

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
March 3, 2021**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, March 3, 2021.

**COUNCIL MEMBERS PRESENT:** Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Sandy Whitman; and Councilor Rob Mooney.

**COUNCIL MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Town Manager Drew Havens, Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Town Attorney Robert Hobbs; Attorney John Leidy; Director of Marketing and Special Events Christian Legner; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** Public Relations Administrative Assistant Betsy Trimble and Deputy Town Clerk Kristiana Nickens.

Mayor Kingston called the meeting to order at 6:00 p.m. He noted that Councilor Nancy Caviness and Town Attorney Robert Hobbs were attending the meeting remotely.

Mayor Kingston asked Town Manager Drew Havens to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

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

**PUBLIC COMMENTS**

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

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

**CONSENT AGENDA**

**Minutes from the January 6, 2021, Regular Meeting; Minutes from the February 3, 2021, Regular Meeting; and Government Education Access Channels Committee Proposed 2021-2022 Budget for CurrentTV**

Councilor Whitman moved to approve the consent agenda as presented.

Motion carried 5-0 via roll call.

**SPECIAL PRESENTATIONS**

**Introduction of Drew Havens, Town Manager**

Mayor Kingston stated that he wished to formally introduce new Town Manager Drew Havens. He gave a short background on Town Manager Havens to Council and the audience.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to swear in Drew Havens as the Town of Duck's new Town Manager.

Mayor Kingston and Council welcomed Town Manager Havens to the Town.

**Beach Renourishment Financing Discussion with DEC Associates**

Andrew Carter of DEC Associates was recognized to speak. Mr. Carter gave a short presentation on the financing of the Town's current, upcoming, and future beach nourishment projects to Council and the audience.

Mayor Kingston asked if the Town would receive the North Carolina Grant up front. Andrew Carter stated that they were working through it presently and have received conflicting answers. He stated that other towns have received the same grant and have already received the funds. He added that they were working through the process to try to figure out if this would be done as a reimbursement or an upfront method.

Mayor Pro Tempore Thibodeau stated that she was curious about the interest rate for the Special Obligation Bonds for both FEMA and the Town because the Town has used Special Obligation Bonds in the past. She asked if FEMA did things similarly and asked what the interest rates were. Andrew Carter stated that the normal Special Obligation Bonds were for five years, adding that for the FEMA portion, they tried to work out a structure where there were one-year interest rates. He stated that at this time 1.60%-1.75% would be a good conservative number for interest rates.

Mayor Pro Tempore Thibodeau noted that each town would be committing 7.82% equivalent revenue. She pointed out that when the Town did the project originally, each town came up with their own MSD amount. She asked for an explanation of the 7.82%. Andrew Carter explained that in 2015 the tax rate was being set by each town and they looked at the penny that would be generated. He stated that at that point 7.82 cents

equated to approximately \$1.22 million that the Town needed to generate, adding that the Town decided to generate that through MSDs and General Fund contribution. He noted that the Town of Southern Shores was presently doing something similar and will have to set their rate. Mayor Pro Tempore Thibodeau clarified that each town has the same contribution rate, but they would need to figure out the MSD rate. Andrew Carter stated she was correct.

Mayor Kingston asked for an explanation of how DEC Associates would interact with the Town with regard to the financing process. Andrew Carter stated that DEC Associates will help create and re-update the financial model that the Town currently has and would look at current Fund Balance levels as well as the revenue that would be coming into the beach model. He noted that this was important to attract the banks and obtain the best rates. He added that each town gets a rate based on its credit postures. He stated that they would take a look at the financial model as well as the calendars needed to pass any legal actions. He noted that at least two legal actions will need to be passed as the Town moves closer to the financing phase. He stated that they would help the Town through the LGC application process in getting approval from them in the July/August timeframe and will craft RFPS and solicitations to the banks in order to obtain the Special Obligation Bonds.

Mayor Kingston noted that this was a four-town scenario and asked if there was any consideration as to what the Town of Nags Head was doing with an impact on what Duck was doing. Andrew Carter stated that the Town of Nags Head was thinking about being part of the project but decided not to. He added that they have a small FEMA project that will come after the bids for the Town's project. He didn't think that the Town of Nags Head's project would have any bearing on the Town's project.

Mayor Kingston thanked Andrew Carter for his presentation.

## **PUBLIC HEARING**

### **Public Hearing/Discussion/Consideration of SE-21-001, an Application by Golden Sand Holdings, LLC for a Special Exception Seeking Modification in the Minimum Parking Standard for One Parking Space Under the Village Commercial Development Option Relating to Establishment of a One-Bedroom Apartment Above the Existing Retail Shop in Unit 7 of the Soundside Shoppes at 1180 Duck Road**

Mayor Kingston turned the meeting over to Attorney John Leidy.

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

to present evidence, examine, and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

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

**The following persons were sworn to provide testimony during the hearing: Joe Heard and Molly Adamovich.**

Attorney Leidy opened the evidentiary portion of the hearing. He stated that Director of Community Development Joe Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant was seeking approval to establish a one-bedroom apartment on the second story of the retail shop in Unit 7 of the Soundside Shoppes at 1180 Duck Road in order to provide housing for an employee of the business. He stated that the addition of the apartment would increase the minimum parking requirements for the site by one additional parking space. He added that the applicant was requesting a special exception through the Village Commercial Development Option to reduce the minimum parking requirement and find that 33 parking spaces were adequate to serve the existing and proposed development on site. He noted that there were minimal site improvements associated with the change.

Director Heard stated that the property was presently zoned Village Commercial and contained the Soundside Shoppes shopping center. He stated that the shopping center was originally approved in 1987 by Dare County and over subsequent years, the shopping center has seen administratively approved changes in tenancy as well as minor changes to the site layout. He added that the center was set up as a commercial condominium with each unit under separate, private ownership and the parking septic areas in common ownership with seven commercial units of retail space.

Director Heard explained that the subject unit was located at the rear of the shopping center adjoining the Town's boardwalk and was previously occupied by Plum Crazy. He added that the unit presently contained 936 square feet of retail space on the first floor and a half-story storage space above, with the northern wall connecting an adjoining unit housing the Sea Dragon Art Gallery.

Director Heard stated that in the past years, the Town has considered and approved reduced parking standards as part of the seven development proposals in Duck Village through the Village Commercial Development Option as follows:

- Loblolly Pines - 52 parking spaces reduced to 46
- NC Coast Restaurant – 16 parking spaces reduced to 13
- Scarborough Faire Shops – 115 parking spaces reduced to 107
- Roadside Bar & Grill – 48 parking spaces reduced to 20
- Wee Winks Shop – 61 parking spaces reduced to 57

- Aqua Restaurant – 57 parking spaces to 48
- Twiddy Realty – 42 parking spaces to 40

Director Heard stated that although there is precedent for approval of reduced parking standards, it was important for Council to recognize that each of these individual applications were reviewed and considered on its own merits. He noted that the Town's zoning ordinance establishes specific criteria that must be met for approval of a special exception through the Village Commercial Development Option.

Director Heard explained that the applicant proposed to maintain the retail use of the first floor but expand and convert the second floor of Unit 7 to a one-bedroom apartment. He noted that both the retail use and accessory apartment were permitted uses in the Village Commercial zoning district. He stated that the proposed improvements and change of use will not alter the development's footprint or increase the amount of lot coverage. He added that the entrance into the subject property from Duck Road is an ingress/egress drive approximately 20 feet in width with the shopping center having a second, one-way egress drive to the south onto Duck Road that was approximately 12 feet in width. He noted that both existing access points would remain the same with the proposed change of use.

Director Heard stated that the property contains 33 parking spaces, the amount of parking available was six spaces short of complying with the minimum parking standards. He added that the proposed addition of the one-bedroom apartment changes the parking calculations by requiring one additional parking space and, therefore, the applicant was seeking relief through the Village Commercial Development Option special exception to modify the minimum parking requirement and find that 33 parking spaces are adequate to serve the existing and proposed development on site.

Director Heard stated that in support of this request, the applicant anticipates that much of the customer traffic to the business will arrive on foot and by bicycle, so the amount of vehicular parking needed will be less than typical shopping centers. He added that the proposed floor plan shows a carryout window directly accessing the boardwalk, which supports the assertion.

Director Heard stated that following the Planning Board's February 10, 2021 meeting, the Board found that the request complied with all applicable findings and voted unanimously to recommend approval of the special exception under the Village Commercial Development Option, subject to the following conditions:

1. The Building Inspector and Fire Department must review and approve the building plans for compliance with applicable codes prior to issuance of a building permit for the apartment renovations.
2. To maximize parking available to business customers, designated parking for the residential apartment must be located by the dumpster.

3. This conditional use permit will expire in 12 month from the date of approval if the associated building improvements have not been permitted.

Mayor Pro Tempore Thibodeau asked if parking #17 was the parking space adjacent to the dumpster. Director Heard stated that it was, noting that the intent was that the parking space not be one that would take away from the business.

Mayor Kingston noted that it was a two-story retail spot. He asked how the original calculation was completed with regard to the storage space. Director Heard stated that storage is not counted toward retail calculations. Mayor Kingston pointed out that the original calculation had the storage counted. He added that there have been several businesses in this spot. He stated that there was a larger retail space and now it was smaller with an apartment. He asked if there was a trade-off between the bedroom and the reduced retail space. Director Heard stated that there wasn't, explaining that the calculations were based on the ground floor retail space only. He added that there wasn't a trade-off. Mayor Kingston clarified that it was only for this time. Director Heard disagreed, adding that it wasn't counted previously.

Attorney Leidy asked the applicant to make a presentation.

Molly Adamovich of Golden Sand Holdings, LLC was recognized to speak. Ms. Adamovich asked Council to grant the special exception. She noted that parking was at a premium and it would help having the employee live at the property.

Mayor Kingston clarified that the intent was for the employee to live above the store. Molly Adamovich stated he was correct.

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

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

Attorney Leidy asked if any sworn witnesses wished to address the application. There were none. He asked if Council had any remaining questions. There were none. There being no one else wishing to speak. Attorney Leidy 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.

Mayor Pro Tempore Thibodeau moved to approve SE-21-001, including the adoption of the proposed findings of fact set forth in the staff report with respect to compliance with the required special exception criteria, and including the conditions recommended by the Planning Board as set forth in the staff report. Mayor Pro Tempore Thibodeau further

moved that Council finds that the quasi-judicial hearing that was conducted in this case met all of the requirements of the Town of Duck Code of Ordinances, the North Carolina General Statutes, including Section 16A-19.24(f) of the North Carolina General Statutes that pertains to quasi-judicial hearings held during a remote Council meeting. Mayor Pro Tempore Thibodeau further moved that the Mayor and Clerk were authorized to execute a Special Exception Permit that is prepared by Town staff consistent with this resolution; provided, however, that if the Town receives any written public comments on the subject of the quasi-judicial public hearing within 24 hours after the time that the hearing was closed, the action taken under this motion shall be suspended and delayed until the next meeting of the Council for consideration of the written comments and further action if necessary; otherwise, absent the Town's receipt of further written public comments within 24 hours, no further action by this Council will be necessary to give effect to the approval of the Special Exception.

Motion carried 5-0 via roll call.

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

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

Director Heard stated that a Request for Proposals was put out to bid on December 14, 2020 seeking qualified contractors to construct a stormwater wetland/rain garden at the Duck Town Park south of the park entrance by the playground. He stated that four bids were received by the following contractors:

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

Director Heard stated that during the initial review of the submitted bids on February 3, 2021, Council requested staff to confirm that the low bidder – Caribbean Landscaping – thoroughly understood the project specifications. He noted that after reviewing the specifications, Caribbean Landscaping recognized their bid did not include all the required project components and opted to withdraw their bid.

Director Heard pointed out that Emerald Forest of Chesapeake, Virginia was the lowest remaining bidder. He added that the Town currently contracts with Emerald Forest to install American Beach Grass, Sea Oats, and Bitter Panicum grasses along the oceanfront dunes. He stated that staff was recommending that the contract be awarded to Emerald Forest.

Mayor Pro Tempore Thibodeau thanked Councilor Whitman for pointing out the error at the February 3, 2021 meeting. She thought there could be an opportunity for educational

signage to be completed. Director Heard stated that staff had some good thoughts on how to go about putting out educational signage.

Councilor Caviness asked if the subdivisions that front Duck Road that were having stormwater issues could use a rain garden as a solution for where water was ponding or if the problem areas were too big. Director Heard stated that there may be some properties that would benefit from a rain garden. He noted that it wouldn't hurt to create something like this that would provide more capacity to hold water, but in the problem areas, the water was too deep for a rain garden to be the only solution.

Mayor Pro Tempore Thibodeau moved to award the contract to Emerald Forest as presented.

Motion carried 5-0 via roll call.

**Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with VHB for Design, Engineering, Permitting, Bidding & Construction Administration Services for Coastal Resilience Projects Included in the Town's BRIC Grant Application**

Chris Dewitt with VHB was recognized to speak. Mr. Dewitt gave a short presentation on the engineering, design, and permitting needs included in the BRIC grant application. He stated that since the process needs to begin immediately, they have submitted a contract to conduct the work on behalf of the Town, which included bidding and construction administration services.

Mayor Kingston asked what the up-front costs would be. Chris Dewitt stated that the overall contract was \$322,000 and is broken down into the individual elements of final design, permitting, NEPA documentation, and bidding. Mayor Kingston asked if all of that would be expended in this fiscal year or past July 1, 2021. Chris Dewitt stated that some will go past July 1, 2021. Mayor Kingston noted that FEMA will reimburse the Town for its beach nourishment project. He asked how FEMA would handle the BRIC grant. Chris Dewitt stated that it was a new program, and he did not have an answer at this time.

Mayor Pro Tempore Thibodeau clarified that with regard to the scope of the project, VHB was coordinating with NCDOT to complete all the road raising. She asked if the Town did not receive the BRIC grant, it would have a contract with a lot of engineering and design that may or may not be necessary. She thought if the grant was not received, the Town basically did a lot of NCDOT's work if they ever wanted to raise the road in the future. Chris Dewitt stated that there was some risk to get to the construction target. He explained that there was a need to start the work and it was reimbursable if the Town receives the grant, but if not, then some work will have been expended as well as some level of decision will have to be made as to what the project becomes at that point. Mayor Pro Tempore Thibodeau thanked Chris Dewitt and VHB for all of their work with the Town over the years.

Mayor Kingston asked if there has been any conversation with FEMA or any feedback on the grant submission. Chris Dewitt stated that there has not been any feedback from FEMA to date. Mayor Kingston asked when VHB has to start working on the plans. Chris Dewitt stated that they need to start as soon as possible.

Councilor Whitman clarified that it would cost \$95,000 out of the \$275,000. Director Heard explained that there were other items that go into that to get to the \$95,000. Councilor Whitman clarified that the VHB fee was \$275,000. Chris Dewitt stated he was correct. Councilor Whitman clarified that out of that, \$95,000 was the gamble. Chris Dewitt stated that they were the big schedule factors. He stated that they have to progress the design to a point where they can submit the permit as well as submitting an effective NEPA documentation. He pointed out that the permitting and the NEPA document were the bigger schedule concerns. Councilor Whitman clarified that if the Town does not receive the grant and VHB was 50% complete, the project could be terminated. Chris Dewitt stated that it could.

Councilor Whitman moved to authorize the Town Manager to execute the contract with VHB as presented.

Motion carried 5-0 via roll call.

## **NEW BUSINESS**

### **Discussion/Consideration of Resolution 21-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Thanking Joseph Heard for his Service as Interim Town Manager**

Mayor Kingston read Resolution 21-01, a resolution that thanked Director Heard for his service as Interim Town Manager over the past seven months.

Mayor Kingston moved to approve Resolution 21-01 as presented.

Motion carried 5-0 via roll call.

Director Heard understood that sometimes individuals were recognized for their contributions to a team's effort. He stated that between what his coworkers have said and done for him as well as the recognition at this meeting, he wasn't sure he had ever received any recognition that was more meaningful to him. He pointed out that Town staff did not have a full-time leader over the past seven months, adding that there were issues he couldn't address as quickly as he would have liked or that he couldn't think about Town staff's needs and interests as often as he would have liked. He stated that in spite of the deficiencies, Town staff took on greater responsibilities and found better ways to do things. He stated that Town staff were the ones that made him look good over the past seven months, adding that they would always have his appreciation, respect and admiration.

Director Heard stated that Council hired an extremely experienced and talented manager in Drew Havens who will lead the staff and community to even greater heights. He stated that Town Manager Havens was someone that was coming in knowing how to manage people and organizations and has already shown that he cares about Town staff and embracing the concept of serving the community.

Director Heard thanked the Council members for helping Town staff get through the challenging period in the life of Duck as they have taken on additional responsibilities. He added that their dedication and encouragement of Town staff has meant a lot to him.

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

Attorney Leidy stated that he did not have anything 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.

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

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

It was *consensus* of Council to direct Town staff and the Planning Board to look at the post and rope and post and rail accessibility issue for beach access and dune walkovers in the beach nourishment project area.

Director of Marketing and Information Christian Legner was recognized to speak. Director Legner gave a brief overview of activities to Council and the audience.

#### **February 2021 Financial Presentation**

Town Manager Drew Havens was recognized to speak. Town Manager Havens gave a short presentation of the February 2021 financials to Council and the audience.

#### **MAYOR'S AGENDA**

Mayor Kingston stated that he had attended his chairman and mayors meeting with continued discussions on COVID-19. He stated that cases have trended down with an

interesting trend recently with regard to positive cases as 1/3 of the cases were individuals aged 1 – 17. He noted that the tracking showed they were due to social events and weddings but were now community spread. He thought Dare County was doing a good job with regard to the COVID-19 vaccines and were getting a three-week average with up to 500 doses per week.

Mayor Kingston stated that he has a NC League of Municipalities Board of Directors meeting on March 8, 2021. He added that he was appointed to the NC League of Municipalities Leadership Foundation and their first meeting will be held on March 18, 2021.

Mayor Kingston thanked Town staff for a great Retreat and thanked Director Heard for all of his hard work over the past seven months.

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

Mayor Pro Tempore Thibodeau welcomed Drew Havens as the new Town Manager and thanked Director Heard for his hard work. She thanked Town staff for the recent Retreat. She reminded the public that she was always available and accessible if anyone needed her.

Councilor Mooney echoed Mayor Pro Tempore Thibodeau's comments.

Councilor Whitman echoed Mayor Pro Tempore Thibodeau's comments.

Councilor Caviness thanked Town staff and Director Heard for an exceptional Retreat. She welcomed Town Manager Havens.

### **OTHER BUSINESS**

#### **Additional Public Comments**

Mayor Kingston opened the floor for public comments.

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

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

Mayor Kingston noted that the next meeting would be the Regular Meeting on Wednesday, April 7, 2021 at 6:00 p.m.

### **CLOSED SESSION**

Mayor Pro Tempore Thibodeau moved to enter closed session pursuant to North Carolina General Statute 143-318.11(a)(3) and (6) in order to confer with the Town Attorney regarding a matter within the attorney/client privilege and to preserve that privilege and

to discuss a confidential personnel matter in accordance with North Carolina General Statute 160A-168, including but not limited to considering the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee. Mayor Pro Tempore Thibodeau further moved to enter closed session pursuant to North Carolina General Statute 143-318.11(5) to establish or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property located at 101 and 103 Scarborough Lane owned by Larry Herron, Thomas Herron, Kascie Herron and Ciera Herron and property located at 1165 Duck Road owned by Larry Herron, Thomas Herron, Deborah Herron, Vicky Herron and Catherine Herron, by purchase, option, exchange, or lease.

Motion carried via 5-0 via roll call.

The time was 8:39 p.m.

Upon return from closed session, Attorney Leidy stated that Council gave instruction and took certain actions, but no other action was needed to be reported at this time.

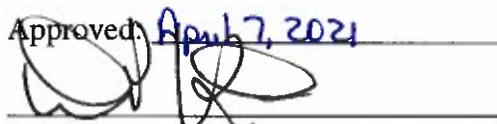
### ADJOURNMENT

Councilor Whitman moved to adjourn the meeting.

Motion carried 5-0 via roll call.

The time was 10:58 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: April 7, 2021  
  
Don Kingston, Mayor

