

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
April 1, 2020**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, April 1, 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; Permit Coordinator Sandy Cross; Director of Marketing and Special Events Christian Legner; Planning Intern Savannah Newbern; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** Public Relations Administrative Assistant Betsy Trimble and Assistant to the Town Manager Alyson Flynn.

Mayor Kingston called the meeting to order at 7:09 p.m. He welcomed those that were joining the meeting via live stream and thanked everyone for their patience as the technical difficulties were worked out. He noted that there was a 30-second delay in the video. He added that Councilor Nancy Caviness and Town Attorney Robert Hobbs were attending the meeting remotely.

Mayor Kingston stated that those that wished to submit comments during the Public Comment period could do so either via email or through the YouTube chat function and they would be read into the record. He stated that the meeting recording would be available on the Town's YouTube channel as soon as possible after the meeting. He asked Mayor Pro Tempore Monica Thibodeau to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments.

Planning Intern Savannah Newbern was recognized to speak. Planning Intern Newbern went on to read the public comments that had been received.

Kevin Wright of 112 Quail Way was recognized. Mr. Wright wrote thanking the Council, various Board members, employees and volunteers, Police and Fire Departments, and emergency service members for their dedication to service over self and their willingness

to expose themselves to risk during this time of crisis. Mr. Wright wrote to thank the merchants and service providers for keeping goods and services available as their livelihoods were threatened in an uncertain future. He thanked the citizens of Duck, the non-resident property owners and visitors for banding together to keep each other safe. He noted that Duck was a special place and these actions were proof of it. He asked everyone to stay safe and strong as everyone will get through the pandemic and build an even stronger community.

William Bush of 123 Ocean Bay Boulevard was recognized. Mr. Bush wrote that he was a practicing Internist in Harrisburg, Pennsylvania as well as owning properties in Duck and that he has been seeing patients in his office with suspected symptoms and temperatures 100 degrees and above. He noted that he could do nasal tests that are sent to Quest Labs, but unfortunately, the turnaround time was five days. He added that several hospitals were offering “drive in” five-minute tests for everyone to screen for those without symptoms. He asked, given the nationwide paucity of tests, if the quick tests were available in Dare County.

Lisa Brubaker of 113 Sprigtail Drive was recognized. Ms. Brubaker wrote that in anticipation of the meeting and with the expectation that Council was hearing from many different constituents related to the temporary travel ban for non-resident property owners, she wanted to share her support for that action. She wrote that she recognized that for Duck, Dare County and the country as a whole, that these were unprecedented times and the decisions that local and state governments were making were based on fluid and quickly changing facts. She noted that one thing was certain – to prevent the unnecessary spread of COVID-19, social distancing has proven to be the best offense and for the Town of Duck and the whole of the Outer Banks, it required difficult decisions such as the travel ban.

Lisa Brubaker wrote that, judging from her community email thread, not everyone was in agreement or supportive of the decision and while she understood the concern for individual and property rights, at times the interest of the whole should and must supersede the interest of the individual, particularly when those interests were not life altering as the potential for a pandemic outbreak was for an area ill-equipped to deal with.

Lisa Brubaker wrote, thanking Council for everything that they do in good times, like the Town events and investments of time and energy made in the community every day, as well as in difficult times like those that are being faced now. She added that it was a tough job and one that most would not take on willingly. She wrote that she wanted to express her appreciation and support in hopes that it gave Council encouragement during this challenging time. She ended by writing that she hoped to see Duck soon when it was safely open to visit.

Daniel Connor of 108 Sprigtail Drive was recognized. Mr. Connor wrote that he was a non-resident property owner in Dare County and owned a home in the Carolina Dunes subdivision. He wrote that he was expressing his dissatisfaction with Dare County’s action in restricting his access to his home in Duck. He wrote that he heard many

arguments in support of this action, primarily from residents of Dare County, and understood that the action was taken with the intent of preventing the spread of the Coronavirus to Dare County. He wrote that, in his opinion, the action taken was discriminatory, made a clear distinction between a property owner who was a resident, and one who was not a resident, then providing or denying access to their property solely upon that basis. He wrote that it was both unreasonable and unlawful. He wrote that the County has not restricted the travel of resident owners in and out of Dare County, to locations where they may contract the virus and return it to Dare. He added that no screening method had been implemented prior to allowing residents to access the County. He wrote that Dare County made an arbitrary decision to distinguish between a non-resident owner – who potentially has the virus – and a resident owner deemed to be virus-free – and elected to treat the property owners in a discriminatory fashion.

Daniel Connor wrote that without a reliable method of screening or closing access to Dare County entirely, it was not reasonable to assume that the Coronavirus could be kept out of Dare County. He wrote that it would be more reasonable to follow the guidelines provided by the federal and state governments with social distancing, washing hands frequently, and avoiding large groups of people. He noted that these were all things he generally did when he was in Duck and were some of the reasons he enjoyed being in Duck. He added that whether he chose to travel to spend his time in Duck should be his choice and not the County government's.

Daniel Connor wrote that Dare County, as well as all local governments throughout the United States was facing a challenge that has never been seen or imagined. He wrote that many decisions were being made that would affect the health and welfare of our communities going forward. He suggested and recommended that the choices made should be thought through a bit more thoroughly than it appeared that this was.

Kaitlyn Kurosky of 93 Locust Street in Montrose, PA was recognized. Ms. Kurosky wrote that Duck needed to provide support or guidance for out of state visitors scheduled to be in the Outer Banks in April. She wrote that many guests, including her, had no interest in traveling for numerous reasons such as government mandates, state closures, and fear of COVID-19 spread. She wrote that it seemed that the message had not yet been received by the local rental companies. She asked how they could be withholding refunds when the governor of North Carolina and the Town of Duck have extended orders for the next 30 days. She asked what resources the public had and what Duck and the surrounding counties could provide as it should be addressed.

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

## **CONSENT AGENDA**

**Minutes from the February 19 & 20, 2020, Annual Retreat; Resolution 20-02, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month; Budget Amendments, Policy for**

**Emergency Paid Sick Leave and Emergency Family and Medical Leave related to Families First Coronavirus Relief Act; and Policy for Electronic Participation in Town Council Meetings**

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

Motion carried 5-0.

**PUBLIC HEARINGS**

**Public Hearing/Discussion/Consideration of SE20-002, an Application for a Special Exception Relating to Grading of Residential Lot at 113 Bayberry Drive, to Allow Fill Approximately Five Feet in Depth, Exceeding the Maximum of Three Feet of Fill**

Mayor Kingston stated that two public hearings were scheduled for this meeting – Special Exception 20-002 and Ordinance 20-01 – both of which will have to be deferred due to the COVID-19 virus until May 6, 2020

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs suggested that Council make two separate motions for the public hearings, indicating that the public hearing was continued to the May 6, 2020 meeting.

Mayor Pro Tempore Thibodeau moved to continue the public hearing on SE20-002 to the May 6, 2020 meeting.

Motion carried 5-0.

**Public Hearing/Discussion/Consideration of 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**

Mayor Pro Tempore Thibodeau moved to continue the public hearing on Ordinance 20-01 to the May 6, 2020 meeting.

Motion carried 5-0.

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

**Discussion of Issues Related to Covid-19**

Town Manager Christopher Layton was recognized to speak. Town Manager Layton asked if, as part of the discussion, that the technical issues be addressed for Council and the audience. He apologized for the technical issues.

Director of Marketing and Public Events Christian Legner was recognized to speak. Director Legner apologized for the issues that the public was having. She stated that a new link had been broadcast. She stated that the meeting was being recorded by YouTube so anyone that had any issues could watch the video at a later time in case they missed anything.

Councilor Mooney asked where the public could go to see the new link. Director Legner stated that it was on the Town's website.

Mayor Kingston asked if people could back track if they missed the beginning of the meeting. Director Legner stated that they could.

Mayor Kingston stated that he has been attending daily meetings with the Dare County Control Group, the first of which was March 16, 2020. He noted that he and Town Manager Layton had attended this meeting as it was not a Control Group meeting, but more of an advanced notification of what Dare County was starting to experience. He stated that as a result of that meeting, he declared a State of Emergency at 12:00 noon on March 16, 2020. He stated that the first guidance was issued regarding mass gatherings of 50+ people and Dare County schools closed later that day.

Mayor Kingston stated that the first Control Group meeting was held on March 17, 2020 via video conference and the Group issued a no visitor access to Dare County effective at 2:00 p.m. on March 17, 2020 and mass gatherings was defined as any gathering over 10 people. He noted that the North Carolina cases at that point was 34 with no deaths. Mayor Kingston stated that the Control Group met on March 18, 2020, which was the day that the Governor closed all restaurants and bars in North Carolina, all Federal parks were closed, and the North Carolina cases had grown to 42 with no deaths. He stated that on March 19, 2020, the North Carolina cases went up to 92 with no deaths.

Mayor Kingston stated that the Control Group met on March 20, 2020 and Currituck and Hyde Counties had also declared States of Emergencies and restricted visitors on March 21, 2020. He added that 73 of 100 counties had declared a State of Emergency in North Carolina. He stated that Dare County closed all parks and recreational facilities followed by many of the towns. He stated that the North Carolina cases were at 136 cases with no deaths. He stated that on March 20, 2020 a second meeting was held by the Control Group and closed non-resident access to Dare County effective 10:00 p.m. on March 20, 2020.

Mayor Kingston stated that the Control Group met on March 23, 2020 and guidance was restricting travel, mass gatherings and social distancing coming from the State. He stated that the North Carolina cases had risen to 297 with no deaths. He stated that the Control Group met on March 24, 2020 and Currituck and Hyde Counties had restricted non-resident access on that date. He stated that the governor announced several actions including closing all public schools until May 15, 2020. He stated that the North Carolina cases were reported at 412 with no deaths.

Mayor Kingston stated that on March 25, 2020 the first positive test was recorded in Dare County. He noted that technically it was in Dare County, but the individual had traveled to Dare County and used a Dare County address. He added that the individual has fully recovered. He stated that the North Carolina cases were at 480 with no deaths. He stated that on March 26, 2020, the Control Group started monitoring the airports and air strips as well as boat traffic and ferry landings as it was found that individuals were becoming very creative in coming into Dare County. He stated that North Carolina cases were at 608 with 2 deaths with one reported case in Dare County.

Mayor Kingston stated that on March 27, 2020, the Control Group approved a Stay Home, Stay Healthy order effective at 5:00 p.m. on March 28, 2020. He stated that North Carolina cases were at 731 with two deaths and only the one in Dare County. He stated that on March 30, 2020, the Governor approved the Stay Home, Stay Healthy order effective at 5:00 p.m. He noted that it replaced Dare County's order with respect to restrictions and orders across the state. He stated that the number of cases in North Carolina were at 1,107 with five deaths, 91 hospitalized, and only 1 case in Dare County.

Mayor Kingston stated that on March 31, 2020, the Control Group issued a letter to the Outer Banks Homebuilders Association, reinforcing no visitor rentals as there had been isolated issues of violations up and down the Outer Banks. He stated that North Carolina cases were at 1,323 with 6 deaths, 137 hospitalized and a second case was reported in Dare County. He noted that it was not considered community spread but was someone that had traveled into Dare County.

Mayor Kingston stated that on April 1, 2020, the Control Group discussed curfews and closing the beaches, but there was no support for these actions. He stated that there were hints from the Governor that some of those actions may be taken. He stated that the cases in North Carolina were at 1,498 with 8 deaths, 157 hospitalized and three cases in Dare County with the latest being someone that traveled out of Dare County last November, but it would be counted as Dare County. He stated that 100 of the 100 counties had declared a State of Emergency. He pointed out that the Control Group will continue to meet every morning via video conference and review the updates from Dare County and all of the towns and give the latest updates on the virus. He added that it didn't appear that the daily meetings would be ending any time soon, especially since the County was under a Stay at Home order through April 30, 2020.

Town Manager Layton stated that Town offices were still open, police and fire were still functioning. He stated that in terms of staff, each Public Safety department has their own protocol in place. He stated that from a general Town perspective, Town Hall was still open and doing business. He stated that one employee was presently working from home and the rest of the employees had enough space to social distance properly. He added that staff was under 10 people, so the office could function. He stated that permit activity was still happening, other general functions were still taking place and staff was still very busy.

Town Manager Layton thought the Town was in a unique position because staff was small so they could function and meet all protocols without a loss of service. He pointed out that there have been some adjustments, such as working on an appointment basis. He noted that if someone showed up to the office, staff has protocols in place to help service those individuals. He stated that, on a daily basis, staff was adjusting things with one being constructing a lockbox for contractors to drop off documents such as permit applications, plans, and permit files, as well as documents of a more general nature. He felt that staff was in good shape to continue to function fully for the foreseeable future.

Fire Chief Donna Black was recognized to speak. Fire Chief Black stated that on March 12, 2020, prior to the Control Group meeting, she went ahead and locked down the Public Safety building. She stated that she was trying to keep minimum staffing with at least 2-3 firefighters each day. She noted that she's had a little bit of a challenge with her firefighters that live on Hatteras Island not being able to drive north due to ocean over wash. She stated that no volunteers were working at the fire department and she wasn't allowing any visitors or packages to come into the building. She stated that a lot of the volunteers were 60 years of age or older, so they have been told not to attend or respond to any calls at this time. She added that she has instituted some on-line training for the firefighters. She noted that her firefighters have implanted the protocol of wiping everything down twice a day as well as self-monitoring for any symptoms.

Fire Chief Black stated that Chief Collins of Dare County EMS and the fire marshal have done a great job at continuing to look at protocol and how Duck Fire Department responds to calls. She stated that Duck's call volume will decrease significantly because they were trying to limit personnel and exposure, adding that most EMS calls Duck Fire Department will not respond to unless assistance is needed. She stated that it was the same for an emergency fire call, if it was an alarm activation, not everyone at the fire department would respond as she would be limiting and minimize staffing until they know what to expect in order to decrease exposure as well as trying to keep everyone safe with regard to staffing.

Police Chief John Cueto was recognized to speak. Police Chief Cueto stated that the officer patrol schedule has remained largely intact and has not been affected. He stated that the natural rotation of officers gave ample time to identify symptoms and make adjustments. He stated that he was advising all of his staff to take their temperature before and after their shifts in order to identify any symptoms they may be experiencing. He stated he has made some adjustments to the schedule as some officers have spouses that were also in law enforcement as well as some have childcare issues. He stated that his officers were completing conspicuous patrols with high visibility in the Village area and along NC 12, adding that they were balancing that with property checks and extra patrols.

Police Chief Cueto stated that his department would be receiving their three new vehicles later in the week. He stated that during patrols, the officers were looking for resident compliance, social distancing as well as some business concerns. He noted that his officers were limiting contact with the public including motor vehicle stops. He

stated that they were performing periodic checks of the playground, park, dune accesses and the beach for social distancing compliance. He stated that he's been very responsive to the FAQs from the Town's website, emails as well as the calls for service. He stated that his officers were continuing their normal calls for service with regard to alarms and open doors. He added that he met with the Sanderling Inn, Sunshine Family Pharmacy, Towne Bank, the post office and places where there were some business concerns to address any concerns they may have and help them to understand the police protocols.

Police Chief Cueto stated that his officers have wound kits and personal protective equipment in their patrol vehicles to use for any incidents. He stated that they have approximately 50 N95 masks in total.

Police Chief Cueto stated that he's been meeting with the Dare County Sheriff as well as the other Chiefs of Police in Dare County for continuity of service, best practices and mutual aid concerns. He explained that it would be with regard to monitoring the bridges as well as the checkpoint that was held in Currituck over the weekend. He added that Duck Police Department was in the queue for a grant that would be through the Governor's Crime Commission that will help supply the department with personal protective equipment in the future.

Police Chief Cueto stated that he canceled his meeting that was scheduled for March 23, 2020 and had his brown bag lunch recently that was very well attended. He went on to give a short update on the past month activities of the Department to Council and the audience.

Town Manager Layton stated that due to the uncertainty from a budgetary perspective with regard to how long the restrictions may last, it had the potential to put some additional pressure on the budget discussions for the coming fiscal year. He stated that the budget preparation was proceeding well but thought it would be in Council's best interest, from a planning perspective, to postpone the budget presentation until May in order to give extra time to figure out when the Town could expect the restrictions to be lifted. He noted that it could have drastic impacts on the upcoming fiscal year. He stated that rather than bringing the budget together that makes assumptions from here, he thought if he could get a little closer and make those assumptions, it would be in everyone's best interest. He asked for permission for the Council to postpone the budget presentation until May 20, 2020.

Councilor Whitman moved to postpone the budget presentation to the May 20, 2020 mid-month meeting.

Mayor Pro Tempore Thibodeau thought the Council should be thinking about an extra meeting of the mid-month meeting after that presentation because they will need time to review everything. She thought Council should be prepared for more meetings after the presentation to flush things out.



Mayor Kingston agreed with Mayor Pro Tempore Thibodeau's comments. He stated that he and Town Manager Layton had discussed it and thought that it may not still be known by the May 20, 2020 meeting. He stated that Council should be prepared to have more meetings.

Mayor Pro Tempore Thibodeau reminded Council that the budget has to be adopted by June 30, 2020. Town Manager Layton agreed. He suggested having the public hearing on the budget on June 3, 2020, but it didn't mean that Council couldn't schedule as many work sessions as needed.

Motion carried 5-0.

Mayor Kingston stated that there have been intense discussions at the Control Group level every day as well as a lot of debate with tough decisions that have to be made on some issues.

Councilor Whitman thanked Mayor Kingston for the work he's been doing by attending the Control Group meetings as well as the amount of information he sends to Council.

Mayor Pro Tempore Thibodeau echoed Councilor Whitman's comments and thanked Mayor Kingston for keeping Council and staff so well informed. She thanked Public Safety staff for everything they were doing to keep things safe.

Mayor Kingston noted that the bridge traffic has diminished, but the emails continue to come in both for and against the restrictions. He stated that the call center was taking a steady amount of calls. He stated that there was an issue that came up recently regarding social distancing on the beaches in Duck. He stated that Town Manager Layton would be contacting Surf Rescue Director Mirek Dabrowski to make sure people were distancing themselves on the beaches. He hoped that the Governor doesn't make the call to close the beaches in North Carolina as they were closed in South Carolina and Virginia.

#### **Discussion/Consideration of Planning Board Reappointments**

Town Manager Layton stated that the terms of Tim McKeithan and Randy Morton on the Planning Board will expire on May 1, 2020. He noted that both Mr. McKeithan and Mr. Morton had indicated that they would like to serve another three-year term to expire on May 1, 2023.

Mayor Pro Tempore Thibodeau stated that she was in favor of Tim McKeithan and Randy Morton being reappointed.

Mayor Kingston moved to reappoint Tim McKeithan and Randy Morton to the Planning Board as presented.

Motion carried 5-0.

## **NEW BUSINESS**

### **Discussion/Consideration of Authorizing a Public Hearing on Ordinance 20-02, an Ordinance Amending the Definition of Building Height in Flood Zones**

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that during the recent consideration of comprehensive amendments to the Town's flood damage prevention ordinance at their public meeting on February 12, 2020, the Planning Board discussed impacts of the proposed amendments on how Duck defines and measures building height in the zoning ordinance for properties required to elevate buildings above the regulatory flood protection elevation. He stated that, as a result of the review, the Planning Board recommended several potential changes to the definition of building height necessary for clarification and consistency with amendments proposed to the flood damage prevention ordinance.

Director Heard stated that during the Planning Board's review of the flood damage prevention ordinance, an issue was raised regarding the application of building height standards for residences required to be raised to the regulatory flood protection elevation. He noted that the issue involved a proposed amendment to the definition of Reference Level in Chapter 150, Flood Damage Prevention, adding that the term defined where the measurement of the height was taken for the regulatory flood protection elevation. He explained that, presently, the definition of Reference Level in the flood damage prevention ordinance reads as follows: "The top of the lowest floor for structures within special flood hazard areas designated as Zone a1-30, AE, A, A99, or AO."

Director Heard explained that for consistency, all local governments in Dare County were amending the definition of Reference Level in the flood damage prevention ordinance to read as follows: "For structures within the Special Flood Hazard Areas designated as Zones AE and AO the reference level is the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower, with only flood resistant materials located below the reference level."

Director Heard stated that under the proposed definition, the change results in beginning the measurement of height one foot or more lower – depending on the difference between the top and bottom of the floor system. He noted that the change effectively results in the loss of one foot or more in the maximum height allowed for structures required to elevate in order to meet the regulatory flood protection elevation. He stated that after discussing the concern, the Planning Board decided that it would be in the Town's interest to evaluate the current definition of Building Height to ensure that the intent and standards in the definition were maintained. He added that the Planning Board asked staff to review options for amendments to the definition of Building Height to maintain the ordinance's intent that property owners were not penalized by reducing building height for having to raise a structure to meet flood elevation standards.

Director Heard stated that at their meeting on March 11, 2020, the Planning Board voted unanimously to recommend approval of the proposed text amendment to maintain

reasonable building height allowances for buildings required to elevate to meet the regulatory flood protection elevation.

Mayor Pro Tempore Thibodeau move to authorize a public hearing on Ordinance 20-02 for Council's May 6, 2020 meeting, as presented.

Motion carried 5-0.

### **Overview of Memorandum regarding Commercial Parking**

Director Heard stated that the issue was one that was brought up at Council's March 4, 2020 meeting where Council had requested staff to prepare a more detailed analysis about the current parking situation and public concerns expressed about the parking issues and whether Council wanted to authorize staff and the Planning Board to give the issue further consideration.

Planning Intern Newbern stated that the parking analysis for Duck Village was the area from Aqua Restaurant to Sunset Grille. She noted that her analysis provided an estimated inventory of existing and required parking for each property in Duck Village, showed where the deficiencies in required parking existed, and highlighted where parking reductions have been granted. She went on to review the analysis with Council and the audience. She noted that staff was bringing the concerns to the attention of Council and asking Council if they wished to authorize staff and the Planning Board to conduct further review of commercial – or just restaurant – parking standards and/or other parking alternatives for the Town.

Mayor Pro Tempore Thibodeau noted that Planning Intern Newbern had mentioned in her presentation that she had added the Town Park. She asked if it was on her review as it was not in Council's packet. Planning Intern Newbern stated that it was. Mayor Pro Tempore Thibodeau thought it was great data to have and felt it was interesting to see that some of the deficiencies were entities in the Town that have been in existence since before the Town incorporated. She pointed out that Kellogg's Hardware was quite deficient as well as some others. She stated that it was nice to quantify it and thanked Planning Intern Newbern for her work on it.

Town Manager Layton asked Planning Intern Newbern to describe her methodology and how she developed the table with the figures listed. Planning Intern Newbern stated that the figures were estimated from the Dare County tax records and GIS aerial parcel maps. She stated that she also used site plans and staff reports.

Mayor Pro Tempore Thibodeau stated that, in anticipation of further discussions, one of the things that prompted the issue was public comments regarding a recent allocation for parking at a couple of restaurants. She noted that she did not see where the restaurants were any more egregious with parking deficiencies than any other business in Town. She thought it was an interesting take away. She stated that in looking at some of the options going forward, the Town may be able to oversee more shared parking arrangements

between the entities and act as a go-between to obtain some formalized sharing put in place as well as some understandings as opposed to a mine and yours scenario.

Mayor Kingston stated that it would be interesting to look at the dates the parking was approved and if the Town created a bigger problem. He wondered if, moving forward, the calculations were correct for the businesses. He noted that some businesses that were approved were about 30 years old but thought it would be good to look at the calculations to see how they lined up with other towns and if the Town was calculating the parking correctly. He noted that there was some discussion on the most recent restaurant that opened in Town from the standpoint of the number of employees as the employees could take up the entire parking lot. He reiterated that it would be good to have the Planning Board take a look at it and see if any improvements could be made or keep what was in place.

Councilor Whitman stated that he agreed with regard to the employee parking versus the parking for the patrons of the restaurant. He wondered if it equaled out. He added that a lot of the restaurants have more employees than patrons and it didn't balance out.

Mayor Pro Tempore Thibodeau thought if the parking requirements were increased or if there was more discussion regarding the employees at the restaurant, then she could assume the consequence of that would be if more restrictive parking calculations would mean that restaurants currently in place would not be able to exist on the current properties. She stated that it was something that could be looked at knowing that there was a very limited amount of space in Town that was almost fully developed. She noted that there were some redevelopments that could happen. She added that it would cause some of the amenities to be lost.

Councilor Whitman agreed, adding that it would be nice to see what the staff at the businesses were versus the patrons. He suggested that it balanced out with the tables versus the employees to see if the Town was not figuring enough or else figure another way to try get an equal amount of parking for both.

Mayor Kingston thought that there was a lot of "table creep" at restaurants from the standpoint of the number that was authorized and the number of people that were actually seated. He thought it was a separate subject.

Town Manager Layton clarified that the analysis did not necessarily go in and count tables at restaurants. Planning Intern Newbern stated he was correct. Town Manager Layton thought if the discussion were to go further, that would need to happen in order to obtain the full data of not only the number of employees but also the number of tables. He stated that with that data, staff could see what options were available. He added that it was really limited when there wasn't a lot of vacant space, but if staff were to look at mediating or facilitating shared use agreements, the data would be extremely helpful in terms of the negotiations that would be needed.

Mayor Kingston thought there was value in the Planning Board looking at the issue and having more realistic guidelines. He added that businesses would be grandfathered as the Town did not want to shut anyone down, but like Mayor Pro Tempore Thibodeau had pointed out, it was always subject to redevelopment. He thought there were other alternatives to redevelopment with respect to parking.

Town Manager Layton stated that if Council were hesitant or wanted to look at something related to this before sending it to the Planning Board, staff could work on gathering data to get more information to bring back before it goes to the Planning Board while keeping the Board apprised of what was going on with the idea that at some point they would see the data.

Mayor Pro Tempore Thibodeau thought it made sense to keep it at the staff level right now as she wasn't sure if Council had determined anything in order to send a directive to the Planning Board. She thought it was interesting data and was delighted at having Planning Intern Newbern as a resource to help Council obtain more specifics on the issue. She thought everyone could be mindful on how the Town could best use the resources of parking available in Town. She added that the Town has worked over the years to increase pedestrian traffic by encouraging people to walk throughout Town. She stated that she was in favor of receiving more data and not directing the Planning Board to do anything at this time since she wasn't sure what everyone had in mind.

Councilor Caviness stated that she had no objection to the Planning Board looking more deeper into the issue. She noted that there were some businesses that were missing from the list in both the Village as well as several that were outside of the Village proper. She thought if an evaluation was going to be completed for commercial parking, it needed to include all businesses.

Mayor Kingston thought Town Manager Layton was suggesting that staff do some more research and fill in some more blanks before it goes to the Planning Board.

Mayor Pro Tempore Thibodeau stated that she liked Councilor Caviness' idea of expanding it to the other businesses. Mayor Kingston agreed.

Councilor Whitman clarified that the data was from Aqua Restaurant to Sunset Grill and Bar. Planning Intern Newbern stated he was correct.

Mayor Kingston asked Director Heard and Planning Intern Newbern to provide more detail at a future meeting. Planning Intern Newbern stated that she could highlight the hours of operation and parking for the businesses.

It was *consensus* of Council to send the issue back to Town staff.

**Overview of Memorandum regarding Dune Walkovers in the Beach Nourishment Project Area**

Director Heard stated that the issue was one that Council looked at during their March 4, 2020 meeting and asked staff to prepare a more detailed analysis about dune walkovers in the nourishment area. He stated that staff received a few public comments from associations in the beach nourishment area where the Town has some further restrictions as to what could go down the east side of the dune. He noted that in the staff report, the particular standard was highlighted, which was the focus of the discussion. He added that Council had a brief discussion at their March 4, 2020 meeting as to where things stood. He stated that Permit Coordinator Sandy Cross would be giving a presentation on what she has noticed on the beach in the nourishment area. He hoped it would help Council decide on whether they wished to proceed with sending it to the Planning Board for reconsideration of the current standards.

Permit Coordinator Sandy Cross was recognized to speak. Permit Coordinator Cross gave a short presentation on the current status of the beach in the nourishment area to Council and the audience. She noted that she did not have a recommendation for Council as she felt it was something that Council needed to decide with regard to whether or not they wanted to allow structures on the beach in the nourishment area.

Mayor Pro Tempore Thibodeau asked how many beach mats were used on the beach and what the cost was. Permit Coordinator Cross stated that there were about four subdivisions that use the mats and they cost approximately \$3,600. She noted that the Town does not install the mats, but the homeowner associations take care of them. Mayor Pro Tempore Thibodeau pointed out that the Town has gone out and smoothed out some of the heavier slopes. She asked what that cost was. Permit Coordinator Cross stated that it was about \$1,700. Town Manager Layton agreed. Permit Coordinator Cross noted that there was give and take with whatever Council decided to do.

Councilor Whitman clarified that the Town was only doing the homeowner's accesses. Permit Coordinator Cross stated that the Town has been doing all of the accesses to help with accessibility.

Mayor Pro Tempore Thibodeau thought it wasn't much money to do the work. She added that as a property manager, she had spent a lot more just to help one homeowner dig out sand from their property.

Town Manager Layton stated that the Town was essentially hiring the operator and equipment for a day and a half to two days to do the work. He stated that the rate could vary but it was very cost effective to do it to keep down the complaints on affecting the dune as a Bobcat did not tear up the dune like larger equipment would. Mayor Pro Tempore Thibodeau clarified that staff was doing it so they were regulating how it was looking. Permit Coordinator Cross stated she was correct.

Mayor Kingston asked Permit Coordinator Cross what she recommended for when the beach was replenished in 2022. He further asked if Council should look at the dune walkovers and allowing people to do more. Permit Coordinator Cross thought if Council

wanted to afford people more mobility, it should be limited to post and rail systems. She added that the more structures on the beach, the more likely there will be more damage.

Mayor Kingston asked if the number of public and homeowner association comments made it worthwhile for the Town to look at the issue. Permit Coordinator Cross wasn't sure how many comments have come in. Town Manager Layton stated that there have been a handful amount of complaints, no more than five or six in total, but enough anecdotal concern that staff felt that Council should weigh in on whether they wished to consider it or not. He agreed with Permit Coordinator Cross in that he thought the structures themselves as far as stairs and such should be off the table, just from a dune integrity standpoint. He thought the impacts for post and rail systems were minimal and didn't think they would be an issue. He noted that the other thing for Council to consider was that the Town would be starting a renourishment project soon and he didn't think Council wanted to change the rules again if they didn't have to as there should be some consistency. He added that if Council were to make some changes now, he hoped that they would be viewed as applying it to the renourishment project as well.

Permit Coordinator Cross stated that if Council allowed post and rail systems to be put in place, it would take away the ability to create dune accesses. She stated that the homeowners that were allowed to do it would no longer be able to have them graded because of the post and rail system.

Mayor Kingston stated that his concern was that Council was not reacting to the public input as there wasn't anyone coming to the Council meetings and talking about it during the public comment period. He thought it was a good reason to take a wait and see approach to the issue.

Permit Coordinator Cross asked if there were any complaints to property management companies. Mayor Pro Tempore Thibodeau stated that there weren't as they tried to be proactive. She added that a lot of the issue was sand blowing onto the personal properties. She stated that her company spends a lot of time and effort to try to make it easy for people and she never considered calling the Town about the access on the way to the ocean. She agreed that there hasn't been a lot of public comment regarding the problems, but there was a lot of time, effort and personnel trying to enhance and maintain the nourished area. She thought what was being done was good and giving the public the resources about the beach mats as well as realizing how fragile the dunes were, was helpful. She felt that less is more in terms of preserving what has been completed. She didn't think Council wanted to keep changing things and would prefer not to do anything more than what has been completed. She thought Council could come to some agreement where they were taking a position and seeing if there would be any input.

Councilor Mooney thought if structures or post and rail systems were installed and prevented the grading, it would defeat the argument. He thought that should be how it should be presented to people.

It was *consensus* of Council to move forward and not expend any additional amount of time on the issue.

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

Town Attorney Hobbs stated that he had attended the School of Government Municipal Attorneys conference via Zoom and was working with Town staff on the beach nourishment easements.

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

#### **Update on Sill – Living Shoreline Permitting and NFWF Grant Award**

Town Manager Layton stated the Town received a National Fish and Wildlife Foundation grant in the amount of \$384,012 for the living shoreline project in the area of Sea Colony and Sunset Grille; however, staff has run into some major issues with the permitting agencies for both the sill project and the living shoreline project.

Town Manager Layton stated that when the Town first embarked on the project, the goal was to complete some kind of sill and then bring sand fill in, replant it and reclaim the property outside of the Town's property, adding that it would be made a demonstration project and show the benefits of living shorelines. He stated that it was denied by the permitting agencies because of subaquatic vegetation in the area even though there were non-native species. He stated that staff was told they would not be receiving a permit to complete the work. He noted that if the Town applied for a bulkhead permit, it would have no issue receiving one, but could not obtain one for a living shoreline.

Town Manager Layton stated staff met with the permitting agency again and asked what could be done and the idea of the sill came up with just doing the sill and connecting it to the boardwalk, which was what staff has pursued for the last two years. He stated that staff went back to the permitting agencies about a month ago expecting approval and some issues came up that were easily rectified, but staff was told by the Division of Water Resources that they could not approve the project due to accretion on the back side, which would destroy the subaquatic vegetation. He noted that staff was told at the same meeting that the Division of Water Resources would likely approve a sill that was closer and may be willing to consider reclaiming lost property, which was what the Town was proposing to do initially.

Town Manager Layton stated that after a lot of discussion and talking with some of the agencies who were involved with the process, as well as talking with some outside nonprofits, the Town was likely going to proceed with a permit application that would put a sill in and would accomplish what was originally planned, but pulling it in a little further so fewer wetlands would be impacted while making the argument that the Town was doing this by reclaiming the wetlands as opposed to trying to establish new wetlands.



He added that it would take longer, so that project will be delayed and will be reflected as such in the upcoming budget. He stated that instead, staff would push forward with the living shoreline project. He noted that there were hurdles that will need to be resolved but felt good about tweaking some things in order to get a plan that would be permitted.

Town Manager Layton reiterated that a bulkhead could be built without any issues, but the was not what the goal was. He added that the goal was to protect the shoreline and the infrastructure, but also demonstrate resiliency and alternatives that property owners and others could use to emulate instead of strictly using bulkheads. He stated that it was agreed that the ultimate goal was to promote resiliency and the long-term benefits of living shorelines over bulkheads. He added that the rules and certain positions by various agencies simply have not caught up with that yet.

Town Manager Layton stated that staff had a significant discussion with the North Carolina Department of Transportation with significant support from them and he thought staff could get NCDOT to assist with the permitting aspect as well as some funding, in making a case that this was a good, essential project to help protect the road. He stated that he was planning to push that to the forefront and try to get that taken care of in enough time to construct that project with the construction of the Phase IV sidewalk. He added that there will need to be some significant negotiation/discussion that will need to take place through the permitting process in order to obtain the permits needed.

Town Manager Layton noted that the pushback staff was receiving was almost exclusively from the Division of Water Resources, which was one of the agencies staff was dealing with. He added that there was pushback from the Division of Marine Fisheries because of the subaquatic vegetation. He stated that staff felt they could get support and could make some tweaks to make that happen.

### **Hurricane Florence Disaster Recovery Fund Grant**

Town Manager Layton stated that the North Carolina Department of Environmental Quality has awarded \$11 million in the last State budget to fund beach nourishment mitigation efforts in a fund named the Hurricane Florence Disaster Recovery Fund. He explained that grants of up to \$2.5 million were available through the fund and Assistant to the Town Manager Alyson Flynn was coordinating with the Town's beach nourishment consultants – Coastal Protection Engineering – on working on a grant application to assist in costs associated with the renourishment of the Town's beach nourishment project. He added that grant applications were to be submitted by April 30, 2020.

### **Financial Statement for the Month of March for FY 2020**

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

### **MAYOR'S AGENDA**

Mayor Kingston stated that his time has been consumed with the Dare County Control Group on a daily basis for the foreseeable future. He stated that the North Carolina League of Municipalities has canceled their annual conference and the mayor monthly meetings have been suspended for now.

**COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau gave a short update on the Government Access Committee's recent virtual meeting. She noted that the tourism summit has been postponed until November and will be held at the Sanderling Inn.

Councilor Mooney stated that he had nothing to report.

Councilor Whitman thanked Town staff and Mayor Kingston for everything they were doing during the COVID-19 crisis.

Councilor Caviness stated that she had nothing to report.

**OTHER BUSINESS**

**Additional Public Comments**

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

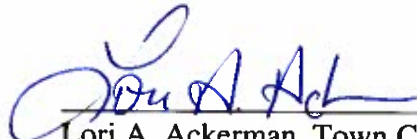
Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, May 6, 2020 at 7:00 p.m.


**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:55 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: May 6, 2020  
  
Don Kingston, Mayor

