

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
September 4, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, September 4, 2024.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; and Councilor Brenda Chasen.

COUNCIL MEMBERS ABSENT: Councilor Kevin Lingard.

OTHERS PRESENT: Town Manager Drew Havens; Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Attorney Johny Hallow; Public Information and Events Director Kristiana Nickens; Town Clerk Christy Drumheller; Senior Planner Sandy Cross; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Town Attorney Robert Hobbs.

Mayor Kingston called the meeting to order at 1:01 p.m. He noted that Councilor Kevin Lingard was excused from the meeting.

Mayor Kingston asked Director of Community Development Joseph Heard to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston noted that there would not be a closed session and that Councilor Kevin Lingard was excused from 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 a timer for the time limit. He asked that any comments related to the public hearing be held off.

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

**CONSENT AGENDA**

**Minutes from the August 7, 2024, Regular Meeting; Contract with VHB for \$41,000 to Complete a Topographic Survey, Drainage Report, and Detailed Site Plan/Specifications related to the Stormwater Management Improvements in the Teresa Court Cul-de-sac; Contract with VHB for \$11,000 to Obtain an Encroachment Permit from NCDOT, Conduct the Bid Process, and Oversee Project**

**Construction of Stormwater Management Improvements in the Teresa Court Cul-de-sac; Contract with Millstone Marine Construction for \$28,939 to Demolish, Remove and Reconstruct One Retaining Wall North of Tuckahoe Drive along the East Side of Duck Road; and Budget Amendments**

Councilor Chasen moved to approve the consent agenda as presented.

Motion carried 4-0.

**SPECIAL PRESENTATIONS**

**Employee Recognition Program**

Mayor Kingston stated that in December 2011, Council adopted an employee service recognition program that would acknowledge the service of employees of the Town at five-year intervals by providing them with a certificate of recognition as well as a gift certificate to a Duck business of their choosing.

Mayor Kingston and Town Manager Havens went on to present Director of Community Development Joseph Heard with his 10-year service recognition certificate and \$100 gift certificate.

Mayor Kingston, Town Manager Havens, and Fire Chief Donna Black went on to present Fire Engineer Jeffrey Del Monte with his 15-year service recognition and \$150 gift certificate.

**Recognition of the Promotion of Brandon Molenda to the Rank of Master Firefighter**

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to recognize Brandon Molenda, adding that he was recently promoted to the rank of Master Firefighter. Mayor Kingston and Council congratulated Master Firefighter Molenda.

**Recognition of the Promotion of Greg Fiala to the Rank of Fire Engineer**

Fire Chief Black went on to recognize Greg Fiala, adding that he was recently promoted to the rank of Fire Engineer. Mayor Kingston and Council congratulated Fire Engineer Fiala.

**QUASI-JUDICIAL PUBLIC HEARING**

**Public Hearing/Discussion/Consideration of SUP 24-001, a Special Use Permit Application by Verizon Wireless, with the Authorization of the Northpoint Association, Inc., to Establish a Small Wireless Facility on Northpoint Neighborhood Common Property at 100 Dianne Street in the Single-Family Residential (RS-1) Zoning District**

Mayor Kingston turned the meeting over to Attorney Johny Hallow.

Attorney Hallow 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 if any member of Council needed to disclose any communications about the subject of the hearing that they may have had with the applicant or any person prior to the hearing. There was none.

Attorney Hallow stated that anyone that would be presenting evidence in connection with the hearing would need to take an oath. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in the applicants, witnesses, and staff for the public hearing.

**The following persons were sworn to provide testimony during the hearing: Joseph Heard and Gary Bryant.**

Attorney Hallow opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director of Community Development Joseph Heard was recognized to speak. Director Heard noted that the public hearing was properly advertised. He stated that the applicant was requesting a special use permit to allow the establishment of a small wireless facility at 100 Dianne Street, which requires a special use permit on private property in the Single-Family Residential zoning district. He noted that Verizon Wireless has negotiated a lease with the Northpoint Association for a 5'x5' area located in a wooded area between the neighborhood tennis courts and Duck Road to accommodate this purpose. He added that, consistent with the State statute and Town standards, the proposed small wireless facility consists of a small equipment box and antenna mounted on a new utility pole that was totaling approximately 39 feet in height.

Director Heard stated that the property at 100 Dianne Street was located at the northeast corner of the intersection of Duck Road and Dianne Street at the entrance to the Northpoint neighborhood. He pointed out that the property was nearly square in shape and has 160 feet of frontage along Duck Road and 140 feet of frontage on Dianne Street. He added that the property presently contained two community tennis courts and an associated parking area that was located mostly within the private right-of-way for Dianne Street.

Director Heard explained that Section 156.058(J) applied to small wireless facilities and had standards such as the height of the new small wireless facility, the utility pole that

would be installed to support the small wireless facility, the maximum size, the utility pole modifications, the color, the wiring and cabling, that guy wires were restricted, grounding would be needed, signage, and access as well as other requirements.

Director Heard stated that Subsection 156.155 of the Duck Town Code establishes review criteria for special use permit applications. He noted that the following standards should be considered as part of the Council's review:

1. The use meets all required conditions and specifications of the ordinance.
2. The use does not materially endanger the public health and safety.
3. The use will not substantially injure the value of the adjoining property unless the use is a public necessity.
4. The use will be in harmony with the area in which it is located and be in general conformity with the Comprehensive & CAMA Land Use Plan.

Director Heard noted that when granting a special use permit, Council may prescribe appropriate conditions and safeguards to the location, nature and extent of the proposed use and its relation to surrounding property, for purposes of (1) ensuring that the conditions of the permit approval will be complied with; and (2) minimizing any potentially injurious effect of the proposed use on adjoining properties, the character of the surrounding area, or the health, safety and general welfare of the community.

Director Heard stated that staff determined that all four required findings were met by the proposal and, therefore, staff was recommending approval of SUP 24-001 subject to the following conditions:

1. To maintain a buffer from Duck Road, the applicant must minimize any tree and vegetation removal associated with installation of the small wireless facility.
2. The applicant must submit the required application materials and obtain necessary building and development permits prior to commencing work.
3. All areas of land disturbance must be stabilized prior to issuance of a final Certificate of Completion/Occupancy for the project.

Attorney Hallow asked Council if they had questions for Director Heard.

Mayor Kingston asked what the Town's ordinance said about the height of antennas or structures such as this one. Director Heard stated that 45 feet was the maximum height for them.

Mayor Pro Tempore Thibodeau asked if small wireless facilities were something that the Town expected to see more of in the future. Director Heard stated that there would be

more coming into Town, adding that some may be in the right-of-way where it would not require approval because the State has exempted them if they were in the right-of-way. He hoped that there would be other opportunities for a company to work with a neighborhood to create a win-win situation such as this one.

Attorney Hallow asked if the applicant had any questions for Director Heard. There were none.

Attorney Hallow asked the applicant to make a presentation.

Gary Bryant, Counsel for Verizon Wireless was recognized to speak. Mr. Bryant stated that he was seeking a special use permit to construct and operate a 39-foot small wireless facility with a 25-foot square portion on a half-acre parcel owned by the Northpoint Association. He stated that there were many types of cell towers, with the majority being very tall, but this one was about as small as it gets.

Gary Bryant went on to give a background on cellular telephones and how wireless facilities work with cell phones as well as the fact that there is a demand for the facilities to Council and the audience. He went on to pass out photographs to Council of what the site currently looked like as well as what the site would look like if Council approved the tower being erected.

Gary Bryant stated that the facility needed to be installed in order to give Duck the cellular coverage it needs and 100 Dianne Street was a very good spot to install one. He asked Council to consider approving the special use permit.

Attorney Hallow asked Council if they had questions for the applicant. There were none.

Attorney Hallow if the applicant was okay with the three proposed conditions listed. Gary Bryant stated that he was.

Attorney Hallow asked if the applicant wished to present any other evidence. There was none.

Attorney Hallow asked if there was any other evidence to be presented during the hearing. There was none.

Attorney Hallow asked if there were any remaining questions. There was none.

Attorney Hallow 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 three proposed conditions.

Councilor Chasen moved to approve SUP24-001 as presented, with the findings of fact as well as the three proposed conditions listed.

Motion carried 4-0.

### **LEGISLATIVE PUBLIC HEARINGS**

There were no Legislative Public Hearings at this time.

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

#### **Discussion/Consideration of Adopting the Town of Duck Emergency Operations Plan and the Continuity of Operations Plan**

Fire Chief Black stated that Council had reviewed the Town's Emergency Operations Plan and the Continuity of Operations Plan at their August 7, 2024 meeting. She asked Council to adopt both plans.

Mayor Pro Tempore Thibodeau noted that some pages showed "Town Manager" while other pages showed "Designee." She clarified that whoever was in charge of the incident would decide who the designees would be. Fire Chief Black stated she was correct.

Mayor Kingston clarified that curfews and evacuations would come under the purview of the Mayor or Designee. Town Manager Havens explained that any curfews or restrictions, as part of a state of emergency, would fall under the purview of the Council or the Mayor, per the Town's ordinance. He noted that it was not detailed in the Emergency Operations Plan.

Mayor Pro Tempore Thibodeau moved to adopt the Town of Duck Emergency Operations Plan as presented.

Motion carried 4-0.

Mayor Pro Tempore Thibodeau moved to adopt the Town of Duck Continuity of Operations Plan as presented.

Motion carried 4-0.

#### **Discussion/Consideration of Ordinance 24-05, an Ordinance to Amend Section 70.05 of the Code of Ordinances to Clarify and Revise the Provisions Regulating the Operation of Golf Carts within the Town of Duck, North Carolina**

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman stated that on April 3, 2024, Council had adopted Ordinance 24-02, which amended Section 70.05 of the Town's Code of Ordinances to make previously recommended safety

equipment mandatory for golf carts. He stated that at Council's July 3, 2024 meeting, He had brought forward to Council some citizen concerns over the cost to retrofit golf carts to meet the mandated safety equipment standard. He reminded Council that they had asked him to re-examine the ordinance and return with recommendations to maintain safety while lessening the financial impact on golf cart owners.

Police Chief Ackerman explained that Ordinance 24-05 amends Section 70.05 as it clarifies and revises the provisions for regulating the operation of golf carts. He stated that he was recommending removing the requirement for turn signals and only require taillights, brake lights, and reflectors on golf carts being operated between sunset and sunrise. He noted that there was an item that was not in the proposed ordinance that he wanted added, which was to amend Section (C)(3)(a) to read as follows: "Two operating front headlights, or a single headlight bar, visible from a distance of at least 250 feet..." He recommended extending the effective date of January 1, 2025 to April 1, 2025.

Police Chief Ackerman stated that in order to officially adopt the fees related to golf cart registrations and failing to register a golf cart, Council would need to add a section to the adopted Schedule of Rates and Fees.

Mayor Kingston suggested waiving the first-year registration fee when an applicant registers for the first time and then after that, charge the \$25.00 annual fee. Police Chief Ackerman stated that when this was discussed, he did not recommend that Town Manager Havens put any revenue in the budget for the collection of fees, adding that he has budgeted for the permits and the only cost would be his staff's labor to do it. He noted that Mayor Kingston's suggestion could be done without any substantial impact on the department.

Councilor Whitman asked if after April 1, 2025, an applicant has not registered their golf cart, they would have to pay the \$50.00 fee. Police Chief Ackerman stated he was correct. Councilor Whitman clarified that it was even with allowing the first year's fees to be waived. Police Chief Ackerman stated that it would be his recommendation, since Council would be generous in waiving the first year, adding that there would still be some onus on the golf cart owners to get it done even if there wasn't a charge.

Mayor Pro Tempore Thibodeau asked what the permitting process would be. She clarified that someone would come to the police department to obtain a permit and an officer would have to look the golf cart over and issue a permit on site. She asked if the permit would be a piece of paper that has the year on it or something identifiable. She further asked if the officers would be looking to see if the permit was visible. Police Chief Ackerman pointed out that a lot of the golf cart owners were not year-round residents and because of that, it was decided to have them complete a self-certification. He explained that someone could apply, potentially online, fill out a registration form, fill out a self-certification form that stated that they have all of the safety equipment in place, and then sign an acknowledgement that they read the rules and regulations. He noted that in the ordinance, it states that the permit would have to be placed on the lower left corner of the windshield. He stated that he envisioned it as a two-sided sticker with the outer

facing side having the date and the inward facing side having the most violated rules as a reminder. Mayor Pro Tempore Thibodeau didn't think it would be too difficult a process. She asked how they would receive their sticker. Police Chief Ackerman stated that the Police Department could mail the sticker or the golf cart owner could stop by to pick it up.

Mayor Kingston asked about golf carts coming into Duck from people renting them outside of Duck and/or bringing their personal golf carts from home. He asked how that would be controlled. Police Chief Ackerman explained that rental golf carts have to follow the same regulations and as part of the outreach campaign, he would be sure to contact the golf cart rental companies. He noted that most have switched to LSVs, but they would be asked that those be registered as well. He stated that as far as people coming from another town, it will be more difficult to handle but they would handle it on a case-by-case basis.

Mayor Pro Tempore Thibodeau moved to adopt Ordinance 24-05 with the addition to Section (C)(3)(a).

Motion carried 4-0.

Councilor Whitman moved to amend the adopted Schedule of Fees to add Section 11, \$25.00 for registration and \$50.00 for late registration.

Motion carried 4-0.

Councilor Whitman moved to waive the registration fees for the first year of April 1, 2025 through March 31, 2026.

Motion carried 4-0.

### **NEW BUSINESS**

There was no New Business to discuss.

### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY**

Attorney Hallow stated he had nothing to report.

### **ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER**

### **Departmental Updates**

Public Information and Events Coordinator Kristiana Nickens was recognized to speak. Director Nickens gave a brief overview of activities to Council and the audience.

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

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross gave a brief overview of the past month's permit activities to Council and the audience.

Fire Chief Black gave a brief overview of the past month's fire activities to Council and the audience.

### **July FY 2025 Financial Presentation**

Town Manager Havens gave a short presentation on the July Fiscal Year 2025 financials to Council and the audience.

### **MAYOR'S AGENDA**

Mayor Kingston stated that the mayors/chairmen meeting will be on September 17, 2024 hosted by the Town of Duck. He stated that he was looking forward to the winged horse presentation. He congratulated the fire department on the new fire engine. He noted that it has been a great summer of events and thanked Community Engagement Coordinator Betsy Trimble and Director Nickens for their work on them.

### **COUNCIL MEMBER'S AGENDA**

Mayor Pro Tempore Thibodeau thanked staff for all of the great things they did. She gave a Tourism Bureau update to Council and the audience. She stated that she would be participating in the Blue Zones Initiative, which was a group that knows of blue zones with a panel of people that will hear about the community and tell the group about blue zones. She noted that it would not be just one blue zone, but the goal would be to be blue zoned certified, which was about healthy lifestyle and something the entire community was getting involved in.

Councilor Whitman thanked Fire Chief Black for her presentation on the new fire engine. He thanked Coordinator Trimble and Director Nickens for all of the summer events.

Councilor Chasen stated that she had attended the Vesta program on September 3, 2024, which showed positive impacts of the olivine dumping offshore. She added that she had spoken to Tyler Wamsley of the Field Research Facility and he had said he would be helping the Town with the situation. She stated that he would be meeting with Town Manager Havens and moving things positively forward with obtaining a lease with the Field Research Facility. She stated that she was finishing working on the horse and encouraged those that wanted to help paint to contact her.

**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 Regular meeting on Wednesday, October 2, 2024 at 1:00 p.m.

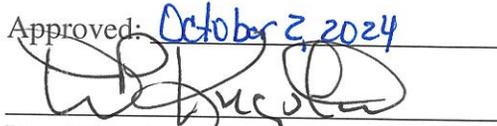
**ADJOURNMENT**

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 3:07 p.m.

  
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Lori A. Ackerman, Town Clerk

Approved: October 2, 2024  
  
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Don Kingston, Mayor

