

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
November 3, 2021**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, November 3, 2021.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Sandy Whitman; and Councilor Rob Mooney.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Drew Havens, Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Finance and Human Resources Administrator Jessica Barnes; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 6:00 p.m.

Mayor Kingston asked Councilor Nancy Caviness to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence. He noted that Mayor Pro Tempore Thibodeau was running late for the meeting.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He noted that comments will be limited to three minutes as there was now a timer for the time limit. He added that the public could email public comments, but they must be received by 4:00 p.m. on the day of the Council meeting. He noted that written comments must also be limited to three minutes when read aloud. There being no one wishing to speak, Mayor Kingston closed the time for public comments.

CONSENT AGENDA

Minutes from the September 1, 2021, Regular Meeting; Minutes from the September 10, 2021, Special Meeting; Budget Amendment; Updated Records Retention Schedule

Councilor Caviness moved to approve the consent agenda as presented.

Motion carried 4-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Submitting Requests to Extend the Dare County Tourism Board and National Fish and Wildlife Grants Relating to the North Duck Village Coastal Resiliency Project

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the Town recently received word that it was likely to be awarded the BRIC grant which will allow the Town to move forward with all of the aspects of the coastal resiliency project in north Duck village. He explained that it was the living shoreline, the shoreline stabilization components, as well as the sidewalk, bicycle lane, and raising the elevation of the highway through that stretch to make the corridor more resilient. He stated that with regard to the timing, the timeframe was December/January for the award to occur which meant that there wasn't time to construct the project this year with the earliest start date being mid-October due to the need for lane closures even though one lane would always be open. He noted that it could not be done at any time but the off-season with regard to traffic flow and its impacts.

Director Heard stated that the issue at hand was that it pushes the previously approved grants out of those cycles, explaining that the Town had approval and has to spend those funds within a certain timeframe in order to take advantage of the grants. He pointed out that at this meeting, staff was taking the first step in requesting another extension for both of the grants. He noted that there were two grants – one for \$147,806 from the Dare County Tourism Board for the bicycle and pedestrian improvements. He stated that he would be asking to extend that through June 2023. He stated that the second grant was for \$384,011.25 from the National Fish and Wildlife Foundation in support of the living shoreline component and the Town would be requesting a one-year extension to allow it to continue their match toward the project.

Director Heard stated that with the BRIC grant, the Town's contribution in matching all three grants has been reduced significantly. He thought that during budget discussions next year, staff will be able to report some positive items with regard stretching the public dollars further with these grants. He noted that Resolution 21-14 outlined the reasons for the requests as well as requesting the two funding agencies for the extensions.

Mayor Kingston asked if there had been any conversation with either organization regarding carrying over the grants. Director Heard stated that he had conversations with both, and both were positive interactions.

Mayor Pro Tempore Thibodeau moved to approve Resolution 21-14 as presented.

Motion carried 5-0.

Discussion/Consideration of the Second Amendment to the Solid Waste and Commercial Recycling Agreement Between the Town of Duck and Waste

Management and to Authorize the Town Manager to Execute the Amendment on Behalf of the Town

Town Manager Havens stated that following a discussion with representatives with Waste Management on October 6, 2021, staff worked with Rob Clendenin and Jerod Roberts with Waste Management to develop three changes to the current contract as follows:

1. Reverting back to the original language regarding pick up days effective January 31, 2022: "Collection shall be made twice per week on Monday and Friday from May 1 through September 30 and one time per week on Monday from October 1 through April 30." We were able to agree to the January 31 date as it allows Town staff to properly message the change, get new stickers printed and distributed, and work to enhance communication regarding current ordinances regarding when trash cans can be placed out for pick up and when they must be removed from the roadside."
2. Changing the collection days for commercial recycling in the contract to match what is actually being done. The contract requires this collection on Tuesdays and Saturdays. They have been collecting on Tuesdays and Thursdays nearly since the inception of the contract. There have been no significant service issues and we have assurance from Waste Management that if there is a location where this change becomes an issue, they will work with us to resolve it. They want, and staff concurs, to avoid having a truck in Town on Saturdays due to the traffic volume seen on that day.
3. Changing the time they may begin collecting from 7:00 a.m. to 5:00 a.m. As they noted at the Council meeting, they believe that 6:00 a.m. is likely the earliest they can begin, but we want to be sure the contract gives them a bit of leeway in case they get here a little early. Our goal, which was one of the goals of the split route, is to get their trucks out of Duck as early in the day as possible especially during the busier times of the year.

Town Manager Havens stated that the second two changes would be effective on December 6, 2021, so staff can properly communicate the coming changes.

Councilor Caviness asked Town Manager Havens to qualify the commercial dumpsters that were in residential neighborhoods. Town Manager Havens stated that it was all commercial recycling and not waste. Councilor Caviness asked if there was a dumpster in a residential area, it would be collected on Tuesday and Thursday. Town Manager Havens stated she was correct, clarifying that it was a recycling dumpster.

Councilor Mooney thought the Town needed to start working with the property management companies so the trash cans do not remain on the street for multiple days. He noted that it was a big problem because, with the previous contract, the cans would sit at the curb on Saturday and not be rolled back to the house until Tuesday. He thought

there needed to be a discussion about it in the future. Town Manager Havens stated that staff was open to suggestions, adding that Mayor Pro Tempore Thibodeau was familiar with the industry. He stated that if there were ways that staff could communicate that they haven't in the past, they would want to know about it. He stated that he did not want to get to a point where trash police would be needed, and citations would be written for a violation of the Town code for people leaving their trash cans at the curb. He added that staff wanted to work on education and getting the same level of compliance from the resident property owners.

Mayor Pro Tempore Thibodeau stated that it was not only an educational piece, but also a functional piece. She stated that the Town of Southern Shores had tried to institute a fine in the past on property owners if the property manager did not comply, but it did not last. She stated that a representative from her company will be attending a meeting with the Town of Nags Head with the idea of how to get the cans rolled back to the house especially on Beach Road. She noted that this year, her company can text residents and tourists to remind them to put their trash can at the curb. She added that trash was an ongoing issue that could be addressed better. She stated that she loved the idea of more education as it sounded like Town staff will help to get the word out. She stated that in other communities, the trash restrictions were incredibly strict, and people were getting more accustomed to having stricter trash regulations. She thought it would take more discussion but felt it was a good idea to look at ways the Town could improve the look and functionality of the trash pickup.

Mayor Kingston thought when Town staff considers new stickers, they could emphasize rollback versus the days of collection.

Councilor Whitman moved to authorize the Town Manager to execute the amendment on behalf of the Town with Waste Management to change the recycling and solid waste collection days.

Motion carried 5-0.

Discussion/Consideration of Authorizing the Town Manager to Execute Contracts for Duck Trail Improvements and Retaining Wall Replacement

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that at Council's October 6, 2021, meeting, Council opted to defer action until bids for the replacement of the retaining walls were received in order to review the total package and prioritize funding for improvements.

Senior Planner Cross stated that the Duck Trail repaving project involves the removal and reconstruction of 707 linear feet of permeable concrete and 313 linear feet of conventional concrete for the Duck Trail shared use path between Oyster Catcher Lane and the previously completed section south of Blue Heron Lane. She noted that the project involves the creation of shallow "V" roadside swales on either side of the Trail, where feasible, to provide positive drainage away from the path and road surface.

Senior Planner Cross stated that the engineer's cost estimates were consistent with the unit cost bids, but there appeared to be an unknown multiplier in the bids that were received, which staff attributed to workload and labor force impacts. She noted that both bids received significantly exceeded the \$110,000 budget for Duck Trail repaving in Fiscal Year 2021-2022. She added that the low bid from Fred Smith Company was valid for 45 days and if the additional \$25,000 budgeted for stormwater improvements along Duck Trail adjoining Sanderling was included, the total budgeted amount of \$135,000 left a shortfall of \$53,920.

Senior Planner Cross stated that the retaining wall replacement project involved the removal and reconstruction of 289 linear feet of retaining wall 50-60 inches in height along the east side of the Duck Trail adjoining the Carolina Dunes neighborhood north of Pintail Drive and south of Wood Duck Drive and 48 linear feet of retaining wall 48 inches in height along the east side of the Duck Trail adjoining the US Army Corps of Engineers property south of Nor'Banks Drive. She pointed out that the bid from Millstone Marine Contracting exceeded the \$60,000 budgeted for the retaining wall replacement in Fiscal Year 2021-2022 and, although higher than the engineer's original estimate, staff considered this to be a reasonable bid, which was valid for 45 days. She added that the total budgeted amount of \$60,000 leaves a shortfall of \$14,079.

Senior Planner Cross stated that after discussing the options for proceeding with the planned projects, staff felt strongly about the importance of the projects as safety improvements. She explained that the section of Duck Trail planned for repaving with concrete has significant issues with root intrusion, creating hazards for pedestrians and bicyclists. She added that the two retaining walls were overdue for replacement and in light of these concerns, staff was recommending that Council consider approving the entire project and authorize the Town Manager to enter into contracts with Fred Smith Company for \$188,920 and Millstone Marine Construction for \$74,079. She noted that if Council decided to stay within the current budgeted amount for the projects, Council could decide to defer construction of the retaining wall project.

Director Heard stated that Council had also asked staff to look at revenue sources to cover the projects. He stated that there was a substantial amount of money budgeted in the current budget year for the coastal resiliency project. He stated that with obtaining the BRIC grant, the amount reduces drastically for the Town's contribution. He added that with the timing, it would no longer start within this budget year, so if Council wanted to consider moving forward with the projects, there was already quite a bit of money allotted in the same line item that could be used for these projects. He noted that a budget amendment would not be required for the projects.

Mayor Pro Tempore Thibodeau stated that she was in favor with moving forward with the projects. Town Manager Havens noted that the BRIC project and these two projects were all budgeted in the same department and Council approves the budget ordinance by department. He explained that at the end of the year, it will be \$69,000 less that would be rolled into the fund balance.

Mayor Kingston asked if it was safe to assume that if the Town spent the budgeted amount this year, the balance would be rolled into next year's budget as an expenditure. Town Manager Havens stated he was correct. Mayor Kingston clarified that, more than likely, the project would be planned to be completed next year. Town Manager Havens stated he was correct, adding that these were projects that need to be done. He noted that Senior Planner Cross has some concerns related to public safety, such as trip hazards on the Duck Trail as well as the issue of how stable the retaining wall was. He stated that it could probably wait another year without causing any issues, but construction prices for 2022 was an unknown. He didn't think it would be significantly less than they were for this year.

Senior Planner Cross stated that the labor and materials were driving factors. She stated that the cost to replace the retaining walls was a good price. She added that with regard to the Duck Trail improvements, the cost was good but there was also a multiplier involved. She pointed out that there was not a multiplier in the retaining wall replacement.

Mayor Pro Tempore Thibodeau pointed out that the Town was trying to allocate some money towards various maintenance costs as part of the annual budget. She didn't think the Town was gaining anything by deferring repairs for another year since they have to be maintained. Senior Planner Cross thought Council could look at some cost savings with regard to Duck Trail improvements next year. She noted that this last section was the most liable in terms of public safety. She added that there was one more section in the Sanderling subdivision that will need work, but it did not have a lot of root intrusion or tree canopy. She thought that section could wait another year.

Councilor Mooney stated that he was in favor of doing the work now. Councilor Whitman stated that he was in favor of moving forward with the work.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to execute the contracts as presented with the adjusted cost.

Motion carried 5-0.

NEW BUSINESS

There was no New Business to discuss.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

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

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

Director of Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of activities to Council and the audience.

October FY 2022 Financial Presentation

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the October Fiscal Year 2022 financials to Council and the audience.

Town Manager Havens gave a short update on the Town's beach renourishment project to Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that his mayor/chairman monthly meetings have started back up after a long hiatus due to COVID-19. He stated that they had their last meeting in mid-October with Representative Bobby Hanig joining for the last two meetings. He stated that it was valuable that Representative Hanig had attended the meetings because he gave an update on what was going on with the General Assembly. He stated that the new issue is redistricting and thought Council saw his letter to Dustin Hall drafted by Town Manager Havens regarding the latest proposal in front of the House, which was splitting Dare County in two. He noted that Dare County was also taking exception to that. He added that the Town of Nags Head went on record with being against the redistricting. He thought it would be difficult for Dare County as well as the six towns to operate with two representatives in the State legislature. He stated that their next meeting will be in mid-November.

Mayor Kingston stated that he attended a few executive meetings with the League of Municipalities – one on Monday, November 1, 2021, and another coming up on Monday, November 8, 2021, as well as a finance committee meeting on November 30, 2021. He noted that he and Town Manager Havens have a Board of Directors meeting on December 9, 2021, which will be held virtually. He stated that on November 4, 2021, he has a meeting with the local leadership foundation.

Mayor Kingston congratulated Mayor Pro Tempore Thibodeau, Councilor Mooney and Councilor Whitman on their re-election. He stated that he looked forward to working with Council in the coming year. He congratulated Tony Schiano on being elected to Council. He expressed his appreciation to Joe Blakaitis, Ben Vorndran, and James Bartlett for running for Council. He thanked Councilor Caviness for her time on Council, adding that this would be her last regular meeting. He stated that Council has valued her contributions over the years.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau gave a short update on the recent Outer Banks Visitors Bureau meeting to Council and the audience. She thanked everyone that voted for her in the recent election and congratulated the other Council members for being re-elected as well as Tony Schiano for being elected to Council. She thanked Councilor Caviness for her service to the Town over the years.

Councilor Mooney asked what the status was for the extension of tents for restaurants. Director Heard stated that staff was asked to come back to Council in December. He explained that the extension was granted until mid-January 2022. He stated that staff planned to come to Council in December with some more information so Council could make a decision on extending it further into the future.

Councilor Whitman congratulated the other Council members and Tony Schiano on the recent election. He reminded Council and the audience that the Town holds a trash pickup every Friday for anyone that wanted to participate. He thanked Councilor Caviness for her service over the years to the Town.

Councilor Caviness stated that incorporating the Town was one of the most exceptional experiences she's had. She stated that it was an extraordinary experience and was a privilege to be part of the incorporation committee. She stated that she had the privilege of serving alongside a lot of the community's visionaries and was very appreciative of it. She noted that they were people that dared to imagine something better, bigger and more creative and she thought everyone benefitted from their vision. She stated that a lot of people love the Town as witnessed by those that vacation or start their lives in Duck. She thanked Town staff for all they have done over the years, adding that the Town would not be what it was without them.

OTHER BUSINESS

Additional Public Comments

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

Mayor Kingston noted that the next meeting would be the Mid-Month Meeting on Wednesday, November 17, 2021, at 1:00 p.m.

ADJOURNMENT

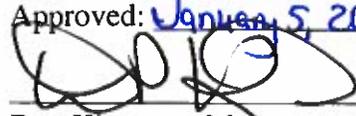
Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 7:13 p.m.



Lori A. Ackerman, Town Clerk

Approved: January 5, 2022


Don Kingston, Mayor

