

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
March 2, 2022**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, March 2, 2022.

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

COUNCIL MEMBERS ABSENT: Councilor Tony Schiano.

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 Christian Legner; Finance and Human Resources Administrator Jessica Barnes; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 6:00 p.m. He noted that Councilor Schiano was excused from the meeting.

Mayor Kingston asked Town Manager Drew Havens to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments. He noted that comments will be limited to three minutes as there was a timer for the time limit. He added that the public could email public comments, but they must be received by 4:00 p.m. on the day of the Council meeting. He noted that written comments must also be limited to three minutes when read aloud.

Philip Ruckle of 1205 North Highway 64, Manteo was recognized to speak. Mr. Ruckle thanked the Town for their participation in geocaching in Duck. He explained what geocaching was and how it works to Council and the audience.

Nancy Caviness of 103 Georgetown Sands Road was recognized to speak. Ms. Caviness stated that the Advice 5 Cents Turkey Trot was ending after 25 years. She thanked the Town for the support over the years. She thanked the businesses and people in the community that helped to make the event a success for many years. She noted that the endowment that was started would continue on even though the race would no longer happen because it was a permanent charitable endowment.

Anastasiia Forlano of 11 Blue Pete Court, Southern Shores, was recognized to speak. Ms. Forlano stated that she wanted to discuss the unprovoked attack on Ukraine by the Russian military. She stated that she has been a member of the Outer Banks community since 2012 and has found that people on the Outer Banks were kind and helpful. She stated that she was born and raised in Ukraine with her family in the Vienna region. She added that this was the eighth day of the Russian attack with her family doing all it could to remain safe. She asked the community of Duck to help by donating on behalf of the Ukrainian people through a GoFundMe page that has been established to help with medical supplies, food, and other humanitarian supplies.

Ron Forlano of 1223 Duck Road was recognized to speak. Mr. Forlano stated that he recently read an article that Dare County received approval for \$35 million to build affordable housing in Dare County. He pointed out that the \$35 million would not come to Duck. He added that the Town incorporated because anything that goes to Dare County never makes it to Duck. He stated that the needs in Duck were the same as Dare County's in that affordable housing was needed. He asked Council to consider forming a committee to explore the option of affordable housing.

Judy Lotas of the League of Women Voters was recognized to speak. Ms. Lotas handed out the 2022 Citizens Guide to Council and thanked the Town for their support of the guide each year.

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

### **CONSENT AGENDA**

#### **Minutes from the January 19, 2022, Mid-Month Meeting; Minutes from the February 2, 2022, Regular Meeting; Budget Amendments**

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

Motion carried 4-0.

### **SPECIAL PRESENTATION**

#### **Introduction/Swearing-In of Police Officer Dylan Berry**

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman went on to introduce Dylan Berry to Council and the audience as Duck Police Department's newest Police Officer.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in Dylan Berry.

Mayor Kingston and Council welcomed Officer Berry to the Town.

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

### **Discussion/Consideration of Authorizing a Public Hearing on Ordinance 22-03, Amending the Penalty for a Violation from a Misdemeanor (Criminal Offense) to a Civil Penalty in the Town's Flood Damage Prevention Ordinance**

Director of Community Development Joe Heard was recognized to speak. Director Heard explained that the proposed text amendment would modify Subsections 150.027(M) and 150.28(E) of the Town's Flood Damage Prevention Ordinance by changing the penalty for a violation from a misdemeanor (criminal offense) to a civil penalty. He pointed out that the Town's adopted Comprehensive & Land Use Plan does not specifically address the use of civil versus criminal penalties; however, adoption of clear and enforceable penalty provisions was necessary to enforce the policy objective.

Director Heard stated that at their February 9, 2022 meeting, the Planning Board voted unanimously to recommend approval of proposed Ordinance 22-03 and to authorize a public hearing at Council's April 6, 2022 meeting.

Mayor Kingston asked if the Town gets many penalties. Director Heard stated that the Town does not get many penalties at all.

Mayor Pro Tempore Thibodeau moved to authorize a public hearing on Ordinance 22-03 for April 6, 2022 as presented.

Motion carried 4-0.

### **Discussion/Consideration of Establishing a Town Property Advisory Committee**

Mayor Kingston stated that Council had a discussion on the issue a couple of times, including at the Retreat, but Councilor Schiano was not able to attend the meeting. He stated that the discussion was moved to this meeting; however, Councilor Schiano was not present. He stated that further discussion could be had at this meeting, but thought if a motion to vote was needed, then all five members of Council needed to be present. He stated that Council could have a further discussion or come to a consensus to discuss it at the April 6, 2022 meeting.

Councilor Mooney thought Ron Forlano's suggestion during public comments was something that would fall into this category. He stated that he was still in favor of establishing the committee and agreed that Council will need to wait until Councilor Schiano was present.

Mayor Pro Tempore Thibodeau stated that she was in favor of re-establishing a citizen's advisory committee, but thought it brought up what they would be charged with doing. She understood that the committee would be more having specific tasks, such as park benches along Duck Trail. She thought Mr. Forlano's suggestion was more of a cross-

section of professionals and staff that may talk of the big issue of affordable housing. She was not sure if the two went together, but it was good that Council was discussing it. She agreed that Council should wait for Councilor Schiano to be present in order to have a further discussion.

Councilor Whitman stated that he wanted all five Council members to discuss the issue.

Mayor Kingston agreed with Mayor Pro Tempore Thibodeau's comments in that there is a little bit of confusion. He thought Council needed to come up with a focus and scope of what the committee would be doing. He thought all five Council members having that discussion would move things ahead.

It was *consensus* of Council to defer the subject to the April 6, 2022 meeting.

### **NEW BUSINESS**

There was no New Business to discuss.

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that he had nothing to report.

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

#### **Departmental Updates**

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

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

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

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

#### **February FY 2022 Financial Presentation**

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the February Fiscal Year 2022 financials to Council and the audience.

## **MAYOR'S AGENDA**

Mayor Kingston stated that he has his mayors/chairmen meeting on March 15, 2022, which will be hosted by the Town of Duck. He stated that he, Town Manager Havens, and Police Chief Ackerman will be meeting with their counterparts from the Town of Southern Shores on March 8, 2022 regarding traffic. He noted that there has been a lot of conversation between the towns so they will be sitting down to discuss traffic and the resolution for the Mid-Currituck bridge, as well as what they were planning to do regarding traffic. He stated that the Town of Southern Shores would not be doing the no left turn at South Dogwood Trail this summer because the Town of Kitty Hawk was not allowing it since they control that intersection.

Mayor Kingston stated that he has his Executive Committee meeting on March 14, 2022 and was looking forward to the Town's winter celebration on March 25, 2022. He stated that he was looking forward to the upcoming meeting with Ken Willson and Weeks Marine which should be held sometime in March. He stated that he has his Executive Committee meeting with the Local Leadership Foundation later in the month. He stated that he was appointed to the nominating committee for the League of the Municipalities.

Mayor Kingston stated that Council appreciated Anastasiia Forlano speaking during public comments. He asked for clarification as to the involvement the Town can have. Town Manager Havens stated that he would prefer to look at the general statutes regarding making contributions to nonprofit organizations. He knew there was authority to do so, but he wanted to be sure of what the limits of that authority were and if it has to be a certified nonprofit. He noted that the Town was governed pretty tightly by the Local Government Fiscal Control Act. Town Attorney Hobbs explained that GoFundMe pages were not nonprofits, so it would be something that he would have to look at regarding the overall plan to make sure it was something that the Town could spend public funds on.

Mayor Kingston asked if the GoFundMe page could be put in the Town's enews or if the Town would be restricted from doing something like that. Town Attorney Hobbs stated that a GoFundMe page was not the same thing as a nonprofit. He stated that there were some limitations on use of public funds. He added that he would be happy to research it, but it would not keep the Town from expressing its support.

Anastasiia Forlano stated that she spoke to Nancy Caviness and they were going to try to get a nonprofit that already exists on the Outer Banks. She stated that they were going to try to get them to be her umbrella so they could collect the money for her. She thanked Council for being open to allowing her to speak.

## **COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau thanked Anastasiia Forlano for coming to the Council meeting to discuss Ukraine. She thanked Nancy Caviness for all of her hard work on the

Turkey Trot over the years. She thanked Philip Ruckle for his contribution to the Town with geocaching. She gave a short Tourism Bureau update to Council and the audience.

Mayor Pro Tempore Thibodeau stated that she was contacted by a property management company regarding the concern of the escarpment on the beach in Carolina Dunes. She stated that they were worried about when people come in that they may not be able to get to the beach, which was concerning. She stated that she brought it up to Town Manager Havens as a point of conversation in order to get some information as to what the Town was thinking about doing. She added that she was also asked how to get the nourishment on the beach sooner than August. She wondered why Duck should be last when the escarpment was so steep.

Director Heard explained that traditionally, the Town has graded down all of the beach access points, both public and private, in the beach nourishment area. He stated that the reason for the focused efforts on them was because those properties were not permitted to construct hardened structures as opposed to other areas that are permitted to have hardened structures. He pointed out that the other areas have a better way to address those concerns with a steep drop off; however, they cannot be addressed as effectively in the beach nourishment area without grading out those access points. He stated that the grading is usually done this time of year with an anticipated completion date of just prior to April. He noted that it was traditionally completed around mid-May because the damage that causes the escarpments happens in the spring and there is usually time for the beach to recover. He added that, unfortunately, that has not happened to the same degree this year and staff understands the concerns that were being expressed by the homeowners. He stated that the Town completes a second grading right before Thanksgiving on an as-needed basis.

Director Heard stated that some of the things that staff could look at doing if there was a need or interest by the Council with the understanding that there may be damaging storms in the future, was a project to knock down and grade out the beach accesses within the next couple of weeks. He noted that the last time it was done, it cost \$2,520. He added that it could be done, but there would be an expectation that it may need to be done again at an extra cost. He stated that another option was if there were some targeted areas that were not considered worst case scenarios with high escarpments, staff could go out and hand dig and shape the accesses. He did not think that that could be promised as it would depend on staff's time and availability. He stated that the third option was that Surf Rescue Director Mirek Dabrowski could be called in to help with the excavation of the highest escarpments.

Mayor Kingston asked if this was a universal problem at every beach access or if it was just a handful. Director Heard stated that it was not, adding that some accesses were worse than others.

Mayor Pro Tempore Thibodeau clarified that the cost was \$2,520. Director Heard stated she was correct. Mayor Pro Tempore Thibodeau clarified that when the Town does it

again as planned, which was closer to Easter, \$2,520 was the anticipated amount that would be allocated for the work. Director Heard stated she was correct.

Councilor Whitman clarified that the work would only be completed in the nourishment area. Director Heard stated he was correct. Councilor Whitman understood that some homeowner associations have sent a letter from another group in Town stating that the work would be completed for the entire beach. Director Heard stated that he was aware of the letter and Senior Planner Sandy Cross sent a response that corrected the misstatements. He knew it went to some specific neighborhood associations but did not think it went out to a larger group at this time. Town Manager Havens stated that he was not aware that it went to a larger group but may have gone to people in the forum. Director Heard explained that staff responded to the associations that took that information and started inquiring Town staff. He stated that they presented the people with information that helped them understand what the policy has been regarding the Town's involvement in that activity.

Councilor Whitman clarified that it was correct to state that the Town should complete the association's accesses earlier than Easter so people can get to the beach through the association accesses in the beach nourishment area and then the private accesses could be completed around Easter. Mayor Pro Tempore Thibodeau asked Councilor Whitman if he was suggesting that the work be done immediately instead of at the end of March. Councilor Whitman stated she was correct. Director Heard stated that the proposal will add cost due to the staging that will be needed, but it could be an option. Councilor Whitman asked if it would be smart to complete the public accesses around Easter and wait until May for the rest. Director Heard thought there was a greater community-wide benefit to complete the common access points because everyone has the ability to access them. He thought Councilor Whitman had a valid point by focusing on those community accesses as opposed to the individual owner accesses. He noted that there would be an additional cost to break that up.

Mayor Kingston thought that since the Town was spending \$7-\$8 million on the renourishment project, there should be enough funding to do this project. Mayor Pro Tempore Thibodeau agreed.

Councilor Whitman asked how many times the Town should have to complete the small project between now and when the renourishment project starts. Mayor Kingston thought it would be two times. Mayor Pro Tempore Thibodeau thought it was hard to tell at this point. Councilor Whitman wondered how many times the Town wanted to spend \$2,520. He further wondered if it should be done weekly based on the number of storms that come through. Mayor Pro Tempore Thibodeau disagreed, but thought it was showing good faith to get the project completed. She pointed out that there will be a lot more visitation earlier this year than normal. Mayor Kingston pointed out that people in MSD-A and MSD-B were paying for the renourishment and should have access to the beach. He reiterated that it was only a couple thousand dollars. Town Manager Havens thought it was easy enough to have it completed in the entire nourishment area, get all of the accesses done, and commit to getting them done before Easter. He pointed out that

Council should not commit to having them done in two weeks since staff has not spoken to the contractors. He added that Council can direct staff to move forward but that it may have to come back between now and Memorial Day and redo it.

Councilor Whitman asked if it would be done a second time. Town Manager Havens stated that it would if it was deemed necessary. He agreed with Mayor Kingston that it would be easy enough to do. Mayor Pro Tempore Thibodeau pointed out that it would show good faith. She thought once the equipment was out and mobilized it would not be hard to complete the project. Mayor Kingston thought the project should move forward.

Mayor Pro Tempore Thibodeau moved to instruct staff to work towards getting the nourishment area graded as soon as possible with the idea that it may have to be revisited in the May timeframe or as needed.

Motion carried 4-0.

Councilor Mooney stated he had nothing to report.

Councilor Whitman reminded everyone that the next beach grass planting will be on Monday, March 7, 2022 at 1:00 p.m. at the Sea Hawk access.

Town Manager Havens asked Mayor Pro Tempore Thibodeau if she wanted to discuss staff drafting a letter for the mayor to sign. Mayor Pro Tempore Thibodeau stated that she did. She stated that, along with the issue of how heavily escarped the Town's beach was in the nourishment area, it was unfortunate that the tentative plan had Duck's beaches being completed in the August timeframe. She stated that the other beaches were accessible while Council has to figure out how to get people to the beach in the nourished area with the intense escarpments, which makes it dangerous and potentially could be throughout the summer. She suggested that Council instruct staff to draft a letter to Weeks Marine to ask if there was any opportunity for them to revisit due to the access issues. She reiterated that the other towns have access while Duck will be struggling with access. She thought it could be brought to Weeks Marine's attention.

Mayor Kingston asked if Duck would need to go through Dare County with the request since they hold the contract with Weeks Marine. He noted that the other towns may be upset when Duck informs Dare County, but the Town had some rationale for the request. Town Manager Havens stated that the letter could be addressed to both. He noted that Dare County did not set the order, the contractor did. Mayor Kingston stated that he was not aware of that. He thought it would be good to do something prior to Weeks Marine being in Duck for a public meeting. Town Manager Havens agreed.

Councilor Whitman asked if Weeks Marine looked at the northern beaches in Duck when they set their schedule. Town Manager Havens stated that they have not since the string of nor'easters that happened. He added that Ken Willson has been kept informed of what the beaches look like.

Mayor Kingston stated that a lot of it has do to with the availability of dredges, adding that there were three dredges for the last nourishment project. He thought it was worth a try. Mayor Pro Tempore Thibodeau agreed, adding that it should be formally brought to Weeks Marine's attention since Duck could not control what was doing with the project. She stated that the Town was lucky to have the project and that it will eventually be completed. She stated that she did not want to sound ungrateful for what would happen, but at the same time the issue could be brought up. She thought it could be an access issue with getting the equipment on the beach. Town Manager Havens stated that the equipment would be coming from Southern Shores since the neighborhoods in the nourishment area of Duck have not been receptive to allowing access.

Mayor Pro Tempore Thibodeau moved to direct staff to prepare a letter for the mayor's signature to request Weeks Marine revisit the nourishment schedule and take into consideration the beach access issues the Town would have throughout the summer until the project has started.

Motion carried 4-0.

### 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.

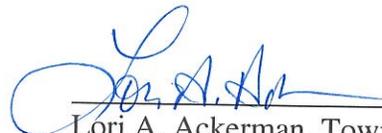
Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, April 6, 2022 at 6:00 p.m.

### ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 7:41 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: April 6, 2022  
  
Don Kingston, Mayor

