

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
September 5, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, September 5, 2018.

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; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

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

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments. He asked that any comments regarding the public hearing be held off.

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to introduce three new firefighters – Noah Parsons, Jose Ramirez and Cameron Whitaker – to Council and the audience.

**Outer Banks Chamber of Commerce Community Housing Initiative**

Pat Broom of the Outer Banks Chamber of Commerce was recognized to speak. Ms. Broom gave a short presentation on the Chamber's community housing initiative to Council and the audience. She stated that the Chamber would like Council to direct the Planning Board and Community Development Department to review their requests for affordable housing initiatives and report back with any suggested revisions.

Bob Wetzel of 141 Betsy Court was recognized to speak. Mr. Wetzel stated that he and his wife love the new sidewalks in Town. He stated that they were an improvement from what the Town had in the past. He stated that the rocks that have been placed on the new pedestrian path have been problematic since they were installed since vehicles tend to kick them up onto the sidewalks and was a hazard to those on the sidewalk. He stated that he and his wife have put the rocks back in place multiple times while walking on the

sidewalk. He thought a solution to the rock issue would be to pull them out and replace them with concrete or asphalt since rocks and gravel have no place on a sidewalk or bike path.

Bob Wetzel stated that the landscaping strip between the sidewalk and the bike path could be improved. He thought everyone would agree that the mulch was not working and was demonstrated after the first torrential rain in Duck. He stated that the grasses that have been planted have helped to stabilize the soil, but there were many places where the sand has eroded and could be a safety hazard as it could undermine the sidewalk over time. He stated that the grasses that were planted could become problematic but wasn't sure how tall it would be growing. He added that where it was growing very well, it was encroaching in and onto the sidewalk. He thought the grass inhibited the use of the 18-24-inch section from any type of use at all. He stated that runners frequently run in the bike path in order to run past pedestrians and where the grass was growing, it was preventing runners and walkers from passing others. He recognized that there was a safety factor, and thought the grasses was providing safety from vehicular traffic, but not for pedestrians on the sidewalk. He suggested that Council think about planting the whole area with Bermuda-type grass or consider repaving the section with some kind of rough rumble strip. He thought it would provide an additional 18-24 inches of useable space for runners. He further suggested having some pedestrian symbols on the sidewalk to re-emphasize what the purpose of the sidewalk was to people as well as to show cyclists that they should be on the bike path and not the sidewalk.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that the vegetation on the new sidewalks looked great, but the area was not very good since the space is limited. He thought Council should revisit the whole pedestrian plan since the pedestrians should either walk one way or another without having to deal with the vegetation getting in their way. He added that the vegetation has exceeded the size that it was meant to be. He stated that it was growing eight to 10 inches into the bike path and the sidewalk. He suggested that it be looked at.

Ben Vorndran stated that the whole Village Commercial Development Option was an issue as he was still shocked that Council voted to approve Roadside Bar & Grill's conditional use permit at their July 18, 2018 meeting. He thought Mark Copeland had a nice business, but he wondered if Mr. Copeland knew about all of his violations and went through the process previously, why he went ahead and built structures anyway when he knew it wasn't allowed. He stated that Mark Copeland then decided to use the Village Commercial Development Option to ask for forgiveness. He thought it was wrong to use that and thought the Option needed to be looked at more strictly. He didn't think Council made the right decision after Town staff and the Planning Board were in favor of denying the application. He wished he could have looked at the comments Council had made online as to their reasoning for approving the application as they seemed very vague. He stated that there weren't any strong comments but more that Roadside Bar & Grill were good neighbors and have a good business. He pointed out that for someone that had seven to nine violations and had already been through the process, there should be something more in place to not allow it to get that far. He thought putting the vote on the Council

was unfair. He thought it needed to be looked at more closely in the future. He reiterated that he was shocked at the outcome of the hearing. He hoped that Council would send the Village Commercial Development Option back to the Planning Board as it needed to be stricter. He pointed out that other businesses have had to comply in the past and asked Council to look at Roadside Bar & Grill's conditional use permit as a learning curve and move forward.

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

### **CONSENT AGENDA**

#### **Minutes from the July 18, 2018, Regular Meeting and Hurricane/Disaster Debris Removal Interlocal Agreement**

Councilor Britt moved to approve the consent agenda as presented.

Motion carried 4-0.

### **PUBLIC HEARINGS**

#### **Public Hearing/Discussion/Consideration of Ordinance 18-06, a Proposal to Amend the Standards of Town Code Section 156.126 by the Establishment of Maximum Size Standards for Single-Family Residences**

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that during the Council's annual retreat, Council and the Planning Board discussed the pros and cons of a variety of options to address the Town's interest in maintaining the village character by adopting reasonable limitations on the scale of residential development in Town. He stated that Council had requested that the Planning Board continue its work with Community Development staff and Town Attorney Hobbs on developing standards that better address the issue.

Director Heard stated that after consideration of options, the Planning Board prepared a draft ordinance that combined the concepts found in the ordinance adopted by the Town of Nags Head and the use of traditional development standards to establish reasonable limits on the scale of development in Duck. He noted that the draft ordinance proposes to establish a maximum size for residences based on the size of the property. He added that the proposal would allow larger residences to be established if certain development criteria were met, including a minimum lot size, increased building setbacks,

landscaping, maximum wastewater capacity, and an overall maximum size of 7,000 square feet.

Director Heard stated that at its September 2, 2015 meeting, Council voted unanimously to adopt revisions to Section 156.126, *Standards for Residential Density Based on Lot Size*, bringing the Town's ordinance into compliance with State standards eliminating the Town's ability to regulate the number of bedrooms in a residence. He stated that the ordinance replaced the Town's previous 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 the lot. He noted that the determination of residential density was based on the maximum occupancy permitted by the septic permit issued by the Dare County Health Department. He added that the current maximum occupancy standards read as follows:

“(A) Residential density. In addition to other requirements set forth in this chapter, the Town of Duck shall regulate residential density by applying the following standards regarding maximum number of occupants permitted to all residential construction. The determination of residential density shall be based on the maximum occupancy permitted by the wastewater permit issued by the Dare County Health Department for the project in question.

- (1) Lots with square footage up to 9,999 square feet: 10 occupants;
- (2) Lots with 10,000 to 14,999 square feet: 12 occupants;
- (3) Lots 15,000 to 19,999 square feet: 14 occupants;
- (4) Lots 20,000 to 24,999 square feet: 16 occupants; and
- (5) Lots greater than or equal to 25,000 square feet: 18 occupants.”

Director Heard stated that subsequent events highlighted the limitations of this approach as the Town was reliant on the Health Department's determinations for enforcement of the ordinance. He stated that, based on the standards of the current State legislation and advice provided by the UNC School of Government and Town Attorney Hobbs, there were other options that the Town could pursue when regulating the scale of residential development; however, there were also alternatives that may present legal concerns for the Town and should only be adopted after careful review.

Director Heard stated that after the Planning Board reviewed the options, they recommended a draft ordinance that combined the concepts found in the ordinance adopted by the Town of Nags Head and the use of traditional development standards. He added that the Planning Board found this approach resulted in reasonable limitations on the scale of development while protecting the Town's character and interests of surrounding property owners.

Director Heard stated the proposed Ordinance 18-06 created standards for the scale of residential development by using the same tiered approach that the Town has always used, using the same five categories ranging from less than 10,000 square feet to greater than 25,000 square feet, thus, creating a maximum sized house as follows:

- (1) Lot sizes 9,999 square feet or less would have a maximum size home of 3,500 square feet.
- (2) Lot sizes 10,000 – 14,999 square feet would have a maximum size home of 4,000 square feet.
- (3) Lot sizes 15,000 – 19,999 square feet would have a maximum size home of 4,500 square feet.
- (4) Lot sizes 20,000 – 24,999 square feet would have a maximum size home of 5,500 square feet.
- (5) Lot sizes 25,000 square feet or greater would have a maximum size home of 7,000 square feet.

Director Heard stated that the ordinance sets some criteria and has allowances for some instances for property owners to build a larger house, up to 7,000 square feet, if they meet the development criteria. He explained that the criteria were as follows:

1. Conforming lot size of 15,000 square feet or greater.
2. Larger building setbacks to increase separation from adjoining properties.
3. Additional landscaping requirements.
4. Minimal architectural standards to break up massive facades.
5. Maximum septic capacity of 1,080 gallons per day (equivalent to a nine-bedroom home).
6. Maximum size capped at 7,000 square feet.

Director Heard stated that at their July 11, 2018 meeting, the Planning Board voted 3-2 to recommend approval of the text amendment establishing maximum size standards for single-family residences. He noted that all of the Board members agreed with using an incentive-based approach establishing generous maximum house sizes but allowing the construction of larger residences in exchange for higher development standards. He stated that the Board members that voted in favor of recommending the text amendment supported the overall cap of 7,000 square feet for new residences and noted the following:

- Previous standards limiting the scale of residences have worked well to help create the desired character and appropriate scale of development in Duck.
- There are concerns about the negative impacts of very large houses including the visual impact, scale compared to surrounding homes, and the number of occupants and vehicles.
- The maximum size of 7,000 square feet is more flexible than the maximum size established by comparable towns on the Outer Banks.
- Only three residences exceeding 7,000 square feet have been constructed since the Town incorporated, so there hasn't been a significant market for large-scale houses and very few houses would become nonconforming.
- Very large residences are inconsistent with the Town's 2027 Vision and CAMA Land Use Plan that call for a "coastal village image" and "small town atmosphere".

Director Heard stated that the Board members that voted in opposition to the text amendment did not want to establish any overall cap on the maximum size of residences in Duck, noting:

- Residences over 7,000 square feet in size could be allowed through a conditional use permit.
- Large residences are in proper proportion and scale on large lots. Property owners should be given the flexibility to construct a very large house on a large lot or combine multiple lots.
- Not all large residences are used for rental purposes. The Town may be excluding year-round residents who choose to live in a very large house.

Town Attorney Hobbs asked Council if they had questions.

Mayor Pro Tempore Thibodeau clarified that the proposal for the septic tank maximum was done in order to have the Town be able to exert more control as the entire ordinance was trying to do, over and above what the Health Department would permit. She further clarified that it was permissible for the Town to tell a homeowner how big their septic tank could be. She wondered, in addition to all of the other proposed restrictions, why it was necessary to have that restriction. Director Heard stated that the Planning Board was looking at it as one facet of the proposal in establishing the overall maximum capacity for a property to prevent an extremely large home. He stated that the Board felt that the other aspects of the ordinance gave the Town greater protection and more legal authority as far as square footage.

Town Attorney Hobbs stated that his comments were in Council's packets. He stated that the legislation that the Town was trying to address has not been tested or litigated and could probably be worded better as far as the legislation goes. He stated that in interpreting the statute, it may apply in determining whether attempts to circumvent in ways that were not expressly dealing with numbers of bedrooms would pass muster. He thought when a municipality gets closer to looking like they were regulating something that the statute does not allow a municipality to regulate, then it could be an issue. He noted that it was the basis for his comments in the Council's packets as he didn't know how a court would rule on something that could be seen as an implied attempt to address occupancy. He felt that it could be removed if others at the Planning Board level felt it should be removed as well as at Council's level if they felt like the other provisions were sufficient to address the concerns without that provision. He stated that he was not prepared to say that the entire ordinance was fatally affected to that provision.

Mayor Pro Tempore Thibodeau clarified that the square footage maximums that were being proposed by the Planning Board was for heated square footage. She added that, conceivably, a homeowner could have extensive amounts of decking as long as they went to the setback. Director Heard stated she was correct as decks were not counted toward the maximum.

Mayor Kingston asked what the rationale was for stopping at 25,000 square feet or greater. He asked what was greater than 25,000 square feet in Town. Director Heard stated that it was the way the Town has always worked in tiers from the original passage of the first ordinance that followed shortly after incorporation. He added that the same five tiers have been used ever since and in looking at it, the Planning Board felt it served the Town well over the years and maintained those tiers. He noted that they did discuss other options but wanted to keep things simple. He stated that they wanted someone to be able to look at the ordinance and easily understand the tiers. He stated that there were a number of properties that were larger than 25,000 square feet. He added that there was a lot of conversation at the Planning Board meeting about the opportunity of combining properties, should a homeowner choose to do so. He stated that many of the Town's subdivisions were developed before the Town incorporated and had different standards over time, but the majority of those were developed under a system that had a 15,000 square foot lot minimum and many of the lots in Town are at that or right above it. He stated that there were some areas that had significantly larger lots ranging from 28,000 square feet to up to almost an acre. He stated that some of the oceanfront lots tended to be a little bit larger because they are deeper and longer and often have more area than a typical lot does.

Town Attorney Hobbs asked if members of the Planning Board wished to make a presentation. There were no presentations.

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

Leo Grohowski of 106 Baum Trail was recognized to speak. Mr. Grohowski stated that he purchased his property two years ago. He stated that he had written to Council expressing his displeasure over the draft ordinance. He stated that he has a 4,700 square foot home on a 38,955 square foot lot, which was 56% larger than where the 7,000 square foot cap comes into play. He thought to put a maximum limit of 7,000 square feet on any lot in excess of 25,000 square feet seemed arbitrary and unfair. He stated that he appreciated simplicity, but felt it was arbitrary and unfair to put a 7,000 square foot restriction on anything in excess of 25,000 square feet. He stated that he has no current plans to renovate his home or rent his home but was working with some builders on a potential remodel and he was concerned that the new ordinance could limit his renovation as well as the negative impact of the purchase of his home two years ago. He believed that a home of 7,500 – 8,000 square feet would look tasteful on a 39,000 square foot lot. He agreed with what the Town was trying to do as he did not want to see large homes on small lots or event homes but thought the way the Town was trying to do it was not right. He added that if there was an effort made to allow certain home sizes commensurate with the size of a lot, it should be allowed to be more than 7,000 square feet. He reiterated that he was not in favor of the draft ordinance.

Victor White of Landmark Engineering was recognized to speak. Mr. White stated that he was representing the owners of 108 South Baum Trail. He stated that he spoke with Director Heard and understood the intent of the proposed ordinance. He thought what Council was trying to do was limiting the density in Duck and one of the things Director

Heard had discussed was having a carrot and stick approach for architecture for larger sized homes. He stated that it worked if the conforming lots were 15,000-19,000 square feet, but once the lot gets to be 25,000 square feet, the Town has limited it to 7,000 square feet with no carrot for a large residence. He stated that he spoke to Director Heard and looked at some of the things on the Town's website and wanted to point out that the maximum size was 10,000 square feet. He thought it would probably be more in line with some of the sizes of the lots in Palmers Island as some were well over 7,000 square feet. He thought if one looked at the Dare County GIS website, the smallest lot was 28,500 square feet, but looking at some older subdivision plats that he had, he thought they were over 30,000 square feet.

Victor White stated that his other concern was that most of the homes in Palmers Island were constructed before Duck incorporated and after speaking to Director Heard, one of the things that was adopted in the zoning code was the height difference because of what existed there in order not to be in non-conformance. He thought that something should be considered to do that same thing with the maximum size. He added that he understood the grandfathering with building the structure after an act of God in that it could be built back, but the draft ordinance would make it hard for existing structures above the 7,000 square foot mark. He thought the homeowners he represented were fine with the spirit and intent of the draft ordinance, and he agreed that the 7,000 square foot incentives with additional setbacks and architectural features worked fine and thought it was a good thing as it gives the Town a better product. He stated that for the lots that were 25,000 square feet, the Town was exempting them in the ordinance in its current form and was arbitrary.

Mark Martin of Sandmark Construction was recognized to speak. Mr. Martin stated that most of the work he has completed in Duck were on the 10,000-20,000 square foot lots and he could not meet the minimum or maximum standard once lot coverage, driveways, and parking are taken into consideration. He thought the 7,000 square foot cap was a bad thing. He pointed out that the Palmers Island subdivision have homes that have been built over the last eight to 15 years that were well over 7,000 square feet. He stated that if someone wanted to do some improvements to their home in Palmers Island, the 7,000 square foot cap would penalize a half dozen homeowners because they won't be able to meet the new restriction. He thought the year-round residents in Palmers Island would have the biggest impact on the ordinance. He cautioned Council about the setback requirements as the first thing to go is the deck in order to make the house bigger, which was an aesthetic issue.

Town Attorney Hobbs asked if there were any remaining questions from Council.

Councilor Caviness asked how many lots in Town exceeded 25,000 square feet. Director Heard stated that he did not have a figure but could look it up. He added that it was not a large percentage of homes in Town.

Mayor Kingston asked what the Planning Board discussion was regarding lots at 25,000 square feet and up. Director Heard stated that it was reflected in the 3-2 vote, as there were differing opinions on what some of the Board members felt and what was an



appropriate level. He stated that there were motions made to not have a cap at all and then another motion had a top tier of 7,000 square feet and up to 10,000 square feet. He added that the majority of the Board didn't want to see anything larger than 7,000 square feet.

Mayor Kingston asked if, prior to being able to control a home based on the number of bedrooms, what the criteria was. He clarified it was 30% lot coverage and the number of bedrooms could be eight, but they could be large bedrooms. He wondered if the Town really controlled the size of buildings. Director Heard stated that the Town did not control the size of buildings.

Mayor Pro Tempore Thibodeau stated that, looking at the control of house sizes or building and the concerns, when one looked at what the Health Department controls with buildings in addition to the Town's setbacks and lot coverage, she thought things were fine in Duck once the bedroom regulation was removed since the Health Department controlled it. She added that where it wasn't controlled was with the larger lots in Palmers Island because there was a desire from some Council members to have additional control – more than what the Health Department allows. She stated that there was some concern about a large home that was being built in Palmers Island, so it was a two-prong issue that was getting the Town's attention. She stated that, overall, the Health Department, with the nature of lots in Duck, will generally keep the size in check. She stated that the research that the Planning Board completed showed that non-conformities will be created for approximately 25 homes if the Town was to adopt the draft ordinance. She pointed out that the Town does have controls on the size of homes based on the nature of what the lot sizes were. She added that every town was different, and Duck happens to have fairly standardized sized lots. She asked if the Planning Board members were concerned about recombining the lots. She didn't see where the problem was unless the Town was concerned about people combining the lots. Director Heard stated that it was one of the examples that was brought up from the members that wanted to see larger houses. He stated that they discussed the proportion in a larger lot and the economy of a larger house, even though many of the lots existing today, there were opportunities for someone to combine properties to create a larger lot. He thought it boiled down to a philosophical difference of opinion between the Board members on whether the proportion was more appropriate or whether there needed to be an overall cap that some houses were just too large for Duck.

Councilor Caviness clarified that since there weren't a lot of large homes built in Duck, the discussion with the Planning Board was if it got to a size that was 25,000 feet or bigger, rather than allowing a 7,000 square foot house, it would be completed by a conditional use permit. Director Heard stated that she was correct as it was another option that was discussed, but it made some Planning Board members uncomfortable as far as what the criteria would be.

Councilor Britt stated that he attended the Planning Board meeting as the Council liaison and it was discussed, with the overall discussion about whether homes would be capped at 7,000 square feet and once that happened, the discussion about what the criteria would

be for conditional use permits became irrelevant. He thought if the Planning Board had gone that route, they would have had to figure out the criteria because it wasn't simple.

Mayor Kingston thought it seemed that the whole issue that has been discussed was the 25,000 square feet and above. He stated that it looked like there may be another tier needed. He added that there were large existing lots along with large homes, which were isolated to Baum Trail. He wondered if Council needed to be looking at that. He clarified that the Planning Board discussed it but did not take any additional steps in that regard. Director Heard stated that the Board discussed Palmers Island specifically. He added that the Town has different standards for that subdivision. He stated that it was an option for Council to consider if they saw it as the only issue and would like to address it. He noted that it was in a different zoning district than almost the entire rest of the Town, so Council could create a standard for that zoning district that differs from others in Town.

Councilor Britt believed it addressed Palmers Island but did not address recombination. Mayor Kingston agreed.

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 public hearing. He reminded Council that the statute required that in order to adopt an ordinance on the first read, it would require a super majority, 2/3 vote of all actual members, whether present or not, meaning that in order to adopt the ordinance on the first reading would require all four Council members to vote in favor of it. He stated that if that did not occur, whether by majority, a tie or a negative vote, then it would have to go to a second reading and the purpose for that was to slow down the process for super majority votes to approve on a first reading. He stated that if the second reading were to occur, the next meeting would have the second reading, and, in that meeting, the adoption would require a simple majority with a quorum present. He turned the meeting back over to Mayor Kingston.

Mayor Pro Tempore Thibodeau stated that she could not vote in favor of the ordinance as presented. She didn't think Council addressed some important considerations that were heard at the meeting. She thought the Town was penalizing homeowners and she was an advocate for personal property rights and this ordinance was putting arbitrary limitations on owners, even in the 20,000-25,000 square foot lots. She stated that she could not vote in favor of the ordinance if it was to come to a vote. She pointed out that Councilor Burdick was not present and thought this was a significant idea that was being presented. She stated that she appreciated all of the work that the Planning Board did on the draft ordinance. She stated that there were a lot of people that were concerned about the appearance, even though she thought the Town did a good job, but she went back to the fact that one could not look at a six or eight-bedroom home and know the difference from the façade. She thought the issue should be tabled and Council should reconsider.

Mayor Kingston clarified that Mayor Pro Tempore Thibodeau's concern was maximum size by lot size. He asked if that was her key concern. Mayor Pro Tempore Thibodeau appreciated all of the research that was done on what has been built in Duck as well as the fact that there hasn't been a lot of problems. She noted that the Town used to allow nine bedrooms and then it was changed to eight bedrooms, which has been an issue for her. She thought that overall the Health Department restrictions were adequate for what the Town needed. She didn't think the Town needed an extra layer of control and that was what many people wanted. She didn't understand why but was willing to go along with some level of control but did not like the septic capacity aspect as it would hurt a lot of homeowners. She didn't think there was a problem with extra septic capacity. She stated that she could live with the ordinance if it was a little more tolerant but what was happening in Palmers Island has not been addressed. She stated that what makes Duck very attractive was what people were allowed to live in, build and have. She wasn't sure that there was a problem and thought the Town was putting a little too much restriction on things. She reiterated that she could live with the ordinance if it was a little more lenient on the larger homes.

Mayor Kingston noted, with respect to septic, when the house in Palmers Island was being rebuilt, Council's concern at that point was that Duck did not have any control because Dare County was controlling it. He thought that was where Council was right now as it wanted to get away from Dare County controlling it and having the Town control it. He thought that was how things got to the point it was at currently. He stated that Council thought septic would be the solution with regard to the number of bedrooms, but it wasn't. Mayor Pro Tempore Thibodeau pointed out that it was only a very small number of properties. She agreed that the issue was in Palmers Island and there was some expansion there which was what started everything. She added that the Health Department has done a good job of controlling what was going on.

Mayor Kingston stated that the septic was still needed, so it wouldn't go away. He thought Council got to this point because the Town needed a higher level of control. He stated that he had no problem with deferring the ordinance and having an additional discussion with all five members of Council. He stated that he was concerned about the upper levels, but at the same time, there was the concern about density.

Councilor Britt echoed Mayor Pro Tempore Thibodeau's comments regarding discussing it more when all Council members were present. He believed that several members would probably come up with the same conclusion. He thought the 7,000 square foot house should be tiered up proportionately. He thought it hurt recombination of lots. He thought it was arbitrary to larger houses in Palmers Island and other existing lots. He thought it could be discussed later in order to give the Planning Board more input, but if it comes back at Council's October 3, 2018 meeting, he would not be behind it as written.

Town Attorney Hobbs stated that Council had the option to table or defer the matter until Council's October 3, 2018 meeting. He added that it would then be the second reading and the vote would not be necessary at this meeting in order to have the second reading.

Councilor Caviness clarified that if it was tabled, Council would have two more rounds of voting on it. Town Attorney Hobbs stated that only one would be needed.

Town Manager Layton stated that it seemed like there were three Council members that were uncomfortable with the top tier and one member wanted the Planning Board to look at additional tiers. He stated that it may be able to get Council closer to a resolution if they were to send it back to the Planning Board.

Councilor Britt agreed with Town Manager Layton's comments, adding that he would not mind sending the ordinance back to the Planning Board to introduce more tiers. Mayor Kingston agreed. Mayor Pro Tempore Thibodeau suggested obtaining more input regarding the 25,000 square foot tier. Councilor Britt suggested adding 500 square feet to each tier to see what non-conformities would be left.

Mayor Pro Tempore Thibodeau moved to send the ordinance back to the Planning Board to get a higher tier capacity for larger lots while being as lenient as possible on square footage limitations and looking at the septic capacity.

Councilor Caviness thought some of the concern about limiting the maximum size was due to combining lots. She stated that she wanted the Board to consider an overlay for a neighborhood like Palmers Island and give them more room and for the rest of the Town where there was a lot more density, to keep that concern in mind as it could become a problem in some neighborhoods. Mayor Kingston asked if the motion should be amended to look at zoning. Councilor Caviness thought it could be amended but wasn't sure. Councilor Britt stated that he would want to know how many lots were outside of Palmers Island. Mayor Pro Tempore Thibodeau hoped that the Planning Board understood that there were a lot of options out there.

Motion carried 4-0.

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

### **Report from Town Planning Staff and Applicant Regarding the Status of Compliance with CUP 18-006**

Director Heard thought the intent of the report was that when Council granted approval of conditional use permit 18-006, they wanted an update to see if the process was moving along. He stated that the first meeting staff had with Mark Copeland, Mike Miller and Michael Strader was on July 26, 2018. He stated that there was a lot of conversation about the requirements that would be necessary as well as what would need to be submitted. He stated that on September 4, 2018, staff received the last piece of information that was necessary and issued the permit for the renovations and work that was approved under the conditional use permit. He noted that there were a variety of buildings that will need to be inspected as well as improvements to the bathrooms. He stated that the permit was issued on September 4, 2018 to allow the applicant to proceed with the necessary repairs, renovations and improvements.

Mayor Kingston asked what the effective date was for the conditional use permit. Director Heard stated that it was effective as of August 14, 2018 as far as the 90-day limit for work to be started.

Mark Copeland of Roadside Bar & Grill was recognized to speak. Mr. Copeland stated that he received the permit on September 4, 2018 and he had already moved the stage, moved one of the buildings, anchored another building and fireproofed one of the buildings. He added that he hoped to have inspections completed in the next 10 days.

### **Update on Review of Village Commercial Development Option**

Town Manager Layton stated that during the review of a recent conditional use permit in the Village Commercial zoning district, Attorney Ben Gallop had suggested that improvements could be made to the Village Commercial Development Option to better accomplish the intent of the standards and make them more legally sound. He noted that Council had a memorandum from Attorney Gallop in their packets where he spoke of some of the standards and criteria that he thought needed to be addressed to make the Village Commercial Development Option a much better ordinance and more enforceable by Council. He noted that there was an overriding recommendation related to how the Town should define fines. He added that it would remove the criminal fines which were for instances where a penalty was a criminal violation and there was a fine associated with it and would go to the school district. He stated that in most circumstances, if there were civil violations, it would go back to the Town. He noted that there were very few that were ever issued and was one of the items that was identified in the memorandum.

Town Manager Layton stated that the other items were related to the criteria and standards that staff needed to develop before it was sent to the Planning Board. He stated that what was proposed was that Council request that staff work on the items in the memorandum and bring the criteria as a starting point back to Council at the Retreat and review them at that point, and then sending it to the Planning Board. He added that it would also authorize staff and the attorneys to help with going through the Code of Ordinances to identify the criminal and civil violations and make the needed changes.

Councilor Britt moved to request staff develop it and bring it back to the Council Retreat as presented.

Motion carried 4-0.

### **NEW BUSINESS**

#### **Discussion/Consideration of Resolution 18-05, a Resolution of the Town Council of the Town of Duck, North Carolina, Establishing a Policy related to the Emergency Pumping of Floodwater**

Town Manager Layton stated that during significant rain events, there could be issues with flooding of roads and properties. He explained that when the floodwater associated with the flooding fails to dissipate within a few days, the Town is often requested to pump roads and properties. He added that Resolution 18-05 was intended to provide guidance for the emergency pumping and to establish roles and responsibilities for pumping. He noted that it clarified that pumping was allowed on to private property provided that the pumping did not cause visible impacts to adjoining properties and further clarified that homeowner and property owner associations as well as private property owners could request a permit to pump to the Atlantic Ocean or Currituck Sound from the North Carolina Department of Environmental Quality, Division of Water Resources, but the request must come through the Town.

Councilor Caviness thought it was great that the Town was trying to facilitate and help the homeowner associations with permitting and obtaining equipment. She asked who would be doing the work as she didn't feel that it should fall to the Public Safety Department to do it. She further asked if there were firms that would do the work. Town Manager Layton stated that firms do exist, but it didn't mean that the Town could obtain their services. He pointed out that once the pumps were running and someone checks them, they basically run themselves. He added that the deployment of the pump line was the most intense part of the operation.

Councilor Caviness asked if it was unreasonable to pursue something similar to debris management where the flood prone neighborhoods could put a company on retainer so that when it was needed, the service could come and do the work. Town Manager Layton stated that vendors do exist and one of the things staff looked at was a franchise where a better rate would be obtained because of agreements. He stated that if there was a flooding event, everyone would be scrambling to obtain equipment. He explained that there wasn't a company that would sign an exclusive franchise not knowing what would be done. He added that there were several companies that are in this line of work and staff would provide that list as it goes forward. He stated that under the Town's debris management contract, there were things in it for using pumps, but Duck never had to use them, and they contract with nearby agencies.

Mayor Pro Tempore Thibodeau asked if the Town ran into an issue with not being able to obtain equipment when there was recent flooding. Town Manager Layton stated that it was never an issue. He added that staff would be more proactive moving forward with securing the equipment earlier in anticipation of flooding.

Mayor Pro Tempore Thibodeau moved to adopt Resolution 18-05 as presented.

Councilor Caviness asked if there was language in the resolution that stated that Town staff would perform the pumping. Town Manager Layton stated that there was nothing in the resolution that would specifically require Town staff to do it, but there would be instances where Public Safety would have to do it, but it would be on a case by case basis.

Motion carried 4-0.

**Discussion/Consideration of Resolution 18-06, a Resolution of the Town Council of the Town of Duck, North Carolina, in Support of a Local Planning & Management Grant to Conduct a Hazard Vulnerability Assessment**

Town Manager Layton stated that several months ago, a proposal was discussed with Western Carolina University and Professor Robert Young regarding completing a vulnerability analysis. He stated that the funding source didn't approve the grant request, so staff was looking at a different pool of money for it. He explained that CAMA has a planning grant program where the vulnerability assessment has a high probability of being funded. He stated that staff thought it was a unique project. He stated that in talking with Dr. Young as well as Director Heard, it was decided that it was worthy of looking at.

Town Manager Layton stated that the grant application had a nice discussion of the project. He explained that it identified and developed specific tools to assess the vulnerability of public structures, meaning the Paul F. Keller Meeting Hall, Town Hall, the boardwalk, NC 12 and the Public Safety building. He stated that it would give tools as to what the impact could be and what could be done to remediate it. He noted that CAMA refers to it as an asset level tool and have used it in other public areas. He added that one of the unique things about the Town's project was that staff would like to pick some private properties, use the same tools, but expand it a bit.

Town Manager Layton stated that the grant would be to identify both the assessment of the vulnerabilities of the public structures as well as the different levels of remediation and mitigation that could be done. He noted that all would be done in such a way that it could be expanded as staff saw fit. He stated that the cost of the grant for the project was \$26,805 and there was a match of \$3,400 from the Town and the remaining match would be through Western Carolina University.

Director Heard stated the final step of analyzing the vulnerabilities and providing staff with alternatives were ways that the issues could be addressed. He thought ultimately it would give Council some guidance as to steps that could be made and what to consider in the future to protect Duck's assets and public resources.

Mayor Pro Tempore Thibodeau moved to approve Resolution 18-06 as presented.

Motion carried 4-0.

**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**

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.

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

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.

Mayor Kingston stated that in 2017, Council spent a lot of time discussing the parking enforcement of private roads. He stated that over the Labor Day weekend, a telephone call came in to the Police Department due to three vehicles illegally parked in the Tuckahoe subdivision. He added that it was the way the system worked, but he was concerned about the officers looking for the owners of the three vehicles and thought it was a waste of their time. He pointed out that it was not a safety issue. He stated that with the discussion that was held in 2017, he thought that Chief Cueto had commented that he didn't think that the Town needed to enforce parking on private streets. He thought as a Council, the issue should be brought up at a future meeting and thought it was a waste of the officer's time to police private streets for illegal parking when the homeowner associations could do the same thing. He stated that he was not criticizing the Duck officers; but reiterated that it was a waste of their time. He thought that at a future meeting or the annual Retreat, he would like to discuss the issue again. He stated that the Town has invested in additional officers to do police work and did not need to be meter maids or parking attendants.

Police Chief Cueto agreed with Mayor Kingston's comments. He explained that the Police Department's policy remained consistent in order to address these situations on a case by case basis. He noted that they were on a complaint driven basis and added that there have been several homeowner associations that have contacted the Police Department recently about parking. He thought this would be an excellent topic for the Council Retreat.

Mayor Pro Tempore Thibodeau clarified that the Police Department received telephone calls from homeowner associations. Police Chief Cueto stated she was correct. He explained that there have been some issues in the Georgetown Sands subdivision as well as on Marlin Drive.

### **Update on the Public Safety Building**



Town Manager Layton stated that he had a discussion with the real estate division of the Corps of Engineers and they were preparing an agreement of understanding with the Town which involved all of the requirements for the approval or disapproval of the request the Town made over a year and a half ago for additional property for the construction of a Public Safety building.

Town Manager Layton stated that the requirements that the real estate division wanted to put on the Town would cost approximately \$100,000. He explained that it involved a review by the Former Utilized Defense Site personnel, a review of what the Town was requesting and the ordinances that existed on the property. He noted that they did not expect to have any issues, but the review was required. He stated that if the Baltimore district was involved, it would be an additional cost as well as an additional cost for the real estate personnel to draft the agreements. He noted that they were requiring an appraisal of the property, which was a significant cost (up to \$20,000) for the it. He added that the Fire Department currently has a license to use the property and it could be revoked at a moment's notice. He stated that if the Town was to move forward with the construction of the new Public Safety building, there has to be some site control over it, which would take it from a license to a lease agreement under the Corps of Engineers. He stated that under the Corps' rules, they were required to charge the Town for it and it would be based on the appraisal. He stated that he didn't know what the cost would be as it would be a project cost and the appraisal was the basis for it.

Town Manager Layton stated that there were also project management costs. He explained that if the Corps gave the Town the approval, they would want someone who was responsible for making sure the Town was building what it said it would build. He stated that the local Field Research Facility did not have those requirements, so the Town would have to pay for someone to provide that oversight. He stated that the Corps was required to complete an environmental assessment, adding that the last environmental assessment that was completed was for the beach nourishment project. He stated that the environmental assessment was costly. He stated that VHB has an arrangement with the Town's architects and can perform the environmental assessment. He stated that it was a hybrid arrangement since the Corps would usually do the assessment, but they were backlogged, so the Town could give the Corps some money and they would review what the hired consultants develop and then make a finding of significant impacts in order to move forward.

Town Manager Layton stated that he anticipated the cost of the review of the Corps was approximately \$25,000 and the environmental assessment was approximately \$36,000. He stated that it would cost approximately \$100,000 collectively. He anticipated bringing forward a memorandum of agreement with the Corps of Engineers to Council's October 3, 2018 meeting and a proposal for the environmental assessment from VHB to ask Council's approval in order to move forward with the project. He added that the Town was several months away from knowing if it could move forward on the design of the project, so it was looking at next summer to get to that point.

Councilor Britt asked if all of the requirements were connected because of the extra space. He further asked if the Public Safety building stayed on the same space, it would be happening anyway. Town Manager Layton stated that it probably would not. He added that it would be the case if the Public Safety building stayed in the current footprint. He stated that one of the reviews of the environmental assessment was the current site and making the argument why the Town needed the other space as well as why it was the best option. He stated that anything significant done to the site would require an environmental assessment.

Mayor Pro Tempore Thibodeau asked if the ordinance aspect was an administrative review or an on-site visit. Town Manager Layton stated that he did not know at this point.

### **Update on the Purchase of Property at 101 and 103 Scarborough Lane and 1165 Duck Road**

Town Manager Layton stated that he did not have an update as the last signature needed has not been obtained. He stated that he wasn't sure when or if it will be obtained but assumed at some point that it will be done. He suggested that the issue be brought back to Council at their October 3, 2018 meeting to discuss how the purchase agreement should be handled – whether it should be withdrawn or have a deadline set. He added that during that process, Council could address why it got to the point where they felt the purchase of the property was a good idea to begin with, which could be part of the decision-making process. He stated that he had some concerns about having a large expenditure on the books since the Town encumbered the money for the purchase because of the purchase agreement. He explained that from an auditing standpoint, it was something that needed to be addressed. He stated that it would also be a good idea to discuss the purchase of the property, so the general public can be made aware of how the Town got to that point and why it was a good idea. It was *consensus* of Council to discuss it at their October 3, 2018 meeting.

### **Update on Proposed Parking Analysis and Floodwater Mitigation Analysis Studies**

Town Manager Layton stated that during the last discussion, there were two study items that were discussed, and some would be discussed further at the Council Retreat, while some would move forward depending on the discussion. He stated that one of the items was the idea of doing a parking analysis of the Village area. He stated that he tried to get an idea of what the project may look like as well as the cost. He noted that there were a variety of ways to get the information and one way that consulting firms obtain information was through the use of drones to try to get an idea of what was going on during peak times. He explained that they use the drones at different times on weekdays and then again on weekends to see traffic coming in and where it was going as well as where people park, and then compare it with what was on the ground as well as reviewing what was approved in the areas. He stated that it was very time intensive.

Town Manager Layton thought in order to get more intense answers, it would cost about \$20,000-\$30,000. He wasn't sure if there was a desire to do that. He added that the other issue was that it needed to be done during peak times, which was during the summer months. He noted that there was time to make a decision if Council wished to move forward with it. He suggested that the Town work its way into the Village Commercial Development discussions at the Retreat and if it comes up again, there would be time to do something over the summer. He wasn't sure the Town was at a point where it wanted to spend that kind of money on the analysis.

Town Manager Layton stated that the floodwater mitigation analysis could be discussed at the Retreat. He pointed out that the Town has a policy in place currently and was working on a discharge plan, which would be taking the policy and turning it into a plan that could be approved by the Division of Water Resources. He stated that the question was if Council wanted to look more closely at these areas that staff knew were subject to flooding during heavy rain events. He asked if Council wanted to look at possible solutions as well. He added that the solutions would likely involve pumping and how the water would be pumped. He stated that it came down to if there was infrastructure that could be put in place or if there was something more along the lines of additional pipes and if it was something Council wanted to look at.

Town Manager Layton stated that before Council gets to that point, staff wanted to look at the conditions and check out the geotechnical data and confirm what was going on and then build from that. He explained that in order to do that, no one has given him a cost estimate of the second phases, which were getting the design work of setting up the pump system or outfalls, if Council were amenable to them. He stated that before that, staff would need to check where the low areas were and see what's underlying through geotechnical data. He stated that the first phase would cost approximately \$50,000 to look at the Town comprehensively in the areas that staff knows where the flooding was to confirm what was going on with the data. He noted that it was something that could wait, but the third phase of storm water flooding was lingering and may make sense to look at in more detail.

Mayor Pro Tempore Thibodeau clarified that Council may have a discussion at the Retreat or if Town Manager Layton was proposing that Council think about the idea and talk about it at the October 3, 2018 meeting. Town Manager Layton stated that for the storm water issue, Council could do either. He stated that if Council felt strongly about moving forward with something now, it could be discussed. He added that if it was something Council wanted to have more of a discussion on, staff could bring in VHB and have the discussion on what it looks like, what the Town would get from it and potentially if it was worth the effort. He stated that it could be incorporated into a general discussion on flood mitigation at the Retreat without getting into the specifics of what the study would be.

Mayor Kingston thought either project needed to be done immediately at this time and felt that Council could discuss both at their annual Retreat. Mayor Pro Tempore Thibodeau and Councilor Britt agreed.

## **Financial Statement for month of August for FY2019**

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

## **MAYOR'S AGENDA**

Mayor Kingston stated that he has his mayors lunch on September 18, 2018 in Southern Shores. He stated that he had a League of Municipalities Finance Committee conference call earlier in the day. He stated that he has a League of Municipalities Board of Directors Meeting on September 19, 2018 in Hickory, North Carolina. He thanked Town Clerk Lori Ackerman for helping him with printing the agendas for his meetings with the League. He thanked Director Legner and Public Relations Assistant Betsy Trimble for their help with all of the summer events. He stated that he has a regional grassroots roundtable on November 27, 2018 in Duck and would be on vacation September 23 through October 2, 2018.

## **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau thanked staff for everything they do. She stated that it was a great summer of events. She thanked Town Clerk Ackerman for her work on the minutes from the July 18, 2018 meeting. She pointed out that the jazz posters looked great in the Meeting Hall.

Councilor Caviness thanked Bob Wetzel for his comments earlier in the meeting. She thought more people were using the crosswalks in Town, but there were still problems with people walking and biking on the wrong side of the road. She noted that she has never seen so much trash on the street and sidewalks in Town and wasn't sure why there was so much and hoped everyone could do their part to stop the littering. She added that the Turkey Trot was coming up on Thanksgiving Day.

Councilor Britt stated he had no report.

## **OTHER BUSINESS**

### **Additional Public Comments**

Mayor Kingston opened the floor for public comments.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that he grew up in a large house and could not imagine his home on a small lot. He wondered if the Planning Board had in their minds if they wanted to allow large homes in Duck. He added that there were septic issues in Corolla with the larger homes. He stated that the building codes were really just minimums and wondered if large homes fit in with the small town feel of Duck.

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

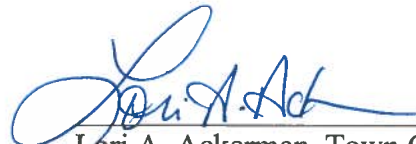
Mayor Kingston noted that the next meeting will be the regular meeting on Wednesday, October 3, 2018 at 7:00 p.m.


**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 4-0.

The time was 10:22 p.m.

  
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Lori A. Ackerman, Town Clerk

Approved: October 3, 2018  
  
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Don Kingston, Mayor

