

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
September 2, 2015**

The Town Council for the Town of Duck convened at the Duck Meeting Hall at 7:00 p.m. on Wednesday, September 2, 2014.

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

COUNCIL MEMBERS ABSENT: Councilor Chuck Burdick.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; 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 7:04 p.m. He asked John and Sandy Fricker to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston noted that Councilor Chuck Burdick was excused from the meeting.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any comments related to the public hearings be held off.

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

SPECIAL PRESENTATION

Recognition of John Fricker for his Service on the Planning Board

Mayor Kingston stated that John Fricker recently resigned from the Planning Board after serving as a member from 2007 to 2012 and as the Vice Chairman from 2012 to August, 2015 because he was moving out of the area. He went on to present Mr. Fricker with a plaque on behalf of the Town, thanking him for his service over the years.

CONSENT AGENDA

Minutes from the August 5, 2015, Regular Meeting, Minutes from the August 19, 2015, 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 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

Mayor Kingston 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 Director of Community Development Joe Heard to give a presentation on behalf of Town staff.

Director Heard stated that applicants Ron and Ken Forlano have proposed 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.

Director Heard stated that staff and the Planning Board have recommended approval of the proposed text amendment.

Mayor Pro Tempore Thibodeau asked what a landscaped area would be considered. Director Heard stated that when the Planning Board and Council review a development plan for a commercial site, there were requirements for a certain amount of landscaping to be incorporated into the site. He added that if there was a designated landscape area on the site plan, it could not be converted into another use.

Town Attorney Hobbs asked the applicants to make a presentation.

Ron Forlano of 1378 Duck Road was recognized to speak. Mr. Forlano stated that he did not have anything to add to what Director Heard had presented. He noted that the Planning Board goes into detail when looking at a situation. He stated that in this situation, he was part of the Planning Board that approved the original ordinance and was partially at fault for not looking at the one clause regarding outdoor dining areas located in septic areas. He added that it was an oversight on his and the Board's part at that time.

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

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

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Kingston moved to adopt Ordinance 15-11 as presented.

Motion carried 4-0.

Public Hearing/Discussion/Consideration of Ordinance 15-12, an Ordinance Establishing Maximum Density Standards for Residential Construction Based on Lot Size Consistent with Recent Changes in State Law

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation on behalf of Town staff.

Director Heard stated that at its August 5, 2015 meeting, the Town Council voted unanimously to authorize Community Development staff and the Planning Board to develop a recommendation for revisions to Section 156.126, *Standards for Residential Construction Based on Lot Size*, consistent with recently adopted State standards eliminating the Town's ability to regulate the number of bedrooms in a residence.

Director Heard stated that the proposed ordinance was developed and recommended for approval by the Planning Board and proposed to replace the Town's existing limitations on the maximum number of bedrooms in a residence with standards that establish a maximum number of occupants for residences based on the size of a lot. He noted that the determination of residential density would be based on the maximum occupancy permitted by the septic permit issued by the Dare County Health Department for the residence.

Director Heard stated that staff and the Planning Board have recommended approval of the proposed ordinance.

Mayor Kingston stated that it seemed that staff and the Planning Board came forward with a two-tiered approach, which based upon the Town Attorney's opinion, gave the Town some protection. He asked why the Planning Board discounted maximum square footage as being a two-tiered approach. Director Heard stated that the Planning Board's discussion centered on a couple of points. He noted that this was a change that could potentially affect a lot of property owners as well as house designers, architects and contractors. He stated that, in looking at it, the Board took care in trying to do something that was most similar to what was currently in place. He stated that the Board realized that what was currently in place worked well over the past 11+ years so they looked at an approach that was similar. He stated that staff asked the Board to consider the maximum square footage approach as well and the thought was that by adding the square footage approach on top, it would make it more dissimilar. He stated that the Board felt more comfortable with that approach as opposed to the square footage.

Mayor Kingston asked if it was true that since 2004, in looking at the maximum density, nine structures were proposed to be non-compliant. Director Heard stated that staff submitted an approach that would combine both maximum square footage and maximum occupancy. He explained that the difference from what the Planning Board approved for maximum occupancy was that they brought the tiers down. He added that staff suggested a ratio of two occupants per bedroom plus two. He stated that the reason for considering the allowances was that there were a good number of permits that were submitted over the years where a homeowner had a four-bedroom house but the septic permit was for ten occupants and not eight. He added that staff incorporated the additional occupancy and the difference was that by reducing it, the Planning Board's recommendation would create 33 non-conforming structures. He stated that by adding in the extra two, the number dropped to six non-conforming structures.

Mayor Kingston clarified that the staff analysis recommendation was maximum density based on square footage and maximum density by number of bedrooms plus two. Director Heard stated he was correct.

Mayor Pro Tempore Thibodeau asked what the rationale was in doing an addition to the square footage. Director Heard stated that the goals and objectives of the Town's Land Use Plan and

Vision spoke to two issues that this type of regulation was trying to address – density and size/bulk of residences. He stated that the one approach did a good job of addressing density and the other does a good job of addressing size/bulk of residences. He added that a combination appeared to be a more comprehensive way of looking at the issue as far as limiting bulk and density.

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

Mayor Kingston asked Joe Blakaitis to summarize why the Planning Board did not adopt the two-tiered approach. Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated that the Board's rationale was to try to come up with something that was similar to what was in place now and could be enforced. He added that another rationale was that they stayed away from square footage because it penalized an owner in some ways. He stated that if an owner wanted to build a home and didn't care about bedrooms but wanted a lot of extra space in the home, and was limited by the square footage due to the lot size, it would also limit the size of the home if the owner wanted a lot of living space. He thought it was a large consideration that the Board had and thought it was important that people can build in the community. He noted that the Board evaluated both opinions of the Town Attorney and the UNC School of Government. He added that Town Attorney Hobbs had suggested that one would be less defensible than the other, which the Board took into consideration. He stated that at the same time, UNC School of Government's attorney felt strongly about the value approach. He stated that the Board did reduce staff's suggestion by two because they felt it should be left as it was.

Ron Forlano stated that after thinking about it for the last week with some documentation that Director Heard sent the Planning Board, he thought the two-tiered approach would accomplish another entity in the Land Use Plan, which was bulk. He added that it gave the Town the element of legal protection by using the size as a determining factor. He didn't think anything the Board did could protect the Town legally by one hundred percent. He noted that both approaches were indirectly mentioning limiting bedroom space. He stated that no matter what the Town did, it would not control density completely.

Town Attorney Hobbs asked if members of the public wished to address the proposal.

Mark Martin of 191 Wax Myrtle Trail in Southern Shores was recognized to speak. Mr. Martin stated that it's been his experience that the Town ordinance has worked very well since starting out with limiting the number of bedrooms for the lot size. He thought there were a handful of instances that he has run into where the plus two has been an issue for several homeowners. He thought the bill, when it was originally introduced in the General Assembly, was for mistakes. He added that the Outer Banks Homebuilders Association was in agreement with what the Town was proposing. He cautioned about the square footage and restricting the size of the bulk, as the Town of Nags Head tried to do the same with their aesthetics ordinance and it backfired.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston.

Mayor Kingston agreed that the Town wanted to put an ordinance in place that maintained what currently existed and didn't place greater restrictions on building in Duck. He added that he liked the two-tiered approach and thought Council needed to listen to the legal advice, even if it was indirectly to be effected. He stated that he liked the fact that the bedrooms could be taken and add plus two for density. He stated that he liked maximum square footage and thought the Town

should control size. He added that he liked maximum size of residence and maximum density combined. He stated that he also liked the fact that it would add two additional people to the number of bedrooms for density. He thought it would maintain what the Town was trying to accomplish.

Mayor Pro Tempore Thibodeau stated that she was initially concerned about shining a light on occupancy because people will have extra sleeping situations. She understood where the Town was in terms of valuing not overcrowding. She stated that she had a conversation with Director Heard about the issue and felt that the occupancy, particularly with the plus two, would address the fact that there would be additional people in a house. She thought the Town was fairly well built out and things were working well. She stated that she liked the idea of adding two to the occupancy and noted that she wanted to make sure there was ample wastewater capacity. She stated that she was concerned about creating non-conformities and thought the occupancy increases will help with that. She stated that she was concerned with private property rights in terms of allowing people to build what they wanted on their properties and thought there were very few outliers. She stated that she was not in favor of limiting the square footage and thought economics would limit it. She thought Council could adopt something and add in the plus two and see how things progress.

Councilor Caviness stated that she remembered when Council was looking at the occupancy issue in the beginning, it was concerned about the impacts of the number of people – i.e. the driveways weren't big enough, there weren't enough trash cans, there was a lot of noise and properties were getting dense. She thought it was interesting to see the solution go back to occupancy as that was where a lot of the original issues stemmed from. She added that the structures were also getting enormous. She stated that she was caught and concerned as to how to enforce occupancy. She thought square footage was easily enforced. She wasn't sure what could be put in place to make people adhere to the occupancy requirement.

Councilor Britt stated that he attended the Planning Board meeting and thought they did a great job with their discussions. He thought that occupancy made sense and didn't agree with the square footage option.

Mayor Kingston stated that Council knew that the General Assembly had to act quickly on the issue and Council had to act just as quickly. He thought that Council received legal advice that said it was problem. He thought it would be nice to have safeguards in place in case one part of the ordinance was lost.

Town Attorney Hobbs stated that there were no cases or litigation regarding the new statute. He didn't know what the intent of the legislature was. He pointed out that the number of bedrooms was not the sole factor with regard to occupancy. He thought the Town could make good arguments in favor of supporting the Planning Board on their recommendation as not indirectly regulating number of bedrooms. He didn't think adding the square footage as a second tier would necessarily make the proposal clean. He thought having a proposal and adding to it did not necessarily make the whole thing perfect to withstand a potential challenge. He thought the more defensible route would be maximum square footage by itself. He didn't think adding the two together would make the occupancy method any better as far as being defensible.

Mayor Kingston asked if it would be wise for Council to move forward with the proposed ordinance as written or with the change of the plus two and have it go back to the Planning Board for more discussion regarding the maximum size of residences. Councilor Britt stated that Council could go that route. Mayor Pro Tempore Thibodeau felt that the Planning Board already

looked at it when they were weighing options. She stated that she was not seeing a big abuse of size of property. She thought economics will control it and would hate to be that restrictive.

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 15-12 using the occupancy recommendation of the Planning Board, adding two to each tier.

Town Attorney Hobbs clarified that for each category, there will be two items added to the proposed ordinance.

Motion carried 4-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Appointment of a Member of Council to Participate on the Dare County Consolidation Committee with the Mayor and Town Manager

Mayor Kingston stated that on August 18, 2015, Council received a letter from the Clerk to the Dare County Board of Commissioners informing it that the Commissioners had authorized Chairman Bob Woodard to form a Consolidation Committee to look into opportunities for the consolidation of services between the County and the Towns of Manteo, Nags Head, Kill Devil Hills, Kitty Hawk, Southern Shores and Duck. He stated that he and Town Manager Layton have been asked to serve on the committee as well as an additional Council Member. He noted that Mayor Pro Tempore Thibodeau and Councilor Burdick have each expressed an interest in serving on the committee.

Mayor Pro Tempore Thibodeau stated that she would support Councilor Burdick serving on the committee. Mayor Kingston noted that the meetings will be held on Thursdays or Fridays and Councilor Burdick may have an issue. He suggested appointing Councilor Burdick and appointing Mayor Pro Tempore Thibodeau as an alternate.

Mayor Kingston moved to appoint Councilor Chuck Burdick to participate on the Dare County Consolidation Committee with the Mayor and Town Manager, and Mayor Pro Tempore Thibodeau to participate as an alternate.

Motion carried 4-0.

Discussion/Consideration of a Notification Policy for Applications at Planning Board Meetings

Director Heard stated that at its August 12, 2015 meeting, the Planning Board engaged in a thorough evaluation of the effectiveness of public notice for applications at Planning Board meetings. He stated that after completing the review, the Board voted unanimously to recommend a policy for notifying the public about applications to be considered at Planning Board meetings.

Town Attorney Hobbs noted that there was no procedure in place where a Planning Board would adopt policies for notifying the public about their meetings. He added that Council had asked the Planning Board to look into it and they were authorized to do so and came up with the policy before Council. He stated that it was unclear whether Council needed to adopt the policy, but a professor from the School of Government suggested that, while it may not be absolutely necessary, the extra steps could be useful. He stated that if Council wished to make any changes

in the future to the policy, it would have to go back to the Planning Board to affirm or reaffirm the changes.

Councilor Britt asked if the policy would place an undue burden on Town staff. Director Heard stated that it would not.

Mayor Pro Tempore Thibodeau moved to approve a policy regarding notification for Planning Board meetings as presented.

Motion carried 4-0.

NEW BUSINESS

Discussion/Consideration of Changing the Date of the Council's October Regular Meeting

Mayor Kingston stated that the date for the October meeting of the Town Council was currently scheduled for Wednesday, October 7, 2015. He noted that several Council members had conflicts on that date so Council was asked to consider changing the date of the meeting to Monday, October 5, 2015 at 7:00 p.m.

Mayor Kingston moved to change the date of the October meeting to Monday, October 5, 2015 at 7:00 p.m.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs gave a short update on the easements for the beach nourishment project. He stated that he was working with Director Heard on revisions to the sign ordinance.

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 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.

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 120 easements and have received approximately 108. He stated that staff expected to receive seven more, but were not making much progress on the remaining few. He stated that staff will be consulting with Town Attorney

Hobbs in the next week in order to come up with an ultimate strategy in order to get the process moving. He added that it would likely include a description of other options that the Town may have at its disposal including eminent domain. He hoped that it will spur some action. He stated that, except for a couple of the property owners that the Town needs easements from, there has been dialogue so staff is not sure why the dialogue has ceased but were hoping to have additional discussions. He felt that the Town was ahead of the game but didn't want to wait until the last minute to obtain the remaining easements.

Town Manager Layton stated that staff has continued its discussion with the Corps of Engineers on access and would be working with one of the attorneys in Wilmington in order to finalize the agreement. He understood that the gentleman they need to contact has been out of town so staff has not been able to confirm if things were moving forward. He expected that it would be brought to Council soon for consideration for access to the beach for the beach nourishment project.

Town Manager Layton stated that Duck and the other towns and Dare County have been working with CP&E on pre-construction documents, which were the bidding documents for the project. He stated that he provided comments to CP&E on those items and hoped to have another draft coming from them shortly. He stated that he, Mayor Kingston and Director Heard attended a meeting with the other towns for an update on the project. He stated that the towns were looking at a finding from the Corps of Engineers by the end of November of no significant impact, explaining that it would mean they would have Federal permits for the project. He stated that the towns needed State permits but didn't expect to have them until February, 2016. He added that they will continue to work on the draft and bid documents in the meantime and expected to advertise for the bids as soon as the CAMA permit is obtained. He stated that bids will be advertised in December and once the CAMA permit is obtained, the bids would be opened as soon as possible, which would be approximately February 3, 2016. He stated that once that was completed, the Town could go to the Local Government Commission in order to get the debt approved for the project. He hoped to have approval by mid-March, 2016 and look at awarding the contract after that. He noted that the start date for construction was around April 20, 2016 and the Town would provide a year for all projects to be completed.

Town Manager Layton stated that potential dredge contractors were already part of the dialogue and there were discussions happening. He stated that people are doing preliminary work so the contractors can get started once the bid was advertised.

Mayor Kingston asked Town Manager Layton to discuss the design on the south end with regard to more sand. Town Manager Layton stated that originally, the project called for two 500 foot tapers – one on the northern end and one on the southern end. He added that due to the instruments located where the southern taper would be; the Corps of Engineers indicated that they desired that the taper not be put in place. He stated that it left the Town with having to provide for the same function that the taper would require by adding additional sand and mounding by constructing it in a slightly different way. He explained that it would be a slight addition of cubic yards of sand so Duck's cost would increase a little; however, he did not expect it to impact the overall cost of the project since Dare County will cover the difference. He stated that the Town was looking at about 100,000 more cubic yards of additional sand that will need to be mounded. He stated that CP&E felt very comfortable with the approach and have run models that show the level of protection would be the same.

Planning Board Applicants and Evaluation Matrix

Town Manager Layton stated that at Council's Reconvened Meeting on August 19, 2015, it was determined that he would develop a matrix based on the criteria discussed at the meeting for Council's use in evaluating applications for the open position on the Planning Board. He stated that Council had in their packets a matrix that was developed for this purpose. He added that the applications received were also included in their packets. He noted that Council chose Thursday, September 17, 2015 at 5:30 p.m. for a special meeting to interview and hear presentations from the applicants on why they want to be on the Planning Board and what they would bring to the table. He stated that applications closed on August 31, 2015 so Council had a complete applicant pool as well as an individual matrix for each applicant at their places to be used at the September 17, 2015 meeting.

Town Manager Layton stated that the next step would be that he and Mayor Kingston would draft a letter that will include a copy of the matrix so each individual understood what some of the key points Council will be looking at. He stated that it would be sent to each applicant along with the date and time of the meeting so they can prepare.

Financial Statement for August FY 2016

Town Manager Layton stated that the financial report was incomplete because he had not received the Occupancy Tax information. He stated that he would send an updated sheet to Council once it has been received. He went on to review the draft statements with Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that he has his mayor's lunch on September 22, 2015. He stated that he attended the Town's Board of Adjustment meeting on September 1, 2015 and felt that Director Heard did an excellent job in training the members. He thanked Public Information Officer Walsh and Administrative Assistant Beth Conery for a great summer full of events. He noted that he would be on vacation at the end of September.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau echoed Mayor Kingston's comments regarding the summer events. She stated that the Government Access Committee would be meeting in about a week and would be discussing grant funding as well as the application procedures.

Councilor Caviness gave an update on the Visitors Bureau meeting to Council and the audience.

Councilor Britt thanked Mayor Pro Tempore Thibodeau for serving on the Tourism Bureau and to Councilor Caviness for serving on the Government Access Channel Committee. He stated that he would be attending a national championship regatta on September 23 – 26, 2015. He added that he was looking forward to Fall.

OTHER BUSINESS

Additional Public Comments

William Cogger of 7 Ginguite Trail in Southern Shores was recognized to speak. Mr. Cogger stated that he was curious as to why Duck does so much more than the Town of Southern Shores.

He commended the Town on the boardwalk. He noted that he put in his name for the Planning Board position. He stated that there wasn't enough public input in the Town of Southern Shores.

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

Councilor Caviness stated that on Tuesday, September 8, 2015, the registration for the Turkey Trot will open. She added that the race will most likely fill in under an hour. She stated that she wanted to thank the Town as it has partnered with the race this year to help celebrate the 20th anniversary. She stated that the day before the race, there will be a concert held on the Town Green, weather permitting.

Mayor Kingston noted that the next meeting will be the Special Meeting on Thursday, September 17, 2015 at 5:30 p.m.

ADJOURNMENT


Councilor Britt moved to adjourn the meeting.

Motion carried 4-0.

The time was 9:36 p.m.



Lori A. Kopec, Town Clerk

Approved: October 5, 2015


Don Kingston, Mayor

