

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
July 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, July 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; Fire Chief Donna Black; Town Attorney Robert Hobbs; Finance and Human Resources Administrator Jessica Barnes; Public Information and Events Director Kristiana Nickens; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** None

Mayor Kingston called the meeting to order at 6:02 p.m.

Mayor Kingston asked Councilor Sandy Whitman 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 be held off.

Reid Carter of 153 Speckle Trout Drive was recognized to speak. Mr. Carter stated that he wanted to alert Council to a problem that has been brewing in Town, adding that he knew it was a problem because he received a few telephone calls from neighbors as well as people that live out of state, which was the trash can ordinance and the new procedures for issuing violations as well as the potential fines. He stated that some of the people that had contacted him told him that it was an unworkable plan, adding that the reason it was unworkable was because of the time the cans have to be rolled out and rolled back in. He pointed out that those that rent their homes and use cleaning services have their cans out at the curb outside of the allowable time. He stated that those people are bringing their cans to the curb when their cleaners are finished cleaning the houses. He stated that other people, like himself who do not rent their home, do not leave Duck on weekends and when they do leave, they put their trash at the curb.

Reid Carter stated that someone contacted him to let him know that they had received a violation notice and called his real estate company to ask them not to roll out/roll in the trash cans outside of the permitted timeframe. He added that the trash cans were left in the driveway full of trash with new renters coming in for the new week. He stated that this causes trash to overflow.

Reid Carter thought Council was aware of the problems, adding that he wanted to let them know that people are upset over the issue. He stated that he had a solution, which was to change the way the policy is enforced. He suggested turning this into a public relations opportunity by creating a campaign for the Town that was friendly and positive, asking people to clean up the Town or clean up the streets. *-The three-minute time ended at this point in the reading of the comments.*

Bob Wetzel of 141 Betsy Court was recognized to speak. Mr. Wetzel stated that he volunteers for the Town regularly and heard a lot of positive comments regarding the 4<sup>th</sup> of July parade as well as complementary comments on the Town and the Town's administration.

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

### **CONSENT AGENDA**

#### **Minutes from the June 7, 2023, Regular Meeting; Approval of the Fiscal Year 2023 Audit Contract; Approval of the Five-Year Contract with Waste Management**

Councilor Schiano moved to approve the consent agenda as presented.

Motion carried 5-0.

### **SPECIAL PRESENTATIONS**

#### **Introduction of 2023 Lifeguards**

Mirek Dabrowski, Director of Ocean Rescue, was recognized to speak. Ocean Rescue Director Dabrowski gave a short video presentation which introduced each member of Ocean Rescue to Council and the audience.

Mayor Kingston thanked Ocean Rescue Director Dabrowski for his presentation.

#### **Introduction/Swearing in of Police Officer Blake Cutrell**

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman went on to introduce Blake Cutrell to Council and the audience as Duck Police Department's newest Police Officer.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in Blake Cutrell.

Mayor Kingston and Council welcomed Officer Cutrell to the Town.

**Swearing in of Melissa Clark as Duck Police Department's Deputy Police Chief; Swearing in of Justin Naquin and John Gilreath as Duck Police Department's Police Corporals**

Police Chief Ackerman stated that Police Lieutenant Melissa Clark was recently promoted to Deputy Police Chief and that Master Police Officers Justin Naquin and John Gilreath were recently promoted to Police Corporals.

Town Clerk Ackerman went on to swear in Deputy Police Chief Melissa Clark and Police Corporals Justin Naquin and John Gilreath.

**QUASI-JUDICIAL PUBLIC HEARING**

**Public Hearing/Discussion/Consideration of SUP 23-006, a Special Use Permit Application by Rosemary Gordon, Owner, for Four Allowances relating to Fill and Grading Activities Associated with the Construction of Three Soundside Retaining Walls at 103 Amy Lane**

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 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, Rosemary Gordon, and Kevin Lineberger.**

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 for the following allowances at 103 Amy Lane: (1) to allow the lower and middle retaining walls up to eight feet in height where a maximum of six feet in height is permitted in Subsection 156.050; (2) to allow the retaining walls to support and contain fill, which is not permitted under Subsection 156.128(A)(6); (3) to allow up to six feet of fill behind the middle retaining wall where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a); and (4) to allow up to eight feet of fill behind the lower retaining wall where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a).

Director Heard stated that the property at 103 Amy Lane was approximately 17,000 square feet according to Dare County tax records; however, an older survey completed in 2005 showed the property as 18,112 square feet in size. He stated that the lot was approximately 103 feet in width and 187 feet in depth to the bulkhead along the Currituck Sound at the rear of the property and zoned Single Family Residential, containing a three-bedroom, 2,148 square foot single-family residence that was constructed in 1975. He noted that a swimming pool, surrounding concrete patio, and a wooden deck were located to the rear of the residence with the improvements on the property appearing to be compliant with Town standards. He stated that the improvements were sited on a bluff that sits at an elevation of approximately 30 feet above mean sea level and an existing bulkhead protecting the western edge of the property was located along the Currituck Sound at an elevation of approximately six feet above mean sea level.

Director Heard stated that the subject property was part of a small subdivision known as Amy Acres, which was subdivided in 1970 to include the four lots that access Amy Lane on the western side of Duck Road and an additional row of 11 lots on the north side of Plover Drive. He stated that the adjoining soundfront property to the south has frontage on the Nash Road cul-de-sac in an adjacent neighborhood. He pointed out that this property was zoned RS-1 and was presently undeveloped. He added that the soundfront property located across Amy Lane – 102 Amy Lane – to the north was also zoned RS-1 and was developed with a six-bedroom single-family residence in 2005. He noted that adjoining the subject property to the east was another RS-1 zoned property at 1152 Duck Road that contained a six-bedroom single-family residence built in 1989.

Director Heard stated that the subject property featured a tall bluff adjoining the Currituck Sound that has been the subject of erosion over the years with the erosion now threatening the stability of the swimming pool and pool deck that was located at the top of the bluff. He stated that the applicant was proposing to protect these existing improvements by stabilizing the bluff through a three-tiered system of retaining walls.

Director Heard stated that the proposed project involved the addition of fill and grading to accommodate the construction of three, tiered retaining walls along the Currituck Sound at the rear of the property to support the existing swimming pool and pool decks. He stated that the proposed improvements were as follows:

- Construction of a wooden retaining wall approximately eight feet in height at the base of the bluff along Currituck Sound with fill approximately eight feet in depth behind to support the retaining wall.
- Construction of a wooden retaining wall approximately eight feet in height along the middle of the bluff with fill approximately six feet in depth behind to support the retaining wall.
- Construction of a wooden retaining wall approximately four feet in height cut into the existing slope along the top of the bluff. This element of the project does not involve fill or require special use permit approval.
- The proposed retaining walls stretch approximately 60 feet in length across the middle of the property, located only in the area below the pool and not extending to neighboring properties.
- The existing bulkhead directly adjoining the Currituck Sound will remain and not be impacted by the proposed construction activities.

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 pointed out that in order to be constructed as proposed, the retaining walls and associated fill will require approval of the following allowances requested in the special use permit:

1. Allow the lower and middle retaining walls up to eight feet in height where a maximum of six feet in height is permitted in Subsection 156.050.
2. Allow the retaining walls to support and contain fill, which is not permitted under Subsection 156.128(A)(6).
3. Allow up to six feet of fill behind the middle retaining wall where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a).
4. Allow up to eight feet of fill behind the lower retaining wall where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a).



Director Heard noted that Subsection 156.128(C) of the Duck Town Code establishes review criteria for special use permit applications involving fill and grading activities. He stated that the Planning Board's review resulted in the following findings supporting their recommendation:

1. The site for the proposed fill is otherwise adequate in size, shape, and other characteristics to accommodate the proposed project.
2. The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to the necessity for the fill, lot shape, topographical features, location of mature vegetation, or location and characteristics of existing improvements on the lot.
3. The amount of fill proposed is the minimum necessary to accommodate the proposed project, especially for soundfront properties.
4. The proposed fill will not negatively impact adjacent properties or the surrounding area, especially for soundfront properties.
5. The special use permit will be consistent with any applicable goals, policies and objectives specified in the Town's adopted Comprehensive & Land Use Plan and Vision Statement. This review includes the Town of Duck's evaluation of the proposal's consistency with its adopted Comprehensive & Land Use Plan, which may be more flexible or more stringent than interpretations by others.
6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

Director Heard stated that the Planning Board determined that all six required findings were met by the proposal and at their public hearing on June 14, 2023, voted unanimously to recommend approval of the special use permit application subject to the following conditions:

1. The proposed retaining walls must be certified by a North Carolina licensed engineer.
2. The applicant must obtain a CAMA Minor Permit from the North Carolina Division of Coastal Management prior to issuance of a land disturbance permit for the fill/grading or building permit for the retaining wall.
3. The applicant must submit required application materials and obtain necessary land disturbance and building permits prior to commencing work.
4. All areas of land disturbance must be stabilized prior to issuance of a Certificate of Completion for the project.

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

Mayor Kingston thought if the applicant built this to code, there would be multiple retaining walls that would be shorter. He asked if there would be more than three retaining walls if it was built to code, adding that he thought shorter retaining walls would mean more steps going up, which would be much more expensive. Director Heard stated that the applicant's representative could answer the question. He was not sure if it was feasible to do due to the height. He added that each retaining wall has to be tied

back, noting that there may be some serious difficulty in achieving that. He thought there were some serious challenges with it.

Kevin Lineberger of Millstone Marine was recognized to speak. Mr. Lineberger explained that the design started out with leaving it flat in the 30-foot CAMA buffer and stabilizing the hill. He stated that after looking at it and figuring out what it would take to shorten the walls somewhat, it would take two walls which was another 24 feet, which was almost to the soundfront wall. He added that all of the fill, even if they were four-foot walls, would not pass and would still require a special use permit.

Councilor Mooney pointed out that a few years ago, a similar application came before Council for 1398 Duck Road that was denied. He asked what the difference was between that proposal and the one in front of Council tonight. Director Heard explained that it depended on the interpretation of the word "similar." He stated that it involved the construction of a retaining wall, but the topography in that case was almost the opposite of what the applicant was proposing in that there was a steep, vertical slope. He added that the previous case, the applicant was looking at running the wall out into the sound or adjoining the sound in order to try to recapture areas that had been lost to erosion. He stated that they were trying to expand their yard by 30 feet to the west to create a level yard that was approximately three to four feet in height. He stated that in this case, the applicant was not proposing to re-establish any lawn area but was trying to prevent further erosion of the higher bluff. He noted that if the applicant was looking at doing what the applicant at 1398 Duck Road was proposing, this applicant would not have a system of tiered retaining walls going down, but it would go straight out 30 feet and then have a 20-foot-high wall to create 30 feet of lawn area.

Councilor Mooney thought the difference was the previous applicant was trying to reclaim land that was already underwater. He asked if that was correct. Director Heard stated that it was.

Mayor Pro Tempore Thibodeau stated that she had wondered the same thing. She thought the other difference was that it expanded the entire width of the property as opposed to a portion. Director Heard stated that the impacts on the adjoining properties were also different than in this proposal. Mayor Pro Tempore Thibodeau asked if there were any vegetative requirements. She stated that she was interested in the idea of holding a retaining wall. She asked if there would be growth on the tiers. Director Heard stated that the applicant could speak to the details but added that one of the specific conditions was that it has to be stabilized with vegetation.

Town Attorney Hobbs noted that there were five conditions listed in the staff report but the draft order only had four. He asked if it was because the applicant had already submitted the drainage plan. Director Heard stated he was correct, adding that it did not need to be included since it has already been accomplished.

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



Town Attorney Hobbs asked the applicant to make a presentation.

Rosemary Gordon of 103 Amy Lane was recognized to speak. Ms. Gordon stated that the reason that she does not have to touch her property outside of the pool area was because there were still good trees left on both sides in addition to one 40-year-old tree, adding that she was aware of the importance of trees. She stated that her property was tree-lined when she first bought the house with no erosion issues until a tornado came through, Hurricane Irene hit, and then Hurricane Michael came through. She stated that the big trees were destroyed in these storms, with the exception of her fig tree. She stated that with regard to building out smaller walls, she could have built out smaller walls, but it would mean that her 40-year-old fig tree would have to be removed. She pointed out that the north side of the property has a lot of trees that go up the hillside, adding that the hillside was extremely stable. She stated that it has always been her plan once she got the bluff stabilized, to replant the native plants and trees that were there originally at the bottom.

Rosemary Gordon stated that on the south side of her property was an empty lot which was originally heavily treed, but presently there are no more trees left. She stated that she was concerned about vegetation and was a big proponent of planting native vegetation because that was what was needed as it helps the ecology in many ways. She added that in addition to the walls, it was her plan to plant as much native vegetation as possible in the tiered walls as well as at the bottom.

Kevin Lineberger pointed out that in this whole process, it has been about trying to stop what rainwater does, which was dragging all the material down the hill. He stated that this would protect the pool from another Hurricane Irene level type of storm event. He added that if the water came over the six-foot wall now with a storm such as Hurricane Irene, Rosemary Gordon would lose her pool and may start losing her home. He thought this was a long-term fix to the everyday erosion from rainwater as well as protecting Ms. Gordon from a hurricane level event.

Councilor Whitman noted that in the design for the water runoff, there were infiltration areas with one that looked like a stone wall. Kevin Lineberger stated that there was no stone and that it was sand and would be stabilized with topsoil and grass seed. Councilor Whitman pointed out that the stone wall looked like it was coming off the side of the home in the drawing. He asked if it was a rock runoff. Mr. Lineberger stated that there was a wooden walkway that will be four feet down from the pool and would sit on top of the short bulkhead. He added that the drawing showed an existing walkway. Rosemary Gordon pointed out that they were steppingstones, along with installed rainwater capture systems. Kevin Lineberger stated that Rosemary Gordon had an as-built survey completed where the surveyor located the steppingstones on the plan. Rosemary Gordon noted that her rainwater capture system recently captured five gallons of rainwater.

Town Attorney Hobbs asked Council if they had questions for Rosemary Gordon or Kevin Lineberger. There were none.



Town Attorney Hobbs asked Rosemary Gordon and Kevin Lineberger if they agreed with the four conditions listed for approval in the draft order. Ms. Gordon and Mr. Lineberger stated that they did.

Town Attorney Hobbs asked if any of the sworn witnesses wished to make a presentation. There were none.

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 four proposed conditions.

Mayor Pro Tempore Thibodeau moved to approve SUP23-006 as presented, with the findings of fact as well as the four proposed conditions listed.

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 Resolution 23-09, a Resolution of the Town Council of the Town of Duck, North Carolina, Revising the Personnel Policies of the Town of Duck**

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that this was a continuation of the discussion Council had at their June 7, 2023 meeting. He stated that he had proposed during the budget discussion a few changes to the Town's personnel policies, adding that he was following up on them. He pointed out that there were three changes he wanted to discuss with Council:

1. Change the wording in the personnel policy regarding vacation time accrual to allow prior government service to count toward total years of service.
2. Implement a retiree health insurance supplement and allow retirees, who retire after July 1, 2023, to participate in the Town's health insurance plan.
3. Implement a tuition assistance program.

Town Manager Havens stated, with regard to the vacation accrual, Council had a discussion at their June 7, 2023 meeting about this change. He stated that the question

became what was meant by prior government service and if it needed to be continuous. He pointed out that Council had in their agenda packets some options related to the vacation accrual. He reminded Council that 17 of the 40 Town employees would be impacted by this change, adding that all but three were in public safety. He stated that the draft resolution had language that would change the years of service definition in the vacation leave accrual section of the personnel policies. He stated that Council was presented with two options based on the discussion with Option A adding the word "Federal" and Option B adding "Federal", but also recognizing an employee's continuous service with the following language added: "...and such prior service, which need not be contiguous, must have ended no more than two years earlier than the date of initial employment with the Town."

Councilor Mooney thought Option B was stronger and closed an existing loophole. Mayor Pro Tempore Thibodeau agreed that Option B gave a little more control. She asked why two years over three were chosen. Town Manager Havens stated that there was no particular reason for it other than two years was a fairly short time away from the public sector. Mayor Pro Tempore Thibodeau thought with regard to family situations and taking care of someone that required an employee to leave service to care for a family member was the reason. She wondered if the two years would be too stringent, adding that she did not want to rewrite the section and was curious where the two years came from.

Councilor Schiano thought Mayor Pro Tempore Thibodeau had a valid point. He thought something needed to be picked, adding that he thought leaving employment for two years for childcare may not be enough time, adding that another number could be picked. He suggested the following language: "...as long as the years an employee was away from public service do not exceed the amount of time and employee was in public service, it would be counted..." He pointed out if an employee left a private sector company after working there for seven years and then returned in less than seven years, the employee would receive credit for their pension that the employee had before.

Mayor Kingston stated that he liked Option B and thought it should be kept simple. He thought two years could always be changed in the future if it was not working. He stated that, generally if someone was leaving the Federal government, they would be looking for another job within a two-year timeframe, which was a reasonable period of time to find another job. He reiterated that he liked Option B.

Town Manager Havens stated that Council could change the policies any time they wanted to. He stated that if the two years were a problem, he would come back to Council to explain why so Council would have a specific case as to why it needed to be modified.

Mayor Pro Tempore Thibodeau stated that she was concerned about changing policies for specific cases, but since Council was developing the policy and the spirit of the policy was to be more inclusive, she thought it should be looked at again if Town Manager Havens ran into any trouble with it.



It was *consensus* to use Option B for Vacation Accrual in the Personnel Policies.

Town Manager Havens stated that the retiree health insurance stipend was the next item. He reminded Council that Duck is the only town on the beach that does not offer health insurance for retired employees. He added that Council did not have any discussion related to the change of how the Town would determine if an employee was eligible, noting that they would need to be eligible for unreduced retirement under the Local Government Employees Retirement System and have served a minimum of 15 years with the Town of Duck at their time of retirement. He pointed out that it would not hit the Town's budget until Fiscal Year 2028, at which point it would be one employee, with it peaking in Fiscal Year 2044 with 15 employees. He stated that the information was based on the Town's current employee census, but things could change.

Town Manager Havens stated that in listening to Council's discussion at their June 7, 2023 meeting, Option A was what was in the original resolution. He added that there was some discussion regarding requiring proof of insurance and proof that someone was paying for their medical insurance through another provider if they do not stay on the Town's policy. He noted that it was already in the language in Option A. He stated that he had two more options to review with Council based on their discussions at the June 7, 2023 meeting, with the following language added:

Option B: If on the Town's health and dental insurance plan, the retired employee must pay their portion of the premium due, by the due date established by the Finance Administrator, prior to the stipend being applied. If the premium is not paid when due, insurance coverage may be terminated and the eligibility for the stipend forfeited.

Option C: In order to qualify for this stipend, the retired employee must remain on the Town's health and dental insurance plan. The retired employee must pay their portion of the premium due, by the due date established by the Finance Administrator, prior to the stipend being applied. If the premium is not paid when due, insurance coverage may be terminated and the eligibility for the stipend forfeited.

Town Manager Havens reiterated that Option A was the original language and Options B and C adds additional language with Option C stating that the employee must stay on the Town's plan.

Mayor Kingston stated that he liked Option C. He thought it would help the Town's employees when they retire to stay on the Town's plan as well as providing a stipend to help pay for it. He stated that if the employee was not on the Town's plan, they would be going on a cheaper one, so the Town would be giving them money that was geared to help them pay for the insurance and/or if someone else provides insurance for them. He reiterated that he was in favor of Option C.

Mayor Pro Tempore Thibodeau stated that she preferred Option B. She pointed out that Council was given a chart that showed what the other towns were providing and this was still much less than what the other towns were offering. She added that the whole purpose was for recruitment and appreciation for service. She noted that this plan would not kick in until the 15-year mark, so it was already more restrictive in that aspect. She thought when someone leaves employment, they may have to go to a different health plan because it was less expensive and because they were in a circumstance that required it. She thought if an employee could afford the good plan that the Town was offering, they would opt to stay on it. She added that she was looking at the broader picture where an employee could be added to their spouse's plan or may have to downgrade their plan. She stated that for all of the reasons listed, she was in favor of Option B.

Councilor Whitman stated that he preferred Option B.

Councilor Mooney asked when a new employee starts with the Town if they were offered choices in healthcare or if it was just one plan. Town Manager Havens stated that the Town has one plan, adding that the options would be that the employee could add a spouse, children, or family to their plan.

Mayor Kingston pointed out that the Town has a very competitive plan, both cost-wise and coverage-wise. He asked if the plan was adequate for the Town. Town Manager Havens stated that it was. He explained that the Town's plan was grandfathered, meaning it does not meet the current requirements of the Affordable Care Act. He stated that it has the effect of keeping the premiums down, but with regard to preventative care, the cost comes out of the employee's pocket instead of insurance paying for it. He added that staff would be looking at the insurance plan now that the Town has a new insurance broker to see if there will be ways to restructure the health insurance program. He pointed out that he did not want to get the premiums out of line but he wanted to acknowledge the fact that employees were paying out of pocket for preventative care, which has been pretty significant at times.

Mayor Kingston stated that he looked at businesses and municipalities who were in deep trouble due to benefits that they approved many years ago and now cannot pay the liability. He stated that he did not want future Council's to have to deal with that. He stated that Duck was the youngest town on the beach and the other towns have a lot more employees, which will result in significant tax increases as retirement goes up in the other towns. He thought Council needed to be cautious when looking toward the future. He knew that, right now, the projection was small but it could grow exponentially based upon health costs. He reiterated that he wanted Council to be cautious going into the next couple of years.

Town Manager Havens stated it was the primary driver of this not being considered a retiree health insurance plan. He stated that he was not saying the Town was going to offer to pay for the retiree's health insurance as other towns have done. He explained that their liability continues to increase as medical costs continue to increase. He added that with a stipend, it was \$200 subject to appropriation in the annual budget. He noted that



the liability does not accrue at the same rate as other towns where they have to deal with actuarial tables. Mayor Kingston pointed out that future Councils could always address and change the stipend on a yearly basis if they wanted to. Town Manager Havens agreed.

Councilor Schiano stated he was confused about what Council was trying to accomplish. He clarified that, currently, when one of the employees meets the eligibility for retirement, they would have the option to continue to purchase the Town's health insurance. Town Manager Havens stated that they would not. Councilor Schiano thought the Town was trying to find some way to bridge the gap if an employee retired before age 65. Town Manager Havens stated he was correct. Councilor Schiano stated that if that was the Town's objective, he thought the Town could allow employees to continue to buy the coverage at the same amount they are presently paying. Town Manager Havens pointed out that employees do not pay for their coverage if it is employee only. Councilor Schiano asked if the employee decided to stay on the Town's insurance, they would have to pay what the Town pays for it. Town Manager Havens stated he was correct, adding that the idea of the stipend was to offset a portion of that. Councilor Schiano clarified that if the Town allowed the employee to pay what the Town pays and provided a stipend, he expected that it would be a reasonable cost for an insurance plan versus what an employee would have to pay on the open market. He thought it would be more expensive for coverage and a big improvement over what the Town currently offers. Town Manager Havens agreed.

Councilor Schiano wondered if the employee left employment and found cheaper insurance in the outside market or found work somewhere that offered insurance, why the Town should give the employee the stipend. He thought it became an enhancement to retirement income as opposed to anything else. He stated that he liked Option C. He added that he would be in favor of a sliding scale on Option C where, based on the number of years of service, the Town would reduce the amount the employee would have to pay of the total premium. He stated that he thought the objective was to bridge the gap to age 65. Town Manager Havens explained that the reason for the stipend as opposed to a sliding scale was because of the liability, adding that the \$200/month liability is a fixed figure. He pointed out that if someone found a job elsewhere with insurance, this policy states that if that happens, the employee would not be eligible for the stipend.

Mayor Kingston stated that if the employee left and went on their spouse's plan, then someone else would be paying for the insurance. He stated that he still was in favor of Option C. He added that retirees that come out of a business have companies that guarantee health plans in the future have changed them and put them into other plans or even disallowed the plans. He stated that what the other towns were doing today could change in the future as they start getting into the liabilities. He thought there would be more control if the employee remained on the Town's plan and helped them bridge the gap. He thought once an employee gets on a different insurance plan, the Town cannot control that. Town Manager Havens stated that the policy states that the employee would have to provide proof of coverage and the premiums paid. Mayor Kingston wondered if the employee was able to obtain cheaper insurance, why the Town would offset the cost.

Mayor Pro Tempore Thibodeau understood Mayor Kingston's point about wanting to control costs. She thought the \$200 stipend would achieve that goal. She thought trying to broaden the benefit to something that the Town's plan took into account that the employee worked for the Town at least 15 years or more as well as having family to consider, dependents or spouses that makes another plan more affordable. She thought it needed to be broadened to not just employee but also the employee's family. She thought it gave the Town more flexibility to assist the employee as well as giving the Town control. She stated that she was still in favor of Option B.

Councilor Mooney stated that he did not see where Option B surrenders any of the Town's control since the employee has to prove that they paid the premium before they receive the stipend. He stated that he was in favor of Option B. He pointed out that people move to other parts of the country and their old health care is not tenable wherever they go.

Councilor Schiano suggested that every employee that retires with 15+ years of service will receive \$200 per month more. Councilor Mooney stated that the employee would not be proving that they paid for the health insurance. Councilor Schiano agreed, wondering what the difference was. He asked what Council was trying to do – boost retirement income or help the employee bridge the gap. Mayor Pro Tempore Thibodeau thought it helped bridge the gap. She noted that the employee may want to stay on the Town's plan or they may need to go on another plan. She wondered what the difference for the Town would be if it was trying to help the employee. She stated that it gives a little more flexibility.

Councilor Whitman thought if one looked at the other towns, some of them could take Duck's employees away just because of this benefit. He noted that 100% coverage by some of the other towns was a sweet offer.

Mayor Kingston pointed out that the proof was not there because the employees were coming to Duck for employment and not the other towns. He agreed with Councilor Schiano's comments in that it was a retirement enhancement if the Town was not controlling it. He stated that the Town was trying to help offset the cost as a bridge to retirement and the best way to do that is to keep them on the Town's plan and provide the stipend. He pointed out that Council could always address the stipend amount in the future. He thought the Town would lose control if Option B were selected.

Mayor Pro Tempore Thibodeau asked Mayor Kingston if he was more concerned about people taking advantage of it if Option B was chosen, so therefore the Town would be paying out more than the \$200. Mayor Kingston stated that he could not answer the question as it was an unknown. Councilor Mooney stated that the answer was that the Town would pay \$200, adding that it would not change whether it was Option B or C. He added that Option B allows an employee to move to another state and if their benefits do not align with the Town's, they can change and still receive the \$200 after they pay the premium. He noted that Council needed to consider that a lot of the employees, when



they retire, will be looking to relocate to somewhere else where their dollars will go farther. He thought it would be wrong for Council to try to control what the employee chooses for their healthcare. He stated that the payment would not be changing, it was just a different choice for the employee. Mayor Kingston thought Option B could be qualified by stating that if an employee moves to a state where they cannot take the insurance with them, they could negotiate for their own insurance with their own agency. He thought there could be a caveat to Option B, adding that the more control the Town has, the more control there will be in the future.

Councilor Schiano asked what the monthly amount the Town pays for the employee/family on the plan. Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes stated that family plans were approximately \$1,800 per month; employee only was \$498; and employee/spouse or employee/children were about \$1,200/\$1,300 per month. Town Manager Havens noted that the Town pays 100% for employee only and 75% for employee/spouse, employee/children, and family coverage. He pointed out that it was a very generous approach to adding family members. Councilor Schiano stated that the cost was more than he thought it would be. He thought the employee could probably do better but would not have the same coverage. Town Manager Havens stated that it allows the employees to make choices. Councilor Schiano stated that he would be in favor of Option B, adding that he would not give the employee the option to stay on the Town's insurance at all.

Mayor Pro Tempore Thibodeau asked why the Town would not want the employee to stay on the insurance plan. She pointed out that it was only \$200 regardless of where the employee goes. She wondered what the difference would be if the employee stayed on the Town's plan versus going to another plan. Councilor Schiano stated it was usage, adding that it will continue to add to the usage. He reiterated that he was in favor of Option B. He thought it would be a lot of work for the employee and the Town because the employee would have to prove that they paid the premium each month and the Town would have to verify that the employee paid the premium. He thought that was okay. Town Manager Havens noted that for the number of employees, it will be manageable to administer.

Town Manager Havens stated that the last item was the tuition assistance program. He noted that there was not a lot of discussion at Council's July 7, 2023 meeting about it. He stated that he budgeted \$9,600 for it for this year with a maximum of \$1,200 per fiscal year per employee that participates. He stated that he would see how the first year goes and come back to Council if the \$9,600 needed to be adjusted.

Mayor Kingston thought there was consensus on the vacation accrual with Option B. He thought there was a split vote on the retiree health insurance stipend but thought the consensus was for Option B.

Mayor Pro Tempore Thibodeau moved to approve Resolution 23-09 with Option B for the vacation accrual as well as Option B for the retiree health insurance stipend.

Motion carried 5-0.

**NEW BUSINESS**

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-08, an Ordinance Establishing a Definition for *Drug Paraphernalia Sales* in the Zoning Ordinance**

Director Heard stated that at Council's February 2, 2022 meeting, Council had authorized staff to work with the Town Attorney on developing a definition for *Drug Paraphernalia Sales*. He stated that after thoroughly researching the issue, Town Attorney Hobbs drafted a definition intended to provide a reasonable and legally defensible basis for staff interpretations. He added that the Planning Board reviewed the proposed ordinance at their June 14, 2023 meeting and voted unanimously to recommend approval. He noted that the public hearing would be held at Council's August 2, 2023 meeting if they so desired to have the ordinance move forward.

Town Attorney Hobbs noted that there was an Attachment B in Council's agenda packets that has the state statute. He explained that state law preempts local regulation of this to the extent that it already set out definitions, adding that he was focusing on Subsection B of the statute where it states the following: "...the following along with other relevant evidence..." He stated that he seized upon that phrase and added to the Code the two additional provisions as relevant evidence. He thought it should be recognized that these will be looked at on a case-by-case basis, but what the ordinance would do would be to provide some guidelines or assistance for the Planning staff to try to administer and regulate businesses as necessary.

Mayor Pro Tempore Thibodeau asked if the genesis of bringing the issue to Council was because drug sales are prohibited. Director Heard stated she was correct. Mayor Pro Tempore Thibodeau stated that if someone sells something that could be considered drug paraphernalia, staff would have to decide if it was within reason. Director Heard stated that the Town has two businesses and possibly a third that have approached the Town expressing an interest in selling the items and asking if there were limitations on it.

Town Attorney Hobbs stated that the Code had the use table, but this would bolster staff's ability to distinguish the sales.

Councilor Mooney moved to authorize a public hearing on Ordinance 23-08 at Council's August 2, 2023 meeting as presented.

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

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

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

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

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

### June FY 2023 Financial Presentation

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

### MAYOR'S AGENDA

Mayor Kingston stated that the mayors/chairmen meeting will be on July 18, 2023 hosted by the Town of Southern Shores. He stated that he had sent a letter to Council and Town Manager Havens regarding starting work on the Town Manager's annual review. He noted that Council received a blank review form but it did not need to be completed until they receive Town Manager Havens' input, which was due on July 21, 2023, adding that Council's input is due to Mayor Pro Tempore Thibodeau by July 28, 2023, culminating in a closed session at Council's August 2, 2023 meeting for the review. He noted that Dare County put out a notice that Council filing starts on Friday, July 7, 2023 at noon and runs through Friday, July 21, 2023 for anyone interested in being a candidate for Town Council. He thanked Director Nickens, Town staff and the volunteers for a great 4<sup>th</sup> of July parade.

### COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau echoed Mayor Kingston's comments about the 4<sup>th</sup> of July parade. She stated that she liked hearing about staff reaching out to the various vendors, especially tents and golf carts, adding that she appreciated the collaboration. She pointed out that she was planning to run for Council.

Councilor Mooney stated he had nothing to report.

Councilor Whitman thanked Town staff for a great 4<sup>th</sup> of July parade as well as all of the events that have been held.

Councilor Schiano thanked Town staff for a great 4<sup>th</sup> of July parade.

**OTHER BUSINESS**

**Additional Public Comments**

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

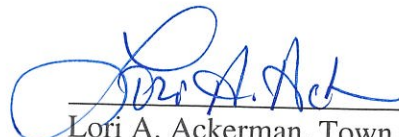
Mayor Kingston noted that the next meeting would be the Regular meeting on Wednesday, August 2, 2023 at 6:00 p.m.

**ADJOURNMENT**

Councilor Schiano moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:39 p.m.

  
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Lofi A. Ackerman, Town Clerk

Approved: August 2, 2023  
  
\_\_\_\_\_  
Don Kingston, Mayor

