

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
April 6, 2016**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, April 6, 2016.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; and Councilor Chuck Burdick.

COUNCIL MEMBERS ABSENT: Councilor Jon Britt.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Public Information Denise Walsh; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:04 p.m. He asked Fire Chief Donna Black 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.

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

CONSENT AGENDA

Minutes from the March 2, 2016, Regular Meeting; Resolution 16-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month and Budget Amendments

Councilor Burdick moved to approve the Consent Agenda as presented.

Mayor Pro Tempore Thibodeau asked for clarification on the \$466,000 budget amendment line item. Town Manager Layton explained that when the Town entered into an agreement with Dare County for the use of the Occupancy Tax Funds for the beach nourishment project, \$700,000 was set aside specifically for permitting and engineering. He stated that once the Town reached a certain point, he was able to ask for reimbursement for the Town's expenses, which was what the amount represents. He added that it was going directly into the Fund Balance to reimburse the Town.

Councilor Burdick clarified that it was not part of the project. Town Manager Layton stated that he was correct.

Motion carried 4-0.

SPECIAL PRESENTATIONS

Employee Service Recognition Program Recipients

Mayor Kingston stated that in December, 2011, Council had adopted an employee service recognition program that would acknowledge the service of employees of the Town at ten year intervals by providing them with a certificate of recognition as well as a gift certificate in the amount of \$100 at a Duck business of their choosing.

Mayor Kingston and Town Manager Layton went on to present a certificate to Fire Chief Donna Black.

Presentation by William Sassorossi, Maritime Archeologist, National Oceanic and Atmospheric Administration (NOAA) on the Proposed Expansion of the Monitor National Marine Sanctuary

William Sassorossi and David Alberg of the National Oceanic and Atmospheric Administration were recognized to speak. Mr. Sassorossi and Mr. Alberg gave a short presentation on the proposed expansion of the Monitor National Marine Sanctuary to Council and the audience.

Mayor Kingston thanked William Sassorossi and David Alberg for their presentation.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 16-02, a Proposed Ordinance adding Section 156.040 to the Duck Town Code Establishing a Table Listing Permitted and Prohibited Land Uses

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the public hearing was open. He asked Director of Community Development Joe Heard to give a presentation.

Director Heard stated that their December 2, 2015 meeting, the Town Council authorized the Community Development staff to work with the Planning Board and Town Attorney on the development of text amendments to address issues with permitted and prohibited uses raised by the recent *Byrd v. Franklin County* decision of the NC Supreme Court. He stated that after reviewing alternatives over the past few months, the Planning Board

developed a proposal to add Section 156.040 to the Zoning Ordinance, which establishes a table listing permitted and prohibited land uses, guidelines for use of the table and interpretations of unlisted land uses in the future. He stated that the Planning Board recommended approval of the proposed text amendment and the draft ordinance has been prepared for Council's consideration.

Director Heard noted that at Council's Retreat, they discussed several concerns about references in the draft Permitted and Prohibited Use Table. He added that Council was encouraged to contact him to outline and discuss any specific issues they had. He stated that, with the understanding that further discussion and consideration was needed to address concerns about how the Town's current ordinance dealt with post offices in the Village Commercial District and residential uses in all commercial districts, an alternative ordinance was developed for consideration. He explained that the alternative ordinance proposed a simpler approach – the addition of a list of prohibited uses along with the previously proposed criteria for staff interpretations. He added that this approach would leave the remainder of the zoning ordinance almost exactly as it had been written. He stated that one benefit of using the alternative ordinance was that the Town could adopt the list of prohibited uses as a safeguard and then go back and thoroughly study the specific concerns raised by members of Council.

Mayor Kingston asked if Council approved the alternate ordinance, the interim step was to go back and look at the ordinances to correct any holes in it or to rework another chart. Director Heard thought the intent would be to go back and have the Planning Board come up with a recommendation based on the comments and concerns Council makes. He stated that the Board may decide that the table would not be needed and that the Town should stay with the format with the districts outlined as they presently existed. Mayor Kingston asked if the table made it easier to administer or if it provided added protection that the Town would not have by amending the ordinances. Director Heard stated that the table simply referenced what was in the ordinances and did not provide additional protection.

Councilor Burdick stated that he didn't understand it that way. Councilor Caviness echoed Councilor Burdick's comment. Councilor Burdick thought the prohibited list included what was currently in the ordinance but also included other items that people felt should be on the list. Director Heard stated that the list was something that the Planning Board developed as far as coming up with uses that would potentially be prohibited in Town in all districts. Councilor Burdick thought Council was looking at adopting the list to give the Town added protection right now beyond what's covered in the ordinance and leave the table for the Planning Board to receive more input in order to refine it to the point where Council felt it was acceptable. Director Heard stated that, with regard to adding the list of prohibited uses, if Council chose to adopt the alternative ordinance, it would change and offer great protection.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that Council was presented with an alternative that Council could consider adopting if they chose to send the table back to the Planning Board for further review. Councilor Burdick

noted that Council had not been comfortable with the table for a variety of reasons. He added that Council was also uncomfortable with not doing anything and letting it go. He thought he understood from Town Attorney Hobbs that the table was a viable route for the Town to have added protection up front. Town Attorney Hobbs agreed. He added that it was an interim step. He stated that the alternative ordinance will take the previous version of the ordinance and remove the parts that were already covered in the Town Code. He stated that the alternative was what was left that the Planning Board developed. He explained that the table was nothing more than a summary of what was already in the Code and adding to it the list of prohibited uses that were in the alternative ordinance. He stated that it wasn't remarkably different from the first version because the other changes that were removed were already in the Town Code.

Councilor Burdick noted that there were some district issues. Mayor Pro Tempore Thibodeau agreed, adding that the table accurately reflected the Town's ordinances as they existed. She stated that the list simply addressed the idea of prohibited uses. Councilor Burdick stated that he did not understand that. He added that there was an ordinance that was noted in the table, but the things noted in it with no ordinance meant they weren't covered through an ordinance. He thought the table was more complete than just the existing ordinance. Town Attorney Hobbs didn't think the intention of the table was to do anything different but to simply add the prohibited uses and summarize all of the other uses that were already in the Town Code. He noted that staff may or may not have accomplished that goal and an option for Council was to decide if it did that function or not and if not, they could send it back to the Planning Board with the direction to continue to study it.

Councilor Burdick thought Council was not comfortable with it. Town Attorney Hobbs stated that the table was not mandatory but one method of presenting uses in the Code. He added that the Planning Board could look at it and decide that they may not come back with a table.

Director Heard stated that if Council wished to move forward with an ordinance, if there were specific things that they wanted the Planning Board to look at, he had a list that covered a wide list of uses that the Board would look at. He added that if there were other specific types of uses, he would appreciate any input from Council as the Planning Board moved forward.

Mayor Pro Tempore Thibodeau clarified that if Council asked the Planning Board to look at items; it would be discussed at the Council level first and then sent to Director Heard to review with the Planning Board rather than each Council member individually emailing Director Heard. She thought it would get confusing and felt that Council should decide together what should be sent to the Planning Board. Mayor Kingston noted that Council had the list in front of them with input from Council. Councilor Burdick didn't think the Planning Board needed to redo what Council finished doing, which was to get a list to the Board.

Mayor Kingston clarified that the Planning Board could come back with a recommendation to change the ordinance. Director Heard stated that they could. He added that even if the table was not decided on, there were a good number of items that needed to be addressed in the ordinance to clarify how the Town was dealing with certain types of uses.

Councilor Caviness clarified that the alternative ordinance was the three page ordinance that was mostly a list of prohibited uses and did not include the table. Director Heard stated she was correct.

Town Attorney Hobbs asked if members of the Planning Board wished to make a presentation. There were none. Town Attorney Hobbs asked if members of the public wished to make a presentation. There were none.

Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that this was a first read of the ordinance and would require four votes to adopt it.

Mayor Kingston stated that Council had two ordinances in front of them – one with the prohibited uses and the table and the other that was modified with just the listing of prohibited uses.

Town Attorney Hobbs suggested a change to the alternative ordinance. He suggested the following language for Part II: "...Section 156.040 or elsewhere in the Town Code or determined otherwise by the Zoning Administration under Section 156.003C..."

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 16-02, the alternative ordinance with the suggested language addition.

Motion carried 4-0.

Public Hearing/Discussion/Consideration of CUP 16-002, an Application by Forlano Properties, LLC, for a Conditional Use Permit to Expand the Recently Approved Outdoor Dining/Entertainment Area for Duck Deli Restaurant at 1221/1223 Duck Road by Converting an Existing Storage Building to a Beverage Stand

Mayor Kingston turned the meeting over to Town Attorney 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 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 and Ken Forlano.

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 requesting approval of a Conditional Use Permit to convert an existing storage shed into a beverage stand as part of the recently approved seasonal outdoor dining/entertainment area for Duck Deli in the yard between the restaurant at 1223 Duck Road and the adjoining residence at 1221 Duck Road. He stated that the existing shed was 130 square feet in size and abutted the edge of the approved outdoor dining/entertainment area. He noted that the shed was not proposed to be moved as part of the project. He stated that the Planning Board recommended approval with a 3-1 vote of the proposed Conditional Use Permit with the following conditions:

1. The two parking spaces in front of the residence, noted as spaces 14 and 15 on the site plan, are to be designated for staff parking.
2. The applicants must construct a five foot wide sidewalk in the specified location, according to the design specifications prepared by VHB and replace the existing pea gravel parking area with permeable paving by the end of January 2017.
3. The applicants must submit an as-built survey documenting all of the site improvements at the completion of the work described in Condition 2.
4. The applicants must obtain approval from the Community Development Department prior to installation of any exterior lighting, which must comply with the Town's lighting standards and may require a building permit.
5. Any signage to be added must comply with the Town's Zoning Ordinance and be permitted by the Community Development Department prior to installation.
6. The applicants must obtain a permit from the Dare County Environmental Health Department prior to conversion of the storage shed to the beverage stand.
7. All work relating to conversion of the storage shed to the beverage stand must be properly permitted and comply with standards of the NC Building Code.

8. Entertainment activities must comply with all applicable Town standards, including the noise ordinance.

Councilor Burdick clarified that this was a conversion of a shed to a beverage bar. Director Heard stated he was correct. Councilor Burdick stated that it seemed like a repeat of the conditions that were already approved.

Mayor Pro Tempore Thibodeau stated that it seemed like it was already items that Council had accepted before. Councilor Burdick noted that it was already accepted by the applicant for the previous Conditional Use Permit. Director Heard stated that they were correct, but added that since it was a subsequent Conditional Use Permit, staff wanted to be clear that there were a number of the conditions that still applied.

Mayor Pro Tempore Thibodeau clarified that it was an overlay of the previous Conditional Use Permit conditions onto the new one. Town Attorney Hobbs stated that it would be an amended and restated permit where all of the previous provisions were incorporated into a new, amended permit. Councilor Burdick wasn't sure that all of the provisions were incorporated from Duck Deli's rebuild into the previous Conditional Use Permit. He added that Council was very specific with the last permit.

Mayor Kingston noted that the Planning Board was not unanimous in their vote on recommending the Conditional Use Permit. He asked what the issue was. Director Heard stated that the dissenting voter was present and he would defer to him.

The following persons were sworn to provide testimony during the hearing: James Cofield.

James Cofield was recognized to speak. Mr. Cofield stated that at the approval of the Conditional Use Permit back in January, there was extensive discussion about the financial condition of the applicant. He stated that the application passed in January based upon a clear statement that the applicant did not have the financial resources to install the parking at that time. He noted that it was an unusual acceptance of a condition to delay the parking implementation until January 2017. He reiterated that the primary basis was that the applicant did not have the financial resources to install the required parking at this time. He stated that, to look at an application two months later where additional financial resources were being applied by the applicant seemed inconsistent with the approval that the Planning Board had granted in January. He stated that that was the primary basis for his dissenting vote.

Town Attorney Hobbs asked the applicant to make a presentation.

Ken Forlano of Duck Deli Restaurant was recognized to speak. Mr. Forlano stated that the beverage center was an afterthought of the original plan, which was why it was in front of Council and had gone back to the Planning Board. He explained that the two additional parking spaces should be installed within two weeks. He added that the only holdback he had with regard to the financial aspect was the additional improvements to

the existing parking lot, which was something that the Planning Board made contingent upon the project. He stated that he agreed to do those things but it was a much larger project. He added that it would have closed him down for a period of time and in order to do things right, he wanted to do it in the winter, which was why he asked for the parking to be set back until January 2017. He stated that he was now moving into his season and closing for four to five weeks to put in the whole parking lot would be detrimental to his business. He stated that he planned to do the work in steps, with completing the two additional parking spaces first along with the five foot walkway so he could use the area. He stated that the beverage center will be phase 2 after the parking was put in place and then the rest of the parking lot would be done in 2017.

Mayor Pro Tempore Thibodeau noted that the applicant may be adding frozen beverages in the future. She asked Ken Forlano to elaborate. Ken Forlano stated that there was a hang up with the Planning Board with regard to using the word "bar". He stated that that was why it was called a beverage center. He added that the Planning Board did not want him to put bar stools in the area as it would create a seating and parking issue. He stated that it was a walk-up window where customers can buy beer, wine and other drinks as well as soft serve ice cream.

Councilor Burdick clarified that alcoholic beverages would be served. Ken Forlano stated that he would be selling beer and wine.

Town Attorney Hobbs asked if any other sworn witnesses would like to come forward to provide testimony. 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 Caviness moved to approve Conditional Use Permit 16-002 adopting the findings and conditions as set in the proposed permit.

Motion carried 4-0.

Public Hearing/Discussion/Consideration of CUP 16-003, an Application by John Power, Representing the Property Owner, Allis Holdings, LLC, for a Conditional Use Permit to Expand the Blue Point Restaurant at 1240 Duck Road by Establishing an Outdoor Seating/Entertainment Area 1,440 Square Feet in Size, including a 1,156 Square Foot Wooden Deck with a 156 Square Foot Bar/Beverage Stand

Mayor Kingston turned the meeting over to Town Attorney 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 and David Klebitz.

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 requesting approval of an amendment to the existing Conditional Use Permit for the Waterfront Shops to add a seasonal outdoor seating/entertainment area for the Blue Point Restaurant. He noted that several other improvements were being made to the property. He stated that the proposal included the following:

1. Construction of a wooden deck, 1,156 square foot in size with a wooden pergola over the open portion of the deck. The pergola will have a retractable awning attached.
2. Construction of a 156 square foot beverage stand on the deck. The roof over the bar/beverage stand will extend out over a row of seats adjoining the beverage stand to cover an area totaling 372 square feet. The beverage stand will feature retractable shutters that can be lowered to make the service area secure and weather tight.
3. Grading a flat grassed courtyard approximately 284 square feet in size between the existing restaurant and the proposed outdoor seating/entertainment area. A handicap ramp will provide ADA access through this area.
4. A 45 square foot addition/enclosure under the roof of the existing northern side porch to accommodate a small janitorial equipment room.
5. Internal renovations for a bathroom expansion in the existing janitorial equipment area.
6. Addition of an 80 square foot walk-in cooler behind the dumpster enclosure toward the northern boundary of the property.
7. Relocation of an underground propane tank from the proposed outdoor seating/entertainment area to a location approximately 30 feet to the east.

8. Removal of the existing dumpster pad and relocation of these dumpsters, including the addition of a third dumpster, in an angled location slightly to the north.
9. Reducing the size of the existing loading zone to a 12 by 22 foot loading area for smaller deliveries and establishing a new 12 by 35 foot loading area within the existing paved area directly adjoining the restaurant.

Director Heard pointed out that if the CUP was approved, it would amend the previously approved CUP 14-004, which was granted on December 3, 2014.

Director Heard noted that once completed, the proposed project will increase the amount of lot coverage on the property. He stated that the roof over the beverage stand and adjoining seating will add 372 square feet of lot coverage and the remaining pergola covered portion of the deck would cover 784 square feet. He noted that the removal of the concrete dumpster pad and portion of an asphalt area north of the restaurant would reduce the lot coverage by 436 square feet, resulting in a net increase of 720 square feet of coverage. He stated that the maximum lot coverage requirement for the Village Commercial District was 60% and with the resulting lot coverage of 39.9%, the proposed improvements would comply with the standard.

Director Heard stated that the addition of the proposed 1,440 square foot outdoor seating/entertainment area will increase the minimum parking requirements. He added that the minimum parking required to accommodate the existing and proposed development would round the parking down to 181 parking spaces. He noted that the site currently contains 181 parking spaces, so the amount of parking presently available will accommodate the minimum parking requirements, including the proposed development.

Director Heard stated that there were no proposed changes to the existing parking layout; however, there were several existing aspects of the parking layout that did not comply with the Town's current parking standards. He explained that the Waterfront Shops and Stan White Realty have shared certain aspects of their access and parking for many years. He stated that the Town standards require a minimum setback of five feet for parking spaces from the side property lines. He noted that in evaluating several existing, overlapping situations, the Town used an interpretation that a parking space would count toward the parking requirements of the site which contains the majority of the space. He stated that, although portions of Parking Spaces 153, 154, 155, 156 and 181 were located on the State White Realty lot, they were counted towards the parking requirements for the Waterfront Shops.

Director Heard stated that the Planning Board voted 5-0 to recommend approval of the proposed Conditional Use Permit with the following conditions:

1. The applicant must acquire necessary permits for all new buildings and renovations included in this proposal to ensure compliance with applicable standards.

2. The applicant must obtain approval from the Dare County Environmental Health Department to connect the beverage stand to the existing septic system prior to the issuance of a building permit and use of the outdoor seating/entertainment area.
3. The applicant must obtain a CAMA minor permit from the NC Division of Coastal Management prior to the issuance of a building permit for the beverage stand and decking.
4. The applicant must obtain approval from the Community Development Department prior to installation of any exterior lighting, which must comply with the Town's lighting standards and may require a building permit.
5. The applicant must submit an as-built survey documenting all of the site improvements prior to the issuance of a Certificate of Occupancy for the buildings and use of the outdoor seating/entertainment area.
6. Entertainment activities must comply with all applicable Town standards, including the noise ordinance.

Councilor Burdick noted that most of the patrons would access the restaurant. He clarified that there was an access ramp for handicapped people off of the back parking area. Director Heard stated that there would be access from the parking area. He added that the intent of the area was to serve as a waiting area for patrons of the restaurant. He stated that the majority of people coming in would be entering through the front door of the restaurant and would be directed to the outdoor seating area to wait for their seats. Councilor Burdick asked if there was or was not a proposed access on the north side of the parking area. Director Heard stated that there would be access from the parking area. Councilor Burdick pointed out that it was not shown on the site plan. Mayor Pro Tempore Thibodeau noted that steps were shown on the site plan.

Mayor Kingston asked if the deck would be elevated with a railing. Director Heard stated that he would defer to the engineer to answer the question.

Councilor Burdick noted that people could not get from the parking lot to the access for the proposed steps because it was blocked by the dumpsters. Director Heard stated that the area to the north of the existing building has an existing ramp and would be tied into the steps. He added that the walkway was located immediately north of the existing building and not by the dumpsters.

Mayor Kingston asked if the existing decks would remain or be removed. Director Heard stated that the decks were required to be removed. He added that the engineer could elaborate on it.

Town Attorney Hobbs asked the applicants to make a presentation.

David Klebitz of Bissell Professional Group was recognized to speak. Mr. Klebitz stated that Condition #2 of the Use Permit required that the permit be issued by the Health Department. He added that the permit has been obtained. He stated that Condition #3 required a CAMA minor permit be obtained. He stated that the permit has not been obtained yet, but the application has been submitted.

David Klebitz stated that there were steps intended to be used with the walk-in cooler. He added that there was an existing ramp with a landing that provided access to the restaurant. He noted that there would be a direct connection to it so there would be access. He stated that in terms of handicap accessibility, it would not be a handicap accessible ramp nor were there any handicap accessible spaces in the parking area. He explained that the intent was that there was an existing doorway on the northwest corner of the building with a new deck to be constructed that will extend around the restaurant remodel and would be designed to meet the accessibility code.

David Klebitz stated that a good portion of the deck will be at or just above grade. He stated that there was a bit of existing land that needed to be graded down to accommodate this. He stated that in the locations where the deck was just above grade, there would not be a railing, but there were locations primarily on the northwest side that could have railings but only if it was required by building code. He stated that they were not proposing to remove any decks and was surprised to hear that there would be any decks coming out. He noted that the current plan showed that the existing decks would remain.

Mayor Pro Tempore Thibodeau clarified that patrons would be able to access the restaurant and enter along the exterior portion along the back end. Dave Klebitz stated she was correct. He added that the intent was to get people to come in through the restaurant but they would also be able to enter it the other way.

Mayor Kingston asked what the status of the decks would be. Director Heard stated that there were some issues as they related to CAMA and other uses that were on the deck that had been removed.

Town Attorney Hobbs asked if there were any witnesses that wished to address the application. 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.

Mayor Pro Tempore Thibodeau moved to approve Conditional Use Permit 16-003 adopting the findings and conditions as presented.

Motion carried 4-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

There was no Old Business to discuss.

NEW BUSINESS

Discussion/Consideration of Appointments to the Planning Board

Town Manager Layton stated that the terms of Marc Murray and James Cofield to the Planning Board will expire on May 1, 2016. He added that Mr. Murray and Mr. Cofield have indicated their desire to remain on the Planning Board. He stated that Council was requested to either re-appoint Marc Murray and James Cofield to the Planning Board for a term to expire May 1, 2019 or appoint other individuals to the position.

Mayor Kingston moved to re-appoint Marc Murray and James Cofield to the Planning Board for a three year term to expire on May 1, 2019.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had attended a winter conference of the municipal attorneys recently at the School of Government and learned some valuable things.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

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.

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

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

Director of Public Information Denise Walsh was recognized to speak. Director Walsh gave a brief overview of the past month's activities to Council and the audience.

Update on Beach Nourishment Project

Town Manager Layton stated that he did not have anything to add to the bid issue that was discussed last month, which turned out favorably. He stated that he was still waiting for Fish and Wildlife to sign off on the Corps permission for the permit. He hoped to have that by the end of April, but there was a lot of information going about that there were between 500-600 applications sitting in the queue waiting to be reviewed and

signed off. He stated that the Town needed to get through that process because the access for the project has been tied to the approval. He explained that the Army Corps had told him that their biological staff needed to sign off on impacts related to the access and it could not be done until the permit was in hand.

Town Manager Layton stated that the Town needed to have the permits in place before he goes before the Local Government Commission for financing. He stated that the schedule for the financing was April 26, 2016, where a kick-off telephone call was scheduled with the LGC followed with a final submittal around May 1, 2016 and approval by the LGC by June 7, 2016.

Town Manager Layton expected to have a resolution for Council's consideration at their May 18, 2016 meeting related to the financing. He explained that it was a customary resolution that the Town has adopted before which approves the financing documents related to the project.

Update on Duck Trail Projects

Town Manager Layton stated that Director Heard had given an update on the project with his overview of activities so he had nothing to add.

Ethics Training

Town Manager Layton reminded Council that certified ethics training would be held on Wednesday, May 18, 2016 at 10:00 a.m.

Financial Statement for March FY 2016

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

MAYOR'S AGENDA

Mayor Kingston stated that he will be attending his monthly mayors meeting on April 19, 2016. He stated that he would be joining Town Manager Layton on the Local Government Commission kick-off telephone call on April 26, 2016 as the Town moves forward on the financing for the beach nourishment project.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau stated that she would be representing the Town on April 11, 2016 in Manteo in meeting with the new ECSU Chancellor. She stated that she was disappointed to hear that the law enforcement conference was canceled. She added that it was disturbing and she was making her views known as much as she could.

Councilor Burdick stated that with regard to publicity problems due to the state government, he thought Council should consider pointing out that the Town has a

principle that it adopted in its vision that shows diversity. He thought it may be appropriate to find a way to publicize it as it was just as or more important than what the state has done in terms of the impression that's being left. He stated that he would like to Town Manager Layton to find a way to use it to get publicity for the Town as far as how Duck stood. He thought it would be useful for the real estate industry to be able to note that there was a state law but the Town had its own principles as to how it ran things.

Councilor Burdick stated that he had picked up on an article recently in *The Virginian Pilot* regarding Corolla Fire and Rescue starting a program to help train and educate the foreign workers that come to the Outer Banks to work as a result of the foreign worker that was killed last year. He thought it may be something that the Town may want to consider in joining with Corolla since Duck has a number of foreign workers. He thought the Police Department, Fire Department and Director Walsh could look at it in terms of how the Town should work with them. Town Manager Layton thought the first step would be to speak with the Duck Merchants Association and get their input to see if they were receptive to the idea.

Councilor Caviness stated that Mayor Kingston and Council knew she had prepared a statement regarding House Bill 2. She went on to read her prepared statement to Council and the audience. She asked Council to support her in making a statement in expressing opposition to House Bill 2.

Mayor Kingston asked Council if they wished to have a discussion with respect to moving forward with Councilor Caviness' comments. Councilor Burdick thought it would be a good idea.

Mayor Kingston stated that he was contacted by the *Outer Banks Sentinel* about a week ago inquiring what the Town's position was and what the Town would be doing regarding House Bill 2. He stated that he could not speak for Council so he was a little vague in his answer, telling the paper that it was not on Council's agenda at that time and was certainly a partisan issue and there were opposing sides on it. He stated that he noted that there was potential for a significant economic impact all over North Carolina, including Duck, and that it was another state taking away authority from municipalities. He stated that the article has been published in the *Outer Banks Sentinel*.

Mayor Kingston stated that Mayor Pro Tempore Thibodeau has been involved with the Dare County Commissioners and has forwarded several impact statements from potential customers that she has lost. He added that Councilor Britt has had the same issue, which was an impact to the community. He thought Council could do a few things, such as passing a resolution. He pointed out that the Town of Nags Head had passed a resolution earlier in the day, but none of the other towns have done anything with respect to discussing and/or putting anything forward. He added that the Council could release a statement that would go on the Town's webpage and via email blast, talking about opposition and impact. He thought Council should focus on the economic impact and the unfairness of the bill. He stated that Council could move forward and do something at

the April 20, 2016 mid-month meeting, with respect to putting something out to the public or something could be done sooner.

Councilor Burdick stated that it was not only an economic issue but also a human rights issue. He stated that the Town has stood together on human rights and he thought it should continue whether by formal resolution or by statement. He thought something needed to be said. He didn't feel comfortable not doing anything. He added that it was not a partisan issue, but a human rights issue. He stated that Council needed to find a way to keep politics out of it and focus on the economic impact. He firmly believed that Council should release a statement as a minimum.

Mayor Pro Tempore Thibodeau thought Council was in agreement with the fact that it would be advantageous to stand united and take a position. She noted that Councilor Burdick had referenced the Town's Vision statement as it specifically talked about being inclusive. She thought Council could quote from the Vision. She stated that as far as a resolution versus a position statement, she thought if one or the other was drafted, they should be interchangeable. She thought Council could give Town Manager Layton some thoughts and come back and vote on it at the April 20, 2016 meeting.

Councilor Caviness did not believe that the Town of Nags Head had a resolution that had been created that they voted on, but thought they had one that was up for consideration from another municipality. She added that Greensboro was the first city in the state of North Carolina that passed a resolution on April 5, 2016.

Town Manager Layton noted that there was a model resolution that he would look at. He added that if one was to be drafted, his goal would be to come up with something that was Duck specific because he didn't want to craft a resolution that everyone else did.

Councilor Caviness stated that the model language may or may not be appropriate for Duck as it may be better for Duck to have something specific. She stated that she would be proud to have Council state firmly that they oppose House Bill 2 and go on the record as a community in the state of North Carolina that they oppose it. She felt it could be opposed on so many different levels whether it was the infringement on the Town's ability to govern locally and do what we believe is responsible for the citizens, the impact of tourism that was being felt in the community and the spring conference for the law enforcement professionals being canceled because of it. She thought it was only the beginning and was a human rights issue.

Mayor Kingston stated that the cancelation of the police seminar was the top story on the *Outer Banks Voice* earlier in the day. He thought a resolution was fine but resolutions tend to fall on deaf ears. He thought a statement would be more effective. He thought a position from the Town could be well expressed in a position statement.

Councilor Burdick agreed with Mayor Kingston. He stated that in order to communicate it, a statement was needed. He added that there may be a way to take the statement and incorporate it into a resolution that could be sent to the General Assembly so the Town

was on formal record as to how Council felt. He thought the appropriate communication to start with was to get a good statement out on Duck's stance.

Mayor Pro Tempore Thibodeau stated that there was a rationale for House Bill 2 as some people that have supported it have claimed that, as a municipality, the Council is serving at the pleasure of the state. She stated that there was a power grab and it was interesting to see it played out.

Town Manager Layton stated that he did some research earlier in the day and the Charlotte Observer had a breakdown of the practical implications of House Bill 2 with what it does and doesn't do. He added that he would forward the link to Council. He stated that he will draft a resolution and position statement to go with it and will bring it back to Council at their mid-month meeting.

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 will be the Mid-Month Meeting on Wednesday, April 20, 2016 at 1:00 p.m.

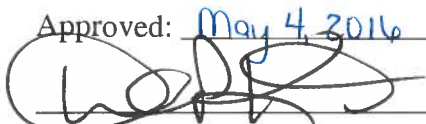
ADJOURNMENT

Councilor Burdick moved to adjourn the meeting.

Motion carried 4-0.

The time was 10:11 p.m.


Lori A. Ackerman, Town Clerk

Approved: May 4, 2016

Don Kingston, Mayor

