

Agenda
Town of Duck Council
Paul F. Keller Meeting Hall
April 3, 2024
1:00 p.m.
Regular Meeting

1. Call to Order
 - A. Pledge of Allegiance
 - B. Moment of Silence
2. Public Comments
3. Consent Agenda
 - A. Minutes from the February 21-22, 2024, Annual Retreat
 - B. Minutes from the March 6, 2024, Regular Meeting
 - C. Resolution 24-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month
 - D. NCLM Voting Delegate
 - E. Budget Amendment
4. Special Presentations
 - A. None at This Time
5. Quasi-Judicial Public Hearings
 - A. None at This Time
6. Legislative Public Hearing
 - A. None At This Time
7. Old Business/Items Deferred from Previous Meetings
 - A. Discussion/Consideration of an Amendment to the Facility Use Policy
 - B. Discussion/Consideration of Ordinance 24-02, an Ordinance to Amend Sections 70.01 through 70.05 of the Code of Ordinances to Clarify and Revise Provisions Regulating the Operation of Golf Carts, Electric Assisted Bicycles, and Other Motorized Vehicles on Public Streets, Sidewalks, and the Multi-Use Path within the Town of Duck, North Carolina

7. Old Business/Items Deferred from Previous Meetings (continued)
 - C. Discussion/Consideration of Ordinance 24-01, an Ordinance Adding Chapter 130, Section 05, Creating an Ordinance Banning the Release of Balloons in the Town of Duck and/or Discussion/Consideration of Resolution 24-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Opposing the Release of Balloons
8. New Business
 - A. Discussion/Consideration of Appointing an Individual to Serve on the Planning Board
 - B. Discussion/Consideration of Authorizing Staff to Work with the Planning Board to Consider Stormwater Management Requirements on Single-Family Residential Properties
9. Items Referred to and Presentations from the Town Attorney
10. Items Referred to and Presentations from the Town Manager
 - A. Departmental Updates
 - B. February FY 2024 Financial Presentation
11. Mayor's Agenda
12. Council Member's Agenda
13. Other Business
 - A. Additional Public Comments
14. Closed Session
15. Adjournment

AGENDA: April 3, 2024 Regular Meeting

ITEM #1:

Call to Order

- A. Pledge of Allegiance
- B. Moment of Silence

RECOMMENDED ACTION:

- Call the Town Council to Order
- Conduct the Pledge of Allegiance
- Hold a Moment of Silence

SUMMARY OF INFORMATION:

The Mayor will call the Council to order and the Council will lead the audience in the recitation of the Pledge of Allegiance and will hold a Moment of Silence.

ATTACHMENTS:

- None

AGENDA: April 3, 2024 Regular Meeting

ITEM #2:

Public Comments

RECOMMENDED ACTION:

- None required.

SUMMARY OF INFORMATION:

The Council will receive comments from the public.

ATTACHMENTS:

- None

AGENDA: April 3, 2024

Regular Meeting

ITEM #3:

Consent Agenda

- A. Minutes from the February 21-22, 2024, Annual Retreat
- B. Minutes from the March 6, 2024, Regular Meeting
- C. Resolution 24-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month
- D. NCLM Voting Delegate
- E. Budget Amendment

RECOMMENDED ACTION:

- Approve the Consent Agenda

(As a reminder, the Consent Agenda is intended to be voted on and approved as one motion. If discussion is required on individual items, a motion must be made to remove that item from the Consent Agenda and add it to the Regular Agenda.)

SUMMARY OF INFORMATION:

The Consent Agenda includes minutes from the February 21-22, 2024, annual Retreat; minutes from the March 6, 2024, regular meeting; Resolution 24-04, the NCLM voting delegate, and a budget amendment. Resolution 24-04 declares April as Child Abuse Prevention Month. The League of Municipalities requests that Town Council members designate a voting delegate for the 2024-2025 NCLM Board of Directors/Slate of Candidates which has historically been the Mayor; however, since Councilor Lingard will be attending CityVision, he will be the voting delegate. The budget amendment increases the Legal Department and decreases Contingency to include unforeseen legal expenses in Fiscal Year 2024. Council is asked to approve the minutes, the resolution, the voting delegate form, and the budget amendment.

ATTACHMENTS:

- February 21-22, 2024, Minutes
- March 6, 2024, Minutes
- Resolution 24-04
- NCLM Voting Delegate Form
- Budget Amendment Sheet

**TOWN OF DUCK
TOWN COUNCIL
RETREAT
February 21 & 22, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 9:00 a.m. on Wednesday, February 21, 2024.

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

OTHERS PRESENT: Town Manager Drew Havens, Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Deputy Fire Chief Clarence Batschelet; Police Chief Jeffrey Ackerman; Deputy Police Chief Melissa Clark; Public Information and Events Director Kristiana Nickens; Erin Diurba of the US Army Corps of Engineers; Ken Willson of Coastal Protection Engineering; Bob Woodard of Dare County Board of Commissioners; Finance & Human Resources Administrator Jessica Barnes; and Town Clerk Lori Ackerman.

ABSENT: Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 9:00 a.m. and welcomed everyone to the Retreat. He stated that the Retreat was held on an annual basis over the course of two days and was a working session between the Town Council and Town staff, refining direction for the budgeting for the upcoming year as well as the Town's longer-term vision. He stated that the Retreat was not open for public comments, but the audience was welcome to talk to Council and staff during the breaks. He noted that at noon Council and staff would recess for a lunch and other business with no food provided for the public this year, adding that snacks were available throughout the day.

Mayor Kingston stated that he wished to amend the agenda to add a resolution. He moved to add the Resolution to the agenda.

Motion carried 5-0.

DISCUSSION/CONSIDERATION OF RESOLUTION 24-02, A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA, SUPPORTING THE COASTAL RESOURCE COMMISSION'S TEMPORARY RULES

Mayor Kingston explained that the resolution was for temporary rules for 30 different rules that the Coastal Resource Commission has in place. He thought in order to maintain the direction that the Coastal Resource Commission has taken, it would be good to support them with Resolution 24-02.

Mayor Kingston moved to adopt Resolution 24-02 as presented.

Mayor Pro Tempore Thibodeau stated that the Dare County Visitors Bureau had sent a letter of support in keeping the rules in place to keep Jockey's Ridge intact. She hoped they could all come to some resolution.

Motion carried 5-0.

US ARMY CORPS OF ENGINEERS FIELD RESEARCH FACILITY UPDATE

Erin Diurba of the US Army Corps of Engineers was recognized to speak. Ms. Diurba went on to give a short presentation on the US Army Corps of Engineers Field Research Facility, the history of it as well as what they do. Erin Diurba then took questions from Council.

Mayor Kingston thanked Erin Diurba for her presentation.

DEPARTMENT UPDATE

Community Development

Director of Community Development Joe Heard was recognized to speak. Director Heard went on to give a short presentation on the Community Development department to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Director Heard for his presentation. He called for a 15-minute break. The time was 10:26 a.m.

Mayor Kingston reconvened the meeting.

BEACH NOURISHMENT AND MANAGEMENT

Ken Willson of Coastal Protection Engineering was recognized to speak. Mr. Willson gave a short presentation on the completed beach nourishment project, the annual beach/dune survey, the vulnerability analysis, and the borrow area study to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Ken Willson for his presentation.

COUNTY UPDATE

Dare County Chairman Bob Woodard was recognized to speak. Chairman Woodard gave a short County update to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Chairman Woodard for his presentation. He recessed the meeting for lunch. The time was 12:05 p.m.

At approximately 12:27 p.m., Town Attorney Hobbs left the meeting.

Mayor Kingston reconvened the meeting.

DEPARTMENT UPDATES

Finance and Human Resources

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short update on the Town's current year budget performance as well as year-end estimates to Council and the audience. She then took questions from Council.

Mayor Kingston thanked Administrator Barnes for her presentation.

Public Information and Events

Public Information and Events Director Kristiana Nickens was recognized to speak. Director Nickens gave a presentation on advertising, communications and upcoming events to Council and the audience. She then took questions from Council.

Mayor Kingston thanked Director Nickens for her presentation. He called for a 15-minute break. The time was 1:52 p.m.

Mayor Kingston reconvened the meeting.

Fire Department

Deputy Fire Chief Clarence Batschelet was recognized to speak. Deputy Fire Chief Batschelet gave a presentation on the Duck Fire Department's activities and what they were looking to accomplish in the future to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Deputy Fire Chief Batschelet for his presentation.

Police Department

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave a presentation on the Duck Police Department's activities as well as what they hope to accomplish in the future to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Police Chief Ackerman for his presentation.

OPEN DISCUSSION

Mayor Kingston asked Council if they had anything else they wished to discuss.

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that he would like to get consensus from Council, explaining that the Town has the opportunity to apply for a grant funding for beach nourishment. He explained that the State has a pot of money totaling \$10 million this year and next and the managers as well as the Dare County manager all discussed having Dare County prepare one application for all of the projects. He believed it would score better and would be something that Dare County would pay for. He explained that Dare County would pay CP&E to prepare the application, adding that the other managers have agreed to do this, but he did not think the other managers have gone before their boards yet. He asked Council for consensus to go this route.

It was *consensus* of the Council to move forward with the opportunity.

Councilor Lingard stated that it was alluded earlier in the meeting that the Town may be completing beach nourishment in the area south of the pier. He thought it was something that Council needed to get the public used to the idea that it may be happening as well as the tax implications because of it. He thought there would be some people that will not be in favor of the project and some that will want it, adding that he thought it was something that Council will need to start discussing that it was a possibility in 2027 that it may happen. He pointed out that the beach has changed in the short time he has lived in Duck, but thought it was something that Council needed to make public and make people aware sooner than later.

Town Manager Havens stated that at the end of Ken Willson's presentation, he mentioned that they would be hurrying up with the processing of the data to be developed this summer. He stated that late summer/early fall staff will be seeing the state of the beach then and he could have Mr. Willson come back before Council to give an update on where nourishment should be done.

Councilor Lingard stated that he would like to look at the demographics of Duck and what the definition of "permanent residents" was. He thought everyone that lived in Duck more than six months of the year considered themselves permanent residents, which was different from those that live here who don't have anywhere to go when the Town is evacuated because of a hurricane. He thought that number was lower. He pointed out that a lot of individuals on the electoral roll do not live in Town full-time, adding that he thought it would be useful to know how many people were actually full-time permanent residents. Town Manager Havens stated that staff would look at the census data to see if the data shows that information.

Councilor Chasen asked if there were a serious weather event and people needed to evacuate, would anyone know how many people were in Town. She further asked if there was a way to find out. Police Chief Ackerman stated that the Police Department is able to process every vehicle that enters Town, adding that the software they use can also show how many leave Town in order to figure out who did not leave.

Mayor Kingston stated that with regard to beach nourishment, once Council sees the data, this time next year it will have to be planned out whether or not nourishment would be needed. He pointed out that there was a two-year lead time as well as how it will be financed and whether new MSDs would need to be established. He stated that Council will need to be actively participating in that discussion next February.

Councilor Whitman moved to recess the meeting until Thursday, February 22, 2024 at 9:00 a.m.

Motion carried 5-0.

The time was 3:17 p.m.

RECONVENE

The Town Council for the Town of Duck reconvened at the Paul F. Keller Meeting Hall at 9:00 a.m. on Thursday, February 22, 2024.

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

OTHERS PRESENT: Town Manager Drew Havens, Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Deputy Fire Chief Clarence Batschelet; Police Chief Jeffrey Ackerman; Police Lieutenant Melissa Clark; Director of Marketing and Information Kristiana Nickens; Finance & Human Resources Administrator Jessica Barnes; Zach Cockrum of Project Vesta; Chris Dewitt, Ricky Wiatt, JD Hines, and Andrew Topp of VHB, Inc.; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

ABSENT: Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 9:00 a.m. He welcomed everyone to the Retreat.

Mayor Kingston thanked everyone that was viewing the meeting remotely and to ensure an orderly meeting, the Retreat was not open for public comments, but the audience was welcome to talk to Council and staff during the breaks. He stated that the meeting recording would be available on the Town's YouTube channel as soon as possible after the meeting. He noted that at 11:30 a.m., Council and staff would recess for a lunch and other business with no food provided for the public this year, adding that snacks were available throughout the day.

PROJECT VESTA UPDATE

Zach Cockrum of Project Vesta was recognized to speak. Mr. Cockrum gave a short presentation on Project Vesta to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Zach Cockrum for his presentation.

UPDATES FROM VANASSE, HANGEN BRUSTLIN, INC.

Chris Dewitt, Ricky Wiatt, and JD Hines of VHB were recognized to speak. Mr. Dewitt, Mr. Wiatt, and Mr. Hines went on to give a short presentation on the various projects they are working on to Council and the audience. They then took questions from Council.

Mayor Kingston thanked Chris Dewitt, Ricky Wiatt, and JD Hines for their presentation. He called for a 15-minute break. The time was 10:39 a.m.

Mayor Kingston reconvened the meeting.

TRAFFIC MITIGATION

Andrew Topp of VHB was recognized to speak. Mr. Topp went on to give a short presentation on the findings of a prior traffic and pedestrian study as well as discussing potential strategies to improve traffic during the summer season to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Andrew Topp for his presentation. He recessed the meeting for lunch. The time was 11:34 a.m.

Mayor Kingston reconvened the meeting.

RENTAL HOME OCCUPANCY/SEPTIC CAPACITY

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross gave a short presentation on the prior research that was reported to Council at their December 6, 2023 meeting regarding rental home occupancy and septic capacity to Council and the audience. She then took questions from Council.

It was *consensus* of Council to continue with education on septic capacity as well as rental home occupancy.

Mayor Kingston thanked Senior Planner Cross for her presentation.

CAPITAL IMPROVEMENT PLAN DRAFT REVIEW

Town Manager Havens gave a presentation on the draft 2025-2029 Capital Improvement Plan as well as a review of debt ratios to Council and the audience. He then took questions from Council.

At approximately 12:55 p.m., Town Attorney Hobbs left the meeting.

Mayor Kingston thanked Town Manager Havens for his presentation. He called for a 15-minute break. The time was 2:08 p.m.

Mayor Kingston reconvened the meeting.

E-BIKES – SIDEWALK AND MULTI-USE PATH USE

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave a presentation on electric bicycles and the use of them on the Duck Trail and sidewalks in the Village area to Council and the audience. He then took questions from Council.

It was *consensus* of Council to direct staff to draft an ordinance for Town Attorney Hobbs to review and then present it at Council's April 3, 2024 meeting.

At approximately 3:10 p.m., Mayor Pro Tempore Thibodeau left the meeting.

LOW SPEED VEHICLES

Police Chief Ackerman gave a presentation on low-speed vehicles and the efforts to improve the safety of those using them to Council and the audience. He then took questions from Council.

It was *consensus* of Council to direct staff to draft ordinance changes to be presented at Council's April 3, 2024 meeting.

Mayor Kingston thanked Police Chief Ackerman for his presentations.

OPEN DISCUSSION

Mayor Kingston asked Council if they had anything else they wished to discuss. There was nothing to discuss.

Mayor Kingston thanked the audience for attending the Retreat, further thanking staff and all of the presenters for their work. He felt that everyone did a great job. He noted that the next meeting would be the Regular Meeting on Wednesday, March 6, 2024 at 1:00 p.m.

ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0. The time was 3:48 p.m.

Lori A. Ackerman, Town Clerk

Approved: _____

Don Kingston, Mayor

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
March 6, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, March 6, 2024.

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

COUNCIL MEMBERS ABSENT: Councilor Brenda Chasen.

OTHERS PRESENT: Town Manager Drew Havens; Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Town Attorney Robert Hobbs; Finance and Human Resources Administrator Jessica Barnes; Public Information and Events Director Kristiana Nickens; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 1:00 p.m. He noted that Councilor Chasen was excused from the meeting.

Mayor Kingston asked Fire Chief Donna Black and the members of the Duck Fire Department in attendance to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He noted that comments will be limited to three minutes as there was a timer for the time limit. He asked that any comments related to the public hearing be held off.

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin stated that she wished to address the agenda item regarding a potential ordinance on helium balloon releases. She stated that NOAA had an article about balloon releases, which were often used for special occasions, which when released into the air end up making their way back to Earth, causing many problems. She pointed out that many of the balloons that were not properly disposed of end up in the ocean or along a shoreline, becoming marine debris. She added that once the balloons land in the ocean, they become a hazard for marine wildlife and can be mistaken for food which leads to loss of nutrition, internal injuries, starvation, and death. She stated that the string or ribbon attached to a balloon can cause entanglement or asphyxiation to marine wildlife.

Miriam Rollin noted that there was also a human and economic impact in that no one likes to be on a beach full of trash, adding that balloon debris contributes to dirty beaches which keeps residents and visitors from enjoying the beach. She pointed out that it was a problem on the Outer Banks and was getting worse. She stated that balloon debris was completely preventable with many alternatives. She added that ten states, including Virginia, have laws banning helium balloon releases; however, North Carolina does not. She urged Council to ban helium balloon releases in Town as a new aspect to the ordinance banning littering. She noted that she knew this would be hard to enforce, but pointed out that the littering ordinance was also hard to enforce, but it was on the books. She thought it would help the public awareness with a new ordinance.

Kathryn Clemans of 116 Sunflower Court was recognized to speak. Ms. Clemans stated that she wanted to speak to the public hearing for SUP 24-002. She stated that she has owned her property for 27 years and has been through many storms. She stated that her and her neighbor had written a letter to the Council about their concerns with SUP 24-002, adding that their main concern was that the owners of 121 East Sea Hawk Drive do not divert their stormwater onto the back of her and her neighbor's properties. She stated that they currently have a small catchment area that overflows from the allowed elevation of 121 East Sea Hawk Drive's land by three feet. She noted that adding stormwater to that area would potentially result in severe flooding on her and her neighbor's properties if the stormwater catchment area overflowed. She asked that a proviso be made in the special use permit that the water be confined to 121 East Sea Hawk Drive's property and does not flow to the backs of her and her neighbor's properties. She added that their septic fields were at the rear of the properties and they have seen significant water come over those fields and had engineering consideration of that matter.

Debbie Swick of 59 Deer Path Lane, Southern Shores, was recognized to speak. Ms. Swick stated that she was the creator of Ban Balloon Releases in North Carolina. She stated that she has sent out proposals to Council as well as all of the municipalities, all 100 counties in North Carolina, and that she was currently working with a state senator to obtain legislation for the entire State of North Carolina. She noted that the State of Florida passed a ban earlier in the day, adding that it needed a signature from the governor there. She pointed out that it was a movement that was taking place all over the coastal United States and is moving forward.

Debbie Swick knew the issue had been discussed by Council and that their concern was enforcing it, just like anything that was litter related. She pointed out that if someone litters from their vehicle, the litter is retrieved and a fine is assessed. She added that when a balloon is let go, it cannot be retrieved. She noted that balloons take 100 years to break down and never decompose and the ribbons attached to them take 150 years to break down. She added that she is a member of N.E.S.T., Marine Mammal Stranding and Seal and they are taught how to assess if balloons have been active in marine life. She stated that if a balloon is released on the Outer Banks, it will go out to sea and the marine wildlife will end up being hurt by them. She urged Council to pass an ordinance specific to balloons, adding that she was aware there were no current businesses in Duck selling balloons, but it didn't mean it wouldn't happen.

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

CONSENT AGENDA

Minutes from the February 7, 2024, Regular Meeting; Government & Education Access Channel 2024-2025 Proposed Budget; Budget Amendment

Mayor Pro Tempore Thibodeau moved to approve the consent agenda as presented.

Motion carried 4-0.

SPECIAL PRESENTATIONS

Introduction of Firefighter Caroline Clissold

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to introduce Caroline Clissold as the newest firefighter for the Duck Volunteer Fire Department to Council and the audience. Mayor Kingston and Council welcomed Firefighter Clissold to the Town.

QUASI-JUDICIAL PUBLIC HEARING

Public Hearing/Discussion/Consideration of SUP 24-001, a Special Use Permit Application by Verizon Wireless, with the Authorization of the Northpoint Association, Inc., to Establish a Small Wireless Facility on Northpoint Neighborhood Common Property at 100 Dianne Street in the Single-Family Residential (RS-1) Zoning District (The applicant for this Special Use Permit has withdrawn the application, so the Public Hearing is no longer needed)

Mayor Kingston noted that public hearing would not be held due to the applicant withdrawing their application.

Public Hearing/Discussion/Consideration of SUP 24-002, a Special Use Permit Application by Property Owner Jerry Tatum, Requesting the Following Allowances for Fill and Grading Activities Related to Stabilization of Fill and Construction of a Single-Family Residence at 121 East Sea Hawk Drive: (1) to Allow a Bulkhead to Support and Contain Fill and (2) to Allow Land Disturbance Activities and Fill within Five Feet of the Property Line to the East

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and

substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine, and cross-examine witnesses. He asked if any member of Council needed to disclose any communications about the subject of the hearing that they may have had with the applicant or any person prior to the hearing. Mayor Kingston noted that Council had heard comments during the Public Comment period.

Town Attorney Hobbs stated that anyone that would be presenting evidence in connection with the hearing would need to take an oath. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in the applicants, witnesses, and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joseph Heard, Sandy Cross, Jerry Tatum, Jeffrey Ballard, Ralph Calfee, and Kathryn Clemans.

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard noted that the public hearing was properly advertised. He stated that the applicant was requesting a special use permit to allow the retaining wall to support and contain fill, which is not permitted under Subsection 156.128(A)(6) and allow land disturbance activities and fill within five feet of the property to the east at 121 East Sea Hawk Drive, which is not permitted under Subsection 156.128(A)(2).

Director Heard stated that the property is part of the Sea Hawk subdivision and is 17,619 square feet in size and zoned Single-Family Residential (RS-1). He stated that the lot was 75 feet in width and 235 feet in depth, containing a four-bedroom, 4,025 square foot single-family residence that was constructed in 2023. He noted that the residence has been occupied under a Temporary Certificate of Occupancy pending resolution of the grading and fill issues. He stated that a swimming pool and surrounding concrete patio was located to the rear of the residence. He pointed out that two properties that were zoned RS-1 abut the rear of the subject property and have frontage on cul-de-sacs in the Tuckahoe subdivision, each containing a single-family residence.

Director Heard explained that when approved for development in December 2020, the residence proposed on the site plan had a setback of 17.5 feet from the eastern side of the property and as part of the permit, a land disturbance plan was approved to add up to three feet of fill in the area where the residence was to be constructed. He noted that the proposed fill tapered down to the existing lot elevation before the required minimum setback of five feet for fill and grading activities. He added that upon completion of the construction project in 2023, the as-built survey showed that the residence was

constructed only 12 feet from the eastern property line. He stated that this difference in location has created issues with compliance with the fill and grading while maintaining the required minimum setback for land disturbing activities from the eastern property line.

Director Heard stated that the applicant has worked with Calfee Engineering to develop a resolution to the issue that involves constructing a low retaining wall for stability and tapering a lesser amount of fill toward the adjoining property to the east. He noted that in order to be constructed as proposed, the retaining wall and associated fill will require approval of the following allowances requested in the special use permit:

1. Allow the retaining wall to support and contain fill, which is not permitted under Subsection 156.128(A)(6).
2. Allow land disturbance activities and fill within five feet of the property to the east, which is not permitted under Subsection 156.128(A)(2).

Director Heard stated that Subsection 156.128(C) of the Duck Town Code establishes review criteria for special use permit applications involving fill and grading activities. He noted that the following standards should be considered as part of the Council's review:

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

Director Heard stated that staff determined that all five required findings were met by the proposal and, therefore, staff was recommending approval of SUP 24-002 subject to the following conditions:

1. The applicant must submit the required application materials and obtain necessary land disturbance and building permits prior to commencing work.
2. All areas of land disturbance must be stabilized prior to issuance of a final Certificate of Completion/Occupancy for the project.

Director Heard stated that he wished to address comments that were made earlier in the meeting regarding stormwater management in general. He stated that he wanted Council to understand that the Town does not have stormwater management requirements for individual residential developments. He stated that there was no requirement that any property retain all of the stormwater on the property. He stated that as far as the elevation and fill that was added to the applicant's lot were otherwise in compliance with Town standards to raise the area that was being developed. He pointed out that there was an area at the rear of the property that was lower and served as a collection area for stormwater for the applicant's property as well as some of the adjoining properties both in the Sea Hawk subdivision and the one that backs up to the Tuckahoe subdivision. He noted that it was not a requirement, but he wanted to point out that there was no fill proposed in the area toward the rear that would impact any of the stormwater management that is in the rear of the property.

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

Mayor Pro Tempore Thibodeau clarified that best practices were for homeowners to try to hold their own stormwater, but the Town does not have anything that requires it. Director Heard stated she was correct.

Councilor Lingard thought the stormwater issue may be something that Council should look into investigating whether it should be a requirement to contain stormwater.

Councilor Whitman clarified that the lot was raised by three feet. Director Heard stated he was correct. Councilor Whitman pointed out that according to the applicant's drawings, they had an even setback on either side. He asked how the house moved over by five feet. He stated that on the applicant's as-built drawing, it was overbuilt and they had to remove some concrete to get the lot coverage down to 29.97. He noted that somewhere in the process, the applicant knew they had a problem but kept building. Director Heard stated that the applicant could speak to Councilor Whitman's questions. He noted that staff reviews the as-built at the end for compliance and as long as it meets the standards, staff would approve it.

Councilor Whitman pointed out that Director Heard had many meetings with the applicant. He asked if this was the only option that came up. Director Heard stated that it wasn't, adding that there were numerous proposals that were looked at. He stated that with the cross-section, there were numerous different cross-sections that were developed and the one in front of Council was determined to be the one that had the least impacts that the applicant was able to move forward with. He stated that there were also several meetings with the contractor on how to best resolve the issue.

Mayor Pro Tempore Thibodeau clarified that the cross-section in front of Council was the best one because it had the least amount of impact on the neighboring property to the east. Director Heard stated that it was determined to be the best alternative, adding that the other options that were looked at were taller retaining walls or higher fill going in. He stated that this was the best proposal as far as minimizing the height of the wall and the impact on the adjoining properties while still providing the support that was needed for that side of the house.

Councilor Lingard stated that the way he saw special use permits was that they were for unforeseen circumstances or something that would benefit the Town or community or something to make good on something that occurred naturally. He asked if that was the broad scope for special use permits. Director Heard stated that that it was, adding that they could be used for other reasons and not limited to that type. He stated that they were all good reasons in considering them, but they were not the only reasons why they could be considered.

Mayor Kingston clarified the primary function of installing the retaining wall was to stabilize the foundation of the house that was rebuilt up three feet. He asked if that was the primary function of the retaining wall. He pointed out that it has now created other flooding which has not been addressed. He asked if that was correct. Director Heard stated that it has not created any flooding issues. Mayor Kingston clarified that there was no drainage into the lots in the Tuckahoe subdivision or on the west side. Director Heard explained that the lot was filled three feet, which the applicant was allowed to do. He stated that before this project, it was the lowest lot in the area so a lot of water collected on it. He added that the owner has a right to elevate the lot and by doing that it had nothing to do with the applicant's proposal. He stated that by elevating the lot three feet, it took out some of the area that used to collect water, but other properties had water flowing off theirs onto the applicant's property. He stated that the applicant elevated their property so that their home and pool were not sitting in a puddle. He pointed out that it happened before any of the issues occurred and the applicant was allowed to do that. He added that staff typically sees fill added to new developments and the issue was the applicant moved their house over; if they had not done that, a special use permit would not have been necessary. He reiterated that what the applicant was doing was not proposing any new fill or bulkhead in the back area toward the Tuckahoe subdivision or the rear of their property. He stated that the property still holds a good amount of water for the surrounding properties and was serving that purpose. He added that, according to the engineering analysis studies staff received, it would not increase the stormwater runoff to the adjoining properties. He thought the applicant would have additional comments about it.

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

Town Attorney Hobbs asked the applicant to make a presentation.

Jerry Tatum of 121 East Sea Hawk Drive was recognized to speak. Mr. Tatum stated that he tried very hard to comply with the rules and this seemed to be the best option. He agreed with Director Heard that the project did not create any more stormwater but was solving the problem at hand. He added that they looked into it very thoroughly and had their engineer present for this meeting who addressed the problem. He stated that he appreciated Council's consideration and approval of the application.

Town Attorney Hobbs asked Council if they had questions for the applicant. He reminded Council that the applicant was not an engineer and could not provide competent evidence relating to engineering matters. He stated that if Council had questions that should be addressed by a professional licensed engineer, then the engineer could provide testimony and answer technical questions.

Councilor Lingard asked why the house was built in the wrong place. Jerry Tatum stated that the builder could address that question. He added that he has been a property owner in the Sea Hawk subdivision since 1980. Councilor Whitman stated that he had the same question that Councilor Lingard had asked about the location of the home.

Town Attorney Hobbs asked the applicant's representative to make a presentation.

Jeffrey Ballard of Ballard Custom Designs was recognized to speak. Mr. Ballard stated that he had constructed the home for Jerry Tatum. He stated that with regard to the question Councilor Lingard and Councilor Whitman had, he moved the house to the left five feet in hopes of having more clearance on the west side. He stated that he did not consider the slope and it was a mistake on his part with regard to the 3:1 slope in keeping the five-foot clearance. He thought the issue was not having fill within five feet of the property line and a 3:1 slope, adding that he could not do both. He stated that he could have kept the slope but not the five-foot setback. He reiterated that it was his mistake of moving the house and not considering the slope. He further reiterated that it was moved for clearance in the future.

Councilor Whitman asked why 400 square feet of concrete was removed from the driveway. Jeff Ballard explained that he did not continue building knowing there was an issue. He stated that the reason for the concrete removal was because at the end of the project, a sidewalk was installed which was a little wider than it should have been and put the project over lot coverage. He added that it was a sidewalk issue on the west side and happened toward the end of the project. He noted that the ordinance required a foundation survey along the way, before they moved forward, which was completed and everything was completed according to the ordinance and the codes. He stated that when he got to the end of the project, he realized that the math did not work out and there was too much sidewalk so he had it removed.

Councilor Whitman stated that in looking at the original site plan as well as the as-built plan, they were different. He noted that somewhere along the line either the property owner or Jeff Ballard had to make a decision as to how everything was moved around. Jeff Ballard agreed, adding that it was a custom home. He explained that custom homes

develop as they are constructed and typically if there was going to be a code issue or an ordinance issue, one goes back to the Town with it, but he did not see that and moved forward with changing some shapes and positions of things. He reiterated that it was a custom project and was not a track home that is built all the time, but something that advances as it moves along.

Councilor Whitman pointed out that five feet was a significant amount. Jeff Ballard agreed, adding that he addressed that with Council. He stated that they moved it and did not consider the slope, adding that there was a large depression on that side that was not on the other side. He noted that if he had moved the house five feet the other way, there would not have been an issue. He reiterated that he made a mistake and did not catch it sooner.

Mayor Pro Tempore Thibodeau clarified that the five-foot move that was done on purpose was so that there was a better access to the back yard. Jeff Ballard stated she was correct, adding that what he found in the past with a swimming pool and septic systems, they tend to have issues and if one could not get behind the house, it becomes a process to try to get equipment behind a house, especially on tighter lots. He stated that it could be done but it's difficult. He stated that in trying to avoid that, he made the call to move the house for better access.

Mayor Kingston clarified that the swimming pool was new, adding that there was no pool before. Jeff Ballard stated that there was no home or pool previously. Mayor Kingston asked if the construction of the swimming pool created elevation at the back of the lot which would cause runoff. Mr. Ballard stated that it did not, adding that the back lot was still at original grade and had most of the original trees. He stated that it was a pretty deep lot.

Councilor Whitman pointed out that Jeff Ballard had stated that he moved the house so he could get around the back, but the septic system is located on the side that was shortened by five feet, according to the site plan. Jeff Ballard explained that the septic system was behind the swimming pool to the left side of the back side of the property. Councilor Whitman pointed out that the house was moved over to the left side. Mr. Ballard agreed. Councilor Whitman stated that Mr. Ballard had stated that he did it so he could get to the septic system. Mr. Ballard agreed, adding that the septic tank was placed in the position by the Dare County Health Department and was on the back side of the property. Councilor Whitman clarified that it was closer to the property at 123 East Sea Hawk Drive. Jeff Ballard stated he was correct, adding that the drainage field was not because it is not located where the septic tank is.

Mayor Pro Tempore Thibodeau asked Jeff Ballard if he was involved in the options. Jeff Ballard stated that he was and worked directly with the engineer to come up with a solution. He thought what was trying to be accomplished was to meet the no fill within the five feet. He noted that the plan had "regrade" which would put it back to the original grade and the retaining wall would be two feet out of the ground and would give the 3:1

slope at the back of the house. He noted that they would be removing fill and not adding it.

Town Attorney Hobbs asked if the applicant wished to present any other evidence. There was none. Town Attorney Hobbs asked if the applicant's engineer wished to make a presentation.

Ralph Calfee of Calfee Engineering was recognized to speak. Mr. Calfee stated that he was a registered professional engineer in the State of North Carolina. He stated that he prepared the engineering documentation that Council had in their packets. He believed that Director Heard did a good job of characterizing what the engineering proposal was and how it has worked as well as how it accomplishes the goals.

Town Attorney Hobbs asked Council if they had questions for Ralph Calfee. There were none.

Town Attorney Hobbs asked if there was any other evidence to be presented during the hearing.

Kathryn Clemans of 116 Sunflower Court was recognized to speak. Town Attorney Hobbs stated that it seemed that Ms. Clemans wished to present evidence during the hearing. He asked where her property was located in comparison with the subject property. Ms. Clemans stated that it was at the rear of the applicant's property, not immediately adjacent, but to the south of John Roderick's property, which was completely adjacent to the applicant's property. Town Attorney Hobbs clarified that Ms. Clemans' property did not directly adjoin the applicant's property. Kathryn Clemans stated he was correct, adding that it did if one looked at the catchment area. Town Attorney Hobbs asked Ms. Clemans if she planned to present testimony on how the proposal will cause damages to her property that will be different from what other properties may suffer or what the general public may suffer. Kathryn Clemans stated that she was trying to ensure that her back yard does not get flooded from additional earth works and people digging and moving things around.

Town Attorney Hobbs pointed out that it seemed that Kathryn Clemans wished to provide testimony on the effect of the special use permit on her property which was not adjacent to the applicant's property. Kathryn Clemans stated he was correct, adding that there was a catchment area that was common to the three properties – 116 Sunflower Court, 118 Sunflower Court, and 121 East Sea Hawk Drive. She stated that she did not want the catchment area filling up and flooding onto her and Mr. Roderick's properties.

Town Attorney Hobbs stated that it was Council's decision regarding allowing a party to intervene and he was interpreting it as a request for someone to intervene as a party to the hearing to provide evidence. He stated that it seemed to him that Kathryn Clemans met the requirements of being a party to intervene in the case. He added that after the testimony and during deliberations, Council could evaluate that along with all of the other

evidence presented. It was *consensus* of Council to allow Kathryn Clemans to intervene and provide evidence.

Town Attorney Hobbs told Kathryn Clemans that she has been admitted as an intervening party and may present evidence, which would be subject to questions from Council as well as the applicant.

Kathryn Clemans stated that she and her neighbor have low-lying property and expect runoff. Town Attorney Hobbs pointed out to Ms. Clemans that she should only discuss her property and not her neighbor's. Ms. Clemans stated that since the property at 121 East Sea Hawk Drive has been elevated by three feet and because her property is low-lying, she gets runoff which increases each time someone completes earthwork to the back of the property. She stated that she was asking if the special use permit was granted, that the engineering that is completed does not result in any diversion of stormwater from the applicant's property onto hers because she cannot take it and was almost at the limit. She noted that at the last sustained rain, just from a three-foot elevation, the catchment area filled up, overflowed, and flooded the rear of her property. She stated that she did not want this to continue to happen and wanted to make sure that something could be done to ensure that there was no diversion.

Town Attorney Hobbs clarified that Kathryn Clemans was not an engineer. Kathryn Clemans stated that she was not. Town Attorney Hobbs clarified that her evidence was just making a request and not stating that the project would cause runoff, but making a statement that she had concerns. Ms. Clemans stated that she was concerned about the potential for flooding her property.

Town Attorney Hobbs asked Council if they had questions for Kathryn Clemans.

Mayor Kingston pointed out that Kathryn Clemans had mentioned a catch basin between the three lots. He stated that it was the first Council had heard about a catch basin. He asked if that should be on the site plan, further asking if it was not associated with the applicant's property. Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that Kathryn Clemans was referring to a catchment area, which was a depression where water flows into it. He stated that it was not a structure, but an area where water flows into it naturally. Mayor Pro Tempore Thibodeau noted that it was part of the topography, adding that the lots are adjoined and there was no special structure. Councilor Whitman stated that it was similar to a swale. Kathryn Clemans stated that it was a ditch.

Councilor Lingard thought the topic with properties containing their runoff was something that needed to be addressed. He didn't think it could be addressed at this public hearing but could be addressed in the future. He stated that he sympathized with Kathryn Clemans but didn't think this was the right environment to speak. He thanked Ms. Clemans for bringing it to Council's attention.

Town Attorney Hobbs asked if the applicant had questions for Kathryn Clemans. Jerry Tatum stated that he did not have any questions but thought the evidence showed that his property was not creating further stormwater runoff. He added that his engineer could speak to that. Mayor Pro Tempore Thibodeau stated that she would like the applicant's engineer to clarify that the new engineering on the proposed bulkhead would not create any additional stormwater runoff.

Ralph Calfee explained that the stormwater management for this project as identified in the evaluation he completed shows that the stormwater infiltrates along the eastern roof overhang and the eastern edge of the decks, flowing directly into the soil without runoff. He pointed out that the house was behaving the way one wants it to behave when it was built and was under the regulations for residential development where the stormwater stayed local to the house and did not go anywhere else. He stated that he did not complete a stormwater management plan that conveys the water from the vicinity of the house to the rear yard. He stated that he kept it local, adding that the development has the landscaping stones under the eaves which aid in the stormwater coming off the roof, going into the catchment areas, and directly into the soil. He stated that the applicant's house does not have any more runoff coming off of the property going to the south than what would occur for any other house that would be built in accordance with the Town's regulations. He assured Council that one of his positions as an engineer in doing this was that he did not do public harm when he solved his client's problems. He thought it does a nice job of keeping the water at the vicinity of the house and letting it infiltrate locally.

Mayor Pro Tempore Thibodeau asked, with the additional construction that has to happen to put in the new retaining wall, it would not create more stormwater issues. Ralph Calfee stated that it would not, adding that there would be the normal amount of construction disruption to install the retaining wall, but it would not cause any stormwater runoff and it should be a relatively short duration, adding that one should not expect that it would create any problems during the construction. He stated that after construction, it will be done in compliance with the assumptions he made for the stormwater plan. He pointed out that Duck received a significant amount of rain a few days prior and there was no indication of any runoff to the south or the east. He added that there was a small amount of runoff that happened on the west because of a small issue that he knows has to be corrected on the west side, which was part of the residential development and would be taken care of. He stated that it works the way it does but would be fixed in a way that makes it more capable of accepting stormwater runoff and keeping it local.

Councilor Whitman stated that the retaining wall will act as a catcher of the water coming off the roof and into the rocks. He clarified that it would not allow the water to flow down into the five-foot spacing. Ralph Calfee stated he was correct, adding that when it is constructed, the soil on the upside of the retaining wall will be six inches below the top of the retaining wall which catches extra water, as well as allowing extra cushion. He stated that there was no reason to believe that there will be any stormwater runoff that will go over the retaining wall and into the five-foot flat area, which was suitable for stormwater infiltration. He added that they were not relying on that. Councilor Whitman clarified that the five-foot spacing was the existing grade that was there before the house

was built. Ralph Calfee stated that it was grading as far as stormwater is concerned. Councilor Whitman clarified that it was not filled. Mr. Calfee stated that the five-foot area on the site plan shows the existing slope and what the regraded area will be, which was essentially horizontal, and takes it back to the original condition.

Town Attorney Hobbs asked Kathryn Clemans if she had any questions for Ralph Calfee.

Kathryn Clemans stated that since she lives on her property, she sees the runoff from the applicant's property as well as other people's property. She stated that she was trying to ensure that whatever digging, regrading, walls, etc. that was completed does not result in extra runoff and diversion of stormwater to the rear of her property. She noted that she was not satisfied that it had been addressed in a substantial way. Ralph Calfee assured Ms. Clemans that the stormwater management on this property gives the absolute minimum runoff that would be anticipated from the property moving to the south. He pointed out that someone could build a house that has a rear hip roof that sheds water to the south, which would be fine, as it is allowed according to the Town's regulations. He stated that this one does not do that. He added that the design of the house and the stormwater system that has been established to resolve the issues, minimizes offsite runoff, and minimizes any runoff that could have occurred to the south.

Councilor Whitman asked where the regrading would be done, if a small swale could be installed from the front of the lot to the back of the lot, a foot deeper, so it would hold the water. Ralph Calfee explained that the grade decreases slightly as one goes to the south. He added that if a swale was installed, it would encourage water to move to the south, but if it was left in a flat horizontal position with vegetation, then any water that gets to that, including incident rainfall, would tend to infiltrate as much as it can rather than run off. He pointed out that the analysis he completed included the incident rainfall as well as looking at a rainfall infiltration for a rain of six inches per hour which was the 100-year rainfall rate for this area of North Carolina.

Town Attorney Hobbs asked if there were any remaining questions.

Kathryn Clemans asked Ralph Calfee if he could assure her that she would not get additional stormwater flowing through the sloped area and if she does get flooded and comes back to Ralph Calfee, he will be able to show that it wasn't from the applicant's property. Ralph Calfee explained that the design assumptions he makes, the soil conditions that are there and the rainfall conditions that are available to him were based on the weather service. He stated that he could not tell Ms. Clemans whether there would be 12, 15, or 20 inches of rain per hour in 15 years and there would be runoff. He added that he could not tell her that someone could go out there, pour paint over the rocks and seal everything off. He stated that the plan that has been completed does not create any runoff to the south.

Town Attorney Hobbs asked if any of the sworn witnesses wished to make a presentation. There were none. Town Attorney Hobbs asked Council if they had any final questions. There were none.

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that Council heard a variety of evidence during the hearing and should consider sworn evidence and evidence that was competent, material, and substantial as far as the decision on the application. He stated that as to the evidence that was technical in nature, competent evidence would be one coming from a licensed professional who is trained in that area. He noted that a vote of the majority of Council would be required to approve the application. He added that as part of Council's deliberation and if there was a motion to approve the application, there were various findings that would need to be made and it would be helpful if the motion referenced the findings as well as the two proposed conditions.

Councilor Whitman stated that the builder had stated this was a custom home, which most homes on the Outer Banks were. He stated that he was worried that if Council started granting these, that they will continue to come before Council asking for a special use permit because it was a custom home and the homeowner moved it without thinking about it going into a setback area. He asked what will happen if Council receives more cases after this one.

Councilor Lingard stated he had the same concern, adding that the homeowner may just assume that the Town would grant a special use permit. He stated that he did not want that precedent to be set, but he also did not want the applicant to be put out because of that. He stated that he was aware of setting a precedent if Council approves this special use permit and in the future someone else could come before Council with the same issue.

Town Attorney Hobbs pointed out that with the process of special use permits, the main reason for a quasi-judicial hearing was for the presentation of evidence and the facts are different in every case. He thought it reduces the opportunity for setting a precedent since every case has to stand on its own and has to comply with the requirements in the ordinance.

Councilor Lingard clarified that Council would not be setting a precedent that could lead the Town in a court of law in the future. Town Attorney Hobbs stated that Council was required by law to follow the ordinance, adding that part of Council's responsibility is to understand what the requirements were, consider the testimony and other evidence presented during the hearing, and make a decision whether the evidence demonstrates that the requirements of the ordinance have been met. He noted that other considerations were not relevant because the Town has established the requirements, so Council has to look at the evidence and see if the requirements have been met. He stated that if there were considerations about whether the ordinance should be changed or the requirements need to be changed, that was not relevant to the case today but for another day. He added that Council has to look at what is required and they listened to the evidence from Town staff, the applicant, and the intervening party about all of those matters and it was up to Council to decide whether the case has met those requirements and whether the permit should be issued.

Mayor Kingston stated that 4(a) of the draft order talks of no negative impact to the adjoining property to the east. He asked if it could be amended to add to the south as well as a condition. Town Attorney Hobbs clarified that Mayor Kingston wished to add another condition. Mayor Kingston asked if it was a condition. Town Attorney Hobbs explained that Council has to evaluate the evidence that was presented and consider competent evidence by a professional, which was the applicant's engineer. He stated that Council has to evaluate the evidence presented by the engineer on the finding of 4(a) as far as the impact of the proposed fill. Mayor Kingston thought the engineer had stated that it was designed for a 100-year storm with no impact on the runoff. Town Attorney Hobbs stated that there was testimony regarding the impact of the proposal to the lots on the south.

Mayor Pro Tempore Thibodeau thought it could be changed to state as follows: "...the adjoining properties..." based on the testimony Council heard rather than get specific as to which side of the properties.

Town Attorney Hobbs asked if the public hearing should be reopened so the question could be asked to Director Heard. Mayor Kingston stated that it should. Town Attorney Hobbs reopened the public hearing.

Director Heard clarified that Mayor Kingston was asking to expand on the finding under 4, adding that there was no issue with that. He stated that if Council wanted to expand on the finding to note that Ralph Calfee's testimony included that it would not impact other properties as well was fine. He thought Mayor Pro Tempore Thibodeau's suggestion was fine or staff could add language to it.

Councilor Lingard suggested removing the last three words "to the east" in 4(a) to read as follows: "...impact the adjoining property." Mayor Pro Tempore agreed, adding that property could be made plural, adding that plural would indicate more than one.

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Kingston felt that it should be expanded since Council does not know what will happen from the retaining wall as it could have other impacts even though it was stated that there would not be any. He added that there could be impacts that happen. He stated that Council heard from a concerned property owner that was adjacent to that lot. He thought some extra protection would be good.

Mayor Pro Tempore Thibodeau appreciated what she heard from the rest of Council regarding setting a precedent. She stated that in her experience on Council, every case has been unique, adding that special use permits were not simple. She thought everyone spent a lot of time on this and did not think there would be rampant disregard for the rules that were set in place. She pointed out that in her tenure on the Council the rules have been modified from time to time. She thought looking at additional stormwater protection

when looking at development was something Council could look at in the future. She stated that she was satisfied with what she heard from the engineer regarding this design of the bulkhead as a way to go back to compliance with no fill within five feet of the property line and also takes into close consideration the runoff that could be affected. She stated that she was in support of the application.

Councilor Lingard agreed with Mayor Pro Tempore Thibodeau's comments and suggestion. Councilor Whitman also agreed.

Councilor Lingard moved to approve SUP24-002 as presented, with the findings of fact as well as the two proposed conditions listed and the one change to 4(a).

Motion carried 4-0.

LEGISLATIVE PUBLIC HEARINGS

There were no Legislative public hearings at this time.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Directing Staff to Develop an Ordinance to Ban the Release of Balloons in Duck

Town Manager Havens stated that this was a follow-up on some information that Council was provided at their February 7, 2024 meeting. He stated that Council has had communications from Debbie Swick, who was at the meeting earlier, as well as having some written communications from her. He stated that he also provided Council with a memorandum regarding balloons. He stated that staff were looking for direction, asking if Council wanted staff to prepare an ordinance, noting that the authority exists in the State to have an ordinance that bans the release of balloons, and that other towns have passed an ordinance. He stated that, alternatively, Council could direct staff to draft a resolution against the releasing of balloons. He didn't think anyone would argue that this is something that people should be stopped from doing but was a matter of how it was done.

Councilor Lingard asked what the difference was with regard to enforcement of an ordinance versus a resolution. Town Manager Havens explained that a resolution was a statement of the feelings of the Council stating that they were opposed to releasing balloons because they are bad for the environment. He stated that it would have all of the wherefores and whereases as well as resolving that the Town Council does not want people to release balloons. He stated that with an ordinance it would have the effect of law in that it would require observation of the release happening and would be a matter of a civil penalty. He explained that if someone released balloons and a police officer sees it, a ticket would be issued.

Mayor Kingston asked what the status was with other towns on the issue. Town Manager Havens stated that he was aware that two other towns were having a discussion about it

and were leaning towards the development of a resolution. He added that he was not aware of any towns that were considering an ordinance. Mayor Kingston pointed out that Debbie Swick had commented about the governor. He asked if that was the governor of North Carolina or elsewhere. Town Manager Havens stated that legislation was passed by the legislature in the State of Florida and was still waiting for the signature of the governor. He noted that the State of North Carolina does not have a state statute banning the release of balloons, adding that the State of Virginia does as well as a handful of other states. He stated that, at present, North Carolina does not. Mayor Kingston clarified that a resolution would ban releasing balloons but not selling them or using them within a house. Town Manager Havens stated that an ordinance would ban the release. He didn't think Council had the authority to ban the sale of balloons. Mayor Pro Tempore Thibodeau pointed out that Town Manager Havens' memorandum states that Council cannot ban the sale of balloons. She thought Council could not ban the use of balloons but could ban the release of them.

Mayor Pro Tempore Thibodeau noted that Town Manager Havens' memorandum stated that Council has the authority in the Town's sign regulations to prohibit them being placed on a sign, which could be added to the Town's sign ordinance. She stated that Council does not have the authority to restrict the sale, adding that Council could develop an ordinance. She thought in reading the minutes from the last discussion, Council discussed education and she thought that would be a big part of the issue regardless of what Council decides. She stated that people will need to be educated on the dangers that this creates as it will be a big part of what is achieved. Town Manager Havens pointed out that the most recent Destination Dare video talks about this issue as well as the whole issue of litter on the beach.

Councilor Lingard stated that he was of the opinion that having enforcement backs up the education. He stated that after the Council's last meeting, he found over 20 balloons on the beach, adding that on March 5, 2024, he found seven more. He stated that this was an issue, noting that the balloons could have come from another state, but the issue was the balloons released in Town, no one would probably see on the beach. He didn't think there was any downside to having an ordinance that bans the release of balloons, adding that he knew it will be difficult to enforce. He asked if there has ever been a fine issued for littering since the Town incorporated.

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman stated that there have been six cases over the last 20 years that involved littering. He stated that he could not tell Council the specifics of them since the records were so old. He noted that it was not a charge that was commonly made because an officer has to witness the act, which doesn't happen that often. Councilor Lingard asked what the penalty was. Police Chief Ackerman explained that it was a Class 3 Misdemeanor, dependent on the weight of the total trash. He stated that there were two avenues available – a criminal fine where a uniform citation would be issued with an opportunity to appear in district court to defend themselves with a fine based on a number of circumstances, with court costs it would most likely cost a total of \$300 and the other was the Town ordinance, but

he wasn't sure of the amount of the fine. He didn't believe it had a specific amount outside of \$25, which would be a civil penalty and not a criminal one.

Councilor Lingard stated that his argument with that would be if it cost \$300 for the balloons, a \$25 fine was insignificant. He thought if the fine did not have some weight behind it, it was unlikely to have any consequence. He thought education was a big thing to educating the wedding planners and venues. He thought Council needed to have some weight behind it to let people know that the Town does not want people to release balloons and if they do and it was witnessed, they will be fined whatever the fee is.

Town Manager Havens stated that other ordinances have a \$250 civil penalty. He noted that the issue with trying to capture this under littering was it was considered littering when it lands and there was no way of knowing who released the balloons. He added that if someone sees a balloon released and a police officer follows the balloon to another town where he sees it land, it would have to be coordinated with the other town as well as trying to get the district attorney to prosecute for littering which was not likely to have a lot of success. He stated that with a local ordinance banning the release, if someone witnesses a release happen, a citation could be issued.

Councilor Whitman thought there should be a resolution drafted and see what the other towns do. He thought it would not be good if Duck was the only Town fining people. Councilor Lingard pointed out that if the rest of Council agreed with Councilor Whitman, they would be getting nowhere. He added that if every Council member has the wait and see attitude, then the issue will go nowhere.

Mayor Pro Tempore Thibodeau clarified that the Town has the authority to prohibit the release of balloons within the Town and several towns in North Carolina have such a provision in their ordinances. She asked if it was attached to the littering ordinance. Town Manager Havens stated that it was a separate ordinance that bans the release of balloons. Mayor Pro Tempore Thibodeau asked if the discussion could be continued and have Town Manager Havens bring Council a copy of what the other towns in North Carolina were doing. She noted that the Town of Greenville had decided not to pass anything, but she thought there must be something that would not create a lot of work for Town Manager Havens. Town Manager Havens stated that he could bring back a draft ordinance for Council's consideration to decide on, adding that he could also bring back a draft resolution at their April 3, 2024 meeting. Mayor Pro Tempore Thibodeau stated that she would be in favor of both. She didn't disagree that the issue should be kept in the forefront, but thought education had to be a huge part of it because the rest of it will be buried in the ordinance and may be forgotten over time. She reiterated that it needed to be kept in the forefront and the Town needs to educate the public.

Mayor Kingston agreed with Mayor Pro Tempore Thibodeau's comments, adding that education and communication was important. He didn't feel that if someone was releasing balloons, that they should be fined right away, but should be told they should not release them. He stated that people will be coming to Duck and not have any idea about the regulation unless it's on a signpost like the one about the prohibition of

fireworks. He didn't think the Town needed to get heavy-handed about it, adding that communication and education were the most important. He stated that one could go to the Sanderling Inn and make them aware that balloons should not be released for weddings. Mayor Pro Tempore Thibodeau agreed, adding that she was encouraged to hear that the realtors have stopped putting them on their open house signs.

It was *consensus* of Council to have staff bring back a draft ordinance and resolution to their April 3, 2024 meeting.

NEW BUSINESS

There was no New Business to discuss.

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

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

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

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

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

January FY 2024 Financial Presentation

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

MAYOR'S AGENDA

Mayor Kingston stated that he had his mayor/chairman meeting on March 20, 2024 hosted by the Town of Southern Shores. He pointed out that there will be a change on the Dare County Board of Commissioners with a few incumbents being defeated in the

primary election. He thanked Town Manager Havens and Town staff for the Council Retreat, adding that it was a good Retreat with a lot of information that was informative and beneficial. He stated that he was looking forward to the upcoming budget process.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau stated that there will be a state tourism conference on March 18-19, 2024 in Greenville, NC that she will be attending. She echoed Mayor Kingston's comments regarding the Council Retreat.

Councilor Lingard echoed Mayor Kingston and Mayor Pro Tempore Thibodeau's comments regarding the Council Retreat. He stated with regard to New Year's Eve, every city and small town throughout the world celebrates the holiday at midnight except for Duck because of the Town's noise ordinance. He stated that he would like Council at a future meeting to consider changing the ordinance to allow only on New Year's Eve outdoor entertainment to go on until 12:30 a.m. He thought in this day and age, everyone celebrates at midnight and did not see any reason why Duck could not do the same.

Councilor Whitman thanked the staff for the great Council Retreat. He thanked the audience that attended the Council meeting, adding that the 1:00 p.m. meetings were working out great.

OTHER BUSINESS

Additional Public Comments

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

Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, April 3, 2024 at 1:00 p.m.

ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 3:20 p.m.

Lori A. Ackerman, Town Clerk

Approved: _____

Don Kingston, Mayor

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH
CAROLINA, DECLARING THE MONTH OF APRIL AS CHILD ABUSE PREVENTION
MONTH

Resolution No. 24-04

WHEREAS, children are vital to our state's future success, prosperity and quality of life as well as being our most vulnerable assets; and

WHEREAS, all children deserve to have safe, stable, nurturing homes and communities they need to foster their healthy growth and development; and

WHEREAS, child abuse and neglect is a community responsibility affecting both the current and future quality of life of a community; and

WHEREAS, communities that provide parents with the social support, knowledge of parenting and child development and resources they need to cope with stress and nurture their children ensure all children grow to their full potential; and

WHEREAS, effective child abuse prevention strategies succeed because of partnerships created among citizens, human service agencies, schools, faith communities, health care providers, civic organizations, law enforcement agencies, and the business community.

NOW, THEREFORE, BE IT RESOLVED, this 3rd day of April, 2024, that the Town Council of the Town of Duck, North Carolina, hereby declares the month of April as Child Abuse Prevention Month; and

BE IT FURTHER RESOLVED that the Town Council calls upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to increase their participation in our efforts to support families, thereby preventing child abuse and strengthening the community in which we live.

Adopted this 3rd day of April 2024.

Mayor

ATTEST:

Clerk



2024-2025 NCLM Board | Designate Your Municipality's Voting Delegate

Designation of the Voting Delegate: Each Voting Delegate shall cast the single vote of the municipality for the 2024-2025 NCLM Board of Directors | Slate of Candidates.

Please complete the Voting Delegate form to identify your municipality's voting delegate to ensure delivery of electronic ballot and voting instructions by April 12, 2024.

If you have questions, contact Sarah Collins, scollins@nclm.org.

VOTING DELEGATE INFORMATION

Name *

Title 	First	Last
-------------------------------------------------------------------------------------------	-------	------

Municipality *

Preferred Email - unique to voting delegate to receive ballot *

Cell Number *

Preferred Address *

Address Line 1

City

North Carolina

▼

Zip Code

Person Completing Form (if different from above)

Name

Title



First

Last

Email

Preferred Phone Number

Submit

Town of Duck, North Carolina
FY 2024
Budget Amendment

Amendment No.: 6
Department: Legal Date: 4/3/2024

Budget Amendment					
Revenues	Fund	Dept. Code	Acct. Code	Obj. Code	Requested Amount
				TOTAL:	\$0
Expenditures	Fund	Dept. Code	Acct. Code	Obj. Code	Requested Amount
Legal - Professional Services	100	4150	150	190	\$15,000
Budgetary Accounting - Contingency	100	9900	910	-	-\$15,000
				TOTAL:	\$0
Reason for Amendment:					
This amendment increases the Legal Department and decreases the Contingency account by \$15,000 to include unforeseen legal expenses for FY 24.					
Approved: _____ Denied: _____					
Date: _____					

AGENDA: April 3, 2024

Regular Meeting

ITEM #4:

Special Presentations

- A. None at this time.

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: April 3, 2024

Regular Meeting

ITEM #5:

Quasi-Judicial Public Hearings

A. None at This Time

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: April 3, 2024

Regular Meeting

ITEM #6:

Legislative Public Hearings

A. None at This Time

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: April 3, 2024 Regular Meeting

ITEM #7:

Old Business/Items Deferred from Previous Meetings

- A. Discussion/Consideration of an Amendment to the Facility Use Policy
- B. Discussion/Consideration of Ordinance 24-02, an Ordinance to Amend Sections 70.01 through 70.05 of the Code of Ordinances to Clarify and Revise Provisions Regulating the Operation of Golf Carts, Electric Assisted Bicycles, and Other Motorized Vehicles on Public Streets, Sidewalks, and the Multi-Use Path within the Town of Duck, North Carolina
- C. Discussion/Consideration of Ordinance 24-01, an Ordinance Adding Chapter 130, Section 05, Creating an Ordinance Banning the Release of Balloons in the Town of Duck and/or Discussion/Consideration of Resolution 24-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Opposing the Release of Balloons

RECOMMENDED ACTION:

- See attachments

SUMMARY OF INFORMATION:

- See attachments

ATTACHMENTS:

- See attachments

AGENDA: April 3, 2024

Regular Meeting

ITEM #7A:

Old Business/Items Deferred from Previous Meetings

- A. Discussion/Consideration of an Amendment to the Facility Use Policy

RECOMMENDED ACTION:

- Per Discussion

SUMMARY OF INFORMATION:

Council recently adopted an updated Facility Use Policy that included a Release and Indemnity Agreement. Mayor Pro Tempore Thibodeau asked that this item be put on the agenda due to the requirement that the Release name the Town as an additional insured. She alerted staff that insurance companies are charging a fee to have the Town named on the Certificate of Insurance. For background, the Town receives Certificates of Insurance from vendors and contractors naming the Town as an additional insured and had not been made aware of them being charged for this service. Naming the Town as an additional insured adds a layer of liability protection but doesn't mean that the Town would not be named in a potential lawsuit. Additionally, it is a best risk management practice to obtain a certificate but not a requirement imposed by the Town's insurance carrier, since it was more for liability than property damage.

The updated Facility Use Policy is attached for discussion on the Release and Indemnity Agreement.

ATTACHMENTS:

- Facility Use Policy

Town of Duck, North Carolina
Facility Use Policy

Purpose:

The purpose of this Facility Use Policy is to define the applicability of facilities within the Town Hall/ Paul F. Keller Meeting Hall (referred hereafter as “Town Hall Complex”) for public use and the expectations of the Town Council for the use of these facilities. It is the intent of the Town Council to allow the use of certain rooms and related facilities within the Town Hall Complex for the benefit of the public, provided the use by the public does not interfere with the operations of the Town or constitute an activity that is commercial in nature.

Applicability:

This Facility Use Policy applies to the facilities within and immediately adjacent to the Town Hall Complex. This policy does not apply to the grounds and facilities that comprise the Duck Town Park, Boardwalk or Boat Pier, the use of which is defined in Chapter 93: Parks, of the Town of Duck, North Carolina, Code of Ordinances.

In general, the public may request to use the following rooms and facilities in the Town Hall Complex pursuant to this policy. These rooms are: in the Town Hall, the first floor conference room (maximum occupancy 50 persons, seating capacity 30 persons) and in the Paul F. Keller Meeting Hall, the meeting hall (maximum occupancy 200 persons, seating capacity 100 persons) and the conference room, which also contains kitchen and bathroom facilities (maximum occupancy and seating capacity 10 persons). The second floor of the Town Hall is reserved exclusively for administrative operations of the Town. Bathrooms for the use of the public are located on the first floor of the Town Hall and may not be reserved for the exclusive use of a specific group. The public may request the use of other facilities within the Town Hall Complex pursuant to this policy by requesting such use in writing to the Town Clerk.

Application:

In order to reserve any of the rooms or facilities in the Town Hall Complex, eligible applicants must complete and submit an application and required fees or deposits to the Town Clerk’s Office no earlier than six months and no later than one month prior to the date for which the facility is being requested. Rooms and facilities may not be reserved without the submittal of an application and the remittance of any required fees or deposits. Reservations for the use of rooms and facilities will be scheduled as completed applications, including any fees and deposits, are received. The Town Clerk is authorized to cancel or relocate any reservations due to scheduling conflicts or unforeseen events that make the use of a room or facility unsafe, unreasonable, or otherwise not in the best interest of the public. In the event that a cancellation or relocation of a reservation is required by the Town, the Town will notify the applicant as soon as possible to the change and refund any required fees or deposits. Groups or entities that have reserved a room or facility and need to cancel the reservation must provide a minimum of a two week notice of such cancellation or forfeit the deposit on the room or facility.

Eligible Applicants and Priority of Use:

The following groups or entities shall be eligible to reserve any of the applicable rooms or facilities in the Town Hall Complex pursuant to this policy. In the event that a conflict exists between one or more groups or entities for the use of a specific room or facility, a priority shall be given to the group or entity as shown below.

Priority One: Town Council and its respective Boards and Commissions.

Priority Two: Town departments and Town sponsored events.

Priority Three: Homeowner, Property Owner, and similar organizations, provided that the applicant is an organization located in the Town.

Priority Four: Non-profit organizations, including other governmental entities, provided that the use of the room or facilities is for educational, business, or professional meetings.

Rooms and Facilities in the Town Hall Complex may not be reserved for weddings or similar events.

Priority Four groups or entities may not use a room or facility more than once in any three-month period.

In accordance with Section 163.99 of the North Carolina General Statutes, the Town is authorized and directed to permit the use of space within the Town Hall Complex without charge by political parties, as defined in G.S. 163-96, for the express purpose of annual or biennial precinct meetings and county and district conventions.

Availability of Rooms and Facilities:

Generally, the applicable rooms and facilities of the Town Hall Complex are available for use, pursuant to this policy, Monday through Friday, between the hours of 9 a.m. and 5 p.m. The rooms and facilities may also be available Monday through Friday between the hours of 5 p.m. and 8 p.m.; however, fees related to room monitoring may apply.

In addition, the rooms and facilities may be available on certain holidays and weekends between the hours of 8 a.m. and 8 p.m.; however, fees related to room monitoring may apply. Applicable rooms and facilities are not available on Memorial Day, the 4th of July, Labor Day, the entire week leading up to Columbus Day Weekend, Thanksgiving Day, Christmas Day, New Year's Day, or Easter Sunday.

In order to accommodate as many groups or entities as possible during popular dates for meetings, unless otherwise approved by the Town Clerk, applicable rooms and facilities must be reserved with specific time periods. Facility Use Applications that do not contain specific time periods, or that contain general time periods, such as "all day," will be denied. In addition, groups or entities may be asked to alter requested time periods to assist in accommodating as many groups or entities as possible.

Room and Facility Deposits and Fees: Refer to the Town's Adopted Schedule of Rate and Fees

The following fees shall apply for the use of rooms and facilities unless waived by the Town Clerk, separate checks are required for deposits and fees:

Deposit for Rooms and Facilities (per room), not including the Community/Meeting Hall:	\$ 50.00
Deposit for Paul F. Keller Meeting Hall:	\$150.00
Deposits will be refunded after the date for which the room or facility was reserved.	

Cleaning Fee for Rooms and Facilities (per room), not including the Paul F. Keller Meeting Hall:	\$ 50.00
Cleaning Fee for Paul F. Keller Meeting Hall:	\$150.00

Monitor Fee for Rooms and Facilities reserved after 5 p.m. or on holidays or weekends: \$ 15.00 per hr.

Priority One, Two and Four groups and entities will not be charged any deposits or fees.

Priority Three groups and entities will be required to pay a deposit, monitor and cleaning fee.

In the event that a room, facility or any of its contents suffers damage due to the actions or neglect of groups or entities that have reserved the room or facility for use, the group or entity will be charged the actual costs to repair or replace the room, facility or damaged item, in addition to forfeiting the deposit for the use of the room or facility, which will be deducted from the final charge for damages incurred.

Release and Indemnity:

A Release and Indemnity Agreement is required by the Town as a condition of the use of any rooms and facilities in the Town Hall Complex.

General Rules of Use:

1. All use of rooms and facilities, except incidental use by Town staff, must be scheduled in advance through an application filed with the Town Clerk's Office. All required deposits and fees must accompany the application.
2. The use of rooms and facilities does not obligate the Town to provide any furnishings or equipment not currently assigned to the area. Furnishings and equipment may not be removed from the room or facility. Additional equipment may be brought into rooms and facilities if noted on the application and approved by the Town Clerk.
3. Under no circumstances will a group or entity using a room or facility be given a key to access any part of the Town Hall Complex. If used during normal operating hours, Town staff will provide access to the room or facility. Access to rooms and facilities during non-operating hours will be provided through the monitor staff.
4. The use of displays, decorations or similar items is expressly limited to tables or easels. The attachment of displays, decorations or similar items on walls, doors, windows, or any other surface is prohibited. The use of candles, or any other device that exposes the Town Hall and/or the Paul F. Keller Meeting Hall to an open flame is prohibited.
5. The Town Hall – Paul F. Keller Meeting Hall and the Duck Town Park are smoke free environments; hence, smoking and/or vaping is prohibited.
6. The use of alcohol at the Town Hall Complex, unless expressly permitted by the Town Manager, is prohibited.
7. The use of the kitchen area is limited to the re-heating of food items.
8. Groups or entities using rooms and facilities will return the rooms and facilities to their pre-event condition in accordance with the checklist provided with the application.
9. Parking during normal operating hours is limited to the north (playground) parking area. During this time, the front and side parking areas of the Town Hall Complex must be left open to allow for normal

Town operations. At times other than normal operating hours, parking is allowed in all designated parking areas.

10. The use of any signage must be noted on the application and approved by the Town Clerk. Under no circumstances may a group or entity use any Town insignias.

11. If a group or entity does not conclude the use of a room or facility (defined as more than fifteen minutes beyond the time indicated on the application), it will result in the forfeiture of the deposit.

12. Groups and entities using the rooms and facilities of the Town Hall Complex are responsible for their behavior and are expected to comply with all policies, laws and regulations. Failure to do so could result in dismissal from the Town Hall Complex and the denial of future use applications.

13. The Town reserves the right to deny the use of the rooms and facilities of the Town Hall Complex if it is determined that to allow the use is not in the best interest of the public. The Town also reserves the right to evict any group or entity from any room or facility in the Town Hall Complex if to do so is deemed to be in the best interest of the public.

Town of Duck, North Carolina
Town Hall – Paul F. Keller Meeting Hall
Facility Use Application

Name of Group or Entity: _____

Group or Entity Address: _____

Name of Applicant: _____

Applicant Telephone: _____

Applicant After Hours Telephone: _____

Applicant Email: _____

Applicant Signature: _____

Date Submitted: _____

Group or Entity Eligibility

(To be completed by Town staff)

_____ Priority One

_____ Priority Two

_____ Priority Three

_____ Priority Four

Total Fee: _____

Room and/or Facility Requested for Use:

Town Hall

_____ First Floor Conference Room
(maximum occupancy 50 persons, seating capacity 30 persons)

Paul F. Keller Meeting Hall

_____ Conference Room w/Kitchen & Bathroom room
(maximum occupancy and seating capacity 10 persons)

_____ Paul F. Keller Meeting Hall
(maximum occupancy 200 persons, seating capacity 100 persons)

Other Rooms or Facilities Requested for Use: _____

Description of Group or Entity Activity including any signage proposed: _____

Date and Time of Use:

Requested Date of Use by Group or Entity: _____

Is this Date on a Holiday or a Weekend? _____ yes _____ no

Requested Time of Use by Group or Entity (including set up and tear down): _____

Is this Time after normal operating hours? _____ yes _____ no

Deposits and Fees (see attached Facility Use Policy for applicability):

Room and Facility Deposit (not including Paul F. Keller Meeting Hall): \$50 * _____ (# of rooms) = _____

Paul F. Keller Meeting Hall Deposit: \$150 = _____
_____Cleaning Fee: \$50/\$150 = _____
_____Monitor Fee: \$15 * _____ (# of hours) = _____

Total Deposits and Fees (due at application submittal): = _____

Town Clerk's Approval or Denial:

_____ Approved

Town Clerk_____
Date

_____ Denied

Town Clerk_____
Date

Remarks: _____

Town of Duck, North Carolina
Town Hall – Paul F. Keller Meeting Hall
Pre and Post Facility Use Checklist

Name of Group or Entity: _____

Date: _____

Time Reserved: _____

Time In: _____ Time Out: _____

Room (s) and/or Facility (ies) Used: _____

	Pre-Event	Post-Event
1. Room/Facility Unlocked-Locked	_____	_____
2. All trash-debris picked up and removed	_____	_____
3. All furnishings/equipment present	_____	_____
4. All furnishings/equipment returned to proper place	_____	_____
5. All displays/decorations mounted properly	_____	_____
6. Kitchen facilities cleaned (if applicable)	_____	_____
7. Bathroom facilities tidied up (if applicable)	_____	_____
8. Signage in approved locations (if applicable)	_____	_____

Comments: _____

Group or Entity Representative: _____

Signature of Group or Entity Representative: _____

Town Representative: _____

Signature of Town Representative: _____

Town of Duck, North Carolina
Town Hall – Paul F. Keller Meeting Hall
Monitor Information

Monitor Name: _____

Monitor Address: _____

Monitor Telephone Number: _____

Time In: _____ Time Out: _____

Town of Duck, North Carolina
Town Hall – Paul F. Keller Meeting Hall
Release and Indemnity Agreement

WHEREAS, the undersigned has requested the use of rooms and facilities owned or operated by the Town of Duck, North Carolina, and do engage in activities for the exclusive benefit of the undersigned.

NOW, THEREFORE, in consideration of the mutual promises or other good and valuable consideration, the undersigned does hereby for himself/herself, his/her heirs, executor, employers, successors, of himself/herself or of his /her employees, administrators, and personal representatives. I/We/The (name of group or entity) _____ understand and agree to the following:

The Town of Duck shall not be liable for any damage to property or person by reason of the applicants use or occupancy of the Town Hall – Paul F. Keller Meeting Hall and the applicant agrees to hold the Town harmless from and against all claims, suits, demands, actions, and the cost and expense thereof, including attorney’s fees, arising out of any property damage or personal injury occurring as a result of the applicant’s use of the Town Hall – Paul F. Keller Meeting Hall. The applicant further specifically agrees to procure and keep in full force at its expense, Commercial Liability Insurance in an amount not less than \$1,000,000 per occurrence, which policy or policies of insurance shall list the Town of Duck as an additional insured. **The applicant will cause a certificate of insurance to be furnished to the Town of Duck evidencing such coverage and said policy shall provide that said insurance may not be canceled without written notice to the Town of Duck at least thirty (30) days prior to any cancellation.**

I/We/The (name of group or entity) _____ hereby declare that the terms of this Release and Indemnity Agreement have been fully read and understood by me, and freely and voluntarily entered into and accepted by me, and I hereby acknowledge that I have read and understand this agreement. This agreement shall be in full force and effect any time after the execution thereof.

Print Name

Signature

Date

AGENDA: April 3, 2024

Regular Meeting

ITEM #7B:

Old Business/Items Deferred from Previous Meetings

- A. Discussion/Consideration of Ordinance 24-02, an Ordinance to Amend Sections 70.01 through 70.05 of the Code of Ordinances to Clarify and Revise Provisions Regulating the Operation of Golf Carts, Electric Assisted Bicycles, and Other Motorized Vehicles on Public Streets, Sidewalks, and the Multi-Use Path within the Town of Duck, North Carolina

RECOMMENDED ACTION:

- Per discussion and adopt the ordinance

SUMMARY OF INFORMATION:

At Council's annual Retreat, two presentations were made to Council. The first was the use of electric assisted bicycles in Town and the second focused on the differences between golf carts and low speed vehicles. Council came to a consensus directing staff to draft an ordinance that would address safety measures and potential changes to the Town's current ordinance. Ordinance 24-02 amends Sections 70-01 through 70.05 in the Code of Ordinances where it clarifies and revises the provisions for regulating the operation of these vehicles.

Staff will review the amendments and answer any questions.

ATTACHMENTS:

- Memorandum from Police Chief
- Ordinance 24-02

INTEROFFICE MEMORANDUM

TO: MAYOR KINGSTON & MEMBERS OF THE TOWN OF DUCK TOWN COUNCIL
FROM: JEFFREY ACKERMAN, CHIEF OF POLICE
SUBJECT: PROPOSED AMENDMENTS TO SECTIONS 70.01 THROUGH 70.05 OF THE CODE OF ORDINANCES
DATE: MARCH 25, 2024
CC: DREW HAVENS, TOWN MANAGER

At the Town Council's annual retreat in February 2024, I made two presentations to the Town Council. The first covered the use of electric assisted bicycles in Town and the second focused on the differences between golf carts and low speed vehicles. The Town Council provided valuable feedback on suggested safety measures and potential changes to the Town's current ordinance regulating the use of electric assisted bicycles and golf carts.

As a reminder, the Town's current ordinance allows the operation of electric assisted bicycles on the Town's multi-use pedestrian path, as well as the sidewalks located within the Central Village Commercial Area, which is the area located between the marked crosswalks at Aqua Restaurant and Sunset Grille & Raw Bar.

The Town's current ordinance regulating golf carts allows for the operation of golf carts on public streets, with suggested safety equipment, and no process for permitting and registration. State law prohibits the Town from enacting regulations on the operation of golf carts on private streets.

Based upon the feedback and direction provided by the Town Council, and in consultation with the Town Manager, I respectfully present the Town Council with proposed amendments to sections 70.01 through 70.05 of the Town of Duck Code of Ordinances, which address the operation of electric assisted bicycles and golf carts.

Attached you will find Ordinance No. 24-02, which shows the additions and deletions to sections 70.01 through 70.05 of the Town of Duck Code of Ordinances. The following bullet points highlight the substantive additions and deletions:

§ 70.01 DEFINITIONS.

- Amends the definition of "Central Village Commercial Area" to remove the language that pertained to the multi-use path that previously ran contiguous with Duck Road prior to the completion of the Village Pedestrian Improvement Project.
- Adds a definition of the "Central Village Commercial Area Bicycle Lane" to establish that the bicycle lanes run contiguous to Duck Road and were designed specifically for the operation of bicycles.

- Adds a definition of the “Central Village Commercial Area Pedestrian Sidewalk” to make it clear the sidewalks are located adjacent to Duck Road and were designed specifically for use by pedestrians.
- Adds the verbatim definition of “Electric Assisted Bicycle” as enacted into North Carolina law under G.S. § 20-4.01(7a).
- Adds the definition of “Low-Speed Vehicle” to differentiate the legal differences between a “golf cart” and a “low-speed vehicle.”
- Amends the definition of “Motorized Vehicle” by adding mopeds and low-speed vehicles to the list of vehicles prohibited from operating on the multi-use pedestrian path. And adds an exception to allow the operation of motorized wheelchairs or similar vehicles, on the multi-use pedestrian path and the Central Village Commercial Area Pedestrian Sidewalk, when such devices are required due to a disability.
- Amends the definition of “Multi-Use Pedestrian Path” by removing the width requirement, and adding language to make it clear the multi-use pedestrian path is located outside of the Central Village Commercial Area.

Further, this definition is amended by making clear that electric assisted bicycles may be operated on the multi-use pedestrian path, which brings this definition in line with the Town’s current ordinance.

- Adds definitions of “Private Street” and “Public Street.”

§ 70.02 MOTORIZED VEHICLES ON THE MULTI-USE PEDESTRIAN PATH AND THE CENTRAL VILLAGE COMMERCIAL AREA PEDESTRIAN SIDEWALK.

- Amends this section to prohibit the operation of electric assisted bicycles on the Central Village Commercial Area Pedestrian Sidewalks.

§ 70.03 OPERATION OF ELECTRIC ASSISTED BICYCLES.

- Adds a section that prohibits the operation of electric assisted bicycles recklessly or at a speed faster than is reasonably proper, or in a manner so as to endanger the life, limb, or property of the rider or of any other person.

§ 70.04 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES.

- Recodifies this chapter from 70.03 to 70.04.

§ 70.05 GOLF CARTS.

- Section 70.05 has been rewritten and reformatted; however, there are no substantive changes from the Town’s current regulations as set forth in subsections (A), (B), or (D).
- Subsection (C) establishes a golf cart registration and permit process, which requires:

- Annual golf cart registration at a fee to be set by the Town Council.

Staff recommends a \$25.00 fee to cover the cost of permit processing and permit decals.

- Acknowledgement that the golf cart permit applicant has read and understands the provisions of the ordinance, that the golf cart is in working order, that the golf carts motor has not been modified, and that the golf cart is equipped with the basic safety equipment required under subsection (C)(3).

Note, headlamps would not be required unless the golf cart is operated between sunset and sunrise.

- Subsection (E) reaffirms that a golf cart may not be operated on the shoulder of any public street, road, or highway, or upon any sidewalk, multi-use pedestrian path, Central Village Commercial Pedestrian Sidewalk, Central Village Commercial Bicycle Lane, or other similar area of the Town.
- Subsection (F)(2) sets a civil penalty of \$50.00 for failing to comply with the golf cart registration and permit provisions.

The penalty for all other violations of this Chapter remains unchanged at \$25.00.

ATTACHMENT

- Ordinance 24-02

AN ORDINANCE TO AMEND SECTIONS 70.01 THROUGH 70.05 OF THE CODE OF ORDINANCES TO CLARIFY AND REVISE PROVISIONS REGULATING THE OPERATION OF GOLF CARTS, ELECTRIC ASSISTED BICYCLES, AND OTHER MOTORIZED VEHICLES ON PUBLIC STREETS, SIDEWALKS, AND THE MULTI-USE PATH WITHIN THE TOWN OF DUCK, NORTH CAROLINA

Ordinance No. 24-02

WHEREAS, previously the Town enacted Ordinance 18-04 to regulate the operation of golf carts on public streets within the Town; and

WHEREAS, subsequent to the adoption of Ordinance 18-04, it was determined that certain provisions of the Ordinance needed to be clarified and revised.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Duck Town Council of the Town of Duck, North Carolina, as follows:

1. Section 70.01 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§70.01 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~CENTRAL VILLAGE COMMERCIAL AREA. The area of the Town adjacent to the east and west side of NC 12, generally between the marked crosswalks on NC 12 at 1174 Duck Road and 1264 Duck Road, where the paved roadway section includes a 4 to 7 foot wide shoulder, which is directly contiguous to the vehicular travel lanes of NC 12, that is designed for use by pedestrians, bicyclists, and other human powered devices.~~

CENTRAL VILLAGE COMMERCIAL AREA BICYCLE LANE. The area of NC 12 on the east and west side, generally between the marked crosswalks on NC 12 at 1174 Duck Road and 1264 Duck Road, where the paved roadway section includes a shoulder, which is directly contiguous to the vehicular travel lanes of NC 12, that is designed for use by bicyclists.

CENTRAL VILLAGE COMMERCIAL AREA PEDESTRIAN SIDEWALK. The concrete sidewalks adjacent to the east and west of NC 12, but not contiguous with the roadway, generally between the marked crosswalks at 1174 Duck Road and 1264 Duck Road, that is designed for use by pedestrians.

ELECTRIC ASSISTED BICYCLE. A bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface

when powered solely by such a motor is no greater than 20 mph. The definition is republished here for convenience only and the definition set out in G.S. §20.4.01(7a), as amended from time to time, is controlling for all purposes.

ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE. A self-balancing non-tandem two-wheeled device, designed to transport 1 person, with a propulsion system that limits maximum speed of the device to 15 mph or less and which are exempt from registration pursuant to G.S. §20-51(14).

GOLF CART. A vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and that is not capable of exceeding speeds of 20 mph. The definition is republished here for convenience only and the definition set out in G.S. §20-4.01, as amended from time to time, is controlling for all purposes.

LOW-SPEED VEHICLE. A four-wheeled electric vehicle equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, windshield wipers, speedometer, seat belts, and a vehicle identification number, which may be operated only on streets and highways where the posted speed limit is 35 mph or less, and whose top speed is greater than 20 mph but less than 25 mph, and which is registered and insured in accordance with G.S. §20-50 and G.S. §20-309.

MOTORIZED VEHICLES. Every vehicle which is self-propelled, ~~and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle~~ powered by gasoline, diesel or other fuel source, batteries, or similar devices, which term shall include golf carts and low-speed vehicles but shall not include ~~mopeds~~ motorized wheelchairs or similar vehicles not exceeding 1000 pounds gross weight and required due to a disability, electric personal assistive mobility devices, or electric assisted bicycles when operated on the multi-use pedestrian path.

MULTI-USE PEDESTRIAN PATH. ~~A~~The concrete or asphalt path ~~that is at least 8 feet in width,~~ situated adjacent to NC 12, but not contiguous with the roadway, between the south Town line and the marked crosswalk on NC 12 at 1174 Duck Road, and between the north Town line and the marked crosswalk on NC 12 at 1164 Duck Road, that is constructed for the use of pedestrians, bicyclists, electric personal assistive mobility devices, electric assisted bicycles, and other non-motorized vehicles.

PRIVATE STREET. A private street is privately owned by a Homeowners Association, by a person, by several people, or by a Corporation/LLC. The designated owner is responsible for all maintenance and upkeep of a private street.

PUBLIC STREET. Public streets are owned, maintained, built, and dedicated to the North Carolina Department of Transportation (NCDOT). NCDOT is responsible for all maintenance and upkeep of public streets.

2. Section 70.02 of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§70.02 MOTORIZED VEHICLES ON THE MULTI-USE PEDESTRIAN PATH AND THE CENTRAL VILLAGE COMMERCIAL AREA PEDESTRIAN SIDEWALK

- (A) Motorized vehicles on the multi-use pedestrian path. ~~Except for emergency vehicles, public safety vehicles or motorized vehicles of Town contractors,~~ No motorized vehicle shall be allowed to operate, park or be left standing on any portion of a multi-use pedestrian path.
- (B) Motorized vehicles on the Central Village Commercial Area Pedestrian Sidewalk. No motorized vehicle or electric assisted bicycle shall be allowed to operate, park or be left standing on any portion of the Central Village Commercial Area Pedestrian Sidewalk.
- (C) Exemptions. Motorized vehicles operated by the Duck Police Department or the Duck Fire Department, while on official public safety business or by Town staff, contractors, or volunteers while on official Town business.

§ 70.03 OPERATION OF ELECTRIC ASSISTED BICYCLES

It shall be unlawful for any person to operate or ride an electric assisted bicycle on the multi-use pedestrian path, public street, or other public area recklessly or at a speed faster than is reasonably proper, or in a manner so as to endanger the life, limb, or property of the rider or of any other person.

§70.034 ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICES

- (A) Electric personal assistive mobility devices may only be operated on a public roadway or other public right-of-way with a posted speed limit of 25 mph or less. A person operating an electric personal assistive mobility device may cross over public roadways and public rights-of-way with posted speeds of greater than 25 mph in the same manner as a pedestrian. In no instance shall an electric personal assistive mobility device be operated within the roadway or right-of-way of NC 12 in the Central Village Commercial Area, as defined herein.
- (B) Any person operating an electric personal assistive mobility device shall wear a helmet of good fit, with the chin strap fastened securely under their chin.
- (C) No person or business shall rent or lease any electric personal assistive mobility device to or for the use of any person unless the rental or lease includes a protective helmet of good fit, the operator intends to wear the helmet with the chin strap fastened securely under the chin at all times while operating an electric personal assistive mobility device

and the operator has been provided with posted or written notice explaining the provisions of this section.

- (D) No electric personal assistive mobility device may be operated at a speed greater than that which is reasonable and prudent for the existing conditions, and in no instance at a speed greater than 6 mph.
- (E) No electric personal assistive mobility device may be operated in a careless or reckless manner.
- (F) Operators of electric personal assistive mobility devices must yield the right-of-way to pedestrians and other human-powered devices.
- (G) Electric personal assistive mobility devices may be operated on public roadways and other public rights-of-way only during daylight hours.
- (H) Electric personal assistive mobility devices must be operated in accordance with all applicable state and local laws and ordinances.
- (I) Town personnel operating EPAMDs for official Town business are exempt from the requirements of this section.
- (J) Any violation of the provisions of this section shall be a misdemeanor and punishable as provided by G.S. §14-4 or by a civil penalty of \$25.00.

§ 70.04~~5~~ GOLF CARTS

- ~~(A) *Purpose.* The purpose of this Section is to provide a means of travel that is convenient, conserves resources, and protects the environment. Golf carts, as defined in § 70.01, if properly used, may be an effective way to travel for short distances within the Town. However, to help ensure the public safety and welfare, the operation of golf carts must not only comply with normal regulations regarding motor vehicles but shall also comply with the provisions of this section. This section establishes the basic, minimum standards of care to be used by the users of golf carts and on public roads, streets, and highways and their respective shoulders. This section also prohibits the use of golf carts on sidewalks, multi-use pedestrian paths, and similar areas of the Town.~~
- ~~(B) *Disclaimer.* Golf carts might not be designed or manufactured to be used on public streets, and the Town neither advocates nor endorses the golf cart as a safe means of travel on public streets, roads and highways. The Town shall in no way be liable for accidents, injuries or deaths involving or resulting from the operation of a golf cart.~~

~~(C) *Assumption of Risk.* Any person who owns, operates, or rides on a golf cart on a public street, road, or highway within the Town does so at his or her own risk and peril and assumes all liability resulting from the operation of the golf cart.~~

~~(D) *Operation of Golf Carts.*~~

~~(1) *Permitted Operation on Public Streets, Roads, and Highways.*~~

~~(a) *Operation on NC Highway 12 prohibited.* The operation of golf carts on NC Highway 12 shall be prohibited; provided, however, a golf cart may cross NC Highway 12 at a right angle when driving from a street on one side of NC Highway 12 to a street that is directly opposite and on the other side of NC Highway 12.~~

~~(b) *Operation on all other public streets permitted.* Except as to NC Highway 12 as provided in division (D)(1)(a) of this section, the operation of golf carts on all public streets, roads, and highways within the Town (specifically, streets, roads and highways maintained by the State or by the Town), where the posted speed limit is 35 miles per hour or less, shall be permitted; provided, however, it shall be prohibited to operate a golf cart in a manner that is inconsistent with applicable laws and the provisions of this chapter.~~

~~(c) *No regulation of golf carts on private streets.* The Town does not have the statutory authority to regulate the operation of golf carts on streets and roads within the Town which are private, specifically those streets and roads which are not maintained by the State or by the Town.~~

~~(2) *Suggested Equipment.* It is recommended that any golf cart authorized by this section to operate on the public streets, roads and highways of the Town should have the following safety features installed:~~

~~(a) Two operating front headlights, visible from a distance of at least 250 feet;~~

~~(b) Two operating tail lights, with brake lights and turn signals, visible from a distance of at least 250 feet;~~

~~(c) A rear vision mirror;~~

~~(d) At least 1 reflector per side;~~

~~(e) A parking brake;~~

~~(f) Seat belts for all seating positions on the golf cart;~~

~~(g) A windshield; and~~

~~(h) No more than 3 rows of seats.~~

~~(3) — *Restrictions.* The use of a golf cart is prohibited within the Town unless the following requirements are met:~~

~~(a) The driver and passengers must be properly seated while the golf cart is in motion and may not be transported in a negligent manner. The seating capacity, as determined by the number of seats, shall not be exceeded.~~

~~(b) No golf cart may be operated at a speed greater than reasonable and prudent for the existing conditions. No golf cart may be operated at a speed greater than 20 miles per hour.~~

~~(c) No golf cart may be operated in a careless or reckless manner.~~

~~(d) Golf carts must be operated in accordance with all applicable state and local traffic laws and ordinances, including all laws, regulations and ordinances pertaining to the possession and consumption of alcoholic beverages.~~

~~(e) Golf carts are subject to the same parking regulations as traditional motor vehicles and may only be parked in the same manner and in the same places designated for the parking of traditional motor vehicles; provided however, 2 golf carts may be parked in a parking space that is designed for the parking of 1 traditional motor vehicle.~~

~~(f) Golf carts may only park in handicapped spaces if the driver has a valid handicapped placard or sticker and the same is clearly posted or displayed on the golf cart.~~

~~(g) Golf carts may not be used for the purpose of towing any person or object.~~

~~(h) The possession of open containers of alcohol and/or consumption of alcohol by the driver and/or passengers of a golf cart is prohibited.~~

~~(i) The operator of a golf cart shall yield the right of way to traditional motor vehicles.~~

~~(4) — *Prohibitions.* No golf cart may be:~~

~~(a) Operated on the shoulder of any public street, road, or highway or upon any sidewalk, multi-use pedestrian path, or other similar area of the Town; or~~

~~(b) Operated within the Town by any person who is less than 16 years of age.~~

~~(5) *Disqualified vehicles.* This section only permits the use of golf carts within the Town. All terrain vehicles, 4-wheel utility vehicles, go-karts, similar utility vehicles, and golf carts that are modified so that they no longer meet the definition of golf cart may not be operated on the public roads, streets and highways of the Town, unless such vehicles are otherwise registered and permitted under the motor vehicle laws of North Carolina. This division does not apply to the Town Police Department, Fire Department, Ocean Rescue or other Town staff or Town contractors using otherwise disqualified vehicles for official Town business.~~

~~(6) *Exceptions.* The operation of golf carts is not subject to the provisions of this section under the following circumstances:~~

~~(a) The operation is at a golf course, private club, or on private property and with the consent of the owner/operator of the applicable real property; or~~

~~(b) The operation is in connection with a parade, a festival or other special event provided the consent of the sponsor is obtained and provided such golf cart is only used during and in connection with such event; or~~

~~(c) The use of the golf cart is by the Duck Police Department while on official police business or by Town staff, contractors, or volunteers while on official Town business.~~

~~(E) *Violation.*~~

~~(1) Any person violating the motor vehicle laws of North Carolina, which shall also apply to golf carts operated within the Town, shall be subject to the penalties prescribed in North Carolina law for said violation.~~

~~(2) Any person who knowingly allows an underage driver to operate a golf cart may be charged and subject to the penalties prescribed in North Carolina law for contributing to the delinquency of a minor.~~

~~(3) Any person violating the provisions of this chapter or failing to comply with any of its requirements shall be required to pay a civil violation in the amount of \$25.~~

- ~~(4) Any person violating the Town's parking ordinances shall be subject to the penalties applicable to parking violations.~~
- ~~(5) Operating a golf cart while under the influence of an impairing substance (such as alcohol or drugs) on a public street or road is a violation of North Carolina law, and is punishable as provided therein.~~

(A) Operation of Golf Carts Permitted

- (1) Purpose. The purpose of this section is to provide a means of travel that is convenient, conserves resources, and protects the environment. Golf carts, as defined in §70.01, if properly used, may be an effective way to travel for short distances within the Town. However, to help ensure the public safety and welfare, the operation of golf carts must not only comply with normal regulations regarding motor vehicles but shall also comply with the provisions of this section. This section establishes the basic, minimum standards of care to be used by the users of golf carts on public roads, streets, and highways, and their respective shoulders. This section also prohibits the use of golf carts on sidewalks, multi-use pedestrian paths, and similar areas of the Town.
- (2) Disclaimer. Golf carts might not be designed or manufactured to be used on public streets, and the Town neither advocates nor endorses the golf cart as a safe means of travel on public streets, roads, and highways. The Town shall in no way be liable for accidents, injuries, or deaths involving or resulting from the operation of a golf cart.
- (3) Assumption of risk. Any person who owns, operates, or rides on a golf cart on a public street, road, or highway within the Town does so at his or her own risk and peril and assumes all liability resulting from the operation of the golf cart.
- (4) Operation on NC Highway 12 prohibited. The operation of golf carts on NC Highway 12 shall be prohibited; provided, however, a golf cart may cross NC Highway 12 at a right angle when driving from a street on one side of NC Highway 12 to a street that is directly opposite and on the other side of NC Highway 12.
- (5) The operation of golf carts on public streets, roads and highways, except as to NC Highway 12 as provided in division (A)(4) of this section with a posted speed limit of 25 mph or less within the Town in compliance with the provisions of this article shall be permitted. However, it shall be unlawful to operate any golf cart that is not properly registered with and permitted by the Town or to operate any golf cart at any place or in any manner not authorized herein.

(B) Exceptions. The operation of golf carts in the following circumstances is not subject to the provisions of this article:

- (1) The operation of golf carts on private property.
- (2) The operation of golf carts within private, gated, or limited access communities.
- (3) The use of a golf cart in connection with a Town sponsored special event provided the golf cart is only used during such event.
- (4) The use of golf carts by the Duck Police Department or the Duck Fire Department, while on official public safety business or by Town staff, contractors, or volunteers while on official Town business.

(C) Registration and permit requirements.

- (1) Registration and permit required. No golf cart may be operated on any public street, road, or public vehicular area within the Town or on any property owned or leased by the Town unless the golf cart has first been registered with the Town and permitted as required herein. The registration and permit shall be renewed annually thereafter in accordance with the provisions of this article.
- (2) Application and permit. The owner shall complete an application provided by the Town and must self-certify that the golf cart is in compliance with the provisions of this article prior to the issuance of an annual permit for the golf cart. To evidence the registration, the owner shall be issued a unique registration decal which shall be displayed on the lower left corner of the windshield of the golf cart. The Town Council may establish, and amend from time to time, an annual registration fee for golf carts.
- (3) Required safety features. In order to register a golf cart and secure an annual permit, a golf cart must have the following safety features installed:
 - (a) Two operating front headlights, visible from a distance of at least 250 feet, if the golf cart is operated between sunset and sunrise,
 - (b) Two operating taillights, with brake lights and turn signals, visible from a distance of at least 250 feet,
 - (c) A rear vision mirror,
 - (d) At least one reflector per side,
 - (e) An operable parking brake,
 - (f) Seat belts for all seating positions on the golf cart,

- (g) A windshield; and,
 - (h) The golf cart is limited to a maximum of three rows of seats.
- (4) Acknowledgement. Prior to the issuance of an initial permit or annual renewal, the owner shall sign an acknowledgement that he/she has read and understands the provisions of this article, that the golf cart is in proper working order, that the golf cart does not contain any modifications to the engine or motor, and that the golf cart is equipped with the required safety features listed in section (C)(3) above, and that the duty to properly maintain the golf cart is a duty of the owner and no reliance may be made as to the fitness of the golf cart as a result of obtaining a permit from the Town. The Town shall set the fee for the initial permit and annual renewal in the Town's budget ordinance fee schedule.
- (5) Disqualified vehicles. All-terrain vehicles, 4-wheel utility vehicles, go-karts, and other similar utility vehicles which are not manufactured for operation on a golf course, and/or a golf cart which has been modified so that it no longer meets the definition of golf cart may not be registered as a golf cart under this article nor shall such vehicles be operated on the public roads, streets, and highways within the Town, unless such vehicles are registered and permitted under the motor vehicle laws of the state.
- (D) Basic requirements. In order to lawfully operate a golf cart on public streets, the owner and/or operator, and the golf cart must meet the following basic requirements:
- (1) The driver and passengers must be properly seated while the golf cart is in motion and may not be transported in a negligent manner. The seating capacity, as determined by the number of seats, shall not be exceeded.
 - (2) No golf cart may be operated at a speed greater than 20 mph.
 - (3) No golf cart may be operated in a careless or reckless manner, or at a speed faster than is reasonably proper, or in a manner so as to endanger the life, limb, or property of the passengers or of any other person.
 - (4) Golf carts must be operated in accordance with all applicable state and local traffic laws and ordinances, including all laws, regulations, and ordinances pertaining to the possession and consumption of alcoholic beverages.
 - (5) Golf carts are subject to the same parking regulations as traditional motor vehicles and may only be parked in the same manner and in the same places designated for the parking of traditional motor vehicles; provided however, 2 golf carts may be

parked in a parking space that is designed for the parking of 1 traditional motor vehicle.

- (6) Golf carts may only park in handicapped spaces if the driver has a valid handicapped placard or sticker and the same is clearly posted or displayed on the golf cart.
- (7) Golf carts may not be used for the purpose of towing any person or object.
- (8) The possession of open containers of alcohol and/or consumption of alcohol by the driver and/or passengers of a golf cart is prohibited.
- (9) The operator of a golf cart shall yield all right-of-way to traditional motor vehicles.

(E) Prohibitions. No golf cart may be:

- (1) Operated on the shoulder of any public street, road, or highway, or upon any sidewalk, multi-use pedestrian path, Central Village Commercial Pedestrian Sidewalk, Central Village Commercial Bicycle Lane, or other similar area of the Town; or
- (2) Operated within the Town by any person who is less than 16 years of age.

(F) Violation.

- (1) Any person who knowingly allows an underage driver to operate a golf cart may be charged and subject to the penalties prescribed in North Carolina law for contributing to the delinquency of a minor.
- (2) Any person failing to comply with the registration and permit requirements set forth in subsection (C) of this chapter shall be required to pay a civil penalty in the amount of \$50.00. Any person violating any other provisions of this chapter shall be required to pay a civil penalty in the amount of \$25.00.
- (3) Any person violating the Town's parking ordinances shall be subject to the penalties applicable to parking violations.
- (4) Operating a golf cart while under the influence of an impairing substance (such as alcohol or drugs) on a public street or road is a violation of North Carolina law and is punishable as provided therein.

3. It is the intention of the Duck Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances for the Town of Duck and to accomplish such intention, sections of this Ordinance may be renumbered, captions added, sections retitled, section references corrected and repealed provisions deleted.

Adopted and made effective on this the ____ day of _____, 20____.

Mayor

Attest:

Town Clerk

AGENDA: April 3, 2024 Regular Meeting

ITEM #7C:

Old Business/Items Deferred from Previous Meetings

- A. Discussion/Consideration of Ordinance 24-01, an Ordinance Adding Chapter 130, Section 05, Creating an Ordinance Banning the Release of Balloons in the Town of Duck, and/or Discussion/Consideration of Resolution 24-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Opposing the Release of Balloons

RECOMMENDED ACTION:

- Discuss and adopt Ordinance 24-01 and/or Resolution 24-03.

SUMMARY OF INFORMATION:

In early February, the Town Council received an e-mail from Southern Shores resident Debbie Swick highlighting the concerns about the release of balloons due to the environmental damage caused by the litter resulting when they return to earth.

The Town Council, at the February 7, 2024 meeting, recommended pursuing this matter through education and public information rather than taking steps toward adopting a specific regulation banning releases.

A second e-mail from Ms. Swick was received on February 18, 2024 prompting further consideration of this topic.

At their meeting on March 6, 2024 the Town Council heard two public comments supporting the adoption of an ordinance banning the release of balloons in Duck. After some conversation, Council directed staff to develop a draft ordinance and a resolution for their consideration.

ATTACHMENTS:

- Ordinance 24-01 Banning the Release of Balloons in Duck
- Resolution 24-03 Opposing the Release of Balloons
- Debbie Swick balloon ban letter
- Balloon memorandum from Drew Havens
- E-mail from Debbie Swick (2/18/2024)

**AN ORDINANCE ADDING CHAPTER 130, SECTION 05, CREATING AN ORDINANCE
BANNING THE RELEASE OF BALLOONS IN THE TOWN OF DUCK**

Ordinance 24-01

WHEREAS, pursuant to North Carolina General Statutes §160A-174 a town may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the town; and

WHEREAS, in furtherance of the public's health, safety and welfare it is necessary to regulate certain activities upon the lands, waterways, beaches, and dune areas of the Town which degrade or cause harm to these areas or the waters of the Atlantic Ocean, Currituck Sound, and tributaries of same; and

WHEREAS, it is further necessary to regulate certain activities to protect the well-being of the natural environment and the wildlife present in this environment.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina:

The Code of Ordinances, Town of Duck, North Carolina, is hereby amended by adding a section, to be numbered 130.05, Unlawful to Release Balloons within the Town, which section shall read as follows:

Sec. 130.05. Unlawful to Release Balloons within the Town.

- A. It shall be unlawful for any person, firm, nonprofit organization, or corporation to knowingly and intentionally release, participate in the release of, intentionally cause to be released, to litter by abandoning and not properly disposing of all waste material, any type of balloon inflated with a liquid, air, or gas within the Town limits, any waters within the zoning jurisdiction of the Town, or the beach and/or dune areas within the Town.
- B. The following are not violations of this Section:
 - (1) Balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes.
 - (2) Hot air balloons that are recovered after launching.
 - (3) Balloons released inside a building or structure do not make their way into the open air.
- C. The following definitions apply to this Section:

“Balloon” means a flexible, nonporous bag made from materials such as, but not limited to, rubber, latex, polychloroprene, mylar, or nylon fabric that can be inflated or filled with gas or fluid, such as helium, hydrogen, nitrous oxide, oxygen, air, or water, and then sealed at the neck of the bag. The Town does not recognize any balloon as “biodegradable or photodegradable”.

“Litter” includes all waste materials resulting from the outdoor release or abandonment of a balloon.

D. Penalty for violations of this Section:

Any person violating the provisions of this section shall be subject to a civil penalty in the amount of \$250 to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within ten days after having been cited for violation of the ordinance.

This ordinance shall be effective upon its adoption.

Don Kingston, Mayor

ATTEST:

Lori Ackerman, Town Clerk

Date adopted: _____

Motion to adopt by: _____

Vote: _____AYES _____NAYS

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH
CAROLINA, OPPOSING THE RELEASE OF BALLOONS**

Resolution No. 24-03

WHEREAS, The Town of Duck’s Vision Statement emphasizes its deep connection to natural resources and commitment to environmental preservation by stating “we respect and value our delicate, yet dynamic barrier island environment”; and

WHEREAS, one of the six unifying principles in Duck’s Vision 2032 reads, in part, “There is a conscious respect for Duck’s fragile and extraordinary environment. We protect and preserve opportunities for our residents and visitors to enjoy our ocean, sound, and natural coastal habitats”; and

WHEREAS, the release of helium and other lighter-than-air balloons poses a significant environmental threat upon deflation; and

WHEREAS, mylar and latex balloons, found littered along the shoreline, contribute to pollution, detract from the Town’s aesthetics, and endanger marine and animal life; and

WHEREAS, balloons frequently land in the Atlantic Ocean and Currituck Sound, becoming prevalent sources of floating debris within a 200-mile radius of the shore; and

WHEREAS, research suggests that marine life and animals mistake balloons for edible resources, leading to ingestion and potential harm; and

WHEREAS, marine life and animals are unable to digest balloons, risking choking or intestinal blockages; and

WHEREAS, local government intervention is crucial for mitigating environmental harm and safeguarding public health and safety.

NOW, THEREFORE, LET IT BE RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA, that the Town Council strongly opposes the release of helium or lighter-than-air balloons within Duck to preserve the town's air, land, and water from contamination, and to protect the wellbeing of native wildlife.

Adopted this 6th Day of April, 2024.

Mayor

ATTEST:

Town Clerk

Debbie Swick
59 Deer Path Lane, Southern Shores, NC 27949
252-715-5945 570-269-7188
debswick@hotmail.com

RE: BAN THE RELEASE OF HELIUM BALLOONS IN THE STATE OF NORTH CAROLINA

Dear Mayor and Esteemed Town Commissioners,

As an extremely active volunteer for many organizations on the Outer Banks I can bear witness to the horrors that all litter, and more specifically, balloon pollution, creates on Our beautiful shoreline and in Our oceans. As a member of N.E.S.T. and a member of The Mammal and Seal Stranding Teams, I see firsthand examples of how balloons cause injury and death to these magnificent creatures, some who have sadly obtained Government Status as ENDANGERED. With your help, I hope to acquire local resolutions prohibiting the release of ALL helium/nitrous balloons while also implementing other restrictions for safer sales and post purchasing practices. My goal is to obtain Legislation throughout the State of North Carolina, and further use it to entice other States throughout Our Country to do the same. The Releasing of Balloons is not strictly a coastal issue. It harms wildlife AND domestic animals throughout the whole United States. Balloon Pollution is a Global problem; one we can address here, at home, and make a grand statement that it is not only not accepted here but will no longer be tolerated in our Beautiful Outer Banks and its surrounding areas.

The Latex balloon is made from plant-based materials and is marketed as biodegradable. There are, in fact, chemicals added to the process which allows the balloon to exist longer. These take approximately 4 to 5 years to break down. The Mylar balloon is created from Nylon and a thin layer of metalized film on top, which is made from petroleum. This type of balloon can take, according to scientific research, upwards of 100 years to break down. The ribbon takes about 150 years. THEY NEVER, NEVER COMPLETELY GO AWAY as they break down into microplastics, causing damage to sea life of all sizes.

Sea inhabitants become ensnared in ribbon, as do Our magnificent shorebirds. Balloon plastic is the number one threat to a shorebird's existence and is 32% higher than the threat of hard plastics. Sea Turtles mistake balloons for jellyfish, a staple in their diet. Larger mammals ingest these balloons. They become lodged in the digestive tract giving the animal a sense of having eaten recently. This causes the animal to stop feeding and it will die a horrific and agonizing death of starvation. In November 2023, a Gervais Beaked Whale was found deceased on Emerald Isle, NC. It was determined that the cause of death was in fact an ingested balloon which was found to be intact at the necropsy. This was a nursing calf, still at his mother's side. At the site of the December 27, 2023 stranding of a Sperm Whale in Nags Head I found a balloon not far from the water that had a company logo on it. When I traced the company to its location, I found that it had traveled 760 miles from a realtor office in Birmingham, Alabama. While it had not made it to the ocean it certainly could have caused harm to another animal as BALLOONS ARE THE NUMBER 1 CAUSE OF DEATH FOR SPERM WHALES.

The average helium balloon is able to travel approximately 1300 miles. The Cape Hatteras National Seashore National Park Service recently reported that they collected 1786 balloons in 2023. The number collected in 2022 was 733; an increase of more than 1000 balloons. One of the balloons collected this year had been released 3 days prior to its being found and was released from Wisconsin. I remind people to liken a balloon traveling through the wind currents across our Country as did the smoke from the Canadian wildfires in the Summer of 2023. Balloons can blow! I also like to remind listeners that while the number of retrieved balloons is impressive, consider firstly that this is over a span of approximately 70 miles of our 3375 mile coastline and secondly, imagine if you can, how many thousands more balloons did not land on our coast, but came to rest in our beautiful ocean. The numbers must be staggering.

Balloon releases can be both ACCIDENTAL and PURPOSEFUL. An accidental release occurs when attempting to load your car in a windy environment, or breaking free from a sign or mailbox, for example. A purposeful release occurs for Weddings, Graduations, Gender Reveals and most popular, Memorializing a loved one. Alternatives exist in many forms. One can choose brightly colored pinwheels for signage or mailboxes. One can scatter birdseed or wildflower seeds, use all natural confetti, plant a tree, or my favorite, blow bubbles. I promise you; **BALLOONS DO NOT MAKE IT TO HEAVEN!** The use of balloons can and should be replaced with items that are more respectful to the world we live in and all its inhabitants. As a frequent roadside and beach trash collector, the number of balloons retrieved is heartbreaking, but I promise you I've never had cause to pick up seeds or bubbles.

If you are driving down the road and throw a deflated balloon out of your car window, it is called littering. If you fill a balloon with helium and let it go into the air, do you know what that is called? It is **STILL** littering!

I ask that you consider implementing covenants, resolutions or bylaws for the following:

1. All Helium/Nitrous filled balloons sold in your town jurisdiction be required to have a one ounce or more weighted object attached to their tether at the time of sale.
2. No balloons may be used as attachments to unsupervised and unmonitored outdoor signage, mailboxes, railings, tables, etc. where accidental releasing may occur.
3. No companies may advertise or offer for sale, at any time, balloons whose sole intention is that for releasing, i.e., memorial, wedding, graduation, etc.,
4. **NO BALLOONS, WITH THE EXCEPTION OF GOVERNMENTAL PERMISSION, MAY BE RELEASED AT ANY TIME, FOR ANY PURPOSE, IN ANY AMOUNT.**

We are all so fortunate to reside where we do. What a great and resounding testament to our residents and visitors alike that we, together are taking a stand to exclaim that our Coast and its inhabitants matter to us, today, and for all time to come.

Most humbly and Respectfully,

Debbie Swick



February 5, 2024

To: Members of the Duck Town Council

From: Drew Havens, Town Manager

Re: Balloon Release Regulations

Following up on the e-mail Southern Shores resident Debbie Swick sent you regarding regulating balloons in Duck, I did some research and spoke with colleagues while at the NC City/County Managers Association conference last week.

Ms. Swick specifically asked Council to consider:

1. All Helium/Nitrous filled balloons sold in your town jurisdiction be required to have a one ounce or more weighted object attached to their tether at the time of sale.
2. No balloons may be used as attachments to unsupervised and unmonitored outdoor signage, mailboxes, railings, tables, etc. where accidental releasing may occur.
3. No companies may advertise or offer for sale, at any time, balloons whose sole intention is that for releasing, i.e., memorial, wedding, graduation, etc.
4. No balloons, with the exception of governmental permission, may be released at any time, for any purpose, in any amount.

It does not appear that authority exists in North Carolina for towns to regulate how balloons are sold or advertised for sale. This effectively eliminates items one and three from the above list. States, such as California, have enabled these types of provisions, but such enabling legislation does not exist in North Carolina.

With regard to item two, it appears that we have the authority, in our sign regulations, to include a prohibition on the use of balloons on signs.

For item four, we have the authority to prohibit the release of balloons (intentional or accidental) from any property within the Town. Several towns in North Carolina have a such a provision in

their ordinances, some with a general prohibition and others specifically including releases from waters and beach front within the zoning jurisdiction of the town.

One of the more recent instances of this type of ordinance being considered was in the City of Greenville, where, after some initial conversations and the development of an ordinance, the City Council voted against adopting the proposed ordinance (4-3 vote).

Absent any change in our ordinance, we would fall back on the state law that prohibits littering to deal with any release of balloons an officer observes. Of course, this is a great topic to include in our public education/outreach to ensure that our residents and visitors are aware of the potential harm balloons can cause.

I will bring this up, unless told otherwise, at your meeting on Wednesday and get your direction regarding the development of any ordinance changes you desire to make (if any).

From: Account Update <debswick@hotmail.com>
Sent: Sunday, February 18, 2024 2:44 PM
To: Lori Ackerman <lackerman@townofduck.com>
Subject: Balloon Release Ban NC

Dear Mayor Kingston and Esteemed Council Members,

As a follow up to my previous email requesting ordinances to prevent the release of helium balloons, I wanted to share with you my recent accomplishment having received support from OBAR, the Outer Banks Association of Realtors. As this organization contains approximately one thousand members, I feel a great sense of pride in articulating the need for balloon use responsibility to this large group of residents. The Board for OBAR will no longer permit the use of helium balloons for their agents' open houses. My journey to acquire much needed legislation will not diminish my need to continue educating all those who live and visit Our beautiful area, as well as those who reside in other States whose releases can impact Our beaches and wildlife as well. I also successfully contacted Realty South, which is a very large real estate company in Alabama. A balloon released from one of their offices was found by me on December 27, 2023 on the beach in Nags Head at the site of a beached Whale. After many calls and emails, they have agreed to no longer provide helium balloons to their agents for use and will educate them as to the impact balloons have on Our coast and wildlife.

I have set up a Facebook page under the heading **Ban Balloon Releases NC** and encourage you to visit and join in the conversations from so many like-minded people who are angered by balloon litter. I have numerous hard copy petitions located throughout the Outer Banks and one online, available to educate and gather signatures from residents as well. This may be visited at Change.org/BanBalloonReleasesNC. I continue to speak at groups and meetings. I have recently been interviewed on BEACH 104 and will be seen on SPECTRUM 1 NEWS on Wednesday, February 21, 2024, airing from 5:00am to 12:00pm, several times throughout the morning. I hope to create a PSA for Current TV as well. I pledge to serve this most magnificent beach community by never ceasing in my message about an easily remedied problem. Although enforcement of these ordinances may seem improbable, I believe that the enactment of them will create a strong voice to all and will undoubtedly deter a possible release when there are understood consequences for their actions. The action of littering is also very hard to enforce. The undeniable difference between the two is that ordinary litter falls to the ground. A balloon as litter will float away and with lack of evidence may not be covered under any pre-existing litter ordinances.

What a great opportunity lay before this administration to be a part of this monumental movement. As I continue towards legislation on then State level, I encourage you to take pause and consider creating ordinances for the town of Duck, NC and be a well-remembered and appreciated Board who made decisions everyone will respect.

I ask this not for myself, but for the wildlife we strive to spare from human impact and for the State we are all so fortunate to call home.

Respectfully submitted,
Debbie Swick

AGENDA: April 3, 2024 Regular Meeting

ITEM #8:

New Business

- A. Discussion/Consideration of Appointing an Individual to Serve on the Planning Board
- B. Discussion/Consideration of Authorizing Staff to Work with the Planning Board to Consider Stormwater Management Requirements on Single-Family Residential Properties

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: April 3, 2024

Regular Meeting

ITEM #8A:

New Business

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

RECOMMENDED ACTION:

- Reappoint Joe Blakaitis or appoint a different individual to serve a three-year term on the Planning Board ending May 1, 2027

SUMMARY OF INFORMATION:

The term of Joe Blakaitis on the Planning Board will expire on May 1, 2024. Mr. Blakaitis has indicated that he would like to serve another three-year term to expire on May 1, 2027.

Staff advertised the position opening and received an application from Miriam Rollin for the opening.

Mr. Blakaitis and Ms. Rollin will be present at the Council meeting to introduce themselves and answer any questions Council may have.

ATTACHMENTS:

- Joe Blakaitis Application
- Miriam Rollin Application



RECEIVED

MAR 12 2024

TOWN OF DUCK, NC

APPLICATION FOR BOARDS, COMMITTEES, AND COMMISSIONS
TOWN OF DUCK

FOR OFFICE USE ONLY		
Date Received	Time	Contacted by:
Appointed To	Date Appointed	Application Updated:

Please Complete Each Section (Print or Type)

Name JOSEPH C. BLAKAITIS
Home Address 115 SANDPIPER ROAD
Mailing Address PO BOX 8212
Business Address HOME ADDRESS
Home Phone 252-261-7513 Business Phone 973-723-4434
Email BLAK@EMBARQMAIL.COM

Boards/Committees/Commissions I am most interested in:

- ☒ Planning Board
☐ Zoning Board of Adjustment
☐ Wall Décor and Artwork Committee
☐ Other (please list) _____

Education (Including Years of School Completed):

LAFAYETTE COLLEGE - GRADUATE - 4 YEARS
DEGREE - ELECTRICAL ENGINEERING

JOSEPH C. BLAKAITIS

Current Employer RETIRED

Title/Position / Years in Current Position /

Brief Description of Duties:

/

Other Employment History DUPONT CO. 10 YRS / GUNPOWDER
KEUFFEL & ESSER / DRAFTING INSTRUMENTS, ETC 20 YRS

Interests/Skills/Areas of Expertise AIRCRAFT PILOT - OVER 6000 HRS
WRIGHT INSTRUCTOR / COMMERCIAL PILOT
ALL RATINGS

Current Professional Organizations/Civic and/or Activities
SANDERLING HOME OWNERS ASSOCIATION.
QUIET BIRD MEN

Past Professional Organizations/Civic and/or Activities
ALUMNUS GROUP AT COLLEGE

Comments
ACTIVE ON DUCK PLANNING BD. SINCE APPROX 2008

Is there any possible conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the Town Council?

No

Yes (If yes, please attach an explanation of the possible conflict)

I certify that the facts contained in this application are true and correct to the best of my knowledge and belief. I understand that this application will be retained in the Office of the Town Clerk for two (2) years and must be updated after that time. If not updated as requested by the Town Manager, the application will be removed from the active consideration file. I understand if I am to be considered for a position that I will be required to give a presentation to Town Council on my qualifications and why I wish to serve. I further understand that upon submitting this application to the Town of Duck, this application and all information on it is considered a public record under North Carolina law.

Signature Joseph C. Blakaitis

Date 3/14/2024

RETURN COMPLETED FORM TO:

Office of the Town Clerk
Town of Duck
Post Office Box 8369
Duck, NC 27949

RECEIVED

MAR 18 2024

TOWN OF DUCK, NC



**APPLICATION FOR BOARDS, COMMITTEES, AND COMMISSIONS
TOWN OF DUCK**

FOR OFFICE USE ONLY		
Date Received	Time	Contacted by:
Appointed To	Date Appointed	Application Updated:

*Please Complete **Each** Section (Print or Type)*

Name Miriam Ann Rollin

Home Address 149 Plover Drive, Duck, NC 27949

Mailing Address 149 Plover Drive, #8197, Duck, NC 27949

Business Address N/A

Home Phone 703-408-6002 Business Phone N/A

Email marollin@icloud.com

Boards/Committees/Commissions I am most interested in:

- ☒ Planning Board
- ☐ Zoning Board of Adjustment
- ☐ Wall Décor and Artwork Committee
- ☐ Other (please list) _____

Education (Including Years of School Completed):

BA 1982 Yale University (Economics & Political Science)
JD 1987 Catholic University of America, Columbus School of Law

Current Employer N/A (retired)

Title/Position N/A (retired)

Years in Current Position N/A (retired)

Brief Description of Duties:

N/A (retired)

Other Employment History Through my over 40 year career advancing the needs of vulnerable children and families through policy improvements and litigation, I had the privilege and pleasure of collaborating effectively with a wide variety of people, including federal/state elected officials, coalition allies and org members.

Interests/Skills/Areas of Expertise Achieving success in my career required: good listening skills; creative problem-solving; clear, concise and impactful written and oral communications; extensive research and analysis; and the ability to quickly digest large quantities of information, and understand complex info.

Current Professional Organizations/Civic and/or Activities

I have become an active member of the Duck community, including speaking at several Town Council Meetings, recently speaking at a Planning Board meeting, and leading an effort to restrict Beach driving (incl. a 700-signature petition). I have also been active in Duck on issues of stormwater management, emergency medical services, speed limits, and most recently placement of cell towers in Duck. I'm also an active NEST volunteer, and OBX Chorus member.

Past Professional Organizations/Civic and/or Activities

I have served on national boards, have been a member of state and national bar associations, and have led national coalitions to advance the interests of vulnerable children, youth and families.

Comments I understand how boards and commissions work, I am a quick study on new topics, and I am excited about serving on the Town of Duck Planning Board, to help in the work of keeping Duck the splendid place that we all know and love!

Is there any possible conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee of the Town Council?

No ☒ XXX

Yes (If yes, please attach an explanation of the possible conflict)

I certify that the facts contained in this application are true and correct to the best of my knowledge and belief. I understand that this application will be retained in the Office of the Town Clerk for two (2) years and must be updated after that time. If not updated as requested by the Town Manager, the application will be removed from the active consideration file. I understand if I am to be considered for a position that I will be required to attend a Council meeting to give an introduction to Town Council. I further understand that upon submitting this application to the Town of Duck, this application and all information on it is considered a public record under North Carolina law.

Signature



Date

3/18/24

RETURN COMPLETED FORM TO:

Office of the Town Clerk
Town of Duck
Post Office Box 8369
Duck, NC 27949

AGENDA:**April 3, 2024****Regular Meeting****ITEM #8B:**

New Business

- B. Discussion/Consideration of Authorizing Staff to Work with the Planning Board to Consider Stormwater Management Requirements on Single-Family Residential Properties

RECOMMENDED ACTION:

- Consider authorizing Town staff to work with the Planning Board on the review of potential standards for stormwater management on single-family residential properties.

SUMMARY OF INFORMATION:

At its public meeting on March 6, 2024, the Duck Town Council received a public comment concerning stormwater management relating to a special use permit application. During the Council's subsequent conversation, the concept of requiring stormwater management on single-family residential properties was raised. As this would be a complicated issue to address, staff is seeking authorization to work with the Planning Board to study the issue of stormwater management on single-family residential properties and develop a recommendation for the Town Council's consideration.

ATTACHMENTS:

- Memorandum from Community Development Department



MEMORANDUM

TO: Mayor Kingston & Members of the Duck Town Council

FROM: Joe Heard, Director of Community Development

DATE: April 3, 2024

SUBJECT: Consideration of Residential Stormwater Management

At its public meeting on March 6, 2024, the Duck Town Council received a public comment concerning stormwater management during consideration of a special use permit application for a residential property. During the Council's subsequent conversation, the concept of requiring stormwater management on single-family residential properties was raised. As this would be a complicated issue to address, staff is seeking confirmation that this is an issue the Town Council wishes to address and authorization to work with the Planning Board to study the issue of stormwater management on single-family residential properties and develop a recommendation for the Town Council's consideration.

Key Points:

- The Town of Duck (and Dare County in prior decades) has not required stormwater management on single-family residential properties.
- Over 95% of the residential properties in the Town of Duck are already developed, placing a disproportionate burden for stormwater management on the relatively few remaining undeveloped properties.
- The Town of Duck requires stormwater management for single-family residential properties seeking to increase allowable lot coverage from 30% to 35%.

AGENDA: April 3, 2024 Regular Meeting

ITEM #9:

Items Referred to and Presentations from the Town Attorney

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: April 3, 2024 Regular Meeting

ITEM #10:

Items Referred to and Presentations from the Town Manager

- A. Departmental Updates
- B. February FY 2024 Financial Presentation

RECOMMENDED ACTION:

- See attachments

SUMMARY OF INFORMATION:

- See attachments

ATTACHMENTS:

- See attachments

AGENDA: April 3, 2024 Regular Meeting

ITEM #10A:

Items Referred to and Presentations from the Town Manager

- A. Departmental Updates

RECOMMENDED ACTION:

- None required.

SUMMARY OF INFORMATION:

The Town Council will receive an update on departmental activities.

ATTACHMENTS:

- None

AGENDA: April 3, 2024

Regular Meeting

ITEM #10B:

Items Referred to and Presentations from the Town Manager

B. February FY 2024 Financial Presentation

RECOMMENDED ACTION:

- None required

SUMMARY OF INFORMATION:

A financial summary will be available at the Town Council meeting.

ATTACHMENTS:

- None

AGENDA: April 3, 2024 Regular Meeting

ITEM #11:

Mayor's Agenda

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: April 3, 2024 Regular Meeting

ITEM #12:

Council Members' Agenda

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: April 3, 2024 Regular Meeting

ITEM #13:

Other Business

A. Additional Public Comments

RECOMMENDED ACTION:

- None required

SUMMARY OF INFORMATION:

- Council will take additional comments from the public.

ATTACHMENTS:

- None

AGENDA: April 3, 2024

Regular Meeting

ITEM #14:

Closed Session

RECOMMENDED ACTION:

- Make the following motion:
 - 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*.

SUMMARY OF INFORMATION:

- None.

ATTACHMENTS:

- Provided under separate cover.

AGENDA: April 3, 2024 Regular Meeting

ITEM #15:

Adjournment

RECOMMENDED ACTION:

- Per discussion

SUMMARY OF INFORMATION:

The next scheduled meeting will be the Mid-Month Meeting on Wednesday, April 17, 2024 at 1:00 p.m.

ATTACHMENTS:

- None