

**TOWN OF DUCK
TOWN COUNCIL
MID-MONTH MEETING
September 20, 2023**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, September 20, 2023.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; and Councilor Rob Mooney.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Drew Havens; Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Deputy Fire Chief Clarence Batschelet; Town Attorney Robert Hobbs; Public Information and Events Director Kristiana Nickens; Senior Planner Sandy Cross; Randy Morton; Eric Myers; Miriam Rollin; Jane Lindley; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black and Finance and Human Resources Administrator Jessica Barnes.

Mayor Kingston called the meeting to order at 1:00 p.m.

DISCUSSION OF APPLICANTS FOR APPOINTMENT TO TOWN COUNCIL

Mayor Kingston stated that at Council's September 6, 2023 meeting, a framework was established for a process to select an individual to serve the unexpired term of former Councilor Tony Schiano. He stated that the following individuals had submitted an application to be considered: Randy Morton, Eric Myers, Miriam Rollin, and Jane Lindley. He asked each candidate to introduce themselves, make any comments that they wished, and answer questions that Council may ask.

Randy Morton of 108 Sailfish Court was recognized to speak. Mr. Morton stated that he has done a lot for the Town including volunteering regularly. He stated that he was a member of the Planning Board for four years and the Board of Adjustment prior to that. He stated that he was looking to fill an opportunity to help out the Town.

Mayor Kingston stated that the election was coming up next month and this was a temporary appointment to the Town Council. He asked Randy Morton why he did not run for Council. Randy Morton stated that he thought about it, but at the time of filing to run for Council, his wife's parents had some illnesses and they had to travel back and forth to Salisbury, North Carolina to care for them. He added that at the time he did not know if he would be in Duck or not, so he had to resign from the Planning Board.

Mayor Kingston thanked Randy Morton for his introduction.

Eric Myers of 141 Plover Drive was recognized to speak. Mr. Myers stated that he has been a resident of Duck about a year. He stated that he has always been interested in helping out in the community and liked that Duck was a smaller town and it was easier to have an impact. He added that he did not consider himself a political person because he thought it was up to someone else to make the decisions to help communities and that he was just a person that lived in Town with other people in charge. He stated that he has two children that are in Political Communications and Government, adding that he realized that everyone has a say and has to be out there and do what they can. He stated that he realized that this was the time for him to do that in the community that he loves. He stated that he works remotely most of the time and even though his job requires him to travel, he knew this was a perfect time to help out the community and provide support to the Town Council.

Mayor Kingston asked Eric Myers why he did not run for Council. Eric Myers stated that he did not think he could spend two years at this time in his life because of his job. He thought maybe in seven years when he would be closer to retirement he could do more and this was how he could help out now and look for more in the future.

Mayor Kingston thanked Eric Myers for his introduction.

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin stated she was excited about potentially serving the Town for the next couple of months. She stated that she has a depth of experience and expertise in policy analysis, communications, organizing and working with different types of people. She stated that she has owned property in Duck since 2011 and became a full-time resident earlier this year. She stated that she was passionate about Duck and what a treasure it is. She added that Council has done a great job of stewarding the Town and she wanted to do her part in terms of helping for a couple of months. She thought that having the policy background that she has would allow her to jump in quickly. She added that she would be happy to join the Town Council.

Mayor Kingston asked Miriam Rollin why she did not run for Council. Miriam Rollin thought just moving to Duck earlier this year and running for Council would be a little premature, so she decided not to run. She thought this would be an opportunity to serve in a smaller way as well as learn more so she could serve better in the future.

Mayor Pro Tempore Thibodeau appreciated that Miriam Rollin was following the issues as well as being very active in Town.

Mayor Kingston thanked Miriam Rollin for her introduction.

Jane Lindley of 1470 Duck Road was recognized to speak. Ms. Lindley stated that her father, former Councilor Denver Lindley, Jr., lived in Duck for 30 years, adding that she owned his home for 11 years and became a permanent resident two years ago. She stated that she has been retired for 11 years and used to work in Information Technology,

adding that she worked as an environmentalist for the Sierra Club in 2019 as well as non-profits.

Mayor Kington asked Jane Lindley why she did not run for Council. Jane Lindley stated that she has been curious since her father was on Council, adding that the present Council keeps running so there must be something interesting that keeps them wanting to run again. She stated that because she was new to moving to Duck as well as purchasing a house in Pennsylvania to care for her mother was a reason for not running.

Mayor Kington thanked Jane Lindley for her introduction.

DISCUSSION/CONSIDERATION OF APPOINTMENT TO THE TOWN COUNCIL

Mayor Kington stated that there were four very qualified individuals. He opened the nomination process, adding that his criteria for his nomination was current Town involvement and experience, attendance at Town Council meetings either online or in person, and availability for the next two and a half months.

Mayor Kington nominated Randy Morton.

Mayor Pro Tempore Thibodeau stated that she was pleased to see so much interest in a two-month appointment. She stated that she liked that Council had a contested race this year because it was great to see new faces and get interest while not having people thinking it was the same people each time. She thanked the candidates for applying and thought any of them would be great on Council.

Mayor Pro Tempore Thibodeau nominated Miriam Rollin. She agreed with Mayor Kington about participation and experience in getting the public involved was why she would be supporting Ms. Rollin.

Councilor Mooney agreed with Mayor Pro Tempore Thibodeau's comments. He nominated Miriam Rollin.

Councilor Whitman agreed with Mayor Kington and Mayor Pro Tempore Thibodeau regarding involvement with the Town and sitting on other boards. He nominated Randy Morton.

Mayor Kington closed the nominations. He stated that there were 2 nominations. He called for a vote.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs explained the voting procedure which Council used many times to appoint persons to various boards which was also the procedure Council uses to appoint members to the vacancies on Town Council in this circumstance. He stated that each Council member has a vote and the procedure states that the person that receives the highest number of votes shall be

appointed. He pointed out that it did not mean a majority, it meant the highest number. He added that if there were four people voting, the potential outcomes to appoint someone could be either a 3-1 vote or a 2 vote, 1 vote, 1 vote, or a 4-0 vote. He stated that with any of those combinations, Council would appoint someone to the vacancy. He noted that a 2-2 tie would not appoint someone, in which case Council would continue with voting either until someone is appointed or if there was a feeling that the matter should be tabled for a future meeting, then Council was entitled to have a motion to table the vote.

Mayor Kingston called for a vote. Mayor Kingston and Councilor Whitman voted for Randy Morton. Mayor Pro Tempore Thibodeau and Councilor Mooney voted for Miriam Rollin. Motion failed due to a 2-2 tie.

Mayor Kingston called for a second vote. Mayor Kingston and Councilor Whitman voted for Randy Morton. Mayor Pro Tempore Thibodeau and Councilor Mooney voted for Miriam Rollin. Motion failed due to a 2-2 tie.

Mayor Kingston moved to defer the appointment until Council's October 4, 2023 meeting.

Mayor Pro Tempore Thibodeau stated that this was the first time that Council was at an impasse, mainly because there weren't five members. She asked if Council waited, what would happen. She thought Council would potentially make a decision at the October 4, 2023 meeting, but the individual wouldn't be able to serve on Council until November, meaning they would only have one month to serve. She wasn't sure what would change between now and October 4, 2023 to make Council have a different vote unless there was a discussion now. She preferred to have someone appointed at this meeting.

Town Attorney Hobbs believed that if Council wished to defer the vote until their October 4, 2023 meeting, the first item on the agenda would be to swear the individual in so they could sit on Council. He added that it would not require Council to wait until their November 1, 2023 meeting.

Mayor Kingston thought the advantage of appointing someone today would be that they would be better prepared for their first meeting in October, instead of coming in and being sworn in. He added that Council was still at an impasse unless someone wanted to change their vote. Mayor Pro Tempore Thibodeau pointed out that Council could be at an impasse at their October 4, 2023 meeting unless it was talked through. She asked the rest of Council how they felt about things.

Councilor Whitman asked if flipping a coin would be acceptable. Town Attorney Hobbs stated that a coin could not make the decision.

Councilor Mooney imagined that everyone considered the candidates carefully and made decisions based on the qualifications, which sometimes has not been the case. He thought it was important that Council had a responsibility to the citizens to give them the

best product that they could. He added that it requires that Council choose a person that they think has the best tools to handle the job. He stated that he would still support Miriam Rollin because she has good experience and a lot of care for the Town. He thought she genuinely could be a big help for Council, albeit a short time on the Council, but it was someone that everyone will probably see later on in other configurations.

Mayor Pro Tempore Thibodeau hoped to see everyone interested in more Council involvement. She stated that looking at the resumes as well as knowing some of the candidates personally, she thought Council saw a nomination for Randy Morton who had served on the Planning Board for four years. She thanked him for that service, adding that it was no small feat and was a lot of dedication. She stated that it indicated that he had a lot of background on some of the issues that Council has seen. She stated that she liked seeing new faces as well as hoping that they would be more involved. She reiterated that she would be pleased with any of the candidates for the fact that it was two months with a lot to learn as well as Duck having a full Council. She stated that she was inclined in getting the appointment completed at this meeting because she wasn't sure where Council would go if they don't get it moving. She liked to have consensus, adding that the Council does have a lot of consensus on things and when they don't, it's for very good reasons. She stated that she would like to get someone appointed at this meeting, adding that she didn't see any other way around it other than making some concessions on what she originally voted for. She did not know what would happen on October 4, 2023 unless a Council member changes their vote. She added that she would not support Mayor Kingston's motion to table the issue and thought another vote should be called.

Mayor Kingston stated that Council had four very qualified candidates and any one of them could serve the Town well over the next two months. He stated that his rationale was current Town involvement and experience, attendance at Council meetings either in person or online, as well as the availability over the next two months. He noted that he was not changing his support for Randy Morton.

Councilor Whitman stated that Randy Morton and Miriam Rollin both have the skills and interest in the Town at heart. He thought all of the candidates were good, but in looking at their backgrounds and the involvement in the Town itself over the last 10 years, Randy Morton had had a lot to do with what was going on with the Town.

Mayor Kingston withdrew his motion.

Mayor Kingston called for a third vote. Mayor Kingston, Mayor Pro Tempore Thibodeau, and Councilor Whitman voted for Randy Morton. Councilor Mooney voted for Miriam Rollin. Motion carried 3-1 for Randy Morton.

Mayor Kingston thanked the candidates for their participation and hoped to see them in the future at meetings or running for Council in the next two years.

PRESENTATION REGARDING TENTS AND VENDOR SET UPS ON THE BEACH

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross gave a short presentation on tents and commercial activity on the beach in Duck to Council and the audience. She stated that staff completed a spring and summer survey of the tents and vendors on the beach; addressed numerous violations reports; and talked with residents as well as vendors in order to provide data to see if Council wanted to see any desired changes to the ordinances.

Mayor Kingston asked what the difference was between commercialization of someone renting a tent on the beach and someone on the beach selling hot dogs or ice cream. He pointed out that it was commercializing a public beach. Senior Planner Cross explained that there was no monetary transaction happening on the beach with the tent vendors. Mayor Kingston pointed out that both activities were for profit. Senior Planner Cross agreed, adding that people also pay for surf lessons on the beach.

Mirek Dabrowski of Duck Surf Rescue was recognized to speak. Mr. Dabrowski stated that as long as money is not transferred on the beach, then one will not operate as a commercial business. He stated that tents on the beach was a service that has grown over the years and changed somewhat because it went from just beach umbrellas and chairs to adding tents. He stated that there were still a lot of people getting umbrellas and chairs. Senior Planner Cross noted that there were some vendors that only sell umbrellas and chairs as well as some that sell just tents and others that sell both, adding that they all have different impacts.

Councilor Whitman asked if the Town was to try to control the issue, how it would be supported – through lifeguards or through a staff member. Senior Planner Cross asked if Councilor Whitman was referencing control with regard to removing items from the beach, telling vendors they could not set up, or making everyone aware of the regulations. She stated that there were different levels of control that needed to be established. Town Manager Havens thought it was regarding enforcement. Mirek Dabrowski stated that there would be a cost involved whether it was with using a lifeguard or a staff member. Senior Planner Cross thought volunteers could be recruited, adding that volunteers have been reporting to staff. She noted that the volunteer work could transition to tagging. She stated that the Town was effective with tagging in the past and could try it again; however, she did not think it would stop the vendors that start putting items on the beach early in the morning.

Councilor Whitman thought with regard to tagging, there should be some sort of tag on the tents, umbrellas, and chairs so Town staff would know who the vendor was. He thought if there was a requirement, that should be part of it. He asked how people could be kept 15-20 feet off the dune line. Mirek Dabrowski stated that his lifeguards take care of that. Councilor Whitman stated that he talked to one of the lifeguards over the weekend and was told it was bad. Mr. Dabrowski agreed that it has been hard the past few days, adding that there wasn't much he could do. He stated that everyone was pushing their tents back against the dune and he had to live with it. He added that when the tide comes in and it's up to people's feet, his lifeguards are parked unless someone

gets into trouble. He reiterated that there was nothing his lifeguards could do when the tide came up very high. Senior Planner Cross noted that the vendors know about this, adding that the first few complaints this season were about that, but as soon as staff reiterated the regulations and the vendors spoke to their staff, the issue was resolved. She pointed out that there was some value to vendors in that they know the Town's regulations. Mirek Dabrowski thought the compliance was really high, but there will always be an issue.

Councilor Whitman stated that in his homeowners association, there were a lot of big tents and lines of umbrellas with most of them being the owners. He asked how that was corrected or enforced. Mirek Dabrowski asked if Councilor Whitman was referencing the 15-foot areas. Councilor Whitman stated that he was as well as the way they set things up. Mr. Dabrowski explained that in the 15-foot area, his lifeguards will ask the people to move. Councilor Whitman pointed out that the tents and umbrellas were lined up straight across the beach where no one could get through. He asked how that would be enforced. Mr. Dabrowski stated that it was a kind request, adding that there should be some space between the tents lined up across the beach. He thought a volunteer could set up cones in front of the accesses to help people get through and out to the beach. He noted that he had not heard any complaints about it. He stated that he has seen some tents that were 30x30 feet and only provide 10x10 feet of shade. He felt that if there was anything to be done, there was a 12x12 foot tent regulation, but it does not have anything about guide wires or guide lines. He thought they should be eliminated or have a 12x12 tent without guide wires because they were a hazard on the beach.

Mayor Pro Tempore Thibodeau asked if tents being too close to the lifeguard stands have been a concern. Mirek Dabrowski stated that it occurs occasionally and his lifeguards try to judge the area to see what they could do. He thought the vendors were staying away from the lifeguard stands, adding that those that do set up near the lifeguard stands were private citizens.

Mayor Kingston thought the biggest issue was equal treatment of the beach. He thought there were the "haves" and the "have nots" and a lot of Council's discussion initially was a family that comes down for vacation with the umbrellas and chairs and cannot find a place on the beach to set up. He thought the starting point was tents. He wondered what would happen if tents were prohibited from the beach for one year to see if it would solve the problem for homeowners as well as visitors. He stated that he's been to beaches on the eastern shore and there were no tents on those beaches, just umbrellas and chairs with people having equal access. He thought that was where Council needed to start and test prohibiting tents on the beach for one year to see what happens. He thought it would become an equity issue because a family could go to the beach in the morning only to find it filled with tents and chairs. He thought if Council wanted to be proactive about it, he thought Council needed to take a stand, move forward, and study the results after one year.

Mayor Pro Tempore Thibodeau thought the survey showed a lot of effort and involvement, adding that the results were interesting that it was a 50/50 issue for people.

She stated that the fact that property owners and residents were 75% of the respondents was also interesting. She stated that she was still digesting the data and thought the vendors were not necessarily the entire problem since they were complying with the Town's ordinances. She noted that the issue was mostly people that were bringing their items down to the beach, reiterating that it wasn't necessarily the vendors that were causing the problem. She understood that people wanted shade on the beach.

Councilor Mooney thought the issue that Mirek Dabrowski described with regard to the guide wires was an issue in that people may not see them and trip over the wires. He stated that that type of shade tent seemed to be something that maybe the Town should think about prohibiting. He added that 5:00 p.m. in the summer was too early since people tend to stay on the beach until 6:00 or 7:00 p.m. He stated that if the Town was making them take down their shades and chairs by 5:00 p.m., he thought it should be extended. Mirek Dabrowski pointed out that the 5:00 p.m. time had not been enforced but was when the items were left unattended. He stated that it became an enforcement issue, adding that when the time was established, his lifeguards were taking items off the beach after sunset, which became a safety issue. Councilor Mooney suggested making it sunset instead of 5:00 p.m. Mr. Dabrowski thought the compliance with people removing their items was close to 100%. Councilor Mooney stated that the question about crowding and ghost set ups was an issue of density, which the Town could not control. He reiterated that he would like to see the time that people have to have their items off the beach changed from 5:00 p.m. to sunset and prohibit the guide wires.

Mayor Kingston pointed out that the whole issue boiled down to tents, adding that the Town was either going to allow tents or prohibit them. He stated that there will either be tents of all different sizes on the beach that will need to be controlled, or no tents and move forward. He noted that the discussion was due to tents and nothing else, other than commercializing the beach, which he felt was an issue. He stated that until the Town tries one or the other, it was like the trash issue. He suggested prohibiting tents on the beach for a year to see what happens. He reiterated that Council was having this discussion due to tents and not chairs or umbrellas. He stated it was the space they were taking up on the beach, adding that it was an equity issue with the haves and have-nots that come down for vacation. He stated that if they could afford it, they would have a lot of space on the beach, but if they couldn't, then good luck to them.

Mayor Pro Tempore Thibodeau disagreed with Mayor Kingston's comments in terms of haves and have nots. She stated that it was not all vendors, adding that some vendors were not even setting up on the beach. She wasn't sure if it was haves or have nots, pointing out that a person could have a tent or not or an umbrella or not, which could be considered the haves or have nots. She thought Mayor Kingston was trying to imply that it was vendors that were creating the issue, which she did not think was the case. Mayor Kingston disagreed, adding that residents go on the beach with tents. He stated that the whole discussion was because of tents and it didn't matter who brings the tents to the beach. He thought the end result was that either tents were or were not allowed. He added that if Council was concerned about tents on the beach because of density, then they should be eliminated.

Senior Planner Cross thought there were two issues – tents, which is why it was on the Council's agenda, but also the vendors. She thought vendors had a value and having some type of regulations for them to adhere to, such as a permit associated with them, was a good thing. She added that if staff continue to get complaints from one vendor multiple times, the Town could revoke their permit.

Councilor Mooney pointed out that the issue was not necessarily with the vendors as they were doing their job. He stated that there may be vendors that were not compliant for various reasons. He noted that Council was discussing the overall density which was contributed by the citizens putting their own items up. He stated that he was not in favor of banning tents from the beach, as he thought it would be a mistake. He added that controlling the action of the vendors by having them issued a permit and if they fail to comply then revoking their permit was something he did not have a problem with. He did not want to anger the tourist base, adding that Council was not discussing doing anything offensive with the tourists. He noted that if a vendor failed to follow the rules and they did it multiple times, that was their problem, adding that it was not going to affect other people that will come to the beach and not use a vendor, but bring a tent to the beach. He stated that the guide wire seems to be dangerous and if there was a medical emergency and a lifeguard trips over it on the way to help someone, it would cause more people to need help. He thought it was not unreasonable to get rid of them. He asked if Council decided to ban tents on the beach for a year, who would enforce it. He pointed out that there will be people that have been coming to Duck for 20+ years and put up a tent each time they come as well as following the rules, and if the Town tells them they cannot do that anymore was an overreach.

Mayor Kingston pointed out that the Town has rules and regulations and ordinances, the Town controls what is on the beach, but there was still a problem. He wondered what the difference would be if Council moved forward with the same rules and regulations. He added that the only way to get at the issue was to prohibit tents on the beach. He agreed that people do come down year after year and have a tent, but they also used to have umbrellas. He wasn't sure what regulations or restrictions were needed as there will still be violations and enforcement. He wasn't sure what Council accomplished.

Mayor Pro Tempore Thibodeau pointed out that there were 1,200 respondents to the survey with a 50/50 split as to whether there was an issue or not. Mayor Kingston pointed out that it was 50/50 with regard to the issue of trash.

Robert Farmer of Farm Dog Beach Services was recognized to speak. Mr. Farmer stated that, regardless of what Council decided, there needed to be something in place that has some teeth. He stated that some of the vendors will never abide by the regulations, including umbrella vendors. He stated that his business sells cabanas and umbrellas, adding that he sees some very valid points on the issue, but that his company does not service Duck unless it was an oceanfront home during the summer because there were so many people that want to be on the beach that it wasn't suitable for his company to operate on the beach. He stated that, regardless of what Council decides, whether it was

cabanas, umbrellas, both or neither, if there was enforcement with teeth, the problems will evaporate.

Mayor Pro Tempore Thibodeau stated that the permitting would become a staff issue. She asked if it would be an overwhelming amount of administration. Senior Planner Cross stated that there were currently 15 vendors and if it increased to 20, it would not be an issue since she, Community Planner James Gould and Deputy Town Clerk Melissa Felthousen would be able to handle it. She didn't think it would be a problem and would be a simple process. She thought the Town could require a substantial deposit and if the vendor's permit was revoked, they would lose the deposit. Councilor Mooney pointed out that it would make the vendors think twice. Senior Planner Cross agreed.

Mayor Pro Tempore Thibodeau stated that she would be in favor of that if it was not going to be too much trouble. She agreed that the enforcement Senior Planner Cross discussed was a consideration for the vendors. She stated that Council recognized that the lifeguards are on the beach to do a job and if they were busy, they would not be able to protect the public as much as they needed to. She thought a good place to start was to create some type of license or permit. She did not agree with prohibiting tents but understood that it sounded like a simple test solution and thought communicating and enforcing it would be hard. She stated that she was in favor of a more incremental approach to the issue to show that Council was taking action. She thought the private citizens could be asked to do something, but she wasn't sure what.

Mayor Kingston stated that it was easy to say it should be enforced more, but the Town has difficulty enforcing parking and trash. He wondered how it would be enforced on the beach because Duck was limited with the number of lifeguards available. He added that tents would escalate and not decrease with more tents on the beach over time. He stated that it would become a larger problem. He thought if Council wanted to get serious, tents should be prohibited in the summer months.

Mirek Dabrowski stated that Myrtle Beach, South Carolina banned tents completely at one point and then started allowing them back at incremental stages. Mayor Kingston stated that he was trying to deal with the reality of the situation because the problem will not go away unless it is prohibited. He stated that it will escalate over time, adding that Council could discuss enforcement all they want, but it was still limited as to what could be done. He stated that ordinances have to be followed up, and he wondered how it would be done on a daily basis. He thought Council needed to deal with the reality of the situation because it was an issue that will not be going away.

Councilor Whitman asked if the vendor fee that will be charged would be enough to pay for a person on the beach for a summer. Mirek Dabrowski stated that it was discussed, adding that there were approximately 16 vendors and what it would cost, he thought the amount would be doable. Senior Planner Cross pointed out that it would not necessarily have to be a full-time person.

Mayor Kingston asked about the residential citizens that bring tents to the beach. He stated that they would not be charged and could be in violation. Senior Planner Cross stated that there would have to be a multi part to it with privilege licenses for business owners that were doing business on the beach, a tagging effort for people that were not using a vendor, but that would be where the signage would come in for the vendors. She stated that there should be a requirement for signage so staff would know it was a vendor. She added that if there was a tent on the beach without any signage and no one sitting under it, they may not be on the beach all day and staff would not know how to get ahold of them. She stated that if it was tagged, the owner of the tent would call.

Mirek Dabrowski thought the first step would be to refine the ordinance to include some specifications on the tent itself to be very specific. He thought another refinement would be that tent vendors would not be allowed to put two tents side by side but would have to have a 10-foot split in between. He stated if there were two tents within close proximity, they would have to be parallel which would prevent people from lining up the tents along the beach. He stated that the size of the tent also needed to be enforced. He thought that those suggestions as well as the changes with the vendors could help. He added that the vendors have done a good job this year with regard to compliance.

Mayor Kingston reiterated that Council has not come up with a solution other than what was already in place and the same issue will be discussed next year. He stated that unless Council took some dramatic action, there would be no change. He added that enforcement is very difficult and even stricter regulations were difficult. Mirek Dabrowski suggested giving it two years with the first year consisting of prohibiting tents on the beach. He thought for the first year, the Town should work with the property managers as he felt that compliance would be 50%.

Councilor Mooney suggested that Council let Senior Planner Cross and Mirek Dabrowski figure out ways that were effective in changing the ordinance or the enforcement of it and bringing it back at Council's October 4, 2023 meeting. Senior Planner Cross thought October 4, 2023 would be too soon. Councilor Mooney suggested it come back at Council's November 1, 2023 meeting.

Director Heard noted that the ordinance was not a Planning Board one. Town Manager Havens thought the Planning Board could still discuss it and provide input. Director Heard stated that they could. Town Manager Havens stated that Director Heard indicated that this was not an ordinance that would go through the Planning Board, but Council could send it to them and ask them to come back with a recommendation.

Mayor Pro Tempore Thibodeau stated that she did not have a problem sending it to the Planning Board for input but thought Council was already receiving the crux of the input at this meeting. She stated that she was not ready to totally ban tents. She appreciated what Mayor Kingston was proposing, but felt it was severe and premature. She thought Council could take an incremental approach and try to modify the regulations and get rid of some of the problem areas.

Councilor Whitman asked how the issue worked out in the Town of Nags Head. Senior Planner Cross stated that they banned one vendor, but the vendor changed their name and was back out on the beach but was banned a second time. She stated that if the Town increased its enforcement and had a license in place with a fee, it would decrease the likelihood of people violating it from a vendor perspective. She added that from a personal perspective, there would need to be volunteers to tag the tents which could be part Surf Rescue and part volunteers with proper training. She thought a collaborative effort was possible, adding that it could be tried this year and if staff continues to see an increase in tents, then she would come back to Council to re-evaluate whether the tent is the problem and not the vendor or staff's lack of enforcement.

Mayor Kingston stated that he was not blaming the vendors but was blaming the people that buy tents and put them on the beach, whether they were a vendor or an individual. He reiterated that the issue has not decreased over the years, it has been discussed for a couple of years, and it wasn't going away, but increasing. He stated that he was not in favor of volunteers to do the enforcement as it was not their responsibility. He added that volunteers should not be sent to the beach each evening to tag tents. Senior Planner Cross explained that she would only be asking the volunteers to tag the tents and equipment. Mayor Kingston stated that Council would be discussing the issue again next year.

Mayor Pro Tempore Thibodeau stated that she had heard that the problem stabilized and things were getting better. She agreed that there may be more volume, but at least people were understanding the rules.

Councilor Whitman asked Mirek Dabrowski if he was starting to see more space taken up by the same groups of homes where there were once five families but now have seven families. He added that it increased the tent capacity. Mirek Dabrowski stated that it wasn't always easy to separate groups based on how close they were. He stated that it was extremely dense in certain areas of the beach.

Town Manager Havens thought Council heard some suggestions about changes in regulation and a suggestion that staff bring back some thoughts on changing regulations at Council's November 1, 2023 meeting. He pointed out that if Council wished to ban tents, it could be an option. He added that it would allow Senior Planner Cross to work on some language for the ordinance including the footprint of the tent itself and the guide wires, a process to permit, how it would be enforced, and signage. Councilor Mooney stated that it should also include extending the time to sunset instead of 5:00 p.m. Mirek Dabrowski thought it was doable, reiterating that the compliance has been really high with removal of equipment.

Councilor Whitman asked Robert Farmer if extending the time would help with getting items off the beach safely. Robert Farmer stated that it would take some of the stress off by extending it to sunset.

It was *consensus* of Council to have an amended ordinance brought back at their November 1, 2023 meeting.

Mayor Kingston thanked Senior Planner Cross and Mirek Dabrowski for their time.

Town Manager Havens explained that with regard to the State's draft budget, there was a provision specific to Dare County related to affordable housing which removes a local government's authority to enforce planning and development ordinances. He understood that it was put in the appropriation bill where Dare County has a \$35 million appropriation they were holding from the state to build affordable housing and has experienced difficulty in siting it. He stated that in addition to preventing local governments from enforcing their zoning regulations, it also requires a municipal utility within a one-mile proposed development to provide utility service to that development. He believed that local governments should have control of their own fate and this would take that away. He pointed out that it was not a huge deal to Duck, but if someone were to assemble a couple of residential lots, they could come in and build a five or six story building and the Town's regulations would not apply to it. He stated that some of the other towns have sent letters or resolutions, adding that a lot of it was that they did not like the provision. He thought the Mayor of the Town of Nags Head wanted Duck to send a letter to its legislative delegation expressing opposition to this issue.

Mayor Kingston moved to authorize staff to draft a letter for his signature regarding this issue.

Councilor Whitman stated that he did not like them taking away the Town's rights, but thought some affordable housing was needed throughout, and did not think they should have the right to just do it. Town Manager Havens thought no one was arguing that point, adding that Duck was in favor of affordable housing.

Motion carried 4-0.

CLOSED SESSION

Mayor Pro Tempore Thibodeau moved to enter closed session pursuant to Section 143-318.11(a)(3) to consult with the Town Attorney in a matter preserving the attorney-client privilege, specifically relating to the litigation case of *Pinto vs. Town of Duck and Hardwick*; and to enter closed session pursuant to Section 143.318.11(a)(5) to establish or instruct the public body's staff or negotiating the price and other material terms of a contract or proposed contract for the lease of real property.

Motion carried 4-0.

The time was 2:57 p.m.

Upon return from closed session, Town Attorney Hobbs stated that for the first item, he gave a brief summary of the current status of the lawsuit that was mentioned in the

motion and with regard to the second item on the lease of property, the Council discussed and decided not to pursue two potential lease opportunities that were discussed.


Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, October 4, 2023 at 6:00 p.m.

ADJOURNMENT


Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 3:23 p.m.

Approved: September 1, 2023


Don Kingston, Mayor



Lori A. Ackerman, Town Clerk

