

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
December 4, 2019**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, December 4, 2019.

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

COUNCIL MEMBERS ABSENT: Councilor Jon Britt.

OTHERS PRESENT: Councilor-elect Sandy Whitman; Councilor-elect Rob Mooney; Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Public Relations Administrative Assistant Betsy Trimble; Director of Marketing and Special Events Christian Legner; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Town Manager Layton called the meeting to order at 7:03 p.m. He asked Bob Fitchett to lead the Pledge of Allegiance. Town Manager Layton led the moment of silence.

SWEARING IN OF NEW COUNCIL MEMBERS

Town Manager Layton stated that the new Council members would be sworn in followed by the election of the Mayor and Mayor Pro Tempore. He turned the meeting over to Town Clerk Ackerman.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman swore in each Council member one at a time.

ELECTION OF TOWN COUNCIL OFFICERS

Election of Mayor

Town Manager Layton open the nominations for Mayor of Duck.

Mayor Pro Tempore Thibodeau moved to nominate Don Kingston as Mayor. Town Manager Layton asked for other nominations. There being no other nominations, Town Manager Layton closed the nominations. Town Manager Layton moved to re-appoint Don Kingston as Mayor.

Motion carried 5-0.

Town Manager Layton turned the meeting over to Mayor Kingston.

Election of Mayor Pro Tempore

Mayor Kingston opened the nominations for Mayor Pro Tempore of Duck. He moved to nominate Monica Thibodeau as Mayor Pro Tempore. Mayor Kingston asked for other nominations. There being none, he moved to re-appoint Monica Thibodeau as Mayor Pro Tempore.

Motion carried 5-0.

PUBLIC COMMENTS

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

Tommy Karole of 77 East Dogwood Trail, Southern Shores was recognized to speak. Mr. Karole stated that he felt like he was blindsiding Council, but the issue has come out quickly and there was no time for him to ask to be on the agenda. He stated that he was asking for a public hearing on the proposed administrative approval of a permit to open a bicycle/kayak rental launch at 1566 Duck Road. He noted that initially the permit request included an ice cream shop which has since been removed from the application and a new application was submitted. He stated that it was in front of the Planning Board at their November 13, 2019 meeting and they had a lot of questions with two motions – to approve the application and to deny the application. He added that there wasn't a second on either motion. He stated that he met with Director Heard earlier in the day and the new application with the ice cream shop removed was not discussed with him. He understood through a third party that the Town could give administrative approval and the applicant would not have to go back before the Planning Board or Town Council since it was the same use permit.

Tommy Karole stated that Joseph Speight operates a crabbing business and a small fish market and couldn't understand why that could be considered the same use as a bicycle/kayak rental business. He asked Council, in fairness to him, to step in because of the parking issue. He stated that when his business was approved in 2008, it didn't open until 2011 and he has seven parking spots on the property that the applicant could not use for their new business. He added that his lease addresses all of the issues and Director Heard had told him it was not part of the application and did not care what his lease stated as it was between the tenant and landlord. He stated that with the special consideration that was given to him to have that parking, he believed it became part of the due diligence to look into it before a permit was issued. He stated that he sought counsel earlier in the day and unfortunately, there was a conflict of interest since the Town's attorney works for the same firm as his.

Jeffrey Beaulieu of 105 Skimmer Way was recognized to speak. Mr. Beaulieu congratulated Council on their election. He stated that he was present to support Tommy

Karole's concerns. He thought Council knew about the Paper Canoe Restaurant and how it was situated on a very busy road with no sidewalks. He noted that it was very difficult to get into the parking lot and park a vehicle any time between 5:00 and 8:30 p.m. He stated that the new business that wants to come in would have a conflict with the Paper Canoe Restaurant during the evening hours that will cause a big safety issue there. He added that there was a sidewalk across the street, but not on the side of the Paper Canoe Restaurant and there was no other parking that could be used. He stated that Mr. Karole has developed a very large business that was usually filled to capacity each evening. He stated that it was a serious safety issue. He asked Council to take it under consideration that the application should not be approved.

Mark Leahy of 105 Bunting Lane was recognized to speak. Mr. Leahy stated that he was also opposed to the application for the kayak rental business next to the Paper Canoe Restaurant. He thought one of the problems was there was no overflow parking in that area unlike what was in other parts of Duck. He stated that if the applicant was going to open a new business there, it was during the evening hours and there was nowhere for his customers to park. He asked Council to reconsider the parking situation outside of the Village core.

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

SPECIAL PRESENTATIONS

Resolution 19-08, a Resolution of the Town Council of the Town of Duck, North Carolina, Honoring and Thanking Chuck Burdick for his Service to the Town of Duck

Town Manager Layton read Resolution 19-08 to Council and the audience, honoring and thanking Chuck Burdick for his service to the Town of Duck.

Mayor Pro Tempore Thibodeau moved to adopt Resolution 19-08 as presented.

Motion carried 5-0.

Chuck Burdick thanked everyone for supporting him over the years that he has been on Council.

Resolution 19-09, a Resolution of the Town Council of the Town of Duck, North Carolina, Honoring and Thanking Jon Britt for his Service to the Town of Duck

Mayor Kingston noted that Jon Britt was unable to attend the Council meeting.

Town Manager Layton read Resolution 19-09 to Council and the audience honoring and thanking Jon Britt for his service to the Town of Duck.

Mayor Pro Tempore Thibodeau moved to adopt Resolution 19-09 as presented.

Motion carried 5-0.

Presentation by Michael Fletcher of the Southern Shores Library Committee

Michael Fletcher of 226 South Woodland Drive in Southern Shores was recognized to speak. Mr. Fletcher stated that he was present on behalf of the Southern Shores Library Committee. Mr. Fletcher went on to give a short presentation to Council and the audience on the recent survey that was conducted regarding the need for a library on the northern beaches.

Mayor Kingston thanked Michael Fletcher for his presentation.

CONSENT AGENDA

Minutes from the November 6, 2019, Regular Meeting and Minutes from the November 20, 2019, Mid-Month Meeting

Councilor Caviness moved to approve the consent agenda as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 19-04, an Ordinance to Establish Review Standards for the Village Commercial Development Option as a Special Exception

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 Council held a public hearing on this text amendment at its November 6, 2019 meeting and, following discussion, voted unanimously to send the draft ordinance back to the Planning Board to discuss and reconsider the proposed requirement under Subsection 156.065(B)(7) that “the requested modification cannot be used to remedy existing violations on a property.” He pointed out that as it would require an applicant to correct or remove a violation prior to application, some Council members had expressed opinions that this subsection may be overly burdensome for an applicant who may have committed a minor violation or a violation by mistake. He added that one idea discussed by Council was a “first time forgiveness” provision.

Director Heard stated that the Planning Board gave further consideration to the proposed requirement at their November 13, 2019 meeting and noted that this provision was inserted during an early stage of the ordinance. He added that the Planning Board thought it was an important standard to discourage business owners from committing violations then seeking forgiveness through the Village Commercial Development Option process. He noted that some Board members commented that this practice is unfair to the businesses that obtain permits and conduct business in the proper way. He stated that the Planning Board did not recommend any changes to the previously submitted text amendment ordinance.

Director Heard stated that the Village Commercial Development Option process was intended to consider flexibility with development standards in situations where the resulting development was consistent with the desired scale and character of development in Duck Village. He stated that special exceptions were available to provide relief from development standards in certain situations and therefore, the Village Commercial Development Option approval process fits better as a special exception than a conditional use permit which typically deals with consideration of uses. He noted that Town Attorney Hobbs, Community Development staff and the Planning Board were recommending removing the current Subsection 156.03(C)(6) from the list of conditional uses in the Village Commercial zoning district and creating a new Section 156.065 entitled: "Special Exception: Village Commercial Development Option", which contained the standards and applicable information related to the Village Commercial Development Option.

Director Heard stated that the current Village Commercial Development Option ordinance gives Council broad discretion to approve a Village Commercial Development Option application after considering a limited number of non-specific and somewhat subjective criteria. He added that under the current Village Commercial Development Option, there were few objective criteria which must be met for an applicant to obtain modifications of requirements that other development projects in the Village Commercial district have to meet. He noted that the general intent of the Village Commercial Development Option was that the proposed development should be consistent with or enhance the character of Duck Village. He stated that the Planning Board had proposed guidelines to help the applicants and decision-makers identify important characteristics for consideration during a Village Commercial Development Option.

Director Heard stated that, at one point, the Planning Board developed a detailed scoring system for design criteria to help quantify whether a proposal was consistent with the character of Duck Village and after thorough review, the Board decided that using these criteria as guidelines would give Council greater flexibility in determining if a proposal was compatible with the Village Commercial district. He noted that due to their modest scale, the proposed ordinance would exempt modest changes in use and small additions/expansions of existing businesses from compliance with the Village Commercial Development Option guidelines.

Director Heard stated that at the Planning Board's November 13, 2019 meeting, they voted unanimously to resubmit its recommendation for approval of the proposed text amendment establishing standards for approval of the Village Commercial Development Option as a special exception.

Mayor Pro Tempore Thibodeau clarified that with the guidelines in place as Council was looking at them at their last meeting and looking at projects that were approved for the Village Commercial Development Option, there would be very few that would not meet the criteria. She asked if it would also constrain any businesses significantly. Director Heard stated that it was general enough that Council has the ability to interpret how well they feel the project complied. He added that the intent was for the property or business owner to look at what they wanted to do and show Council a good faith effort in that what they were doing would be consistent with the character of the Village. Mayor Pro Tempore Thibodeau clarified that Director Heard was talking about properties that were already developed. Director Heard stated she was correct.

Town Attorney Hobbs asked if there were any comments from members of the Planning Board. There were none.

Town Attorney Hobbs asked if anyone from the audience wished to address the proposed ordinance. 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. He reminded Council that it will require at least four votes to approve the ordinance on the first read, but if there were not four, there will be a second read at Council's January meeting and the ordinance would be adopted with a simple majority.

Mayor Kingston noted that Council had sent the ordinance back to the Planning Board in November because there were only four Council members present and now there was a new sitting Council. He added that there was also some objection to Section B7, which the Planning Board was asked to look at again. He stated that he had no issue with original proposal and felt the Planning Board did a very good job. He stated that he would support the draft ordinance.

Mayor Pro Tempore Thibodeau agreed that the Planning Board did a great job, adding that she appreciated them going back and looking at Council's concerns that were stemming from small infractions that may prohibit someone from finishing a project. She thought the Village Commercial Development Option has been a great asset to the Town and has allowed smaller, more interesting businesses. She stated that she too was in favor of supporting the ordinance.

Councilor Caviness moved to approve Ordinance 19-04 as presented.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 19-07, an Ordinance Amending Standards for Gravel Parking Surfaces on Commercial Properties

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs stated that Director Heard would give an overview.

Director Heard stated that the draft ordinance recommended by the Planning Board would seek to accomplish two objectives: (1) the definition of *Lot Coverage* in Section 156.002 of the Town Code is proposed to be amended by excluding gravel driveways, parking aisles, and parking spaces from lot coverage calculations; and (2) the design standards for commercial parking in Subsection 156.112(C) of the Town Code are proposed to be amended by the addition of allowances and standards for commercial gravel parking surfaces.

Director Heard stated that while the Planning Board was discussing issues related to this, they questioned why gravel parking surfaces with greater permeability than asphalt/concrete surfaces were not given the same reduction in lot coverage offered to residential properties, adding that the Board members drafted a memorandum to Council asking for authorization to further consider the issue. He stated that Council authorized the Planning Board to work with Town staff at their August 7, 2019 meeting to develop ordinance amendments that would encourage greater use of pervious or semi-pervious surface materials on commercial properties.

Director Heard explained that the Town's current commercial parking standards were established to promote the construction of sturdy, dust-free, professional looking parking surfaces. He added that a provision for a certain percentage of parking surface shows that the Town considered stormwater runoff but didn't place the same priority on lot coverage as the Planning Board does today. He stated that during their deliberations, the Board placed a higher priority on stormwater runoff than continuing to develop hardened parking surfaces.

Director Heard stated that the draft ordinance would create allowances for use of gravel parking and encourages its use by exempting such surfaces from lot coverage calculations. He noted that the Planning Board recognized that commercial parking areas were subject to more intensive use by large delivery trucks and a greater number of vehicles, so the Board proposed commercial parking standards rather than the minimal gravel parking standards for residential properties. He added that the Board intentionally left these standards general and flexible to allow an applicant's engineer to design a suitable solution for the site. He stated that in order to prevent rocks and gravel from being tracked onto the adjoining sidewalk, bike lane, and roadway, the Board required the installation of an asphalt or concrete apron at the driveway entrance.

Director Heard stated that Subsection 156.093(D) of the Town Code referenced that parking surface standards shall be in accordance with the Parking Design Standards found in Section 156.112. He noted that rather than making any changes to Subsection

156.093(D), the draft ordinance would leave this reference and proposes amendments to Subsection 156.112(C). He stated that it would contain the following standards, which would create allowances and standards for the use of gravel parking surfaces in commercial areas:

- All driveway and parking aisles shall be improved with asphalt, concrete or pavers except for areas used for overflow, special events and peak parking.
- The Town encourages use of pervious materials and new technologies that provide for safe and efficient driveway and parking areas that appropriately address stormwater runoff issues. No more than 80% of the surface area of the parking area and drive aisles may be constructed using an impervious surface material.
- Any non-paved surface used for parking spaces shall be improved with pavers or similar dust-free surfaces.

Director Heard stated that at its public meeting on October 16, 2019, the Planning Board voted unanimously to recommend approval of the proposed text amendment establishing commercial gravel parking standards and excluding gravel parking on commercial properties from lot coverage calculations.

Town Attorney Hobbs asked if there were any comments from members of the Planning Board. There were none.

Town Attorney Hobbs asked if anyone from the audience wished to address the proposed ordinance.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that he wanted to voice some concerns as he has been thinking about the ordinance. He stated that with regard to coverage, the ordinance was allowing a reduction in coverage so an applicant could build bigger buildings or parking areas. He wondered why it was in the original ordinance as he remembered people using the multi-use path was an issue. He wondered what doors coverage would open up, whether good or bad, as well as allowing a variance for the coverage since there were multiple possibilities when the amount of coverage affected was reduced. He added that it also increased the visual size of a building as well as taking away from parking, which was one of the things that was needed most in Town. He stated that he was always trying to think of how this would positively affect the Town if the ordinance was approved. He stated that he was bothered by the difference between stone and gravel, noting that stone drained water away better than gravel. He wasn't sure why gravel was in the ordinance.

Lynne Alterman of 100 Ocean Crest Way was recognized to speak. Ms. Alterman asked if she understood that whatever lot coverage was currently in place, would remain in place, but someone would be allowed to put in gravel in order to accommodate more parking beyond it. She stated that if it was the case, what would prevent someone from putting gravel over their entire property in order to accommodate the number of vehicles that would be needed to support their business. She asked if she understood it correctly.

Director Heard stated that the ordinance would not count the area of the gravel parking toward lot coverage. Lynne Alterman clarified that there was no limit to the amount of gravel that could be added to the original lot coverage requirement and someone could potentially gravel over their entire property. Director Heard stated that, technically, it could not be done, but it would potentially allow additional parking that was gravel. Ms. Alterman stated that she would like to see another limit – there was a lot coverage requirement currently in place, and if the Town was going to allow additional gravel for parking beyond that limit, an additional limit should be set as to how much gravel could actually be put on a lot.

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

Mayor Kingston asked, based on the last comment, how setbacks would come into play. He asked if there was some protection. Director Heard stated that there was not literally a way to do it over the whole lot due to septic, buffers and setbacks. He explained that the intent was to potentially allow someone to go higher than the 60% standard. He stated that the concern that the Planning Board was looking at was limiting the stormwater management and for the use of the gravel or stone parking area has benefits from that standpoint. He added that the Board members felt that it was a very important thing that the Town was looking at and felt that the trade-off was significant enough that they made the proposal.

Mayor Kingston clarified that if someone wanted to gravel their lot instead of having grass, it could be done as long as there was enough landscaping, trees or vegetation. Director Heard stated that they could as a landscape treatment. Mayor Kingston noted that someone could gravel their yard presently if they wanted to. Director Heard stated that they could but it could not be set up to be used as parking but could be used in that manner as landscape material.

Mayor Pro Tempore Thibodeau stated that years ago the Town decided to pass an ordinance for the residential side because of the parking requirements when it became obvious over time that there was too much concrete being installed so the Town chose to allow permeable pavement for parking. She stated that it was for the fact that, aesthetically, the Town was looking for less concrete on the residential side with the goal being more permeability and better drainage, knowing people may park on the gravel as well. Director Heard stated that the Planning Board's discussion centered more around the stormwater management than aesthetics.

Councilor Mooney asked how the draft ordinance would affect 1566 Duck Road and the flooding that occurs there. Director Heard stated that the property currently has gravel parking so whatever stormwater issues they have would be exacerbated if they were developing that site. He added that if someone wanted to go in and redevelop that property, under the current ordinance they would be required to put in a pretty substantial amount of asphalt or concrete for the parking area, which would create a greater amount of lot coverage and therefore the water that would normally permeate into the ground through the gravel parking area would no longer do that, but would be running off the

sides and other areas. He stated that the intent of this ordinance would be to allow that to happen. He added that 1566 Duck Road was a good example of what the Town would be looking for, should the draft ordinance be adopted in terms of not having a greater problem.

Councilor Mooney asked what it would mean in terms of parking if the owner wished to increase their parking. Director Heard stated that they could do so by using a gravel surface. Councilor Mooney clarified that guidelines with regard to buffers and septic would remain in place, regardless of what the owner wanted to do. Director Heard stated that they would have to comply with all of the development standards, adding that it would not change the requirements for having an appropriately sized septic system or having buffers. He noted that the draft ordinance would not be changing the locational standards.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that it would take four votes to adopt the ordinance on the first read.

Mayor Pro Tempore Thibodeau thought the stormwater management aspects of the ordinance as well as the fact that it may add a few more parking spaces in areas that need it was well thought out by the Planning Board. She added that she would support adopting the ordinance.

Councilor Caviness thought there have been issues that have been raised during public comment regarding the unintended consequences of the gravel. She wanted to clarify that parking requirements were determined by occupancy if it was a house and by use if it was a business.

Town Attorney Hobbs reopened the public hearing.

Councilor Caviness asked if she was correct with regard to the number of parking spaces in a shopping center were determined by the use. Director Heard stated she was correct, adding that there were different requirements as to the types of uses with some based on the number of seats and some based on the square footage. Councilor Caviness felt that Council was hearing a concern over buildings getting bigger, but the parking spaces would be determined by the type of business. She added that if it was a bigger business, it would have more parking requirements. She thought that there may be a thought that if the building started getting bigger, then there would be more and more requirements for parking. She wasn't sure if that necessarily follows. Director Heard stated that it depended – he explained that if it was something that was based on square footage, then a larger building would have greater minimum parking requirements.

Mayor Kingston clarified that the Town has size requirements for commercial and residential properties based on the size of the lot. Director Heard stated he was correct. Mayor Kingston pointed out that the Town had that as well as setbacks and height.

Patti Bossert of 102 Pelican Way was recognized to speak. Ms. Bossert clarified that with regard to the gravel and other setbacks, if gravel was added to existing parking, the space from the road from where the gravel begins has to be 20 feet of concrete. Director Heard stated she was correct, explaining that a paved surface for the apron would need to be concrete. Ms. Bossert clarified that 1566 Duck Road would have additional gravel as well as an additional 20 feet of concrete from the street to the beginning of the gravel area. Director Heard stated she was correct. Ms. Bossert pointed out that in an area where there were stormwater issues and flooding, to put in an additional impervious surface would be problematic to an existing stormwater drainage location.

Ben Vorndran stated that he had attended some design classes and to have a gravel or stone driveway to support the weight of a commercial vehicle would not be permeable as the base would be thick. He stated that if Council thought it would make it a more permeable system, they should look at crush and run as a gravel-based system. Director Heard stated that it would not be a surface that was stone or gravel. Ben Vorndran clarified that crush and run was not gravel. Director Heard stated that it was not. Mr. Vorndran stated that there were a lot of places that use crush and run as a base and it puddles. He added that the difference between asphalt and making a commercially acceptable surface out of stone or gravel, the possibilities of that being more effective in draining stormwater was not feasible without a tremendous amount of piping, excavation and installing French drains. He noted that people at commercial sites have the ability to install gravel or asphalt. He didn't think there was a bonus for them if they installed gravel over asphalt. He stated that he was concerned that there was a false image that it would give better drainage surface as he felt it was only 20% better because asphalt parking lots were constructed to drain off to the sides to a permeable surface, where gravel would not drain as well.

Town Attorney Hobbs asked if anyone else wished to speak.

Mayor Pro Tempore Thibodeau asked if apron was the drive aisle to get into a property and not what was going around the entire perimeter of a property. Director Heard stated she was correct, adding that it would be 20 feet wide for an entrance/exit. He stated that the thought that the Planning Board was looking at with regard to it was where it would be applied, which was most likely in Duck Village. He added that they were looking at the relationship between the driveway, the sidewalk, the bicycle lane and the roadway with the thought being that those areas be kept clean and not have gravel or stone kicked up in those areas where it could become a safety hazard. He stated that the Planning Board felt that having the concrete apron would keep a lot of the gravel or stone on the property.

Mayor Pro Tempore Thibodeau asked if the draft ordinance were to pass and someone wanted to add gravel in order to create additional parking, they would have to come into conformity. She further asked if they would have to go through the Community Development process. Director Heard stated that it would depend on the circumstance and the scale that was being proposed. He added that if it was something that was being done in conjunction with an addition to a building where they were increasing the

requirement for parking and having to add parking spaces, then staff would look at it and the new area would at least have to comply. He stated that if it was something where someone was re-doing the entire parking area and redeveloping the property, they would have to bring it into full compliance if it was over 50%, otherwise they would only have to bring the new area into compliance.

Mayor Kingston asked if there was enough protection in the existing ordinance and regulations to protect against some of the concerns that have been voiced. Director Heard stated that in terms of what may be allowed, the Town would still limit the size and setbacks, adding that it would potentially allow someone to possibly do a little more with a building, but they would still have to have a greater area for parking if they did that. He added that most of the projects that staff sees would not allow it as people were already trying to squeeze in as much as they can, so whether it was gravel or asphalt would be irrelevant to the size of the building since they would still be building the same thing and would not have room to put in additional parking no matter what. He didn't think there would be a great impact, but depending on the situation, it possibly could. Mayor Kingston noted that if the Town saw the development, it could always be re-addressed. Director Heard agreed.

Jamie Head of Barrier Island Resort was recognized to speak. Mr. Head stated that the ordinance will be helping Barrier Island Resort. He explained that with regard to the concern over the large trucks driving on gravel, they cannot drive on a gravel driveway or even make deliveries on gravel parking areas because it will not support a tractor-trailer. He stated that he was looking at the ordinance as a way of taking away his asphalt and putting gravel in, not to increase the parking, but to help the drainage issues.

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

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 19-07 as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 19-09, an Ordinance to Conform with State Law Relating to Firearms

Director Heard stated that Town Attorney Hobbs drafted Ordinance 19-09 as well as a related ordinance approved by Council at their November 6, 2019 meeting. He explained that the intent of the ordinances was to consolidate all measures relating to firearms and to make amendments to bring the Town's standards into consistency with applicable State laws. He noted that while firearms were not typically an issue addressed by the Planning Board, the Board members considered the text amendment as it was found in the Zoning Ordinance. He stated that at their November 13, 2019 meeting, they voted unanimously to recommend approval of the ordinance. He pointed out that the ordinance

would eliminate a requirement that “firearms are prohibited in establishments conducting electronic gaming operations.”

Mayor Pro Tempore Thibodeau moved to authorize a public hearing on Ordinance 19-09 at Council’s January meeting.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of the Appointment of Council Members to Serve on/as the Following:

Government Access Channel Committee

Mayor Kingston stated that an appointment would need to be made for the Government Access Committee.

Mayor Kingston moved to nominate Mayor Pro Tempore Thibodeau for the Government Access Committee.

Motion carried 5-0.

Planning Board – Council Liaison

Mayor Kingston asked for volunteers or nominations for the Council Liaison for the Planning Board. Councilor Whitman stated that he would like to serve.

Mayor Kingston moved to nominate Councilor Whitman to serve as the Council Liaison for the Planning Board.

Motion carried 5-0.

Dare County Tourism Board

Mayor Kingston stated that there has been a lot of discussion over the last week and Chuck Burdick was present for this meeting. He explained that Dare County had asked the Town to supply three names. He added that normally, Council appoints a Council member to the Tourism Board; however, the State legislature, when the Tourism Board was established, states that a member serves until their term is over, regardless of whether they were on the board that sponsored them or not. He stated that Dare County controls that, so the decision was that it was up to Mr. Burdick as to whether or not he wished to remain on the Tourism Board and represent the Town of Duck or if he wanted to resign. Chuck Burdick stated that he wished to continue serving on the Tourism Board.

Mayor Kingston didn't think a motion was needed. Town Attorney Hobbs agreed, explaining that under the State law it was a two-year term and Council would only take action if there was a vacancy.

Mayor Pro Tempore Thibodeau clarified that one year remained on Chuck Burdick's term with the Tourism Board. Town Attorney Hobbs stated she was correct, adding that at that point in time, there would be a vacancy and Council would propose nominees from the Council to the Dare County Board of Commissioners and they would appoint someone from those nominees.

Town Manager Layton clarified that the enabling legislation for the Dare County Tourism Board specifically states that members will serve their term. He added that there were by-laws that have been adopted by the Tourism Board which provide some leeway, but it was a moot point because by-laws cannot override State law. He stated that the only way that a Council, board or entity could recommend to the Dare County Board of Commissioners that they would replace a sitting member was if that sitting member resigned. He noted that Chuck Burdick has indicated he would like to continue to serve and not resign. He stated that because of that, staff would not be submitting names to Dare County on this issue.

Mayor Kingston stated that he would like Town Manager Layton and Chuck Burdick to meet to discuss how communications would be done. He pointed out that because Mr. Burdick is no longer on Council, there would not be any direct access to him with information coming back to Council. Chuck Burdick stated that he and Town Manager Layton had discussed it, and he would continue to attend the Board meetings and then call Town Manager Layton with the information and Town Manager Layton would email all of Council. He stated that if there were items that Council wanted to discuss further, he could attend the Council meetings. He stated that the idea was to communicate directly to Town Manager Layton.

Mayor Kingston asked if it was acceptable to Council. Mayor Pro Tempore Thibodeau thought when anything particularly pertinent to Duck were to come up, she hoped that Chuck Burdick would come to a Council meeting to give an update. She noted that there was enough continuity with Mr. Burdick previously serving on Council for 10 years that he would know what Council was looking for. She thought the back and forth communication would be important to maintain. Chuck Burdick agreed.

Check Signatory – Two Council Members

Mayor Kingston noted that the check signatory was traditionally the Mayor and Mayor Pro Tempore. He suggested that he and Mayor Pro Tempore Thibodeau be the signatories.

Mayor Kingston nominated himself and Mayor Pro Tempore Thibodeau to continue as the check signatories for the Town.

Motion carried 5-0.

Albemarle RPO Rural Transportation Advisory Committee

Mayor Kingston stated that an appointment would need to be made for the Albemarle RPO Rural Transportation Advisory Committee. He stated that former Councilor Jon Britt was on the committee and now a new person will need to serve.

Councilor Caviness asked where the committee met and how often. Director Heard stated that the number of meetings have gone back to meeting quarterly and included the whole Albemarle sound and was usually held in Hertford or communities near there. He stated that, as necessary, there are emails and things like that exchanged related to certain things that may be time sensitive. He stated that all of the action took place at the meetings. He noted that the voting members were the counties, so no county has greater representation than another, and all of the municipalities in the region are included in the conversations and discussions. He added that the role of the person appointed would be partnering with the Dare County representative to be sure that Duck's interest was represented as part of the voting.

Councilor Mooney stated that he would like to serve on the committee.

Mayor Kingston moved to nominate Councilor Rob Mooney to serve on the Albemarle RPO Transportation Advisory Committee.

Motion carried 5-0.

DCBA Liaison

Mayor Kingston stated that an appointment would need to be made for the DCBA liaison. He explained it was a once a year report to the DCBA on the activities in Duck. He added that historically it has been the Mayor.

Mayor Kingston moved to nominate himself for the DCBA liaison.

Motion carried 5-0.

Discussion/Consideration of the Process to Fill the Vacancy on the Planning Board

Town Manager Layton stated that with the election of Councilor Whitman to Council, a vacancy existed on the Planning Board. He noted that there was no set process for Council when making appointments to the Planning Board, so he was recommending that Council discuss how they wish to fill the vacancy. He explained that previously, Council solicited applications and made appointments with and without interviewing potential applicants, adding that any discussion or interviewing would need to be conducted in open session. He proposed that Council direct staff to advertise that it was seeking applications for the position and then submit to Council at their January meeting.

Mayor Kingston suggested that interested parties submit applications by the next Council meeting and based upon the number, Council would choose the individual at the January meeting.

It was *consensus* of Council to do so.

Discussion/Consideration of 2020 Council Meeting Date Schedule

Mayor Kingston stated that the draft 2020 Council meeting date schedule was before Council, adding that there was a conflict with regard to the New Year's Day holiday in 2020. He stated that in the past it was moved to the mid-month meeting. He stated that it could be held then or on Wednesday, January 8, 2020. Councilor Caviness proposed moving the Regular meeting to Wednesday, January 15, 2020 at 7:00 p.m.

Town Manager Layton pointed out that the annual Retreat would be held on Wednesday, February 19, 2020 and Thursday, February 20, 2020 and the budget presentation would be held on April 15, 2020.

Mayor Pro Tempore Thibodeau moved to adopt the schedule as amended.

Motion carried 5-0.

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

Director of Public Information, Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of upcoming 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 police 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.

Land Use Plan Advisory Committee

Town Manager Layton stated that the Council had previously appointed two Council members – Jon Britt and Councilor Caviness – to the Land Use Plan Advisory Committee. He added that Council had appointed Councilor Whitman from the Planning Board to be on the committee. He stated that due to the 2019 election, Jon Britt was no longer on Council and Councilor Whitman was now on Council and not on the Planning Board. He stated that rather than belaboring the point and since the Committee has only worked about six months and was halfway through the process, if Council would like to appoint or request that the Planning Board submit another member for consideration, that would fill the Planning Board aspect of the Advisory Committee. He recommended that everything else remain the same with only the Planning Board being the missing piece. He further recommended that staff reach out to obtain a recommendation that Council could discuss at their January meeting.

Mayor Kingston thought a recommendation would be good as it would be a good balance to appoint a second person from the Planning Board. Councilor Caviness agreed. Mayor Pro Tempore Thibodeau clarified that Council would be asking the Planning Board to submit a recommendation. Town Manager Layton stated she was correct.

Update on the Assistant to the Town Manager Position

Town Manager Layton stated that the position advertisement will be closing on Friday, December 6, 2019 and over 60 applications have been received to date. He stated that one applicant was as far away as South Africa. He stated that he planned to wait until the application date closed and then he would review the applications and develop a plan accordingly on how he will conduct interviews and move forward on it. He stated that he has received applications from local individuals as well as regionally and nationally and thought there would be some good candidates. He pointed out that sometimes it takes time to find the right individual for the position, so he was not going to rush the process and hoped to have someone in place by late spring.

Mayor Pro Tempore Thibodeau asked how long the advertisement was open. Town Manager Layton stated it was roughly eight weeks. He added that it was advertised in local publications as well as through the North Carolina League of Municipalities and the ICMA newsletter.

Financial Statement for November of FY 2020

Town Manager Layton stated that he did not receive the Occupancy Tax figures but did receive Sales Tax and would be sending an updated form to Council when he receives all of the figures. He went on to review the financial statements with Council and the audience.

MAYOR'S AGENDA

Mayor Kingston congratulated Councilor Caviness and Fire Chief Black on the recent Turkey Trot. He thanked the voters for re-electing him and Council for re-appointing him as Mayor. He stated that has his Mayors meeting on December 17, 2019 at Dare County. He stated that he would be giving a presentation to the DCBA on December 7, 2019 and would be attending Council Ethics training on December 10, 2019. He stated that the mayors have been asked to make a presentation at the Chamber of Commerce OBX Leadership meeting to discuss community visions and leadership. He stated that he had his North Carolina League of Municipalities Finance meeting on December 2, 2019 and would be attending Essentials of Municipal Government at the Hilton Garden Inn on December 14, 2019. He added that he was looking forward to the Yuletide celebration and thanked Town staff for their support.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau thanked everyone for supporting her election and thanked Council for re-appointing her at Mayor Pro Tempore. She stated that she was happy that Police Chief Cueto included the passing of former Police Chief Phillip Ferguson in his monthly report. She stated that the Government Access Channel Committee would be meeting soon. She noted that she would not be present for the Ethics training on December 10, 2019 as she will be out of town.

Councilor Caviness thanked everyone for attending the meeting this evening. She gave a short update on the Turkey Trot results to Council and the audience and thanked everyone for their assistance with it.

Councilor Whitman thanked everyone for voting for him to Council.

Councilor Mooney thanked everyone for voting for him to Council and hoped Council would do a good job for the citizens.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Tommy Karole of 77 East Dogwood Trail, Southern Shores was recognized to speak. Mr. Karole stated that as part of the ongoing discussion with the Planning Board, someone brought to his attention Subsection 156-074(E) of the Town Code. He stated that the subsection reads as follows: "...nonconforming use of a structure or structure and premises in combination is discontinued or abandoned for 10 consecutive months except when government action impedes access to the premises, the structure or structure and premises in combination shall not therefore be used except in conformity with the regulations of the district in which it is located..." He stated that in response to the question that was posed by the Planning Board member, Director Heard responded and what led him to decide what the legal, non-conforming use has not been discontinued or

abandoned was because the limited amount of boat launching continued at the site at 1566 Duck Road. He questioned this because Joseph Speight was on record at the Planning Board meeting stating that he let his friends launch boats there. Mr. Karole stated that to his knowledge, there was no boat launching at the site. He added that the owner has paid property taxes on seven watercrafts for 2019, which he didn't think was justification as he had knowledge that the watercraft were for sale. He stated that based on the information he has obtained, it was not clear that the use was discontinued or abandoned for 10 months. He pointed out that, based on his records, the use has been abandoned for over 16 months. He thought it could be looked into by checking the sales tax records that Director Heard could present to Council. He wondered where he stood as a small business owner and was why he wanted to seek counsel on it. He stated that he met with the applicant earlier in the day and he was under the impression that the parking would be shared at 1566 Duck Road, but Mr. Karole felt he has been backed into a corner, which was why he was asking Council to get involved with the issue. He thanked Police Chief Cueto and Fire Chief Black for the great work their departments do to keep people safe in Town.

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

RECESS TO RECONVENE

Councilor Whitman moved to recess to reconvene on Tuesday, December 10, 2019 at 10:00 a.m. for Ethics training.

Motion carried 5-0.

The time was 9:43 p.m.


Lori A. Ackerman, Town Clerk

Approved: January 15, 2020

Don Kingston, Mayor

