

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
May 1, 2019**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, May 1, 2019.

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Deputy Fire Chief William Walker; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Fire Chief Donna Black and Director of Marketing and Special Events Christian Legner.

Mayor Kingston called the meeting to order at 7:00 p.m. He asked Councilor Nancy Caviness to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston noted that Town Manager Layton was running late and suggested the following agenda items be moved up on the agenda: New Business C, Town Attorney Presentation, Departmental Activities, Mayor's Agenda, and Council Member's Agenda. It was *consensus* of Council to move the items up.

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.

CONSENT AGENDA

Minutes from the March 20, 2019, Mid-Month Meeting; Minutes from the April 3, 2019, Regular Meeting; Authorize the Town Manager to Execute a Contract Renewal with CrowderGulf for Debris Management/Removal Services

Councilor Britt moved to approve the consent agenda as presented.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 19-03, an Ordinance Adding Criteria for Approval of Conditional Use Permits

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that Council had a recommendation before them from the Planning Board regarding a text amendment with the intent being to establish more detailed criteria for the approval of conditional use permits. He stated that currently, the criteria in the ordinance was very basic and general. He stated that the Town attorneys were recommending that the Town take a look at adding a little more meat and general criteria so that as Council was evaluating those types of applications, Council and the applicant would understand what Council was looking for generally.

Director Heard stated that the proposed standards and criteria that were outlined in the Planning Board's recommendation were criteria that was recommended by the Town attorneys and were criteria that have existed for many years in many other communities throughout the state and have similar types of statements. He added that staff felt comfortable that these were fairly tried and true and would stand up to any legal challenge.

Director Heard stated that at their April 10, 2019 meeting, the Planning Board voted unanimously to recommend approval of the ordinance. He noted that the ordinance as well as full sections as to how it would work would be part of the approval process.

Mayor Pro Tempore Thibodeau asked if was possible to give an example of how the Town may implement something like this. She noted that it was something that has been discussed for a while and adding a little more direction. She added that when she read the draft, it didn't seem too much more detailed. She asked for a loose example. Director Heard stated that it came up as part of the Town attorneys' review of the Village Commercial Development Option and as it was a conditional use, that was how the issue came up. He explained that the reason it came up was because a lot of the more recent case law, when people have challenged conditional use permits that were denied, if the ordinance does not give reasons why, all the person has to do is show that they met the very limited criteria in the ordinance. He noted that presently, it was very limited and if the person could convince a judge that they have met that one criterion, then the judge may find in their favor and overrule the decision that was made. He added that by adding the additional things, it gives Council more to hang their hats on.

Director Heard stated that the way it would work would be that when staff prepares a staff report, they would identify the criteria and put in the reasons why they think it meets it or not and the Planning Board would also make that part of their recommendation as to whether they feel it meets it or not. He stated that if Council decided to deny the ordinance or approve it and someone challenges it from the other direction, it would give Council firmer legs to stand on as it moves forward. He added that the way it may work as far as endangering public health or safety, Council could look to the ordinance and agree that it would endanger public health and safety and therefore, they could

recommend against it. Mayor Pro Tempore Thibodeau clarified that it would give reasons to hang Council's decision on, point by point. Director Heard agreed, adding that they were still fairly general, but the more specific the Town gets, the more it ties Council's hands. He stated that at some point if Council wished, staff can come up with things that were more detailed and specific but felt that this was more a first step that gave Council something to work with while still allowing them to make their decision and keeping it fairly flexible.

Town Attorney Hobbs noted that these were items that were set forth and approved by North Carolina case law. He stated that Item #3 which dealt with the injuring the value of property, if a sworn witness came in and brought in an expert such as an appraiser who gave Council evidence regarding substantial diminishment or reduction of value of an adjoining property, then Council could potentially look at it and consider it as far as whether Item #3 was met or not. He added that if Council was satisfied that the evidence presented was correct and it substantially injured the value based on expert testimony, Council may find that Item #3 has not been met, then it would be criteria for not approving it.

Councilor Burdick understood that they were the general criteria that were being used today. Town Attorney Hobbs stated he was correct. Councilor Burdick clarified that they were sufficient in that they help avoid legal challenges. Town Attorney Hobbs stated he was correct, if they were properly utilized. He added that Council was still ultimately making the decisions on the four criteria based on sworn evidence presented during quasi-judicial hearings and it was up to Council to decide what was credible and what wasn't and then make a decision based on those criteria.

Councilor Britt stated that Council was looking at taking the Village Commercial Development Option and making it a special exception as part of this ongoing process. He asked how it would affect it, especially when the use has to meet all of the required specifications and conditions of the ordinance because the Village Commercial Development Option tended to be more flexible. Director Heard stated that with the Village Commercial Development Option, Council were changing the standards for that individual development proposal. He added that they would be complying with the standards for it and it would not end up being in conflict. Town Attorney Hobbs noted it was a list for conditional use permits and the special exceptions would be reclassified as such would fall under a different set of criteria.

Councilor Burdick understood that if Council did that, the criteria would also be used for special exceptions. Councilor Britt noted that it did say that and wasn't just for conditional use permits. Director Heard stated that most of the special exceptions that Council ends up reviewing have specific criteria depending on what the request was. He added that there were other things and not just what was in that section that it would apply to.

Councilor Caviness moved to authorize a public hearing for Ordinance 19-03 for June 5, 2019 as presented.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had no report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

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

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

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

Public Relations Administrative Assistant Betsy Trimble was recognized to speak. Public Relations Assistant Trimble gave a brief overview of upcoming activities to Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that he has his mayors meeting on May 21, 2019 in Southern Shores. He stated that he and Town Manager Layton attended the stormwater management meeting on April 26, 2019 in Kill Devil Hills with the mayors and managers present from the other towns. He noted that Jerry Jennings and Alan Moran from the North Carolina Department of Transportation joined in the meetings. He added that each town went through their respective issues with the Town of Duck's not being as significant as some of the other towns where they have swales and culverts as well as significant flooding. He stated that Mr. Jennings and Mr. Moran took a lot of notes and were very responsive but have limited funds for repairs and maintenance as well as new construction as they service approximately 14 counties. He stated that it was a very productive meeting and he thought the Town's main issue was cleaning out some of the culverts to help with the flooding in the northern end of Duck.

Mayor Kingston stated that he was invited to attend the Dare County Board of Commissioners meeting on May 7, 2019 along with the other towns and Dare County to accept an award on beach nourishment from the American Shore and Beach Preservation Association. He stated that he has several North Carolina League of Municipality

activities coming up – the finance meeting on Monday, May 6, 2019 to review the preliminary budget and a board meeting in Hickory on May 14, 2019 followed by the annual conference of CityVision 2019 on May 15-16, 2019. He stated that he was invited to a mayor’s roundtable with North Carolina Department of Environmental Quality. He noted that Town Manager Layton would be attending as an observer to discuss offshore drilling and seismic testing. He stated that he was quoted in an article in the Outer Banks Sentinel regarding the Mid-Currituck Bridge.

COUNCIL MEMBER’S AGENDA

Mayor Pro Tempore Thibodeau gave an update on the Government Access Channel meeting.

Councilor Burdick gave an update on the recent Tourism Board meeting.

Councilor Caviness thanked Public Safety for their active shooter training that was held recently. She thanked the audience for their help back when the Town incorporated.

Councilor Britt echoed Councilor Caviness’ comments and added that Deputy Fire Chief Walker will be missed after he retires.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Presentation of Proposed FY 2020 Budget

Mayor Kingston recognized Town Manager Layton.

Town Manager Layton gave a presentation on the proposed Fiscal Year 2020 Budget to Council and the audience, noting that he was not proposing a tax increase. He then handed out the proposed Fiscal Year 2020 budget.

Mayor Kingston thanked Town Manager Layton for his presentation.

NEW BUSINESS

Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with Stewart for Services Related to the Town of Duck Comprehensive Plan and CAMA Land Use Plan

Town Manager Layton stated that the Town was beginning the process of updating the CAMA Land Use Plan. He explained that after reviewing the qualifications submitted by six consulting firms and interviewing four of them, staff found Stewart to be the consultant that was best suited to facilitate the planning process and prepare an updated land use plan for the Town. He stated that the contract contained a scope of services and tentative schedule for the planning process with the total cost to the Town for the planning consulting services at \$55,810. He added that if approved by Council, a budget

amendment would be prepared for the June 5, 2019 Council meeting which would appropriate an additional \$15,810 to the budget to cover the costs of the contract.

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

Motion carried 5-0.

Appointments to the CAMA Land Use Plan Advisory Committee

Mayor Kingston stated that as part of the process for the CAMA Land Use Plan was to establish an advisory committee which Council authorized a couple months ago. He stated that the committee would consist of one member of Town Council, one member from the Planning Board, one member from the Board of Adjustment, one member from the Duck Merchants Association, one member from the Neighborhood Association, and two at-large members.

Mayor Kingston nominated Councilor Caviness as the representative from Town Council.

Mayor Pro Tempore Thibodeau nominated Councilor Britt as the representative from Town Council.

Motion carried 3-2 with Councilor Jon Britt being appointed.

Mayor Kingston stated that there were two nominations from the Planning Board and Board of Adjustment. He felt that there should be one recommendation from each board instead of having Council select an individual.

Mayor Pro Tempore Thibodeau clarified that the Planning Board and Board of Adjustment would come forward with a recommendation from their respective boards. Mayor Kingston stated she was correct and would be his recommendation. Mayor Pro Tempore Thibodeau thought it was a good idea.

Councilor Burdick clarified that Council wanted one representative from the Planning Board and Board of Adjustment. Mayor Kingston stated that each board submitted two names, which put Council in the position of having to choose from two very qualified individuals from each board. He stated that he wanted to ask the two boards to come back with one individual. Councilor Burdick understood and asked if there was any reason why there needed to be just one from each board. He thought that if both individuals wanted to serve, they should be allowed. Mayor Kingston thought the Town's resolution already assigned the number of individuals from each board. Councilor Burdick understood but wondered if it made any difference.

Town Manager Layton stated that it was ultimately up to how Council wish to make up the committee. He added that there was no reason why the resolution could not be

changed. Councilor Burdick thought that if there were two people from each board that were willing to serve, they should be able to it. Mayor Kingston stated that he had no objection and if that was the case, he wished to add two Council members instead of one.

Mayor Pro Tempore Thibodeau agreed, adding that it would be up to the consultant to corral the multitude of members. Town Manager Layton agreed, noting that the resolution was the creation of Council's and if they wished to change that, he suggested that an amended resolution be brought back to Council for their approval.

Town Attorney Hobbs stated that the resolution pointed out who would be appointed, adding that Council made that decision. He stated that if the Planning Board wanted to put multiple people up, Council could still pick one person. Mayor Pro Tempore Thibodeau thought it could be expanded. Mayor Kingston stated that Council was wanting to expand it by two members. Town Attorney Hobbs thought if Council wanted to expand it, the resolution would need to be amended.

Councilor Burdick stated that he liked it because it was a long-term project and there would be the likelihood of a representative not being able to attend all of the meetings constantly, which could be problematic. He didn't have a problem with having multiple people from Council and thought it was a good idea. Mayor Pro Tempore Thibodeau agreed.

Councilor Burdick moved to amend Resolution 18-09 to appoint the following members: two from Town Council, two from the Planning Board and two from the Board of Adjustment.

Councilor Burdick asked how many individuals should be appointed from the Duck Merchants Association. Councilor Caviness stated that it should be one. Councilor Burdick recommended two individuals from the neighborhood association and then the two at-large members. Mayor Pro Tempore Thibodeau thought that Jeff Shields was the representative from the neighborhood association and should remain as one.

Mayor Kingston asked for guidance with regard to changing the numbers in the resolution. Town Attorney Hobbs stated that it was Council's discretion. Mayor Kingston asked if the resolution could be changed without Council seeing it. Town Attorney Hobbs stated that Council was only increasing the number of members on the committee and allocating the increase between the Council, Planning Board and Board of Adjustment.

Motion carried 5-0.

Councilor Burdick moved to appoint Councilor Caviness and Councilor Britt as the Town Council representatives.

Motion carried 5-0.

Councilor Caviness moved to appoint Sandy Whitman and James Cofield as the Planning Board representatives.

Motion carried 5-0.

Councilor Burdick moved to appoint Ed Sadler and Kent Zimmerman as the Board of Adjustment representatives.

Motion carried 5-0.

Councilor Caviness moved to appoint Leigh Raskin as the Duck Merchants Association representative.

Motion carried 5-0.

Councilor Caviness moved to appoint Jeff Shields as the Neighborhood Association representative.

Motion carried 5-0.

Councilor Burdick moved to appoint Douglas Brook as the part-time at-large representative. Councilor Caviness moved to appoint Henry Blaha as the full-time at-large representative.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Public Safety Building

Town Manager Layton stated the period for comments has closed with only two comments received from other agencies, none of which were of any significance. He stated that the consultants were now working on answering questions as to why additional land is needed and why it was the best solution to the property. He stated that once that was completed, they will be moving forward in the process for the environmental assessment.

Financial Statement for month of April for FY 2019

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

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 asked if the resolution that was amended would need to come back to Council at their next meeting. Town Attorney Hobbs stated that it could be added as part of the minutes.

Mayor Kingston noted that the next meeting will be the Mid-Month Meeting on Wednesday, May 22, 2019 at 1:00 p.m.


ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:42 p.m.


Lori A. Ackerman, Town Clerk

Approved: June 5, 2019

Don Kingston, Mayor

