

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
May 2, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, May 2, 2018.

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

COUNCIL MEMBERS ABSENT: Mayor Don Kingston.

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

OTHERS ABSENT: Fire Chief Donna Black.

Mayor Pro Tempore Thibodeau called the meeting to order at 7:04 p.m. She asked Deputy Fire Chief Bill Walker to lead the Pledge of Allegiance. Mayor Pro Tempore Thibodeau led the moment of silence.

**PUBLIC COMMENTS**

Mayor Pro Tempore Thibodeau opened the floor for public comments. She asked that any comments regarding the public hearing be held off.

Diane Denny of the Outer Banks Dementia Task Force was recognized to speak. Ms. Denny gave a short presentation on what the Task Force does to Council and the audience.

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

**CONSENT AGENDA**

**Minutes from the April 4, 2018, Regular Meeting and Minutes from the April 18, 2018, Mid-Month Meeting**

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 4-0.

## **SPECIAL PRESENTATIONS**

### **Employee Service Recognition Program Recipient**

Town Manager Christopher Layton was recognized to speak. Town Manager Layton presented Town Clerk Lori Ackerman with her 15-year service recognition certificate and \$150 gift certificate.

## **PUBLIC HEARINGS**

### **Public Hearing/Discussion/Consideration of CUP 18-005, an Application for a Conditional Use Permit to Establish an Ice Cream Shop (Eating Establishment) in the Southern End Unit of the Loblolly Pines Shopping Center at 1187 Duck Road**

Mayor Pro Tempore Thibodeau turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

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

**The following persons were sworn to provide testimony during the hearing: Joe Heard, Rupert Gunnell and Keith Cummings.**

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

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant was requesting a conditional use permit to add an ice cream shop in the southern end unit in the Loblolly Pines shopping center at 1187 Duck Road. He pointed out that in order to accommodate the parking requirements for the proposed use, Pizzazz Pizza will remove two seats from its restaurant and the existing ice cream shop will cease operating as part of this arrangement, with the former ice cream shop converted to retail use for Pizzazz Pizza.

Director Heard explained that the development currently contained 44 legitimate parking spaces and the amount of parking on the site was presently nonconforming. He stated that the proposal could not increase the amount of parking required on the site. He added that the proposed change of use from retail to an eating establishment alters the parking

calculations. He pointed out that the prior retail use required a minimum of 4.5 parking spaces and the proposed eating establishment requires a minimum of five parking spaces. He stated that in order to offset the increase, the owner of Pizzazz Pizza has proposed to remove two seats from the restaurant, which would reduce the overall amount of parking.

Director Heard stated that the site requires two handicap accessible parking spaces and the applicant has installed them, which makes it comply fully with one of the conditions that the Planning Board had recommended.

Director Heard stated that the Planning Board reviewed the application at their April 11, 2018 meeting and recommended approval, subject to the following conditions:

1. Two ADA compliant parking spaces must be designated and marked in the shopping center.
2. The Building Inspector and Fire Department must review and approve the proposed improvements for compliance with applicable codes.
3. Any new signage must be reviewed and approved under a separate permit by the Community Development Department.
4. This conditional use permit will expire in 12 months from the date of approval if the approved change of use has not been initiated.

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

Town Attorney Hobbs asked the applicant to make a presentation. There was none.

Town Attorney Hobbs asked Council if they had questions for the applicant. There were none.

Town Attorney Hobbs asked if any of the sworn witnesses wished to give a presentation or comment on the application. There were none.

Town Attorney Hobbs asked if anyone wished to address the application. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Pro Tempore Thibodeau. He reminded Council that a vote of the majority – three Council members – would be needed to approve the application. He added that if Council adopted the approval, they would need to include specific findings and conditions.

Councilor Burdick moved to approve CUP 18-005 as presented, with the conditions set forth by the Planning Board.

Motion carried 4-0.

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

## Update on Duck Village Pedestrian Improvements

Town Manager Layton stated that the pedestrian plan improvements first phase was coming along nicely. He noted that there were two things that were still outstanding that will be addressed over the next few weeks.

Director Heard stated that Barnhill Contracting was almost finished with the project. He stated that there were three different contractors that would be working over the next week or two to get the project finished. He explained that staff had a walk through with Barnhill Contracting on April 26, 2018 along with VHB to look at the different aspects of the project and developed a punch list of at least three dozen items. He stated that Barnhill has completed just about all of the items, with the only things left were working with Kelloggs Hardware on the new islands so vehicles could drive over them. He added that the intersection with Duck Ridge Village Court had issues with regard to making a smooth transition across the intersection. He explained that they had to get it graded just so for the drainage so there would not be any standing water.

Director Heard stated that Barnhill completed a significant redo in front of Scarborough Lane as there were some drainage concerns in that area. He stated that there was a very positive conversation about it and a good solution was achieved.

Director Heard stated that Liquid Lawns would be coming in behind Barnhill Contracting to work on the irrigation repair work associated with the project. He stated that they were also working for the Town in planting the hydroseed on the east side of the sidewalk to stabilize the new soil.

Director Heard stated that Coinjock Lawn Care would be coming in after Liquid Lawns to install all of the plantings that would be put in between the bike lane and the sidewalk as well as the new medians that were installed.

Director Heard stated that a subcontractor of Barnhill Contracting would be coming in to put in the crosswalk striping and other markings. He noted that he did not have a date when that would begin, but that it would be in the short term. He added that there were several crosswalks that would be shifted and re-oriented. He stated that the bike lane markings on the east side of Duck Road would be done and the west side would be done next year. He stated that there will be crosswalks installed across intersections as well as the area near Aqua Restaurant so people will know to stay on the path.

Town Manager Layton stated that staff has reached out to Dominion Power regarding the transformers and as of the last correspondence, they were unable to tell staff when their contractors will come to Town to finish that.

Director Heard stated that the ramp that leads up to the crosswalk by Sunset Bar and Grill will shift over to line up with crosswalk.

Mayor Pro Tempore Thibodeau asked how long it would take for Coinjock Lawn Care to complete the plantings. Director Heard stated that he wasn't sure, but noted that all of the materials were in Town ready to go.

Councilor Burdick noted that the project was supposed to be done by the end of May. Town Manager Layton agreed, adding that the contract with Barnhill states that they have to be completed by May 15, 2018. He added that Coinjock Lawn Care has more flexibility since they were relying on Barnhill being completed. He thought it would be a matter of weeks to get the plants in. Councilor Burdick thought it would be nice to have things finished by Memorial Day weekend. Town Manager Layton stated that staff expected the plantings to be installed before that weekend.

Director Heard stated that Coinjock Lawn Care would be watering the plants regularly, particularly during the first month. He pointed out that all plants were guaranteed for one year. Councilor Burdick asked what plants would be installed. Director Heard stated that there would be a variety of lower type plants such as decorative grasses and small shrubs.

Mayor Pro Tempore Thibodeau stated that dealing with Barnhill Contracting and the subcontractors has been great. She added that they have been good communicators and have taken full responsibility for getting things the way they should be. She thought the Town was lucky to have them.

**Discussion/Consideration of Ordinance 18-05, Amending the Peddlers and Vendors Ordinance by Allowing the Dissemination of Religious Messages and Materials**

Town Manager Layton stated that staff framed the ordinance like they would have with any other issue that would go before the Planning Board, even though this ordinance did not go before the Planning Board. He stated that staff wanted Council to have a chance to look at it. He stated that there was a very simple change to the ordinance, which was one that a lot of people would suggest that it be made. He stated that Council was welcome to adopt the ordinance now or it could be brought back if Council wished to hold a public hearing on it.

Town Manager Layton stated that the Town's existing peddlers and itinerant merchants ordinance has a provision that would not allow a religious group to hand out flyers or otherwise act as a peddler. He added that it came to a head when the Town had Jehovah's Witnesses on the boardwalk handing out flyers. He explained that under the ordinance, staff asked the group to cease what they were doing, which they did; however, after several inquiries from local Jehovah's Witnesses, staff received a letter from the Jehovah's Witnesses headquarters in New York that stated that they felt that the Town's existing ordinance was unconstitutional. He stated that it was run by the Town's attorney and found that they were correct.

Town Manager Layton stated that staff communicated back to the Jehovah's Witnesses that they were in agreement that the ordinance was unconstitutional and would amend the ordinance. He thought that at this point, there wasn't much the Town could do from a

legislative perspective, so staff drafted an exemption that would allow the activity of Jehovah's Witnesses handing out flyers in Town.

Mayor Pro Tempore Thibodeau asked if the revised language would satisfy the constitutionality's. Town Attorney Hobbs stated that it would.

Councilor Burdick moved to adopt Ordinance 18-05 as presented.

Motion carried 4-0.

### **NEW BUSINESS**

There was no New Business to discuss.

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

Town Attorney Hobbs stated he had no report.

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

#### **Update on Departmental Activities**

Deputy Fire Chief Bill 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.

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

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

Director of Public Information, Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of the past month's activities to Council and the audience.

#### **Update on the Town of Duck Beach Nourishment Project**

Town Manager Layton stated that the final invoices were still being worked through so the project was not closed out yet. He stated that all of the towns have been given the draft report of the completed project, which was required by the permit, and it contained some of the information of what the post-construction surveys will look like. He noted that this was all before the recent storms. He added that he reviewed the draft report and approved it; once it was approved by the other towns, staff will get it on the Town's website so the public can look at it. He noted that the general conclusion for all towns

was that the project was constructed correctly and it was equilibrating the way it was expected.

### **Financial Statement for April FY 2018**

Town Manager Layton reviewed the financial statements, beach activities and beach nourishment reports with Council and the audience.

### **MAYOR'S AGENDA**

Mayor Pro Tempore Thibodeau stated that Mayor Kingston would be attending the monthly mayors meeting on May 15, 2018 in Manteo. She stated that he and Town Manager Layton attended a meeting with the other towns and Dare County on April 5, 2018 to discuss the status of beach nourishment. She stated that he wanted to thank Town Clerk Ackerman for assisting him in preparing for the NCLM finance meeting on April 26, 2018 as well as the NCLM board meeting he was attending in Asheville. She stated that he wanted to wish the Town a happy 16<sup>th</sup> birthday of incorporation.

### **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau congratulated Town Clerk Ackerman for all she does for the Town. She stated that she was looking forward to summer arriving and all of the great upcoming events in Duck.

Councilor Burdick stated that Director Heard attended the Albemarle Regional Planning Organization meeting in April. He stated that he was unable to attend, but thought Director Heard represented the Town well.

Councilor Caviness reminded everyone that May 10, 2018 was the annual tourism summit at Koru Village.

Councilor Britt stated that he had participated in the recent sound front cleanup, which was great. He congratulated Councilor Caviness for finishing her 15<sup>th</sup> marathon. He stated that he was looking forward to summer.

### **OTHER BUSINESS**

#### **Additional Public Comments**

Mayor Pro Tempore Thibodeau opened the floor for public comments.

Bob Fitchett of 113 Cofield Court was recognized to speak. Mr. Fitchett stated that he moved to Duck 17 years ago and watched the Town grow from the very beginning, remembering all of the original Council members. He stated that Town Manager Layton has found some amazing grants for the Town in order to save money. He added that the boardwalk has been an amazing accomplishment.

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

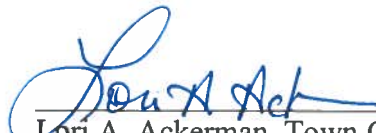
Mayor Pro Tempore Thibodeau noted that the next meeting will be the mid-month meeting on Wednesday, May 16, 2018 at 1:00 p.m.

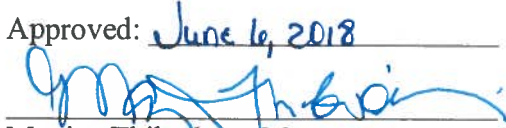
**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 4-0.

The time was 8:31 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: June 16, 2018  
  
Monica Thibodeau, Mayor Pro Tempore

