle, Straub and Murphy, LLP; Potter & Company, PA; and Sharpe, Patel, PLLC. She pointed out that the proposal from Johnson, Mizelle, Straub and Murphy, LLP included Richard Straub, CPA as the Partner in Charge and Jonathan Dail continuing as the Staff Accountant. She noted that the fees included \$27,000 for Fiscal Year 2023, \$29,700 estimated for Fiscal Year 2024 and \$32,670 for Fiscal Year 2025. She added that the fees were based on the assumption that they would be Single Audits. She stated that if a Yellow Book Audit was completed instead, the fees would be lower. She stated that the firm also noted many other governmental clients for which they currently or previously performed annual audits and were located in Kitty Hawk.

Administrator Barnes stated that the proposal from Potter & Company, PA included Daniel Morrow, CPA as the Partner in Charge and two other CPA professionals, a senior audit staff member as well as at least two other staff accountants that may assist. She pointed out that the firm listed that they have completed Dare County's audit for the past 27 years, as well as many other years of service for other governmental clients and were located in Concord. She added that the fees included \$35,000 for Fiscal Year 2023, an estimated fee of \$36,250 for Fiscal Year 2024, and an estimated fee of \$37,500 for Fiscal Year 2025. She stated that the fees were based on the assumption that they would be Single Audits and if a Yellow Book Audit was completed instead, the fees would be lower.

Administrator Barnes stated that the proposal from Sharpe Patel, PLLC, CPA included Jay Sharpe, CPA as the Partner in Charge, a senior audit manager, as well as three senior audit associates. She pointed out that the firm noted many other governmental clients for which they currently or previously performed annual audits and has offices in Raleigh and Charlotte. She stated that the fees included \$23,355 for Fiscal Year 2023, an estimated fee of \$24,056 for Fiscal Year 2024, and an estimated fee of \$24,777 for Fiscal Year 2025. She noted that the fees were based on the assumption that they would be Single Audits and if a Yellow Book Audit was completed, the fees would be lower.

Administrator Barnes stated that staff reviewed the three proposals, asked for references, and asked for the professional opinion of Teresa Osborne, CPA, who completes the Town's financial statements and assists with financial matters as needed. She stated that staff concluded that they wanted to see if Johnson, Mizelle, Straub and Murphy, LLP would negotiate their fees since the Town has taken on more of the work over the last three years with paying separately to have the financial statements prepared as well as having Ms. Osborne assisting with preparing the supporting audit documentation. She stated that by doing so, Ms. Osborne was able to speak with Richard Straub who agreed to lower the fees to a fixed rate each year of \$24,000 for all three fiscal years.

Administrator Barnes noted that Potter & Company, PA was an excellent firm and was very knowledgeable about the Outer Banks and beach nourishment; however, staff could not justify such a high increase in fees if the Town were to switch to a new firm. She stated that Sharpe, Patel, PLLC had excellent references and lower initial fees; however, while the partners and staff collectively have many years of experience, Teresa Osborne and staff were not as comfortable with this firm being formed recently in 2020.

Administrator Barnes recommended that the Town remain with Johnson, Mizelle, Straub, and Murphy, LLP for audit services in Fiscal Years 2023, 2024, and 2025.

Mayor Kingston clarified that the Town has not had any issues with Johnson, Mizelle, Straub and Murphy, LLP. Administrator Barnes stated that he was correct. Mayor Kingston clarified that they were no longer completing the Town's payroll. Administrator Barnes stated he was correct.

Mayor Pro Tempore Thibodeau thought having Teresa Osborne giving her professional opinion was great as well as getting a fresh set of eyes on all of the Town's financials during a transition period in 2020 and Administrator Barnes in place made her feel very comfortable staying with Johnson, Mizelle, Straub and Murphy, LLP.

Councilor Whitman moved to authorize the Town Manager to execute a contract for auditing services with Johnson, Mizelle, Straub, and Murphy, LLP as presented.

Councilor Mooney asked why Lisa Murphy would no longer be completing the Town's audits. Administrator Barnes stated that she wasn't sure but thought it was that she was trying to get away from completing government audits and focusing more on taxes. Councilor Schiano pointed out that sometimes an auditing firm likes to rotate partners. Administrator Barnes noted that Jonathan Dail will still be the staff accountant for the Town's audits.

Motion carried 5-0.

**Discussion/Consideration of Authorizing the Town Manager to Place an Order for Four Police Vehicles under State Purchasing Contract, including a Budget Amendment for Said Purchase**

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that this would be an advanced purchase of four police vehicles. He explained that in the Capital Improvement Plan and the budget for Fiscal Year 2024, the plan was to purchase four police vehicles, but the issue was that they were hard to come by and if staff waits until the budget is approved in June, the ordering window will likely have closed and will not reopen for another year. He stated that the question before Council was if the vehicles could be purchased now rather than waiting until the budget is approved in June. He reminded Council that the current fleet has 14 marked SUV patrol vehicles and one unmarked pickup truck, adding that this would replace four of the 2017 marked vehicles. He noted that the Town was on a six-year replacement cycle and will be able to enjoy the residual value of those when they are sold on the used car market.

Town Manager Havens stated that in Fiscal Year 2024, the plan was to purchase four vehicles, for Fiscal Year 2025 the Town would purchase two vehicles, and in Fiscal Year 2026 the Town would purchase three vehicles. He noted that it was in the Town's Capital Improvement Plan and the price of \$57,049 was the cost for each vehicle and upfitting.

Town Manager Havens explained that the purchase would be made under the North Carolina Sheriff's Association fleet purchasing agreement, adding that there were a number of purchasing agreements in place in North Carolina with the Sheriff's Association having the best price for police vehicles. He noted that the vehicles were at a lower cost than buying them retail. He pointed out that there currently is a shortage of police vehicles that started with the semiconductor shortage where manufacturers got behind in producing all vehicles. He stated that manufacturers make more money selling a retail vehicle than a fleet vehicle. He added that Ford canceled some orders in 2022,

with localities and states placing orders for vehicles in 2022 and Ford canceled them because they could not meet the demand.

Town Manager Havens clarified that the ordering window had not opened yet. Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman explained that it had not, adding that he has been in constant contact with Ford waiting for them to launch it. He noted that Ford has opened the window on every model except for the Ford Explorer. Town Manager Havens stated that Ford and Chevrolet had capped the number of orders accepted for vehicles in the 2023 model year. He stated that staff wanted to be ready and have approval from Council the minute the order window opens so the Town could get in line for those vehicles.

Town Manager Havens pointed out that it used to be that Dodge, Chevrolet and Ford were all in the police car business, but Dodge was moving away from that. He stated that Ford was limiting police vehicles to just the SUV and Chevrolet has just the Tahoe that was police-rated. He stated that while there used to be a lot more choices for police vehicles, it was now very limited. He reiterated that he did not want to miss the ordering window.

Town Manager Havens stated that staff were recommending purchasing the vehicles outright instead of financing them in order to save \$20,000 in interest over a three-year period. He anticipated that the Town would have surplus funds this year of approximately \$900,000, so taking the money out now would not hurt the Town. He stated that he was asking that Council consider approving a budget amendment and authorize him and Police Chief Ackerman to place the order for the four vehicles when the purchasing window opens, at a cost of \$228,196.

Mayor Pro Tempore Thibodeau asked if staff were certain that the window would open. She further asked what would happen if the Town did not get the opportunity to purchase the vehicles. Police Chief Ackerman stated that the purchase window will definitely open at some point. He stated that if the Town did not get the order in early, it would risk paying considerably more for the vehicles. Mayor Pro Tempore Thibodeau asked if there was a risk that purchasing the vehicles would not happen at all. Police Chief Ackerman stated that there was always that risk and with the semiconductor shortage, fleet vehicles are not a priority.

Mayor Kingston asked if the order could not be placed until the new fiscal year, the strategy would be to roll the budget amendment into the following year and pay cash. Town Manager Havens stated that it would, explaining that the Town would encumber the money and carry it to the following year. Mayor Kingston clarified that the Town would not finance the purchase. Town Manager Havens stated that he was correct.

Councilor Schiano clarified that the vehicles would be purchased this fiscal year. Town Manager Havens stated that he was correct, adding that if the Town could not, the money would be encumbered which would carry to the next fiscal year.



Mayor Pro Tempore Thibodeau moved to approve a budget amendment and authorize the Town Manager and Police Chief to place an order for four vehicles when the ordering window opened.

Motion carried 5-0.

### **Discussion/Consideration of Proposals for Solid Waste and Recycling Services**

Town Manager Havens stated that the Town's current contracts for solid waste and recycling collection expire on September 30, 2023. He stated that staff prepared a Request for Proposals on January 3, 2023 with a deadline of February 17, 2023 for responses. He noted that the RFP was sent directly to Waste Management, Bay Disposal, and Tidewater Fibre Corp. He pointed out that the RFP process was completed far in advance of the contract renewal because of the significant expense in the budget, adding that staff wanted to have solid numbers to include as they work through that process.

Town Manager Havens stated that the bids were for a five-year contract term with renewable for successive two-year terms. He noted that the Town can continue to renew the contracts for two-year terms with no end to it. He explained that there were four services that staff asked for bids on – residential solid waste, residential recycling, commercial solid waste (dumpster), and commercial recycling (dumpster). He reminded Council that the Town currently contracts with Tidewater Fibre Corp for residential recycling and Waste Management for the other three services.

Town Manager Havens stated that three responses were received, two from the incumbent providers and one additional provider. He noted that only one bid on residential recycling while the other two did not. He explained that the way the RFP was structured, a bidder could bid on one service, all of them, or different ways they could bundle them together. He stated that Tidewater Fibre Corp was the only bid for residential recycling, so they were the low bidder as well as the Town's incumbent provider. He pointed out that he had sent Council the bid tabulation and then sent it again because Waste Management had contacted him about an apparent error in the tabulation, which was corrected.

Town Manager Havens stated that staff had asked for inflation adjustments which will be negotiated and built into the contract. He stated that Waste Management has asked for a cap of 9%, Bay Disposal asked for a cap of 7%, and Tidewater Fibre Corp asked for a cap of 5%. He noted that the current contracts were 2.5% and 3%, adding that he did not expect the Town would hit either the 7% or 9% cap in the current environment of high inflation. He stated that they were terms that he would negotiate into the contracts with the providers.

Town Manager Havens stated that the low bids were for residential solid waste from Waste Management, commercial solid waste and recycling (dumpster services) from Waste Management, and Tidewater Fibre for residential recycling services. He noted that it was the incumbents that provided the lowest prices. He stated that he was looking for

direction from Council as to who staff should negotiate the contracts, adding that he was comfortable with recommending that the Town stay with Tidewater Fibre Corp and Waste Management. He stated that he was very happy with Waste Management's performance recently.

Mayor Kingston agreed with Town Manager Haven's recommendations in keeping Waste Management and Tidewater Fibre Corp.

Mayor Pro Tempore Thibodeau stated that she was glad to hear that Town Manager Havens was pleased with Waste Management's performance. She hoped it would continue. She agreed with Mayor Kingston on the recommendations, adding that she would support it.

Councilor Schiano asked if the trash services looked for new customers. He further asked if it was easy to get bids. Town Manager Havens stated it was not easy. He stated that there were not a whole lot of players, adding that Waste Management and Bay Disposal were the main companies. He stated that Tidewater Fibre was the only recycling company. He stated that he asked Dare County if they wished to bid on it but they declined.

Councilor Schiano moved to allow the Town Manager to negotiate and prepare contracts with Waste Management for residential and commercial solid waste and recycling services and Tidewater Fibre Corp. for residential recycling services.

Motion carried 5-0.

**Discussion/Consideration of Resolution 23-05, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting a Dare County EMS Ambulance in, or more proximate, to Duck**

Town Manager Havens stated that following the demolition of the Southern Shores Fire Department building on East Dogwood Trail, where a Dare County EMS advanced life support ambulance was stationed, the ambulance was moved to a temporary location on Juniper Trail near Highway 158. He pointed out that this adds approximately three road miles to any response to the Town of Duck and, especially during the busier months, may mean a significant delay in response.

Town Manager Havens explained that while the Duck Fire Department provides basic life support first response, a delay in advanced life support intervention and transport could be detrimental to medical outcomes in some cases. He stated that Dare County EMS positions an ambulance at the Duck Public Safety building on weekend days during the summer months and having one positioned there more frequently during that time that a new facility is being built on East Dogwood Trail would improve response times in Duck.

Town Manager Havens stated that he was asking Council to consider adopting Resolution 23-05.

Mayor Kingston asked if the resolution would be sent to the Dare County Board of Commissioners. Town Manager Havens stated that it would along with a cover letter to the Board of Commissioners and Dare County Manager Bobby Outten.

Councilor Mooney explained that in the wintertime, the 10-mile mark was, in his opinion, outside of the recommended response time. He added that it was definitely outside of that response time in the summer. He understood that, for 18 months, the expectation was that the East Dogwood Trail facility would take that long to be built. He pointed out that construction ending on time rarely occurs. He stated that Duck was exposing its constituency on the north side of Town to an unacceptable response time. He thought that should be strongly worded to Dare County, adding that they need to understand the issue. He understood that the whole EMS deployment has a methodology attached to it; however, Dare County needed to figure out how to resolve the issue, adding that he thought the answer was that they have to understand that they have to increase the service. He stated that it was an enormously important service that must be provided by Dare County according to state statute. He thought Dare County was being slightly negligent with regard to the north end of Duck, adding that he understood they also have to cover Hatteras and Manns Harbor. He pointed out that the way in and out of Duck was unique to the entire Outer Banks. He recommended a more strongly worded document to send to Dare County.

Mayor Pro Tempore Thibodeau stated that she was glad for the clarification as to exactly what the intent was for the resolution. She stated that there was a temporary problem, but it was a big problem. She read the following from the draft resolution: "...hereby requests the consideration of repositioning the ALS ambulance that was at East Dogwood Trail to a location in Duck or more proximate to Duck than the East Dogwood Trail location in order to enhance response times for advanced medical care..." She pointed out that it was a permanent item. Councilor Mooney agreed, adding that the 18 months he referenced was the duration of however long it will take to rebuild the station on East Dogwood Trail. He pointed out that for the people on the north side of Duck, even that location still puts them in jeopardy and was outside of what EMS describes as a desirable response time. He stated that he would like to see this change permanently, pointing out that he thought there was space at the Duck Fire Department for an ambulance. He noted that there was a bay that the ambulance could be put in and hopefully the Council will figure something out in the not-too-distant future about a new Public Safety building that would include permanent space for an ambulance.

Deputy Fire Chief Clarence Batschelet was recognized to speak. Deputy Fire Chief Batschelet explained that the Fire Department does have space for an ambulance to stage, but there was currently not enough space for the paramedics to live there in a permanent nature. He noted that anything they do currently would require them to create space by removing one of Duck Fire's large apparatus out of the building to accommodate the ambulance. Councilor Mooney asked if the northernmost bay with the couches could not

be used for the ambulance. Deputy Fire Chief Batschelet explained that that was their current training room. Councilor Mooney thought that the training could happen on the second floor of the building. Deputy Fire Chief Batschelet explained that the current configuration does not have the space, adding that having an ambulance there would block access from the building to the rest of the apparatus. He stated that the brush truck originally was parked there and when someone came out the door, it was very hard to get past the truck. He stated that there wasn't as much space there as there appeared, especially with the current apparatus, but the fire department does make accommodations to have the ambulance and has been extremely open to allowing them to stage there.

Councilor Mooney stated that, at the end of the day, it was a problem that has to be solved somehow, adding that it was a huge Public Safety issue, and a resolution needs to be achieved. He thought it was unacceptable to have a response time that was more than 8.5 minutes to the people that live on the north side of Duck. He stated that, given the percentage of the calls were close to 50% medical, he thought that most of them were probably not very serious. He stated that for the one call that was very serious, it was a problem. He pointed out that the Police Department and Fire Department were all qualified to administer basic lifesaving measures, but if someone needs medicine or needs to be transported, the fire department could not do that. He added that if someone has to wait, especially over the next 18 months, they will be waiting 30 minutes for an ambulance to arrive and may pass away before it arrives. He reiterated that this was an issue that needed to be resolved.

Councilor Schiano clarified that the Town had two problems – a short-term and a long-term. Councilor Mooney stated he was correct. Councilor Schiano clarified that the draft resolution dealt with the short-term problem. Town Manager Havens stated he was correct, adding that it was the reason it was drafted.

Mayor Kingston pointed out that the short-term was more critical because there would be two summer seasons where an ambulance would not be close by. He thought Dare County was aware that Council wants an ambulance in Duck and thought it was a longer-term discussion. He stated that the short-term was that the ambulance is now further away and it would be two summer seasons. He thought that should be the thrust of the resolution to get Dare County's attention. He agreed with Councilor Mooney's comments, adding that there was a bigger solution for the longer-term, but right now there was an 18-month problem which was worse. Mayor Pro Tempore Thibodeau and Councilor Mooney agreed.

Mayor Pro Tempore Thibodeau thought strengthening the resolution could be accomplished. Mayor Kingston stated that the cover letter could be stronger. Mayor Pro Tempore Thibodeau thought the following language could be bolded in the resolution: "...requests...repositioning the...ambulance...to a location in Duck or more proximate to Duck..." She understood it wasn't Duck's call and Council needed to be deferential, but it was making a good point that there would be a long length of time to wait for the new facility and there was a lot of extra distance that could affect a lot of people. She stated that she supported the resolution and a very detailed cover letter.

Councilor Mooney stated that he would like to see the letter be more strongly worded. Mayor Pro Tempore Thibodeau pointed out that if Councilor Mooney had any recommendations, this would be the time in order to get it to Dare County, or Council could table the issue until their May 3, 2023 meeting.

Town Attorney Hobbs stated that if Council agreed, they could approve the concept of the resolution and direct or authorize Town Manager Havens and Mayor Kingston to work out the final wording based on the discussion at this meeting. He noted that if Mayor Kingston felt like he had a good understanding of the concerns, that was an option and Council would not have to come back at another meeting to pass the resolution.

Councilor Mooney moved to approve Resolution 23-05 in concept with the direction of the Town Manager and Mayor to work out final wording consistent with the discussion at this meeting.

Motion carried 5-0.

#### **Discussion/Consideration of Post-COVID Assembly Occupancy Enforcement**

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that Council had adopted allowances in May 2020 to allow business establishments the ability to maintain their approved occupancy capacity with the use of outdoor or tented areas. She stated that as COVID restrictions loosened, Council continued to allow the outdoor areas in order to reduce risk exposure with the end date of December 31, 2022. She noted that some businesses have suggested that the post-COVID environment is different and there is a need for additional occupancy to satisfactorily accommodate the need for services and increased price of services.

Senior Planner Cross pointed out that one of Council's top 2023 strategic goals was the enforcement of the Town's special use permits and other ordinances. She stated that as the Town may be dealing with several businesses that may wish to request revisions to their existing permits in order to accommodate the perceived post-COVID need, staff was asking for guidance from Council as to the level of flexibility they want to see as the Town moves forward. She stated that staff was also asking whether Council would like staff to study and review the current regulations related to restaurant allowances.

Councilor Mooney stated that he was in favor of giving staff some wiggle room. He noted that the businesses were suffering between staff and supply shortages, adding that he thought it was Council's responsibility because they wanted to keep the feel of the Town the way that it was, adding that the businesses will need room and help with it. He thought it was Council's job to give it to them.

Mayor Pro Tempore Thibodeau stated she was glad to hear Councilor Mooney's comments.

Councilor Whitman stated that he somewhat agreed with Councilor Mooney but thought if someone wanted to get into compliance or get closer to compliance, they should submit an application within 30-45 days to show a good faith effort that they were willing to sit down with staff to see what they could do. He didn't think that they should wait until the end of the summer to have them meet with staff and start their application. He thought it was something that needed to be done now and worked on, even if it took three months, adding that it would be worked on. He thought after 45 days, if the people don't come in to submit an application, then the Town will need to enforce things. He pointed out that he wasn't trying to be anti-business, but the Town needed to put a timeframe in place. Senior Planner Cross thought it was reasonable.

Mayor Pro Tempore Thibodeau agreed with Councilor Whitman's comments on getting things started but noted that it could be difficult for a business with trying to work on something and ramping up for the summer season and operating. She thought having the business show a good faith effort was understandable, but she thought it should be a longer timeframe.

Councilor Whitman disagreed, adding that it was started in October and December. He stated that, in looking at the tally sheet, it was the second most asked item on it. Mayor Pro Tempore Thibodeau stated that she looked at the tally sheet and saw how it tallied with four on one and one on another. Councilor Whitman agreed, noting that there were five votes for it to enforce the special use permits, which was before Council knew that people were not complying. He stated that the Town has a problem with some businesses that overextended what they were allowed to do and they want to continue to do so. He added that Council got in trouble four years ago over the same issue with a restaurant in Town. He didn't think it should happen to again. Senior Planner Cross pointed out that, four years ago, staff worked with that business for almost two years. She stated that she was looking for equality as staff deals with the businesses. She noted that if the Town was able to be flexible with one business and work through that process, she wondered if Council wanted to change that now. She explained that it would come across as potentially anti-business, which was something she did not want to happen. She felt if Council wanted to be fair to all businesses, then staff needed to work with them.

Councilor Schiano stated that when he looked at the situation, he noted that it was a tough time for restaurants as well as almost all retail businesses. He stated that for some reason, COVID flipped things and people did not want to work or they were working somewhere else; there wasn't available housing; and the situation was complicated. He thought 90+ percent of the restaurants were working on a five-day week schedule, even rotating days. He thought it was great for them because they could move forward five days a week with their staff with all employees receiving two days off. He thought it may be the new normal. Senior Planner Cross agreed, adding that volume was needed to make the numbers work. Councilor Schiano agreed, wondering how the Town could help the people keep their volume in a shorter amount of time. He thought this would be a way to do that. He stated that he was not troubled in any way by what he saw in the restaurants that he visited during COVID. He pointed out that the outdoor seating looked appropriate and was well managed. He stated that it did not bother him if the Town

continued to allow that. He thought there should be some sort of an agreement with those that want to continue with the outside dining as to what they wanted to do that was approved and not keep stretching it as there was a barrier that was agreed upon. He thought it enhanced the community and the ability for the restaurant to serve customers. He added that he did not find it displeasing and wasn't sure if anyone else did.

Councilor Mooney agreed with Councilor Schiano's comments. He thought one of the things that Council needed to consider was that it had tremendous faith in Town staff and their judgment. He thought that putting a 45-day or any day end point on this would take away their ability to use their own discretion. He added that because Council was so lucky to have such a good staff, it wasn't a concern for him. He thought staff would exercise good judgment and truly try to work with the people so that the restaurants don't close, which was something that he didn't want to happen. He stated that when discussing the problem that existed four years ago, he felt it was an egregious disregard by that particular business that sparked the whole conversation regarding follow-up on conditions when the conditions were completely ignored and exacerbated. He did not think staff would let that happen again. He stated that he did not see it as a danger to the community, adding that he thought the more dangerous problem for the community was if Council started seeing restaurants close down because the Town was not trying to help them get over whatever type of hump happening. He stated that Council understood that the housing issue was problematic, but he thought a lot of the businesses were trying really hard to find places in Town, such as renting homes for their staff, which was an added expense. He thought it was incumbent on Council to try to help them.

Councilor Whitman agreed with Councilor Mooney's comments, adding that the Town has to get the restaurants to start their paperwork and work with the Town and not let them keep things as is for the next six months. He stated that in six months, Council will be in the same position it's in now. He stated that if the businesses show that they want to work with the Town, in 45 days, they will be able to put in an application together showing what they wanted to do.

Mayor Pro Tempore Thibodeau agreed with Councilor Whitman's comments in principal. She thought that there was another layer from staff needing extra clarification regarding the waiting areas and things that do not exist quite yet that staff may need clarification from either the Planning Board and/or Council to identify some things that were not defined quite right. Senior Planner Cross stated that if she looked at a couple of places that have a lot of seats that were the waiting area and she confirms with them that they were not serving those people in that area, then she didn't see an issue with that. She pointed out that it was not identified in the ordinance and if there were situations like that, she thought staff could work with it while simultaneously working with the business owners. She noted that she could be very persuasive to make sure the businesses were doing what they are supposed to do. She stated that she liked the 30–45-day timeframe but thought there needed to be wiggle room with it.

Mayor Kingston stated that one of the issues was that there was nothing quantified. He explained that Council was talking about issues but he wondered what the serious issues

were, how serious they were, who was in the most serious shape, and who can correct their issues quickly and who can't. He stated that he saw some statistics recently such as a restaurant that was authorized for 38 seats but they had 60. He wondered if every restaurant was like that or just one. He reiterated that it needed to be quantified. He understood the waiting area and people waiting to get into a restaurant, but he wondered if they could be served drinks in the waiting area or outside. He thought there were a lot of definitions that needed to be looked at. He stated that it was hard because there was no quantification. He stated that the Town was dealing with innuendos, adding that there was a labor problem and inflation problem, but so did the entire economy. He stated that the Town has ordinances in place along with regulations and rules. He wondered how serious the offenses were. Senior Planner Cross stated that they vary in degree. Mayor Kingston stated that Senior Planner Cross was telling Council that, but they did not know what they were dealing with. He noted that Councilor Whitman had stated that the businesses needed to get into compliance and to give them time, which he understood, adding that Council did not want to be negative to the businesses. He asked again how big of a problem the Town was dealing with. He stated that he was having trouble quantifying it. Senior Planner Cross noted that she could not quantify it for Council yet. She stated that she could tell that one business exceeded their seating as well as another business, based on recent site visits, that has expanded their outdoor areas. She stated that there were other areas that may have taken their indoor seating and translated it to outdoor areas. She stated that as staff goes through each business, they were talking with them, but due to staff's time, it cannot be done all at once. She noted that staff was very similar to the restaurants in that they were strapped. She explained that emails were the initial notification in October and December was followed up with direct emails to businesses and then on-site visits in January. She added that it was now April and staff were just as much to blame for the issue because they could not get out to all of the businesses and be the eyes and ears 24 hours a day, 7 days a week.

Mayor Kingston understood the issue but noted that the original order was that this was not a chance for businesses to expand their business but a chance to relocate where some of the business takes place. He stated that Council extended it last year for another year, put out a warning in October and a second warning in December with most of it being ignored for one reason or another. He asked how big the problem was and how long would it take to pull it back to where it needed to be. He thought maybe a redefinition was needed, especially with regard to waiting areas. He pointed out that there were other regulations such as the health department, parking, etc. Senior Planner Cross reiterated that she could not quantify it at this meeting.

Mayor Pro Tempore Thibodeau stated that she was mindful of the businesses and their success. She stated that there was also the guest experience at a restaurant which was important. Senior Planner Cross stated that she had spoken to a restaurant owner who indicated that people still want that distance from other people, adding that there were a lot of things that are different than they were in March 2020. She stated that she was just asking for flexibility.



Councilor Mooney stated that Council has great faith in the Town staff. He thought Council would be remiss in not allowing them to use their experience and discretion in this matter. He stated that Senior Planner Cross would come back to Council if an issue arose that needed consultation, but in the interim period and in the interest of trying to help people that were having issues, he thought the wiggle room was important and thought Council should give that to them.

Councilor Schiano thought there were occupancy issues as well as septic issues that needed to be taken into consideration. He stated that this was an issue that would not be solved in a week and would take time to do it right. He thought Council could do something such as allowing what was originally granted during COVID to stay in force for a certain period of time, but they needed to be in compliance and Town staff would be checking to make sure. He stated that if a business was interested in maintaining that for the long term, they would have to do something different, but he wasn't sure what it would be. He pointed out that the Town does not have enough staff to do all the work that's needed in a short period of time. Councilor Whitman pointed out that was the problem. Councilor Schiano stated that he was not saying that the staff has to make sure the business was in compliance with what was granted. Councilor Whitman reiterated that that was the problem, where the Town granted the business with what they could do and then they expanded it way beyond that. He wondered what could be done. Councilor Schiano stated that he wasn't sure and thought Senior Planner Cross had an idea as to who has expanded. He thought they should be addressed first.

Mayor Kingston pointed out that it needed to be equitable in that the Town could not have one business coming into compliance while another is ignoring it and not taking any action. He reiterated that it needed to be equitable and quantified. He pointed out that Senior Planner Cross knew by organization or restaurant what the situation was. He stated that Council did not have quantifiable data in front of them so they were dealing with comments, innuendos and what has been witnessed.

Mayor Pro Tempore Thibodeau thought each restaurant and business was unique. Mayor Kingston agreed. Mayor Pro Tempore Thibodeau stated that they were all different sizes, different layouts, exterior waiting areas, and opportunities. She stated that every restaurant and situation was unique. She appreciated the idea of getting some quantifiable things but knew that Senior Planner Cross was aware of the most egregious offenders or people who were blatantly disregarding the rules versus those that want to work with the Town.

Mayor Kingston asked Senior Planner Cross if she has met with every restaurant and received responses from the letters that were sent. Senior Planner Cross stated that she has not received a response from any of the letters that were sent. She pointed out that it wasn't until staff started walking to the sites and reached out. She stated that there were a couple of places where staff saw some changes that may need to be acknowledged administratively. She stated there were not a lot of restaurants in Duck, adding that staff has to meet with them, talk them through it and figure out whether they need to come in for an amendment or whether they want to roll things back. She added that she was

asking Council, if a business wanted to go for an amendment, does staff let them come for an amendment and keep what they have as they go into the season. She stated that she wants to be fair with all of the businesses like it was in the past. She noted that some will be willing to come into compliance quickly while others will need more time, adding that it was not a quick process.

Mayor Kingston thought it was an individual thing and staff would have to work with every restaurant and the timeline would be different for each one. He didn't think Council should put something out there that takes it into time again. Senior Planner Cross stated that she was not suggesting that. She added that she wanted flexibility to be able to work with the businesses through the season to get things moving in the right direction in that the business could go back to what they had or come in with an application to see if they can get approved for something else. Mayor Kingston pointed out that the business could always come in and ask for more, adding that Senior Planner Cross could look at the waiting areas and whether or not people can be served in those areas. He thought the Town's ordinances may need to be changed.

Town Attorney Hobbs reminded Council that the previous COVID relaxation of the requirements was done under an emergency declaration. He thought Council could say there was an emergency for other reasons, but it would not be the same as it was before. He thought a combination of providing flexibility to the staff work would be good because Council would not want the staff to be flooded with a large number of applications at once as well as the applicants not always having the ability to hire professionals at the same time to complete a variety of changes. He stated that, in the meantime, staff could look at text amendments and other things to enhance flexibility. He stated that he would not recommend a formal action to extend something that has already expired unless Council was able to identify a defensible emergency. He thought it was fine to provide staff flexibility in a post- COVID environment to wind down or modify things as needed and provide more time for that.

Mayor Kingston thought Council was in agreement. He asked if a motion was needed or if it could be moved forward. He pointed out that staff were working on enforcement now and working with the restaurants. He added that Council was not going to change any dates since it already expired and all the rules and regulations were in place. He thought staff needed the opportunity to work with the individual businesses. Town Attorney Hobbs thought if staff was okay with a consensus, then that would be fine.

It was *consensus* of Council to concur with the recommendation of Town staff that they be provided some flexibility in working with the restaurants in question.

Town Manager Havens asked if staff should look at text amendments regarding waiting areas rather than having a business come in with a text amendment and paying for it. Councilor Mooney and Mayor Kingston thought it was a better approach.

Town Manager Havens pointed out that the issue was Council's second ranked priority, adding that Town staff listens to Council when they indicate what is important to them,

which is why staff dedicated time to this issue as well as trash letters. He noted that hearing from Council that it was okay to work with the businesses as long as they were seeing progress towards compliance and they are not in violation of health department regulations and safety issues as well as staff not running into any issues with someone, staff could continue to do what they have done in the past and work with people to move to compliance which will ultimately involve them coming in for modifications, special use permits or conditional use permits.

Town Attorney Hobbs thought it was possible that a text amendment may deal with some of the matters that may eliminate the need for a special use permit or a less intensive special use permit.

Mayor Kingston pointed out that Council never authorized in the declaration of an emergency the expansion of businesses. He stated that Council had indicated that alternatives were okay but never authorized the expansion that occurred. He felt that it needed to be pulled back closer to where it should be, with some changes.

#### **North Carolina League of Municipalities Voting Delegate**

Town Manager Havens explained that the Town needed a voting delegate for the North Carolina League of Municipalities' City Vision conference that will be held at the end of April. He stated that the voting was completed virtually, but Council needed to name a voting delegate, adding that typically it has been the mayor, and he would fill out the ballot. He stated that the primary item they would be voting on was the League Board of Directors and President and leadership for the coming year.

Mayor Kingston moved to designate the Mayor as the voting delegate.

Motion carried 5-0.

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

Town Attorney Hobbs stated he had nothing to report.

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

##### **Departmental Updates**

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

Director Heard gave an overview of the past month's permit activities to Council and the audience.

Deputy Fire Chief Batschelet gave a brief overview of the past month's fire 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.

### **March FY 2023 Financial Presentation**

Administrator Barnes gave a short presentation on the March Fiscal Year 2023 financials to Council and the audience.

### **MAYOR'S AGENDA**

Mayor Kingston stated that the mayors/chairmen meeting will be on April 18, 2023 hosted by Dare County. He stated that he was looking forward to the April 19, 2023 meeting where the budget will be discussed. He stated that the Brick walkway looked great and everyone did a great job. He thought Council needed to take another look at the Planning Board bylaws since they were put together many, many years ago. He thought staff should look at them to see what was pertinent and see what should go into the ordinance. It was *consensus* of Council to look at the bylaws.

Town Attorney Hobbs thought it would be appropriate to find out the genesis of the bylaws and if they are referred to in the Town Code and report back as far as what staff thought the purpose of them was and any changes that may be needed.

### **COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau stated that she recently toured the Public Safety building and appreciated the opportunity to see the limitations and what was going on in the building. She hoped the Town could move forward with good information on it as it was a priority for Council. She thanked Town staff for everything they do.

Councilor Mooney thanked Town staff for all of their hard work. He felt that everyone was doing a good job.

Councilor Whitman thanked Town staff and the volunteers for the work on the Memory Lane Brick project.

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 Mid-Month meeting on Wednesday, April 19, 2023 at 1:00 p.m.

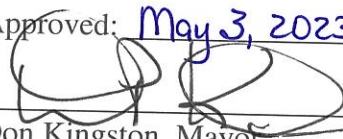
**ADJOURNMENT**

Councilor Schiano moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:28 p.m.

  
\_\_\_\_\_  
Lori A. Ackerman, Town Clerk

Approved: May 3, 2023  
  
\_\_\_\_\_  
Don Kingston, Mayor

