

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
March 4, 2020**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, March 4, 2020.

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Attorney Ben Gallop; Director of Marketing and Special Events Christian Legner; Assistant to the Town Manager Alyson Flynn; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Public Relations Administrative Assistant Betsy Trimble.

Mayor Kingston called the meeting to order at 7:03 p.m. He asked Councilor Rob Mooney to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any comments regarding the public hearings be held off.

Mary Jane Slesinski of the Dare County League of Women Voters was recognized to speak. Ms. Slesinski handed out the 2020 Citizens Guide to Council and thanked the Town for their support of the guide each year.

Director of Community Development Joe Heard was recognized to speak. Director Heard gave a short presentation on the upcoming Census count to Council and the audience.

Chuck Burdick of 148 Whistling Swan Drive was recognized to speak. Mr. Burdick gave a Dare County Tourism Board update to Council and the audience.

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

CONSENT AGENDA

Minutes from the February 5, 2020, Regular Meeting; Government Education Access Channels Committee Proposed 2020-2021 Budget

Councilor Whitman moved to approve the consent agenda as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of SE19-002, an Application for a Special Exception Relating to Fill and Grading Activities at 1398 Duck Road, to Allow the Use of a Bulkhead to Contain and Stabilize Fill

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 that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joe Heard, Crouse Gray, Barrett Crook, Jason Self, Michael O'Steen, and Sharon Hart.

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

Director Heard stated that the applicant was seeking a special exception to support and stabilize a significant amount of fill material with a bulkhead. He stated that the proposed project involved grading and the addition of off-site fill to build up the height of the property for a distance of 30 feet behind a three-foot high bulkhead at the rear of the property along the Currituck Sound. He noted that in order to be constructed as proposed, the improvements will require approval of a special exception for a bulkhead to be used as a method to stabilize or contain fill. He added that the property owner was seeking to construct a bulkhead and backfill up to 23 feet behind the bulkhead in order to build up the height of the property, effectively creating a level lawn area approximately 30 feet in width behind the bulkhead. He stated that the proposed bulkhead will be approximately three feet high for much of its length but will taper to a height of 18 inches on higher ground near the northern side of the property. He pointed out that the applicant has obtained a CAMA permit for construction of the proposed bulkhead.

Director Heard stated that the proposed bulkhead and fill behind it would extend across the entirety of the subject property and tie back into the property with perpendicular bulkhead walls running down the sides of the property. He stated that the bulkhead design has ties that extend 15 feet into the property behind the bulkhead to help support the structure and part of the justification for the requested special exception was to accommodate the tie-back posts west of the existing swimming pool.

Director Heard stated that the Town has permitted many dozens of bulkheads along the Currituck Sound. He stated that these soundfront bulkheads are generally permitted at a particular height and location to stabilize the existing shoreline but are not built outward or upward to increase the amount of land supported by the bulkhead. He pointed out that the Town allows a reasonable amount of fill to be placed behind the bulkhead as part of the construction process, but this area does not exceed more than a few feet in width. He added that with many properties along the Currituck Sound, the subject property has shown evidence of an eroding shoreline due to the forces of wave action and storms. He stated that erosion over time has created an approximate one-foot escarpment to the swimming pool on the property. He pointed out that the escarpment was approximately seven feet from the pool north of the pier, as close as four feet directly underneath the pier, and widens to 14 feet south of the pier. He added that two trees that were located south of the pier have roots that have been partially exposed by the erosion.

Director Heard stated that the adjoining lot to the north did not have a bulkhead and a portion of its shoreline immediately north of the subject property matches the shoreline of the subject property. Further north, a peninsula of the shoreline juts approximately 75 feet out into the sound. He added that a large oak tree on the property stands approximately five feet from the subject property and could be impacted by the proposed return on the northern side of the proposed bulkhead. He stated that the adjoining lot to the south has a low bulkhead that ties into the bulkhead further south and extends through the property. The majority of this bulkhead directly borders the Currituck Sound. He stated that approximately 16 feet south of the subject property, the bulkhead was completely covered by soil that has accreted where the shoreline extends 85 feet further into the sound. He noted that the bulkhead was approximately two feet lower and set back approximately nine feet further than the proposed bulkhead and fill on the subject property.

Mayor Pro Tempore Thibodeau clarified that the proposed bulkhead would be to the east of the property line. Director Heard stated that it would be to the west further out towards the sound.

Director Heard stated that Subsection 156.128(C) of the Town Code states that Town Council may grant a special exception for fill only after determining that the application meets the following criteria:

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 CAMA Land Use Plan and Vision Statement. This review includes the Town's evaluation of the proposal's consistency with its adopted CAMA 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 noted that at the Planning Board's public meeting on January 8, 2020, the Board received presentations from staff and the applicant, evaluated the proposed special exception, and voted unanimously to recommend denial of the application. He stated that on the day after the meeting, the applicant met with staff to discuss options for amending the proposal to better address the concerns voiced by the Planning Board. During the on-site meeting with staff, the applicant expressed an intent to reduce the proposed scale of the project and retain an engineer to complete a study analyzing the potential impacts of the project on adjoining properties. He noted that local engineer Barrett Crook prepared a Shoreline Stabilization Engineering Report for the Planning Board's consideration; however, the applicant did not submit a proposal with revised dimensions for the project and requested that the Planning Board reconsider the same bulkhead/fill design as was previously submitted.

Director Heard stated that at the Planning Board's meeting on February 12, 2020, the Planning Board had a split vote on a motion to deny the proposed special exception, which resulted in no recommendation from the Planning Board to Town Council. He explained that the Planning Board members that were in favor of the application thought the proposal complied with the special exception findings and were persuaded by the engineers' comments that the proposed bulkhead and fill would provide protection for the subject property and was not likely to negatively impact adjoining properties. He added that the Planning Board members that were in opposition cited concerns about the scale of the proposed bulkhead and fill, expressed doubt that the proposed project was the minimum design necessary to protect the property and noted that other options could be viable alternatives for shoreline protection.

Director Heard stated that if the Council decided to recommend approval, they were being asked to consider the following conditions:

1. The applicant must submit required application materials to obtain necessary land disturbance and building permits prior to commencing work.
2. The return on the northern side of the bulkhead must be designed and constructed to minimize damage to the neighboring tree and its root system.

Mayor Pro Tempore Thibodeau clarified that the bulkhead would be permissible by right from CAMA, but the issue that Council was looking at was the amount of fill that would go behind the bulkhead. Director Heard stated she was correct, adding that it was beyond permissible as the permit was already issued. He stated that it met the state requirements and the only issue was that in the Town's land disturbance ordinance, the Town does not permit bulkheads or retaining walls to be used to build up properties for fill that was added to a property. He noted that it was the special exception that was being sought by the applicant. Mayor Pro Tempore Thibodeau asked if the applicant put the bulkhead in with the CAMA permit and did not put any fill in, the Council would not be having this discussion. Director Heard stated she was correct.

Mayor Kingston asked how much fill the Town would allow as adequate behind the bulkhead to meet the standard. Director Heard stated that in order to construct a bulkhead, it typically needed to be built out with room behind it as it was being built. He stated that, generally, a foot or two would be needed for a bulkhead that was put in along an existing shoreline. He stated that staff would want a foot or two behind it in order for it to be approved administratively. He noted that a much more substantial amount of fill was being proposed for this project. Mayor Kingston asked if the applicant was filling in behind the bulkhead, it would cover the trees. Director Heard stated that two trees on the southern side have their root system exposed. He stated that a lower bulkhead would cover it but with a bulkhead, one would not want it up against the trees as that would potentially cause significant damage to the root system.

Mayor Kingston asked if the homeowner could add fill around the pool. Director Heard stated that they could as long as it was not supported by the bulkhead and did not exceed three feet in height. Mayor Kingston clarified that the applicant could come from the house, towards the bulkhead and go behind the bulkhead. Director Heard stated that they could as long as the bulkhead wasn't supporting all of the fill behind it.

Councilor Whitman asked if the homeowner could terrace down the three feet. Director Heard stated that there were a couple of different goals that the applicant was trying to achieve with the application. He stated that one of the challenges was where the tree was located, as it would make it difficult to terrace because of the presence of the tree. He added that the terrace would have to be behind the tree; however, it could be done on the northern side without much of an issue. He thought it would be more difficult on the southern side due to the presence of the tree. Councilor Whitman clarified that the applicant was trying to save the tree. Director Heard stated that the applicant was. Councilor Whitman pointed out that it looked like the applicant had the tree cut down

next to the one they wanted to save. Director Heard stated that six trees have been cut down on the property.

Councilor Caviness asked why the six trees were cut down. Director Heard stated that he wasn't sure but thought the applicant could answer.

Mayor Kingston clarified that the applicant came before the Planning Board twice with the application, was denied the first time and the second time there were no significant changes other than an engineering report. Director Heard stated that there was no change to the design of the project, adding that the biggest change was the information that was provided to the Planning Board. He noted that, initially, there were no engineering analysis or study that was completed, and the applicant came back with that information as well as some additional information at the second Planning Board meeting. Mayor Kingston asked if the engineer said anything about the fill. He noted that the engineer was saying that the bulkhead will work and was at the right height but didn't comment about the excess of fill. Director Heard thought it was part of what they were looking at when they were referencing the bulkhead.

Mayor Pro Tempore Thibodeau asked what the impact would be of the fill over the tree stumps. Director Heard stated that if the fill was too high, it would have a negative impact on the tree. He wasn't sure exactly where the three-foot going across would be with regard to the tree. He noted that it would cover the root system, but he wasn't sure how much higher it would be.

Councilor Caviness asked if the applicant was maintaining the disrepair or lack of fill/ground/sand around the pool area as a result of flooding, thus the desire for the bulkhead. Director Heard stated that the applicant could answer that. Councilor Caviness stated that she was getting confused as to what the bulkhead would be protecting – the property from erosion, the trees, or the pool. Director Heard thought all three were items that were mentioned by the applicant in their application.

Mayor Kingston asked if there has been flooding on the property. Director Heard stated that he wasn't sure.

Crouse Gray of Gray & Lloyd was recognized to speak. Mr. Gray stated that he was the attorney for the applicant. He asked if the area on the property was where the applicant was proposing to install the bulkhead. Director Heard stated that it was where the applicant's contractor drew on the plat, so he presumed it to be the case. Crouse Gray clarified that there were shoreline marks on the drawing. Director Heard stated that there were. Mr. Gray pointed out that the bulkheading that was being proposed would be on the shoreline and not near the water. Director Heard agreed that it was when the photo was taken.

Mayor Kingston asked what the elevation was from the ground level of the pool to where the bulkhead would be, not including the bulkhead. Director Heard stated that it would

be between three to four feet from where the sand was located near the edge of the water to where the swimming pool was.

Crouse Gray pointed out that in Council's packets, there were a lot of photographs. He noted that one photograph showed tape along a piling at the location of the height from the ground at that point up, which showed exactly how high it was in that area. He added that it was about five feet.

Town Attorney Hobbs asked the applicant to make a presentation.

Barrett Crook of Kitty Hawk Engineering was recognized to speak. Mr. Crook stated that he was the author of the report that was requested by the Planning Board. He stated that one of the issues he wanted to point out was that the height of the bulkhead was significantly lower than the elevation of the pool, so there would be a significant slope from the top of the bulkhead back toward the pool. He noted that it was intended to minimize the amount of fill in and behind the bulkhead. He stated that the pool would be approximately five feet above the northwest corner of the base of the bulkhead at the shoreline. He stated that the pre-eroded level around the base of the trees was where the soil would be brought back so there would not be an increase in the depth of the fill around the base of the trees from what it was previously, but would simply restore the elevation of the soil at the base of the trees. He noted that it was the intent of the bulkhead sloping from the three-foot height on the northwest corner as it was significantly less fill on the southwest corner bulkhead because of the elevation of the shoreline was higher in that area, which is where the tree was located. He stated that fill that would be brought in was more of a replacement from the eroded sand than significant fill that would be replaced.

Crouse Gray clarified that in addition to the report that was in Council's packets, a later amendment was prepared to the report. Barrett Crook stated that he was correct. Mr. Gray asked Mr. Crook to summarize that document to Council and the audience. Barrett Crook stated that it detailed some of the relative elevations and fill levels behind the bulkhead, the height of the bulkhead, and responded to some of the comments in the Town's commentary regarding his original report. He added that it spoke to some of the elevations on the bulkhead and the amount of fill.

Crouse Gray asked Barrett Crook when he designed the plan, he took into account the amount of fill that would be put in. Barrett Crook stated that there was an effort to try to minimize the amount of fill because of the Town's ordinances as well as the sensitivity to the tree and making sure that the bulkhead was placed far enough away from the tree to preserve it. He stated that it also was to make sure that the elevation of the bulkhead fill did not exceed the original pre-eroded soil around the tree. Crouse Gray clarified that Barrett Crook was a licensed engineer. Mr. Crook stated that he was. Mr. Gray asked Mr. Crook if he thought the area was a high wave energy environment. Mr. Crook stated that it was. Mr. Gray clarified that southwest winds tended to be the most destructive for this area. Mr. Crook stated he was correct. Mr. Gray asked Mr. Crook what would happen when the wind pushes the water in towards the shoreline. Mr. Crook stated that it

raised the elevation of the water, causing wave action and erosion. Mr. Gray clarified that in the original report, Mr. Crook had looked at the issue of some alternative types of stabilization. Mr. Crook stated that he did. Mr. Gray clarified that the bulkhead was then designed. Mr. Crook stated that it was. Mr. Gray clarified that Mr. Crook had determined that the high energy wave environment with a bulkhead was the best system to accomplish the goals of the application. Mr. Crook stated he was correct, adding that he would like to accomplish what he was trying to achieve with a living shoreline, but given the high energy environment in the area, the living shoreline would not last.

Mayor Kingston noted that the bulkhead was designed to deal with the wave energy. He asked what would be achieved by backfilling from the bulkhead to the house if the wave energy would be eliminated by installing the bulkhead. He asked what would be achieved by putting in the fill from the top of the bulkhead to the pool. Barrett Crook explained that it would provide a support for the east side of the bulkhead and restore the soil to its original elevation. Mayor Kingston clarified that it was designed to achieve that as well as having some fill behind the bulkhead. He couldn't understand why there needed to be additional fill all the way to the house if the bulkhead was designed to accomplish what he wanted to accomplish. Mr. Crook stated that it would be a very gentle slope from the top of the bulkhead to the pool. He asked Mayor Kingston what he would propose to be there in place of fill from the pool to the bulkhead. He added that he wasn't sure he understood the question. Mayor Kingston asked why the need for additional fill. Mr. Crook stated that there needed to be some slope from the pool to the bulkhead otherwise there would be a terrace. Mayor Kingston assumed it would be leveled off behind the bulkhead to the ground level. Mr. Crook agreed. Mayor Kingston clarified that there would be a slope back up to the pool. Mr. Crook agreed, adding that the amount of fill would decrease as one approached the pool because of the elevation of the current sand height, it would make an even slope from the pool to the top of the bulkhead. Mayor Kingston wasn't sure he understood the answer.

Councilor Whitman asked if, with regard to the southwest wind, the point would block off the wind and wave action going towards the shoreline. Barrett Crook stated that it would block off a small area to the north.

Mayor Kingston stated that if Barrett Crook was worried about the southwest wind, the property would be hit on the north because it would come across and hit the corner of the bulkhead. He asked if erosion would happen to the property to the north. Barrett Crook stated that the bulkhead would not significantly affect the amount of erosion on the adjacent property.

Councilor Mooney asked if the erosion on the subject property was exacerbated by the bulkhead on the southern property. Barrett Crook did not think it was. Councilor Mooney noted that the photograph being referenced was not representative of what was presently on the property. He asked if the bulkhead would need to be tied in on both ends and slope back into the natural grade. Mr. Crook stated he was correct. Councilor Mooney wasn't sure how Barrett Crook could state that it would not affect the property to the north as it seemed to be an unnatural conclusion. Mr. Crook pointed out that the

Town's engineer had recommended it be tied back on the south side. He stated that there could be some erosion, but he didn't think it would be significantly different with the presence of a small bulkhead.

Councilor Caviness asked Barrett Crook if he completed the assessment on the viability of doing a living shoreline or sills. Barrett Crook stated that he had. Councilor Caviness noted that the Town has been looking at living shorelines for a number of years. She asked if it would be beneficial for the cove area to have a broader type of sill project. Mr. Crook thought it was a great idea conceptually, but with it being out in a storm, it would not work due to the high, intense wave action.

Mayor Pro Tempore Thibodeau understood that the bulkhead was not actually in the water but on the land. She asked if it could be envisioned having a bulkhead in addition to a living shoreline. Barrett Crook stated that it was a good idea, but the success rate for a living shoreline would be low given the weather conditions that are experienced. Mayor Pro Tempore Thibodeau understood that the homeowner was trying to protect the property that was eroding due to volatile water and affecting the roots of the trees. She noted that everyone was subjected to this and not just this particular property. She stated that CAMA understood since they issued a permit, but she wondered what Mr. Crook's opinion would be to adding a living shoreline in addition to a bulkhead. Mr. Crook stated that there could be a living shoreline, but it was difficult to keep it in place indefinitely.

Councilor Caviness clarified that Barrett Crook was of the opinion that the perpendicular cut/switchback from the proposed bulkhead would not create trouble on the shared corners on the property lines. Barrett Crook stated that the one to the south would be about 18 inches exposed and the one to the north would be more exposed. He noted that it would be parallel with the west wind and hidden behind the southwest wind. Councilor Caviness noted that the bulkhead on the north side of 1400 Duck Road had quite a bit of erosion on the corner. Mr. Crook stated that it was on the southwest corner of 1402 Duck Road, which would be protected as opposed to the southwest corner at 1400 Duck Road.

Councilor Mooney thought 1400 Duck Road did not have a bulkhead. He clarified that 1400 Duck Road did not have one. He asked if the northwest corner of the proposed bulkhead would tie back into the natural elevation. Barrett Crook stated he was correct. Councilor Mooney asked if it would create more velocity with the wave action that was going in to 1400 Duck Road. Mr. Crook stated that the tie back itself would not increase the velocity.

Councilor Caviness asked Barrett Crook if he was the engineer that made the assessment about installing a bulkhead versus filling in the eroded sand at the edge of the pool. Barrett Crook stated that he was. Councilor Caviness clarified that the homeowner did not want to opt to do a gradual terrace. Mr. Crook stated that Director Heard had told him that a terrace would be difficult to do because of the location of the tree as well as the fact that there was quite a slight slope from the top of a three foot bulkhead in the northwest corner all the way back to the pool, so there would need to be a number of eight to 12 inch small terraces.

Mayor Pro Tempore Thibodeau stated that the bulkhead had to have dirt to the top of the back of it so that it has something to tie the ties in to it. She asked if it was standard, when it starts to cut back on adjacent properties. She understood what was happening on the south side but wondered how far from the property line on the north side it would start before it cuts back. Barrett Crook stated that it was just a few feet. Mayor Pro Tempore Thibodeau clarified that it had to have fill up to the top so it could be tied in and anchored. Mr. Crook stated she was correct.

Mayor Kingston asked what the difference was in the elevation. Barrett Crook stated that it was 2.5 feet. Mayor Kingston asked if there has been a lot of erosion around the pool. Mr. Crook stated that it was getting closer and closer with every big storm. Mayor Kingston asked if there has been flooding up to the pool. Mr. Crook stated that the homeowner could answer that question.

Councilor Whitman asked if there was any reason the strings did not go back to the first section of the pilings to the pier. He noted that the roots of the tree could be covered to save it. He thought the strings could be moved back to the second set of pilings and then cover the roots of the tree on that side. Barrett Crook clarified that Councilor Whitman wanted to move the string line back one row of pilings. Councilor Whitman stated he was correct. Mr. Crook pointed out that if it was moved back, it would be right at the tree. Councilor Whitman thought it was about four feet out from the tree roots. Mr. Crook explained that moving back toward the tree would put the roots in a precarious situation.

Councilor Caviness clarified that it would be precarious because of the anchors. Barrett Crook stated she was correct as well as because of the roots. Councilor Caviness asked why so many trees have been cut down on the property. Mr. Crook stated that he did not know.

Town Attorney Hobbs asked if there were other presentations by the applicant or the applicant's representatives.

Jason Self of Self Appraisal Services was recognized to speak. Crouse Gray asked Jason Self if a bulkhead was constructed on the property, what effect it would have on the appraisals for the adjoining properties. Jason Self stated that it would have no effect on the neighboring properties.

Mayor Kingston noted that Council was not discussing the bulkhead but the additional fill. He asked what the relevance was. Mayor Pro Tempore Thibodeau thought the bulkhead could not be installed without the fill. Crouse Gray stated that the application was to install a bulkhead and the reason it was before Council was because fill was involved; however, one of the issues was the impacts on the adjoining properties. He felt there needed to be someone to advise Council that putting the bulkhead and the fill in would not add any negative impact on the value of the adjoining property.

Town Attorney Hobbs asked for the next witness for the applicant to come forward.

Michael O'Steen, Professional Engineer, was recognized to speak. Mr. O'Steen stated that the applicant asked him to review the property in addition to the previous review by the other design professionals. He stated that he visited the property on February 29, 2020 and observed the existing string lines. He added that prior to his site visit, he viewed Barrett Crook's report as well as the Town engineer's comments, and his observations were consistent with the other design professionals that had viewed the property. He stated that he did not see any significant negative impacts to the adjacent properties with the addition of the material behind the bulkhead. He pointed out that the fill behind the bulkhead was necessary in order to construct the bulkhead. He added that, based on his observations, the string line was approximately two feet or 18 inches below the top of the walkway which was level with the pool deck elevation. He stated that the proposed bulkhead was much lower than the top of the pool elevation. He noted that this was an attempt to include minimal amount of fill to still provide adequate and resilient shoreline stabilization for the property owner.

Crouse Gray asked Michael O'Steen if he prepared a report of his findings. Michael O'Steen stated that he did. Mr. Gray asked, in the review of the information and the site visit, the amount of fill being placed would slope up and was the maximum or minimum. Mr. O'Steen stated that it was not excessive but leaned more toward the minimum amount of fill to provide a resilient stabilization.

Councilor Caviness asked if the bulkhead was erected with the normal amount of fill behind it, it would be adequate to protect the property. Michael O'Steen stated that it was the minimum amount to construct the bulkhead. Councilor Caviness clarified that taking the fill from the bulkhead to the pool would be a requirement to protect the property. Mr. O'Steen stated she was correct.

Town Attorney Hobbs asked for the next witness for the applicant to come forward.

Sharon Hart of 1398 Duck Road was recognized to speak. Ms. Hart stated she was the owner of the property. She stated that she purchased the property in July 2018 and within a matter of months she had two hurricanes come through. She stated that when Hurricane Michael came through, it washed away two feet of sand, causing the tree roots to be exposed. She stated that when the gale force winds came through this past February, it washed another 10 inches away from her property. She noted that every time there was a storm, she was losing more sand and the trees were eroding. She stated that there was a tree on her property at one time that was cut down because it was dying. She added that with regard to the other trees that were cut down, there were some small trees that had died due to damage from storms. She pointed out that they were saplings and not full-grown trees.

Sharon Hart stated that in January, on the north side, the string line for the bulkhead measured 36 inches and then after the gale force winds in February, it measured 41 inches. She stated that on the south side, it started out at 17 inches and went to 27 inches. She noted that in a short amount of time, she was losing property. She pointed out that

1400 Duck Road's deck sits back about 75 feet and the neighbor on the south side's house sits back 100 feet. She added that she was only 30 feet, making her property exposed and at risk with every storm, more so than her neighbor's. She stated that the height of her bulkhead line was three feet and was the same elevation as the bulkhead that was north of 1400 Duck Road as well as the same elevation as the high bulkheads that were on the south side of her home. She pointed out that there were currently seven bulkheads south of her property, her home and 1400 Duck Road without bulkheads and then bulkheads to the north. She stated that she wasn't asking for taller bulkheading, but for a bulkhead that was the same height as the taller bulkheads to the north and the south.

Sharon Hart stated that there was a definite slope from the pool down to the height of the bulkhead and was not level. She stated that her objective was to create a permanent storm wave buffer because she will soon have issues with her pool and her pool deck and will ultimately lose her trees. She added that she was trying to prevent losing her trees because they block the wind and hold the soil, but eventually they will be lost to a storm. She reiterated that she was trying to prevent any property damage to her home and trees. She added that she has an erosion problem and her property was at risk of damage with every storm.

Mayor Kingston appreciated what Sharon Hart was proposing and didn't think there was any debate on the bulkhead since it was already approved. He thought Council was discussing the excessive fill and why it was necessary since there would be adequate fill behind the bulkhead to hold it in. He thought it was unreasonable to add more fill. Sharon Hart asked what was considered excessive. Mayor Kingston stated that he would defer to Director Heard from the standpoint of what was normal behind a bulkhead but assumed if the bulkhead would be as high as it will be, there would be quite a bit of fill behind it and he wasn't sure it would be leveled into the slope. Sharon Hart stated that it would be level only on the north side as there would be more on the north side than the south side. She added that the bulkhead was level and the same height on the north and the south as the taller bulkhead to the north of 1400 Duck Road. She stated that it was the same height as the tall bulkheads to the south of her. She added that it was just to line up at the same height. She stated that her neighbor at 1396 Duck Road has a two-foot bulkhead and when Hurricane Dorian came through, there was a wave wash of 37 feet and at the February storm there was a wave wash of 27 feet. She noted that she was 30 feet, so she could not have a two-foot bulkhead and protect her property. She stated that if she had a two-foot bulkhead, she would have water behind her pool as well as damage to her pool after a storm such as Hurricane Dorian.

Mayor Kingston thought Sharon Hart's engineers designed a bulkhead that would alleviate the majority of the damage to her pool. Sharon Hart stated it was the reason for the three-foot-tall bulkhead. Mayor Kingston didn't think there was any debate by Council since a CAMA permit had been granted.

Crouse Gray handed Sharon Hart a signed affidavit from her neighbor at 1396 Duck Road stating that she did not have an issue with Ms. Hart installing a bulkhead and fill to Council and the audience. She pointed out that on the north side of her property, the

wave action came within seven feet of her pool deck. She added that under her pier was 4.5 feet. She noted that she was at 4.5 feet with normal storms, but soon she will have a big problem.

Crouse Gray stated that the issue boiled down to three experts, including the Town's engineer, that were basically stating that the bulkhead system as designed and proposed was the best for the protection and the least offensive in the sense of the amount of fill that needed to be put in. He stated that it would go up 36 inches and then put fill in straight across to wherever the grade hits or put in a slope and make it look better. He pointed out that the differential was what was in front of Council. He didn't think anyone disagreed that the CAMA permit was granted for the bulkhead, so the question was if his client can make it look good or not.

Crouse Gray stated that the excessive fill was not for purposes of allowing his client to put any other type of structure in or anything else, but realistically whether his client can put the fill in and make it look decent with a nice even slope with 36 inches up to where the grade was instead of it being flat, getting the grade somewhere and going up. He thought the rest of it was already in play due to having the CAMA permit and the adjoining neighbors on both sides stating they had no objections to his client doing the work in the CAMA application process. He stated that it was demonstrated to Council that there were no hardships to the neighbors that would be created, three engineers and the Town's engineer have stated that this was the best mechanism, and what was really on the table was the differential of the slope and if it could be made to look good or not. He requested that Council authorize his client to put the fill and the bulkhead in that was requested in the application. He added that if Council was not willing to allow his client to do that, then they should make it clear that the bulkhead could be installed and put 36 inches in flat until it hits grade.

Town Attorney Hobbs noted that there were a couple of proposed conditions in the application. He asked if the applicant had any objections to the conditions that were listed in the staff report, should the Council approve the application. Crouse Gray stated that his client had no objections if the permit was granted as requested.

Town Attorney Hobbs reintroduced Director Heard to make additional testimony.

Director Heard stated that he wanted to be clear with regard to the closing statements that Crouse Gray had made. He stated that it would still require a special exception to take the 36 inches and go straight back. He noted that he wanted to be clear that the closing statements made suggested it had to be done as a right. He stated that it would also require a special exception and there would still be 36 inches of height of fill going back but would not go all the way back to the pool, but it would go back for quite some distance.

Mayor Kingston asked what the fill would look like behind the bulkhead if the bulkhead was built as proposed that would be permitted. Director Heard stated that it would be a

couple of feet, the height of the string with a slight rise up as it approached the height of the pool.

Mayor Pro Tempore Thibodeau clarified that the staff recommendations were that the applicant must submit required application materials to obtain necessary land disturbance and building permits prior to commencing work and the return on the northern side of the bulkhead must be designed and constructed to minimize damage to the neighboring tree and its root system. Town Attorney Hobbs clarified that they were for the conditions. Director Heard stated he was correct, adding that they were Planning Board recommendations.

Mayor Kingston asked if the proposal had the excessive fill all the way to the pool. He asked if that was what was submitted. Director Heard stated that the applicant had not submitted a cross section that showed the slope or anything of that nature, adding that he did not have anything definitive other than the description that was provided to Council by the applicant and the design professionals working with the applicant.

Councilor Whitman stated that Council had in their packet, photographs of the bulkhead with tie backs that were 15 feet back. He noted that it appeared to be about two feet below grade. He asked if that would be where the fill would be allowed if only the bulkhead was built. Director Heard stated that he was correct. Councilor Whitman asked if that was as far as the applicant was allowed to fill in. Director Heard disagreed. He explained that with regard to the fill, the bulkhead would be 20 feet back from where it was being proposed. He added that in that area, the height was there, and it was supporting the existing fill on the property. He stated that in order to construct that, the applicant would need to have an area where the soil would be excavated behind it as the pilings were driven into the ground for the construction. He noted that if that was where the applicant was proposing to put it, they would not be able to put in tie backs because there wasn't enough room to do so if it was close to the pool. He added that staff could see a need and one of the points that the applicant and the design professionals made was that they need at least some room in there to accommodate the tie backs as well as how far to the west the bulkhead would need to go in order to accommodate it. He pointed out that the applicant had offered Council some thoughts and rationale as to why it needs to be out 30 feet, which was what Council was considering.

Mayor Kingston clarified that Council was moving ahead without a detailed plan. Director Heard stated that staff did not have a cross section showing the exact slope of the fill. He noted that it was part of the condition as that type of thing would need to be submitted as part of the permit application that follows the special exception request. He reiterated that staff did not have a cross section that showed the proposed slopes of the fill behind the bulkhead.

Town Attorney Hobbs asked if the applicant had any further evidence to present. There was none.

Town Attorney Hobbs asked if any sworn witnesses wished to address the application. There were none. He asked if Council had any remaining questions. There were none. There being no one else wishing to speak, 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 Mooney stated that since the CAMA permit was already issued and the Council was trying to determine whether or not it was an excessive amount of fill, he didn't have a problem with the fill. He thought it was a reasonable expectation. He added that he was not convinced that it doesn't present erosion or an exacerbated erosion problem for the homeowners at 1400 Duck Road; however, that wasn't what was in front of Council to discuss.

Mayor Pro Tempore Thibodeau agreed that, based on the circumstances that the property was built some time ago and further west than other construction, this was a reasonable approach to protecting the property and the existing trees. She thought that the fill would not be adding land to the property but putting back what has been eroded. She stated that she did not have an issue with it, although she felt it would be helpful to do more than just the bulkhead and work toward some type of mitigation out in the water such as a living shoreline in addition to the bulkhead. She pointed out that she wasn't saying she wanted to require it, but felt it was something that was important to pursue.

Councilor Whitman stated that unless he saw a full set of plans, he could not move forward.

Mayor Kingston stated that what concerned him was that the application went before the Planning Board and was denied; went back to the Planning Board a second time with no redesign but some additional information and no decision was made, but still some opposition, and now at this meeting Council was presented with additional information which had not been seen prior to the meeting. He stated that he was concerned that there was no detailed specifications to be looked at or voted on. He thought there were a lot of unknowns and it seemed like there was disagreement with respect to where the bulkhead should be, whether it was 23 feet or 30 feet. He added that the Town disallows bulkheads the whole back of a property. He thought it needed to be looked at again and thought the Planning Board needed to look at it again as he didn't feel comfortable moving ahead. He understood the applicant had the permit to build the bulkhead, but thought behind the bulkhead, there wasn't enough information. He stated that Council wanted the applicant to protect their property.

Town Attorney Hobbs reminded Council that the application could not go back to the Planning Board unless there were substantial changes. He added that Council did not have the option to send it back to the Planning Board to look at the exact same proposal.

Mayor Kingston stated that the issue he had was he wasn't sure what proposal Council was looking at. He pointed out that there was nothing that has been detailed that showed Council the elevations and design, how much fill and how much fill was permitted. He added that there was a lot of unknowns and he understood that the applicant wanted to move ahead and protect her property, which he agreed with, but there didn't seem to be a lot of information behind it that would allow Council to move forward and approve it.

Councilor Caviness stated that what was troubling to her was that it seemed like there could be more compromise or a reduction in how far west it was, which would reduce the overall amount of fill and still accomplish the protection of the property. She stated that she concurred with the Planning Board in that there could be less impacts. She thought the Town has been saying for a long time that one of the values, in addition to protecting property, was also to protect the environment. She noted that this was one of the fragile areas in Town and she didn't want to not protect someone's individual property, but at the same time, she didn't want to do things that would exacerbate neighboring properties while continuing to approve methods and strategies that were going against what the ideal conditions could be. She understood that a living shoreline project would take longer but thought the idea of this project could be pulled back some to still achieve what the property owner wanted, which was protection.

Mayor Pro Tempore Thibodeau stated that what she was seeing from the information Council received both in their packets as well as at this meeting was that the bulkhead was positioned where it was to protect the vegetation on the property. She thought it was a value the Town had and if it was pulled back further east, it would be constructing over the trees. She appreciated that area of the bulkhead positioning for that reason in order to give the applicant more vegetation and more natural buffering.

Mayor Pro Tempore Thibodeau stated that with regard to the level of detail, she concurred that it would be helpful to see a side elevation but didn't think it would hold her back from making a decision because there were a lot of images and details. She wasn't sure why the applicant didn't put that last piece in there and agreed that the survey and photographs would change and were not exact. She stated that she wasn't concerned with the elevation because she thought it has been very clear in the conversations that everyone was trying to limit the impact and protect the property and trees. She stated that she was satisfied with the amount of information received and appreciated that it could be sent back to the Planning Board. She thought Council would be looking at more of these decisions in the future. She felt the proposed bulkhead seemed completely appropriate to her based on the topography, existing vegetation and the position of the property.

Councilor Caviness wondered if the applicant could keep the bulkhead where it was proposed, have the fill needed to hold it in and then rather than having the excessive fill that would go all the way up to the pool, use vegetation to fill in and stabilize that part of the property. Mayor Pro Tempore Thibodeau thought the applicant's attorney had mentioned doing that but she wasn't sure how it would be accomplished.

Mayor Kingston stated that the applicant has approval to move ahead and build the bulkhead. He added that they could back fill the bulkhead as normal. Mayor Pro Tempore Thibodeau disagreed. Councilor Mooney asked if it was a fact.

Town Attorney Hobbs reopened the public hearing.

Mayor Kingston asked if the applicant had the permit for the bulkhead with normal back fill, the special exception only was dealing with excessive fill. Director Heard stated that the applicant has a CAMA permit but did not have a Town permit for the bulkhead and would need to submit information and receive a building permit for it. He stated that the typical amount of fill had to do with when the bulkhead was up against a bank the applicant was trying to set. He stated that in this instance, the bulkhead was nowhere near a bank behind it so anything put in would be longer than the typical one or two feet that was being constructed. He stated that as a general practice, the Town does not permit that type where a lot of additional fill is put in behind a bulkhead. He noted that the applicant had stated that she was trying to recapture property that may have been lost but no matter what, it was new fill.

Councilor Caviness wanted to review the conditions that would be imposed. Town Attorney Hobbs stated that Council could add additional conditions if they did not think the conditions were sufficient. Councilor Caviness clarified that it would require a land disturbance permit, the proper building permits, and a redesign or special design to look at reducing impacts on the northeast corner which would be 1400 Duck Road. Director Heard stated that it would as it relates to minimizing damage to the large tree in that corner. Councilor Caviness clarified that if it satisfied the Council to have more a more detailed plan regarding fill or landscaping, they could apply it. Director Heard stated that it would be submitted as part of the land disturbance permit application.

Town Attorney Hobbs asked if anyone had additional evidence to present. There were none. There being no one else wishing to speak, he closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Pro Tempore Thibodeau moved to approve SE19-002, a special exception permit with the six findings as well as the two proposed conditions and to have the permit show a plan for vegetation.

Councilor Caviness asked if Mayor Pro Tempore Thibodeau suggested an additional condition with regard to a plan for vegetation. Town Attorney Hobbs stated that it was. Councilor Caviness asked if it could be included that it be vegetation that would be westward of the bulkhead. Town Manager Layton asked if Councilor Caviness was referencing a living shoreline. Councilor Caviness stated she was. Town Attorney Hobbs suggested that if Council wanted to impose conditions that had not been discussed, it would be helpful to reopen the hearing. Councilor Caviness stated that she was fine with the added condition of a vegetative plan

Mayor Kingston stated that he still had a concern with respect to the definition of the fill. He stated that it was a deviation from the Town's rules and regulations for ordinances as well as a deviation from what the Planning Board put forth on two different occasions. He reiterated that he would rather see a resubmitted plan, go through the process, have it better thought out and more understandable than to approve something that was difficult to put into perspective without a detailed plan. Councilor Caviness agreed. Mayor Kingston thought the plan could be reworked and resubmitted over a quick period of time. Town Attorney Hobbs noted it could not be the same plan. Mayor Pro Tempore Thibodeau stated that it would have to be substantially different.

Mayor Kingston clarified that if his objection was the fill from the bulkhead to the pool and if the applicant came back with a plan without that, it would be a new plan. Mayor Pro Tempore Thibodeau thought it would have to be a whole new positioning of the bulkhead. Mayor Kingston pointed out that there were other ways to protect the erosion of the pool in addition to putting in the bulkhead and the fill. He added that the Planning Board went through the discussion and, in essence, denied it and then had no decision. He noted that they were obviously troubled by it. He stated that, once again, Council was taking the Planning Board's recommendation and disregarding their concerns while moving forward with something different.

Mayor Pro Tempore Thibodeau pointed out that two of the Planning Board members were in favor of the application and two were not, so it was split decision. She thought, without attending the meeting, it was because the information was not clear. She stated that she didn't disagree with Mayor Kingston's point that the more information Council can receive, the better. She stated that she did not disagree with the fact that Mayor Kingston felt that he didn't have enough information in terms of the elevation and the side view, but thought more information came in at this meeting. She thought Council was able to obtain a lot more information at this meeting that the Planning Board wasn't working with, which made her more comfortable due to more information.

Motion denied 2-3 with Mayor Kingston, Councilor Caviness and Councilor Whitman dissenting.

Public Hearing/Discussion/Consideration of SE20-001, an Application for Two Special Exceptions Relating to Fill and Grading Activities at the Unaddressed Property North of 1336 Duck Road to: (1) Allow the Use of a Bulkhead to Contain and Stabilize Fill and: (2) to Allow Fill Approximately Five Feet in Depth Behind the Proposed Bulkhead, Exceeding the Permitted Maximum of Three Feet of Fill

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

Town Attorney Hobbs stated that the applicant was not present for the public hearing due to previous plans. He stated that the public hearing would open and Director Heard would advise Council of the information, at which point they will have the option to make the motion to continue the public hearing until their April 1, 2020 meeting, at which time a necessary witness would be available to make their presentation. He

pointed out that the meeting would not have to be re-advertised because Council would put in their motion the date and time of the public hearing and it would pick up then.

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 that anyone wishing to testify come forward to be sworn in.

Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following person was sworn to provide testimony during the hearing: Joe Heard.

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

Director Heard stated that staff received a written request from the applicant, requesting that the public hearing and decision on the special exception application be deferred until the Town Council meets on April 1, 2020, when they would be available to participate in the public hearing. He noted that Town staff had no issues with the request as the project was not time sensitive. He added that staff notified other parties that had expressed an interest in it that the deferral had been requested as well.

Councilor Caviness moved to defer the public hearing until the April 1, 2020 meeting.

Mayor Pro Tempore Thibodeau asked if the applicant could submit more information between now and April 1, 2020 to be considered as part of the public hearing. Town Attorney Hobbs stated that they could. Mayor Pro Tempore Thibodeau encouraged the applicant to submit as many details as possible so Council had as much information as possible to work with.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of SE20-002, an Application for a Special Exception Relating to the Construction of an Addition at 108 Cook Drive to Allow an Encroachment of Four Feet into the Minimum Front Setback of 25 Feet

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 that anyone wishing to testify come forward to be sworn in.

Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joe Heard, Marc Murray, and Jeannine Cotner.

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

Director Heard stated that the applicant was seeking a special exception permit to allow an addition over 26 feet in width to encroach four feet into the minimum front building setback for the existing single-family residence at 108 Cook Drive. He noted that Subsection 156.030(D)(3) of the Zoning Ordinance required a minimum front yard setback of 25 feet and if approved, the applicant will be able to locate the proposed addition as close as 21 feet from the front property line.

Director Heard explained that, attached to the southeast corner of the existing house, a majority of the proposed addition was three stories in height. He added that the upper stories contained additional living space for the residence; however, the portion of the proposed addition that encroaches into the front setback was only one story in height and contained part of a two-car garage.

Director Heard stated that the current residence, decks and swimming pool improvements all comply with the current setback standards and the proposed addition has been designed to comply fully with the minimum side setback requirement as it would be over 11 feet from the eastern side property. He added that the proposed addition would increase the lot coverage to 34%, which was well below the allowable maximum of 50%.

Director Heard stated that Section 156.054 of the Town Code was adopted to allow Town Council to grant special exceptions related to building height and setback requirements for properties with principal structures that were in existence on or before July 1, 2003. He added that Section 156.054(C) of the Code stated that Town Council may grant a special exception only after determining that the application meets the following criteria:

1. The site for the proposed use is adequate in size and shape, and the proposed use will not negatively affect adjacent property or the surrounding area.
2. The special exception will not be inconsistent with the objectives specified in the CAMA Land Use Plan.

3. The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to unusual building design, lot shape or mature vegetation; or there are practical siting constraints where original placement of the dwelling on the lot prohibits reasonable improvements that meet existing requirements.
4. Any height special exception authorized under the terms of this section for an addition to an existing structure shall be limited to no greater than five feet beyond the maximum height permitted in the zoning district.
5. The proposed structural modifications meet sound residential design objectives to (a) minimize loss of privacy on neighboring properties; (b) maximize image of quality residential development to the street frontage; and (c) avoid reduction of light and air to neighboring properties.

Director Heard stated that since the request complied with all applicable findings, the Planning Board voted unanimously to recommend approval of the special exception application, subject to the following condition:

1. The applicant must submit required application materials and obtain a building permit prior to commencing work.

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

Marc Murray of Finch & Company was recognized to speak. Mr. Murray thought Director Heard explained everything. He asked if there were any questions on the requirements and how they were met, he would be happy to answer. He noted that since the Planning Board meeting, a letter was received from the adjacent property owner signifying that they had no objection to the project.

Town Attorney Hobbs asked if there was any other evidence or testimony from the applicant and applicant's representative. There was none.

Town Attorney Hobbs asked if there were any other sworn witnesses that wished to make a presentation. There were none.

Town Attorney Hobbs asked if anyone had additional evidence to present. There were none. There being no one else wishing to speak, Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston.

Councilor Whitman moved to approve SE20-002 as presented with the findings of fact and the proposed condition.

Motion carried 5-0.

Mayor Kingston called for a 10-minute recess. The time was 9:45 p.m.

Mayor Kingston reconvened the meeting.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 20-01, an Ordinance Containing Comprehensive Amendments to Chapter 150, Flood Damage Prevention, of the Town Code of the Town of Duck, North Carolina

Director Heard stated that flood maps were generally updated every 10 years by FEMA and the State of North Carolina and FEMA released updated preliminary flood maps in June 2016 for Dare County. He stated that following the review of comments and appeals by individual property owners, FEMA recently issued its letter of final map determination on December 19, 2019. He added that, consistent with the adoption timeline set by federal law, the new maps and accompanying flood damage prevention ordinance must be adopted by the Town within six months and become effective by June 19, 2020.

Director Heard stated that the flood map amendments in the Town show a significant reduction in the number of properties located in special hazard flood areas, which were the A and V zones. He stated that figures provided by Dare County show the number of structures located in a V flood zone decreasing from 397 to 255 and the number of structures in an A flood zone were proposed to decrease from 882 to 187. He noted that while the figures were general in nature and individual properties may or may not change flood zones, the figures show that a significant number of property owners may benefit from reduced insurance rates and potentially lower development standards; however, the changes also present challenges for individual property owners and the Town as a whole.

Director Heard explained that over the past three years, planners and floodplain managers from all the towns and Dare County have met to consider the ramifications of the flood map changes to be adopted for Dare County. He stated that planners from every community shared common concerns about the large number of properties being shifted from V zones to A zones, being shifted from A zones to X zones, and significant lowering of the base flood elevation in remaining A flood zones. Some of the concerns include:

- Property owners may view their location in an X flood zone to mean that they have a very minimal or no risk of flooding and base decisions on this assumption.
- This perception of very low or no risk may cause owners to decide to drop flood insurance. This decision can lead to uninsured damages during future flooding events and significant insurance rate increases should the property be reclassified to a flood hazard zone when maps are revised in the future.

- The potential reduction in minimum building elevation and other standards will encourage the construction of significant improvements without flood prevention measures in areas at risk of flooding. Damages to these improvements could cause hardship to property owners and negatively impact the community's flood insurance rating.

Director Heard pointed out that in order to address the potential issues, Outer Banks' planners have been implementing a two-pronged approach involving (1) a comprehensive educational campaign about flood hazards and flood insurance; and (2) adoption of local flood damage prevention ordinances with standards ensuring that future development occurs in a less risky, more sustainable manner.

Director Heard stated that during its public meetings on January 8, January 22, and February 12, 2020, the Planning Board completed a thorough review of the draft damage prevention ordinance. He added that the Board members discussed that there may be corresponding amendments necessary to the Town's definition of "building height" in the Zoning ordinance. He stated that, consistent with past policy, the Town does not want to penalize property owners by reducing allowable height for compliance with flood elevation standards. He noted that after review of the "building height" definition, staff and the Planning Board found that the existing wording will accommodate the revised standards in the flood damage prevention ordinance, but the change in measurement from the top of the first floor to the bottom of the lowest structural member/utilities would result in a reduction of approximately one foot of allowable building height. He pointed out that the Planning Board will be considering revisions to maintain the intent of the definition of "building height" at its March meeting.

Director Heard stated that at their February 12, 2020 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment featuring comprehensive amendments to the flood damage prevention ordinance. He stated that the Board members found that the proposed amendments to the ordinance will reduce risk in future disasters, improve the safety of the community, and minimize flood damage to insurable property.

Mayor Pro Tempore Thibodeau noted that there were some recommendations from the Homebuilders Association and other citizens which would be incorporated in the materials Council will receive prior to the public hearing. She asked what the best way for Council to ask questions about the ordinance. Director Heard stated that Council was welcome to send him any questions or comments and they will be incorporated in the same list. Mayor Pro Tempore Thibodeau asked if there were points brought up in the materials Council receives for their April meeting, Council could agree on what may need to be reconsidered and then send it back to the Planning Board to complete the reconsideration. Director Heard thought it depended on how much of a change it would be in terms of whether it could be done immediately or by sending it back to the Planning Board. He noted that sending it back to the Planning Board would make the schedule a little complicated due to the June 19, 2020 adoption date. Mayor Pro Tempore Thibodeau thought that the points already received could be given to Council earlier than

later or as they come in. She stated that she wanted as much time as possible to consider any changes or tweaking. She thought that any changes could be highlighted and given to Council. Director Heard stated that a matrix would be provided to Council that would list out what each town was doing.

Mayor Pro Tempore Thibodeau clarified that if there was nothing over 25% things on a home could remain as is. She added that a lot of additions were completed in Duck so a home that may have changed due to the new ordinance and the flood zones would be allowed to build an addition if it was less than 25%. She asked if there was discussion at the Planning Board level as to what it would mean. Director Heard stated that there was plenty of discussion with the Planning Board with staff's recommendation that it applied to all situations that would have to be met. He explained that staff's rationale was that the Town was 90% built out and if the Town was not applying these standards to additions, it would not be applied to very much.

Councilor Caviness asked if accessory structures would have to be built to the new standard. Director Heard stated that "accessory structure" did not mean the same thing with the flood damage prevention ordinance that it does elsewhere. He explained that an accessory structure that contained a heated area would have to meet all of the same criteria that a regular building does, but if it was a storage shed, it would not.

Councilor Caviness moved to authorize a public hearing on April 1, 2020 to consider Ordinance 20-01 as presented.

Motion carried 5-0.

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

Town Manager Layton stated as a result of Randy Morton being appointed to the Planning Board, a replacement was needed to fill his unexpired term. He stated that staff advertised on social media asking for applications and eight were received – James Blose, Douglas Brook, Bill Miozzi, Anthony Parisi, John Pucciano, Chuck Straub, Robert Wetzel, and Kent Zimmerman. He noted that Robert Wetzel was currently an alternate on the Board of Adjustment and in the past, Council has appointed a senior alternate to move up to be a full member and then appointed a new individual for the open alternate position. He added that Kent Zimmerman was a full member before resigning from his position due to moving away from Duck but was now back and wished to serve on the Board.

Mayor Kingston moved to nominate Robert Wetzel as a full member of the Board of Adjustment.

Motion carried 5-0.

James Blose of 105 Waxwing Lane was recognized to speak. Mr. Blose gave a short background on himself and why he wished to serve on the Board of Adjustment.

Anthony Parisi of 1540 Duck Road was recognized to speak. Mr. Parisi gave a short background on himself and why he wished to serve on the Board of Adjustment.

John Pucciano of 133-B Jay Crest Road was recognized to speak. Mr. Pucciano gave a short background on himself and why he wished to serve on the Board of Adjustment.

Mayor Kingston opened the nominations.

Mayor Pro Tempore Thibodeau nominated James Blose.

Councilor Mooney nominated James Blose.

Councilor Whitman nominated John Pucciano.

Councilor Caviness nominated Anthony Parisi.

Mayor Kingston chose not to make any nominations.

Town Attorney Hobbs noted that the voting would not require a majority of the Council, but the individual with the most votes would be the one appointed.

Votes received for James Blose – Mayor Pro Tempore Thibodeau and Councilor Mooney.

Votes received for Anthony Parisi – Councilor Caviness.

Votes for John Pucciano – Mayor Kingston and Councilor Whitman.

Town Manager Layton stated that Council will need to re-vote on James Blose and John Pucciano since they each received two votes.

Votes for James Blose – Mayor Pro Tempore Thibodeau and Councilor Mooney.

Votes for John Pucciano – Mayor Kingston, Councilor Caviness and Councilor Whitman.

Town Manager Layton noted that John Pucciano would be appointed as the Alternate to the Board of Adjustment.

Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with the Dare County Tourism Board for Phase IV of the Comprehensive Pedestrian Improvements

Town Manager Layton stated that previously, the Town was awarded a grant from the Dare County Tourism Board for Phase IV of the Comprehensive Pedestrian Plan improvements. He noted that Phase IV of the project was located at the southbound segment of NC 12 between Resort Realty and Sunset Grille and included the construction of the sidewalk, revetment improvements and other improvements to the shoreline. He noted that Council previously approved a contract for the engineering and construction services related to this phase. He added that the funds related to the grant contract in the amount of \$147,806 would be available after July 1, 2020.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to execute the contract as presented.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with VHB Engineering NC for Permitting, Final Design, Bidding and Construction Phase Services Related to the Sill at the Town Park

Town Manager Layton stated that the Town has been working on conceptual plans for several years on erosion control measures at the Town Park. He stated that after several meetings and over several years with regulatory agencies, staff and the Town's consultants, VHB Engineering NC, have concluded that permits could be obtained for a sill attached to the boardwalk in the area of the Town Park. He noted that the contract would advance the project through permitting and final design phases and included bidding and construction phase services. He pointed out that the cost of these services was \$38,500 and if approved by Council, a budget amendment would be prepared for Council appropriating the funding from Contingency at Council's April 1, 2020 meeting.

Councilor Whitman asked if the permitting fee was for CAMA and the Corps of Engineers. Town Manager Layton stated it was. Councilor Whitman remarked that it was a big number. Town Manager Layton stated that it was a lot that was required since it was a CAMA Major permit.

Mayor Pro Tempore Thibodeau asked if there was an idea of how long the permits last. Town Manager Layton stated it was three years.

Councilor Whitman moved to authorize the Town Manager to execute the contract as presented.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had no report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

Police Chief John Cueto was recognized to speak. Police Chief Cueto gave a brief overview of the past month's police activities to Council and the audience.

Director Heard gave a brief overview of the past month's permit activities to Council and the audience. He stated that he needed Council's consideration on parking requirements for restaurants and whether they are sufficient. He asked if Council wished for the Town to evaluate those standards and determine if any changes were needed or suggested. He added that it could be something that Council wanted the Planning Board to look at. He stated that staff received comments regarding dune walkovers and beach accesses in terms of erosion that has occurred from some storms. He stated that based on comments received, staff was asking Council to consider looking at the issue.

Town Manager Layton asked Council if the restaurant parking was something, they wanted to refer to the Planning Board to look at. He noted that if more discussion was needed, it could be brought back to Council's April 1, 2020 meeting. He asked Council if they wanted the Planning Board to look at allowing some kind of feature in the nourishment area to assist with traversing the dunes. He noted that it was a major discussion point when the beach nourishment project was being completed.

Mayor Pro Tempore Thibodeau didn't think that the parking needed to be re-evaluated on the restaurants. She thought there were regulations in place and wasn't sure what re-evaluating things would do. She stated that with regard to the dune walkovers, it has been a few years and the Town didn't want people to touch things when the beach was first nourished. She stated that it was looked at closely when the new sand was added. She added that she was not opposed to looking at it but didn't know if meant there would be any action taken. She stated that she wasn't opposed to having the Planning Board look at it but wasn't sure it would result in any action.

Mayor Kingston disagreed with Mayor Pro Tempore Thibodeau regarding the parking issue. He thought the calculations needed to be looked at for not only restaurants but also for retail establishments. He noted that it has not been looked at in a long time and there was a parking issue in Town. He thought more discussion would be needed with regard to the beach issue.

Councilor Caviness asked if the volume of questions regarding parking at restaurants increased to a critical mass. She asked if staff was seeing a lot of problems. She wondered if it rose to a point that it needed to be evaluated or if only one person was having an issue with it. Director Heard stated that there have been a few instances recently with regard to issues at the Paper Canoe Restaurant and N.C. Coast Restaurant.

Councilor Whitman thought the Planning Board should look at both issues.

Councilor Mooney pointed out that there wasn't any more room with regard to the parking issue. He noted that the evaluation could not create space where there wasn't any. He stated that with regard to the beach issue, he thought it was a good idea to look at it again to determine what to do about the accesses.

Mayor Kingston thought with regard to the parking, it would be to make sure Council was looking at the right numbers. He added that nothing would be changed immediately.

Councilor Caviness stated that she would prefer having the Planning Board look at some broader solutions with shared parking or more cooperative living not only at restaurants, but also with retail establishments and how it all would work as opposed to just looking at restaurants. She added that if the Planning Board was going to spend a lot of time evaluating something, she would like to see it go further by having some recommendations that would help everyone.

Mayor Pro Tempore Thibodeau noted that the Planning Board was pretty busy. Councilor Caviness agreed.

Town Manager Layton pointed out that this was an issue where staff was getting asked frequently about it and didn't have a suggestion either way but knew that the questions were coming and it wasn't staff's position to deny Council the opportunity to decide whether or not they wanted to look at the issues. He stated that staff was happy to bring back a better analysis for the reasoning for it at a future meeting but wanted to know if the discussion could be started.

Mayor Pro Tempore Thibodeau thought that it would be helpful for staff to share the comments they were receiving from the public. She stated that she would not have an objection to having the Planning Board look at it but didn't want to over burden the Board.

Mayor Kingston suggested that Town Manager formulate something and bring it back to Council. Town Manager Layton stated he would.

Director of Public Information, Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of upcoming 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.

Update on the Dare County Revaluation

Town Manager Layton stated that Dare County finalized the revaluation of real property for the County, including Duck and other towns and preliminary taxable values increased 26% for Dare County and 16% for Duck, before appeals, which were expected to drop values by 5%. He noted that for Duck, values rose from \$1,568,7479,000 to \$1,821,595,800 and as part of the FY 2021 budget, the Town will need to calculate and advertise the Revenue Neutral rate. He explained that North Carolina General Statute 159-11(e) defines the revenue neutral rate as the rate that was estimated to produce revenue for the next fiscal year equal to the revenue that would have been produced for the next fiscal year by the current tax rate if no revaluation had occurred. He added that for Duck, the revenue neutral rate was expected to decrease from \$0.225 to a range of \$0.02008 and \$0.2018. He stated that appeals of the revaluation will be accepted by the Dare County Revaluation Department until 21 days from February 25, 2020.

Financial Statement for the Month of February for FY 2020

Town Manager Layton reviewed the financial statements with Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that his mayors meeting would be held on March 17, 2020 in Southern Shores. He stated that he will be meeting with the Outer Banks Homebuilders Association as well as the Outer Banks Association of Realtors with Town Manager Layton and Director Heard as part of their 2020 outreach program, which will be happening in mid to late March. He stated that he has a meeting with the other mayors on March 11, 2020 in regard to workforce housing which would be hosted by the Town of Nags Head. He stated that he attended the North Carolina League of Municipalities retreat that was held in Duck the week before. He stated that he was looking forward to the Bias Speaker Series on March 5, 2020. He thanked Town staff for a great retreat.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau thanked the Planning Board for all of their hard work. She stated that she was looking forward to the Bias Speaker Series. She added that it was hard to believe that 100 years ago women were finally allowed to vote.

Councilor Caviness stated she had nothing to report.

Councilor Mooney stated he had nothing to report.

Councilor Whitman thanked Town staff for a great retreat.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

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

Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, April 1, 2020 at 7:00 p.m.

CLOSED SESSION

Mayor Pro Tempore Thibodeau moved to enter closed session pursuant to North Carolina General Statute 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in a manner preserving the attorney client privilege with regard to the Hovey v. Sand Dollar Shores Homeowners Association, Inc. and the Town of Duck.

Motion carried 5-0.

The time was 11:36 p.m.


Upon return from closed session, Mayor Kingston stated that there was nothing to report. He added that Council received advice and a report from the Town attorneys.


ADJOURNMENT

Councilor Caviness moved to adjourn the meeting.

Motion carried 5-0.

The time was 12:53 a.m.


Lori A. Ackerman, Town Clerk

Approved: May 6, 2020

Don Kingston, Mayor

