

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
June 1, 2016**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, June 1, 2016.

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

**COUNCIL MEMBERS ABSENT:** Mayor Don Kingston.

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

**OTHERS ABSENT:** None.

Mayor Pro Tempore Thibodeau called the meeting to order at 7:02 p.m. She noted that Mayor Don Kingston was away on a family trip. She asked Police Officer Chuck Edwards 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.

Police Chief John Cueto was recognized to speak. Police Chief Cueto went on to present Officer Chuck Edwards with his Advanced Law Enforcement Certificate.

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to introduce the Town's newest full-time firefighter – Brandon Boyd – 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 20, 2016, Mid-Month Meeting; Minutes from the May 4, 2016, Regular Meeting; Minutes from the May 4, 2016, Reconvened Meeting; and Budget Amendments**

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 4-0.

**PUBLIC HEARINGS**

**Public Hearing/Discussion/Consideration of Proposed FY 2017 Budget**

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the public hearing was open. He asked if anyone wished to comment on the proposed budget. There being no one wishing to speak, he closed the public hearing and turned the meeting back over to Mayor Pro Tempore Thibodeau.

Councilor Burdick moved to adopt the Fiscal Year 2016-2017 budget ordinance as presented.

Motion carried 4-0.

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

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance 16-04, a Text Amendment Proposal to Amend Section 156.040 of the Zoning Ordinance by Establishing a Table Listing Permitted and Prohibited Land Uses and Making Associated Changes in Zoning District Standards**

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that at Council's April 6, 2016 meeting, the Planning Board was requested to address concerns about how to deal with particular land uses identified by the Council members in the proposed permitted/prohibited use table. He stated that the Planning Board completed its review of these issues and recommended amendments to the applicable sections of the Zoning Ordinance as well as adoption of a table of permitted and prohibited uses included as part of Section 156.040. He noted that the proposed Section 156.040 provided guidelines for using and interpreting the use table. He recommended that Council authorize a public hearing for their July 6, 2016 meeting.

Councilor Britt moved to authorize a public hearing on Ordinance 16-04 at the July 6, 2016 Council meeting, as presented.

Motion carried 4-0.

**NEW BUSINESS**

**Discussion/Consideration of Ordinance 16-03, an Ordinance Amending Ordinance 15-08, a Capital Project Ordinance for the Town of Duck, North Carolina**

Town Manager Christopher Layton was recognized to speak. Town Manager Layton stated that as part of the FY 2016 budget, Council approved Ordinance 15-08, a Capital Project Ordinance for the Town of Duck. He explained that the capital project ordinance was related to the Town's beach nourishment project. He added that with bids for the project received and project costs more clearly defined, it was necessary to amend the original ordinance with the revised project costs and Ordinance 16-03 would implement those changes.

Councilor Burdick asked if there was a way that the Town could put a set of limits that would allow the ordinance to go forward so Council would not have to keep amending it due to minor changes as long as the total was within one percent. Town Attorney Hobbs believed that the ordinance gave discretion for the Manager. He added that he wasn't sure that this ordinance did. Town Manager Layton stated that it did not include that specific discretion like in a budget ordinance. He added that, at this point, he didn't expect it to come back. He stated that there was contingency within the construction so there should be enough to get at the one percent change. He stated that anything beyond that would exceed the revenues. He thought the numbers in the ordinance were solid and he didn't anticipate bringing it back, but it was possible.

Councilor Burdick stated that he was looking at it from a standpoint of minor changes and if there was discretion. He asked how much contingency was in it. Town Manager Layton stated that he would have to look at the breakdown but added that there was enough contingency money in there that he would feel comfortable on the construction side.

Councilor Burdick moved to adopt Ordinance 16-03 as presented.

Motion carried 4-0.

**Discussion/Consideration of Resolution 16-06, a Resolution of the Town Council of the Town of Duck, North Carolina, Amending the Previously Adopted Policy Related to Fund Balance**

Town Manager Layton stated that at Council's May 18, 2016 meeting, there was discussion about the Town's fund balance policy and how it related to the current Town finances. He explained that the current policy stated that the Town would seek to attain an unassigned fund balance of 75 – 100% of the Town's previous year's General Fund Expenditures. He stated that since the Town's overall budget increased since the initial adoption of the policy, it has become increasingly difficult to attain the goal of the policy even though the unassigned portion of the Town's General Fund balance continues to increase. He noted that the draft policy changes the requirement of fund balance to be maintained from 75 – 100% of unassigned General Fund balance to total General Fund balance, while stipulating that 50% or more of the total fund shall be unassigned. He pointed out that the intent of the change was to balance the need of the Town to have a healthy, liquid General Fund balance, while ensuring that the actual amount of the General Fund wasn't excessive.

Mayor Pro Tempore Thibodeau asked what would be considered as assigned fund balance. Town Manager Layton stated that the Town has a separate fund for beach nourishment, which is not spent. He added that that fund could not have a fund balance and the Town could not spend the money for anything but beach nourishment.

Councilor Burdick moved to adopt Resolution 16-06 as presented.

Motion carried 4-0.

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

Town Attorney Hobbs stated that Town Manager Layton had handed out to Council a summary of the *Nies v. Town of Emerald Isle* case. He explained that the case was a lawsuit by individual oceanfront property owners against the Town of Emerald Isle challenging regulations and other matters relating to public use of the dry sand beach. He stated that the Carteret County Trial Court ruled in the Town's favor as did the North Carolina Court of Appeals.

Town Attorney Hobbs stated that the plaintiffs appealed to the North Carolina Supreme Court and the Court granted a discretionary refute and were now receiving praise from the two litigants and any parties that wish to file an amicus brief. He stated that the Town Manager for Emerald Isle has reached out to his counterparts around the coast to see if they would be interested in filing an amicus brief supporting the ruling of the Court of Appeals.

Town Attorney Hobbs noted that he had attended the Town of Nags Head's Board of Commissioners meeting earlier in the day and they approved a motion to file an amicus brief in this case, supporting the Town of Emerald Isle's position. He added that in discussing the issue with his law partner, Ben Gallop, he's been discussing with Emerald Isle's attorney the possibility that the law firm may be writing an amicus brief which would be then be signed by whatever towns and counties wished to sign on for support. He stated that the Town of Nags Head would be on it along with any other town that wished to sign on with them.

Town Attorney Hobbs asked if the Town of Duck wished to sign on with the amicus brief as well as to support the Town of Emerald Isle's position in regard to public trust rights in the dry sand beach area. He stated that the more towns and counties involved in an amicus brief, the lower the cost for each local government. He thought the Town of Nags Head approved an expenditure of up to \$2,000.

Town Manager Layton explained that the Town Manager of Emerald Isle contacted him earlier in the day to ask if Duck would be interested in signing on with an amicus brief and if Duck would be willing to pledge an amount of money, up to \$2,000, towards the development of the amicus brief.

Mayor Pro Tempore Thibodeau moved to have the Town of Duck agree to join in on the amicus brief and pledge up to \$2,000 to help support it.

Councilors Burdick and Britt stated that they would support it. Councilor Caviness asked if the Town Manager of Emerald Isle reached out to every coastal town. Town Manager Layton stated that he had. Councilor Caviness asked if it was anticipated that most of the coastal towns and counties would support it. Town Manager Layton thought they would.

Councilor Burdick asked if it was a national issue. Town Attorney Hobbs stated that it was governed by state law so it was not a national issue, but state by state.

Motion carried 4-0.

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

### **Update on Departmental Activities**

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

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

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

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

### **Update on Beach Nourishment Project**

Town Manager Layton stated that Council had in their packets the final letter from CP&E regarding the Town's monitoring report. He stated that the other item was a contract with Dare County and CP&E for the project management. He explained that this is where some of the costs for the actual construction management would be.

Town Manager Layton stated that the Town obtained the permit from the Army Corps of Engineers and were about to sign off on the BOEM lease agreement for the borrow area. He stated that the next milestone will be LGC approval and closing on the special obligation bonds for Duck's share of the funding. He stated that he was not aware of any issues and the LGC should meet and approve it, with the closing scheduled for June 10, 2016.

Town Manager Layton stated that he had discussions with PNC Bank and each town will have its own account for the funding. He stated that once it's received, it would be put in a money market when the funds could be invested.

### **Financial Statement for May FY 2016**

Town Manager Layton stated that he did not have the financial statements yet. He went on to review the beach activities report with Council and the audience.

### **MAYOR'S AGENDA**

Mayor Pro Tempore Thibodeau stated that she appreciated the Duck Fire 101 presentation by Fire Chief Black. She thought it captured a lot of good information regarding what people should be thinking about as the Outer Banks heads into hurricane season. She stated that she attended the hurricane conference recently at the Nags Head Fire Department and found it very informative. She noted that Dare Days was happening on June 4, 2016 in Manteo.

### **COUNCIL MEMBERS' AGENDA**

Councilor Burdick congratulated Town Manager Layton on an excellent budget. He noted that he will be out of town for two weeks.

Councilor Caviness stated she had nothing to report.

Councilor Britt stated he had nothing to report.

### **CLOSED SESSION**

Councilor Caviness moved to enter into closed session to establish or instruct staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease of real property located at 101 Scarborough Lane and 103 Scarborough Lane, Duck, North Carolina, owner of record by Larry Herron et al for any public purpose.

Motion carried 4-0.

The time was 8:57 p.m.

Upon return from Closed Session, Mayor Pro Tempore Thibodeau noted that the next meeting would be the regular meeting on Wednesday, July 6, 2016 at 7:00 p.m.

### **OTHER BUSINESS**

#### **Additional Public Comments**

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


**ADJOURNMENT**

Councilor Caviness moved to adjourn the meeting.

Motion carried 4-0.

The time was 9:38 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: July 6, 2016  
  
Monica Thibodeau, Mayor Pro Tempore

