

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
August 5, 2015**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, August 5, 2014.

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

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Police First Sergeant Jeffrey Ackerman; Police Sergeant Melissa Clark; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Public Information Officer Denise Walsh; Administrative Assistant Bethany Conery; and Town Clerk Lori Kopec.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:03 p.m. He asked Police Chief John Cueto to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments.

Town Manager Christopher Layton was recognized to speak. Town Manager Layton went on to introduce the Town's newest Police Chief, John Cueto, to Council and the audience.

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

CONSENT AGENDA

Minutes from the July 1, 2015, Regular Meeting

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Residential and Commercial Solid Waste and Recycling Contracts: Contract for Residential and Commercial Solid Waste and Commercial Recycling Collection and Disposal with Waste Management of Virginia, Inc. and Contract for Residential Recycling Collection and Disposal with Tidewater Fiber Corp

Town Manager Layton stated that he was authorized in July by the Council to prepare contracts with Waste Management of Virginia, Inc. for residential and solid waste and commercial recycling collection and disposal, as well as with Tidewater Fiber Corp for residential recycling collection and disposal. He stated that staff had previously solicited proposals from Waste

Management and Bay Disposal for residential and commercial solid waste and recycling services and from Tidewater Fiber Corp for residential recycling services. He noted that Tidewater Fiber Corp proposed the lowest cost for residential recycling service and Waste Management proposed the lowest cost for residential and commercial solid waste and bulk waste collection services. He added that Bay Disposal proposed the lowest cost for commercial recycling services. He stated that without residential recycling, the proposal from Waste Management was \$149,063 lower than the Bay Disposal proposal for residential and commercial solid waste and commercial recycling collection and disposal. He stated that as part of the new contract, Waste Management has offered to provide the Town up to two hundred 96 gallon replacement trash cans per year free of charge, effective October 1, 2015. He recommended that Council authorize him to execute a contract with Waste Management of Virginia, Inc. and Tidewater Fiber Corp. He added that they were both for five year terms, expiring on September 30, 2020.

Mayor Kingston moved to authorize the Town Manager to execute a contract with Waste Management of Virginia, Inc. for residential and commercial solid waste and commercial recycling collection and disposal and also to execute a contract with Tidewater Fiber Corp for residential recycling collection and disposal, as presented.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Resolution 15-06, a Resolution of the Town Council of the Town of Duck, North Carolina, Approving Financing Terms with Branch Banking and Trust Company for the Purchase of Five Town Vehicles

Town Manager Layton stated that First Sergeant Jeff Ackerman completed all of the work on the vehicle financing. He added that as part of the approved FY 2016 CIP, it included five vehicles that were slated for replacement this year. He stated that one vehicle was for Building Inspector Cory Tate, one was for Fire Chief Donna Black and the other three were for the Police Department. He stated that staff was seeking permission to purchase the vehicles through installment purchase financing and were recommending BB&T as they had the lowest rate with no fees associated with the loan. He reminded Council that the way the replacement of vehicles was achieved was to focus on the debt payment and cycle the purchases so that the Town never exceeded a certain amount. He stated that for this year, the Town was paying the last payments on the vehicles and the radios, as well as for the last set of vehicles. He explained that the overlap was due to one loan for a five year term and the other for a three year term.

First Sergeant Jeff Ackerman was recognized to speak. First Sergeant Ackerman stated that the vehicles to be purchased included three police package Ford Explorers, one Ford F150 and one Chevrolet Tahoe or Ford Expedition. He added that the estimated cost of the vehicles, including outfitting, was \$204,500. He stated that in preparation for the purchase of the vehicles, he solicited bids from five financial institutions to issue debt in this amount for a three year term. He added that the Town received proposals from three institutions, BB&T, Sun Trust and PNC Bank. He noted that BB&T had the best rate of 1.81% with no fees, followed by Sun Trust at 2.04% and a \$350 fee and PNC Bank at 2.65% and a \$250 fee. He recommended that the Town enter into an agreement with BB&T for the installment purchase agreement for the purchase of the five vehicles.

Mayor Kingston asked if the new police vehicles would have the mobile data terminals. First Sergeant Ackerman stated that they would. Mayor Kingston asked if there was anything that

would need to be added to the vehicles. First Sergeant Ackerman stated that the vehicles will be equipped with everything needed.

Mayor Pro Tempore Thibodeau asked if payments on the Chevrolet Tahoe would start once it's delivered. First Sergeant Ackerman stated that the money would be put in an escrow account and as the vehicles are delivered, they would be paid from the escrow account. He noted that the first payment was not due until Fiscal Year 2017.

Councilor Burdick moved to adopt Resolution 15-06 as presented.

Motion carried 5-0.

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 15-11, an Ordinance Eliminating a Requirement that Outdoor Dining Areas cannot be Located in Septic Areas in the Zoning Ordinance of the Town of Duck, North Carolina

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that Ron and Ken Forlano submitted a request to amend Subsection 156.129(C)(5) of the Zoning Ordinance by eliminating a requirement that outdoor dining areas cannot be located in septic areas. He noted that if the ordinance was adopted, the proposed text amendment would be a change to the zoning ordinance and would apply to every restaurant in Town, not only the Duck Deli property that Ron and Ken Forlano own. He stated that the Planning Board recommended approval of the proposed text amendment and staff was recommending approval as well.

Councilor Caviness moved to authorize a public hearing on Ordinance 15-11 at Council's September 2, 2015 meeting, as presented.

Motion carried 5-0.

Discussion/Consideration of Referring the Following Items to the Planning Board for Recommendation:

Amending the Town's Existing Zoning Ordinances to Incorporate Changes Required by the Passage of Senate Bill 25, Zoning/Design & Aesthetic Controls

Director Heard stated that, after consulting with Town Attorney Hobbs, who in turn consulted with the UNC School of Government, a conclusion was reached that the State's restriction on regulating the number of rooms negates the Town's ability to establish a maximum number of bedrooms for single-family residences based on lot size. He stated that since the Town could no longer use the number of bedrooms as a means of limiting the size and density of single-family residences, the Planning Board and staff were requesting authorization to study a variety of alternatives in an effort to determine the best way to address community character and density issues in the future. He stated that alternatives that could be considered would include some combination of development standards such as building height, building width, building size, building setbacks, lot coverage, density and septic systems.

Director Heard recommended that Council consider setting a public hearing for its September 2, 2015 meeting to consider the text amendments to Section 156.26 of the Zoning Ordinance. He noted that the Town did not have the ability to adopt a moratorium to prevent incompatible residences from being built in the interim time period. He added that staff received a building permit application to construct a residence that would be larger, in terms of number of bedrooms,

than what is presently allowed. He stated that staff would have to approve it if it met all of the other standards; however, they want the window to be as tight as possible, so if Council was comfortable in looking at a shorter process, then staff would welcome it. He felt that staff could work through options with the Planning Board and develop an ordinance in a timely manner that could be advertised for public hearing at Council's September 2, 2015 meeting.

Mayor Pro Tempore Thibodeau stated that she would be interested in attending the Planning Board meeting to hear their discussion and rationale. Councilor Britt stated that he would like to attend as well. Mayor Kingston wasn't sure if three Council members could attend the Planning Board meeting at the same time as it could be a conflict. Councilor Britt stated that he would not attend if there was a conflict. Mayor Pro Tempore Thibodeau thought one Council member should attend. Councilor Britt thought it would be fine if Mayor Pro Tempore Thibodeau attended.

Mayor Kingston asked if it was true that homeowner covenants could override Town ordinances with respect to design and size. Director Heard stated that they work on concurrent tracks. He added that the Town cannot enforce homeowner covenants; however, just because the Town has a different standard, did not make the covenants unenforceable. He stated that the only difference was that they would have to be enforced by the property owners association for the neighborhood. He stated that just because the Town doesn't restrict something doesn't mean the neighborhood could not. Town Attorney Hobbs noted that legislation specifically exempts from its regulations the enforcement of private restrictions which include association actions. Town Manager Layton stated that if someone were to come in and apply for a permit that was against their covenants, the Town couldn't not issue the permit as it was up to the homeowner association to do the enforcement.

Councilor Burdick asked Town Attorney Hobbs if he was comfortable with the Town coming up with a meaningful set of standards that could maintain the character of the Town. Town Attorney Hobbs stated that he was, as long as the standards were consistent with the statute. He noted that there were some standards that will work and some that won't. He added that he and his firm would be happy to provide guidance, if needed. Councilor Burdick asked if the advanced timing was acceptable. Town Attorney Hobbs stated that it was.

Councilor Burdick asked if the Town of Nags Head had passed an ordinance regarding zoning/design and aesthetic controls. Town Manager Layton stated that they were working on it. Director Heard stated that they have not adopted an ordinance. Town Manager Layton added that a recommendation was moving forward and they were looking at a strict square footage requirement of 3,500 square feet, which was in lieu of a moratorium. Councilor Burdick clarified that the Town of Nags Head did not have to hold a public hearing to do that. Town Manager Layton stated that their Planning Board made the recommendation and would probably head towards a public hearing. Councilor Burdick asked if it was a stop gap measure. Director Heard stated that that was the idea. Councilor Burdick clarified that Director Heard was proposing the Town come up with a response at the next Planning Board meeting in time to hold a public hearing at Council's September 2, 2015 meeting. Director Heard stated he was correct.

Mayor Pro Tempore Thibodeau pointed out that there were also the restrictions from the Health Department. She added that the Town would not be seeing any unbridled development on any property. Mayor Kingston stated that there was a process that needed to be followed. He thought sending it to the Planning Board was logical. Councilor Britt saw no harm in scheduling a public hearing.

Councilor Burdick clarified that there was no interim position the Town could take on the issue. Town Attorney Hobbs asked if Councilor Burdick meant a moratorium. Councilor Burdick stated he was correct. Town Attorney Hobbs stated that the previous change to the law eliminated the moratorium option for residential purposes and uses. He added that this was the only process Council could take, by adopting a text amendment, to make the change to remove the provisions that were currently in existence that were contrary to the new law.

Councilor Burdick moved to authorize the Planning Board to develop a text amendment placing reasonable restrictions on the size and density of residential uses and schedule the public hearing at Council's September 2, 2015 meeting.

Motion carried 5-0.

Review the Town's Existing Zoning Ordinances and Provide Recommendations related to Notification Requirements for Planning Board Meetings

Director Heard stated that public comments have been made at recent Planning Board and Council meetings regarding the degree of notification provided to property owners and neighborhood associations for applications to be considered at Planning Board meetings. He stated that if Council wished, they could authorize the Planning Board and staff to study the issue and recommend an appropriate level of notification for applications at Planning Board meetings in the future.

Councilor Burdick asked what the Planning Board's position was on the issue. Mayor Kingston stated that it was what Council had to determine. Councilor Burdick understood and asked if the Planning Board agreed that they should be looking at it. Director Heard stated that Vice Chair John Fricker sent an email to all Council members with his thoughts. He added that the Planning Board did not take any formal action on the issue.

Joe Blakaitis of 115 Sandpiper Cove and Chair of the Planning Board was recognized to speak. Mr. Blakaitis stated that the Planning Board did not have any feelings regarding the issue at this point. He added that even though the requirements for notices for Planning Board meetings were not really required, Town staff does make sure to send out notices for their meetings. He thought that the notices that were sent to adjacent property owners weren't serving its purpose because they may be on vacation or not in the area, making it so that all owners in the association would not receive notice and it creates an issue. He stated that the Planning Board's job was to send items to Council that did not create a lot of work.

Mayor Kingston asked if the Planning Board was looking to strike through the policy or create an ordinance. Director Heard stated that he would like to discuss it with the Planning Board. He stated that the Board may discuss it and decide that the current policy was enough. He wasn't sure where they would end up but the Board could consider a text amendment or make a recommendation to strengthen some of the current policies that are in place. Mayor Kingston asked how the policies get changed. He further asked if they came before Council or were done administratively through staff. Director Heard stated that it was done administratively to a degree. He added that staff had great respect for the wishes and desires of Council and board members as policies are developed. He stated that if Council felt there was a need for it, it would be something that staff would give strong consideration to.

Town Manager Layton noted that the current policy was something that has evolved and not one that was created by Council, but one that previous Planning Directors felt were reasonable ways

to try to alert people. He stated that staff sends out notices through the e-news, Town website and social media feeds for the Planning Board agenda. He added that they weren't part of any policy, but something staff considers a good practice to keep the public informed. He stated that Council had the ability and authority to officially create a policy or an ordinance to require something. He stated that staff recognized that things could always be improved, but people also need to avail themselves of what the Town does provide. He thought the question came down to whether there were weaknesses that needed to be addressed as well as recommendations that come through after the Planning Board looks at an issue or if the Town was doing a fairly good job and just needed to strengthen it. He stated that, based on those recommendations, it could be determined whether it would be best served through a formal or informal policy or an ordinance.

Councilor Burdick clarified that it was now an informal staff policy. Town Manager Layton stated he was correct. Mayor Pro Tempore Thibodeau clarified that it met the statute of the State in terms of notification. Councilor Burdick thought it more than met the statute. Mayor Pro Tempore Thibodeau agreed. Director Heard stated that the adopted standards the Town has in place that address notices of public hearings for Council meetings, was the information that complied with the state statute. He added that the other forms of notice for the Planning Board go above and beyond the standards. Town Manager Layton pointed out that there was no requirement for a general notice at the Planning Board level. Director Heard agreed.

Councilor Burdick thought Council and staff was trying to be transparent in how things were dealt with. He thought it made sense that the Planning Board look at the issue.

Mayor Pro Tempore Thibodeau moved to authorize the Planning Board to review current notification procedures for Planning Board meetings and recommend necessary action.

Motion carried 5-0.

Amending the Town's Existing Zoning Ordinance to Incorporate Changes Necessary to Sign Standards as a Result of the U.S. Supreme Court's Recent Decision in *Reed vs Town of Gilbert*

Director Heard stated that as part of its recent decision in the *Reed vs. Town of Gilbert* case, the U.S. Supreme Court found that sign ordinances could not apply differing standards based on the content of noncommercial signs. He noted that a community could not create special allowances for political or religious signs without also allowing the same privileges to other types of noncommercial speech. He noted that the Town's current sign standards contained several elements that were inconsistent with the Supreme Court's recent decision. He stated that the Planning Board and staff were requesting authorization to review the sign standards and recommend amendments to bring the standards into compliance with the Supreme Court's decision.

Mayor Pro Tempore Thibodeau moved to authorize the Planning Board to develop a text amendment updating the Town's sign standards.

Motion carried 5-0.

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

Update on Departmental Activities

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

Police First Sergeant Jeff Ackerman and Police Sergeant Melissa Clark were recognized to speak. First Sergeant Ackerman and Sergeant Clark 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.

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

Project Update on Beach Nourishment Project

Town Manager Layton stated that Town staff needed to secure 119 easements and have received approximately 106. He added that half of the easements that still need to be obtained were tied up in items such as waiting for an estate to settle or waiting for HOAs and other groups that staff has to wait for. He noted that staff did not expect any issues; it was just a matter of waiting for them to take formal action. He stated that, with regard to the remaining six, three were simply trying to get a family to work things out amongst themselves to get the easement signed. He stated that the remaining three were considered challenges and staff would be discussing how best to proceed with those. He stated that staff has had good conversations with the owners but they have not resulted in the delivery of the signed easements.

Town Manager Layton stated that staff has continued its discussion with the Corps of Engineers on access and was still working through some points. He stated that he was confident that something would be worked out. He noted that an agreement has not yet been signed, but when it does come forward, it will come before Council. He stated that the FRF chief has been in and out of the area over the last couple of weeks and staff has not been able to continue those discussions.

Town Manager Layton stated that the permitting and design and sand search with CP&E were both nearly complete. He added that permitting was 99% complete and the sand search was 100% complete. He stated that there was another contract with Dare County for pre-construction services. He added that, while the Town signs off on them, the invoices go directly to Dare County and will come out of the occupancy tax funds that the Town receives. He stated that the Town's portion to date has been approximately \$16,000 with very preliminary items related to bidding and final design of the project. He stated that he authorized the topographic and hydrographic survey of the project area to move forward with doing the entire beach.

Town Manager Layton stated that CP&E was requesting that \$28,997 in contingency funds be set aside for additional tasks related to the current sand search and borrow area design contract to be released for the collection of additional sand samples in the project areas to meet the Major CAMA permit requirements and for the final taper volume design and GENESIS simulations related to the south project area.

Mayor Kingston moved to authorize the Town Manager to release contingency funds identified in the original contract with CP&E in the amount of \$28,997 for the collection of additional sand samples and taper volume design and GENESIS simulations.

Motion carried 5-0.

Alliance for the Currituck Sound Resiliency Grant

Town Manager Layton stated that the Town was offered the opportunity to participate in the development of a resiliency grant proposal entitled "Currituck Marshes for the Future". He explained that the grant proposal, which was being spearheaded by Audubon of North Carolina, was seeking funding from NOAA in the amount of \$500,000 for the development, design, implementation and monitoring of trial projects related to climate change and sea level rise. He noted that he had taken the liberty to write a letter in support of the proposal which only obligated the Town to participate in the project if it was funded, but did not require any matching funds.

Financial Statement for EOY for FY 2015 and for July FY 2016

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

MAYOR'S AGENDA

Mayor Kingston stated that he was happy to see that all Council members had filed on time for the upcoming election. He stated that he had attended a press conference on August 3, 2015 that was called by the Chairman of Dare County. He added that Chairman Bob Woodard participated, the vice chair from Currituck County participated, six mayors for the Dare municipalities participated, the executive director of the Chamber of Commerce participated, the chairman of the Outer Banks Realty Association and Representative Paul Tine participated. He noted that it was a good session with a lot of points made. He stated that he focused his comments on the impact to Duck; discussed loss of revenue, population and accessible beaches and ad-valorem tax increase potential. He thought it was a good session and felt Representative Tine was very supportive. He stated that it was now up to the House and their meeting with the Senate on the budget. He added that Governor Pat McCrory already indicated that he would veto the bill if it comes to his desk. He stated that the meeting was streamed live and the videos were available to be viewed.

Mayor Kingston stated that he would be attending a Chamber of Commerce meeting on August 17, 2017 from 8:00 a.m. to 10:00 a.m., which was a meet and greet for elected officials. He stated that he was planning to attend, along with Mayor Pro Tempore Thibodeau. He thought it would be a good opportunity to meet people from the Chamber and there would likely be a question and answer period at the end.

Mayor Kingston stated that he and Town Manager Layton would be attending a meeting with former U.S. Representative Mike McIntyre. He added that he used to serve on the House of Representatives from one of the counties down south and invited the managers and mayors to have breakfast with him. He believed that he wants to talk about coastal issues, but thought it would be an interesting discussion. He stated that afterward, he would be attending a beach nourishment meeting with the Towns of Kitty Hawk, Kill Devil Hills and Dare County.

Mayor Kingston stated that at the end of June, he attended a meeting with Jim Hobbs from the NC Tourism and Travel Coalition. He added that Mayor Pro Tempore Thibodeau also attended

along with a group of mayors and realty firms. He stated that Mr. Hobbs was a lobbyist and discussed occupancy tax and the impact of using occupancy tax funds for dredging. He stated that Mr. Hobbs was going to meet with his coalition and set up meetings. He added that the first one was earlier in the day with him and the mayors from the Towns of Southern Shores and Kitty Hawk attending.

Mayor Kingston noted that John Fricker was resigning from the Planning Board and staff has put out a call for applicants that wish to serve on the Board. He stated that he hoped to make the appointment at Council's September 2, 2015 meeting. He added that he and Mayor Pro Tempore Thibodeau had gotten into a discussion as to if there should be some kind of criteria as Council evaluates the candidates since there would probably be multiple candidates for the position. He stated that he wanted to get Council's input on the criteria for selecting a member to the Planning Board. He added that staff and the Planning Board could provide input as to what they would like to see.

Mayor Pro Tempore Thibodeau stated that the Planning Board opening happened fairly quickly. She added that Council could decide as early as their next meeting. She thought Council should discuss it as a way to get out in public that there was an opening and that the decision could be made as early as Council's September 2, 2015 meeting. She thought it was something Council should be thinking about. She thought Council could meet with candidates and bring it back for discussion. She noted that a decision did not have to be made by the September 2, 2015 meeting, but input could be received from other members of the Planning Board. She stated that she wanted to get it out that Council would be considering the issue. She stated that she was open to suggestions on how to handle the process.

Mayor Kingston asked what the date was for the candidates to submit their applications. Town Manager Layton stated that it was August 31, 2015. Mayor Kingston stated that if applications were received after August 31, 2015, it may be premature to make a decision at Council's September 2, 2015 meeting. He added that Council would need time to evaluate the candidates and perhaps have conversations with them. Councilor Burdick thought Mayor Pro Tempore Thibodeau made some good points. He added that Council needed the opportunity to interact with each candidate since the Planning Board position was an important one. He thought it would be good if Council could obtain input from the Planning Board as well as input from people in Town that had an opinion about the issue before Council picks a final candidate. He thought when it was time to choose a candidate, there needed to be some type of process as to how Council will pick the best one.

Councilor Caviness asked if there would be a mid-month meeting for August. Town Manager Layton stated that one was not presently scheduled; however, Council could have one if they wished. Councilor Caviness thought Council could discuss a process at the August mid-month meeting and illicit feedback from the existing Planning Board. She stated that she would be interested in hearing some perspective from them as to skillset or needs that they have. She added that it wouldn't have to be a long meeting, but could be a good time to discuss it.

Councilor Burdick thought Council could discuss how to go about the selection process. Town Attorney Hobbs noted that there was a specific procedure in the Town's code for appointments, set forth in Section 31.30. He thought Council could look over it and decide if it was satisfactory as it was their adopted procedure.

Mayor Kingston thought having a mid-month meeting was a good idea. Councilor Burdick agreed. Councilor Britt stated that he would not be able to attend the mid-month meeting due to

his business schedule. Mayor Kingston noted that the mid-month meeting could be held at another time instead of 1:00 p.m. Councilor Britt felt it would be easier if it was later in the day.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau gave an update on the meeting with Jim Hobbs to Council and the audience.

Councilor Burdick stated that he would be out of the country and not able to attend the September 2, 2015 meeting.

Councilor Caviness stated she had nothing to report.

Councilor Britt felt that John Fricker should be recognized for his time served on the Planning Board.

OTHER BUSINESS

Additional Public Comments

There were no public comments.

RECESS TO RECONVENE


Councilor Burdick moved to recess to reconvene the meeting for Wednesday, August 19, 2015 at 5:30 p.m.

Motion carried 5-0.

The time was 9:24 p.m.



Lori A. Kopec, Town Clerk

Approved: September 2, 2015


Don Kingston, Mayor

