

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
August 2, 2023**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, August 2, 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; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None

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

Mayor Pro Tempore Thibodeau moved to remove the second closed session from the agenda.

Motion carried 5-0.

Mayor Kingston asked Councilor Tony Schiano 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.

Donna Creef of the Outer Banks Association of Realtors was recognized to speak. Ms. Creef stated that recently the Board of Directors at the Association adopted a resolution in support of Federal legislation that would authorize the NFIP for five years and make significant changes to it. She stated that she was asking Council to adopt a resolution in support of the National Flood Insurance Reauthorization and Reform Act of 2023. She explained that the NFIP was currently authorized until September 30, 2023, adding that the resolution that the Outer Banks Association of Realtors adopted was sent to Senator

Budd, Senator Tillis, Congressman Murphy, and Congressman McHenry. She hoped Council would consider adopting the resolution.

Mayor Kingston stated that Council would be considering the resolution at their mid-month meeting.

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

CONSENT AGENDA

Minutes from the July 5, 2023, Regular Meeting; Approval of a Contract with Coastal Protection Engineering for a Townwide Beach and Storm Vulnerability Analysis; Approval of a Contract with Tidewater Fibre Corp. for Residential Recycling Collection; Approval of a Memorandum of Agreement between the Town of Duck and the NC League of Municipalities for Municipal Accounting Services, Cybersecurity and Technical Assistance; Budget Amendment

Councilor Mooney moved to table the approval of a contract with Coastal Protection Engineering until the September 6, 2023 meeting.

Town Manager Drew Havens was recognized to speak. Town Manager Havens asked Councilor Mooney if he would accept having the item at Council's August mid-month meeting. Councilor Mooney stated that it would be fine.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs clarified that the motion was to remove the item from the Consent Agenda as well as to approve the Consent Agenda without it or just the one item. Councilor Mooney stated that his motion was just to remove the item.

Motion carried 5-0.

Councilor Schiano moved to approve the consent agenda as amended.

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, Town Manager Havens, and Police Chief Jeffrey Ackerman went on to present Police Sergeant Timothy Armstrong with his 5-year service recognition certificate and \$50 gift certificate.

Mayor Kingston, Town Manager Havens, and Police Chief Ackerman went on to present Police Corporal Justin Naquin with his 5-year service recognition certificate and \$50 gift certificate.

Mayor Kingston, Town Manager Havens, and Fire Chief Donna Black went on to present Firefighter Jose Ramirez with his 5-year service recognition certificate and \$50 gift certificate.

Mayor Kingston noted that Fire Captain Jared Smith could not make it to the meeting. He went on to give Fire Captain Smith's 15-year service recognition certificate and \$150 gift certificate to Fire Chief Black in his absence.

Mayor Kingston, Town Manager Havens, and Director of Community Development Joseph Heard went on to present Senior Planner Sandy Cross with her 20-year service recognition certificate and \$200 gift certificate.

QUASI-JUDICIAL PUBLIC HEARING

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

LEGISLATIVE PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 23-08, an Ordinance of the Town Council of the Town of Duck, North Carolina, Establishing a Definition for Drug Paraphernalia Sales in the Zoning Ordinance

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs opened the public hearing, noting that the Council would be sitting as a legislative body. He stated that Director Heard would give a presentation.

Director of Community Development Joseph Heard was recognized to speak. Director Heard stated that the ordinance was drafted by Town Attorney Hobbs which proposes to add a definition for *Drug Paraphernalia Sales* in Section 156.002 of the Zoning Ordinance. He stated that the proposed definition ties back to the State's definition in the General Statutes and also provides guidance for interpretation of whether a business is primarily engaged in the sale of drug paraphernalia.

Director Heard pointed out that businesses primarily engaged in drug paraphernalia sales are not permitted in any zoning district in Town. He noted that during the past year, staff was contacted by three different businesses about selling items that would be considered drug paraphernalia, which included equipment, products and materials designed or

intended to introduce controlled substances into the human body. He added that among many items, examples include pipes, bongs, rolling papers, small spoons, and roach clips. He stated that it was challenging for staff to interpret and define what type and how many of these items would constitute a drug paraphernalia business.

Director Heard stated that staff asked Town Attorney Hobbs to develop a proposed definition for *Drug Paraphernalia Sales* in order to provide guidance to staff when making these types of interpretations in the future. He stated that after Town Attorney Hobbs thoroughly researched the issue, he prepared a draft ordinance for Council's consideration. He noted that although it was relatively general in nature, the definition was intended to provide a reasonable and legally defensible basis for staff interpretations.

Director Heard stated that the Planning Board discussed the ordinance at their June 14, 2023 meeting and noted that implementation of the proposed standards would still require interpretation by Town staff in most instances, but the definition would provide some guidelines for staff to base their interpretation upon. He noted that as it clarified and provided guidance for the Town standards relating to drug paraphernalia sales in a legally defensible manner, the Planning Board voted unanimously to recommend approval of Ordinance 23-08.

Mayor Pro Tempore Thibodeau asked Director Heard if he felt he had the information he needed in order to move forward. She further asked if it would help him and staff. Director Heard stated that it will help staff and was a step in the right direction.

Councilor Schiano asked what prompted the issue. Director Heard explained that there were two different businesses in the past 18 months that have come into Town looking to sell these types of products as part of a larger business. He stated that they were concerned about what they could and could not do. He added that staff had to come up with an interpretation on what they could and could not do since the Zoning Ordinance did not have a definition for it. He noted that in both cases the businesses were eventually approved but were told they could not sell certain items but could sell some of the other items that fell under the definition. He stated that the issue was generated by staff and Council was asked to consider this to move forward, while staff worked with Town Attorney Hobbs to try to give staff something to provide a better baseline when making those interpretations.

Councilor Whitman asked if there were any other stores in Town that tried to sell items that were not on the list. Director Heard that there were retail businesses that carry a very small portion of what they sell that fall under the State's definition of drug paraphernalia. He thought Wee Winks Market sold items that may be on the list. He wasn't aware of any businesses that tried to add drug paraphernalia products to sell.

Mayor Kingston asked if the businesses that Director Heard approved came to Town. Director Heard stated that they did with one that is currently closed while another is still open. Mayor Kingston asked if the businesses were in agreement with the rules that were set up at that time. Director Heard stated that they were.

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

Town Attorney Hobbs asked if Council had any remaining questions.

Councilor Schiano asked what would happen if Council prohibited the sale of drug paraphernalia completely. He asked if this was something Council could do. Town Attorney Hobbs stated that he did not look at that issue but thought the draft ordinance was more realistic and defensible. He added that if Council decided to have zero tolerance for it, it would be a difficult enforcement situation for Town staff, especially if it was a business that sold one or two items. He thought the goal was to have a minimal tolerance and not a zero tolerance. He thought it could be done and he could look into it if he was directed to do so. Director Heard pointed out that a copy of the State statute was in Council's packets that has the definition. He noted that it was pretty broad ranging with some items that were considered drug paraphernalia that were used for other purposes that were not drug related.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and reminded Council that they were sitting as a legislative body and in order to adopt the ordinance on the first read, it would require a two-thirds vote of all members, which was four members. He turned the meeting over to Mayor Kingston for deliberation.

Mayor Pro Tempore Thibodeau moved to approve Ordinance 23-08 as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-07, an Ordinance of the Town Council of the Town of Duck, Amending Sections 30.35 through 30.40 of the Town Code Providing a Description and Duties of the Planning Board

Director Heard stated that Ordinance 23-07 proposes to update and amend Town Code Sections 30-35 through 30-40 in the following ways:

- Add the general purposes of the Planning Board
- Update the list of officers
- Establish duties for each of the Board's officers
- Generally outline meeting schedules, cancellation, and notice requirements
- Update duties and expectations for the Board members

Director Heard explained that most of the amendments were items moved from the former Planning Board by-laws to the Town Code. He added that the proposed

amendments were intended to serve a significant public purpose by providing a more comprehensive description of the Planning Board and their duties in the Town Code instead of the by-laws, making the knowledge more publicly accessible to potential Planning Board applicants, persons submitting development permits, and the general public. He noted that the draft Rules of Procedure in Council's packets were intended to streamline the former by-laws to an outline concerning how the Board conducts their internal decision-making procedures.

Director Heard stated as part of updating the ordinance and establishing Rules of Procedure, it was noted that the following duties were previously outlined in the Planning Board by-laws but were not actually under the Board's authority or involvement. He added that the following items were proposed to be corrected as part of the amendments:

- The Planning Board was authorized to review the Town Council's Capital Improvement Projects. This duty is conducted annually by the Town Council as part of their budget review and adoption.
- Meetings were required to be held on the second Friday of each month. The Planning Board has met on the second Wednesday for over a decade. There is no benefit to tying the Board members' hands by specifying a date for meetings.
- A specific requirement for an annual report from the Planning Board was required. This report and information on Board activities has been typically given during the Town Council Retreat in February. The amendment proposes more general wording to keep the Town Council and general public advised about matters considered by the Board.

Director Heard noted that at Council's meeting on April 5, 2023, Council heard presentations from candidates for the Planning Board and during Council's considerations, the contents of the Planning Board by-laws were discussed. He added that since the by-laws were adopted in 2004 and have not been updated since then, Community Development staff were asked to review the by-laws and develop recommended amendments. He stated that after reviewing the current by-laws, staff determined that many contents of the by-laws should be located in the Town Code outlining the appointment, description, and duties of the Planning Board. He added that Ordinance 23-07 would add those standards to the Town Code. He pointed out that the by-laws have been streamlined to the draft Rules of Procedure and although the original by-laws were adopted by Council, Town Attorney Hobbs advised staff that the Rules of Procedure were only guidelines and should be adopted by the Planning Board members.

Director Heard stated that since the applicable sections of the Town Code do not relate to the development standards of the Town, the Planning Board technically does not have a role in considering or adopting of the amendments to Sections 30-35 through 30-40; however, recognizing that the Board likely have an interest in these amendments to their description and duties, staff presented the draft amendments to them for review and comments. He stated that over the course of three public meetings, the Planning Board reached consensus on the following changes to the draft ordinance and its own Rules of Procedure:

- Subsection 30.37(A) was amended with the Planning Board’s recommendation to require full-time residency for Board member eligibility.
- Subsection 30.37(B) was amended to specify Planning Board member eligibility for reappointment for additional terms.
- Subsection 30.37(D) was added outlining a requirement to complete an oath of office prior to service on the Planning Board.

Director Heard noted that with the Rules of Procedure, the guidelines for meeting attendance were amended to missing two consecutive or three regular meetings within a year before a recommendation of removal from the Planning Board is forwarded to Town Council. He stated that the Planning Board voted unanimously to recommend approval of the proposed text amendments and that staff was also recommending approval for a public hearing.

Mayor Kingston asked if there needed to be a better definition of “full-time residency”. He further asked if there was currently a definition for it. Director Heard stated that it was asked at the Planning Board meeting and Attorney Lauren Womble stated that it was a very challenging thing to do. He stated that the Planning Board did not include that. He thought Town Attorney Hobbs could speak to the liability of defining “full-time residency”.

Town Attorney Hobbs explained that when trying to define residency or a domiciliary, there were a number of factors that went into it but there was no right line test for it. He stated that it could involve where one lives, what state the driver’s license is for, or for voting registration. He stated that they were factors that could be looked at but thought it best not to get into that type of detail; however, if there was concern on the Council’s part, he could investigate what other towns have tried to do with regard to defining the term.

Councilor Mooney asked why the Town would not look at voter registrations or driver licenses. He pointed out that it was simple, adding that it should suffice. Town Attorney Hobbs thought Council could make changes at their public hearing, adding that staff could bring forward to Council’s September 6, 2023 meeting a definition that Council could consider adding to the provision. He did not think it was substantive enough to require it to go back to the Planning Board, but Council could do so if they wished.

Councilor Schiano thought voter registration would be appropriate, adding that if one was not a voter in Duck, he wasn’t sure the individual should be sitting on a board that decides policy for people who are voters.

Councilor Mooney stated that the language under Section 30.37(B) stated the following: “...Board members shall be eligible for reappointment for additional terms...” He asked if additional language could be included where a term expires, regardless if the incumbent Planning Board member wants to remain on the Board or not, that there has to be an advertisement and an open application for non-members of the Planning Board.

Director Heard stated that he could add that in for Council's consideration before the public hearing if they were in agreement with it.

Council Whitman asked if Council was trying to tell people that serve on the Planning Board that after they serve a three-year term, Duck is no longer interested in them serving. He clarified that if there were multiple openings and only one person who wasn't on the Board applied for it, Council could still appoint the incumbents without considering the other person. Director Heard understood that Councilor Mooney's suggestion was that it would not remove the ability for Council to reappoint someone but it would state what the process would be if someone was interested in being appointed to the Planning Board. Councilor Whitman pointed out that he was referencing the end of a Board member's term and them wanting to be reappointed. Director Heard stated that Council could reappoint the individual, adding that it would not remove that option, but would indicate that an application would need to be submitted.

Councilor Mooney pointed out that Council already went through the process. He added that he was not saying that Council did not want Board members to be reappointed. He stated that his point was that Council has already been through this process when an incumbent's term was expiring and there were a few individuals that applied, but Council reappointed the incumbent. He thought it was a leap to think that Council was telling individuals that their service was not wanted. He pointed out that the Planning Board was arguably the most important, non-elected board in Duck and Council wanted to put the most qualified and best people they could find on that board and not reappoint people because they want to keep doing it. He stated that it was fine if they were the most qualified people, but if not, they should not be reappointed.

Mayor Kingston pointed out that it read that if the incumbents were eligible for reappointment, it did not mean they would be. He added that there were rules as a Town Council of how they deal with the open positions by advertising and voting.

Director Heard stated that it did not have to be in the ordinance for Council to complete the process, but there was no issue with adding it if that was what Council wanted. Mayor Pro Tempore Thibodeau stated that if there was an opening it would be advertised, even though it has always been advertised when there was an opening.

Town Manager Havens thought Councilor Mooney was suggesting that the Town codify the procedure that Council has been using. Mayor Kingston suggested adding the following language where it speaks of eligible for reappointment: "...through the application or reapplication process..." He added that it would solve the problem. Town Manager Havens thought the language change was not substantive.

Town Attorney Hobbs pointed out that in the Town Charter, when it comes to eligibility to serve on the Town Council with regard to residency, it had the following language: "...to be eligible for election to the Town Council an individual must reside in the Town of Duck..." He thought if Council were to analogize the proposed code section, the Town Charter was more specific in that the language read as follows: "...not only resides

but is a full-time resident of the Town...” He stated that he could bring back a more detailed definition or description of eligibility, but Council would be going beyond their own eligibility to serve on Town Council.

Councilor Mooney agreed with Town Attorney Hobbs and noted that the Council was elected while the Planning Board was appointed, which was a major difference. Town Attorney Hobbs agreed. Mayor Pro Tempore Thibodeau pointed out that eligibility goes through the Board of Elections, where they vet the candidates. Councilor Schiano thought it was good governance to allow people to submit an application.

Mayor Pro Tempore Thibodeau moved to authorize a public hearing on Ordinance 23-07 for Council’s September 6, 2023 meeting.

Motion carried 5-0.

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-10, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending Sections 156.040 and 15.058 of the Zoning Ordinance Clarifying Where and Under What Criteria Wireless Telecommunication Facilities are Permitted

Director Heard stated that Ordinance 23-10 proposes to resolve two issues related to the establishment of wireless telecommunication facilities in the Town of Duck, which were as follows:

1. The Permitted and Prohibited Use Table in Section 156.040 of the Duck Town Code would be amended to include “stealth antennas” and “wireless telecommunication facilities”. Both of these uses are permitted by administrative approval in most zoning districts but require a special use permit in Single-Family Residential (RS-1 and RS-2) districts.
2. Subsection 15.058(J)(1)(b) of the Duck Town Code would be amended to clarify that new utility poles supporting wireless telecommunication facilities can be as tall as 50 feet in height outside of single-family residential zoning districts.

Director Heard explained that when Town staff were evaluating a recent inquiry, they noticed a discrepancy between the Permitted and Prohibited Use Table in Section 156.040 and standards dealing with wireless telecommunications systems in Section 15.058. He stated that in order to avoid any confusion in the future, staff were proposing to resolve the discrepancy by adding the standards currently outlined in Section 15.058 to the use table.

Director Heard noted that when staff was evaluating another recent inquiry, they became aware that the Town’s standards for the height of new utility poles accommodating small wireless facilities were presently specified and limited on residential properties and public rights-of-way, but no standards were prescribed for commercial or other non-residential properties. He added that to clarify the intended standard, staff was proposing to close the loophole by establishing specific standards for the height of new utility poles

accommodating small wireless facilities on commercially and other non-residentially zoned properties. He noted that the proposed maximum height of 50 feet was consistent with State standards for utility poles within public rights-of-way.

Director Heard stated that the Planning Board discussed the proposal at their July 12, 2023 meeting and, as it clarifies Town standards and provides guidance for staff and other parties relating to wireless telecommunication facilities, the Board voted unanimously to recommend approval of the proposed text amendment. He added that staff was also recommending approval for a public hearing.

Councilor Whitman asked if the 50-foot above ground level referred to the pole itself or the device on top of the pole. Director Heard stated that it included all of it.

Councilor Schiano asked if there was a difference between wireless telecommunication facilities and wireless telecommunication poles. Director Heard stated that there were. Councilor Schiano asked what the difference was. Director Heard explained that a wireless telecommunication facility was everything from 500-foot-tall towers to the little boxes that aren't very noticeable along the road that were more common. He stated that the wireless telecommunication poles were just utility poles. He pointed out that they were defined in the State statutes, adding that the State created provisions that exempt up to 50 feet within their rights-of-way and limits what towns can regulate in order to help the telecommunication industry provide service.

Councilor Schiano asked if the ordinance was related to Verizon, which were asking people to install poles on private property. He asked if it was tied into that. Director Heard stated that Verizon is one of several providers that was looking to install poles. He explained that when Town staff are contacted, it is through another company that deals with the location sites, which may be Verizon or another wireless company. He added that they are usually scouting sites and are given different radiuses in terms of where the site needs to be and then they contact people within that radius. He stated that the best areas are located in the State's rights-of-way, which are common in the Town of Southern Shores. He pointed out that Duck has one pole at Scarborough Lane that is unobtrusive, adding that a new one will be installed near the Sanderling Resort. He didn't think there would be a huge proliferation of the poles in Town.

Councilor Schiano wasn't sure how tall the pole in the Town of Southern Shores was but it wasn't bad and was relatively unobtrusive considering how big it was. Director Heard stated that as long as the equipment box is small in size, it would be exempt under the State law. He added that if it was bigger, it would have to come before Council as a Special Use Permit. He stated that Council has the authority to regulate bigger, more obtrusive ones, but as long as it was a small wireless facility, they meet the State definition and could install them. Town Manager Havens explained that the one in the Town of Southern Shores that was a "mast" would come through as a Special Use. He added that staff was discussing one that looked like a paint bucket on the side of a pole with a control box attached to it that is mounted towards the ground. Councilor Schiano

stated that they weren't too bad. Town Manager Havens agreed. Director Heard pointed out that he was not discussing the very large monopole in the Town of Southern Shores.

Mayor Kingston clarified that the wireless providers could put the pole on the public right-of-way. Director Heard stated that they could. Mayor Kingston asked if they could do it without obtaining a permit. Director Heard stated that they were technically required to obtain a permit through the Town and staff were technically required to issue it. He noted that the Town charges \$100 for the permit, adding that staff could not deny it as long as they meet the standards.

Councilor Schiano moved to authorize a public hearing on Ordinance 23-10 for Council's September 6, 2023 meeting.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-09, an Ordinance Amending Section 156.162 of the Zoning Ordinance Authorizing the Board of Adjustment to Grant Continuances and Adopt Rules of Procedure

Director Heard stated that Ordinance 23-09 proposes to amend Section 156.162 of the Zoning Ordinance with Subsections (D) and (E) authorizing the Board of Adjustment to grant continuances and adopt its own internal Rules of Procedure. He explained that from time to time, an applicant or other party to a Board of Adjustment decision may have the need to request a continuance if they felt that a fair hearing or their due process rights will be negatively impacted by the unavailability of a key witness or the full slate of the voting Board members. He stated that Section 160D-406 of the North Carolina General Statutes allows a continuance to be granted in certain situations for boards engaging in quasi-judicial decisions; however, the Town standards creating the Board of Adjustment and assigning its powers and duties do not specifically state that the Board has the authority to grant continuances or adopt its own internal Rules of Procedure. He added that in order to prevent any questions or legal challenges about this authority in the future, Town Attorney Hobbs proposed to clearly spell out this authority.

Director Heard stated that the Planning Board discussed the proposal at their July 12, 2023 meeting and voted unanimously to recommend approval of the proposed text amendment. He added that staff was also recommending approval for a public hearing.

Town Attorney Hobbs stated that what prompted the text amendment was that sometimes an applicant wants to have a witness present but the witness cannot be at the meeting and the applicant may find out a day or two before the hearing. He stated that, rather than having the Board of Adjustment convene and then recess the meeting to another time, the text amendment provides that the Board chair may take the action prior to the meeting so staff doesn't have to go through the trouble of having all of the members come to the meeting only to reschedule it for another time so the witness could be present. He

thought it made for a more efficient way for the Board to act and not unnecessarily bring everyone together for a very short time to vote to continue the meeting until a witness could be available.

Mayor Pro Tempore Thibodeau moved to authorize a public hearing on Ordinance 23-09 for Council's September 6, 2023 meeting.

Motion carried 5-0.

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 23-11, an Ordinance Amending Applicable Sections of the Town Code Removing the Planning Board from the Review and Approval Process for Special Use Permits

Director Heard stated that Ordinance 23-11 proposes to amend several Town Code sections to remove the Planning Board review from the special use permit review process. He stated that the following sections would be amended:

- Section 30.40 – Removes review of development proposals (which only occurs during the special use permit process) from Planning Board duties.
- Section 156.117 – Specifies that site plan review under the special use permit process is the sole purview of the Town Council.
- Section 156.093 – Removes references to administrative and Planning Board review of access and buffer layouts during the special use permit process.
- Section 156.155 – Remove all references to Planning Board review during the special use permit review process.

Director Heard stated that the Planning Board discussed the proposed amendments at their July 12, 2023 meeting with staff and Attorney Lauren Womble. He stated that the members inquired about the current review process and discussed what would be lost by removing the Planning Board from the process. He noted that the Planning Board's review adds value to the process as the Board focuses on development issues on behalf of the Town Council and it was also mentioned that Planning Board review offers an advantage for applicants to have a "trial run" as they go through the process and have a review before it goes to Council. He stated that the Board noted several applications over the years that didn't proceed directly to Council because of questions that came up at a Planning Board meeting.

Director Heard pointed out that Attorney Womble stated that the purpose in reviewing and making changes to the ordinance was to head off any issues that may arise in the future. He stated that Attorney Womble had explained why the Planning Board's involvement raised potential legal questions about the Town's quasi-judicial process. He added that it was noted that removing the Planning Board review would result in a more timely, streamlined review process for applicants.

Director Heard stated that the Planning Board voted 3-1 to recommend approval of Ordinance 23-11 for a public hearing.

Mayor Kingston asked for an explanation of Section 156.093 from the standpoint of removing references to administrative and Planning Board review. Director Heard explained that, currently, that section represented the Planning Board's involvement in reviewing those items during the special use permit process. He stated if they were no longer part of that process, that statement would need to be removed. Mayor Kingston asked if the term "administrative" referred to Town staff. Director Heard stated that staff would still review it, adding that the section referred to both, but would remove the Planning Board from it. He noted that the section dealt with administrative and Planning Board but the Planning Board part of it would be removed.

Mayor Pro Tempore Thibodeau stated that she has been involved in many special use permit applications over the years and knew that when it was a quasi-judicial hearing that Council only discusses the evidence they are hearing at the meeting. She stated that it has been difficult to parse out the information Council receives from the Planning Board's input. She asked if it was a complicated project and some of it needs to go to the Planning Board while other parts were special use permit parts, if the regular stuff happens and then the applicant applies for the special use permit or if it was all tied in together. She thought there had been applications that needed a special use permit in addition to some Planning Board input but thought she may be mistaken. Director Heard stated it was an all or nothing, adding that if it was a permitted use, that would require a staff review. He stated that if it was a special use, that would fall under the Town Council. Mayor Pro Tempore Thibodeau clarified that it would also have input from staff. Director Heard stated she was correct.

Town Attorney Hobbs thought there have been occasions where someone needed both a special use permit and a variance. He stated that in that case, there would be two hearings by two different bodies. Director Heard stated that one of the situations where that could come into play was with a group development or multi-tenant as it would require a special use permit. He stated that even if someone was doing some minor modifications and not adding a use and if it was truly minor, staff would deal with it. He added that if they were making significant changes, then it would require a special use permit.

Councilor Schiano clarified that zoning variances were different than special use permits. Director Heard stated that they were. Councilor Schiano clarified that a zoning variance would go to the Board of Adjustment because the Planning Board does not have anything to do with variances. Director Heard stated he was correct. Councilor Schiano clarified that special use permits come into play when someone wants to use a property for a purpose other than what was specified in the zoning. Town Attorney Hobbs explained that the ordinance would provide for certain things to require a special use permit, whereas a variance was a request for a use that was not allowed in the Zoning ordinance, but the applicant would be asking for an exception. Director Heard stated that it was a standard that was not allowed, meaning they would have to do a use variance such as a setback standard or something beyond what could be approved under special use. He added that there were two different types, noting that certain uses just by their nature

were special use permits. He stated that no matter the design, it would come before Council as a use, but there were certain development standards in the ordinance such as fill and retaining walls that were spelled out in the ordinance of the certain standards that Council has the authority to grant a special use permit. He pointed out that even if the use itself was permitted, the applicant was asking for some kind of relief, adding that it was spelled out in the ordinance what relief could be granted. He stated that if it wasn't, then it was a variance request and goes before the Board of Adjustment.

Mayor Kingston clarified that with the Resort Realty project, in theory it would not have gone through the Planning Board with the new ordinance but would come directly to Council. He stated that there were setback and parking issues with that application. He asked if they were variances or special uses. Director Heard stated that they were special use permits. Mayor Kingston clarified that Council would deal with them plus any other issues they saw. Director Heard pointed out that they were special uses under the Village Commercial Development Option because it was in Duck Village.

Councilor Schiano asked if the last application Council reviewed was a special use permit. Director Heard stated that it was. Councilor Schiano clarified that it went to the Planning Board first and they looked at it and approved it. Director Heard stated that the Planning Board made the recommendation to approve the application. Councilor Schiano stated that once it comes before Council, they listen to everything and evaluate the evidence before making a decision. He thought the Planning Board was an important part of the process and thought it was helpful to know the applicants went before the Planning Board and received some advice. He pointed out it was the same with the Resort Realty project. He thought the process was useful with the Planning Board.

Councilor Mooney stated that, with regard to quasi-judicial hearings, it meant the chairman of the Planning Board or another member of the Board would have to come before Council to testify about what they recommended and why. He asked what the percentage of special use permit work that the Planning Board does compared to the other things they were doing. Director Heard stated that it was approximately 50%.

Councilor Mooney pointed out that the concern that Attorney Womble raised was that this was potentially a legal issue in the future. He wasn't sure why since there was no explanation why. He added that if the Planning Board is removed from the special use permit process, then staff would provide that information. He pointed out that it was the same exposure that is had with the Planning Board would also extend to Town staff, adding that there was no protection at all. He thought Council needed the Planning Board to be included and do what they have been doing. He felt they were doing a good job and the whole purpose of appointing qualified people to the Planning Board was because Council trusted them to make good decisions, evaluate problems, and give Council good answers about how to move forward. He stated that he was vehemently opposed to removing this from the Planning Board.

Mayor Pro Tempore Thibodeau stated that her point went back to what Council has been told, which was that Council was not supposed to take any evidence other than what they

hear at a quasi-judicial hearing into consideration. She wondered if it was possible to have the Planning Board's work put in as evidence as part of the quasi-judicial hearing. Councilor Mooney pointed out that it could be put in by a member of the Planning Board as testimony.

Town Attorney Hobbs stated that, typically Town staff puts into the evidence what the recommendation of the Planning Board was in the staff report. He thought that the concern would be that if Council looked at their agenda and read the Planning Board recommendation and already made of their mind and were accused of doing that by an applicant who felt they were not given due process during the hearing and if someone felt like they had made up their mind about the application despite the warning he gives during a quasi-judicial hearing, based on the Planning Board recommendation, then that could be grounds for a court to potentially overturn the decision Council makes. He stated that it was Council's decision and as they read through the material including the blog post from the UNC School of Government, they point out the problems but do not come out and state that Council must remove the Planning Board from the process; however, they do state that if Council decides to keep them, there were some cautionary steps that would need to be taken. He stated that Currituck County removed the Planning Board from their process under their attorney's guidance back in 2016. He added that he has not completed a survey of the other towns or Dare County on whether they have taken a similar action.

Councilor Mooney stated that Corolla was exploding all over the place. He stated that for Council to be able to withstand a legal challenge, someone would have to come in and prove that Council made up their minds before the hearing. He wondered what tangible evidence they would have to prove that. He added that there would not be any. Town Attorney Hobbs agreed, adding that it could be very subjective and hard to see on the record. Councilor Mooney reiterated that he was thoroughly opposed to it and thought the Planning Board was an important asset for Council as Council relies on their recommendations and expertise on deciding whether something is good or bad. He asked Director Heard how much he relied on the Planning Board's recommendations. Director Heard stated that he doesn't. Councilor Mooney clarified that Director Heard did it separately. Director Heard stated he was correct. Councilor Mooney stated that when there is a quasi-judicial hearing with evidence presented, the only evidence that would be considered when making a decision would come from staff and the Planning Board. He pointed out that there was no question about whether or not this was information that was considered in the decision-making process because it was delivered during the hearing.

Mayor Kingston stated that when the staff does a review it was internal, but when it was brought before the Planning Board it was in a public venue, adding that it was also live streamed so the opportunity to get the information before Council should or should not have been already out. He defended the quasi-judicial hearing because all of Council could be exposed to it by attending a Planning Board meeting where the discussion is held. He thought Council has been at odds with the Planning Board in the past in many instances over the years. He thought the Planning Board had been good advisors, but staff puts most of the information out to the Planning Board for them to debate. He

thought Council depends upon Director Heard and his staff to bring it to Council with regard to special use permits. He thought the Planning Board should not be in the process and special use permits should go directly to Council. He noted that everything else could go through the Planning Board, but agreed with the quasi-judicial issue, especially since Planning Board meetings are open to the public and Council.

Director Heard stated that staff does not have an opinion or recommendation on the issue. He stated that when this went to the Planning Board, staff did not express an opinion. He stated that he was not advocating for a certain position or decision on Council's part. He added that the difference between the staff review and the Planning Board review was that the staff review was purely technical in nature. He stated that staff was looking at ordinances that Council adopted and applying them to projects. He stated that the legal danger was that the Planning Board was doing it as part of a public meeting where they are receiving input from the public. He added that if they allowed that input to persuade them to do things, that would be going beyond what they should be doing. He noted that Town Attorney Hobbs had mentioned a UNC School of Government blog that outlined very carefully how a board needs to act but does not expressly say that a town should not have a Planning Board do this, but if they do, they need to stay within certain boundaries which can be challenging. He pointed out that when there is a group of people, it's easy to be persuaded to do something or go beyond a technical review when developing a recommendation. He stated that that was the difference between the two as far as the staff versus the Planning Board.

Town Attorney Hobbs pointed out that the people that are at a Planning Board meeting are not under oath at their meetings and may bring in people who are not experts. He stated that these people may present things that may sound persuasive but in reality, may not be. He stated that it was considered incompetent evidence unless the person was qualified to give evidence. He stated that it was possible that the Planning Board may be persuaded by certain types of evidence that may not be allowed when the hearing comes before Council. He stated that it was a different environment with the Planning Board but Council made very good points that because they have technical backgrounds in these types of things, they could decipher and figure out the basis for the application, which was the whole point – to make recommendations to Council. He added that Council has to decide how valuable the recommendations were in this type of application. He stated that he was not saying that Council had to get rid of the Planning Board in the process but was pointing out the issue and Council can decide from their perspective whether they were better off with or without the Planning Board in the process.

Councilor Mooney asked if there were different parameters described for the Planning Board. Director Heard stated that there were not many parameters described at all. He explained that there has been training with the Planning Board at least every other year in order to guide them and help them understand their role, but sometimes in the heat of the moment, it was not always easy to follow those guidelines. Councilor Mooney clarified that even if the Board was subjected to non-admissible evidence at a Planning Board meeting, they were not making a decision, but were making a recommendation to Council. He thought that, combined with what Director Heard presents, was what

Council relies on in order to make those decisions. He pointed out that he was not seeing a connection where it was a tenuous situation with someone coming in to complain about the value of their property and what it had to do with what Council was discussing. He stated that it was ultimately facts and the technical aspect of whatever permit was being sought. He stated that he did not see it as an issue with the Planning Board.

Mayor Pro Tempore Thibodeau asked when someone comes before the Planning Board for a special use permit and the Planning Board votes 3-2 against the proposal, it would still come before the Council. Director Heard stated that it would, adding that it would come to Council with a recommendation of denial. Mayor Pro Tempore Thibodeau stated that it was weighty in terms of the Planning Board making the decision before Council does. She asked if it was possible to take the decision-making aspect away from the Planning Board and just use their technical input like Council relies on staff to do. She stated that she was hearing that the special use permit should be based on technical aspects and evidence from experts. She thought the question was now whether or not the Planning Board members were experts.

Town Attorney Hobbs stated that he was not aware of a situation where a Planning Board has completed just a review and not made a recommendation, adding that it was their nature to review and make a recommendation. He thought to keep the Planning Board in the process, Council would continue doing what it was currently doing, which was to be reminded at the beginning of a quasi-judicial hearing that they make their decision solely based on the evidence presented under oath. He noted that the Planning Board may be part of that process, but Council would need to remember that they could have a Planning Board member talk about what they decided, but what they discussed and decided was all unsworn evidence. He added that even though they were swearing to what was said, what was said in the Planning Board meeting was incompetent evidence because it was not under oath and was not given the same protections as they would be in a quasi-judicial hearing. He pointed out that that was why, at the beginning of a quasi-judicial hearing, he tells Council to make their decision based solely on the evidence presented to them which was primarily from people that were speaking with firsthand knowledge during the Council hearing and not what was said prior to the hearing. He added that it included testimony and evidence presented during the hearing and disregarding things that were told to Council prior to the hearing. He stated that, to the extent that Council could continue to use the Planning Board's recommendation to supplement their decision, that is to be consistent with it, but to not be the decision, then Council has done as much as they could to still get the benefit of the Planning Board recommendation, but to know that Council was making the final decision and not rubber stamping or feeling obligated to follow what the Planning Board did.

Councilor Mooney clarified that that was how it currently existed. Town Attorney Hobbs stated he was correct. Councilor Mooney clarified that if a member of the Planning Board attends a quasi-judicial hearing and testifies, it would be direct evidence about what they discovered during their inquiry. Town Attorney Hobbs stated he was correct. Councilor Mooney stated that the argument that Council would be subjected to unsworn testimony was not a good argument. He added that if they were going to come in and

discuss what they did and listened to during the course of their inquiry, that would be direct evidence. Town Attorney Hobbs pointed out that what the Board listened to during the hearing was unsworn. Councilor Mooney thought it did not matter because they were not telling Council what to believe that someone that was unsworn had concluded or talked about. He added that what the Planning Board was expecting Council to listen to was what they did and what their conclusions were, which they could present under oath during a hearing. He noted that it eliminates the argument that Council was basing a decision on unsworn testimony. Town Attorney Hobbs explained that the bottom line was that his job was to point out the risk, adding that the blog post from the UNC School of Government identifies those matters in that Council would decide how valuable what level of value the Planning Board brings to that process and to the extent that Council felt they could continue to make their decisions with the Planning Board in the process. He cautioned that Council needed to do this with an understanding of their responsibilities during the hearing in order to make their decision with either leaving things the way they were or making a change.

Councilor Mooney pointed out that it also incorporated the thought that someone was accusing Council of not making a decision based upon testimony heard during the hearing, which would impugn Council's standing. Town Attorney Hobbs agreed. Councilor Mooney stated that there was no good reason why Council could not figure that out and stand up ethically on the presented evidence and make their decisions based solely on that.

Mayor Pro Tempore Thibodeau stated that she would agree, but the Planning Board evidence that Council would hear at the public hearing was just evidence as to what was discussed and not evidence that Council could rely on as expert testimony. She added that Council could hear a testimony from someone as to what they did in a meeting but their decisions could be based on non-expert testimony. Councilor Mooney stated that there were differences between expert testimony and direct evidence, adding that they were not the same thing. He stated if Council wanted to have someone come in and testify as an expert, they would have to explain why they are experts with Council accepting whatever that explanation was. He pointed out that that was not the purpose of the Planning Board, adding that it was their job to go out and investigate whatever is requested in the special use permit and figure out whether or not it falls within the guidelines of the Town's ordinances. He noted that if it was not a problem, then he did not see an issue with that. He thought that 50% of what the Planning Board was doing was relative to special use permits and if Council was going to take 50% of their responsibility away from them, he wondered what they were needed for at all. He stated that he wasn't saying that Council should get rid of the Planning Board.

Mayor Pro Tempore Thibodeau stated that the Planning Board has other responsibilities and Council would never get rid of them. She thought it becomes a popularity issue when Council goes against what the Planning Board recommends, adding that it carries a lot of weight. Councilor Mooney asked what Mayor Pro Tempore Thibodeau meant with regard to it being a popularity issue. Mayor Pro Tempore Thibodeau stated that it could be construed as very unpopular if Council decides to go against what the Planning Board

recommended at a public hearing. She added that it has happened. She stated that there was a public sentiment expressed at the Planning Board that was being overruled at the Council level. Councilor Mooney thought if people wanted to come and had a stake in a special use permit and Council was interested in seeing it done the way they talked about at the Planning Board meeting, then they should be present at the Council meeting and testify to that effect. He noted that it would become more direct evidence for Council to consider. He added that without that, there was no argument.

Mayor Kingston agreed with taking the Planning Board out of the process. He pointed out that staff prepares the technical report and presents it to Council during a special use permit public hearing. He added that the Planning Board makes a recommendation and there have been times that Council has received opinions from a Planning Board member that were contrary to what the recommendation was, based upon nothing other than an opinion. He stated that Council was receiving advice from two different Town attorneys, adding that because it was a quasi-judicial hearing, Council should not have the unproven evidence as part of its discussion. He stated that the meetings are open to the public with a lot of interaction from people that were not sworn to testify. He thought Council should take the legal guidance and take them out of the process and see how the next few hearings go. He asked what the Planning Board did to support the recommendation to Council at the last quasi-judicial hearing, adding that Council went through the hearing with technical staff, the applicant, and engineers. He asked again what the value was of the opinion of the Planning Board. He reiterated that Council had to go through the whole process and make their own judgment on whether or not to approve it. He stated that he supported moving forward and removing the Planning Board from the process to see how the special use permit process works without them. He stated that the Board still had a lot of other work to do, adding that Council was not eliminating the Planning Board. He thought Council should be taking legal advice to do things the right way. Councilor Mooney pointed out that Council was not making that decision at this meeting. Mayor Kingston agreed, adding that Council was debating on whether or not to authorize a public hearing. Councilor Mooney stated that he was fine with authorizing a public hearing on it, adding that he thought Council should do that. He pointed out that he was voicing his opinion.

Councilor Schiano asked if an applicant for a special use permit had the right to bypass the Planning Board if they desired to do so. Director Heard stated that they did not. Councilor Schiano clarified that an applicant knew that what they receive from the Planning Board was not a final decision. Director Heard stated he was correct, adding that the applicant respects the Planning Board's recommendation. He pointed out that there have been applicants that withdrew from the process after receiving a denial recommendation from the Planning Board.

Mayor Pro Tempore Thibodeau moved to authorize a public hearing on Ordinance 23-11 for Council's September 6, 2023 meeting.

Motion carried 5-0.

Update on Annual Hazard Mitigation Plan Implementation

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that in order to be part of the National Flood Insurance Program Community Rating System, the Town must develop and adopt a Hazard Mitigation Plan and annually update the status of the Plan's strategies to address flood-related issues. She noted that the Town of Duck was part of the Outer Banks Regional Hazard Mitigation Plan along with Dare County, Currituck County and the Towns of Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo.

Councilor Whitman moved to approve the Town of Duck Hazard Mitigation Plan 2023 progress report and associated mitigation action items, 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

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 Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave a brief overview of the past month's police activities to Council and the audience. He noted that there was some vandalism on the boardwalk where three benches were thrown into the sound as well as unknown individuals that kicked out the pickets of a 50-foot section of the boardwalk, adding that he did not think the incidents were related. He stated that a Duck resident had offered a \$500 reward and the Duck Police Department is working with the Dare Community Crime Line to get the word out. He stated that Director Nickens had also done an exceptional job getting the word out on social media. He pointed out that, to date, they received one anonymous tip, but it was cleared because it was not related.

Police Chief Ackerman stated that there was a camera at Town Hall that caught a group of youths placing cones across Duck Road around 1:00 a.m. in order to block traffic, adding that it happened a second time at a different location on the following evening. He noted that the video was not clear enough to get it out on social media in order to identify the suspects. He added that the damage to the boardwalk took several individuals to do. He stated that the public engagement over social media was outrage over the damage with a lot of positive comments about the Town and its amenities.

Councilor Schiano asked if there were cameras on the boardwalk. Police Chief Ackerman stated that there were no cameras there. He stated that he was asked by Councilor Whitman after the damage was discovered regarding cameras. He explained that an overall Townwide camera project has been on his radar for a while, adding that he has looked at numerous ways to improve the infrastructure at Town Hall, throughout the park, boardwalk, and Town itself, but it was an extremely costly endeavor. He stated that he was trying to break it down into phases that were manageable to accomplish the end goal. He stated that Councilor Whitman had asked him to specifically look at obtaining cameras on the southern section of the boardwalk. He noted that there were some logistical challenges such as not having 110v power on the boardwalk because solar power is used for the lighting. He stated that that Councilor Whitman and Maintenance Technician Kim Pittman have come up with a potential solution, which was to run 110v power from the north parking lot to the hub where three cameras could be installed on the boardwalk. He explained that the cameras were multi-sensor cameras that consisted of four cameras in one, using four independent cameras within it that were fully adjustable and would allow 100% coverage of each of the intersections on the boardwalk.

Police Chief Ackerman stated that he discussed with Town Manager Havens the possibility of potential funding for the camera as it was not something that was in this year's budget. He understood that there was some funding in the budget earmarked for radar vehicle sensors at either end of Town. He added that from a police department perspective, both projects were important, but the LPR data was proving to be consistent and reliable and it would not hurt the department's endeavors to table the traffic sensor program for another year and utilize those funds for the cameras.

Town Manager Havens stated that the question for Council was what was more important. He stated that the radar-based vehicle sensors were part of the Capital Improvement Plan and was funded in the current year's budget, adding that subsequent phases of the camera project were dependent on the success of the pilot project of three cameras. He noted that it has proven to be very successful, so he had planned to come back to Council in Fiscal Year 2025 for Phase 2 of the camera project. He asked Council again what they felt was more important to them today – the cameras on the boardwalk or the vehicle sensors. He pointed out that this was not a decision that staff would make but was a decision for Council.

Mayor Kingston stated that it was important to protect the Town's assets, adding that the boardwalk was a big asset of the Town and that it was costly to repair it. He thought if security could be enhanced, it would make sense.

Councilor Schiano asked if people could walk on the boardwalk any time they wanted. He further asked if the boardwalk was open 24 hours a day. Town Manager Havens stated that they could, adding that the boardwalk has lights on it. He added that Town staff does not discourage people walking on the boardwalk. Councilor Schiano thought the cameras were a good decision.

Councilor Whitman asked how much it would cost to install the three cameras. Police Chief Ackerman stated that it would cost approximately \$20,000, which was also the cost of the vehicle sensor project. Councilor Whitman clarified that there was at least \$5,000 in physical damage to the boardwalk. Town Manager Havens stated that he wasn't sure about the cost. Councilor Whitman thought it included the lumber that had to be purchased for the temporary repairs. Town Manager Havens agreed. Councilor Whitman thought with the temporary work that had been completed, it already cost the Town \$5,000. Town Manager Havens noted that the cameras will not prevent crime 100% of the time but will act as a deterrent, especially if there are signs. He added that it will help the police department get closer to solving instances of vandalism. He explained that what encumbers the police department was that they could obtain the video data but have a very short window to find the suspects. He thought the deterrent value alone had a lot of value. He pointed out that the cameras were an asset as well as a draw to Duck from a tourism promotion standpoint. He stated that either project could be completed this year, but it was up to what Council wanted to do.

Councilor Whitman stated that he and Town Manager Havens met two people the previous Friday that loved the boardwalk and were upset over what happened. He stated that the people told them about another section of the boardwalk they thought had been vandalized but it turned out to be due to age.

Mayor Pro Tempore Thibodeau asked if implementing the cameras on the boardwalk would take three or six months. Police Chief Ackerman thought it could be done very rapidly. He thought if this was a project that Council felt was a priority, he would make it happen as fast as he could. Mayor Pro Tempore Thibodeau asked if Police Chief Ackerman was concerned about the weather and the potential wind damage to the cameras. Police Chief Ackerman explained that the cameras meet all of the specifications for extreme weather, adding that he did not see any issues. Mayor Pro Tempore Thibodeau stated that she was in favor of the cameras on the boardwalk.

Councilor Mooney moved to authorize the Duck Police Department to purchase cameras for the Duck Town boardwalk.

Motion carried 5-0.

Senior Planner Cross gave a brief overview of the past month's permit 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.

July FY 2024 Financial Presentation

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the July Fiscal Year 2024 financials to Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that the mayors/chairmen meeting will be on August 16, 2023 hosted by the Town of Kill Devil Hills.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau clarified that with regard to the Planning Board attendance, it was proposed that missing three meetings could result in a Planning Board member being removed from the Board, which was ultimately the Town Council's decision. Director Heard stated she was correct, adding that only Council could appoint and remove members of the Planning Board. He explained that the Board adopted in their Rules of Procedure where they would have the opportunity of making a recommendation to the Council that an individual be removed. Mayor Pro Tempore Thibodeau stated that she was thinking if a member had a health issue, adding that she would want all members to be present as much as they could.

Mayor Pro Tempore Thibodeau stated that she would like to receive an update regarding the recent tent meeting that was held with the vendors. She thought that could be discussed at the August mid-month meeting. Town Manager Havens thought that Council would be receiving an update as well as the results of the tent survey at their September 6, 2023 meeting.

Mayor Pro Tempore Thibodeau stated that she would like to continue hearing about the trash ordinance since the Town was receiving a lot of public input on it. She appreciated everything everyone was trying to do, adding that she understood the unrealistic portions of it. She noted that it will continue to be discussed after the season to receive more information.

Councilor Mooney stated he had nothing to report.

Councilor Whitman thanked Senior Planner Cross for 20 years of service to the Town.

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.

CLOSED SESSION

Mayor Pro Tempore Thibodeau moved to enter closed session in accordance with Section 143-318.11(6) of the North Carolina General Statutes to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.

Motion carried 5-0.

The time was 8:50 p.m.

Upon return from closed session, Mayor Kingston moved to give Town Manager Havens a 10% salary increase and a \$10,000 bonus effective August 1, 2023.

Motion carried 5-0.


Mayor Kingston noted that the next meeting would be the Mid-Month meeting on Monday, August 21, 2023 at 1:00 p.m.

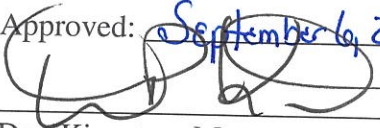
ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:38 p.m.


Lori A. Ackerman, Town Clerk

Approved: September 6, 2023

Don Kingston, Mayor

