

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
January 3, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, January 3, 2024.

COUNCIL MEMBERS PRESENT: Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; Councilor Brenda Chasen; and Councilor Kevin Lingard.

COUNCIL MEMBERS ABSENT: Mayor Don Kingston.

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; 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: Fire Chief Donna Black.

Mayor Pro Tempore Thibodeau called the meeting to order at 1:00 p.m. She noted that Mayor Kingston was excused from the meeting.

Mayor Pro Tempore Thibodeau asked Planning Board Member Joe Blakaitis to lead the Pledge of Allegiance. Mayor Pro Tempore Thibodeau led the moment of silence.

PUBLIC COMMENTS

Mayor Pro Tempore Thibodeau opened the floor for public comments. She noted that comments will be limited to three minutes as there was a timer for the time limit.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to read the written public comments that had been received.

Russell DiGilio of 162 Mantoac Court was recognized. Mr. DiGilio wrote the following: "Dear Town Council, My wife and I, Russ and Christy DiGilio, own the property at 162 Mantoac Court located in the Poteskeet neighborhood. We have removed the property as a rental and travel from Maryland quite frequently to enjoy it. Unfortunately, we cannot be in attendance for your meeting so we are writing to you instead. We purchased our house in November of 2021 and have invested a significant amount of money to improve the condition and appearance of the property which was in shambles when we bought it. Part of our house exterior renovation was to install new steps to the beach and all new sand fencing. Both projects cost about \$15,000.

We love Duck, however, our main concern we have had since owning the house is the condition of the beach. The size of the beach, steps to the water, was already in question back in 2021 but unfortunately it has continued to deteriorate in size this past year. During last season, many times during high tide tourists had to back up almost to our protective dunes to stay out of the water. After last year's hurricane we were lucky to come out of it unscathed. However, the nor'easter that followed pounded our beach which seemed like an eternity (about a week) and during the process quickly devastated the bottom portion of our new steps, ate into our protective dunes and wiped out our new sand fencing and sea grass. We lost about eight feet of beach depth. While we replaced our steps for another \$8,000 we currently are unable to replace the sand fencing until the dune regains some depth. We hear that Mother Nature will eventually replenish the beach and I'm sure some of it will come back. However, we are very leery that the situation will ever be totally remedied without help.

We are requesting that you seriously consider approving the renourishment of this beach area before we lose any more of our protective dunes. In addition, if tourists don't have a beach to enjoy I would think that eventually they'll take their business elsewhere which would negatively impact the Duck economy. Thank you for your consideration."

Bob and Pam Manchester of 164 Mantoac Court were recognized. Mr. and Mrs. Manchester wrote the following: "Duck Town Council/To Whom it May Concern... Bob and Pam Manchester here. We are the proud owners of 164 Mantoac Court, located in the Poteskeet neighborhood. We have removed the property as a rental this past year and travel to and from Pennsylvania frequently to enjoy Duck and the surrounding area, but most importantly the beach. We feel blessed to be part of the Duck community and look forward to meeting you all. Unfortunately, we cannot be in attendance for your upcoming meeting, so we are writing instead. We purchased our house in September of 2021 and have invested a significant amount of money to improve the condition and appearance of our property. Part of our house exterior renovation was to upgrade our beach stairs and install all new sand fencing. Both projects cost north of \$10,000.

We love Duck! With that said our main concern since owning the house is the condition of the beach. The size of the beach was already in question when we purchased the property, but unfortunately it has continued to erode in size and shape this past year. This past season, many times during high tide, both we and the tourists had to back up to our protective dunes to stay out of the water. After last year's hurricane we were lucky to come out unscathed. However, the nor'easter that followed pounded the beach and during the process quickly devastated the bottom portion of our steps, ate into our protective dunes and wiped out our new sand fencing and sea grass. We lost 10 to 12 feet of beach. And with the storm on December 17 and 18 (we were there) our damaged steps are now gone. This will cost us ~\$18,000 to install new steps and replace the sand fencing.

We hear that Mother Nature will eventually replenish the beach?? But I'm not so sure?? We remain hopeful at least some of it will come back! However, we do not think the situation will be totally remedied without help. We are requesting that you seriously consider approving the renourishment of this beach area before the neighborhood loses

more of its protective dune. And if not for us, for the tourists! If they do not have a beach to enjoy they will take their business elsewhere, which will negatively impact the Duck economy. Thank you for your time and consideration.”

Kevin Davis of 166 Mantoac Court was recognized. Mr. Davis wrote the following: “Dear Council, I would like to echo the concerns of my neighbors on Mantoac Court. The dune east of my home eroded 12 feet the last batch of storms and it is looking doubtful that Mother Nature will replenish it. I understand that there is now an excess of sand in areas of the Nags Head beach. Would it make sense to move sand from Nags Head to Duck?”

Yasmin Abadian of 167 Mantoac Court was recognized. Ms. Abadian wrote the following: “Dear Council Members, My husband, Jim McWhorter, and I own an oceanfront home in Poteskeet – 167 Mantoac Court. As all of you know, this has been a horrific year for our beaches. We have had multiple storms, and our dune is severely damaged. The stairs to our dune are destroyed and we haven’t been able to – first repair, and now replace them – due to back to back storms. We were fortunate that our house abuts the community access which fared much better. This is not only impacting beachfront homeowners, but overall Duck owners. We already have a small beach and guests will start going elsewhere – which will initially impact rents, and ultimately impact property values. Our insurance costs have doubled over the past couple of years and they’re likely to continue rising – exponentially. Additionally, under these circumstances, no one is going to want to invest in properties on the beach, which will further impact the value of our homes. We cannot continue waiting for beach nourishment. We need it to be expedited as another year or two like this, and we are likely to have no dune, and possibly no house. We would appreciate your serious consideration of this matter. Thank you.”

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

CONSENT AGENDA

Budget Amendment

Councilor Chasen moved to approve the consent agenda as presented.

Motion carried 4-0.

SPECIAL PRESENTATIONS

There were no Special Presentations at this time.

QUASI-JUDICIAL PUBLIC HEARING

There were no Quasi-Judicial public hearings at this time.

LEGISLATIVE PUBLIC HEARINGS

There were no Legislative public hearings at this time.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Extending the Contract between the Town of Duck and Sandski, LLC d/b/a Surf Rescue, including Evaluating Cost and Level of Service Options

Surf Rescue Director Mirek Dabrowski was recognized to speak. Surf Rescue Director Dabrowski stated that Council had in their packets two options that showed how he was able to reduce the cost of his services. He noted that in each of the options, the amount of service would be reduced. He recommended that Council stay with the original contract that he had presented at Council's last meeting. He felt the first option in front of Council was a viable one that could potentially save the Town some money, but he was not recommending the second option because he felt it was cutting the service back to a point where the Town may open itself up for some serious situations.

Mayor Pro Tempore Thibodeau reminded Council that at their December 6, 2023 meeting, there was a higher increase in the projected cost for services for Fiscal Year 2024-2025. She stated that the contract price was \$626,000, adding that Surf Rescue Director Dabrowski was requesting a total of \$760,000. She noted that at Council's last meeting, they asked for alternatives to be brought back to this meeting.

Mayor Pro Tempore Thibodeau pointed out that there were now some options to consider and thought they should be reviewed.

Surf Rescue Director Dabrowski explained that the current level of service was from May 14 through October 31. He stated that it took into consideration 8:00 a.m. to 8:00 p.m. lifeguard service daily as well as an increased level of service in the fall with regard to the number of four-wheelers that remain on the beach as well as the times they are on the beach. He noted that the total for option 1 would be a total of \$700,000 which was a \$60,000 savings, adding that it reduced the supervisor coverage between May 15 and Labor Day from 12 hours to 10 hours per day; ends the season on September 30 instead of October 15; changes from eight additional stands beginning June 15 to seven additional stands and ends the higher number of stands a week earlier from August 17 to August 10; and eliminates the roving patrols between Labor Day and October 15.

Surf Rescue Director Dabrowski stated that option 2 would cost \$600,000, which was a \$100,000 savings, adding that it reduced the supervisor coverage between May 15 and Labor Day from 12 hours to 10 hours per day and begins the supervisor staffing a week later from May 15 to May 22; ends the season on September 30 instead of October 15; reduces the base number of stands from six to five; changes from eight additional stands beginning June 15 to six additional stands and ends the higher number of stands a week

earlier from August 17 to August 10; changes from two roving patrols between June 15 and August 17 to one roving patrol; and eliminates roving patrols between Labor Day and October 15.

Mayor Pro Tempore Thibodeau clarified that the initial request of \$760,000 would keep the same level of service. Surf Rescue Director Dabrowski stated she was correct, adding that it would keep the 12-hour days for the supervisor and in the fall there would be the same number of four-wheelers which was four as well as keeping the same lifeguard stands.

Councilor Whitman clarified that over the last contract, it would be a \$134,000 difference. Surf Rescue Director Dabrowski stated he was correct. Councilor Whitman clarified that if Council chose option 1, it was \$74,000 additional of what Surf Rescue Director Dabrowski was currently getting paid. Surf Rescue Director Dabrowski stated he was correct. Councilor Whitman clarified that if Council chose option 2, it was an additional \$34,000 over what Surf Rescue Director Dabrowski was getting paid. Surf Rescue Director Dabrowski stated he was correct, adding that he had explained at Council's December 6, 2023 meeting that his insurance cost was going up and was the reason for the increase he was asking. Councilor Whitman clarified that if Council stayed with the current contract, it would cost the taxpayers three quarters of a cent, but if Council chose option 1 it would be four tenths of a cent. He noted that this was after Council approved an increase last year. Surf Rescue Director Dabrowski explained that the difference between what he provides and the Town would provide if they took over lifeguard services was that it was changing annually. He stated that previously he was 20% under on the contract, which saved the Town money. He added that if Council wanted to see a savings, it would happen by reducing service but he was not recommending that. Councilor Whitman stated that he did not want Surf Rescue Director Dabrowski to reduce services, but wanted the public to know what it will cost the taxpayers if Council keeps the contract the same. He added that he would be in favor of the Town paying the \$760,000 but needed to consider the taxpayers.

Councilor Chasen agreed that Surf Rescue Director Dabrowski has provided a great service over the years and has been a real partner with the Town, adding that she wanted to keep and continue that relationship. She thought that Councilor Whitman providing the information to the taxpayers was direct information that they should know that it will cost more and Council will need to find a way to pay for it. She added that she was willing to go with the \$760,000 and to provide the service as it was, because there were more people coming to Duck. She thought Council will continue to work with Surf Rescue Director Dabrowski and find other possible ways such as with the insurance issue with the municipality handling some of it. She thought it would be a great alternative going forward. Surf Rescue Director Dabrowski explained that he was still working on insurance and applying to insurance companies that handle unique services such as his, which was a handful of companies. Councilor Chasen felt it was not Surf Rescue Director Dabrowski's problem alone to solve the issue, adding that she thought the Town as a municipality had a responsibility to work with him to see if there was anything they

could do. She pointed out that municipalities have a different avenue to get and gain insurance coverage, adding that she thought it should be investigated.

Councilor Lingard clarified that option 1 was losing coverage from September 30 to October 31. He asked what the average number of calls was in the last few years. Surf Rescue Director Dabrowski stated that it was extremely random. He stated that one year in the off-season there were three calls total and the next year there were 400. He stated that there was no rhyme or reason to it, adding that it was related to the weather and the surf. Councilor Lingard stated that Council had received an email earlier in the day that included something about surf rescue. He asked when red flags were flying, what Surf Rescue Director Dabrowski's level of coverage was on the beach. Surf Rescue Director Dabrowski stated that he is trying to put more lifeguards out. He added that even though it wasn't in the contract, if red flags were flying, he would put out an additional lifeguards on the beach.

Councilor Whitman asked what the locations were for the lifeguard stands on the beach. Surf Rescue Director Dabrowski stated that there were six stands on the north side of the pier and seven on the south side of the pier. He noted that these would be in place if the contract is adopted as is. He added that if Council decided to go with one of the options, there would be three four-wheelers south of the pier and north of the pier there would be one four-wheeler. Councilor Whitman asked how the population at Ocean Pines to the County line compared with the population at Charles Jenkins to Plover Drive. Surf Rescue Director Dabrowski thought it was between 50-65% and has been growing over the years. Councilor Whitman asked if it would help to eliminate the lifeguard stand at Charles Jenkins and move the one from the Southern Shores town line further north. Surf Rescue Director Dabrowski stated that the one in Southern Shores is at Hillcrest Drive, which was a busy access. He added that there were three lifeguard stands south of that stand. He noted that there was time where a four-wheeler was shared between the two towns, but eventually he started using two four-wheelers in Southern Shores and the south end of Duck.

Mayor Pro Tempore Thibodeau stated that she appreciated the options Surf Rescue Director Dabrowski provided to Council, since the increase was a lot for Council to take in at their December 6, 2023 meeting. She stated that having the options was helpful for Council to make some choices. She stated that she was surprised by cutting the end of the season in either option how much it would cost. She noted that Duck was very popular in the fall, adding that she knows that insurance costs have skyrocketed for both property owners as well as businesses. She knew that Council was looking at one year and she liked to get ahead of the decision point for the following year since there would be another year of a contract extension. She stated that that timing was something that she wanted to bring up at some point so Council could plan. Surf Rescue Director Dabrowski agreed, adding that in the contract the decision is supposed to be made regarding whether or not the Town wanted to move forward with that and then prior to this year, those decisions were made in July with all information provided to Council in July. He thought it was partially his fault for not bringing it to Council earlier in the season and putting together a proposal then. He believed the proposal would have had to

be amended because he did not get his insurance increase until August. He reiterated that he was still pursuing other avenues with other insurance companies to see what they could potentially do.

Councilor Whitman stated that under option 1 there were two roving patrols from Memorial Day to September 30th. He asked what would happen if the Town got through the roving patrols from Labor Day to October 15th and eliminated two instead of all four. He noted that there were already two in place through September 30th. Surf Rescue Director Dabrowski explained that there were also two roving patrols that come on in the middle of June until August 16th and then there would be only two roving patrols that go until the end of September. He clarified that Councilor Whitman was thinking of taking the two until October 15th. Councilor Whitman stated he was correct, adding that it was 15 days. Surf Rescue Director Dabrowski thought the cost increase would be minimal but would be all labor. Councilor Whitman asked for an explanation of equipment supplied with the contract. Surf Rescue Director Dabrowski stated that he uses four-wheelers to patrol the beaches in between the lifeguard stands, three four-wheelers dedicated to zones - one zone is from Ocean Pines to the north Town line and two zones from the Research Pier to Charles Jenkins. He stated that he has a side-by-side that patrols the nourishment area as well as a truck that is dedicated to responding to calls and transporting patients off the beach. He stated that he has jet skis on the beach and paddle boards. He noted that every lifeguard gets fins. Councilor Whitman pointed out that there were also 14 lifeguard stands. Surf Rescue Director Dabrowski stated that he maintains the lifeguard stands and does the labor on them but the Town provides the materials for them. Councilor Whitman asked when the setup for the lifeguard stands was from Memorial Day to when, and when the lifeguard stands are installed. Surf Rescue Director Dabrowski stated that they go through the stands to make sure they were in good shape, adding that they usually last seven to 10 years. He added that the stands are usually put in in one day along with the flag poles, which take four days.

Mayor Pro Tempore Thibodeau asked how Surf Rescue Director Dabrowski answers any distress calls in the sound. Surf Rescue Director Dabrowski stated that the sound was part of his contract.

Councilor Chasen moved to approve the contract extension to continue service as is for a cost of \$760,000.

Councilor Whitman clarified that the contract was good through June 30, 2025. Town Manager Havens stated he was correct.

Mayor Pro Tempore Thibodeau assumed that Council will have a continued conversation no later than September. Surf Rescue Director Dabrowski pointed out that the contract specifies July 1 as the date that Council could begin discussions regarding continuing service. Town Manager Havens stated that he would meet with Surf Rescue Director Dabrowski between now and then.

Motion carried 4-0.

Discussion/Consideration of Ordinance 23-16, an Ordinance Defining and Regulating Businesses and Registration

Mayor Pro Tempore Thibodeau reminded Council and the audience that Council had discussed Ordinance 23-16 at their December 6, 2023 meeting, adding that it was a new area for the Town based on the vendors that supply the tents and umbrellas on the beach.

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that there was a discussion at Council's December 6, 2023 meeting regarding Chapter 94 related to beach and dune management. She stated that a number of revisions were adopted at that time.

Senior Planner Cross stated that Ordinance 23-16 was discussed and some of the modifications suggested by Council were to remove exemptions for Town staff and contractors and include liability and workers compensation insurance. She stated that Town Attorney Hobbs assisted staff in updating the ordinance. She noted that a clause was added that a verification of workers compensation insurance was needed. She stated that the fee schedule was also discussed, but it was decided that it would come back to this meeting to be considered.

Senior Planner Cross stated that the business registration license would only apply to beach equipment vendors and does allow for an annual license fee; details the period of the license and due date; details information required for the application; and details the reason for refusal and revocation of the license.

Senior Planner Cross stated that with the development of the business registration, a fee would need to be assessed. She noted that at Council's September meeting, Council felt that it should be impactful in the sense that vendors would think twice about violating the ordinance and the income could help with enforcement efforts. She added that staff proposed a fee in the amount of \$2,000 annually but it was not widely accepted by Council or the vendors present at the meeting. She stated that one Council member had suggested \$500 and another suggested \$1,000. She stated that she researched other municipalities and found that the Town of Kill Devil Hills charges \$25 and the Town of Nags Head charges \$100, while the larger beach areas outside of the Outer Banks competitively bid the right to rent beach equipment services with substantial fees. She pointed out that Destin, Florida was one that charges a beach vendor permit per location.

Senior Planner Cross stated that she made a recommendation for \$1,000, but also wanted to provide Council with some options if they were in favor of her suggestion as follows:

- Option 1 – Business registration fee \$500 to \$1,000 non-refundable annual fee.
- Option 2 – Business registration fee \$500 non-refundable annual fee plus a \$500 deposit/bond for infractions with the balance refunded annually.
- Option 3 – Business registration fee less than \$500 non-refundable annual fee plus a \$X deposit/bond for infractions with the balance refunded annually.
- Option 4 – Other suggestions.

Mayor Pro Tempore Thibodeau understood that Council needed to discuss Ordinance 23-16 and then move on to the fee discussion. Senior Planner Cross noted that Mayor Kingston and Councilor Whitman were adamant at Council's December 6, 2023 meeting that there needed to be an enforcement plan. She added that she did not include any information on that because there were two departments working together to develop a staff position that may address those and allow for an effective management plan.

Mayor Pro Tempore Thibodeau stated that the beach equipment issue has been well studied with a lot of effort involved by the Community Development Department. She pointed out that the discussion before Council was how they felt about the revisions to Ordinance 23-16.

Councilor Lingard stated that the Town was asking people to identify their tents on the beach and the signage requirements were in the ordinance. He asked about the vehicles that drop off and pick up equipment because they were often anonymous pickup trucks. He asked if the Town could enforce the identification of a vehicle the vendor is using. He thought the ordinance mentioned having a license in the vehicle. He asked if the Town could ask the vendor to display the license in the vehicle. Senior Planner Cross thought having a placard in the windshield would be reasonable. She thought that permanent vehicle signage would be a heavy lift, adding that some have magnets on their vehicles, but others used plain trucks. She thought if the Town required a placard in the vehicle that could be identified from the front windshield would work. Mayor Pro Tempore Thibodeau thought it should be in a bright color. Senior Planner Cross stated that it could be issued by the Town, similar to a building permit. Councilor Lingard thought it needed to be emphasized in the ordinance that the placard needed to be on display in the vehicle. Town Attorney Hobbs noted that proposed Section 111.20 had the following language: "...be displayed in the business...in or on the vehicles used for delivery..." He suggested that it be revised to read as follows: "...shall be displayed in the vehicle and visible from outside the vehicle..." Mayor Pro Tempore Thibodeau thought visible was clear language. Town Attorney Hobbs stated that the new language in Section 111.20 would read as follows: "A licensee shall post their business license conspicuously in the place of business licensed, and in or on the vehicle, visible from outside of the vehicle used for delivery."

Councilor Chasen moved to approve Ordinance 23-16 as amended by Town Attorney Hobbs.

Motion carried 4-0.

Discussion/Consideration of an Amendment to the Town of Duck Fee Schedule

Mayor Pro Tempore Thibodeau noted that Council was given some options. She stated that it was something new for the Town to have for a business but given the effects and interest in it as well as trying to have some teeth in the ordinance, allowing for registration so staff knows who the vendors were on the beach was important. She stated that for those reasons, the fee was definitely something that could be substantiated, but

the question before Council was what the fee would be. She asked Council for their thoughts on the options that were presented.

Councilor Lingard asked how many vendors worked in Duck. Senior Planner Cross stated that there were 15 but seven were actively providing a service in Town. Councilor Lingard clarified that most of the violations last year were due to tents going up before the 8:00 cutoff. Senior Planner Cross stated he was correct. Councilor Lingard asked if there was anything apart from that that was a violation. Senior Planner Cross stated that she received a couple reports of people storing equipment on private property, but she wasn't able to substantiate it. She added that there were no situations last year where vendors were blocking emergency access like what happened the year before. She noted that she did not receive any reports of people storing equipment in the dunes, which was a previous problem. She hoped that the violations would cease, adding that staff would still have to deal with enforcement, but it will most likely be with private individuals in dealing with the size and guy wires. Councilor Lingard thought education was the key when contacting the management companies and the owners, letting them know. He thought he would be annoyed if he erected a 30x30 tent and was told he could not put it up, but if he knew beforehand, he would be fine with it.

Mayor Pro Tempore Thibodeau stated that staff have worked well with the vendors, adding that they know the rules and for the most part were abiding by them. She asked Council how they felt with regard to a fee. Councilor Lingard stated that he liked option 2 - \$500 non-refundable annual fee and a \$500 deposit. He thought Council could review the \$500 deposit next year to see if it should be renewed and if there were no violations, he didn't see the point in having it. Councilor Chasen stated that she wanted to see a \$500 fee and a \$1,000 deposit that the vendor would get back at the end of the year. She explained that any infractions would be deducted from that and allow the Town to assign an impact if there were violations, particularly for repeated incidents. She didn't think if people were not going to take it seriously, they would really look at it since it was \$1,500 out of pocket and if it was worth it or not for them. Councilor Lingard stated that Council would have to decide on what constitutes the reason to keep the bond. He wondered if the Town should deduct \$100 for every violation or tell the vendor they have three strikes and they lose it all. He thought it was something that Council needed to be very clear on before this was put in place.

Mayor Pro Tempore Thibodeau clarified that Councilor Chasen was suggesting a non-refundable \$1,000 or refundable. Councilor Chasen stated that it would be refundable if there were no violations. Mayor Pro Tempore Thibodeau pointed out that Councilor Lingard was suggesting \$500 refundable and Councilor Chasen was suggesting \$1,000 refundable. Councilor Lingard stated that he did not have an issue with the \$1,000 but thought Council needed to make it clear what the vendor will lose their bond for if they violate the rules. Councilor Whitman stated that he was in favor of \$1,000 non-refundable fee and no bond at all. He explained that by the time staff try to collect on a bond, the money has already been spent on attorney fees.

Town Attorney Hobbs stated that the other thing Council could consider was that Ordinance 23-16 talks of either issuing the license or revoking the license, but it doesn't get into more detail than that. He stated that if there was a bond or something similar, which he thought the ordinance may not have anticipated, how it would be administered, if it was a partial refund if there was a violation, how the dollar amount would be characterized, or if it would be a full forfeiture. He noted that those were things that the ordinance should be more clear on so the staff that administers it would not have to apply so much independent discretion to it. He thought if Council wanted any advice, his would be to pick a license fee and leave it as a license fee for this year and if Council felt they needed to have a refundable component to it, then it could be brought back to a later meeting along with the changes to Ordinance 23-16 so Council could give sufficient guidance to staff.

Mayor Pro Tempore Thibodeau thought Town Attorney Hobbs' recommendation spoke to the clarity and not making staff decide on who would receive a refund. She thought Council should set a business registration fee at this point, on the advice of Town Attorney Hobbs, so it could be tied to the ordinance. She added that there was a suggestion of \$500 and another of \$1,000. Town Manager Havens stated that with the idea of a bond and if there was a violation, the Town already has the revenue from their fee for the violation and would not have to track the vendor down to have them pay. He noted that according to the Town's schedule of fees, violations of ordinances would be applied as any other violation. He added that the idea of having the bond was that the Town would not have to find the person to have them send in a check for the fee. He thought the enforcement behind that was that if there wasn't a bond and the Town sent a Notice of Violation, and the violator did not pay within a reasonable amount of time, their license would be revoked.

Councilor Lingard didn't think the Town was expecting many violations. Councilor Whitman stated that his issue with a bond was that it had to go through an insurance company to collect it. Town Manager Havens stated that the Town would not do a traditional bond, but the vendor would give the Town its registration and if it was \$500, they would give the Town an additional \$500 that would be held. Senior Planner Cross stated that it would be a cash bond similar to the vegetation management plan the Town has, where the funds were held in escrow.

Mayor Pro Tempore Thibodeau stated that the options Council was looking at were just a fee, a registration fee, and an alternative refundable deposit. She wasn't sure if that changed Town Attorney Hobbs' input on the issue. Town Attorney Hobbs stated that it was fine with him. He thought that now that he understood the purpose behind it, it made more sense that it should not be called a bond. Town Manager Havens stated that if it was a small number of violations and if Council decides they want to just do a fee, staff could come back and tell Council if they spent a lot of time chasing down violators and then the deposit could be considered in future years. He noted that the vendor needed to have some skin in the game with the Town in the form of a business registration and fee. Mayor Pro Tempore Thibodeau agreed, adding that having proof of insurance would be helpful as well as the formal relationship of doing business in Duck. She stated that she

was in favor of the \$500 based on the fact that the Town was incrementally working toward this.

Councilor Lingard thought Council was looking at a difference between \$3,500 or \$7,000 the Town would be collecting depending on what Council goes for in terms of a bond. He asked what difference it would make to the enforcement. Mayor Pro Tempore Thibodeau noted that it was based on seven vendors in Town. She added that it was just the vendors, noting that the enforceability was also private citizens. She pointed out that the enforcement component has not been figured out yet, at this point Council was just looking at the revenue to the Town for the licenses. Councilor Lingard stated that he was in favor of \$500 and if it becomes an issue, it could be addressed next year.

Mayor Pro Tempore Thibodeau asked the rest of Council how they felt about \$500. Councilor Whitman stated that he was in favor of \$1,000.

Councilor Whitman moved to adopt Option 1 and charge a registration fee of \$1,000, non-refundable without a deposit.

Councilor Chasen asked if Council wanted to consider this as its first foray into this and come back later after information is received at the end of the season. Mayor Pro Tempore Thibodeau stated that it was an option, adding that it could be reviewed annually. She stated that she was not in favor of \$1,000 as she thought it was high for the first year based on the fact that there hadn't been a lot of infractions. She stated that she would be opposing the \$1,000. Town Manager Havens pointed out that the schedule of rates and fees was something that Council considers and adopts with the annual budget. Mayor Pro Tempore Thibodeau thought it was good to know since this was brand new to Council.

Motion failed 1-3 with Mayor Pro Tempore Thibodeau, Councilor Lingard, and Councilor Chasen dissenting.

Councilor Chasen moved to adopt \$500 with a \$1,000 refundable deposit.

Motion failed 2-2 with Mayor Pro Tempore Thibodeau and Councilor Lingard dissenting.

Town Attorney Hobbs stated that Council can continue making motions if they wished.

Councilor Lingard moved to adopt Option 1 with the \$500 and no deposit.

Councilor Whitman asked what would happen with the violations. Councilor Chasen stated that she would like to see a deposit, adding that she would be in favor of \$500 and a deposit of \$500.

Councilor Lingard withdrew his motion.

Councilor Chasen moved to have a business registration fee of \$500 with a fully refundable deposit of \$500 that can be refunded at the end of the season.

Councilor Whitman thought the fee for the violation would have to be brought to Council at their February 7, 2024 meeting. He noted that it was great to have the \$500 fee but there were no amounts for the violations and what the violations would be. He stated that he was fine with the \$500 and \$500 but wanted to know what the \$500 would go to. Councilor Chasen agreed. Mayor Pro Tempore Thibodeau asked how the \$500 refundable fee would be handled. Town Attorney Hobbs stated that one of the remedies besides revocation was a civil penalty under Section 10.99, which was part of the Town Code of Ordinances. He explained that the provision states that the ordinance may provide what the penalty was or if it doesn't, then the civil penalty of not less than \$50 and not more than \$1,000 may be imposed per violation. He noted that it would fall under Subsection C which was anywhere from \$50 to \$1,000, adding that Council could consider amending Ordinance 23-16 after the first year of operations and have a specific dollar amount for the civil penalty which would be applied with the deposit that Council was considering.

Councilor Lingard thought someone had to make a decision between \$50 and \$1,000, noting that it was a big gap between the two. He asked if could be \$50 for each violation at this meeting or if Council needed to amend Ordinance 23-16. Mayor Pro Tempore Thibodeau pointed out that Council had not decided on anything yet. Councilor Lingard thought Town Attorney Hobbs had stated that it would have to be in Ordinance 23-16 rather than the fee schedule. He asked if that was correct. Town Attorney Hobbs explained that Ordinance 23-16 does not have a specific penalty but refers to the Code section which has that range. He thought that because Council authorized a range for unspecified penalties that gives authority and discretion to staff to come up with a penalty. He added that if Council was fine with that, they could adopt the proposal on the table with the deposit as part of the fee and staff will then determine what the penalty will be based on the authorization Council provided in the Code. Town Manager Havens stated that staff could bring a schedule of that to Council so they could understand as well as making the vendors and general public understand the fees and penalties. Town Attorney Hobbs noted that Council could always amend the ordinance at a later date as to a specific penalty that would dovetail with the Code section.

Mayor Pro Tempore Thibodeau stated that with regard to the penalty side of things, it seemed reasonable that staff could come up with that and were working on it but did not have it fleshed out yet based on the fact that it required a few departments to agree on it. She clarified that the penalties would also be for private individuals and not just the businesses. She added that the businesses would be giving a deposit but for private individuals it would be an infraction. She asked if they would be subject to the penalties. Town Manager Havens stated she was correct. Town Attorney Hobbs added that they would also be subject to any of the remedies as set forth in the Code section which includes remedies such as injunctions and other court actions to keep people from violating the ordinance. Councilor Lingard thought it would come down to enforcement, adding that if the Town could not enforce it, it would be an issue.

Motion carried 4-0.

NEW BUSINESS

Discussion/Consideration of Appointing an Individual to Serve on the Planning Board

Mayor Pro Tempore Thibodeau stated that there was currently an opening on the Planning Board. She stated that several applications were received with one of the requirements being that the applicants would have to be present for this meeting to express their interest in serving. She added that the position was advertised with four interested, but one withdrew from being considered. She stated that Miriam Rollin, Bob Webb, and Thomas Burton were all interested in being considered.

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin went on to introduce herself, adding that she was interested in serving on the Planning Board because she loved Duck. She stated that she has been very active in helping to encourage public involvement on various issues in recent years including the issue of beach driving, adding that she worked most recently on the issue of cell towers. She stated that she cares about maintaining Duck as the beautiful place that it is and thought the Planning Board played a major role in helping Duck to be what it is in terms of rules, regulations, and ordinances. She noted that she is a trained attorney and could be a quick study on issues presented to the Planning Board.

Councilor Lingard asked Miriam Rollin what she would bring to the Planning Board that others cannot. Miriam Rollin thought her analytical skills as an attorney and having done policy work for many years helped her be able to analyze potential ordinance issues, as well as understanding the subtleties of the current and proposed ordinances. She thought she would bring the ability to organize and to get more people involved.

Councilor Whitman asked Miriam Rollin if she had been a volunteer with the Town. Miriam Rollin explained that she moved to Duck in mid-2023 and had not had a chance to do any volunteering but was looking forward to doing it in the coming year.

Bob Webb of 1166 Duck Road was recognized to speak. Mr. Webb went on to introduce himself, adding that he was interested in serving on the Planning Board. He stated that he loved Duck and is happy to be a full-time resident. He stated that he worked for the same company for 37 years and during that time he worked in purchasing, operations, and senior management. He noted that he has never been on a Planning Board but has been an applicant to the Planning Board for his company for renovations to building warehouses and office buildings. He stated that he understood how Planning Boards work as well as understanding how important it is to serve the community and make sure the businesses want to be in Town. He stated that with regard to volunteering, even though he has not lived in Town full-time until recently, he and his wife have always volunteered for the Clean Sweeps on Fridays in Town.

Councilor Lingard asked Bob Webb what he would bring to the Planning Board that others cannot. Bob Webb thought his experience with dealing with Planning Boards would be beneficial, as well as his knowledge of reading blueprints and understanding the terminology related to architecture and landscaping.

Thomas Burton of 109 Sandpiper Cove was recognized to speak. Mr. Burton went on to introduce himself, adding that he was interested in serving on the Planning Board. He stated that he and his wife moved to Duck in 2008 and since then, he has completed volunteer work with the beach grass planting, the annual Duck Clean Sweep, as well as volunteering for the Corolla Wild Horse Fund. He stated that his experience with the volunteer work has been very favorable and he liked working with Town staff and Council.

Councilor Lingard asked Thomas Burton what he would bring to the Planning Board that others cannot. Thomas Burton stated that he liked to get down to the basics of the facts very quickly and get them resolved. He added that he liked to hear the other side of the argument. He pointed out that he recently has been appointed to the board of the Sanderling Homeowners Association, which he felt would help with the administrative side of things. Councilor Whitman asked Thomas Burton if he was on the board for the Sanderling Homeowners Association North or South. Thomas Burton stated that it was South.

Mayor Pro Tempore Thibodeau thanked the three candidates for their time and opened it up for deliberation or discussion. Town Attorney Hobbs explained that Council's procedures included the opportunity to nominate one or more person and then take a vote. He added that it could include a discussion if necessary.

Mayor Pro Tempore Thibodeau asked if Council would take each individual as an individual motion. Town Attorney Hobbs stated that there was one position and one or more Council Member could nominate one person for the position and then have a vote and the person that receives the highest number of votes would be selected. He noted that it did not have to be a majority vote. Councilor Whitman asked if Council could nominate people for the Planning Board and Board of Adjustment at the same time. Town Attorney Hobbs stated that it would have to be done separately.

Councilor Chasen nominated Bob Webb. Councilor Whitman nominated Thomas Burton. Councilor Lingard nominated Miriam Rollin.

Mayor Pro Tempore Thibodeau called for a vote for Bob Webb. Councilor Lingard, Councilor Whitman, and Councilor Chasen voted in favor; Mayor Pro Tempore Thibodeau voted against.

Mayor Pro Tempore Thibodeau called for a vote for Thomas Burton. No votes were received.

Mayor Pro Tempore Thibodeau called for a vote for Miriam Rollin. Mayor Pro Tempore Thibodeau voted in favor; Councilor Lingard, Councilor Whitman, and Councilor Chasen voted against.

Bob Webb was appointed to the Planning Board for a term to expire July 1, 2026.

Discussion/Consideration of Appointing an Individual to Serve on the Board of Adjustment

Town Manager Havens stated that only one candidate had submitted an application for the Board of Adjustment, which was Bob Webb. He added that unless there was interest from Miriam Rollin and/or Thomas Burton, the position would need to be readvertised. He pointed out that Ms. Rollin and Mr. Burton were not appointed to the Planning Board and if they were interested in serving, they could indicate that to Council, or staff could readvertise for two positions on the Board of Adjustment.

Mayor Pro Tempore Thibodeau noted that there were no applicants for the Board of Adjustment and there were now two open positions. Councilor Whitman asked if Council could ask Miriam Rollin and Thomas Burton if they were interested in the positions. Town Attorney Hobbs thought it was best to table the issue and readvertise the openings.

Mayor Pro Tempore Thibodeau tabled the consideration, adding that the positions would be readvertised.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

Police Chief 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.

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

Director of Community Development Joseph Heard was recognized to speak. Director Heard 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.

November FY 2024 Financial Presentation

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

MAYOR'S AGENDA

Mayor Pro Tempore Thibodeau pointed out that the new meeting time has brought more people to the meeting, adding that it was great to see so many people still in the audience. She hoped that the new time for the Council meeting would encourage more people to participate. She noted that those that could not be at the meeting in person, could view it online, adding that she was happy that staff no longer had to stay so late due to the previous evening meetings. She thanked Director Nickens for the great outreach she has completed regarding the various things going on in Town. She reminded the audience of the webcam in Town that people can view on the Town's website. She stated that she was glad to receive the comments on the west side feasibility study and encouraged the audience to provide comments. She noted that she was representing the Town on the Visitors Bureau again and was looking forward to the upcoming year serving on that board.

COUNCIL MEMBER'S AGENDA

Councilor Whitman thanked staff for all they have done in the past year. He reminded the audience that the next beach grass planting would be on Monday, January 8, 2024 at 1:00 p.m.

Councilor Chasen thanked the audience for attending the meeting and participating. She thanked Town staff for their hard work. She stated that she serves on the Government and Education Access Channel Committee with the first meeting to be held on January 24, 2024; however, she will not be able to attend due to a scheduling conflict.

Councilor Lingard thanked the audience for attending the meeting, adding that it was great to see so many people still in attendance at the end of the meeting. He thanked Town staff for their hard work. He noted that there were a few people that had emailed the Town earlier in the day regarding beach nourishment, adding that he thought it was something that should be discussed. He thought there was a lot of misinformation on what can and cannot be done as well as how easily things can be done. He reiterated that Council needed to have a discussion on the issue. He pointed out that the part of the beach that people had commented about was a mess and the last thing Council wanted was to have a house fall into the water. He thought Council needed to have a discussion about the beach.

OTHER BUSINESS

Additional Public Comments

Mayor Pro Tempore Thibodeau opened the floor for public comments.

James Cohagan of 145 Arrowhead Court was recognized to speak. Mr. Cohagan thought everyone appreciated everything that Council does for the Town. He agreed with Councilor Lingard's comments, adding that it was a big issue and before people started asking for the beach to be renourished, there were a lot of pros and cons and a lot of things that cannot be done before and after nourishment. He thought there needed to be a lot of time to discuss all of the issues. He stated that it was not something that would be resolved in 15 minutes, adding that the Town may need to have experts present that were involved with the nourishment program.

There being no one else wishing to comment, Mayor Pro Tempore Thibodeau closed the time for public comments.

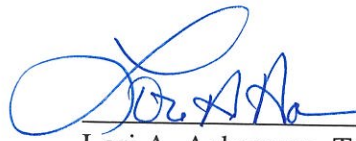
Mayor Pro Tempore Thibodeau noted that the next meeting would be the Mid-Month meeting on Wednesday, January 17, 2024 at 1:00 p.m.

ADJOURNMENT

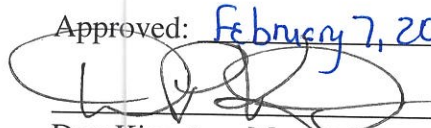
Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 3:28 p.m.



Lori A. Ackerman, Town Clerk

Approved: February 7, 2024


Don Kingston, Mayor

