

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
February 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, February 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: Interim Town Manager Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Senior Planner Sandy Cross; Deputy Town Clerk Kristiana Nickens; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Public Relations Administrative Assistant Betsy Trimble and Assistant to the Town Manager Alyson Flynn.

Mayor Kingston called the meeting to order at 6:01 p.m. He noted that Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness and Councilor Rob Mooney were attending the meeting remotely.

Mayor Kingston stated that he wanted to make some adjustments to the agenda. He stated that under Consent Agenda the approval of the audit document needed to be added and the first Closed Session item needed to be deleted.

Councilor Whitman moved to amend the agenda.

Motion carried 5-0 via roll call.

Mayor Kingston asked Deputy Fire Chief Clarence Batschelet to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston thanked everyone that was viewing the meeting remotely and to ensure an orderly meeting, he asked the audience to follow the guidelines for those that wished to submit comments during the Public Comment period. He noted that if the comments were submitted via email it would be read into the record and if comments were submitted for a later comment, it could be done through the question and answer function in Zoom and would be read into the record. He stated that the meeting recording would be available on the Town's YouTube channel as soon as possible after the meeting.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any public comments be held off at this time.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman read the following public comment from Wesley M. Moyer: "I would like to say congratulations and great job on hiring Drew Havens as your new Town Manager. I was a member of the Apex Town Council that hired Drew as our Town Manager. I worked with him for the next 3-4 years until the next election. He is a man of high integrity and character and was very helpful to me personally when I was on the Council. Great job again and if my business brings me to the OBX on a night of a Council meeting, I will do my best to make it by and say hello. Have a great day and enjoy working with your new Town Manager."

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

CONSENT AGENDA

Minutes from the December 2, 2020, Regular Meeting; Minutes from the December 4, 2020, Special Meeting; Minutes from the December 10, 2020, Reconvened Meeting; Minutes from the December 11, 2020, Reconvened Meeting; and Adoption of FY 2020 Audit Document

Councilor Whitman moved to approve the consent agenda as presented.

Motion carried 5-0 via roll call.

SPECIAL PRESENTATION

Introduction of New Firefighter/EMT

Fire Chief Donna Black was recognized to speak. Fire Chief Black introduced new firefighter/EMT Spencer Thomas to Council and the audience.

Mayor Kingston and Council welcomed Firefighter Thomas to the Town.

PUBLIC HEARING

Public Hearing/Discussion/Consideration of SE-20-005, an Application by Sunlight on Coast, LLC for Two Special Exceptions Relating to Fill and Grading Activities Associated with the Installation of a Stormwater Management System at 1170 Duck Road

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

Town Attorney Hobbs stated that the Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine, and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joe Heard, John Replogle, Kristin Replogle, and Jordan Daneker.

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Interim Town Manager Joe Heard would give an overview.

Interim Town Manager Joe Heard was recognized to speak. Interim Town Manager Heard stated that as per the applicant's project description, the existing retaining wall at the rear of the site was failing, which places an increased load on the adjoining soundfront bulkhead. He added that the existing deck does not permit vegetative growth underneath it due to shade, which leads to soil erosion and stormwater runoff directly toward the Currituck Sound. He noted that replacement of the retaining wall was necessary to support the adjoining ground and structures above it, including the existing swimming pool and home. He stated that rather than reconstructing the existing wooden retaining wall and deck, the applicant was proposing to construct a stone retaining wall and replace the deck with a new pervious raised patio with subsurface infiltration to increase the capacity to capture stormwater runoff. He explained that this system will allow stormwater to recharge the subbase and dissipate into the ground naturally. He added that stormwater drainage improvements will capture and direct runoff toward a swale near the southern side of the property.

Interim Town Manager Heard stated that the proposed project involved the addition of fill and grading to accommodate the construction of substantial improvements in the rear yard of the property. He stated that proposed improvements included the following:

- Removal of approximately 400 square feet of existing wooden decking and 518 square feet of existing impervious stone patio.
- Installation of approximately 912 square feet of pervious patio with a subsurface base allowing stormwater infiltration and gradual release into the adjoining ground (approximately 340 square feet underneath the house and 572 square feet in the lawn area).
- Construction of a stone retaining wall approximately five feet in height extending generally parallel to the rear of the property line from the existing sunken lawn area three feet from the northern property line to a point approximately 16 feet from the southern property line.

- Filling and leveling the lawn area behind the retaining wall to create a consistent elevation and support the pervious patio, swimming pool, hot tub, and stormwater management improvements.
- Replacing the existing natural turf in the sunken lawn area with approximately 280 square feet of pervious artificial turf and permeable subbase near the northwest corner of the property.
- Regrading and adding stormwater drainage improvements (catch basins, piping, and pervious artificial turf) in the area adjoining the southwest corner of the house to capture and direct runoff toward a swale near the southern side of the property.

Interim Town Manager Heard stated that in order for the project to be constructed as proposed, the retaining wall and fill will require approval of the following special exceptions: (1) Subsection 156.128(A)(6) requires approval of a special exception permit for retaining walls to be used as a method to stabilize or contain fill. The proposed project involves the addition of fill and grading associated with the construction of an elevated lawn and patio behind and approximately five-foot high retaining wall paralleling the rear of the subject property; and (2) Subsection 156.128(A)(12)(a) requires approval of a special exception permit for fill in excess of three feet in height. The proposed project adds fill material with a depth of approximately five feet supported by the proposed retaining wall.

Interim Town Manager Heard stated that Subsection 156.128(C) of the Town Code establishes special exception review criteria for applications involving fill and grading activities. He stated that the following standards must be considered as part of the Town Council's review:

1. The site for the proposed fill is otherwise adequate in size, shape, and other characteristics to accommodate the proposed project.
2. The applicant has demonstrated that the requirements of this chapter are unreasonable or impractical due to the necessity for the fill, lot shape, topographical features, location of mature vegetation, or location and characteristics of existing improvements on the lot.
3. The amount of fill proposed is the minimum necessary to accommodate the proposed project, especially for soundfront properties.
4. The proposed fill will not negatively impact adjacent properties or the surrounding area, especially for soundfront properties.
5. The special exception will be consistent with any applicable goals, policies and objectives specified in the Town's adopted CAMA Land Use Plan and Vision Statement. This review includes the Town's evaluation of the proposal's consistency with its adopted CAMA Land Use Plan, which may be more flexible or more stringent than interpretations by others.

6. The applicant has submitted a drainage plan consistent with the requirements described in Subsection 156.128(A)(4)(c).

Interim Town Manager Heard noted that at the Planning Board's public meeting on January 13, 2021, the Board found that the request complied with all applicable findings and voted unanimously to recommend approval of the special exception application, subject to the following conditions:

1. The proposed retaining wall must be certified by a North Carolina licensed engineer.
2. The applicant must obtain a CAMA minor permit from the North Carolina Division of Coastal Management prior to issuance of a land disturbance permit for the fill/grading or building permit for the retaining wall.
3. The applicant must submit required application materials and obtain land disturbance and building permits prior to commencing work.
4. All areas of land disturbance must be stabilized prior to issuance of a Certificate of Completion for the project.

Mayor Kingston asked if there would be any disturbance between the proposed rock wall and the existing bulkhead for the sound. Interim Town Manager Heard stated that there may be a little bit of grade. He explained that the proposed stone retaining wall would be similarly situated to the existing wooden wall. He noted that there were differences in that there were areas where the wood bows out and was not identical or totally straight across the front of the property. He stated that there would be some work that will be done in the area below to shape the swales out somewhat, but it was not the focal point of the project as they were the improvements to the east of the wall.

Councilor Whitman asked how much lower the existing wall was in relation to the wall across the side of the pool. Interim Town Manager Heard stated that it was fairly similar adding that the applicant could better answer the question.

Mayor Pro Tempore Thibodeau asked if the stone was a better choice and further asked what it would be tied into. She wondered if it was tied in with deep pilings. She asked when the water was taken out with stormwater capture, it would be happening in front of the applicant's property. She clarified that all of the water coming out was designed to be contained on the applicant's property. She asked what the difference was between a retaining wall and a bulkhead. Interim Town Manager Heard explained that the bulkhead referred to something that directly abuts a shoreline; whereas a retaining wall was a structure that supports fill in some way and could be anywhere on the property. He stated that the applicants could answer the other questions regarding the retaining wall and how the water was being released.

Councilor Whitman pointed out that the applicant has an existing pool and retaining wall across it. He noted that the drawing showed the distance from the pool and retaining wall. He asked how that fit in with the setbacks. Interim Town Manager Heard stated that the applicant could answer that question.

Town Attorney Hobbs asked the applicant to make a presentation.

Jordan Daneker of Evolve Design & Build was recognized to speak. Mr. Daneker explained that a bulkhead was a sea wall and sea walls can be built out of numerous products, including retaining wall block. He stated that a bulkhead and a retaining wall were two different types of items in the way they work but it was demographically challenging for certain areas in the country and can be cost prohibitive. He stated that with regard to the retaining wall, when looking at the cross-section of the retaining wall, there was batter back to it. He stated that the structure part of the wall was made to be segmental so that it can move freely. He added that the advantage of a retaining wall was the segmental system as it adapts to the environment. He noted that the changes were very subtle and not something that one could see on a year to year to basis but can be seen on a long-term basis. He stated that while the cost is more expensive, the retaining wall being the concrete segmental product was a better long-term alternative.

Jordan Daneker stated that some people think that cross sections were the tiebacks and were set into the wall. He explained that the main reason that they were set into the wall was so the homeowner or builder could see that the engineer adhered to the standards and the geogrid was inside the wall. He noted that the geogrid did not stabilize or tie to the wall as a tieback does to a bulkhead; but supported the soil content and reinforced the labor. He pointed out that with regard to the structural stability of the wall, there was a toe slope, meaning there was more embedment on the wall than there would be on other typical bulkhead alternatives.

Jordan Daneker stated with regard to the stormwater management plan, he wanted to prove to Council that they were able to manage that stormwater. He stated that the system proposed was far superior and basically removes the stormwater faster than any type of sheet drainpipe as it goes directly into the system.

Councilor Whitman asked how the wall behind the pool will be installed next to the pool. Jordan Daneker clarified that Councilor Whitman's concern was that the wall abuts directly up to the pool and how it would be stable. Councilor Whitman stated he was correct, pointing out that there was only so much feet between there and the dip for the excess water to flow down. Jordan Daneker stated that there were returns in the wall so that the wall returns back into the side of the pool. Councilor Whitman asked where the excess five feet of fill was located. Jordan Daneker stated that the reason they exceed the five feet of fill was because underneath, the deck sloped down and when he raises the patio, it will need to be filled in and would be where the storm chamber would be located. Councilor Whitman clarified that the chamber was under the platform. Mr. Daneker stated that it was originally, but they decided to put it under the green space because he was concerned about the stability of the wall and he wanted it to be as strong as possible. Councilor Whitman asked if the patio was hollow underneath. Jordan Daneker stated he was correct.

Mayor Pro Tempore Thibodeau asked if the spirit of the project was being preserved. Interim Town Manager Heard stated that it was adding that this was a very interesting and innovative way to handle stormwater management.

Town Attorney Hobbs asked if there were other presentations by the applicant or the applicant's representatives. There were none.

Town Attorney Hobbs asked John and Kristin Replogle to come forward. Town Attorney Hobbs stated that the Town of Duck was under a state of emergency and this was, by law, known as a remote meeting meaning that there were three Council members participating via Zoom. He stated that the law required that the Town has special requirements when having a quasi-judicial hearing during a remote meeting. He explained that the Town has to provide the right of individuals to a hearing and decision during the emergency; the Town has to ensure that all persons subject to the quasi-judicial proceeding who have standing to participate in the hearing have been given notice of the hearing and consent to the remote meeting; and that all due process rights of the parties affected are protected. He asked John and Kristin Replogle if they agreed that the Town felt like it has provided them with a hearing and decision during this emergency. Mr. & Mrs. Replogle stated that they agreed.

Town Attorney Hobbs asked John and Kristin Replogle if they agreed that the Town provided them with notice of this hearing, and they have consented to have this hearing during a remote meeting. John and Kristin Replogle agreed. Town Attorney Hobbs asked Mr. & Mrs. Replogle if they agreed that the Town has made every effort to protect their due process rights which were rights to a notice in the hearing with regard to this quasi-judicial hearing. John and Kristin Replogle agreed.

Town Attorney Hobbs asked if the applicant had any further evidence to present. There was none.

Town Attorney Hobbs asked if any sworn witnesses wished to address the application. There were none. He asked if Council had any remaining questions. There were none. There being no one else wishing to speak. Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that a vote of the majority of Council would be required to approve the application. He added that as part of Council's deliberation and if there was a motion to approve the application, there were various findings that would need to be made and it would be helpful if the motion referenced the findings as well as the four proposed conditions.

Councilor Whitman moved to approve SE-20-005, including the adoption of the proposed findings of fact set forth on the staff report with respect to compliance with the required special exception criteria, and including the conditions recommended by the Planning Board as set forth in the staff report. Councilor Whitman further moved that Council finds that the quasi-judicial hearing that was conducted in this case met all of the requirements of the Town of Duck Code of Ordinances, the North Carolina General Statutes, including Section 16A-19.24(f) of the North Carolina General Statutes that

pertains to quasi-judicial hearings held during a remote Council meeting. Councilor Whitman further moved that the Mayor and Clerk were authorized to execute a Special Exception Permit that is prepared by Town staff consistent with this resolution; provided, however, that if the Town receives any written public comments on the subject of the quasi-judicial public hearing within 24 hours after the time that the hearing was closed, the action taken under this motion shall be suspended and delayed until the next meeting of the Council for consideration of the written comments and further action if necessary; otherwise, absent the Town's receipt of further written public comments within 24 hours, no further action by this Council will be necessary to give effect to the approval of the Special Exception.

Motion carried 5-0 via roll call.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Awarding a Contract and Authorizing the Town Manager to Execute Such Contract for Construction of a Rain Garden/Wetland on the Town Park Property

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that a Request for Proposals was put out to bid on December 14, 2020 seeking qualified contractors to construct a stormwater wetland/rain garden at the Duck Town Park south of the park entrance by the playground. She stated that the RFP was emailed directly to 13 local landscapers, posted on the Town's website, and included in the e-news on December 15, 2020 and December 18, 2020, and was published in certain Construction Job websites as well.

Senior Planner Cross explained that the project consisted of the creation of a stormwater wetland to improve infiltration, attract native pollinators, and create an educational design element. She stated that the bidding contractors were asked to provide a total cost for grading, surveying, material removal, plantings, and final stabilization consistent with plans that were prepared by Anlauf Engineering, PLLC. She added that four bids were received by the following contractors:

- Caribbean Landscaping for \$8,123.54
- Emerald Forest for \$14,100.00
- Dragonfly Ponds for \$17,105.00
- Whitehurst Sand Company for \$22,600.00

Senior Planner Cross pointed out that Caribbean Landscaping was the low bidder and was also the contractor for maintenance of the Town's sidewalks and to beautify the landscaped areas throughout Duck Village; however, while they have a great deal of experience with a variety of landscaping projects, staff was concerned that they did not provide examples or references for projects that were similar in nature. She stated that Emerald Forest was the second lowest bidder and was also contracted with the Town to install American Beach Grass, Sea Oats and Bitter Panicum grasses annually along the

oceanfront dunes. She noted that they focus on coastal sand dunes as well as specializing in wetlands and living shorelines, stormwater ponds, and stream restoration. She pointed out that while Emerald Forest had a higher bid, they have more substantial experience with the construction of stormwater wetland/rain garden projects. She stated she would like Council to decide on the best contractor for the work to be done.

Mayor Kingston clarified that the Town was receiving a grant for \$2,000 and the price difference was \$6,000 versus \$12,000. He further clarified that even though Caribbean Landscaping has not completed this type of work before, there were detailed specifications on what needed to be completed. Senior Planner Cross stated that there were, and the engineer noted that it wasn't too difficult. She added that when she talked to Emerald Forest about some of the projects that they have completed, they pointed out that it was specified one way, but they did it a different way. She noted that there was experience involved with planting wetland species, adding that she would err on the side of experience. She stated that the Town could have Caribbean Landscaping perform the work so they would get experience, but her experience with Emerald Forest has always been good in that when there was a failure, they rectified it.

Councilor Whitman clarified that Caribbean Landscaping has not completed work of this kind, but Emerald Forest has. Senior Planner Cross stated that Emerald Forest has extensive experience in this kind of work.

Councilor Caviness asked what failure looked like. Senior Planner Cross stated that it was dead plants. Councilor Caviness asked if it was also a collapsing of the area because it hasn't been properly excavated, tiered or whatever was necessary in terms of sculpting it before the plants were introduced. Senior Planner Cross stated that it could potentially be that, but she thought it was more of an inability if they didn't excavate enough or they didn't excavate properly. Councilor Caviness asked if it could exacerbate the flooding situation. Senior Planner Cross stated that the contractor would have to really mess up for that to happen. Interim Town Manager Heard stated that, worst case scenario, it would not be any worse than it currently existed, but if they followed the grading specifications, there shouldn't be an issue.

Senior Planner Cross pointed out that Caribbean Landscaping has impressed her with their work in the Village area, adding that they were in Town the beginning of the year and removed all of the weeds. She stated that she had no doubt that they will be diligent in completing the project, but it was a matter of experience versus no experience as well as the cost factor.

Councilor Whitman clarified that there could possibly be an \$8,000 failure. Senior Planner Cross stated he was correct. Mayor Kingston assumed that the contract would have a guarantee that the work will be done correctly and not fail. Councilor Whitman pointed out that if the Town loses \$8,000, half of the cost would be for the plants. He asked if the Town lost all of the plants, how it would get them back. He added that no one would know for about a year. Mayor Kingston thought it would be the case with any contractor that was planting the plants.

Councilor Mooney thought there should be some language put in the contract to protect the Town in case the project fails. He stated that he wasn't unconvinced about Emerald Forest as he thought Senior Planner Cross' points were well taken.

Mayor Pro Tempore Thibodeau pointed out that the specifications were designed for the area and it seemed like they didn't identify the exact plants. Senior Planner Cross stated that specific plants were identified in the plan. Mayor Pro Tempore Thibodeau stated that she liked the idea of using a local vendor. She added that part of the decision for using Caribbean Landscaping for the sidewalks was to give them some experience. She stated that the Town could be getting a lot of innate experience and everyone could learn from their experience. She thought the benefit she could see with Emerald Forest with regard to experience would be that they may be able to give the Town some knowledge that could be passed on to the citizens of Duck. She thought they could be a resource for future education. Senior Planner Cross agreed, adding that it could be an educational piece while the work is being completed.

Mayor Pro Tempore Thibodeau thought there may be other places in Town for residential rain gardens. She asked Senior Planner Cross if she envisioned them going in on residential properties. Senior Planner Cross stated that the Town was looking to obtain stormwater studies in local neighborhoods and part of it may involve future recommendations for rain gardens or stormwater wetlands.

Councilor Whitman asked if the project was going to be the showplace for the Outer Banks for a rain garden or if there were other existing rain gardens. Senior Planner Cross stated that there were other ones on the Outer Banks. Interim Town Manager Heard pointed out that there were a lot of rain gardens, but this would be one of the more accessible, visible ones. Senior Planner Cross stated that the intent was to have signage available. Interim Town Manager Heard stated that he had spoken with Director of Marketing and Events Christian Legner regarding developing signs for it.

Councilor Whitman clarified that with regard to the project caving in, only two feet would be dug for it. Senior Planner Cross stated that it was not likely that it would cave in, adding that if it failed, it would be the plants being planted too deep or not deep enough.

Mayor Kingston thought if the specifications were written and were bid out and the contractor had the business with the Town and liked doing business with the Town, and if the Town had a contract to protect itself, it would save \$6,000 which could be reinvested somewhere else on the Town property. He stated that he liked the idea of giving someone a chance to prove themselves as well as giving them a new experience. He thought it wasn't a difficult project and felt that the logical choice would be to go with the low bidder.

Mayor Pro Tempore Thibodeau understood Mayor Kingston's comments, adding that there was a good deal of difference in the cost. She thought it came down to the visibility

or educational/showcase aspect and if it was worth it. She wasn't sure where the educational aspect could go. She thought if the specifications showed Caribbean Landscaping what they need to do, they may be good at it. She added that she was still debating on the issue, noting that there were benefits with regard to saving the \$6,000.

Mayor Kingston thought the project was basically digging a ditch and planting plants that the Town specified. He added that it was already laid out. Councilor Whitman pointed out that there was concrete work involved. Senior Planner Cross didn't think there was. Councilor Whitman noted that there was a 4,000 lb. concrete structure to be installed in the bottom that would hold the water.

Mayor Kingston thought another positive was that Caribbean Landscaping was working in Duck a few days a week through the rest of 2021. He thought if there were issues, they would already be in Duck to address them. Councilor Caviness thought it was a plus for Caribbean Landscaping.

Councilor Mooney asked who installed the other rain gardens on the Outer Banks. He further asked if it was any of the contractors that bid on this project. Senior Planner Cross stated that Emerald Forest constructed one in Manteo and a few others in Virginia. She stated that she had asked Caribbean Landscaping for references that were similar in nature and they provided her with references that were for landscaping. She noted that Dragonfly Ponds specializes in this type of project but were too high and Whitehurst Sand Company specializes in concrete work. She pointed out that when bids are really low or really high, it meant that the contractor didn't know what they were doing. She added that if it boiled down to cost, Council should choose Caribbean Landscaping; if it was a piece of the Town park that Council wanted to ensure would be done right and look beautiful, Council should choose Emerald Forest.

Mayor Kingston stated that he looked at it in that if the Town could not manage the contract, shame on the Town. He noted that it was double the price and Caribbean Landscaping said they could do the work. He added that the Town has a relationship with Caribbean Landscaping, and he was sure they would like more business with the Town to supplement what they already have. Senior Planner Cross agreed. Mayor Kingston thought the cost outweighed the experience in this instance as it was not the most complicated project.

Councilor Whitman asked Senior Planner Cross if she had sat down and reviewed the specifications with Caribbean Landscaping. Senior Planner Cross stated that she had not, but they had the specifications. Councilor Whitman asked if Caribbean Landscaping was aware of the concrete at the bottom of the drainage ditch that will need to be constructed, which was at a cost of almost \$6,000.

Mayor Kingston asked if there was concrete in the project. Senior Planner Cross stated that she did not recall seeing any concrete as part of the project. Mayor Kingston stated that if seepage was wanted, he couldn't believe there would be concrete. Mayor Pro Tempore Thibodeau agreed, adding that she didn't understand the plans.

Interim Town Manager Heard explained that under the grant program, residential properties were eligible for the project, so the project could serve as something that residents in Duck would choose to look at and individual residents could apply for the grant. He noted that a majority of the rain gardens in Dare County were built by volunteer labor or by individual contractors. He added that most projects did not have an engineer involved.

Mayor Pro Tempore Thibodeau asked if a resident had to have an engineered drawing to go through the same process the Town has to go through. Interim Town Manager Heard stated that they would not as it was not a requirement of the grant. He explained that the Town's project was different in that it was trying to resolve an existing issue with stormwater, so he wanted to make sure the grades were correct so that the water would be drawn off the problem area. Mayor Pro Tempore Thibodeau asked if a homeowner wanted to replicate what the Town was doing; they would need to obtain a permit. Interim Town Manager Heard stated that they would, adding that the only permit they would need would depend on the scale of the project but would most likely be a land disturbance permit.

Senior Planner Cross stated that there was some question on the design of the project. She noted that there was a concrete weir and suggested that she be able to go back to Caribbean Landscaping to make sure they have factored that into their cost. She added that she would bring the item back at Council's March 3, 2021 meeting, noting that they could not get the plants until mid to late April.

Councilor Caviness stated she would prefer having it brought back in March. Mayor Kingston agreed. He asked if the Town's engineer added the concrete in the base. Interim Town Manager Heard noted that it wasn't a base but a weir which was a little dam on the western edge of the pond. Mayor Kingston clarified that it was a catch basin. Interim Town Manager Heard explained that water would flow over the weir and drift out through the rest of the wetlands.

NEW BUSINESS

There was no New Business to discuss.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he did not have anything to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

Interim Town Manager Heard gave an 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 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 Information Christian Legner was recognized to speak. Director Legner gave a brief overview of activities to Council and the audience.

Council Retreat February 17 and 18, 2021

Interim Town Manager Heard reminded Council that the Retreat was coming up on February 17-18, 2021 beginning at 9:00 a.m. each day. He added that both sessions would last all day.

January 2021 Financial Presentation

Interim Town Manager Heard stated that he did not have the January 2021 financials but would send them to Council once they were complete.

MAYOR'S AGENDA

Mayor Kingston stated that he had attended his chairman and mayors meeting with continued discussions on COVID-19. He stated that he had an emergency meeting last week, as unsuspecting to them, there was a shortage of COVID-19 vaccines as they were diverted to Mecklenburg County. He stated that the State apologized, and Dare County recovered fairly well, although they may be a few hundred doses short. He thought Dare County was doing an excellent job with the COVID-19 vaccinations and everyone that has received them has said nothing but glowing comments about how organized it was.

Mayor Kingston stated that Drew Havens and he both serve on the NC League of Municipalities Board of Directors. He stated that there was a question regarding whether or not they could both continue to serve on that board. He noted that changes were made to the constitution several years ago, adding that he was an elected board member from District 1 and Mr. Havens was an appointed member from one of the affiliated organizations for Town Managers, Town Clerks and Attorneys. He stated that because of that, there is no conflict, and both could continue to serve through the end of their respective terms.

Mayor Kingston stated that he had a NC League of Municipalities Finance Committee meeting on February 16, 2021. He stated that he and Drew Havens both serve on this committee, so he would be on the virtual call as well. He stated that they have a two-day Board meeting on February 25-26, 2021 and the last time the Board met was in February

2020 in Duck. He stated that the NC League of Municipalities had contacted him and asked him to be appointed to the League Leadership Foundation, which he accepted, for the coming year.

Mayor Kingston thanked Director Legner and Public Relations Administrative Assistant Betsy Trimble and Town staff for a successful Winter Celebration. He noted that it was very different this year, but it was good to make recognition of Town Council, boards, and staff. He stated that he was looking forward to the upcoming Council Retreat, adding that it would be different since it will be virtual. He stated that he was looking forward to Drew Havens' arrival on February 15, 2021 and thanked Interim Town Manager Heard for his dedication and leadership since July 2020.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau welcomed Drew Havens as the new Town Manager, adding that she was excited for him to start working for the Town. She stated that she was very appreciative of all of the updates that Town staff provided. She stated that she has been delighted in seeing the financial reports that Teresa Osborne has been providing Council each month. She stated that she has joined the Outer Banks Visitors Bureau as the Town of Duck's representative and was happy to serve as the Assistant Treasurer.

Councilor Caviness echoed Mayor Kingston and Mayor Pro Tempore Thibodeau's compliments on Town staff and their leadership and dedication to the values and principles of the community as well as going above and beyond by setting high benchmarks for the Town. She stated that she had her first Government Access Committee meeting remotely on January 28, 2021.

Councilor Mooney had nothing to report.

Councilor Whitman had nothing to report.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Director Legner stated that no additional public comments had come in.

There being no comments, Mayor Kingston closed the time for public comments.

Mayor Kingston noted that the next meeting would be the Annual Retreat on Wednesday, February 17, 2021 at 9:00 a.m.

CLOSED SESSION

Councilor Whitman moved to enter closed session pursuant to North Carolina General Statute 143-318.11(5) to establish or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property located at 101 and 103 Scarborough Lane owned by Larry Herron, Thomas Herron, Kascie Herron, and Ciera Herron and property located at 1165 Duck Road owned by Larry Herron, Thomas Herron, Deborah Herron, Vicky Herron and Catherine Herron, by purchase, option, exchange, or lease

Motion carried via 5-0 via roll call.

The time was 8:21 p.m.

Upon return from closed session, Town Attorney Hobbs stated that Council gave instruction to Town staff, but no action was taken.

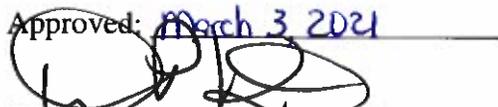
ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0 via roll call.

The time was 9:17 p.m.


Lori A. Ackerman, Town Clerk

Approved: March 3, 2021

Don Kingston, Mayor

