

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
May 7, 2025**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, May 7, 2025.

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

COUNCIL MEMBERS ABSENT: None.

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

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 1:00 p.m.

Mayor Kingston asked Town Manager Drew Havens 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 hearings be held off.

Shameeka McKoy of MCL Jasco was recognized to speak. Ms. McKoy went on to give a short presentation on the USDA-Natural Resources Conservation Service Emergency Watershed Protection Program to Council and the audience.

Miriam Rollin of 149 Plover Drive was recognized to speak. Ms. Rollin stated that she wanted to speak about turtle friendly lighting. She understood that the Planning Board was looking at exterior lighting, adding that she wanted to plant the seed that an important aspect of any outdoor lighting ordinance change was making sure that it was as friendly as possible to turtles. She pointed out that any oceanfront lighting that was affecting the sand level would potentially distract the turtles. She added that she is a member of N.E.S.T. and they were going to send a letter to Council and the Planning Board and that she was looking forward to working with both boards on turtle friendly lighting.

Ms. Rollin stated that she knew that the budget was up and that many residents were shocked to see their revaluations that Dare County had sent out. She noted that there was an appeal process and hoped that people would avail themselves with the process. She knew that, as a budget matter, that this could potentially be a moment of people thinking that they could get more resources for the Town, but it was tempered by the fact that it will hit people hard, especially with those that have no intention of selling their home. She pointed out that the revaluation does not bring anything in for them as it was an additional cost. She stated that she wanted to make sure that it was a thought as Council was thinking about the budget going forward.

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

CONSENT AGENDA

Minutes from the April 2, 2025, Regular Meeting; Minutes from the April 16, 2025, Special Meeting; Minutes from the April 16, 2025, Mid-Month Meeting; Resolution 25-08, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Week of May 11-17, 2025 as National Memorial Police Week; and Budget Amendment

Councilor Chasen moved to approve the consent agenda as presented.

Motion carried 5-0.

SPECIAL PRESENTATIONS

Swearing in of Mitchell Ardinger as Duck Police Department's Police Corporal and Recognition on Obtaining his Advanced Law Enforcement Certificate

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman presented Master Police Officer Mitchell Ardinger with his Advanced Law Enforcement Certificate. He noted that Officer Ardinger was recently promoted to the rank of Corporal.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in Corporal Ardinger.

Mayor Kingston and Council congratulated Corporal Ardinger on his promotion and certificate.

Resolution 25-10, a Resolution of the Town Council of the Town of Duck, North Carolina, in Appreciation to Joseph Heard Upon His Retirement from the Town of Duck

Town Manager Drew Havens was recognized to speak. Town Manager Havens went on to recognize Director of Community Development Joseph Heard, adding that Director Heard would be retiring at the end of the month after working for the Town for 11 years. He read Resolution 25-10 to Council and the audience and then presented Director Heard with a framed resolution.

Mayor Pro Tempore Thibodeau moved to approve Resolution 25-10 as presented.

Motion carried 5-0.

Director of Community Development Joseph Heard was recognized to speak. Director Heard went on to give a short presentation entitled: "Retirement Reflections" to Council and the audience.

Mayor Kingston and Council congratulated Director Heard and wished him well on his retirement.

QUASI-JUDICIAL PUBLIC HEARING

There were no Quasi-Judicial public hearings at this time.

LEGISLATIVE PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 25-01, an Ordinance Updating Penalties for Violating the Tree Preservation Standards in Subsection 156.137(J) of the Town Code

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs opened the public hearing, noting that the Council would be sitting as a legislative body. He stated that Director Heard would give a presentation.

Director Heard stated that when enforcing replanting penalties, staff has run across the issue of contractors being unable to find or purchase trees of the size required by the ordinance from most plant nurseries in the local area and region. He explained that the current ordinance requires such replacement trees to be "...a minimum of three inches in caliper and 10 feet in height..." at the time of planting. He added that staff received credible reports from local landscaping contractors and followed up by contacting regional plant nurseries to document that this size of tree was not readily available.

Director Heard stated that at their November 6, 2024 meeting, Council authorized the Community Development staff to work with the Planning Board on reviewing the violations and penalties section of the Tree and Vegetation Preservation ordinance and recommend a more appropriate penalty and replanting standard.

Director Heard stated that the Planning Board was recommending approval of Ordinance 25-01 to amend the current tree protection standards in the Zoning Ordinance by reducing the minimum size of replacement trees from a three-inch caliper to a two-inch caliper for tree removal violations to better address tree availability issues and be more consistent with real world situations faced by local landscaping contractors. He noted that the proposed amendment does not reduce the size or amount of the overall penalty for violations but allows smaller trees to be planted to fulfill the penalty requirements.

Director Heard stated that at their meeting on March 12, 2025, the Planning Board voted 3-2 to recommend approval of Ordinance 25-01, which proposes to amend the current tree protection and penalty standards in the Zoning Ordinance by reducing the minimum size of replacement trees from a three-inch caliper to a two-inch caliper for tree removal violations. He pointed out that during their review, the Board evaluated standards from other communities, determined the availability of larger trees from local and regional nurseries, and discussed several other potential changes to the Town's current standards. He added that the Board members that voted in favor of the motion to recommend approval stated concerns about the lack of local and regional availability of larger trees and challenges to local contractors, pointing out that smaller trees suffer less replanting shock and begin to grow quicker, and noted that the amended ordinance would still require a substantial penalty to deter violations. He added that they also expressed an opinion that the proposal was consistent with the Town's adopted Comprehensive & Land Use Plan. He stated that the members that voted against the motion questioned its necessity, expressed concerns that the reduction in tree size would lessen the immediate visual impact of the replanting, and be less of a deterrent to potential violations of the tree preservation ordinance.

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

Mayor Pro Tempore Thibodeau clarified that the highlighted section in the staff report had the main changes to the ordinance. Director Heard stated she was correct.

Town Attorney Hobbs asked if any members of the public wished to comment on the proposed ordinance. There were none.

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

Mayor Pro Tempore Thibodeau stated that she appreciated the Planning Board's input on the ordinance and the idea that it will make it easier for people to comply by going with a smaller tree size. She thought it seemed very reasonable.

Mayor Pro Tempore Thibodeau moved to approve Ordinance 25-01 as presented.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of the Proposed Fiscal Year 2025-2026 Budget

Mayor Kingston turned the meeting over to Town Attorney Hobbs.

Town Attorney Hobbs opened the public hearing, noting that the Council would be sitting as a legislative body. He stated that Town Manager Havens would give a presentation.

Town Manager Havens stated that at Council's April 16, 2025 meeting, he presented the Proposed FY 2026 budget. He pointed out that the proposed budget was based on an Ad Valorem tax rate of \$0.18 for Fiscal Year 2025-2026 which was a 2.45 cent increase above the Revenue Neutral rate tax of \$0.1555. He added that the proposed budget also sets the tax rates for the two MSDs as follows: MSD-A would be at the rate of \$0.0798 and MSD-B at the rate of \$0.189. He stated that Council may hold additional work sessions, as needed, on the budget and that the budget needed to be adopted by June 30, 2025. He reviewed the proposed budget with Council and the audience.

Town Attorney Hobbs asked Council if they had questions for Town Manager Havens.

Mayor Kingston pointed out that Town Manager Havens had discussed the increase in the taxes, adding that the MSDs were revenue neutral. He thought Town Manager Havens should make that point. Town Manager Havens agreed, adding that the MSDs were at the revenue neutral rate.

Mayor Pro Tempore Thibodeau commended Town Manager Havens and Town staff for putting the budget together as well as presenting it in a way that was easy to follow.

Mayor Kingston pointed out that Town Manger Havens should talk about shared revenues since all of the other towns were most likely going to increase their taxes this year. Town Manager Havens stated that the biggest of those will be the local government sales tax and occupancy tax, adding that those were distributed back to the towns so the Town's portion of that is done on an Ad Valorem basis, explaining that it was the ratio of the tax levy of each community. He noted that as tax levies go up, the Town's proportionate share could increase depending on what the other towns do. He understood that most other communities in Dare County were going to adjust their tax rate off of revenue neutral, so to stay where the Town was, it made sense to increase the Ad Valorem tax rate.

Town Attorney Hobbs asked if any members of the public wished to comment on the proposed budget. There were none.

Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston, adding that the next step would be Council voting on the budget at their June 4, 2025 meeting unless some significant issues come up before then.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of a Process to Appoint Seven Individuals to Serve on the Board of Adjustment

Mayor Kingston stated that the terms of the entire Board of Adjustment will expire on July 1, 2025, adding that staff is in the process of reaching out to current members to inquire as to whether or not they wish to be reappointed. He noted that with regard to filling these positions, the Town had a process in place and asked Town Attorney Hobbs to give a short overview on that process.

Town Attorney Hobbs reminded Council that the Town Code has a new requirement for advertising the vacancies which is set out in Section 31.30, adding that Town staff will need to advertise the vacancies and provide applications to people interested in being appointed prior to the meeting where the appointments/reappointments would be made. He added that all applications will be provided to Council prior to the meeting where the vacancies will be filled. He stated that during the meeting, Council will open the floor to nominations in which Council members could put forward and debate names of possible appointees with each Council member nominating one person to the position. He noted that when there was more than one vacancy, then the procedure states that there will be separate nominations and voting for each position to be appointed.

Mayor Kingston asked when the vacancies would need to be advertised if this was coming back to the Council's June 4, 2025 meeting. Town Clerk Ackerman stated that she could put out the advertisement on May 8, 2025 with a submittal deadline of Tuesday, May 27, 2025 in order to have it as part of the June 4, 2025 agenda packet. Town Manager Havens clarified that the current members have been contacted to see if they wished to be reappointed. Town Clerk Ackerman stated that she did and all seven wish to be reappointed.

Councilor Lingard pointed out that, presumably, all seven have applied to be full members of the Board of Adjustment, which consisted of five members and two alternates. He asked if there will be a discussion on who will be appointed as members and who will be appointed as alternates. Town Manager Havens stated that there would. Mayor Kingston explained that the first five that were nominated and appointed would become full members and the other two would be appointed as alternates.

It was *consensus* to advertise the vacancies, receive applications by May 27, 2025 and include them in the June 4, 2025 Council packets.

Discussion/Consideration of Authorizing the Town Manager to Execute a Contract for Dune/Beach Planting

Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross stated that as part of a comprehensive effort to preserve and protect the dune system, the Town annually plants beach grass, sea oats, and bitter panicum using a contractor and volunteers along the entire length of the beach. She stated that the three-year contract for

the contracted planting will expire on June 30, 2025 and the Town solicited proposals from qualified contractors for a new three-year contract. She added that three contractors responded to the Request for Proposal with the lowest responsive bidder having limited experience with a contract of this size and scope. She recommended that Council authorize a one-year contract to Caribbean Landscaping with the option to renew that contract for an additional two years.

Mayor Pro Tempore Thibodeau asked for an explanation on the incremental increase that Caribbean Landscaping had in their proposal. She assumed that if the Town accepted the one-year plan, Caribbean would be held to those figures. Senior Planner Cross explained that it was \$99,817.35, \$102,811, and \$105,896. Mayor Pro Tempore Thibodeau asked if the Town entered into the one-year contract with a two-year extension, what the timetable would be to know if everyone was happy with Caribbean's work. She understood it was up to 60 days. Senior Planner Cross stated that she should know after they plant beach grass, which would be by March, adding that she would have an indication as to their capacity or bandwidth and from there she would reassess it once they plant the sea oats. She noted that the sea oats was the missing part since sea oat planting was more complicated.

Mayor Kingston noted that Caribbean Landscaping was a current vendor with the Town. He asked if they were performing well. Senior Planner Cross stated that they were performing okay.

Councilor Chasen moved to authorize the Town Manager to execute a contract with Caribbean Landscaping for dune and beach planting as presented.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 25-03, an Ordinance Adding Subsection 156.053(C) to the Town Code Allowing Additions to Match the Height of the Existing Roofline for Legally, Nonconforming Residences up to a Maximum of One Additional Foot

Director Heard stated that at the Planning Board's April 9, 2025 meeting, the Board voted 4-0 to recommend approval of Ordinance 25-03, which proposes the addition of Subsection 156.053(C) that states: "Notwithstanding any other provision of this chapter, for any single-family dwelling built prior to July 3, 2002 that exceeds the maximum height for the zoning district in which it is located, an addition does not exceed the maximum building height of the zoning district by more than one foot. The addition must conform with all other provisions of the Town's adopted zoning, flood damage prevention, and building code regulations."

Director Heard explained that, at their April 2, 2025 meeting, Council referenced a recent special use permit application for a building height amendment to allow an addition with

the same roofline and height as the existing residence. He stated that it was noted that similar situations exist elsewhere in the community and a provision allowing minor height exceptions was suggested. He added that Council members had expressed an interest in Community Development staff working with the Planning Board to develop an ordinance containing this type of height allowance for nonconforming residences.

Director Heard stated that since the Town's incorporation, there have been three height exception requests, adding that in 2005 the Board of Adjustment approved a 3.6-foot variance to tie into an existing roofline. He stated that a zoning text amendment removed height matters from variance proceedings, and they have subsequently been handled as special exceptions that must be approved by Council. He pointed out that in 2015, a height exception was approved for 0.3 feet above the 35-foot maximum and in 2024 a height exception for 1.2 feet was approved above the 35-foot maximum. He added that staff recently reviewed another situation where the roof height would exceed the 35-foot maximum by .07 feet; however, the contractor and owner chose to build the addition to meet the 35 feet rather than apply for a special exception.

Director Heard stated that the proposed allowance would only be permitted under the following conditions outlined in Subsection 156.053(C):

1. The structure must be a single-family residence.
2. The residence must have been constructed prior to July 3, 2002.
3. The permitted height encroachment can be no more than one foot above the maximum height allowed in the zoning district in which the property is located. Additions at a greater height must still obtain a special use permit.
4. The addition must comply with all other applicable Town standards.

Director Heard stated that at their April 9, 2025 meeting, the Planning Board voted unanimously to recommend approval of the proposed amendment, noting that it will allow greater flexibility for property owners with nonconforming residences to make reasonable improvements to their properties with minimal impact to neighboring properties. He recommended that Council authorize a public hearing on Ordinance 25-03 for their June 4, 2025 meeting.

Mayor Pro Tempore Thibodeau clarified that people that were adding on will be able to administratively get to match an existing roofline given the parameters in the draft ordinance. Director Heard stated she was correct. Mayor Pro Tempore Thibodeau thought it seemed really reasonable, especially because they were built prior to the Town incorporating and maybe the measurements were completed differently under Dare County.

Councilor Whitman moved to schedule a public hearing on Ordinance 25-03 for Council's June 4, 2025 meeting.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated he had no report and congratulated Director Heard on his retirement, thanking him for his years of service.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

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

Councilor Chasen moved to authorize the Town Manager to draft a letter for the Mayor's signature in support of Senate Bill 576.

Motion carried 5-0.

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

Fire Chief Matthew Dudek was recognized to speak. Fire Chief Dudek gave a brief overview of the past month's fire activities to Council and the audience.

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

March FY 2025 Financial Presentation

Finance Administrator Lauren Creech was recognized to speak. Administrator Creech gave a short presentation on the March Fiscal Year 2025 financials to Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that the mayors/chairmen meeting will be on May 20, 2025 hosted by the Town of Southern Shores. He stated that he has recently been involved with House Bill 765, which has to do with taking control of local development from the towns and it has been moving through the House with a lot of discussion across the state with the NC League of Municipalities, adding that Town Manager Havens has been deeply involved as well. He stated that he has a Zoom meeting on Monday, May 12, 2025 with the other mayors as well as the members of the committee that have proposed the bill. He noted that it was supported by the North Carolina Homebuilders Association as well as the North Carolina Realtors Association. He stated that the mayors have scheduled a

meeting on May 29, 2025 in Raleigh with several legislators to be attended by all the towns regarding this bill. He added that he will be out of town May 16-21, 2025

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau stated that she represents Duck on the RPO Committee, adding that she recently attended a meeting. She stated that she was looking forward to the upcoming summer events. She commended Town staff on the recent volunteer party and thanked Director Heard for his time with the Town of Duck, adding that he will be missed.

Councilor Lingard stated that he recently attended the CityVision conference in Greenville and congratulated Senior Planner Cross on the presentation that she made at the conference. He noted that the conference for 2026 would be held in Raleigh.

Councilor Whitman stated that he had the opportunity to go to the County Legislative Center where they awarded the Governor's Award for volunteerism to Lenny Schmit, who lives in Southern Shores but was nominated by Community Engagement Coordinator Betsy Trimble. He thanked the volunteers that recently helped to paint the first-floor conference room. He thanked Director Heard for his service to the Town.

Councilor Chasen thanked Director Heard for his service to the Town. She stated that she attended the Outer Banks Visitors Bureau Personnel meeting on April 25, 2025 and would be attending the Visitors Bureau meeting on May 19, 2025.

Councilor Lingard thanked Director Heard for his service to the Town.

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, June 4, 2025 at 1:00 p.m.

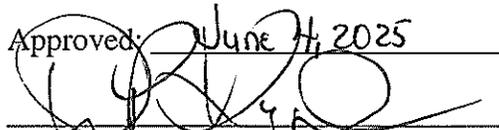
ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0.

The time was 2:46 p.m.


Lori A. Ackerman, Town Clerk

Approved: June 7, 2025


Don Kingston, Mayor

