

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

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1. Call to Order
  - A. Pledge of Allegiance
  - B. Moment of Silence
2. Public Comments
3. Consent Agenda
  - A. Minutes from the June 5, 2024, Regular Meeting
  - B. Minutes from the June 19, 2024, Mid-Month Meeting
  - C. Resolution 24-11, a Resolution of the Town Council of the Town of Duck, North Carolina, Honoring the 150<sup>th</sup> Anniversary of the Chicamacomico Life-Saving Station in Rodanthe and Declaring October 2024 as Life-Saving Service Commemoration Month
4. Special Presentations
  - A. Swearing in of Christy Drumheller as Deputy Town Clerk
  - B. Introduction of the 2024 Town of Duck FLOCK Academy Graduates
  - C. Introduction of 2024 Lifeguards
  - D. Presentation from Chris Dewitt of VHB on the West Side Feasibility Study
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. None at This Time

8. New Business
  - A. Discussion/Consideration of Resolution 24-10, a Resolution of the Town Council of the Town of Duck, North Carolina, Revising the Personnel Policies of the Town of Duck
9. Items Referred to and Presentations from the Town Attorney
10. Items Referred to and Presentations from the Town Manager
  - A. Departmental Updates
  - B. May FY 2024 Financial Presentation
11. Mayor's Agenda
12. Council Member's Agenda
13. Other Business
  - A. Additional Public Comments
14. Adjournment – the Next Meeting will be the Mid-Month Meeting on Wednesday, July 17, 2024 at 1:00 p.m.

**AGENDA: July 3, 2024**

**Regular Meeting**

**ITEM #3:**

Consent Agenda

- A. Minutes from the June 5, 2024, Regular Meeting
- B. Minutes from the June 19, 2024, Mid-Month Meeting
- C. Resolution 24-11, a Resolution of the Town Council of the Town of Duck, North Carolina, Honoring the 150<sup>th</sup> Anniversary of the Chicamacomico Life-Saving Station in Rodanthe and Declaring October 2024 as Life-Saving Service Commemoration Month

**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 June 5, 2024 regular meeting; minutes from the June 19, 2024 mid-month meeting; and Resolution 24-11. Resolution 24-11 honors the 150<sup>th</sup> anniversary of the Chicamacomico Life-Saving Station as well as declaring the month of October as life-saving service commemoration month. Council is asked to approve the minutes and the resolution.

**ATTACHMENTS:**

- June 5, 2024, Minutes
- June 19, 2024, Minutes
- Resolution 24-11

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
June 5, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, June 5, 2024.

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

COUNCIL MEMBERS ABSENT: None.

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

OTHERS ABSENT: None.

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

Mayor Kingston asked Councilor Sandy Whitman to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston stated that he had missed a few meetings due to health reasons. He thanked Mayor Pro Tempore Thibodeau for filling in for him during his absence. He thanked the rest of Council and Town staff for being patient with him and keeping him informed while he was absent.

**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 hearings be held off.

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

Kevin Wright of 112 Quail Way was recognized. Mr. Wright wrote the following: "I am Kevin Wright, resident at 112 Quail Way. I had the great fortune to participate in the first iteration of the FLOCK Academy. This program is a fantastic way to learn how the Town Administration and services function and to deeply connect with the Town. The Town staff put significant effort into the program, which was exceptionally well-

coordinated by Kay Nickens. Please sustain this program. It makes a difference. Well done to all and thank you.”

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

### **CONSENT AGENDA**

#### **Minutes from the May 1, 2024, Regular Meeting; Acceptance of the North Carolina Emergency Management Disaster Relief and Mitigation Fund Grant in the Amount of \$1 Million for Expenses related to the NC 12 Resiliency Project; Budget Amendment**

Councilor Chasen moved to approve the consent agenda as presented.

Motion carried 5-0.

### **SPECIAL PRESENTATIONS**

#### **Presentation by the North Carolina League of Municipalities Representatives Perry James, Municipal Accounting Services Senior Consultant, and Mary Hogan, Supervisor of Accounting, on the Completion of the Town of Duck Finance Software Conversion**

Perry James and Mary Hogan of the North Carolina League of Municipalities were recognized to speak. Mr. James went on to give a short presentation on the Municipal Accounting Software program conversion that Town recently completed to Council and the audience. Mary Hogan went on to present Finance & Human Resources Administrator Jessica Barnes with a plaque for the completion of the program. Perry James then presented Mayor Kingston with a plaque from the North Carolina League of Municipalities that recognized the Town of Duck in the completion of the software conversion project.

Mayor Kingston thanked Perry James and Mary Hogan for their presentation.

### **QUASI-JUDICIAL PUBLIC HEARINGS**

#### **Public Hearing/Discussion/Consideration of SUP 24-003, a Special Use Permit Application by Property Owners Un Yong Karl and Eva Chin of 1156 Duck Road, to Amend the Locations of a Bulkhead and Retaining Wall Previously Approved under SUP 23-005 to (1) Allow Bulkheads or Retaining Walls to Support and Contain Fill; (2) Allow up to Four Feet of Fill Behind the Upper Retaining Wall; and (3) Allow up to Five Feet of Fill Behind the Lower Bulkhead and Public Hearing/Discussion/Consideration of SUP 24-004, a Special Use Permit Application by the Four Seasons Owners Association, Owner of the Common Property at 0 Duck Road, and Matthew and Jenna McDermott, Adjoining Property Owners at**

**102 Amy Lane, Requesting the Following Allowances for Fill and Grading Activities: (1) to Allow a Bulkhead to Support and Contain Fill; and (2) to Allow up to Eight Feet of Fill Behind the Bulkhead**

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that with regard to SUP 24-003 and SUP 24-004, they were related to each other and the evidence according to Town staff was pretty much the same. He stated that Town staff has proposed that the public hearings for SUP 24-003 and SUP 24-004 be consolidated. He explained that Council would have one public hearing to consider both applications and at the conclusion of the consolidated public hearing, Council would deliberate and act separately on each of the applications. He added that before the public hearing could move forward, he asked the applicants or their representatives for both special use permit applications to come forward individually to let Council know if there were any objections to having a consolidated public hearing for both applications.

George Haber of Emanuelson and Dad was recognized to speak. Mr. Haber stated that his firm was the one completing the work for SUP 24-003 at 1156 Duck Road and were the contractors hired by Four Seasons. He stated that he did not have an objection to combining the two hearings.

Jeff Shields of Seaside Management was recognized to speak. Mr. Shields stated that he was the managing agent for Four Seasons in Duck. He stated that he did not have an objection to combining the two hearings.

Councilor Chasen moved to approve Town staff's recommendation to hear the evidence for both SUP 24-003 and SUP 24-004 together and voting on them separately.

Motion carried 5-0.

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. There was none.

Town Attorney Hobbs pointed out that he became aware of a correspondence received from Jeffrey Broitman and Caroline Uzel regarding SUP 24-003. He asked Mr. Broitman and Ms. Uzel if they planned to speak, be a witness, and provide testimony or if they planned to intervene as a party, which meant that Council would have to decide whether to allow it. Jeffrey Broitman of 1158 Duck Road was recognized to speak. Mr. Broitman stated that he wanted to be a witness.

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

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

**The following persons were sworn to provide testimony during the hearing: Joseph Heard, Sandy Cross, George Haber, Jeff Shields, Eli Barrett, and Jeffrey Broitman.**

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 hearings were properly advertised. He stated that, with regard to SUP 24-003, the property at 1156 Duck Road was 23,000 square feet and zoned Single-Family Residential (RS-1) and contained a five-bedroom, 3,256 square foot single-family residence that was constructed in 2002. He noted that a swimming pool and surrounding concrete patio were located to the rear of the residence and that the improvements were sited on a bluff at an elevation of 23 feet above mean sea level. He added that the property has a retaining wall and soundfront bulkhead that was constructed in 2023.

Director Heard stated that the property is part of the Four Seasons subdivision and the adjoining property to the south contains a soundfront community access for the Four Seasons neighborhood, featuring a pier/dock structure on the waterfront. He stated that the soundfront property to the north at 1158 Duck Road was zoned RS-1 and contains a four-bedroom single-family residence. He stated that across Duck Road to the east was another RS-1 zoned property containing many recreational amenities associated with the Four Seasons neighborhood including tennis courts, a basketball court, and a large indoor recreation center.

Director Heard stated that in response to the applicant's need to minimize erosion threatening the stability of the swimming pool and surrounding concrete patio located at the top of the bluff, Council approved a special use permit (SUP 23-005) to allow construction of a bulkhead, retaining wall, and associated fill with the following provisions:

1. Allow the bulkhead and retaining wall to support and contain fill, which is not permitted under Subsection 156.128(A)(6).
2. Allow up to five feet of fill behind the soundfront bulkhead where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a).
3. Allow up to four feet of fill behind the upper retaining wall where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a).

Director Heard stated that, per the site plan and project description, the approved improvements included the following:

- Construction of a vinyl sheet bulkhead approximately five feet in height at the base of the bluff adjoining the Currituck Sound with fill approximately five feet in depth behind to support the retaining wall.
- Construction of a vinyl sheet retaining wall approximately four feet in height along the middle of the bluff with fill approximately four feet in depth behind to support the retaining wall.
- The bulkhead and retaining wall were proposed to extend across the entire property from the northern to the southern property lines and have returns extending eastward into the subject property.

Director Heard explained that when constructing the approved bulkhead and retaining wall, the contractor changed the location and design and mistakenly encroached approximately 16 feet onto the adjoining Four Seasons property at 0 Duck Road. He stated that the applicants were seeking to resolve this issue by submitting the special use permit application with justification for the revised location and design. He added that the contractor was proposing to extend the bulkhead across the remainder of the Four Seasons property and tie into an existing bulkhead on the adjoining property owned by Matthew and Jenna McDermott, applicants for SUP 24-004, at 102 Amy Lane. He noted that although the design and location differ, the current proposal requires approval of the same allowances as the prior special use permit (SUP 23-005).

Director Heard stated that the revised proposal was to construct a two-tiered bulkhead system that consists of two walls and stairs connecting the walls down to the shoreline for water access. He stated that the proposed upper retaining wall would be four feet tall and 108 feet long with one 3.75-foot return and one 7.5-foot return, situated at a 15-foot elevation and the proposed lower bulkhead would be five feet tall and 108 feet long with one 10-foot return and one 16-foot return, situated at a 5.38 feet elevation. He added that the proposed stairs would be four feet wide and start at the upper retaining wall and move down the bluff, connecting to the lower bulkhead and down to the shore in order to provide access to the water.

Director Heard noted that the proposal called for alternate lengths of both walls, alternate placement of the upper wall, and shortened returns on the upper wall from the previously approved special use permit. He added that the contractor had provided the following justification for the amendments:

1. As construction continued, other factors arose that called for field adjustments to be made in order to soundly construct the upper wall without negatively impacting the existing structures at the property and the neighboring properties.
2. Prior to the start of construction, the bluff was heavily vegetated and the exact conditions of the soil and what lay underneath was difficult to determine when first planning the layout of the walls.



3. As we moved through the construction process and began digging into the bluff, a field decision was made to construct the upper wall at an elevation of 15 feet as opposed to 14 feet from the pool fence, in order to stabilize the rapidly deteriorating bluff and prevent any damage to the existing structures.
4. During the construction of the northern return on the upper wall, it was revealed that the placement of the neighboring property's return would require a shorter return so as not to undermine the neighboring return or the neighboring fence.
5. During the construction of the southern return on the upper wall, it was revealed that the existence of heavy vegetation would serve as better stabilization for the bluff than removing the vegetation and constructing a longer return.

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 were the same as with the prior approval and 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.
6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

Director Heard stated that staff determined that all six required findings were met by the proposal and, therefore, staff was recommending approval of SUP 24-003 subject to the following conditions:

1. The applicant must submit the required application materials for the revised design and obtain any necessary development permits.

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, with regard to SUP 24-004, the property at 0 Duck Road was 14,500 square feet and zoned Single-Family Residential (RS-1) and was owned by the Four Seasons neighborhood, serving as a community sound access featuring a pavilion, pier, and a soundfront beach. He stated that the property at 102 Amy Lane was 18,112 square feet and also zoned RS-1 that contains a 4,256 square foot single-family residence with a swimming pool, gazebo, wooden deck, and concrete patio on the soundside of the residence. He noted that these improvements were sited on a bluff with an elevation of over 25 feet above mean sea level protected by a bulkhead along the shoreline of the property.

Director Heard stated that the soundfront property to the south of the subject property was zoned RS-1 and contains a three-bedroom single-family residence and the property to the north at 1156 Duck Road was zoned RS-1 and contains a five-bedroom single-family residence. He added that directly east of 102 Amy Lane was a property zoned RS-1 that contains a six-bedroom single-family residence and across Duck Road to the east were other common properties containing recreational amenities associated with the Four Seasons neighborhood.

Director Heard stated that the parcel north of the subject property at 1156 Duck Road was granted a special use permit for a two-tiered bulkhead/retaining wall system in June 2023 and when constructing those walls, the contractor mistakenly encroached approximately 18 feet onto the adjoining property at 0 Duck Road. He stated that the applicants were seeking to resolve this issue and potential erosion issues that may result therefrom, by extending the bulkhead across the remainder of the Four Seasons property and tie into an existing bulkhead on the adjoining McDermott property. He added that the applicants were proposing to prevent further erosion by stabilizing the bluff with the bulkhead.

Director Heard explained that in order for the project to be constructed as proposed, the bulkhead and associated fill will require approval of the following allowances requested in the special use permit:

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

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:

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.
6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

Director Heard stated that staff determined that findings 1, 2, 4, and 5 were clearly met, adding that Council will need to determine if the information provided concerning the amount of fill and stormwater drainage/management was sufficient to comply with findings 3 and 6. He added that if Council determines that all required findings have been met, then Council should approve the special use permit application and if Council decides to approve SUP 24-004, then staff was recommending consideration of the following conditions:

1. The applicants must submit the required application materials and obtain necessary land disturbance and building permits prior to commencing work.
2. The applicants must obtain a CAMA General Permit prior to obtaining a development permit and commencing work.
3. All areas of land disturbance must be stabilized prior to issuance of a final Certificate of Completion/Occupancy for the project.

Director Heard pointed out that Council also had the option of denying SUP 24-004 or tabling the public hearing and further consideration of the application until their July 3, 2024, meeting.

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

Councilor Lingard asked what kind of percentage difference would be needed for the fill. Director Heard suggested that Council wait to hear from the applicant as he understood they had additional information on the fill.

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 on SUP 24-003.

George Haber stated that Senior Planner Sandy Cross had alerted him of the two deficiencies that Director Heard had pointed out and he had additional paperwork for Council to review that shows how they will handle the fill and stormwater issues. He added that their engineer was also present that could answer questions. He went on to hand out the documentation to Council.

Town Attorney Hobbs clarified that George Haber was presenting information as part of SUP 24-004 to be considered as part of the evidence. George Haber stated he was correct, adding that if Council had any specific or detailed questions, he would have his engineer address those.

Councilor Whitman clarified that the paperwork that was just submitted was for the Four Seasons lot. George Haber stated he was correct, adding that to the right and to the north was the Chin's property. Councilor Whitman pointed out that only the Chin's property was being discussed.

Town Attorney Hobbs asked George Haber if he was finished discussing SUP 24-003. George Haber stated that they were satisfied with the presentation that Director Heard gave.

Town Attorney Hobbs asked the applicant to make a presentation on SUP 24-004. He pointed out that the documents that were handed to Council were related to this application.

George Haber explained that the documentation showed the proposed work that would be done. He stated that the documentation also contained the missing documents that Director Heard had referred to for findings #3 and #6. He added that their examination as well as their engineer's examination of the slope as it currently exists will not need a significant of fill and will relocate some of the existing soil. He stated that they will be cutting back, construct the retaining wall and use the soil that was used to pull back from where they would be putting the wall, and then backfill using that. He added that they do not anticipate bringing in any fill. He noted that the paperwork showed an elevation of two feet, the rip rap, six feet of bulkhead, as well as the relocation of soil to be used as backfill.

Town Attorney Hobbs asked Council if they had questions for the applicant.

Mayor Kingston asked if this was the first time that Town staff saw the documentation that was presented to Council. He pointed out that Director Heard had stated that there wasn't a plan and now Council had one. He asked if Town staff had viewed the documentation prior to the Council meeting. Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that staff had received the documentation the day before the Council meeting and asked the applicant to bring hard copies to be presented to Council. Mayor Kingston pointed out that Council was being asked to make a decision without staff's input. Town Attorney Hobbs stated that the evidence was presented during the hearing and counted the same as what was in the agenda package because it was being presented during the hearing. He added that Council could ask staff questions about the new evidence as they could tell Council how it may or may not change their recommendation.

George Haber stated that the applicant's engineer could answer any technical questions Council may have.

Mayor Pro Tempore Thibodeau clarified that the six-foot proposed bulkhead was the same height that was originally proposed when the new piece of bulkhead would be tied with the existing bulkhead that was encroaching into the Four Seasons property. George Haber stated she was correct. Mayor Pro Tempore Thibodeau clarified that originally when the applicant made the application, backfill would be needed to the six-foot elevation but now fill could be pulled back in order to install the bulkhead and then pulling it off the slope to fill in, so no additional fill would be needed. Mr. Haber stated that their application did not indicate that fill would be brought in. He pointed out that Director Heard had stated in his presentation that it looked like it would be fill, which was a valid concern, but his engineer looked at it and determined that fill would not be needed. He added that they were not making any changes.

Councilor Whitman pointed out that the new documentation showed that four feet of fill was to be added, going from six feet to 10 feet, which was above the three-foot mark. George Haber stated he was correct. Councilor Whitman noted that the applicant was asking for an additional foot of fill. Mr. Haber asked if the three feet was the standard for fill or height of the bulkhead. Director Heard stated it was for fill. George Haber noted that there would be variances as they go through and dig. Councilor Whitman stated that the profile section showed four feet of fill. Mr. Haber agreed.

George Haber asked that his engineer explain the fill issue for Council.

Director Heard noted that the additional fill was part of the applicant's SUP request and application.

Town Clerk Ackerman proceeded to swear in the applicant's engineer for the public hearing.

**The following person was sworn to provide testimony during the hearing: Carlos Gomez.**

Carlos Gomez of Coastal Engineering was recognized to speak. Mr. Gomez explained that the way that he looked at it was with an average and would be less than three feet. He noted that it was such a minor issue that has become a big issue and he apologized for anything he could have done better, adding that it would always be three feet on average, if not less. He noted that it was how he understood it. He explained that if it was going to be three feet, then one would have to spend a lot of money for very little to be accomplished. He added that there was not a clear understanding of the three feet on the bulkhead side or in the middle.

Councilor Whitman pointed out that the profile drawing that was handed to Council showed four feet of fill, which was what was presented to Council. Carlos Gomez agreed, adding that it would vary back and forth because the topography was changing and a lot of cross sections would be needed. He stated that if the understanding was three feet, then that should be the limit but for it to make sense it would have to be an average.

Carlos Gomez explained that it was not a bulkhead that was to be constructed but a retaining structure, adding that a bulkhead would be under water. He pointed out that in the cross-section, it becomes very steep in that area. He wasn't sure what happened with the buffer in that there were some changes, but he knew there were indications that the applicant was asked to move it somewhat because of the topography. He added that any movement would force it to go one way or another, adding that these would remedy any adjustments that have to be done at that time. He stated that he has been working with a structural engineer to try to get the best out of it, adding that he also had two other surveyors involved. He stated that they went out to the site the week before when they understood that Council would be looking for the cross-section, adding that a bulkhead was good but it was not really that important; however, it was part of the ordinance, so he obliged the Town to present it as quick as he could.

Carlos Gomez explained that because of the cross-section, one could see how important it was to have a bulkhead because the area is so steep and any fill or backfill would need to come from above in order to backfill without bringing in any extra fill. He pointed out that it was making a very steep part of the bluff flatter and it will allow the water as it comes down to create less damage with erosion. It will stop there with a bulkhead and allow it to infiltrate and protect the shoreline. He noted that it was a good thing, adding that he respected Four Seasons for doing the project because it makes a lot of sense as well as helping the Town of Duck.

Town Attorney Hobbs asked with regard to the fill question, finding #3 in staff's presentation, if there was anything to add about that. Carlos Gomez stated that a structural engineer or he would be there from time to time to make sure things were carefully done. He noted that if Town staff noticed any changes, to call him as this was a process that needs to move on but it can be done properly.

Town Attorney Hobbs asked if any Council members have any questions of Carlos Gomez regarding finding #3. He thought it would be best to cover all evidence regarding finding #3 first to make sure everyone has all of their questions answered.

Mayor Pro Tempore Thibodeau clarified that the six foot was consistent with the adjoining property bulkhead and would tie into the hill on the cross-section to stabilize it with some ties. She further clarified that the hill would be pulled down to back up to the structure so the slope would be eased. Carlos Gomez stated she was correct, adding that it typically works very well.

Mayor Pro Tempore Thibodeau asked if it was considered fill when the dirt is pulled down against the wall. Director Heard stated that it was, adding that it didn't matter where the fill came from, if it was off-site or on-site. He stated that it would not be an issue. He reminded Council that the applicant was asking for the relief as part of their application. Mayor Pro Tempore Thibodeau clarified that it was for practical purposes. Director Heard stated she was correct, reiterating that it was fill whether it was off-site or on-site.

Councilor Chasen asked if there were any concerns with what has been presented. Director Heard asked Carlos Gomez to explain where the cross-section was taken. Carlos Gomez stated that it was right above. Director Heard noted that Mr. Gomez had used the word "average", asking for an explanation. Mr. Gomez explained that it was the average of the cross-section, adding that they only took one cross-section. Director Heard asked if it was where the A was on the drawing. Mr. Gomez stated he was correct. Director Heard stated that his concern was that the cross-section wasn't taken as a worst-case scenario where they would need to move fill but was taken at a point that they determined. He added that if the applicant moved it further to the north, it may require more fill behind it. He stated that staff needed to know for the purpose of the special use permit what the maximum was and not the average, but the maximum that would be at any point along the wall.

Director Heard stated that his question would be whether Carlos Gomez felt that the cross-section represented the maximum amount of fill that would be needed, or whether it was an average of a particular area that he was looking at. Carlos Gomez stated that based on the information he had from the original surveyor, he could bulkhead and discuss it with the contractor, which was very important information, which was to put it in that location. He stated that once he understood what the Town was looking for, he completed an additional survey and obtained additional points to get a closer topography. He noted that it was a very steep hill with a lot of vegetation, adding that he did the best he could with what was there. He noted that it also the area where the rip rap was where there was less shoreline.

Director Heard stated that he was concerned that if Council approves the application with four feet of fill and if the applicant finds that they need to add more fill, they will be in violation of the permit. He wanted Council and the applicants to understand the limitations that if the application was approved, it may limit any improvements the

applicants were looking to make during the construction process if they decided to use an average versus the maximum.

Councilor Whitman stated that it was his question in the beginning of the hearing in that the applicant was showing four feet, but he wondered if it would be four feet all the way across.

Town Attorney Hobbs pointed out that Carlos Gomez had stated he was a North Carolina licensed professional engineer, adding that in looking at the proposed finding of the amount of fill proposed was the minimum necessary to accommodate the proposed project, especially for soundfront property. He asked, considering the nature and topography Mr. Gomez mentioned with regard to the property, if Mr. Gomez could give an opinion about whether the amount of fill was the minimum necessary. Carlos Gomez stated that he wasn't talking about an exact size, adding it was the best he could do. He stated that he had to go with something and did get a lot more points, but it was not exact because it was not a flat area where an average could be taken. He added that he felt very comfortable that it could be managed. He thought the Council should decide where it will be measured so a contractor or engineer will be able to adjust it to make sure the Town was satisfied.

Councilor Whitman stated that he was not comfortable with what Carlos Gomez was stating because the wall was already 18 feet longer than it was supposed to be. He pointed out that it appeared that no one was taking control of the project. Carlos Gomez stated that it was unfortunate that he was not involved in that part but understood that the Town requested that the walls be moved some by the contractor and by doing that it forced the walls to move more.

Councilor Whitman pointed out that the applicant had an approval to do it one way and they realized they had a problem getting it done the way it was approved, so they moved everything without coming back to the Town to get additional approvals. He stated that that was how the wall in this application was spaced. Carlos Gomez stated that he could not speak to that. Councilor Whitman stated that the discussion was regarding measurements, adding that the applicant did not get one of the walls in the right spot. He asked how he was supposed to know that what Mr. Gomez was saying about the fill was correct. Carlos Gomez explained that now it was a different review and was getting close. He added that his company completed the original as built for the property to the north and gave them ideas as to what needed to be done and they worked on the location of the retaining walls with a structural engineer. He pointed out that he knew they were asked to move the wall by the Town, adding that he knew when they completed the as-built survey of the bulkhead, no one could figure out how the wall moved. He noted that he personally contacted the contractor to tell him that something had happened in that the bulkheads were not in the same place. He stated that it was a very unfortunate circumstance, adding that these things do happen and it was what happens when one works with retaining structures.



Councilor Whitman clarified that Carlos Gomez was telling Council that the walls were originally put in the wrong spot. Carlos Gomez disagreed, adding that he did not know all of the details. Councilor Whitman asked what Mr. Gomez meant when he stated that the walls had moved. Mr. Gomez explained that he understood that the Town wanted the walls to be moved.

Eli Barrett of Emanuelson and Dad was recognized to speak. Mr. Barrett explained that he was the contractor for both special use permit projects. He stated that with regard to the placement of the walls, he had completed that and accepted responsibility for the walls being 18 feet over on the side of the property. He stated that his subcontractor had made a mistake when staking the property line, but it had worked out well because if the walls were moved back to where they were originally located, one would have to dig into the side of the hill which would destabilize the whole area. He pointed out where the walls currently were, were working out well for the applicant and Four Seasons. He added that with regard to fill, they were doing the minimum amount that could be done. He noted that they were not bringing anything in, there was no fill, and if he could connect the two walls it would solve a lot of problems for the applicant and Four Seasons.

Councilor Whitman stated that he did not have any problem with the walls since they would protect both properties. He stated that there was a mistake made and Carlos Gomez could not say how much fill would be needed. Eli Barrett stated he was confused, adding that he did not understand the question. Councilor Whitman noted that Council was being told that the walls were put in the wrong spot and that it was fine, but Carlos Gomez, as the engineer, was telling Council that he could not say how much fill would be put in. Eli Barrett clarified that it was the new Four Seasons wall. Councilor Whitman stated he was correct. Mr. Barrett stated that he and Mr. Gomez could say exactly how much. Councilor Whitman pointed out that Mr. Gomez was not giving an exact amount. He asked if it would be six feet or four feet, adding that Mr. Gomez had stated it was an average. He stated that if it was six feet, it was lower than the three-foot average. Eli Barrett noted that there was something to be said about building things in the field and looking at drawings. He explained that they have to go out and make things happen. He added that what Mr. Gomez was stating was that the section he provided was probably close to what it was but was not 100% accurate.

Councilor Whitman asked why there weren't more sections. Carlos Gomez stated that it was what the Town requires and was why they thought it was important to do. He pointed out that there was no way to figure out exactly how much fill will be needed. He explained that it was a strip of land, he had to figure out from one point to another how long it goes, figure out that wall and divide it by the width, which gives the average. Councilor Whitman stated that Mr. Gomez was looking for an average of four feet of fill. Mr. Gomez disagreed, adding that three feet was what one wanted to have. Councilor Whitman agreed, but the drawings showed four feet. He clarified that it was the worst-case scenario spot. Mr. Gomez thought Councilor Whitman was not understanding the drawings. He understood what Councilor Whitman was stating but it was not what he had said. He explained that the average from zero to four or five feet on the bulkhead was

about two and a half feet. Councilor Whitman thought there should have been a section showing that.

Councilor Lingard stated that in looking at the drawing, it looked like where the section was, was a worst-case scenario. He stated that it looked like a 4.9-foot contour juts through the bulkhead at that point and appeared to be the worst-case scenario. He added that he would like to see it closer but thought that section – whether by luck or judgement – appeared to be the worst-case scenario. He stated that he would like to see something that would confirm that, but in looking at the plan, he thought the cross-section was the worst-case scenario.

Jeff Shields stated that this has not been the clearest and precise presentation that he has heard, but pointed out that the two projects Council was considering were connected. He explained that there was a property owner that was present in Four Seasons who built a retaining wall that Council approved, and a mistake was made by the contractor. He added that there was an encroachment on Four Seasons' common property of 18 feet, meaning that Four Seasons now has 18 feet of a retaining wall that they have to connect with an adjacent property that is not in Four Seasons but was present and agreed to it. He noted that there was presently an erosion tunnel where there was a bulkhead on the south and north with the Four Seasons pier which has been closed since February as a result of it due to the stairs being no longer safe due to the erosion. He stated that they were working through the process with Emanuelson and Dad because they were the ones that constructed the wall on the north side that has encroached on the Four Seasons property. He added that they decided to work with them since they already had started the process and he met Hal Goodman who was the structural engineer to look at it and looked at it with Emanuelson and Dad.

Jeff Shields noted that there were two different elevations – one lower and the other higher – and they were coming in with a six-foot level retaining wall. He pointed out that the higher retaining wall was tiered and they were tying into the second tier and going across to the other retaining wall which will make a level retaining wall. He stated that they wanted to be able to backfill. He understood that the ordinance states it has to be a three-foot maximum, but it was a piece of property that was different from any other in Duck on the soundside. He noted that it was an exception that they have to put in a retaining wall, be able to install tiebacks to hold the retaining wall up and be able to backfill. He stated that they could argue about three feet, four feet or five feet, but the project has to be completed. He stated that if Council approves the application at whatever the Code states and allows them to come back to ask for more fill, they will do that. He stated that they were trying to prevent a total loss of the Four Seasons property because they have the retaining walls that were creating a tunnel and eroding the property. He thought this was an exception in an exceptional location with huge cliffs that they were trying to contain and prevent further erosion. He asked Council to consider this because it was an important amenity to Four Seasons, adding that they wanted to be good neighbors as well.

Councilor Whitman stated that he was in favor of the bulkhead, but he was not in favor of someone coming in and stating they were going to do everything but they already proved to Council that they do not know how to do everything when the wall ended up 18 feet on another piece of property. He added that when someone tells him that they will come back and want to change something and not come back, he wanted someone to know that Council will be looking at it. He agreed with using retaining walls to protect the land, it was how it was being done that he had an issue with.

Jeff Shields pointed out that the property to the north was done without Four Seasons' involvement other than their sign off on a CAMA permit, adding that they were in a situation that they did not want to be in and didn't ask for it. He stated that four years ago they installed rip rap in order to stabilize that area but it didn't work and was not currently working with the retaining wall on the north side. He asked Council to help Four Seasons, help the property owners on the north and south side to be able to contain the area that was exceptional – it was not the rule or the average of what the shoreline in Duck was. He asked Council to help them to contain it which gives them the opportunity to open up the Four Seasons pier after the project is completed. He hoped that Council would consider the fact that Four Seasons would be overseeing the project and would be working closely with the Town in order to avoid any more mistakes.

Town Attorney Hobbs asked Jeff Shields if he had experience with installing retaining walls or bulkheads in the past. Jeff Shields stated that he worked for Northeastern Marine 38 years ago and bulkheaded most of Corolla. Town Attorney Hobbs asked Mr. Shields if finding #3 regarding the amount of fill was the minimum necessary to accommodate the proposed project. Mr. Shields explained that his discussions with his contractor and looking at it currently, he thought they had enough to bury the tiebacks. He could not say if it would be topped off nor could he say if they would have to come back before Council, but they would if necessary. He reiterated that he wasn't sure when he read the ordinance that it was ever looking at the extreme of what was happening with this project.

Councilor Chasen pointed out that no one could figure out if four feet of fill was appropriate or if more would be needed. She asked, so it would not come back to Council, if it could be stated that the maximum amount of fill would be a certain amount of feet. She asked if Council could approve the special use permit and offer concessions so this doesn't come back to Council, knowing that Town staff would be on-site taking care of it. Director Heard explained that Council has to approve a certain amount of fill with the special use permit. He stated that the applicants have requested to allow up to eight feet of fill behind the bulkhead. He noted that if Council approved the application as submitted, it would allow the applicant to fill up to eight feet even though they were saying that they may only need three or four feet in certain areas, it would be the maximum. He stated that staff was reasonable enough to work with the applicant, but if it was more than eight feet, the applicant would have to come back to Council. He wasn't sure if Town Attorney Hobbs felt differently about the applicant's ability to come back before Council.

Town Attorney Hobbs thought if the applicant came back, it would be under a different application and would be under different circumstances. He added that the applicant could tell Council if they were willing to agree to modify their proposal to a different maximum than what was proposed.

Jeff Shields stated that they would be in favor of five feet, adding that if Council could approve that at this meeting, then they would be fine with it. He stated that if they had to come back later, they would do so. He reiterated that the situation was difficult because of the actual topography of that area. He stated that if they could get through this and Council can approve five feet of fill, they would be fine with that. He added that if they have to submit a new application for additional fill later, they will do that.

Mayor Pro Tempore Thibodeau thought Council was looking for something that will hold and be structurally sound. She stated that it was curious to her why the applicant originally wanted eight feet of fill when the retaining wall was six feet, adding that she wasn't sure where the other two feet of fill would go. She thought that it had to do with it being somewhere in the realm of the height of the retaining wall would make sense for the amount of fill to have knowing that the goal was to minimize the amount of backfill. She stated that she would be comfortable with a different cap on the fill. She reiterated that she wanted it to be structurally sound.

Councilor Lingard asked Carlos Gomez if he drew the plan. Carlos Gomez stated that he did. Councilor Lingard asked Mr. Gomez if he could confirm that Section 8a was the worst-case scenario. Mr. Gomez stated that it was very close to the worst-case scenario, adding that it goes from the north almost minimally towards the south where it gets larger which is where it was consistently the same elevation. He stated that if one looks from the north to the south and figures the average in that direction, it would be a lot less. He added that it was so close but he would be happy to go look at it again to see if they could find one more scenario.

Councilor Lingard stated that Council was looking at five feet of fill, adding that eight feet of fill made no sense. He thought if the application was changed to five feet of fill, Council would be fine with it. Town Attorney Hobbs noted that the order would state that if it was approved.

Town Attorney Hobbs asked the applicant if they had anything else to present regarding finding #3.

Carlos Gomez stated that the top of the backfill could be lower enough that it won't go over a number but Council needed to come up with a standard of what he was looking at. He noted that three feet was either the average or the most at the front of the bulkhead. He stated that it was very important that the topography be lower if necessary. He pointed out that if one took the averages of north to south, top to bottom, it would be a lot less than three feet. He thought there could be some construction administration since it was a difficult area but it was a very good contractor that would take care of it and explain if there was an issue.

Town Attorney Hobbs stated that Council has the standards that were in the ordinance, adding that any if there were any changes it would be addressed later through a text amendment, but it was not for Council at this time. He stated that it sounded like the applicant was proposing a maximum of five feet of fill and that will be what the Council will consider when they deliberate. He asked if that was correct. Jeff Shields stated he was correct, adding that it was what they were asking for.

George Haber stated that when one looks at the bulkhead and talks about a six-foot height, it was the left side of the drawing. He stated that there were 10 feet exposed with four feet of fill in the front, which was a six-foot measurement. He added that if one takes the 10-foot height and subtracts the four feet of fill that was in the front was the reason for the six-foot measurement on the left side of the drawing.

George Haber stated that with regard to the mistake that was made with the bulkhead, when one looks at the bulkhead on the southside going north, it ties into the corner of the neighbor's bulkhead to the north, which was the CAMA line. He stated that the subcontractor they brought in started laying out the wall in that area. He added that Senior Planner Cross came out and pointed out that the subcontractor was in the wrong spot and asked them to move, which they did. He stated that the second issue they had was that the CAMA stake to the south was set on the property belonging to Four Seasons, which was not typical. He pointed out that the property was explained as having a bluff, but it was a cliff. He stated that visually lining up the property lines from one end of the property to the other was difficult. He agreed it was still a mistake, but it was an understandable one, was regrettable and was taking up a lot of time. He added that they did not go in and haphazardly started putting holes in the ground, as they made the best judgment they could with the information they had. He thanked Senior Planner Cross for realigning the wall so it was put down with the plan and that was why the mistakes were made.

Councilor Lingard thought part of the problem, while no fault of the applicant's, was the second mistake in a row regarding special use permits. He stated that it seemed that Council was expected to agree on what was proposed. He reiterated that it was not the applicant's fault, but it was the second one that came before Council with similar circumstances where Council had to approve something after it was built. He thought that was partially where that issue was coming from. George Haber stated that they will own all of their mistakes, adding that it was a very difficult project. He added that one of the issues was the dense vegetation, especially on the north side of the property and they were very concerned about undermining the structural integrity of the land above and adjacent to it which was why they made the adjustments to the wall construction.

Town Attorney Hobbs asked if there were any other witnesses that wanted to discuss the fill question or SUP 24-004. There were none.

Town Attorney Hobbs asked if the applicant wished to address finding #6 that dealt with the stormwater drainage plan.

Carlos Gomez explained that if there were simple provisions, it will work well with everyone benefiting. He added that working as a team will make things go well.

George Haber asked what finding #6 was. Town Attorney Hobbs stated that the applicant was required to submit a drainage plan consistent with the requirements described in Section 156.128(A)(4)(c) and the comment was that the applicant had not submitted a separate, distinct stormwater drainage plan as prepared by a North Carolina licensed engineer, but instead provided a general outline of the existing drainage pattern overlaid on an arial photograph. He added that there was a cover letter that explained how tying the proposed bulkheads on the adjoining properties will prevent further erosion and deposit of sedimentation into adjoining waters. He asked if the applicant planned to submit a stormwater drainage plan prepared by a licensed engineer.

Jeff Shields stated that what Council was seeing was what was consistent with what was presented to the property on the north that was given to Council. He added that they were seeing the same thing. George Haber disagreed, adding that they had submitted the stormwater plan at this meeting. He explained that the diagram above the graph with the cross-section of the bulkhead was the stormwater plan.

Carlos Gomez explained that a bulkhead by itself well done will perform the way it should and was in itself a stormwater plan for two reasons: (1) it reduces erosion and (2) increases the ability for the upper part to drain the water down. He stated that they submitted the plan for the property to the north, it was reviewed, discussed, and then submitted the second one that was consistent with the first one. He stated that they found out on May 31, 2024 that the Town had issues and they looked at what the Town was looking at and completed the information needed. He pointed out that it was just a statement in the handout the Council was given that explained what the stormwater plan was. He stated that there were no impervious surfaces added together, adding that post-development flow would be better than the pre-development as it would slow the water.

Town Attorney Hobbs clarified that the second page of what was handed out to Council was reasonably consistent with the requirement of an engineer's drainage plan. Carlos Gomez stated that it was. Town Attorney Hobbs clarified that Mr. Gomez had signed it as a licensed North Carolina engineer. Mr. Gomez stated he was correct, adding that he was also a licensed surveyor and was allowed to certify the drainage plan.

Councilor Whitman asked Director Heard if the information provided was sufficient. Director Heard stated that it was, adding that the information Council was provided at this meeting met the requirement of finding #6. Town Attorney Hobbs pointed out that it was signed and sealed by the engineers as required in the findings.

Town Attorney Hobbs asked if either applicant had anything else to present on the applications. There was none.

Town Attorney Hobbs asked if any of the sworn witnesses wished to make a presentation on either application or both.

Jeffrey Broitman of 1158 Duck Road was recognized to speak. Mr. Broitman stated that he wished to address SUP 24-003. He pointed out that in reading the staff comments and recommendations, Condition #2 states the following: "All areas of land disturbance must be stabilized prior to issuance of a final Certificate of Completion/Occupancy for the project." He felt that between the two properties, there was still an active erosion situation where it was both eroding the fill behind the upper wall as well as eroding his property under his fence and he would like to have this addressed. Town Attorney Hobbs asked what Mr. Broitman would propose in order to address the issue. Jeffrey Broitman stated that it was hard to say, adding that there was an attempt made to do something. He explained that there was the vinyl panel on the upper wall and the applicant put in a vinyl panel just below that and the area was eroding over the top of the lower panel, with nothing holding it back. He felt that something needed to be added in there, adding that he knew they had addressed the situation but did not install a return because it would compromise the property and the fencing. He reiterated that something needed to be done to hold it back, otherwise there would be the same tunnel effect happening.

Mayor Pro Tempore Thibodeau clarified that in looking at the north side of the graph in front of Council, Jeffrey Broitman did not have a bulkhead on his property. Jeffrey Broitman stated that he did. He explained that the graph showed the upper bulkhead where it angled in and cuts into his property. He added that, originally, it was going to be straight with a retaining wall of about six feet. He stated that now they adjusted it so it was just the angled piece abutting his wall and in that was an area that was just running over that. Mayor Pro Tempore Thibodeau clarified that it was pooling there. Jeffrey Broitman stated she was correct, adding that he had photographs he wished to show Council.

Town Attorney Hobbs stated that he had a copy of Jeffrey Broitman's letter and photographs that would be entered into evidence. Jeffrey Broitman went on to hand out the photographs to Council. Town Attorney Hobbs suggested that Council may want to ask whether the applicant had any comment on the new evidence.

Mayor Pro Tempore Thibodeau thought it was not always a perfect solution to tie all of the bulkheads together if they were going to be a little different and have wash over, which was evident in the photographs that were presented.

Councilor Chasen asked if there was a suggestion from the engineer on site on what's happening at Jeffrey Broitman's property. Eli Barrett pointed out that this was the first time he heard about the issue, but he was willing to address the problem. He explained that the problem was when they first constructed the walls, there was heavy vegetation and they couldn't see anything. He stated that when they started digging into it, they realized that Mr. Broitman's return did not come back far enough. He noted that, ideally, the two walls should be anchored together to prevent any leaks. He reiterated that the problem was that Mr. Broitman's return did not come back far enough, so he will need

something on that side to come back further so it could be sealed off. He stated that they could not return the returns any further because it would destabilize Mr. Broitman's and Mr. Chin's properties. He pointed out that his engineer had noted that those returns were where they needed to be. He added that there was another solution to help with Mr. Broitman's problem and was something they could do to get that figured out, which they were willing to do. Town Attorney Hobbs asked what the solution was. Eli Barrett stated that they would work with Mr. Broitman to make things right.

Town Manager Drew Havens was recognized to speak. Town Manager Havens clarified that as part of the required stabilization for the final certificate of completion, the contractor will make the required modifications to Jeffrey Broitman's property. Eli Barrett stated they would. Town Attorney Hobbs asked Jeffrey Broitman if that was reasonable to him as far as adding a condition to the approval. Jeffrey Broitman stated that it did, except that this was the second time and second error. He noted that he was supposed to meet with the applicant's contractor, which he did, and was told that it would be taken care of; however, they went and installed the bulkhead which was the solution but it was leaking. He hoped that this second time would actually fix the problem.

Carlos Gomez stated that, working as a professional engineer for 40 years, what Jeffrey Broitman was referring to was typically an industry standard for bulkheads, adding that the goal was to tie them together in order to minimize erosion. Senior Planner Cross showed Eli Barrett the photographs that Jeffrey Broitman had presented. Eli Barrett stated that he will work on a solution to take care of the issue.

Mayor Pro Tempore Thibodeau asked if the erosion was coming from the top with the water coming down the slope or was it coming up from the sound when there was a bad southwest wind. Jeffrey Broitman stated that it was sloping to the wall and coming down and eroding behind the wall and eroding down.

Town Attorney Hobbs asked Director Heard if he would recommend the additional condition to be added to SUP 24-003 to address the latest comments and to ensure a tie-in. Director Heard stated that he would.

Town Attorney Hobbs asked if there was any other testimony from any witness concerning either application. There was none.

Town Attorney Hobbs asked if there were any concerns from the applicants regarding the proposed conditions that were set forth in Town staff's proposed special use permits. George Haber asked what the change was regarding the two properties. Town Attorney Hobbs suggested that he work with Town staff, the applicant and witness on the wording of the new condition. He added that there would be a solution as a condition of the issuance of the permit but it would be left to the parties. George Haber stated that he was worried that they could not tie in and he didn't want it to be a condition if it was something that wouldn't work, adding that they would discuss it and work together on a solution.



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 there were two applications, one for SUP 24-003 and the other for SUP 24-004. He recommended that they consider them separately in that order. He noted that a vote of the majority of Council would be required to approve the applications. He added that as part of Council's deliberation and if there was a motion to approve the applications, there were various findings that would need to be made and it would be helpful if the motions referenced the findings as well as the proposed conditions.

Councilor Whitman pointed out that Council had two or three applications in the last year where they had problems with contractors making mistakes and coming back to Council to ask for forgiveness. He felt it was time that the contractors took care of their own mistakes and not come to Council to make their problems go away. He added that he had no issue with SUP 24-003.

Mayor Kingston agreed with Councilors Lingard and Whitman's comments.

Councilor Chasen moved to approve SUP24-003 as presented, with the findings of fact as well as the two proposed conditions listed and the one additional condition that the applicant will agree to work with the adjoining property owner on a solution relating to the problem the witness had brought forward.

Motion carried 5-0.

Mayor Kingston asked Council for their thoughts on SUP 24-004.

Mayor Pro Tempore agreed that the error has caused Council the issue of correcting it at this level; however, as Council heard from the applicant, it was fortuitous for them to stabilize their property. She stated that she was in favor of the proposal but suggested going higher on the amount of fill, recognizing that Council wants them to use the minimum amount of backfill and understanding that it was difficult topography and Council needed to make some accommodations. She stated that she would be in favor of allowing the continuation of the retaining wall as proposed but giving more leeway on the fill so that it would not come back to Council.

Town Attorney Hobbs noted that staff presented a proposed special use permit with concerns about findings #3 and #6. He added that with finding #6, staff had indicated that they were satisfied with the new evidence presented at this meeting dealing with the drainage and with regard to finding #3, Council could add a condition that would provide the maximum fill amount. Director Heard pointed out that there was a maximum fill amount already in the permit. Town Attorney Hobbs stated that if Council chose to approve the application, they would need to modify the third paragraph to whatever maximum they wished to change it to.

Councilor Whitman thought the applicant had suggested the fill amount be changed from eight feet to five feet and not leave it at the eight-foot mark. Town Attorney Hobbs asked if the public hearing should be reopened so the question could be asked of the applicant. Mayor Kingston stated that it should. Town Attorney Hobbs reopened the public hearing.

Jeff Shields stated that five feet was what they were asking for with regard to the fill.

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that the suggestion was for the condition be changed from eight feet to five feet of fill.

Councilor Chasen moved to approve SUP24-004 as presented, with the findings of fact as well as the three proposed conditions listed and the change to 3 to allow up to five feet of fill.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of SUP 24-005, a Special Use Permit Application by Property Owner Mark Wishner of 109 Settlers Lane, requesting the Following Allowances for Fill and Grading Activities: (1) to Allow Retaining Walls to Support and Contain Fill; (2) to Allow up to 13 Feet of Fill Behind the Upper Retaining Wall; and (3) to Allow up to Eight Feet of Fill Behind the Lower Retaining Wall**

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

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.

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

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

**The following persons were sworn to provide testimony during the hearing: Joseph Heard, Sandy Cross, Mike Robinson, and Mark Wishner.**

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

Director Heard noted that the public hearing was properly advertised. He stated that the applicant was requesting a special use permit to allow a retaining wall up to 13 feet in height, allow the retaining walls to support and contain fill, allow up to 13 feet of fill behind the upper retaining wall, and allow up to seven feet of fill behind the lower retaining wall.

Director Heard stated that the property was presently undeveloped and zoned Single-Family Residential (RS-1) with the lot being 15,781 square feet in size, approximately 119 feet in width and 150 feet in depth. He noted that the property has a relatively steep slope and substantial elevation change that rises from 10 feet at the eastern side of the lot to over 44 feet at the western side. He added that the property was proposed for development of a five-bedroom single family residence with a swimming pool and surrounding concrete patio on the eastern side and was part of the Founders Ridge neighborhood.

Director Heard explained that the subject property to the west was 111 Settlers Lane and was zoned RS-1, containing a three-bedroom single-family residence that was constructed in 2002. He stated that the adjoining property to the east was an undeveloped lot zoned RS-1 and the abutting soundfront property to the rear was 116 Osprey Ridge Road that was zoned RS-1 and contained a six-bedroom single family residence. He added that across from Settlers Lane to the north was a narrow, undeveloped lot that was zoned RS-1 with frontage on Nash Road in the West Winds subdivision.

Director Heard stated that the project involved fill and grading to accommodate the construction of two-tiered retaining walls in the southeast portion of the property to support a level area for the proposed home, swimming pool, surrounding concrete patio, and septic field. He pointed out that the proposed improvements included the following:

- Construction of an L-shaped upper wooden retaining wall approximately 13 feet in height at its highest point along the eastern and southern sides of the proposed residence, pool, and septic field. The retaining wall is approximately 160 feet in length.
- Construction of an L-shaped lower wooden retaining wall approximately seven feet in height at its highest point located 10 feet east and south parallel to the upper retaining wall. This retaining wall is approximately 145 feet in length.
- Each of the retaining walls will project only five feet in height above the fill on the eastern and southern sides at the completion of the project.

Director Heard stated that in order for the project to be constructed as proposed, the retaining walls and associated fill will require approval of the following allowances requested in the special use permit:

1. Allow a retaining wall up to 13 feet in height where a maximum of six feet in height is permitted in Subsection 156.050.
2. Allow the retaining walls to support and contain fill, which is not permitted under Subsection 156.128(A)(6).
3. Allow up to 13 feet of fill behind the upper retaining wall where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a).
4. Allow up to seven feet of fill behind the lower retaining wall where a maximum of three feet is permitted in Subsection 156.128(A)(12)(a).

Director Heard stated that 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.
6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

Director Heard stated that staff determined that all six required findings were met by the proposal and, therefore, staff was recommending approval of SUP 24-005 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.

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

Councilor Lingard asked why the Town has rules on bulkheads and fill. He thought there had to be a reason for it, but he wanted to know what the reason was. He stated that it seemed that it was to prevent excessive fill, adding that this application was asking for a lot of fill, as well as to prevent developments like this. He thought he may be wrong but wanted to know why the Town has these restrictions in place and what the original thought was when they were put in place. Director Heard stated that he could complete some research to see what was discussed. He explained that, in a typical subdivision, if someone brought in eight feet of fill to their lot it could have impacts on adjoining properties, so Council was placing a cap on the amount of fill. He added that it limits the type of solution with a proactive approach. He stated that it was partially due to fill and partially due to stormwater management. He noted that the Planning Board would be having a discussion on some related issues that Council may hear about in the next couple of months.

Mayor Pro Tempore Thibodeau saw in the proposal that the tree line was trying to be preserved along the south end of the property. She asked Director Heard if he was concerned about the amount of vegetation that might have to be cleared in order to get the bulkheads in place. She further asked about putting a swimming pool in a filled area and stabilizing it. Director Heard stated that the applicant and engineer could speak to the questions asked. He stated that staff were in favor of preserving vegetation, but it was not a requirement on residential property unless it was 24 inches or greater. He added that the applicant could speak to how they plan to go about that and what they plan to preserve.

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.

Mike Robinson of 104 Jester Court, Kill Devil Hills was recognized to speak. Mr. Robinson stated that he was a licensed professional engineer and licensed land surveyor. He explained that this was a very challenging lot with differing elevations and was heavily wooded. He stated that he started out by getting a full topography on the lot, Styons Surveying got the contours needed, then he developed the site plan with the house and swimming pool and started working on the grading. He stated that they started on the east side and started building up with a few goals that they needed to maintain – a flat building pad that was no more than three or four feet above the road; minimize land disturbance by only removing what was absolutely necessary; and keeping the retaining walls to a maximum of five feet.

Mike Robinson pointed out on the site plan was the existing contours and the proposed contours, adding that around the proposed contours was the clearing limits that he believed could be maintained for the site. He noted that on the south side, they would not

be clearing until about five feet to the property line and on the north side it was further than that. He added that on the west side there was about seven to eight feet that does not need to be cleared which would mean that the vegetation would remain. He pointed out that there was a substantial amount of vegetation that would remain on the south side, adding that the entire northeast quadrant would be left vegetated as well. He stated that the rest of the site would be stabilized, irrigated, and sodded. He stated that he did the best he could for the lot to keep the disturbance to a minimum, keep the bulkheads workable, and at the last iteration, he pushed the building into the hill and made one of the back walls of the building a retaining wall. He noted that they spent a lot of time on the development of the plan and he felt very good about it.

Mike Robinson explained that, as far as building a swimming pool in fill, they had to be very careful in that the fill has to be placed in lifts and each lift is compacted with water, tamps or both. He stated that there was a Geotech that would be working with them to go through the compaction since part of the building would be in fill, adding that he wanted to make sure that everything is properly placed, compacted in lifts, and final compaction suitable for a slab construction.

Town Attorney Hobbs asked Council if they had questions for the applicant.

Councilor Whitman stated that Mike Robinson did a great job on the stormwater storage. Mike Robinson stated that he has had great success with it.

Town Attorney Hobbs asked if the applicant was okay with the two proposed conditions listed. Mike Robinson stated that they were.

Mayor Pro Tempore Thibodeau asked if it was necessary to obtain any input from the neighboring properties on the application. Director Heard stated that letters were sent to the adjacent properties. Senior Planner Cross noted that one telephone call was received, adding that one of the adjacent property owners was present for the meeting.

Town Attorney Hobbs asked if the applicant wished to present any other evidence. There was none.

Town Attorney Hobbs asked if there was any other evidence to be presented during the hearing. There was none.

Town Attorney Hobbs asked if there were any remaining questions. There was none.

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that a vote of the majority of Council would be required to approve the application. He added that as part of Council's deliberation and if there was a motion to approve the application, there were various findings that would need to be made and it would be helpful if the motion referenced the findings as well as the two proposed conditions.

Councilor Chasen moved to approve SUP24-005 as presented, with the findings of fact as well as the two proposed conditions listed.

Motion carried 5-0.

### **LEGISLATIVE PUBLIC HEARINGS**

There were no Legislative public hearings at this time.

Mayor Kingston called for a five-minute recess. The time was 3:55 p.m.

Mayor Kingston reconvened the meeting.

### **OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS**

#### **Discussion/Consideration of the Proposed FY 2024-2025 Budget Ordinance and 2025-2029 Capital Improvement Plan**

Town Manager Havens stated that the budget had been presented to Council two other times with one comment received from the public on it. He stated that he was asking Council to adopt the budget as presented.

Mayor Pro Tempore Thibodeau clarified that transfer and contingency was where the MSD transfers were. Town Manager Havens stated she was correct. Mayor Pro Tempore Thibodeau clarified that if the Town were to have a beach nourishment project in this budget, Council would have seen the capital expenditure in the year the project was done. She pointed out that there was \$4.7 million in the Fiscal Year 2023-2024 budget for the BRIC project, asking where the nourishment came in. Town Manager Havens explained that it was under Debt Service, adding that the BRIC project was not debt funded and was cash funded capital. He stated that the beach nourishment project was debt funded.

Mayor Kingston clarified that the latest grant the Town received from the State will be allocated as part of this year's budget. Town Manager Havens stated he was correct, adding that the grant revenue would be recognized in Fiscal Year 2024.

Councilor Whitman moved to adopt the FY 2024-2025 budget and the Fiscal Year 2025-2029 Capital Improvement Plan as presented.

Motion carried 5-0.

#### **Discussion/Consideration of Ordinance 24-03, an Ordinance Amending Chapter 95, Section 05 and Chapter 156, Section 129 of the Town of Duck Code of Ordinances to Allow Outdoor Entertainment until 12:01 a.m. on January 1 of Each Year**

Town Manager Havens stated that at Council's May 1, 2024 meeting, there was a proposal that Council consider making the change to the noise ordinance to allow outdoor entertainment to continue until 12:01 a.m. on January 1 of each year. He stated that Council directed staff to put out a survey to the community to receive input, adding that 174 responses were received from non-resident property owners, residents, Duck business owners, employees at a Duck business, and Southern Shores residents that visit Duck on New Year's Eve. He pointed out that 77% of the responses were in favor of a temporary modification of the noise ordinance for New Year's Eve only and 23% were opposed.

Mayor Kingston appreciated receiving the survey, adding that the responses were not unexpected. He stated that his position has not changed in that he does not support the change, adding that he knew it was discussed in his absence. He noted that this was not Duck and to make a change for a couple of hours once a year for a few people at the expense of others in Town was not something he could support. He did not think anyone needed to turn Duck into Times Square on New Year's Eve and what will happen between 10:00 p.m., and 12:00 a.m. would not be dining but drinking and noise. He noted that the restaurants could still stay open internally, just not externally. He reiterated that he did not support the change and would not be supporting the draft ordinance.

Councilor Chasen stated that she had talked to people and personally they told her that they liked the 10:00 p.m. cutoff. She added that she was in favor of not changing the time.

Councilor Whitman stated that he had talked to people that were not in favor of changing the time, adding that they felt it was not the community that they lived in. He agreed with Mayor Kingston that people could eat or drink inside if they wanted for those two hours.

Councilor Lingard asked Council if they knew anywhere else in the country that celebrates New Year's Eve at 10:00 p.m. Councilor Chasen pointed out that it was what makes Duck special. Councilor Lingard disagreed, adding that Councilor Chasen must have talked to 23% of the people and not the 77%. He understood that he wasn't going to win the argument, but thought it was silly, adding that the number of people that will be affected was small. He noted that those that would be affected by the sounds from businesses were small as well. He stated that it was a small radius around the different businesses for two hours on New Year's Eve. He thought stating "It's Duck" was not an argument. He asked if someone could tell him another place in the country that celebrates New Year's Eve at 10:00 p.m., he would be surprised.

Fire Chief Donna Black left the meeting at this point.

Mayor Pro Tempore Thibodeau appreciated Councilor Lingard bringing the issue forward because it was a good idea for Council to re-examine what they were doing and how the Town got to that point. She did not think it was an issue until Councilor Lingard brought it up, adding that she appreciated the work that went into the survey. She pointed out that a nice cross-representation of respondents were in favor of the change, adding that she



had talked to people and was told that they didn't realize it was a problem. She wasn't sure if there were any businesses that wanted to stay open, noting that it would be businesses that wanted to be open outside. She reiterated that she appreciated Councilor Lingard bringing the issue forward to Council. She noted that, based on the data, she heard that people did not really care if a business could stay open later, but she heard the Council sentiment and understood both arguments. She agreed that the noise would be minimal. She stated that, at this point, unless Council receives some business establishments coming back to them saying they wanted to do something, she would not be in favor of the draft ordinance, especially since Council has not been approached by any businesses asking for the change.

Mayor Kingston pointed out that people could still celebrate New Year's Eve in Duck but could not do it at an outside venue.

There was no motion to approve Ordinance 24-03, so the ordinance died.

**Discussion/Consideration of Instructing the Town Attorney to Cease Work on a Pending Lawsuit in Response to the NC General Assembly Pre-empting Local Zoning Regulations when Considering Affordable Housing Projects in Dare County**

Town Attorney Hobbs stated that Council had joined with the four other Dare County towns in the lawsuit dealing with the Dare County Local Act and Budget Bill that pre-empted zoning on affordable housing projects. He explained that there has been new legislation that repealed those provisions and therefore, the lawsuit Council had joined as a plaintiff was now moot because what was challenged has been repealed by the State legislature. He stated that he and other Town Attorneys have gone to their respective town boards and recommended that they approve them to have the Town dismiss the lawsuit as a group because it was moot.

Councilor Chasen moved to authorize the Town Attorney to dismiss the pending lawsuit being considered against the State of North Carolina.

Motion carried 5-0.

**NEW BUSINESS**

**Discussion/Consideration of Resolution 24-09, a Resolution of the Town Council of the Town of Duck, North Carolina, Revising the Personnel Policies of the Town of Duck**

Town Manager Havens stated that every year throughout the year the department directors discuss changes that may be needed to the personnel policies and they try, unless it was emergent, to wait and complete them all at once. He stated that there were two proposed revisions to be considered as follows:

1. Change the probationary period for new employees to six months for all employees.
2. Change the language regarding Name Clearing Hearings.

Town Manager Havens stated, with regard to the probationary period, it was currently 12 months for Public Safety employees and six months for all other employees, adding that the department directors did not see any practical reason to do that anymore and to have it be six months for all employees.

Town Manager Havens stated, with regard to the Name Clearing Hearing, it was recommended by the North Carolina League of Municipalities consultant – Becky Veazy – that had drafted the Town’s personnel policies. He noted that the most significant change was to require these hearings for demotions as well as dismissals, adding that some changes were recommended based upon case law.

Councilor Chasen moved to approve Resolution 24-09 as presented.

Motion carried 5-0.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY**

Town Attorney Hobbs stated he had nothing to report.

#### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER**

##### **Departmental Updates**

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave a brief overview of the past month’s police activities to Council and the audience.

Police Chief Ackerman noted that Fire Chief Donna Black had left to respond to a call and he would be filling in for her. He went on to give a brief overview of the past month’s fire activities to Council and the audience.

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

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

#### **April FY 2024 Financial Presentation**

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

### **MAYOR'S AGENDA**

Mayor Kingston stated that he had his mayor/chairman meeting on June 18, 2024 in Nags Head. He stated that on June 12, 2024 there would be a hurricane preparedness meeting put on by Dare County that he could not attend, so Mayor Pro Tempore Thibodeau would be attending in his place. He thanked Director Nickens and Public Information and Events Coordinator Betsy Trimble for the ribbon cutting ceremony that was held for the completion of the BRIC project. He noted that there would be a July mid-month meeting where Council will work on the revised review form for the Town Manager and because it was a significant change, a work session was needed due to Town Manager Havens' performance evaluation being due at the beginning of August.

### **COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau gave an Outer Banks Visitors Bureau meeting update and an Outer Banks Housing Taskforce meeting update to Council and the audience. She suggested having Administrator Barnes, if she has the time, to give a short overview on the conversion to the new software at a future Council meeting.

Councilor Lingard stated that there were very few children that live in Duck, adding that his neighbor recently had a baby.

Councilor Whitman thanked staff for the ribbon cutting. He stated the he recently attended the open house and dedication of the new helicopter hanger for Dare County EMS. He encouraged Council and the audience to visit the building as it was pretty impressive.

Councilor Chasen thanked staff for everything they do to help Council get all the information they need. She stated that Town of Manteo Commissioner Ruth Stetson had contacted her about an interest from locals and visitors to be able to take a ferry from Manteo to Duck. She wasn't sure if it was possible, but Manteo was interested, adding that perhaps Town staff could speak with the Town of Manteo to find out what needs to be done or if it was even possible. She stated that Harbortowns cruises was the ferry line, adding that Commissioner Stetson had mentioned that all of the towns have received state funding to be able to do this. She asked if it was something that could be considered. Town Manager Havens stated that Duck has been involved with some studies with NCDOT and some others regarding ferry service, adding that he would be happy to speak to Councilor Chasen offline.

Mayor Kingston noted that he had a conversation with the Town of Manteo's Mayor and that the ferry line would be running between Manteo and he believed Edenton, Elizabeth City, and Hertford. Councilor Chasen stated that there were several locations. Mayor

Kingston pointed out that the issue has come up before in conversation regarding the depth of the water and docking facilities. Councilor Chasen agreed, adding that this was not something that was set in stone since she did not know if it was possible, but Commissioner Stetson had mentioned that the ferry line had specially designed ferries that were low clearance so it may work. Mayor Kingston thought it was an interesting concept. Councilor Chasen pointed out that the Town of Manteo had asked that Duck consider this as well as what the interest level was.

**OTHER BUSINESS**

**Additional Public Comments**

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

**CLOSED SESSION**

Mayor Pro Tempore Thibodeau moved to enter closed session pursuant to North Carolina General Statute Section 143-318.11(a)(3), to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.

Motion carried 5-0.

The time was 5:05 p.m.

Upon return from Closed Session, Town Attorney Hobbs stated that Council discussed two matters and he provided legal advice but had nothing further to report.

Mayor Kingston noted that the next meeting would be the Mid-Month Meeting on Wednesday, June 19, 2024 at 1:00 p.m.

**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 5:26 p.m.

\_\_\_\_\_  
Lori A. Ackerman, Town Clerk

Approved: \_\_\_\_\_

\_\_\_\_\_  
Don Kingston, Mayor

**TOWN OF DUCK  
TOWN COUNCIL  
MID-MONTH MEETING  
June 19, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, June 19, 2024.

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

COUNCIL MEMBERS ABSENT: Mayor Pro Tempore Monica Thibodeau.

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

OTHERS ABSENT: None.

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

**CONSENT AGENDA**

**Motorola FLEX Interlocal Agreement; Budget Amendment**

Councilor Chasen moved to approve the consent agenda as presented.

Motion carried 4-0.

**Presentation by Nick Cohn of the Army Corps of Engineers Field Research Facility on How Best to Manage Dunes with Fences and Vegetation on the Beach**

Nick Cohn of the Army Corps of Engineers Field Research Facility was recognized to speak. Mr. Cohn went on to give a presentation on beach dune systems and how to manage dunes with fences and vegetation on the beach to Council and the audience. He then took questions from Council.

Mayor Kingston thanked Nick Cohn for his presentation.

**NEW BUSINESS**

**Discussion/Consideration of Closing the Beach Nourishment Capital Project Fund and Transferring the Residual Funds to the Beach Nourishment Capital Reserve Fund**

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes explained that after preparing for the end of the fiscal year, the Town's financial consultant, Teresa Osborne, reported that there was \$22,037.10 that remained in the Beach Nourishment Capital Project Fund and since the project was completed in the Spring of 2023, she was recommending that the Town close out the fund in order to avoid carrying the balance over into the new fiscal year. Director Barnes stated that Ms. Osborne had also recommended that the Town transfer the funds into the Beach Nourishment Capital Reserve Fund where those funds will be held.

Administrator Barnes recommended that Council also make a motion to approve the budget amendments associated with these transfers.

Councilor Chasen moved to close the Beach Nourishment Capital Project Fund and transfer the residual funds into the Beach Nourishment Capital Reserve Fund as presented.

Motion carried 4-0.

Councilor Chasen moved to approve the budget amendments as presented.

Motion carried 4-0.

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

**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 2:19 p.m.

\_\_\_\_\_  
Lori A. Ackerman, Town Clerk

Approved: \_\_\_\_\_

\_\_\_\_\_  
Don Kingston, Mayor

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA, HONORING THE 150<sup>TH</sup> ANNIVERSARY OF THE CHICAMACOMICO LIFE-SAVING STATION IN RODANTHE AND DECLARING OCTOBER 2024 AS LIFE-SAVING SERVICE COMMEMORATION MONTH

Resolution #24-11

WHEREAS, during the late 1700s and early 1800s, an increase in maritime trade resulted in the greater possibility of near-shore shipwrecks occurring along the East Coast of the United States; and

WHEREAS, at that time, large sections of the Eastern Seaboard were sparsely populated, leaving sailors with little hope of being rescued should their ship begin to sink – and a very small chance of survival if they made it to shore due to the isolated nature of the beaches; and

WHEREAS, in 1848 the foundation for the future United States Life-Saving Service was laid when the United States government provided a New Jersey congressman with funding to provide life-saving services in his state; and

WHEREAS, in the years that followed, the shipping of goods as well as transportation by water, although perilous, expanded dramatically as the United States became industrialized; and

WHEREAS, this increase in maritime activity subsequently resulted in a greater loss of lives and vessels along the Eastern Seaboard, and dramatic events involving these losses demonstrated the need for a formal life-saving service to be established; and

WHEREAS, Sumner Kimball, a young lawyer from Maine, was appointed to serve as chief of the U.S. Department of the Treasury’s Revenue Marine Division in 1871 and asked the U.S. Congress to authorize \$200,000 to fund life-saving stations along the East Coast; and

WHEREAS, on April 20, 1871, the U.S. Congress appropriated this \$200,000 in funding for life-saving purposes, and that same year, a network of existing volunteer life-saving stations scattered along the East Coast were formally organized as a separate agency of the U.S. Department of Treasury, resulting in the official establishment of the United States Life-Saving Service; and

WHEREAS, Sumner Kimball identified the coast of North Carolina – which is often referred to as “the Graveyard of the Atlantic” due to the frequency of shipwrecks that occurred as vessels attempted to traverse the area’s treacherous shoals – as an area of high priority; and

WHEREAS, by 1874, funds were appropriated to begin building seven life-saving stations along the coast of North Carolina, the first of which to be completed was the Chicamacomico Life-Saving Station in Rodanthe, which was commissioned on December 4, 1874; and

WHEREAS, construction of all seven life-saving stations – Chicamacomico, Jones Hill, Caffey’s Inlet, Kitty Hawk, Nags Head, Oregon Inlet, and Little Kinnakeet – was completed by October 1874; and

WHEREAS, in 1878, an additional 11 stations were constructed on the coast of North Carolina – including the now-famous Kill Devil Hills Life-Saving Station, whose crew members provided assistance to the Wright brothers – as well as the Hatteras Inlet Station; and

WHEREAS, a series of additional stations continued to be constructed from the North Carolina/Virginia state line to the northern border of South Carolina, eventually totaling 29 stations that were located an average of six miles apart from one another; and

WHEREAS, over the course of its 44 years in operation before it was merged with the Revenue Cutter Service and became the United States Coast Guard, the United States Life-Saving Service responded to 28,121 vessels – and of the 178,741 lives that were in peril at sea, crew members successfully saved a record number of 177,286 lives; and

WHEREAS, we note that October 2024 is the 150<sup>th</sup> anniversary of the arrival of the United States Life-Saving Service to the coast of North Carolina; and

WHEREAS, we reflect upon the rich heritage of the men and women of Dare County who sacrificed comfort and risked their own personal safety to save the lives of strangers in danger at sea; and

WHEREAS, we acknowledge the tireless work that continues to preserve the heritage, stories, and legacies of the United States Life-Saving Service in North Carolina, ensuring that the heroism of these men are never forgotten; and

WHEREAS, we honor the legacy of the United States Life-Saving Service in North Carolina, and appreciate the thousands of visitors a year who continue to be inspired by the positive impacts of the surfmen, their families, and descendants – many of whom still reside in the county today.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA, THIS 3<sup>RD</sup> DAY OF JULY, 2024, that the Town of Duck hereby recognizes and celebrates the 150<sup>th</sup> anniversary of the Chicamacomico Life-Saving Station in Rodanthe and also proclaim October 2024 as “Life-Saving Service Commemoration Month” in the Town of Duck in honor of those who so bravely served in the United States Life-Saving Service along our shoreline.



Adopted this 3<sup>rd</sup> day of July, 2024.

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Mayor

ATTEST:

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Town Clerk

## **Early US Life-Saving Service history pertinent to Chicamacomico and Outer Banks**

1847 - the Federal government funded its first life-saving station on the coast of New Jersey. With coastal shipping increasing after the Civil War, it became obvious that more stations were needed for the Outer Banks of North Carolina which had earned the name "Graveyard of the Atlantic".

1871 - Sumner Kimball was named Head of Chief of the [Treasury Department](#)'s Revenue Marine Division. Kimball convinced Congress to appropriate \$200,000 to operate the stations and to allow the [Secretary of the Treasury](#) to employ full-time crews for the stations. Kimball instituted six-man boat crews at all stations, planned new stations, and drew up regulations with standards of performance for crew members. Stations for the coast of Virginia and North Carolina were high on his list of priorities.

1873 - Construction began at Kinnakeet in September, the first of 10 new stations on the North Carolina and Virginia coast. Unfortunately, changes of plans, poor oversight, and contractor mismanagement led to dismissal of the contractor in April 1874. Kinnakeet had been substantially completed and work had been started at Chicamacomico including the foundation and some framing.

April 23, 1874 - Two new contractors were found and the stations divided between the two. The northernmost six stations, Stations One through Six including three in Virginia were assigned to a Norfolk contractor. The southernmost stations Seven, Eight, and Nine were assigned to a New Bern contractor. The government settled the contract on the Kinnakeet work (Station 10) with the fired contractor. Elizabeth City became the logistic base for supplies and communication for construction.

June 20, 1874 - Act of Congress requires reporting of disasters to shipping, including shipwrecks. Life-saving medals of first (gold) and second (silver) class were established. More life-saving stations, life-boat stations, and houses of refuge were authorized.

October 1874 - At the end of the third week of October it was reported all 10 stations were complete and ready to receive their equipment. The stations were assigned to District 6, covering Cape Henry, Virginia to Cape Fear, North Carolina. The 10 stations, from north included in Virginia: Cape Henry, Damn Neck Mills, False Cape; and in North Carolina: Jones Hill, Caffey's Inlet, Kitty Hawk, Nags Head, Oregon Inlet, Chicamacomico, Little Kinnakeet.

December 1874. The Secretary of the Treasury reported that a total of 22 new stations had been erected in the past year including the 10 in District 6: "They are completely equipped and were manned for the winter's service on the first of the present month".

December 4, 1874 - Station No. 9 Chicamacomico was commissioned.

November 24, 1877 - Wreck of the US Navy gunboat *Huron* off Nags Head, NC with a loss of 83 men. Nags Head Life-Saving Station was not yet open for the season which began in December and pointed out the need for a longer season with full-time personnel.

January 31, 1878 - Wreck of the US Navy ship *Metropolis* off Currituck Beach, NC with a loss of 102 added fuel to the fire of the need for better Life-Saving Station manning after much public outcry of the loss of both the *Huron* and the *Metropolis*

June 18, 1878 - By act of Congress, the network of life-saving stations was formally organized as a separate agency of the United States Department of the Treasury called the Life-Saving Service. Pay was improved. Keepers were required to live at the station year-round. More stations and equipment were authorized, including 15 more on the coast of Virginia and North Carolina with 10 between those already existing and three more below the existing stations reaching to just above Hatteras Inlet.

By 1879 there were 18 Life-Saving Stations on the Outer Banks, **an honored way of life and service.**

**AGENDA:        July 3, 2024                    Regular Meeting**

**ITEM #4:**

Special Presentations

- A.    Swearing in of Christy Drumheller as Deputy Town Clerk
- B.    Introduction of the 2024 Town of Duck FLOCK Academy Graduates
- C.    Introduction of 2024 Lifeguards
- D.    Presentation from Chris Dewitt of VHB on the West Side Feasibility Study

**RECOMMENDED ACTION:**

- None

**SUMMARY OF INFORMATION:**

A – Lori Ackerman will swear in Christy Drumheller as the Town’s newest Deputy Town Clerk

B – Kay Nickens will recognize the recent graduates of the Town’s inaugural FLOCK Academy course.

C – Mirek Dabrowski will introduce the current lifeguards working under the Town of Duck Surf Rescue program.

D – Chris DeWitt with VHB will provide the Town with a presentation summarizing the recently completed feasibility study for a shared use path along the west side of Duck Road from the crosswalk at Aqua Restaurant & Spa south to the Town boundary.

**ATTACHMENTS:**

- None

**AGENDA: July 3, 2024 Regular Meeting**

**ITEM #8A:**

New Business

- A. Discussion/Consideration of Resolution 24-10, a Resolution of the Town Council of the Town of Duck, North Carolina, Revising the Personnel Policies of the Town of Duck

**RECOMMENDED ACTION:**

- Discuss and consider adopting the resolution

**SUMMARY OF INFORMATION:**

An additional revision is being recommended to the Town’s Personnel Policies. Resolution 24-10 would make a change effective July 3, 2024:

Current Policy Language:

ARTICLE VIII. SEPARATION AND REINSTATEMENT

Section 2. Resignation

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two calendar weeks. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation unless the notification requirement is waived by the Town Manager. Thirty days’ notice is expected of department directors and the Town Manager.

Recommended Policy Language:

ARTICLE VIII. SEPARATION AND REINSTATEMENT

Section 2. Resignation

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two calendar weeks. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation unless the notification requirement is waived by the Town Manager. Thirty days’ notice is expected of **all employees exempt from the Wage and Hour Provisions of the Fair Labor Standards Act.**

**ATTACHMENTS:**

- Resolution 24-10

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA, REVISING  
THE PERSONNEL POLICIES OF THE TOWN OF DUCK

Resolution #24-10

WHEREAS, the Town of Duck Personnel Policies were originally adopted by the Town Council on February 3, 2003; and

WHEREAS, the Town of Duck Personnel Policies were updated on June 16, 2021 and further updated on August 4, 2021 July 5, 2023 and June 5, 2024; and

WHEREAS, the Duck Personnel Policies provide guidance on the policies that govern the Town's personnel administration, including the appointment, classification, pay, promotion, demotion, dismissal, employment conditions, and grievance procedures; and

WHEREAS, certain sections of the Town of Duck Personnel Policies require some revision; and

WHEREAS, Article XII, Section 3 states that the policy may be amended by resolution appropriately approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA, THIS 3rd DAY OF JULY, 2024, that the Town of Duck Personnel Policies are amended to read as follows:

**ARTICLE VIII. SEPARATION AND REINSTATEMENT**

Section 2. Resignation

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two calendar weeks. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation unless the notification requirement is waived by the Town Manager. Thirty days' notice is expected of all employees exempt from the Wage and Hour Provisions of the Fair Labor Standards Act.

BE IT FURTHER RESOLVED that this revised personnel policy section supersedes previously approved sections of the policy and become effective on July 3, 2024.

Adopted this 3<sup>rd</sup> day of July, 2024.

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Mayor

ATTEST:

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Town Clerk