

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
October 2, 2024**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, October 2, 2024.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Councilor Sandy Whitman; Councilor Brenda Chasen; and Councilor Kevin Lingard.

COUNCIL MEMBERS ABSENT: Mayor Pro Tempore Monica Thibodeau.

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

OTHERS ABSENT: Deputy Town Clerk Christy Drumheller.

Mayor Kingston called the meeting to order at 1:00 p.m. He noted that Mayor Pro Tempore Thibodeau was excused from the meeting.

Mayor Kingston noted that there needed to be a change to the agenda and asked for a motion.

Councilor Whitman moved to move Item 4B under Special Presentations to 8A under New Business.

Motion carried 4-0.

Mayor Kingston asked Councilor Brenda Chasen to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

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.

John Klamut of 133 Olde Duck Road was recognized to speak. Mr. Klamut stated that he wanted to comment about golf cart safety. He noted that in the minutes there was a suggestion of potentially eliminating turn signals on golf carts because of the cost of installing them on existing ones. He thought it was a mistake, adding that it scares him seeing children in rear facing seats on golf carts as they were totally unprotected when it comes to vehicular traffic. He thought that eliminating turn signals would further

increase the risk of a rear-end collision. He encouraged Council not to consider any reduction in the safety of golf carts. He suggested that the Town prohibit children from riding in rear facing seats on a golf cart, but instead have them sit in the middle and have adults sit in the rear facing seats.

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

CONSENT AGENDA

Minutes from the September 4, 2024, Regular Meeting; Confirm the Mayor's Appointment of Council Member Sandy Whitman and Council Member Brenda Chasen to Serve as Town Council Liaisons to a Staff-Led Committee Working with Dills Architects on the Initial Programming and Design of a New Public Safety Facility; and Resolution 24-13, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting Operation Green Light for Veterans

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, Town Manager Havens, and Fire Chief Donna Black went on to present Master Firefighter Anthony Bartolotta with his 15-year service recognition and \$150 gift certificate.

QUASI-JUDICIAL PUBLIC HEARING

Public Hearing/Discussion/Consideration of SUP 24-007, a Special Use Permit Application by Property Owners Shawn and Irene Devroude to Allow Fill up to Three Feet in Height to be Supported by a Retaining Wall at 134 Olde Duck Road, Which is Not Permitted under Subsection 156.128(A)(6)

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 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.

Councilor Whitman stated that he received an email regarding the application. Mayor Kingston stated that he received an email, as did the entire Council, but he disregarded it without reading it. Councilor Lingard stated that he received an email, started reading it, but then disregarded it.

Town Attorney Hobbs asked if any of the prior communications would unduly influence Council's decision. Mayor Kingston, Councilor Whitman, and Councilor Lingard stated that it would not.

Town Attorney Hobbs 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, Sandy Cross, Shawn Devroude, Irine Devroude, and John Klamut

Town Attorney Hobbs 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 applicants were requesting a special use permit to allow three feet of new fill supported by a retaining wall that was extended approximately eight feet to the north along the eastern side of the residence.

Director Heard stated that the property at 134 Olde Duck Road was part of the Olde Duck Beach subdivision and the property was 15,394 square feet in size and zoned Single-Family Residential. He stated that the lot was rectangular, 90 feet in width and approximately 171 feet in depth. He noted that the property currently contains a four-bedroom, 2,740 square foot single-family residence that was constructed in 2022 to replace an older house on the property. He added that a swimming pool and surrounding concrete patio were located to the rear of the residence.

Director Heard explained that the previous residence on the property was located 14.9 feet from the eastern side property line with an elevated deck that extended to the 10-foot minimum side setback line and the pilings of the deck appear to have doubled as a structural component of the prior retaining wall. He pointed out that during the process

of demolishing the former residence and constructing the current one, the side setback was increased to 24 feet for the residence and 18 feet for the attached deck. He noted that the land disturbance permit associated with the new construction – which was completed on February 11, 2022 by House Engineering – showed no retaining wall and the property gradually graded down towards the east. He added that the as-built survey for the initial construction – completed by Styons Surveying on September 27, 2022 – may be incomplete as it did not show any retaining wall on the property.

Director Heard stated that a permit to remove the prior retaining wall and construct a new retaining wall, including the eight-foot extension to the north, was approved on December 19, 2023. He noted that the permit contained a specific condition, signed and initialed by the general contractor, that no fill was permitted behind the retaining wall. He added that this condition was also noted and highlighted on the approved site plan.

Director Heard pointed out that after not receiving a response to several emails, staff completed an inspection of the property on April 17, 2024 to check on the completion of the project. He stated that during the inspection, staff noted that fill had been added behind the retaining wall and after an additional request to the contractor went unanswered, staff initiated discussions with the property owners about options to resolve the issue. He noted that the property owners chose to pursue a special use permit in hopes of keeping the fill in its current location.

Director Heard stated that Subsection 156.128(C) of the Duck Town Code establishes review criteria for special use permit applications involving fill and grading activities. He noted that the following standards should be considered as part of the 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 use exception will be consistent with any applicable goals, policies and objectives specified in the Town's adopted Comprehensive & Land Use Plan and Vision Statement. This review includes the Town of Duck's evaluation of the proposal's consistency with its adopted Comprehensive & Land Use Plan, which may be more flexible or more stringent than interpretations by others.

Director Heard noted that staff received comments from Town Engineer Mike Robinson after the staff report was sent out to Council regarding Finding 4, which read as follows: "...from an engineering perspective I do not see any reason the additional fill would cause any issues. Drainage might actually work better with a level fill elevation. As it is now the roof runoff could flow to the lower area and possibly leak through the wall. I also see the exposed tiebacks as a trip hazard, and it would be much safer if they were covered with fill." Director Heard stated that staff would change Finding 4 as a potential issue since Town Engineer Robinson did not find it as an issue.

Director Heard noted that Section 156.128(C) of the Duck Town Code states that the Town Council must evaluate the proposal's consistency with the Town's adopted Comprehensive & CAMA Land Use Plan. He pointed out that while not addressing issues specific to this special use permit application, the Town's adopted Cama Land Use Plan provides the following goal and objectives relating to the design and impact of the proposed improvements:

- 6: Engage in efforts to improve local flooding and stormwater management.
 - 6.4: Reduce runoff through minimizing impervious surface coverage, encouraging tree preservation, and accommodating low impact development solutions to stormwater management.

Director Heard stated that staff determined that Findings 1, 3, 4, and 5 were met by the proposal; however, staff found that Finding 2 was not met. He added that the owners or their contractor proceeded to fill behind the retaining wall extension at their own risk despite several notifications from staff that they were not permitted to do so. He stated that staff were recommending denial of the special use permit application, noting that if the majority of Council agreed with this analysis, then a motion could simply reference the staff findings in the report. He pointed out that compliance with Town standards could be as simple as removal of the fill behind the retaining wall extension and stabilization of that portion of the property.

Director Heard stated that if Council decided to grant the special use permit, then alternative findings should be referenced for Findings 2 to support the decision. He stated that if Council decided to approve the application, they should consider the following conditions of approval:

1. The applicants must obtain the necessary land disturbance permit for the fill behind the retaining wall extension.
2. The applicants must provide an as-built survey showing the locations of the retaining wall extension.
3. All areas of land disturbance must be stabilized prior to issuance of a final Certificate of Completion for the project.

Town Attorney Hobbs asked Council if they had questions for Director Heard.

Councilor Lingard asked if the applicants had presented the as built in the first place, it would have fit all of the Town's criteria or would they have had to obtain a special use permit for anything they submitted as the project was built. Director Heard stated that the original redevelopment plan that was approved in 2022 showed no retaining wall, adding that the applicant was apparently getting rid of it and grading it down. He pointed out that it had already been done after the permit was approved and was an option they had at that point. He stated that if they did that, according to the original plan, there would not have been any issues and they would not be in front of Council asking for approval of a special use permit.

Director Heard stated that the applicants were subsequently issued a permit and decided to retain the retaining wall so they were able to obtain a permit for it. He reiterated that a retaining wall was just a wall and the applicants could obtain a permit for it, adding that the only issue was the fill behind it. He pointed out that if they did not have the fill behind it, then the permit and the project would have been approved.

Councilor Lingard noted that staff contacted the contractor several times. He asked what the response was when that happened. Director Heard stated that contact with the contractor began on November 2, 2023 after a final inspection was done at the property where it was noted by staff that there was still a retaining wall present. He stated that staff followed up on November 21, 2023, November 30, 2023, December 1, 2023, and December 5, 2023 to come up with a plan as to how they would address the issue of whether the applicants wanted the retaining wall to remain or implement the original plan. He noted that as a result of those discussions, staff issued a new land disturbance permit for a retaining wall and the extension on December 19, 2023. He added that under that permit were the conditions that the applicant could not add any fill behind it and staff specifically had the contractor initial that to be sure that that point was understood.

Director Heard stated that when the final inspection on the wall permit was completed on April 17, 2024, staff met with the owners and the contractor on site and it was noted that fill had been added. He stated that the next day Community Planner Jim Gould had sent out a very detailed email that gave them the options of removing the fill or submitting for this special use permit. He stated that Community Planner Gould followed up again on May 23, 2024, noting that both communications were sent to the owners and the contractor, which detailed the violations as well as options for bringing the project into compliance. He stated that the option the applicants chose was to come before Council for the special use permit request. He added that since then, staff have been waiting for the submission of that application.

Councilor Lingard asked if the survey from September 27, 2022 that was presented to staff was before staff knew the wall was there. Director Heard stated he was correct. Councilor Lingard asked if Director Heard found it strange that the wall was initially missing from the as-built survey. Director Heard stated that, technically, the wall was still missing because they did not have a new survey. He explained that, typically, a structure

like that was located by the surveyor and included on as-built survey, but in this instance it was not.

Mayor Kingston stated that this was about an eight-foot section, which was where the fill was currently located. He asked if the fill was already in existence with the older wall. Director Heard stated that it was. Mayor Kingston asked if it was up to the level that currently exists. Director Heard stated that it was. He added that this application was only for an 8 foot by 8-foot area.

Councilor Whitman clarified that several notices were sent to the applicants that they were out of compliance. Director Heard stated he was correct. Councilor Whitman asked if the contractor was sent the notices. Director Heard stated that he was.

Town Attorney Hobbs asked if the applicants had any questions for Director Heard. There were none.

Town Attorney Hobbs asked the applicants to make a presentation.

Shawn and Irine Devroude of 134 Olde Duck Road were recognized to speak. Mr. Devroude stated that his family has owned the residence for over 40 years with the original home on the lot being the first house on Olde Duck Road. He stated that they demolished the original home in order to build a newer home as they were year-round residents.

Shawn Devroude pointed out that he and his wife have great respect for the Town of Duck, adding that they have respected the strict building codes. He stated that he has dealt with the Town on many projects they had on the original house and it has always been a positive experience. He stated that they have great respect for what the Town Council has to do, adding that it was important that they maintained the will and consent of the residents of the Town.

Shawn Devroude explained that after the house was constructed in October 2023, it was time for them to complete all of the projects that needed to be done, adding that one of the first projects was to deal with the old retention wall that was affixed to the side of the original house. He stated that it was not properly constructed and due to the demolition of the original house, it caused significant damage to the retention wall. He stated that the original retention wall was attached to the old pilings and they had to cut the pilings when the original house was demolished while trying to keep the retention wall, but due to the significant damage, they knew they needed to replace it.

Shawn Devroude stated that their lot is elevated with a steep pitch down to their neighbor's property and they have always made sure to stop any erosion from coming onto the neighbor's property. He explained that in October 2023, they entered into a contract with a contractor to rip out the old wall and build a new one. He pointed out that the way the new house was oriented on the lot, it was slightly further to the west and eight feet farther to the north, adding that the old retention wall went to where the old

slab on the north end of the property ended. He stated that the new house orientation took the house slab another eight feet to the north. He added that when they applied for the permit, the idea was that they would replace the retention wall that protected the slope of the old slab in order to protect the rest of the eight feet because that was where the house slab and the roofline were. He noted that it made sense for them to do it this way for erosion and water retention, which was the reason for the eight-foot discrepancy. He added that it was not because they wanted to add another eight feet to the retention wall, but because the house slab goes that additional eight feet to the north.

Shawn Devroude stated that work started in January 2024 and ended two weeks later, adding that in April 2024 they started their landscaping project, minus the new construction. He noted that the lot was not landscaped so they started working on it, which was when it came to their attention from the Town that they needed to do something. He added that for part of those projects, they extended the retention wall out to the end of the slab and gave themselves an additional rock layer to ensure that there would be no erosion or water runoff. He stated that they wanted to make the project pristine but also erosion free, watertight, and aesthetically pleasing.

Shawn Devroude stated that there was a reference to a lack of response from him and his wife earlier in the meeting. He explained that there were emails that were sent, which were addressed to him but he never received them as he thought they went to his junk folder.

Irine Devroude was recognized to speak. Mrs. Devroude stated that through this process and reading the documentation that was posted on the Town's website was the first time she had learned that there were multiple inquiries to their contractor that went unanswered. She explained that back in April, 2024, the email was sent to Shawn Devroude and copied to the contractor and when Community Planner Gould had sent her the email asking her to read the emails that were previously sent in April to the Devroudes and their contractor, she responded that they had never received them. She stated that there apparently were a lot of attachments in the emails with photographs but she thought the emails went to their junk mail folder. She pointed out that when the project was completed that they reached out to the contractor many times but never heard back.

Shawn Devroude thought the timing and the email exchanges were a red herring because it came to their attention what the remedies were, they pursued it and was why they were before Council. He stated that they were asking Council to use discretion. He explained that if one looks at the wall, they went overboard on the beefiness of the retention wall, adding that they did not need to have anything as substantial as what was constructed. He stated they decided to construct one so substantial because they wanted it to be aesthetically pleasing and something that would compliment the house. He added that they also wanted it to be usable space, not only to catch the erosion and water runoff, but usable for installing landscaping to make it look nice. He noted that when the original house was demolished and when the old retention wall was replaced, they lost a considerable amount of sand and rock and had to replace it. He added that once the wall

was constructed, there were two things they did not anticipate – they did not anticipate having tie rods sticking out and being a safety hazard; and they did not anticipate the amount of sand and rock that would be displaced. He pointed out that the wall was 50 feet long and there was one tie rod that was sticking out, was a safety hazard, and an eyesore, so they decided to put in what they felt was a small amount of sand and did not think anything of it when they filled in the space to hide the tie rod.

Shawn Devroude stated when it came to their attention that even though it was a small amount of sand and that the amount of sand would be an issue, there was a process for it and they applied for the special use permit. He stated that they understood that the spirit of the Code was trying to ensure stabilization and trying to protect the natural landscapes in Town. He didn't think an amount of sand like they put in would be an issue and did not think it was what the spirit of the Code intended to do.

Town Attorney Hobbs asked Council if they had questions for the applicants.

Councilor Whitman pointed out that the Devroudes had sent a letter and stated that they were told by their contractor that they could not fill the corner in. He clarified that even though they were told that, they filled in the corner. Irine Devroude stated he was correct. She explained that they were told they were not allowed to add any new fill. Councilor Whitman pointed out that the letter stated the following language: "...would not be permitted to fill the corner..." He noted that it did not state whether it was new or existing fill. Shawn Devroude agreed, adding that once they finished the project and looked at that corner, they did not think filling it in would be an issue. Irine Devroude added that they graded most of the sand. She pointed out that the reason they included a lot of photographs that have the pilings was because the level of the sand they had was extremely high with a lot of sand in front and to the side of the wall, so they used that sand to grade it and keep the sand level down.

Councilor Whitman clarified that the Devroude's contractor had completed the work when they decided to fill the corner in. Irine Devroude stated that the contractor had nothing to do with them filling in the corner. Councilor Whitman asked if at the time the Devroudes were receiving letters from the Town if the contractor was still working for them. Irine Devroude stated that he was. Councilor Whitman asked if they had spoken to the contractor. Mrs. Devroude stated that they have not spoken to the contractor since he received his last payment. Shawn Devroude pointed out that the contractor's work was completed. Mrs. Devroude agreed, adding that he did a great job but there was no follow-up. Councilor Whitman thought there should have been some follow-up. Mr. Devroude agreed, adding that the contractor did not install the fill, they did.

Councilor Chasen stated that the Devroudes had a beautiful home and lot, adding that she could see why they did what they did. She stated that her problem was that there were standards that Council needed to evaluate. She pointed out that the Devroude's were told not to add the fill but they did it anyway. She stated that she had a problem with getting past that and asked them to help her understand why they did it. Shawn Devroude explained that when they were told that at first, they felt it was a small hole and they

would just fill it in. He stated that they knew when the retention wall was demolished and constructed that the sand would be displaced. He pointed out that the amount of sand was not that big and they didn't think it would matter. Councilor Chasen asked what the other options staff had presented that were not used. Irine Devroude stated that it was to tear down that part of the wall, tear out the wall and let the sand fall, dig it out, or file an SUP.

Town Attorney Hobbs asked if there were any sworn witnesses that wished to make a presentation.

John Klamut was recognized to speak. Mr. Klamut apologized to Council for sending an email to them earlier in the day, adding that he misinterpreted the instructions on the Town's website. He went on to read a statement to Council and the audience supporting the request, adding that he was a retired Civil/Professional Engineer formerly licensed in New York but never practiced or been licensed in North Carolina. He felt that denying the SUP and removing the soil inside the retaining wall extension was not a feasible solution from an engineering, aesthetic, or safety point of view as it would be unusual to construct an enclosed retaining wall system with a sloped depression on the backfilled side. He noted that it was questionable whether the Town should have approved a retaining wall that could not be backfilled. He encouraged Council to approve the SUP and to amend the draft to allow enough additional fill so that the Devroudes could level their garden to the same elevation as the grade behind the repaired existing retaining wall.

Councilor Whitman pointed out that John Klamut was asking for Council to change the rules for this special use permit application. John Klamut agreed. Councilor Whitman stated that the Devroudes knew the rules that were in place when they obtained their permit, adding that he did not think Council was allowed to change the rules mid-stream. Mr. Klamut stated that he was not suggesting that Council change the rules but was suggesting that Council and/or Planning Board look at it. He pointed out that this was a good example of how putting fill behind a retaining wall was the best solution. He noted that it was a better solution than the one that was on the original engineered drawings.

Town Attorney Hobbs asked the applicants if they had questions for the witness. There were none.

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

Town Attorney Hobbs asked if there were any remaining questions.

Councilor Lingard thought he saw the day before a reference to a letter from the owners of 136 Olde Duck Road regarding this special use permit, but the letter was not in the Council packet. He asked what the thoughts were from those owners. Director Heard explained that staff received a comment from the homeowners but staff does not provide the actual letter. Town Attorney Hobbs noted that it was per State statute.

Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He noted that John Klamut had presented his background and credentials and made clear he was not a currently licensed engineer in North Carolina. He stated that engineering comments fall under the realm of expert testimony and it would be up to Council to evaluate his position for his statements as a witness and determine whether they want to consider the comments made as a layman or an expert. He added that Mr. Klamut does not meet the strict requirements of an expert since he was not a currently licensed North Carolina engineer. He stated that Mr. Klamut made comments on Finding 2 that the ordinance was unreasonable as to the criteria and also made comments about potential changes and why that was a problem. He stated that Mr. Klamut had stated that it was not Council's responsibility today to evaluate the ordinance, but that Council was given the ordinance and as part of their consideration, Council was not allowed to make changes to the guidelines or the ordinance as they were for another day.

Town Attorney Hobbs stated that Council was applying the ordinance as written to the facts presented in this case as sworn testimony.

Mayor Kingston stated that it concerned him whenever anyone moves ahead on a project without permission. He pointed out that Council has seen that a few times now. He understood the timelines and the relationships with the contractor as well as the communications; however, he would be supporting the application. He thought based upon Town Engineer Robinson's comments, Council was dealing with a reasonable solution. He stated that he would not be taking into consideration the comments that were voiced, but thought the Town may need to look at the practicality of some of the ordinances that are in place. He reiterated that he would be supporting the application with the findings.

Councilor Lingard stated that he did not have a problem with the sand, as he didn't feel it was an issue; however, he did have an issue that this was the third time Council has been asked to approve a mistake. He stated that he would support the application, but wanted to make it clear that Council cannot keep approving special use permits because of mistakes and actions by contractors. He reiterated that he would support the application but noted that this will not be something that Council will continue to approve because this was not what special use permits were for.

Councilor Whitman stated that he was not in favor of supporting the application because the Town has rules that should be followed. He agreed with Councilor Lingard that this was the third one this year where the applicant made a mistake and wanted the application to be approved. He thought if the applicants did what they were supposed to, it would not be an issue.

Councilor Chasen understood why the applicants did what they did; however, Subsection 156.128(A)(6) of the Town Code states the following: "...bulkheads or retaining walls shall not be allowed as a method to stabilize or contain fill, except bulkheads established for shoreline protection and as otherwise permitted by special use permits granted by the

Town Council...” She noted that Council has the ability to approve them, adding that she is on the same platform as Councilors Lingard and Whitman in that this was not the first time Council has had contractors make changes sporadically in the field or homeowners that have done things and then asking for forgiveness after the fact. She pointed out that there was no point in having regulations and zoning standards if people were going to do as they please and then ask for forgiveness. She stated that she wasn’t saying that’s what the applicants did, but it was the perspective that Council was facing at this point since there continues to be an issue with contractors disregarding the regulations. She stated that she could go either way with this application; she could support it because she aesthetically sees what the applicant is doing and it makes sense, but she realized the regulations say no.

Mayor Kingston moved to accept SUP24-007 as presented with the findings of fact as well as the three proposed conditions listed.

Motion failed 2-2 with Councilors Whitman and Chasen dissenting.

Town Attorney Hobbs noted that because the motion failed, the application was denied.

LEGISLATIVE PUBLIC HEARINGS

There were no Legislative Public Hearings at this time.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 24-04, an Amendment to the Town Standards and Definition of Lot Coverage in Section 156.002 of the Town Code regarding Allowances for Pervious Surface Materials for Single-Family Residences

Director Heard explained that Ordinance 24-04 proposes exemptions for artificial turf and water in swimming pools consistent with recently adopted State legislation – 100% lot coverage credit for pervious parking surfaces and 40% credit for other types of semi-pervious surfaces and pervious surfaces used elsewhere on a property. He stated that the proposed ordinance also addresses appropriate subsurface base materials, certification of perviousness by a licensed engineer, long-term maintenance of pervious surfaces, and recordation of maintenance agreements. He added that at their meeting on September 11, 2024, the Planning Board voted 4-1 to recommend approval of the proposed text amendment in Ordinance 24-04.

Councilor Whitman moved to schedule a public hearing on Ordinance 24-04 for Council’s November 6, 2024 meeting as presented.

Motion carried 4-0.

NEW BUSINESS

Discussion/Consideration of Adopting the Town of Duck Flood Warning and Response Plan

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross reviewed the Town of Duck Flood Warning and Response Plan with Council and the audience. She noted that the plan was consistent with mitigation action items identified in the Town's Hazard Mitigation Plan as well as in support of the Town's Emergency Operations Plan which was adopted by Council at their September 6, 2024 meeting.

Councilor Chasen moved to adopt the plan as presented.

Motion carried 4-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated he had nothing to report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

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.

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

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 Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave a brief update on the efforts to help other agencies in Western North Carolina with regard to Hurricane Helene and the damage it caused to Council and the audience.

August FY 2025 Financial Presentation

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

MAYOR'S AGENDA

Mayor Kingston stated that the mayors/chairmen meeting will be on October 15, 2024 hosted by the Town of Kill Devil Hills. He stated that he was looking forward to the winged horse presentation and the upcoming jazz festival. He thanked Police Chief Ackerman and his staff for their response to western North Carolina.

COUNCIL MEMBER'S AGENDA

Councilor Lingard thanked Police Chief Ackerman and the residents of Duck who responded to the call for donations for western North Carolina. He stated that another group had started picking up trash on the beach, which was separate from Duck Sweep. He thanked them for what they were doing.

Councilor Whitman echoed Councilor Lingard's comments and thanked Police Chief Ackerman and his officers as well as the volunteers that helped the Town with various projects such as pumping stormwater and trash pickup. He added that he would like to see the Town look really good the weekend of the jazz festival.

Councilor Chasen echoed the rest of Council's comments, adding that Duck has a can-do attitude in that anything that needs to be done, people figure it out and solve it for the benefit of everyone. She gave a Government Access Committee meeting update to Council and the audience. She added that she was looking forward to the winged horse presentation.

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.

CLOSED SESSION

Councilor Whitman to enter closed session pursuant to North Carolina General Statute Section 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged; and to enter closed session in accordance with Section 143-318.11(a)(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 (i) the price or other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

Motion carried 4-0.

The time was 3:26 p.m.

Upon return from closed session, Town Attorney Hobbs stated that for the first closed session, he gave legal advice concerning a legal matter and received guidance from Council. He stated that for the second closed session, the Council discussed it and a motion needed to be made.

Councilor Chasen moved to set a public hearing for Wednesday, October 16, 2024 at 1:00 p.m. to receive public comment on and consider a resolution to enter into an installment financing agreement to provide for the financing for the potential purchase of real property under an offer from the Town, which is in the process of being signed by the seller; and to authorize the Town Manager to pay the earnest money deposit on the contract once the signed contract has been received from the seller; and to authorize the Town Manager to obtain a real estate appraisal and survey for the property in support of the purchase.

Motion carried 4-0.

Mayor Kingston noted that the next meeting would be the Mid-Month meeting on Wednesday, October 16, 2024 at 1:00 p.m.

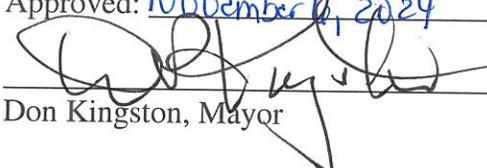
ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 4-0.

The time was 5:10 p.m.


Lori A. Ackerman, Town Clerk

Approved: November 6, 2024

Don Kingston, Mayor

