

**TOWN OF DUCK
TOWN COUNCIL
SPECIAL MEETING
October 30, 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 30, 2024

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

Council Members ABSENT: None.

OTHERS PRESENT: Town Manager Drew Havens; Town Attorney Robert Hobbs; Public Information and Events Director Kristiana Nickens; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; and Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 1:06 p.m.

Public Hearing/Discussion/Consideration of Receiving Public Comment on Resolution 24-15; a Resolution of the Town Council of the Town of Duck, North Carolina, Making Certain Findings Concerning a Proposed Installment Financing Agreement to Provide for the Financing for the Purchase of Real Estate

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs opened the public hearing and stated that Town Manager Drew Havens would give an overview.

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that Resolution 24-15 was a resolution that would approve the issuance of Installment Finance debt for the purchase of real property at 101 Scarborough Lane, 103 Scarborough Lane, and 1165 Duck Road for the purchase price of \$2 million. He noted that the land size was 1.53 acres and presently owned by the Herron family, adding that the use of the property would be for undetermined public use.

Town Manager Havens explained that Resolution 24-15 had findings and declarations, including the following:

- The Town proposes to finance the costs of the purchase pursuant to the Installment Financing Agreement, and the Town will make no more than 10 annual installment payments in amounts sufficient to repay advances to be made by the bank to finance the purchase in an aggregate principal amount not to exceed \$2,000,000.
- The Installment Financing Agreement is necessary or expedient for the Town.
- The sums to fall due under the Installment Financing Agreement are not excessive for its stated purposes; and the estimated cost of the purchase is not excessive.

- Counsel to the Town will render an opinion that the proposed undertakings are authorized by law and are purposes for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina.
- Interest to accrue on the advances made under the Installment Financing Agreement shall be at a rate not to exceed 6% per annum. The Installment Financing Agreement, under the circumstances presently obtaining, is preferable to a general obligation bond issue for this purpose.
- The estimated cost of financing the purchase pursuant to the Installment Financing Agreement is less than an estimate of similar cost for general obligation bond financing therefor.
- The debt management procedures and policies of the Town are good and have been carried out in strict compliance with law, including the filing of all required audits and reports with the Local Government Commission, and the Town is within its statutory debt limit and is not in default with respect to any of its outstanding indebtedness.
- No increase in the property tax rate will be required to raise the sums to pay the estimated debt service to fall due under the Installment Financing Agreement for all of its stated purposes.
- The Town has made timely payment of all sums owed by it with respect to the payment of principal and interest on all of its outstanding debt obligations and has received no notice from the Local Government Commission or any holder concerning the Town's failure to make any required payment of debt service.
- The Town Manager of the Town and such other officers of the Town as may be appropriate are hereby authorized to act on behalf of the Town in filing an application with the Local Government Commission for approval of the Installment Financing Agreement and other actions not inconsistent with this resolution.
- All actions heretofore taken by the Town Manager of the Town and any officers of the Town in connection with the purchase and Installment Financing Agreement are hereby ratified and confirmed.

Town Manager Havens pointed out that North Carolina General Statute 160A-20 requires a public hearing before entering into an Installment Finance Agreement and that notices for the hearing was published 10 days in advance in accordance with North Carolina General Statute 160A-20(g).

Town Attorney Hobbs noted that he had already delivered his opinion for the purchase.

Mayor Kingston asked what percentage rate was quoted for the loan. Town Manager Havens stated that it was 4.08%.

Town Attorney Hobbs opened the public hearing for comments from the public. There being no one wishing to comment, he closed the time for the public hearing.

Councilor Chasen moved to adopt Resolution 24-15 as presented.

Motion carried 5-0.

Discussion/Consideration of Approving a Letter to the Local Government Commission (LGC) in Response to a Financial Performance Indicator of Concern Contained in the Fiscal Year 2023-2024 Audit

Town Manager Havens explained that the Town's annual audit is complete and has been approved by the Local Government Commission; however, shown in the audit report was an item called a "Financial Performance Indicator of Concern" (FPIC), specifically under Item C in the section titled; "Stewardship, Compliance, and Accountability" on Page 29 of the report that was submitted to the Local Government Commission on October 21, 2024. He pointed out that Item C read as follows: "C. Excess of Expenditures over Appropriations: Public safety expenditures exceeded budget by \$45,807." He noted that this amount represented an overage of less than one percent compared to the final amended budget.

Town Manager Havens stated that because the expenditures exceeded the amended year-end budget, the Town was technically out of compliance with the final budget ordinance, adding that this finding was not considered material enough to mention by either the Town's auditor (Jonathan Dail of Johnson, Mizelle, Straub and Consolvo, LLP) nor the Town's contracted accountant (Teresa Osborne of Dowdy & Osborne, LLP), but the reviewer at the Local Government Commission flagged it as a concern that they wanted addressed in a revised audit report. He explained that because of this, the Town was required to submit a response letter signed by the Town Manager, the Finance Officer, and a majority of the Town Council, which would contain an explanation of the cause of the issue and the remedy to prevent a recurrence.

Town Manager Havens noted that this concern will not impact the final outcome of the audit report which shows a "clean audit" for the Town for Fiscal Year 2023-2024. He added that Jonathan Dail will be presenting his report to Council at the December 4, 2024, regular meeting. He stated that this letter needed to be sent to the Local Government Commission as soon as possible due to the timing of the application to them to allow the Town to enter into a financing agreement to purchase the Herron property.

Town Manager Havens stated that, as noted in the letter, during Fiscal Year 2023-2024, there was confusion caused by the conversion to a new software platform and both the police and fire departments had a significant amount of overtime incurred due to injuries in both departments. He added that the final budget amendment was not sufficient to cover all the expenditures of the departments, noting that the letter noted some changes that were made to ensure that this does not occur in the future.

Mayor Kingston asked what the Local Government Commission's expectation would have been if the amount was higher. He further asked if it was an issue that the Town did not cover the amount in the budget amendment. Town Manager Havens explained that, legally, if the budget was off by one dollar, the Town failed to comply with its budget ordinance. He stated that he has seen bigger numbers in the negative that have never been

flagged, adding that he appreciated the Local Government Commission because they were there to keep local governments out of trouble and they do a really good job of it.

Mayor Pro Tempore Thibodeau stated that she felt confident with the change in the software and Teresa Osborne's oversight as well as Town Manager Haven's awareness, in that any errors would be corrected quickly.

Councilor Chasen echoed Mayor Pro Tempore Thibodeau's comments adding that she was glad that it was found and that it was a non-material issue.

Mayor Kingston explained that every year the auditor contacts him to ask questions, adding that Jonathan Dail did contact him and made mention of the issue but that it was insignificant and so insignificant that he wasn't going to put it in his report.

Councilor Chasen moved to approve the draft letter to Local Government Commission in response to the FPIC contained in the Fiscal Year 2023-2024 audit report as presented.

Motion carried 5-0.

Closed Session

Mayor Pro Tempore Thibodeau moved 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.

Motion carried 5-0.

The time was 1:25 p.m.

Upon return from closed session, Town Attorney Hobbs stated that he met with Council and discussed with them a legal issue which required legal advice that he provided. He stated that Council provided direction to him with regard to it.

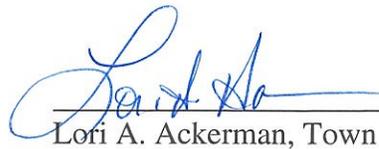
Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, November 6, 2024 at 1:00 p.m.

ADJOURNMENT

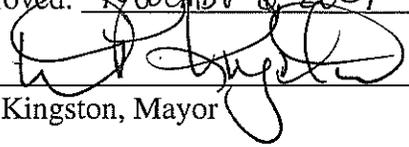
Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 2:09 p.m.


Lori A. Ackerman, Town Clerk

Approved: November 6, 2024



Don Kingston, Mayor

