

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
April 6, 2022**

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

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Drew Havens; Police Chief Jeffrey Ackerman; Deputy Fire Chief Clarence Batschelet; Town Attorney Robert Hobbs; Public Information and Events Director Christian Legner; Finance and Human Resources Administrator Jessica Barnes; Community Planner James Gould; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Director of Community Development Joseph Heard and Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 6:01 p.m.

Mayor Kingston asked Community Planner James Gould to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

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

Jan Collins of the Dementia Friendly Coalition was recognized to speak. Ms. Collins stated that the Coalition has sea horse decals displayed at certain restaurants which represent that the restaurant or business has been trained to become dementia friendly. She explained that the businesses took a 20-minute learning session on how to approach and redirect people that have dementia so that loved ones can feel comfortable taking their family member out to a restaurant or business, knowing they will be respected and taken care of if a situation arises. She noted that the Coalition was the result of a community health needs assessment which revealed individuals with dementia and their at-home caregivers needed more support and was created in March 2014. She added that the Outer Banks Hospital became the first dementia friendly hospital and currently trains

other hospitals to achieve the same designation. She stated that, going forward, the Coalition's goal will be to educate the public at large about the growing need for communities to accept and support both those that live with dementia as well as assisting loved ones that provide the care.

Doug Brindley of the Outer Banks Association of Realtors was recognized to speak. Mr. Brindley stated that the board recently approved several initiatives set forth by the DEI Task Force on fair housing, diversity, equity, and inclusion. He presented Council with a copy of the National Association of Realtors biannual magazine and thanked Council for passing the resolution on proclaiming April as Fair Housing Month.

Michael Rollin of 149 Plover Drive was recognized to speak. Mr. Rollin stated that he wished to cede his time to Miriam Rollin.

Jennifer Beckwith of 147 Plover Drive was recognized to speak. Ms. Beckwith stated that she wished to cede her time to Miriam Rollin.

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin stated that her statement incorporated key parts of a petition that was being delivered to the Town Council regarding private beach access on Plover Drive. She explained that the petition has signatures from 94 owners of 52 Plover Drive properties, including almost all of the owners of the Duck Blind Villa condominiums, which owns the land that the Plover Drive private beach access easement exists.

Miriam Rollin stated that Bob Hovey feigns a role as champion of public beach access but has financial interest in enabling his business and renters of his property in Osprey Ridge subdivision to have free beach access. She noted that for Mr. Hovey, it was a matter of money. She added that after Mr. Hovey's court defeat with the Sand Dollar Shores private beach access, he has now focused on Plover Drive for beach access. She pointed out that several rental agencies and real estate companies operating in Duck have illegally asserted public beach access via Plover Drive. She noted that an advertisement by Shore Realty offers homes for sale in Osprey Ridge and talks of the public beach access located on Plover Drive. She added that Resort Realty, Brindley Beach, and other rental listings for Osprey Ridge claim to have ocean access via Plover Drive.

Miriam Rollin stated that Bob Hovey has provided an alleged support for his erroneous claim of public beach access at Plover Drive, with a deed from Pearl W. Gard, made in 1976. She pointed out that Plover Drive is and has been a state road as provided in the deed; however, no state, county or Town ownership or control of the private beach access was ever accepted by any public entity. She stated that in 1979, each current plot of real property for Sea Acres on Plover Drive was established with deeds that included a specific grant of private easement rights for the beach access that was as follows: "...said land being conveyed together with easement of right of way to the Atlantic Ocean as shown on said plat which said easement will be held in common with other lot owners in Sea Acres and Amy Acres." She noted that she shared with Council all of the relevant documents including the plats and deeds.

Miriam Rollin stated that because they have deeded rights to the beach access, the Plover Dive property owners maintain the access and have done so for years. She pointed out that as recently as March 26-27, 2022, Plover Drive owners replaced aging railings and supports on the beach access structure, with all costs and labor paid for solely by the Plover Drive property owners with affirmation by Duck Blind Villas, who owns the land that the private easement runs on. She stated that they recently replaced a sign indicating the private nature of the beach access with affirmation by Duck Blind Villas. She noted that any signage or structures on the private property of Duck Blind Villas would require their ascent and any signage on the Plover Drive road would require NCDOT approval.

Miriam Rollin reminded Council that there is clear language on the Town's website regarding the lack of public beach access, with the following statement: "The Town of Duck neither owns nor maintains any public beach access locations. Access to our beach is limited to Duck residents, Duck renters, and their guests through privately owned and maintained locations. The Town of Duck does not allow parking along state roads, and there are no public parking areas at beach accesses. Please check with the homeowners' association for your vacation rental or with your rental company for beach access questions." She stated that in the NC Appellate Court decision in Hovey vs Sand Dollar Shores, it was made abundantly clear the following language: "The Town of Duck is a seaside resort community that provides no public beach access. All oceanfront lots there are privately owned and have been since before Duck was incorporated in 2002. Although members of the public are entitled to walk on the beach, wade in the ocean, and otherwise use the natural resources abutting the boundaries of these properties, the land between the beach and public streets and highways belongs to private landowners." She stated that the following language was also noted: "We acknowledge that our holding means that the Town of Duck, as an incorporated municipality, lacks public beach access. The Town has not sought to establish a public beach access and generally maintains that all of the beach access locations within the Town limits of Duck are located on private property. This Court must uphold these private property rights under the law."

Miriam Rollin stated that the court explained to Bob Hovey the process for dedicating land to the public and also explained to him that the process has not been followed in the case of the beach access at Sand Dollar Shores with the following language: "...the plat map fails to show an unambiguous intention to dedicate the Easement to public use and we hold that Plaintiffs have not shown a clear and unmistakable intent by the developers of Sand Dollar Shores to publicly dedicate the Easement for public use, and intention alone is not adequate to accomplish a dedication; a public authority must also accept the offer." Ms. Rollin noted that this process was not followed in the cast of any alleged dedication of land related to the Plover Drive access, adding that the beach access easement land belongs to Duck Blind Villas, together with land owned by Donna Daly of 161 Plover Drive.

Miriam Rollin stated that with the NC Court of Appeals and the NC Supreme Court having closed off Bob Hovey's efforts to claim a public beach access at Sand Dollar Shores or anywhere else in Duck, Mr. Hovey has raised a new claim – a prescriptive

easement for the Plover Drive beach access. She explained that a prescriptive easement has been found when a road over one property has been the only access to another property and has been used daily by the owners of the second property in order to access their property. She stated that in a beach access prescriptive easement case in North Carolina, the effort to establish the easement failed because: "...mere use alone of a purported easement is not sufficient to establish the element of hostile use or use under a claim of right...", which was one of the requirements for a prescriptive easement. She added that it also had the following language: "...the adverse or hostile use of a purported easement must be for a continuous and uninterrupted period of at least 20 years..." She stated that there has not been a continuous uninterrupted use for at least 20 years by Bob Hovey or other non-owners or guests of Plover Drive and the beach access.

Miriam Rollin explained that while any claim of prescriptive easement would be far-fetched from the start, Bob Hovey had made stipulations in the Sand Dollar Shores case where he talked about repeated use of the Sand Dollar Shores beach access over a number of years, which completely undermined any such assertion by him of prescriptive easement for the Plover Drive beach access. She pointed out that Mr. Hovey could not have prescriptive easement for every single beach access that he has ever used. She added that it was abundantly clear that there was no valid claim by Mr. Hovey or anyone else that Plover Drive or any Duck beach access was a public access other than Plover Drive owners and guests.

Miriam Rollin stated that the real property owners on Plover Drive were petitioning the Town of Duck to do the following:

1. Ensure – and specify on the Town of Duck website and newsletters – police enforcement of no parking restrictions on both sides throughout the entire length of State Road 1417, also known as Plover Drive, from Route 12 up to the cul-de-sac, and along the rest of Plover Drive, which turns south for a short distance.
2. Reject any illegal attempts by any who are not property owners on Plover Drive in Duck, NC to exercise any control of the private beach access easement, which has been granted to the property owners on Plover Drive, through ownership deeds.
3. Communicate with rental agencies and real estate companies operating in Duck, directing them to cease and desist from false advertising regarding beach access via Plover Drive for rental properties and real properties not located on Plover Drive.

Kelly McDonald of 134 Plover Drive was recognized to speak. Ms. McDonald stated that she was president of the Duck Blind Villas Owners Association and was representing all 25-unit owners. She stated that they were in support of the petition that was presented to Council and echoed the sentiments that Miriam Rollin had stated in her comments. She added that they vehemently oppose any public beach access on Plover Drive and continue to enforce their private parking with all appropriate signage installed within Duck Blind Villas' parking lot as well as within the street side cul-de-sac.

Phillip Johnson of 134 Plover Drive, Unit 1-D was recognized to speak. Mr. Johnson stated that he took over possession of Unit 1-D with a limited liability company out of Virginia along with his eight siblings. He stated that his parents passed away on March 30, 2022 and he had taken possession of the unit on March 25, 2022. He presented Council with a deed for the unit that states that he owns all of Duck Blind Villas and that he was turning it over to Atlantic Township which includes the Town of Duck. He further presented Council with a copy of the LLC, adding that he wished to transfer the LLC to North Carolina because it was completed incorrectly in Virginia.

Bob Hovey of 302 West Eden Street, Kill Devil Hills was recognized to speak. Mr. Hovey stated that he was unaware of so much opposition to him using the beach access on Plover Drive for most of his life. He stated that in 1976 Plover Drive was clearly and unambiguously deeded to the public and has been constantly used by the public since then. He disagreed with Miriam Rollin's claim regarding no continuous use for 20 years as he started offering surf lessons in 1996 and before that, Plover Drive was a drive over beach access. He stated that it was clearly and unambiguously deeded to the public in the 1970's and used for people launching their dories and using the beach as a drive on access. He noted that any claim that it was not being used for 20+ years was not true.

Bob Hovey stated that the deed was clearly and unambiguously deeded to the public. He noted that what happened on Seabreeze Drive had nothing to do with Plover Drive as that was a different circumstance with restrictive covenants and things that the courts ruled on. He was not sure how the Town would benefit from not having parking at the end of Plover Drive as he thought it would be bad timing to start restricting parking at the beginning of the summer when it has been used as public parking for 50 years. He stated that he has lost track of how many times he has stood in front of Council regarding this issue. He added that it has been going on for 20 years with him standing in front of Council and not receiving a response or a thank you, but constantly being brushed off. He stated that he would appreciate if Council would have a discussion as he thought it was worthy of being put on a future agenda. He noted that a lot of people were concerned and he thought before Council directs no parking signs to be erected and making strict rules that would easily be overruled by the court, there should be a discussion. He thought there should also be a discussion regarding the parking before shutting down 50 years of parking.

Bob Hovey stated that the Duck pier was a public beach until the terrorist attack on September 11, 2001. He requested the Town to consider contacting the Army Corps of Engineers to find out about the beach access at the pier being closed to the public while other beaches across the country have reopened on Federal land. He thought there would be a lot more impact if the Town contacted the Army Corps of Engineers instead of him. He thought Council owed it to the citizens of Duck to be able get that access back since there was no real reason why that beach access, parking, public drive on access and the gazebo picnic area were all still closed to the public. He thought putting Plover Drive on an upcoming agenda before making a decision would be prudent.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to read the following public comment from Ron Blunck of 117 Canvasback Drive: “Dear Duck HOA and Property Owners Forum Members, recently I sent you an email reporting the NC Supreme Court’s refusal to review the Hovey vs Sand Dollar Shores beach access lawsuit. That left standing the NC Appeals Court decision that concluded the Sand Dollar Shores access is private and not public. Please read the email below written by Robert Hovey to the Town of Duck. Note what he is seeking and that he is asking the Town Council to include his requests in the April Town Council meeting agenda for discussion:

1. He wants to now use the Plover ocean access walkway for public use.
2. He wants the Town to publicly state whether the police will respond to any property owner complaints about his public use of the Plover ocean access walkway and prevent him and the public from using that access walkway.
3. He wants the Town to negotiate with the Army Pier to return the public access that previously existed on the Army Pier property.

While Hovey is referencing the Plover access walkway, I would guess he is really thinking about public access with any/all other community access walkways within the Town. That might include your community access walkways. **Here is my perspective on Hovey’s request to the Town:**

- **I agreed that the Town should publicly state:**
 - **The police will respond to any community complaint about public use of any community access walkway in Duck. This should apply to community sound access as well as community ocean access.**
 - **The police will enforce private access only restrictions when responding to a complaint.**
 - **The police will enforce no parking restrictions around community access walkways when responding to a complaint.**
- **I agree that the Town should actively pursue public access to the beach with local Army officials above them if necessary. It should be noted that the Town has had a long-standing goal of providing public beach access as stated in the last two Town of Duck CAMA Land Use Plans. In my opinion, the Army Pier is really the only viable alternative for this.**

Please respond to my email and let me know if you agree with my perspectives above or not. If there is general agreement, I will communicate to the Town prior to the April Town Council meeting on April 6th. Regards, Ron Blunck, Duck Forum Coordinator”

Town Clerk Ackerman read the following public comment from Ron Blunck of 117 Canvasback Drive: “Dear Drew and Duck Town Council, please consider this email and include it in the minutes as public comments to your Council meeting tomorrow. I received 39 responses from property owners to my email on March 26th. Here is a brief summary of them:

1. Owners who agreed or mostly agreed with my **perspectives**: 39
2. Owners who disagreed or mostly disagreed with my **perspectives**: 0
3. Owners who neither agreed or disagreed with my **perspectives**: 2

Several owner had questions or perspectives of their own. In summary:

1. A few owners were not sure the Town should push the Army Pier management very hard for using their property for public access.
2. A couple of owners were not familiar with private vs public streets in Duck, and the impact that may have on public access to the beach.
3. Several owners expressed concern over potential retaliation from Robert Hovey if opinions were made public.
4. Several owners had suggestions for the Town on how to research/identify alternative ways to provide public access.
5. Several owners felt Robert Hovey was making an issue over public access for his own business interests in Town and not the general interest for the overall public.
6. A couple owners indicated they would communicate themselves directly to the Town.
7. A couple of owners expressed concern over the Town's relationship with other people and communities on the Outer Banks over the whole matter.
8. Several owners thought any police enforcement of private use of private access walkways should be on a complaint basis and not be aggressive.
9. A couple of owners were not sure the Town should publicly respond to the Robert Hovey request.
10. Several owners felt the Town avoided the initial issue and did not properly address it.
11. A couple of owners pointed out that Robert Hovey owns a rental house in Duck but does not live in Duck.
12. Several owners indicated their HOA offered membership in the HOA (for a fee) so owners in adjoining subdivisions without access walkways could use their walkway(s).
13. Several owners felt owners should attend the Town Council meeting(s) and directly provide their input.
14. Several owners felt the police should also enforce no parking around access walkways.

All Forum members have reviewed a draft of this email, and none are opposed to sending it to you. Regards, Ron Blunck, Duck HOA Forum Coordinator.”

Greg Beckwith of 147 Plover Drive was recognized to speak. Mr. Beckwith stated he has owned his property since 1996. He stated that he has seen Bob Hovey giving surf lessons, whether it was from 1996 or not, but the reason that Mr. Hovey's argument fails with respect to a prescriptive easement was because he was not asking for a prescriptive easement for himself to use, he is asking for a prescriptive easement for anyone who was willing to take a surf lesson. He added that Mr. Hovey was asking for a prescriptive easement for anyone who may engage in a weekly rental of his rental home. He

explained that prescriptive easements are such that they have to be continuous and uninterrupted for 20 years, adding that it did not endure to a rental person who rents their home for a week, nor does it endure for the benefit of a surf class that Mr. Hovey wishes to hold. He stated that it also failed because signs have been posted at the Plover Drive beach access and sometimes, they get taken down by someone unbeknownst to the homeowners on the street. He pointed out that the signs have been posted from as early as 2002 by the residents indicating that the access was strictly for the use of Sea Acres and Amy Acres. He stated that by placing the signs, it put Mr. Hovey on notice that he was trespassing, adding that the sign that was placed in 2002 put Mr. Hovey on notice that he was trespassing.

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

CONSENT AGENDA

Minutes from the February 16-17, 2022, Annual Retreat; Minutes from the March 2, 2022, Regular Meeting; Easement Extension; Resolution 22-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month; Resolution 22-05, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Fair Housing Month; Budget Amendment

Councilor Schiano moved to approve the consent agenda as presented.

Motion carried 5-0.

PUBLIC HEARING

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

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that Town Manager Havens would give an overview.

Town Manager Drew Havens was recognized to speak. Town Manager Havens asked for a moment of silence to remember Director of Community Development Joe Heard as he continues to recover from his health issues.

Town Manager Havens stated the subject of the public hearing was a text amendment regarding civil penalties for violations of the Town's flood damage prevention ordinance. He stated that on the advice of the Town Attorney in 2019, the Town Council modified dozens of sections of the Town Code to clarify that most types of violations are enforced

by civil, rather than criminal, penalties. He stated that the Town subsequently adopted a new Flood Damage Prevention Ordinance consistent with State model ordinances which classified certain types of violations as misdemeanors, subject to a criminal penalty.

Town Manager Havens stated that recently adopted NC Session Law 2021-138 took additional steps to decriminalize certain sections of local ordinances by limited local government authority for criminal enforcement. He stated that in order to comply with the new law, staff and the Planning Board were proposing to amend these two penalty clauses in the Flood Damage Prevention Ordinance. He noted that the Town's adopted Comprehensive & Land Use Plan does not specifically address the use of civil versus criminal penalties; however, adoption of clear and enforceable penalty provisions is necessary to enforce the following policy objective: 4.2: Ensure that development of land minimizes negative direct and secondary environmental impacts, avoids risks to public health, safety, and welfare and is consistent with the carrying capacity of the land.

Town Manager Havens stated that at their meeting on February 9, 2022, the Planning Board voted unanimously to recommend approval of the proposed ordinance.

Town Attorney Hobbs asked Council if they had questions for Town Manager Havens. There were none.

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

Town Attorney Hobbs asked if any members of the public wished to address the proposal. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and reminded Council that they were sitting as a legislative body and in order to adopt the ordinance on the first read, it would require a super majority vote, which was four members. He turned the meeting over to Mayor Kingston for deliberation.

Mayor Pro Tempore Thibodeau moved to approve Ordinance 22-03 as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Establishing a Town Property Advisory Committee

Mayor Kingston stated that Council first started discussing the issue in December 2021, with some limited discussions on it but wanted to wait until the full Council was present to have the discussion. He explained that it was envisioned that the advisory committee would be an advisory group to Town staff on projects that are anticipated or planned by the Town.

Town Manager Havens stated that Council had discussed the issue three times in the past. He added that it was an idea that came from the Community Development staff to see if there could be a committee that staff could engage with in order to obtain different perspectives from different members of the community, particularly when it came to potential projects related to the Town facilities and the Duck Trail. He noted that it was primarily for Town facilities and was never envisioned as a committee that would meet on its own and drive its own agenda, but one that would have additional public perspective. He stated that nothing has changed from the staff's perspective since it was first introduced. He understood there was some confusion with the initial presentation and it was redefined for the second iteration.

Mayor Kingston stated that his initial concern was the focus of the group, adding that it has changed over the past few months, but the original focus was more blue sky and coming up with ideas. He stated that a lot has changed because when the Town first had the Municipal Property Master Plan Advisory Committee, Duck did not have the staff it currently has, so it took more people to plan the path forward for the Town. He added that since then, the Town has grown in both experience and staff. He thought this committee should be more single focus and thought the advisory committee would be given a task to look at. He stated that he would like to see Council organize that advisory group on an as-needed basis based upon the requirement at hand. He pointed out that the Pedestrian Plan Committee had a particular task with a lot of public involved. He stated that he would rather see Council take that approach instead of appointing a standing group that may not be the right composition for the task at hand since it could change as time moves on. He reiterated that he still questioned the need for a committee at this point in time.

Mayor Pro Tempore Thibodeau stated that she re-read the latest staff memorandum as well as the minutes where Council discussed the issue. She stated that having the public advisory committee available to ask questions of facilities, expansion of playground facilities, and perhaps getting involved in ideas regarding amenities in the park and sidewalk would be a way to engage others in decisions. She noted that the Town does not have a Parks and Recreation Committee and areas were limited as to what the Town had with regard to public property. She thought that engaging members of the Town instead of relying on staff to make decisions on things were on her mind. She thought that anything the Committee may come up with would have to go through a vote from the Council for approval, so it was more input than anything else. She pointed out that it would not be a waste of anyone's time but getting a variety of input. She stated that Councilor Whitman's previous concerns were the makeup of the Committee, adding that there was no mention of how long the Committee would be in play except that it could be looked at annually. She pointed out that the Town did really well when the Town was still young to have the Municipal Property Master Plan Advisory Committee and she felt there was nothing wrong with soliciting the opinions of those in the community that may want to be involved. She added that she would have no problem with the Committee, but if the makeup of it was a concern, she wanted to have more discussion on it.

Councilor Schiano thought Council was open to input from the community and the citizens and that Council wanted to be. He thought Council has shown that with its public comment section along with a survey regarding the rezoning change. He noted that it was very helpful. He stated that obtaining input from the community was important and that Council needed to find more ways to do that. He stated that, with regard to this Committee, he thought if there was a standing committee, it would get sour after awhile since it probably would not be used enough. He pointed out that people will lose interest and question why they are on the committee. He thought it may be better to use the ad-hoc approach in that if there was a project or issue that needed public input or expertise, Council should create a committee to do that under the direction of the appropriate staff member. He stated that the committee could meet with a specific target or task in mind, give their input and staff could put it before the Council. He stated that that committee could then be disbanded and when another topic comes up, Council could put together another group of people that would be appropriate to discuss the particular topic. He thought that it would be a good way to obtain input. He reiterated that a standing committee may not work. He thought if Council could find a way to draw upon community members as needed, it would be great.

Councilor Mooney thought the committee was a good idea, adding that any time Council can receive input from the community, it was important. He stated that people will participate. He added that as far as people becoming bored in between meetings, he did not see that as an obstruction to the committee members doing what they will be asked to do when they are asked to do it. He noted that if people were going to volunteer to do the job, they would be happy regardless of the length of time that expires between different projects that may be in search of advice from the community. He thought it was a good idea, adding that the makeup of the committee would give Council enough of a diverse group to have good advice and decisions from them. He stated that as far as how long the committee may stand or what their terms may be, that could be addressed at a future date. He reiterated that he felt that the committee was a good idea.

Councilor Whitman noted that the committee's term would expire on December 31, 2023. He stated that surveys have been sent out to allow everyone to respond that wished to respond with their opinion. He added that staff could put together a list of what they were asking for, such as park benches. He stated that he was looking at the committee makeup – two from the business community, two from neighborhood associations, and two at-large members. He thought if that was to be used, it should be made up half from north Duck and half from south Duck so there will be both sides of the community represented.

Mayor Kingston thought Councilor Schiano's comment about public input was great as all of Council wants public input. He thought there were many ways to get public input, but it all depended on the subject at hand. He agreed with Councilor Schiano's suggestion of having a standard committee available as he thought it was situational. He stated that with the idea of new equipment for the playground, there would need to be input from younger people. He wondered if the standing committee would be the right group of people to advise Council on what would be needed in the playground. He

wondered if younger families in Town would be better or have it completed through a survey. He noted that with today's technology, the Town receives good responses to its surveys with a lot of input, opinions, and suggestions. He stated that he would rather have more than less input on things that would be looked at. He stated that every time a survey is put out, there is always a great response to it. He did not see the need for putting the advisory committee in place and thought the ones in the past were in place due to a smaller staff. He thought the Town has a competent staff and if input was needed, it could be obtained in other ways.

Mayor Pro Tempore Thibodeau stated that with regard to creating ad-hoc committees on an as-needed basis, she understood Mayor Kingston's objections against the idea in terms of different levels of expertise. She thought the same could be said for all of Council for making a decision in terms of what would be the best equipment for the playground. She stated that everyone is limited in what they know, adding that creating ad-hoc committees for each issue would be a burden on staff. She agreed that surveys were a great way to get input on particular issues, but with the public areas, there should be some kind of continuity. She stated that Council would make all decisions to vote on or approve. She thought there was work that needed to be done and if it was staff developing a committee for each particular issue, it seemed to be a lot of work. She added that sending out surveys may result in isolated viewpoints and not getting the big picture. She stated that she did not like Councilor Whitman's suggestion of a committee comprised of people from north and south Duck but understood that he wanted it to be diverse and representative of the entire Town. She stated that it was a way to alleviate the work that staff would need to do, agreeing that there is a large staff, adding that they are pretty busy. She thought it was an organized way to obtain public input, but without trying to put it all on staff to come up with ideas. She stated that she did not have an issue with a committee.

Councilor Mooney thought there was another benefit that Council may not have thought about. He stated that there will be a day where this Council will not be present, adding that this was an opportunity to reach out to the community to get more people involved. He stated that the citizens could decide whether or not they want to get involved. He thought it was an opportunity for education with the public and Council.

Councilor Schiano stated that he was not opposed to a committee and thought it was a good way to have people give input and to get people closer to the workings of the Town and Council. He did not think that the same people were the right people every time an issue arises. He stated that Council would be guilty of not getting enough or the right input on a project. He thought that if something came up that needed input, the committee would be the starting point to get the pros and cons and hear what they think and then form an opinion. He thought after that, it could go to the larger community to ask for their thoughts. He added that there was no rule that stated that the same people would be the ones that have the right skillset for another project that comes up. He reiterated that he was in favor of the committee but was not sure if a standing committee was the best approach but thought that committees that were pulled together and used as needed on projects would expose more people to the process as opposed to the same group.

Mayor Pro Tempore Thibodeau thanked Councilor Whitman for reminding Council that the committee terminates in 2023. She knew how long it took to come up with decisions, adding that it seemed like there would not be that many issues that could be completed by the end of 2023. She thought that same people could not be reappointed and that Council could look for different people. She stated that she was in favor of proceeding.

Mayor Kingston stated that he could not identify something now that an advisory committee would be needed, adding that the survey regarding trash that was completed was very valuable with getting the total input from the people in Town. He stated that he had the same concerns Councilor Schiano had with regard to having the same people or not having the right people. He stated that he was in favor of an on-demand basis which was done before. He thought without specific tasks, he did not think it was a value at this time. He thought public input could be achieved in other ways and, as needed by staff, identify it, and set up an advisory group for that particular project.

Mayor Pro Tempore Thibodeau thought having a committee like this would not exclude the Town from sending out surveys. She thought surveys were great and wanted to look for as much input as possible, depending on the issue. She added that even if there was an ad hoc or standing committee making a decision, the community could still be surveyed.

Mayor Kingston moved to suspend establishing a Town Property Advisory Committee but leaving it open for establishing committees as needed by Town staff for specific projects.

Mayor Pro Tempore Thibodeau clarified that Mayor Kingston wished to suspend the idea of having a standing committee but if the Town staff comes to Council asking for a committee to be set up for a particular project, staff or Council would create the committee. Mayor Kingston stated that staff would come to Council with a recommendation. Mayor Pro Tempore Thibodeau clarified that staff would recommend creating a committee and what it would be made up of like the one proposed. Mayor Kingston stated she was correct, adding that it would be similar to the pedestrian committee the Town had previously. Mayor Pro Tempore Thibodeau asked Mayor Kingston if he would be in favor of a Park Advisory Committee. Mayor Kingston stated that he did not see it as necessary.

Councilor Mooney stated that ad hoc committees were just another layer of bureaucracy that will delay whatever needed to be done as opposed to having people available that could make a decision without having to work on it for weeks at a time. He noted that it was an opportunity to throw a wrench into things.

Mayor Kingston pointed out that the Town used to have a lot of lead time on projects and staff would know the type of people they would want to work with. He stated that with an advisory committee, they would have to be brought up to speed as they would not be experts on everything based upon what the project will be.

Councilor Mooney did not think staff was proposing experts, adding that this was an opportunity to receive public feedback that was in addition to the surveys. He noted that this was people that were readily available to ask questions who will go and ask questions of others, which would result in a much bigger cross section of opinions that would not normally happen. Mayor Kingston thought there was a limited audience by asking certain people for opinions. He thought if it was important to the Town, a wider response would be needed.

Motion carried 3-2 with Mayor Pro Tempore Thibodeau and Councilor Mooney dissenting.

NEW BUSINESS

Discussion/Consideration of Resolution 22-06, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting the Construction of the Mid-Currituck Bridge and its Continued Inclusion in the State Transportation Improvement Plan

Town Manager Havens stated that Council had a draft resolution in front of them, adding that some of the other nearby towns have adopted similar resolutions. He explained that the resolution was renewing the Town's support of the efforts to build the Mid-Currituck Bridge.

Councilor Schiano asked who receives copies of the resolution. Town Manager Havens stated that the resolution is sent to the other towns, the NC Department of Transportation as well as the Town's legislative delegates in Raleigh. Mayor Kingston pointed out that it was reaffirming the Town's position that Duck supports the bridge. He added that Dare County and the Town of Southern Shores have passed resolutions and thought the other towns will as well. He noted that Duck was in discussions with the Town of Southern Shores regarding preparing an amicus brief to go to the next trial, but that was with the attorneys. Mayor Pro Tempore Thibodeau explained that the resolution was adding on and reaffirming a long-held position that the Town has had.

Mayor Pro Tempore Thibodeau moved to approve Resolution 22-06 as presented.

Motion carried 5-0.

Discussion/Consideration of Resolution 22-07, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting a Wright Brothers Tribute Museum and Observatory

Town Manager Havens stated that the resolution was sent by the Town of Kitty Hawk who passed a similar resolution. He explained that there is a private concern that was interested in building a Wright Brothers Museum that would be co-located with the

Visitors Center in Kitty Hawk. He stated that the Town of Kitty Hawk was looking for support from the other towns and the county.

Councilor Schiano moved to approve Resolution 22-07 as presented.

Motion carried 5-0.

Discussion/Direction of the Purchase of a Replacement Fire Engine in Accordance with the FY 2023-27 Capital Improvement Plan

Town Manager Havens stated that during the discussion of the draft Capital Improvement Plan at the Retreat, one of the items in the Plan was the replacement of engine 11, which was a 2005 Pierce pumper. He explained that the CIP has that it would be replaced in Fiscal Year 2023, but the Town has an opportunity to save a significant amount of money by making the purchase or order for purchase prior to April 30, 2022.

Town Manager Havens stated that the Capital Improvement Plan (CIP) predicted a cost of \$750,000 for a fire truck, noting that fire apparatus has become extremely expensive. He added that Deputy Fire Chief Clarence Batschelet has been in the fire service for a number of years and has seen a lot of cost escalation. Town Manager Havens noted that he got out of the fire service in 2007 and at that time, two fire trucks could have been purchased for the cost of one now.

Town Manager Havens explained that if the Town orders the new fire truck before April 30, 2022, the cost was \$763,054 and the CIP predicted price was a little lower than that. He added that if the Town prepays for the truck when the order is placed, a savings of \$28,000 would be had, bringing the cost down to \$735,000. He stated that if Council decided that they wanted to order the truck, but not at this time, the quote price would still be the same, but there would be a cost escalation of approximately \$53,000, bringing the new total to \$813,579. He added that if the Town opted to prepay for the truck, it would bring the total down to \$783,619. He explained that if Council decided not to purchase the truck until after April 30, 2022 and does not opt for the prepayment, it would cost the Town \$813,000, and if it is financed for 10 years at 3.5%, the interest alone was \$165,000, so prepaying would save the Town's taxpayers \$165,000. He noted that the Town currently has the cash to make the purchase.

Town Manager Havens stated that, with regard to the current truck, Pierce Fire Apparatus has offered a trade-in price of \$25,000 if the Town takes advantage of that up front. He explained that when the Town places the order, Pierce will take \$25,000 off the price. He believed that the Town could get more than \$25,000 for the truck when the new one arrives, which would be approximately 20-24 months from the date the order was placed. He asked Council if they wished to move forward with purchasing the new fire engine.

Mayor Kingston clarified that the fire department has been having mechanical issues with Engine 11 and now Engine 111 was having issues. Deputy Fire Chief Clarence Batschelet was recognized to speak. Deputy Fire Chief Batschelet explained that there

have not been any major issues with Engine 111 other than age issues due to normal wear and tear. He added that Engine 11 was presenting recurring problems due to its age and is causing a fair amount of money to have it worked on.

Councilor Schiano asked what the annual maintenance costs were. Deputy Fire Chief Batschelet stated that he did not have the figures in front of him but estimated that the cost for the transmission work was approximately \$8,000-\$20,000.

Mayor Kingston thought Council needed to discuss whether or not to purchase a new engine first and then discuss whether to purchase now or wait. He asked Council if there was a consensus or discussion on whether or not to purchase a new engine, which would be two years out.

Mayor Pro Tempore Thibodeau noted that a presentation was given at the Council Retreat that Fire Chief Donna Black had discussed the size of it and the fact that the newer versions were slightly smaller and more agile on the street. She clarified that purchasing from Pierce again would keep the fleet with the same repair company that was fairly readily available. Deputy Fire Chief Batschelet stated she was correct.

Councilor Whitman stated that he was in favor of purchasing the new engine now. Mayor Pro Tempore Thibodeau stated that she was in favor of purchasing the new engine now. Mayor Kingston asked if anyone objected to the purchase. Councilor Mooney asked if Pierce was experiencing any of the same problems that the automotive industry was. Deputy Fire Chief Batschelet stated that they were not. Councilor Mooney noted that the Town would be giving Pierce \$750,000 and they would have that for two years before the fire department receives the truck. Town Manager Havens stated he was correct. Councilor Mooney stated that he was in favor of purchasing the new engine. He asked if the Town was purchasing a new engine and then selling the old one, who would purchase it. Deputy Fire Chief Batschelet explained that there were brokers that deal with selling used equipment and there were fire departments that take the equipment to have it for other uses, such as using it as a blocker.

Councilor Mooney thought the Town could sell the ladder truck for more money than the engine. Deputy Fire Chief Batschelet stated he was correct. Councilor Mooney pointed out that the tallest building in Duck was 35 feet. He stated that he never understood why the Town spent money on a ladder truck when there are not any high rises or large hotels that would be that high. Deputy Fire Chief Batschelet explained that the Town is required to have a ladder truck because it has buildings that were 35 feet high. He added that the Town is required to have one by ISO, otherwise there would be a major deduction in the Town's rating, meaning that commercial businesses and homeowners would lose that benefit and have their insurance increase.

Mayor Kingston pointed out that the Town would be getting a cash discount of 3%, adding that the Town had cash in the bank that was not making that much in interest. He thought the discount was greater than what the Town would make in two years.

Councilor Schiano thought Council had to take the recommendation in order to make a decision. He stated that he would like to see the maintenance costs over the last five years so Council could see what will need to be spent to keep the new engine in working order. He stated that it would have been nice if Council had gotten an analysis on the option of not paying up front and what the best investment would have been so it could be compared and make a decision. Town Manager Havens stated that it was looked at. Councilor Schiano stated that it was never good when a decision has to be made immediately.

Mayor Kingston stated that the Town would have to replace either the truck or the engine and with it being two years out, it makes the newest piece of equipment ten years old. He thought by saving that money and not having to finance it for 10 years, made good sense to him. Town Manager Havens stated that the fire department have been working with Pierce representatives since the Retreat to specify and build a new engine.

Mayor Pro Tempore Thibodeau asked with regard to building it to a particular specification, there would be a fear that something may be forgotten. Deputy Fire Chief Batschelet stated that they were able to put a comprehensive committee together to make sure nothing was missed and that everything needed was in the specifications.

Mayor Kingston moved to purchase a replacement for Engine 11 and place the order prior to April 30, 2022 and not allow the trade-in but look for a better opportunity over the next two years.

Mayor Pro Tempore Thibodeau noted that there would not be a penalty for not making the decision at any time. She asked when that decision would need to be made regarding the trade-in. Town Manager Havens stated that if the Town does not accept their trade-in offer, the decision has been made that the Town would be selling it when the new engine is received.

Councilor Schiano stated that \$25,000 did not seem to be a lot for the engine. He asked if it would be worth keeping it as a backup engine. Deputy Fire Chief Batschelet explained that the main issue with keeping it was storage. He added that because it was a fire apparatus and has an oil tank as well as the environment on the Outer Banks, it could not be stored outdoors long-term.

Motion carried 5-0.

Discussion/Consideration of a Trash/Recycling Cart Roll-out and Roll-back Service

Councilor Schiano stated that in speaking to people when he was campaigning and hearing in general from people in Town, there was a lot of concern regarding trash and recycling cans that get put out and not rolled back for several days after pickup. He stated that the other issue was there was a lot of trash around the cans waiting for pickup. He stated that he also heard from people who complained about rodent issues and that they were relating those items together. He stated that in thinking about how to solve that

problem, there were options, one being a roll-out and roll-back of the carts. He thought most of the problem did not have to do with residents that live in Duck year-round since they already roll their carts out and back in. He added that with rental properties, people do not always roll the carts out and back and they end up sitting on the street. He noted that the problem was particularly bad along Beach Road and was not aesthetically pleasing to see the cans at the curb for multiple days at a time.

Councilor Schiano thought Council may want to consider a Town-wide roll-out/roll back service. He stated that the Town of Nags Head was doing it along Beach Road and the Town of Southern Shores was doing it along Ocean Boulevard. He stated that he wanted to raise the issue to see if there was interest in it or if there was a possible solution. He thought the Town could issue a summons but was not sure if Council wanted the police department enforcing trash can violations. He stated that the Town could make the rental companies responsible in some form, adding that there were options.

Town Manager Havens stated that the Town of Southern Shores has been discussing it and were approved to start a pilot program. Town Attorney Hobbs stated that, at the Town of Southern Shores' Council meeting on April 5, 2022, they authorized some funds for the town manager to initiate a pilot program for the summer for oceanfront properties along Ocean Boulevard. He stated that they have a contractor and a price and their Council elected to initiate the program.

Mayor Kingston asked if the Town of Southern Shores were only rolling back the cans from the road. Councilor Schiano thought it was just a few feet back off the road. Mayor Pro Tempore Thibodeau pointed out that that was the way the Town of Nags Head was doing it on Beach Road. She stated that with the Town of Southern Shores, they have their own public works department, but it looked like they decided on a private contractor instead to collect on Ocean Boulevard up to Hickory Trail. She added that Duck has a busy area that does not need to be impeded by trash cans. She stated that there was a concern regarding adequate cans and the Town of Southern Shores discussed it, adding that the Town of Nags Head addresses it by taxing the people by capacity. She stated that there was a fee that each of these towns would be taxing individuals along the roadway. Councilor Schiano thought they would be charged as opposed to taxing.

Mayor Pro Tempore Thibodeau stated that in terms of property management companies getting involved, education was always something that could be done, but any kind of penalties would have to go to the homeowner as the property management companies would not be eligible to be penalized. She reiterated that education was something that every property manager tries to do with the turnover. She thought some of the issue was exacerbated by the staggered pickup, but now the Town was back to the original pickup dates of Monday and Friday.

Mayor Kingston asked if the Town of Southern Shores was paying for the pilot project, further asking if people could opt out of the pilot project. Town Attorney Hobbs believed that the Town of Southern Shores was paying for it. He stated that allowing people to opt out of the project was not discussed.

Councilor Whitman pointed out that there were a number of homeowner associations in Duck and thought the homeowner associations have more responsibility for this than the Town or management companies. Councilor Schiano stated he was fine with Councilor Whitman's comment and thought Council needed to find what the focus point was to make it happen. He noted that his homeowner association has the residents pay for the roll out/roll back service and owners could opt out of it. He thought if the Town decided not to have anything put in place, there should be a process whereby the cans are rolled away from the street. Councilor Whitman agreed. Mayor Kingston agreed, adding that the last person in line should be the Town and the first person should be the one that owns the property and secondarily the property management company or homeowner association. He added that his homeowner association started with education and educating the property owners that either they or the renter/property management companies need to get the cans out and off the road. Councilor Schiano agreed.

Councilor Schiano thought Mayor Pro Tempore Thibodeau made the point that having the right number of cans was important. He noted that some homes do not have the right number of cans, which was exacerbating the trash problem in the community. Mayor Pro Tempore Thibodeau thought it could be a neighborly thing, whether someone decides that they want to roll their neighbor's can out and back or call the number on the house if it was a rental home to alert the property management company that it needed to be addressed. She pointed out that property management companies should be very reactive, adding that it was a tough job to collect the trash. She stated that she has a person that works for her company that only picks up excess trash all week to keep it from getting out of hand.

Mayor Kingston stated that if the Town serviced all of the residential address points, it would be enough to pay for another fire truck. Town Manager Havens agreed, adding that he used the Town of Nags Head's figures to calculate what it would cost Duck for the service. Mayor Kingston stated that there would either have to be a trade-off or a tax increase. Town Manager Havens agreed.

Mayor Pro Tempore Thibodeau thought education about trash and the environment to the community was important regarding what could go into a recycling container. She stated that she would like the Town to focus on that. She added that getting an adequate number of cans at the homes was also important. Councilor Schiano agreed with Mayor Pro Tempore Thibodeau's comments but was not sure how everyone will be educated due to the transient population. Mayor Pro Tempore Thibodeau thought it could be a simple message by using QR codes, which Town staff has worked hard on with the trash and recycling schedule. Mayor Kingston pointed out that only two towns on the Outer Banks were doing rollout and roll back, but it was only on the major thoroughfares. He agreed that education would be good for the people in Duck.

Discussion Regarding Beach Access

Mayor Kingston stated that Council heard from Bob Hovey and Miriam Rollin as well as several other homeowners, adding that Council heard both sides of the discussion. He pointed out that the item was put on the agenda because Council was accused of saying it would be discussed at a future meeting and with the court cases that were going on, a discussion never happened. He thought Bob Hovey wanted beach access on Plover Drive. He thought if Mr. Hovey wanted to pursue that, it seemed to be a separate case. He stated that the Supreme Court upheld the Court of Appeals with regard to the Town not having any public beach accesses. He stated that if Mr. Hovey wanted to continue to pursue that, he did not think Duck had any role in it as he thought it was a personal issue he would have to pursue. He stated that with regard to policing, the Town has the ability and will look at it with respect to the Police Chief and Town Manager regarding whether or not the Town wants to arrest people for trespassing. He noted that it could be done for other reasons such as disturbing the peace. He noted that parking was complaint driven at this time, adding that he did not think Duck had the staff to enforce parking on every street if it was not complaint driven. He stated that with respect to the beach access at the Army Corps property, it was not a viable option. He pointed out that the US Army Corps of Engineers should be looked at as a US military fort as it was not what it was 20-30 years ago and is a lot different today.

Town Manager Havens stated that he had spoken with Jeff Waters, Facilities Manager at the US Army Corps property and asked for a history since everyone kept hearing that the area used to be open to the public for beach access. He stated that Mr. Waters did confirm that prior to September 11, 2001, people were permitted to park in the parking lot by the gazebo and walk over the access that currently is used for the Town's lifeguard service. He noted that it was primarily surfers that used it and was not something that was advertised. He added that there was no signage allowing parking or signage that advertised it as public access, but it was something that was understood in what was then a much smaller community. He stated that after September 11, 2001, the military decided to secure everything and installed a gate. He noted that they did conduct tours of the facility with an intern that led the tours, but as the funding ended, the facility scientists continued the tours until it became overly burdensome and detracted from their work and the tours stopped.

Town Manager Havens stated that the facility was never open with the picnic shelter nor was it was open as a place for people to park their vehicles and access the beach. He stated that he had asked what the odds would be to use facility for beach access and was denied as the Army was moving to make things more secure at their facilities. He noted that the facility in Duck does science that is available to researchers worldwide, but also supports the war fighting effort and some of their research was not something that they want the public to be around. He stated that he could continue to go up the chain of command, which he would do if Council directed him, but noted that he already knew what the answer would be.

Mayor Kingston appreciated the petition from the owners and residents of Plover Drive. He stated that parking would be enforced on a complaint basis and thought there needed to be more internal discussion with respect to arresting people for trespassing. He thought

that would be handled by the Town Manager and Police Chief for them to discuss. He stated that not much could be done with regard to the illegal access on Plover Drive. He added that if Bob Hovey wished to pursue the issue, he could do it through the courts, but he thought it was already set by the NC Supreme Court and Appellate Courts. He stated that with regard to communicating with the rental agencies that have properties in the Osprey Ridge subdivision, the Town could send an informational piece to them but the Town does not have any enforcement action to have them take down their advertisements.

Councilor Schiano thought the Town has made it clear that there are no public beach accesses. He stated that it was all private property with nothing available at this point. He stated that, regardless of what the Town may or may not think, there was nothing that could be done about the issue. He stated that this should not be a personal issue, adding that he understood that feelings run high on the issue with people on different sides both feeling passionately about it. He encouraged everyone to be focused on the issue and not personalities as he wanted everyone in the community to get along and enjoy being in Duck. He stated that everything in Duck on the ocean side was private property and the court ruling has affirmed that as well as affirmed on appeal the same thing that the accesses are not for the public. He noted that because it establishes the law, it did not matter what Council's opinion was.

Councilor Schiano stated that he was not looking forward to posting people at Plover Drive to have them arrested if they walked by. He thought people have a right to expect that their private property rights will be protected by law enforcement of the Town. He stated that Bob Hovey has asked Council to tell him if he will be arrested if he goes on the property, but he did not think that question needed to be answered since it was not the Town's decision but Mr. Hovey's. He added that if Mr. Hovey wants to violate private property, he was making himself subject to whatever the laws were and what people may do in light of that. He stated that if someone makes a complaint about trespassing, the police will have to respond with the person knowing what the consequences will be. He noted that Town Manager Havens had discussed his communication with the Field Research Facility and that there was no hope. He encouraged Bob Hovey to speak to his federal representative and senator to see if he could get some action. He pointed out that there have been insinuations that the Town would be looked at as a bad place due to not having public beach access; however, he thought it was an unfair characterization. He stated that it was holding the Town accountable for something they have no control over. He thought there was nothing the Town could do beyond what it has already done and if there were two parties that disagreed, they could go to court.

Councilor Mooney agreed with Councilor Schiano's comments adding that it was a dead issue. He added that he was not sure Bob Hovey was sincere in his pursuit of it since he did not stay for the discussion after he asked to have the issue put on the agenda. He thought Council was finished with the issue. Councilor Schiano agreed and did not think there was any more Council could do about it.

Mayor Pro Tempore Thibodeau agreed with Councilor Schiano that Bob Hovey was passionate about the issue and feels that he is right. She stated that when the Town was faced with the issue on Seabreeze Drive, it stood by on the sidelines waiting to abide by the law and what the law decided. She stated that the Town were caught with some items on the website that had to be adapted as things were happening back then and landed on what the website currently states, while waiting for the final appeals. She stated that the website has maintained that Seabreeze Drive is a private access. She didn't disagree that things have changed over the last 30 years and Duck is more developed. She added that things were a little more looser before September 11, 2001 and things have changed at the Field Research Facility over time that have tightened things up to the point that the Town has been trying over five to six years to allow a new fire department building. She stated that Council does see the difficulty in getting through the bureaucracy of the Field Research Facility and wants to keep on their good side while working on a new Public Safety building. She stated that it did not mean it would not open the door for future discussions, but with the complicated world and amount of attention on that research and facility, the idea that anyone can access the property was hard.

Mayor Pro Tempore Thibodeau stated that people have always been able to walk to the beach over the years without an issue. She stated that the Town could do a few things – in its purview, the Town could offer to purchase one or two oceanfront properties but they were extremely expensive. She stated that the Town could purchase the property and let that community know that it would be used for public access. She pointed out that the Town has looked at doing this over the years with a property that was condemned before the beach nourishment project, but it was not pursued because the money was a big issue at the time. She stated that there have been established communities well before the Town incorporated that have private accesses. She added that the Town obtained some public streets with some communities that are so old that they do not have homeowner associations, and they subsequently gave their streets to NCDOT. She stated that doing that did not affect the easement.

Mayor Pro Tempore Thibodeau stated that the Town has a lot of history and things have evolved. She noted that things that Council could do were beyond practicality, but it did not mean that the Town could not do anything. She added that the Town follows the law. She thought in terms of parking violations based on complaints made sense, but she was not sure about the trespassing. She stated that Council can wait to hear back from the Town Manager and Police Chief to get some opinions from them on the practicalities and view. She thought a larger issue for the community was that the Town has grown and is almost built out. She pointed out that there were several streets in Duck that do not have deeded beach access – Jaycrest Road was one – adding that when the Ocean Crest subdivision was built, the residents of Jaycrest Road were invited by Ocean Crest to have deeded access. She added that Nantucket was invited into Ocean Crest but they did not want to participate. She stated that the Osprey Ridge subdivision and Settlers Lane do not have deeded access as well as the homes along Duck Road that are not part of a subdivision. She stated that that there were some communities that do not have a way to get to the beach. She thought Council could encourage neighbors to talk to neighbors to see if there are things that could be worked out. She stated that she wanted to encourage

that in order to get some communication started. She stated that when the Osprey Ridge and Duck Landing Lane subdivisions were developed, she could not understand why they did not work to obtain beach access.

Mayor Pro Tempore Thibodeau thought it was neighborly to allow people to walk across a beach access to get to the public ocean, but people could not be told what to do. She thought it would be nice if people could work together so neighbors could get to the beach. She stated that in terms of helping facilitate those conversations, she was not sure if the Town has a role but it could be worked out if people were willing and interested in some kind of conversation.

Councilor Whitman agreed with the other Council comments.

Mayor Kingston thought Town Manager Havens and Police Chief Jeff Ackerman were going to discuss the trespass issue and how it will be handled. He thought whatever could be done to advise the rental companies of the advertising errors regarding beach access would be good.

Councilor Schiano stated that he was not looking to arrest anyone, but private property owners only have one recourse to make sure their property is private. He stated that if someone keeps going across it, they should call the police and have them engage with them; otherwise, they do not have private property anymore. He stated that if someone is accessing private property purposely to raise an issue, they know that the way to deal with that would be through the courts. He added that getting arrested every day will not solve the issue. He reiterated that if it was private property and was for the enjoyment of the people of that development, they have the right to have it remain as private property. He stated that since Council did not want people to take the law into their own hands, he thought there was an obligation.

Mayor Kingston asked if any revisions needed to be made on the Town's website with regard to beach access. Town Manager Havens stated that staff will take another look at it.

Town Attorney Hobbs stated that his firm was prepared to give advice to staff on all the issues that have been discussed and will be happy to initiate that process.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

Deputy Fire Chief Batschelet gave a brief overview of the past month's fire activities to Council and the audience.

Community Planner James Gould was recognized to speak. Community Planner Gould gave an overview of the past month's permit activities to Council and the audience.

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

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

March FY 2022 Financial Presentation

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

Town Manager Havens stated that the Town has contracted with retired Dare County Planning Director Donna Creef to help with plan review and other more technical planning functions that are needed in Director Heard's absence. He stated that he made an application for a few grants recently – one for a transportation resiliency grant and the second for a disaster relief and mitigation fund grant. He stated that the Town should hear the results of both in mid-May.

Town Manager Havens stated that on March 21-21, 2022 the North Carolina Army National Guard came to Town to do a cyber security assessment along with a staff member from Shoshin Technologies. He stated that the results are pending at this time, adding that he went through the same process when he worked for the Town of Apex.

Town Manager Havens noted that the Town's public restrooms have been converted to be completely touchless now. He stated that the wooden sign coming into Town will be lit so it can be seen at night.

MAYOR'S AGENDA

Mayor Kingston stated that he has his mayors/chairmen meeting on April 19, 2022, which will be hosted by the Town of Southern Shores. He stated that he would be coming off the North Carolina League of Municipalities Board in a few weeks and was getting ready to have his last meetings – the Executive Committee on April 11, 2022 and the Finance Committee on April 21, 2022, adding that he would be attending a nominating committee meeting on April 7, 2022 where they would be picking the new slate of nominations for the Board of Directors. He stated that he would remain president of the Local Leadership Foundation with the annual meeting scheduled for April 26, 2022. He stated that he was looking forward to the 20th anniversary celebration in Town and wished Director Heard a speedy recovery, adding that he was missed.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau stated that she recently attended the North Carolina State Tourism Conference in Durham, NC. as part of the Tourism Board that she sits on as a representative of the Town of Duck. She thanked Mayor Kingston and Town Manager Havens for their service on the League of Municipalities boards. She stated that she attended the Outer Banks Chamber of Commerce meeting the day before and found it interesting.

Councilor Mooney stated he had nothing to report.

Councilor Whitman thanked the community and staff for the recent grass planting and trash pickup that was completed in Town.

Councilor Schiano stated that he attended the Government Access and Education Channel meeting recently, adding that the Town's request for new microphones for the Meeting Hall had been approved by the board.

OTHER BUSINESS

Additional Public Comments

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

Mayor Kingston noted that the next meeting would be the Mid-Month Meeting on Wednesday, April 20, 2022 at 1:00 p.m.

ADJOURNMENT

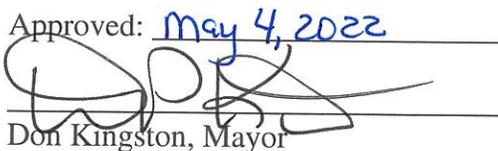
Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:00 p.m.



Lori A. Ackerman, Town Clerk

Approved: May 4, 2022


Don Kingston, Mayor

