

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
March 7, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, March 7, 2018.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Nancy Caviness; Councilor Chuck Burdick; and Councilor Jon Britt.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Christopher Layton; Police Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:02 p.m. He asked Director of Marketing and Special Events Christian Legner to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments.

Judy Lotas of the Dare County League of Women Voters was recognized to speak. Ms. Lotas handed out the 2018 Citizens Guide to Council and thanked the Town for their support of the guide each year.

Susan Jackson of 123 Spyglass Road was recognized to speak. Ms. Jackson stated that she had questions about parking. She stated that they currently have permit parking in her neighborhood in the Sea Ridge subdivision. She added that Nor'banks has parking there for their beach access. She stated that she read Ordinance 18-01 concerning parking and was confused about what was going on with the parking. She asked Council to respond to her question. Mayor Kingston noted that Council does not respond during Public Comments but would be discussing it. Ms. Jackson stated that she would like clarification regarding public versus private roads.

**Presentation by Outer Banks Children @ Play Museum**

Robin Holton from the Outer Banks Children @ Play Museum was recognized to speak. Ms. Holton gave a short presentation on the Museum's history of community service, its importance to early childhood education and their future vision.

Mayor Kingston thanked Robin Holton for her presentation.

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

### **CONSENT AGENDA**

#### **Minutes from the February 7, 2018, Regular Meeting; Government Education Access Channels 2018-2019 Budget**

Councilor Burdick moved to approve the Consent Agenda as presented.

Motion carried 5-0.

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

#### **Discussion/Consideration of Ordinance 18-03, an Ordinance Permitting and Regulating the Operation of Golf Carts and Low-Speed Vehicles on Public Streets within the Town of Duck, North Carolina**

Town Manager Chris Layton was recognized to speak. Town Manager Layton stated that staff has been discussing the ordinance with Council over the past several months and thought a good draft was brought forward at Council's Retreat, which resulted in taking questions for an ordinance to be considered at this meeting. He stated that after staff looked at the ordinance more closely, a couple of issues arose. He explained that the issue was whether the ordinance would cover private streets as well as public streets. He added that, originally as the ordinance was presented to Council, staff was hopeful that it would cover private and public streets because staff felt that the conditions that were being addressed with the golf carts were universal regardless of the street. He noted that the ordinance was drafted that way and as staff researched it more, it was realized that there were some provisions related specifically to private streets where the Town did not have the authority to regulate golf carts, low-speed vehicles or disqualified vehicles.

Town Manager Layton pointed out that the draft ordinance in front of Council could be thought of two different items— golf carts which were different from low-speed vehicles. He explained that low-speed vehicles were essentially allowed anywhere a motor vehicle was allowed because they travel at speeds of 35mph and under and because they are registered motor vehicles, while golf carts were not. He stated that staff had much more clear authority on low-speed vehicles because they have to be registered and were allowed anywhere where roads had a speed limit of 35mph and under; however, golf carts could only be regulated on public streets, roads, highways, such as NC12, Sea Hawk Drive and Carolina Dunes, to name a few.

Town Manager Layton stated that the ordinance as it was written would only apply to those areas. He added that as staff looked into it and discussed it with the new information, one of the things staff discussed with Town Attorney Hobbs was a real intent to still address NC 12, which was the primary concern. He added that the ordinance would make it clear that golf carts were not allowed on NC 12. He noted that low-speed vehicles were a different issue. He stated that staff did not feel it was appropriate to authorize disqualified vehicles, such as ATVs and Gators on NC 12 as staff didn't feel it was a condition that they wanted to turn a blind eye to and encourage by not regulating them on NC 12. He explained that outside of NC 12, it was less of an issue as staff did not have an issue with people using golf carts to drive down to the beach. He noted that this was made clear when staff thought the ordinance would not allow it to be done.

Town Manager Layton stated that one of the ways to address the issue could be to narrowly define the regulations to NC 12. He added that staff felt that if the uses could not be regulated on private roads, staff didn't want to penalize public roads as well and create an environment where it was very clear that a golf cart could be used to go to the beach on a private road, but on a public road, it would not be allowed without the Town adopting an ordinance.

Town Manager Layton stated that there were a variety of ways to address the issue of private and public streets. He stated that the confusion was where staff was currently at. He stated that he wasn't asking Council to adopt an ordinance immediately as staff may have to tweak it depending on the direction that Council gives. He added that the real issue came down to whether Council wanted to pass something that applied only to public roads or if they wanted staff to look at the ordinance again for other changes. He noted that staff was still investigating exactly what authority the Town had outside of the public roads, but it didn't sound like there was much that the Town could do, as per Town Attorney Hobbs.

Town Manager Layton stated that staff originally thought they could regulate the safety equipment on golf carts on private streets, which was why the ordinance originally had a whole list and staff felt that that would be a way to get at the issue of 16-year olds and safety equipment; however, it appears that the Town could not regulate that on private roads. He reiterated that the ordinance could be done just for public roads where the draft ordinance could be adopted immediately as there was clear authority, but staff did not think it could be done for private roads.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the revised ordinance had a few changes. He stated that the enabling act from the General Statute was Section 160A-300.6 that a city may, by ordinance, regulate the operation of golf carts on any public street, road or highway where the speed limit was 35 mph or less within its municipal limits or on any property owned or leased by the city. He stated that the article in Chapter 160A where the statute was located really did not contain a clear definition of a public street and, in going through Chapter 160A, he came to the conclusion that there were some contradictory provisions dealing with that term. He

thought in looking at the article as a whole, he thought a reasonable interpretation would be that a public street in this context meant one that was maintained by the public, i.e. either in the State highway system or maintained by the Town. He noted that in this case, there were no streets maintained by the Town.

Town Attorney Hobbs stated that he saw three possible options – one was to adopt the ordinance as presented with the addition of the three places where “public” was added. He explained that staff would enforce it with the guidance given, but only for public streets. He stated that the second option would be to add a provision at the end within Section 70.04, a new subsection F called “Application” and make a broader term as the Town is given the authority in the statute. He noted that the statute stated that the Town has the authority to regulate the operation on “any” public street. He added that Council could pick and choose the public streets. He explained that under new Subsection F, a provision could be added to it that would read: “...for purposes of this section 70.04, the term public streets, roads, and highways shall mean a street, road or highway that is dedicated and open for use by the public and is either a part of the State highway system or has been formally accepted by the Town for public maintenance by the Town...” He stated that the third option would be to add a new subsection that would read: “...for purposes of this section 70.04, the term public streets, roads, and highways shall mean only NC Highway 12...”

Town Attorney Hobbs explained that Council was in their legal authority to adopt the ordinance as presented with the three changes made that was in front of them. He added that Council could also add one of the clarifying provisions. He noted that the first provision would be consistent with the way staff was prepared to enforce it. He stated that the second would be narrowing the focus of the ordinance to make it applicable to just Highway 12 with respect to public roads.

Mayor Pro Tempore Thibodeau asked what the benefit would be to define what a public road was. Town Attorney Hobbs thought the benefit was that it clarifies exactly what it is that was being referred to in the ordinance so that staff can have clear guidance. He added that it helped with continuity and preservation, especially with staff turnover. He stated that more guidance in the ordinance would help to preserve what the intent was.

Town Manager Layton stated that sometimes when the term “public” was used, people who were very savvy in their understanding of definitions, a lot of the roads he listed could be classified as public vehicular areas. He stated that people could interpret it to mean if people could drive on a street, it must be public. He added that this definition narrows it and how it was defined would depend on who maintains the street. He noted that it was clarified in the ordinance.

Councilor Burdick noted that safety was the number one issue for golf carts on whatever street they were on. He asked if there was any way to pass the ordinance in the same way that the parking ordinance was passed where the Town defined it as public but also allowed the subdivisions to request inclusion in it. Town Attorney Hobbs didn’t think the enabling statute for the Town gave the Town that authority because it clearly says

“public”. He stated that he could investigate or research the term more fully through the School of Government to see what other guidance they have given to other towns related to this type of regulation. He added that he personally was not aware of any use or enforcement for this type of ordinance that would deal with a private street, even in a situation where the association has asked for inclusion.

Councilor Burdick asked what was in the State parking regulation that allows the Town to do it. Town Manager Layton stated that it was specific language that authorizes it on private streets, which was lacking in the statute for golf carts as there was nothing that allowed it. Councilor Burdick pointed out that there was nothing that disallowed it. Town Attorney Hobbs thought the idea was that a town can only exercise the authority granted to it by the State General Assembly. He thought that the situation regarding private subdivisions that have streets that were not publicly maintained, the association itself could adopt regulations and enforce them without intervention or assistance from a town. Councilor Burdick thought the point of checking with the School of Government was good. Town Attorney Hobbs stated that he would if the rest of Council wanted him to. He thought when an ordinance was adopted, it was never unchangeable as a town could adopt something that has a fairly narrow focus and then adopt amendments to the ordinance at a later date as circumstances warrant.

Mayor Kingston asked if it was a fact that, with or without the ordinance, the State dictated the use on NC 12. He added that whether the ordinance was in effect or not, it was prohibited on NC 12 because of speed limits and registered vehicles. Town Attorney Hobbs stated that, with respect to golf carts, the authority is given to the towns if an ordinance was adopted. He added that, with regard to the operation of golf carts on a road where the speed limit is 35 mph or less, that that was specifically delegated to towns and cities including on NC 12 because it is a public road.

Councilor Burdick thought modifying the ordinance to make it a little more concise and precise would make sense given that Council could always change it. He added that it did get the Town established in some form, officially with an ordinance since the Town was trying to control the safety of golf carts and low-speed vehicles.

Mayor Pro Tempore Thibodeau stated that she liked the idea of adding the clarification of “public” as that was what the Town was allowed to talk about. She added that it also shows what the intent of the whole area was and keeps it vague and people that live on private streets that try to challenge it could be shown what was being done for the whole Town. She noted that it wasn’t hard to figure out what was a public and a private street in Duck. She stated that it could be for public streets in that this was how the Town envisioned the safety of golf carts in the whole Town. She reiterated that she liked leaving the ordinance with the term “public”.

Town Attorney Hobbs noted that the wording he had handed out to Council has not been changed and was not an addition to subsection 70.01. He added that it was not a definition for the entire subsection. He explained that the way he changed it was that he moved it to a proposed subsection F of Section 70.04 and the title of it would be

“Application” and would read as follows: “...for the purposes of this section, 70.04, the term public street, road or highway shall mean a street, road or highway that is dedicated and open for use by the public...” Mayor Pro Tempore Thibodeau clarified that Town Attorney Hobbs was referencing Section 70.01. Town Attorney Hobbs stated that he was referencing section 70.04. He noted that what he handed out to Council had 70.01, but after he typed it up, he looked at it further and decided it would be better to limit the definition just to the golf cart ordinance and not to every section within Chapter 70. He thought it would make sense to add the definition to just the golf cart ordinance and would be a new Subsection F to 70.04.

Mayor Pro Tempore Thibodeau clarified that subsection 70.04 started with the definition. Town Attorney Hobbs explained that Page 6, subparagraph 3 would have a new subsection F above it.

Councilor Burdick stated that he liked Mayor Pro Tempore Thibodeau’s comment about keeping things vague. He thought it was enforceable the way it was written and allows the Town to try to convince people to drive/ride safely and have safe equipment, which was what the goal was.

Councilor Caviness stated that she was confused by the ordinance. She felt that Council took something that seemed to her to be relatively straightforward and made it really complicated. She stated that if she understood the ordinance right, a vehicle could not be on NC 12 unless it was deemed a registered, approved low-speed vehicle by the Division of Motor Vehicles. Town Manager Layton stated she was correct. Councilor Caviness clarified that on the other streets, whether it was a golf cart or some other utility-type wagon that was motorized would be allowed on private streets. Town Manager Layton stated she was correct. Councilor Caviness clarified that it could drag pool chemicals, laundry, beach chairs, etc. up and down the street and it would be okay. Councilor Britt stated that the Town did not have the authority to regulate it.

Town Manager Layton pointed out that, originally, staff believed the Town did have the authority to regulate them and wrote the ordinance that way. He stated that there was some vague language that, as staff researched deeper, became clear that the Town was on the wrong side. Councilor Caviness clarified that they would not be allowed on the multi-use path. Town Manager Layton stated she was correct. Councilor Caviness stated that whatever needed to be done to make that clear, she was in favor of. She added that she was getting confused with wondering if staff would look the other way when it was a golf cart that was bringing children and beach chairs but then have a problem with someone that was trying to take laundry across NC 12, or the landscaper that uses a golf cart to do their work. She stated that she did not want to penalize people who were trying to take care of properties and homes and help with property management – whether they were subcontractors or businesses – she didn’t want to penalize them for trying to have a smaller footprint and make it okay for all of the fun and recreational things.

Town Manager Layton stated that the ordinance as written would restrict all of the activities Councilor Caviness referenced on public streets, but not on private streets

because the Town did not have that authority. He added that in some places, it would not be allowed and staff could stop them, but couldn't do anything beyond telling the person it was an unsafe condition.

Councilor Caviness asked about disqualified vehicles. Town Manager Layton explained that disqualified vehicles would only apply to public roads.

Councilor Burdick stated that if the ordinance only applied to public roads, the Town would have an ordinance that applies to two subdivisions. Mayor Kingston stated that there were about 18-20 subdivisions with public roads. Councilor Burdick stated that the Town would end up with an ordinance that was enforceable in 30% of the Town, plus NC 12 and not enforceable in other areas. He stated that people would say that the Town was discriminating against them. He wondered if Council should focus only on NC 12. Councilors Britt and Caviness agreed.

Councilor Britt stated that the average visitor to Duck does not know if NC 12 is a public or private street. Councilor Caviness pointed out that Council didn't even know. She stated that if it was to be enforced, it needed to be enforced all the time with no exceptions or don't do it. Councilor Burdick thought it should be specific to NC 12. Councilors Britt and Caviness agreed.

Police Chief John Cueto was recognized to speak. Police Chief Cueto apologized that the ordinance had gotten to be so confusing. He stated that, from a law enforcement perspective, he wanted that clarification and conformity as well as the ability for an officer to understand that a violation has occurred. He stated that with it being specific to NC 12, he was concerned about the traffic on NC 12. He noted that, in discussing the history with his officers, there were not a lot of calls about erratic behavior on the side streets, but it was the calls where there were situations on NC 12, such as higher speeds, more pedestrians and distractions in the roadway. He added that that was where he was most concerned. He reiterated that he was most concerned about NC 12 and the traffic there and not so much on the side streets. He thought if Council agreed that the ordinance be made specific to NC 12, it would be good as it would result in uniformity and clarification that's needed for the officers as well as anyone in Town.

Councilor Caviness asked if on Page 5, the reference to a person less than 16 years of age, needed to be stricken from the draft ordinance. Town Manager Layton explained that it only applied to golf carts. He added that with regard to street legal vehicles, one could drive them if they were 16 years of age or older. He stated that, under the ordinance, it would only apply to NC 12. Councilor Burdick stated that it bothered him because he saw it in his neighborhood. Town Manager Layton stated that it was one of the issues that was discussed with the Town Attorney in that staff was adamant about it. He thought it could be looked at more to see if there is some way for the Town to have the authority for an age limit since it was one of the concerns.

Councilor Burdick stated that he sees it all summer with 12-year-old children joy-riding in golf carts. Mayor Pro Tempore Thibodeau asked if they were doing it on NC 12 or

not. Councilor Burdick stated that it was off NC 12, such as the street he lives on. Mayor Kingston noted that the Town would not be regulating that. Councilor Burdick agreed. Councilor Britt noted that Councilor Burdick was just concerned. Town Manager Layton stated that the Town could regulate them in the Carolina Dunes subdivision, but not anywhere else.

Mayor Pro Tempore Thibodeau noted that Council was left with pulling the ordinance back to NC 12 and letting it happen. Councilor Burdick hoped that the Town could get something that would allow a restriction for age limit. Town Manager Layton pointed out that if there was an unsafe condition, the police can be called. He added that it would not result in a fine, but it didn't mean that there won't be a discussion, which could be educating.

Councilor Caviness asked if the bike lane was considered NC 12. Director Heard stated that it wasn't. Town Manager Layton stated that if it was a street-legal vehicle, it had to follow the rules of the road, which meant that the path was not for vehicles. He added that low-speed vehicles should not be operating on the bike path. He stated that he was unclear if it was a ticketable offense, but it was not there for low-speed vehicles as they need to be operating in the driving lane.

Mayor Kingston clarified that the definition of sidewalks and multi-use path were covered well with the draft ordinance. Town Attorney Hobbs stated that they were.

Councilor Caviness stated that the reason for her question was that there were people that would not be driving on the sidewalk but also not on the road. Town Manager Layton thought that there would be a warning given to anyone that was clearly traveling on the bike path when they shouldn't be.

Councilor Burdick moved to adopt Ordinance 18-03 with the modifications to restrict it only to NC 12 and adopting the new language for Subsection F, while leaving the other corrections where they were.

Motion carried 5-0.

Mayor Kingston asked how the ordinance would be communicated. Town Manager Layton stated that staff would put the ordinance in the new brochures and other education materials will be provided to companies that rent golf carts. He added that Director Legner will be working on a communication plan for the Town. Mayor Kingston asked if it would be good to communicate it to the homeowner associations and rental companies. Town Manager Layton thought it was appropriate.

Councilor Burdick stated that the Town did not want to lose the momentum regarding the issue. Town Manager Layton agreed, adding that staff would be starting on it immediately. Mayor Pro Tempore Thibodeau pointed out that it was pretty straightforward and simple.

Town Manager Layton stated that, in terms of full disclosure and because of the ordinance, staff was exploring a low-speed vehicle for the Town. He added that the Town presently has a golf cart, but in the chance that staff would want to use it, such as the Community Resource Officer, an affordable, low-speed vehicle was being looked at.

**Discussion/Consideration of Authorizing the Planning Board to Provide Recommendations on the Following Items:**

**Development of Revised Standards for Flood Damage Prevention to Address Concerns about Changes Resulting from the Adoption of New Dare County Flood Maps**

Director Heard stated that Dare County and each of the towns in the county were considering the adoption of development standards that maintain a minimum building elevation standard – even in X zones – to help mitigate the impacts of significant changes anticipated with the adoption of new flood maps. He added that the Community Development Department was seeking direction from Council as to how to proceed with consideration of amendments to the Town’s Flood Damage Prevention Ordinance. He noted that Council may wish to consider one of the following options or another process of their choosing:

1. Authorize the Planning Board to work with staff on the development of recommendations.
2. Have a presentation and discussion at a future mid-month Council meeting.
3. Hold a joint meeting with the Planning Board to discuss the issues.

Councilor Caviness stated that she liked the idea of a joint meeting with the Planning Board at a mid-month meeting. She added that instead of receiving a recap of what has happened at the Planning Board level, Council would be in on the discussion. She thought it seemed like it would be to Council’s benefit to be in on the discussion as there would be clear lines of communication. She reiterated that she was in favor of a joint meeting with the Planning Board.

Councilor Burdick stated that he liked the idea of combining the three options – first having the Planning Board and staff deal with the key issues and then have a joint meeting so a reasonable discussion could be held instead of Council getting involved in all of the details.

Councilor Britt stated that he was in favor of a presentation and discussion at a future mid-month meeting and then a joint meeting with the Planning Board if Council felt it was necessary. He thought Council should let the Planning Board do their job and make the recommendations to Council and if Council felt there was enough in there that they needed to have a joint meeting, then it could be done then.

Mayor Pro Tempore Thibodeau appreciated the fact that Councilors Burdick and Britt worked on the Planning Board level and had the idea. She asked if Duck was really trying to work with Dare County and all of the towns and municipalities in general. She further asked if there would be a common thread that everyone was agreeing on. She asked if Duck's Planning Board would be fine-tuning one or two points for Duck because it was topographically different or have some other particular issue, so it really would be the differences that would be discussed as opposed to the whole common denominator idea with consensus of the entire county. Director Heard stated that part of the conversation would be the points that have been agreed on. He added that none of it has gone to any local government for approval at this point. He noted that there were many communities, including Dare County, that have taken steps and putting details out to make sure the Board of Commissioners were comfortable with this approach. He stated that there would be a number of items where staff felt they could reach a consensus across the board with the six municipalities and unincorporated Dare County in a particular approach.

Director Heard noted that there was a lot of benefits to it for the development community and Duck to have the consistency. He stated that there were a number of items where staff fully expected that it would not occur on certain items as they were too different, the situations were too different and it would not happen. He stated that in those instances, the Town needs to decide what's best for Duck and what it thinks will get the best result.

Mayor Kingston thought he was hearing from Council to authorize the Planning Board to work the details, come back and make a presentation and if necessary, hold a joint meeting. He thought it was the process to follow. Councilor Britt agreed.

Councilor Burdick moved to send the item back to the Planning Board and Town staff to review the options and bring back a presentation to Council for a decision forward at that point.

Motion carried 5-0.

#### **Consideration of Zoning Enforcement Policies in Light of State Law 2017-10 Setting Time Limits on Zoning Enforcement Actions**

Director Heard stated that, adopted in May 2017 and effective October 2018, State Law 2017-10 limits the ability of local governments to take legal action regarding a zoning violation. He stated that, specifically, the law prevents communities from filing a lawsuit to enforce zoning standards in situations where the violation has existed for a period of seven years or five years from the date the local government knew about the violation.

Director Heard stated that, other than enforcement of signs and more significant violations, the Community Development Department has generally maintained a policy of addressing zoning violations following complaints from the community. He added that in light of the higher standard found in State Law 2017-10, staff was seeking to know if Council wished to consider any amendments to the Town's current enforcement policy.

Councilor Caviness clarified that it was zoning and not health, building or fire code. Director Heard stated that there was an exemption if it was a health and safety-type of issue that this would not prevent.

Councilor Caviness asked for clarification if staff, fire or police were aware of it, it would trigger the Town's knowledge. Town Manager Layton stated that, technically, it did. He wasn't sure how it would be proven. He stated that the hard issue now will be that it will force staff to be more aggressive in how they deal with some of these things.

Mayor Kingston clarified that Director Heard's recommendation was to make revisions as necessary. Director Heard thought if Council has found an issue that they would like staff or the Planning Board to look at, it could be looked at that way. Town Manager Layton pointed out that staff was not looking for an ordinance as the State code was in place. He added that staff, by necessity, will have to be more aggressive and if Council was uncomfortable with it, then it needed to be discussed further. He stated that ultimately how staff deals with the issue was through an established policy by Council and staff wanted to make Council aware that their intent was to not let the issues slip by and be more aggressive in those timeframes, which may come across as being more aggressive.

Councilor Britt clarified that Town Manager Layton was talking about being more aggressive after a complaint. Town Manager Layton stated that staff wanted to make clear that if they see a violation, they have to address it because the clock starts ticking. He stated that, previously, the issues were complaint-driven and staff tried to deal with more egregious issues, but now after five years, someone could have a vested right to do something that was contrary to all of the Town's policies. He stated that staff didn't feel that it should be allowed and didn't have the timeframes to deal with things even though five years seems like a long period of time, but in reality, a lot that staff deals with takes that long to resolve. He noted that staff will have to push issues a little more due to the new State law.

Councilor Britt stated that he did not want to see Duck become the town that was going around looking for problems. He added that it was not the tone that Council wanted to set. He understood that the language pushes the Town that way, but reiterated that he did not want to see staff drive up and down the roads looking for problems. Mayor Pro Tempore Thibodeau agreed, adding that it could be that someone new would come in and staff would have to tell them that they have been dealing with the issue for five years, but now they didn't have the right to do anything about it.

Councilor Burdick asked how many instances over the last five years have come up that this would have been problematic. Director Heard stated that staff was currently dealing with one situation that has dragged on for years. Councilor Burdick asked if it has reached a point under the new State law that the Town cannot do anything. Town Manager Layton stated that it had not. He added that staff has never gone out looking for problems, but under the new scenario, if staff saw something and thought it was an issue, they would have to investigate it quicker than in other circumstances. He stated that staff

believed it would be a handful of cases, adding that it would still be a change in how staff dealt with things since they did not want the time limit to run out.

Councilor Britt stated that he understood staff dealing with some situations, but did not want to see staff going out looking for problems. He added that he would like to see the department continue to have a common sense, community friendly approach and not look for little problems. He added that blatant items should be dealt with quicker. Mayor Pro Tempore Thibodeau agreed with Councilor Britt's comments.

Town Manager Layton stated that staff has an understanding of how Council wants staff to deal with the issue. He stated that at any point that staff becomes concerned that they were not following the guidance or if Council felt that staff wasn't, then another discussion could be held and staff can go from there.

Councilor Caviness thought another point to consider with the five to seven-year timeframe, staff needs to look at things from the other side. She added that if someone was in violation of something for 5-7 years, it was not fair to others that were compliant to let the ones that were non-compliant get away with the violation. Town Manager Layton agreed. He stated that his intent was not to give Council the impression that staff lets things linger for years because they try to keep things moving forward, but were also aware of the fact that, no matter how much someone is pushed, they will be fined. He thought staff was looking for a comfort level from Council as well as an understanding of the ordinance, knowing that there may be situations in the future where they have to be a little more aggressive to deal with the issue.

Mayor Kingston thought that the Planning Board could take a look at the item and send back some recommendations for discussion. Mayor Pro Tempore Thibodeau didn't think the Planning Board was looking for Council to do that. Mayor Kingston thought they were looking for authorization to look at it with conditions. Director Heard stated that if the Council agreed with the approach that Town Manager Layton discussed, it would not have to go to the Planning Board. Town Manager Layton stated that there was no law that needed to be addressed.

Councilor Burdick thought it put the onus on Town staff to stay on top of critical issues and make sure Council was aware of them. Town Manager Layton agreed.

## **NEW BUSINESS**

### **Planning Board Appointment**

Town Manager Layton stated that the term of Joe Blakaitis on the Planning Board will expire on May 1, 2018. He stated that Mr. Blakaitis has indicated that he would like to continue serving on the Board for another three-year term to expire on May 1, 2021.

Councilor Britt moved to reappoint Joe Blakaitis to the Planning Board for a term to expire on May 1, 2021.

Motion carried 5-0.

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

Town Attorney Hobbs stated he had no report.

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

**Update on Departmental Activities**

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

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

Director of Public Information, Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of the past month's activities to Council and the audience.

**Update on the Town of Duck Beach Nourishment Project**

Town Manager Layton stated that the paving of the staging area at the Corps of Engineer's property was completed and they are happy with the work. He stated that the final invoice will be submitted and the Town can finally close out the project. He added that over the next several weeks, he will provide Council with the full accounting of the Capital Project costs.

Town Manager Layton stated that extra sand fencing had been initiated in the project area, so the contractor will be starting on it. He added that, prior to the recent storm, two sample accesses were scraped and it worked very well. He recommended that it be done in April at a cost of \$8,500 - \$9,500 to do all of the beach accesses in the nourished area. He noted that there should be enough funding for it without having to transfer funds. It was *consensus* of Council to allow scraping of the accesses in the nourished area.

Town Manager Layton stated that he was still trying to obtain information from the Corps of Engineers regarding the Public Safety building. He stated that he did not want to be too aggressive until the staging area was completed, but with it completed, he asked representatives at the Corps if they were happy with the results, which they were. He stated that he also asked what was going on with the request on the Public Safety building

and was told that it was being actively reviewed. He noted that even though the status hasn't changed, staff knows that it was now in process.

### **Collaboration with Western Carolina University**

Town Manager Layton stated that Robert Young, Professor of Coastal Geology at Western Carolina University had contacted him to inquire if the Town would be interested in collaborating with the University on a study that would identify ocean and soundside property and infrastructure, including private property, vulnerable to storms, flooding and similar events. He explained that the project would include identifying and grading those exposures and would be funded through a grant from the University of North Carolina System, which is subject to a competitive Request for Proposals. He added that Dr. Young requested that the Town indicate its interest in the project so he could submit a letter of interest for the grant. He noted that there was no financial requirement for the Town for the study.

Councilor Burdick asked how the study would impact the Town's resiliency plan. Town Manager Layton thought it would dovetail nicely with it.

It was *consensus* of Council to move forward with the collaboration.

### **NCBIWA 2018 Coastal Local Government Annual Meeting**

Town Manager Layton stated that if Council was interested in attending the NCBIWA annual meeting in Pine Knoll Shores to let him or Town Clerk Lori Ackerman know so they could get Council members registered.

### **Financial Statement for February FY 2018**

Town Manager Layton reviewed the financial statements, beach activities and beach nourishment reports with Council and the audience.

### **MAYOR'S AGENDA**

Mayor Kingston thanked staff for a great Retreat. He stated that he has his mayor's meeting either on March 20 or March 27, 2018 in Kill Devil Hills, at that point he would try to get a read on what they were looking at with respect to their budgets and taxes. He stated that he attended the North Carolina League of Municipalities Board meeting in February and found it very interesting. He stated that he also had a finance meeting with the NCLM Board coming up and they were getting to the point where they were going to make a decision as to what will be done with their buildings that were destroyed in a fire last year. He noted that he canceled a closed session for this meeting. He explained that a couple years ago, staff looked at a property but it wasn't the right time to discuss anything. He stated that he would still like to have either a closed or open session with Council to discuss its philosophy moving forward with respect to property investments in Duck. He felt the timing was not right for a discussion at this point.

## **COUNCIL MEMBERS' AGENDA**

Mayor Pro Tempore Thibodeau thanked staff for the Retreat. She stated that she had traveled to Raleigh to voice the Town's opinion regarding offshore drilling and seismic testing. She added that it was a robust group that attended and she hoped that all voices were heard at the Federal level.

Councilor Caviness stated that she attended the North Carolina Grant Makers Conference and annual meeting in Winston-Salem due to her seat on the Outer Banks Community Foundation Board. She stated that it was a great opportunity to be with foundations across the state. She added that there was a fascinating discussion regarding changing demographics in North Carolina and talked about a lot of the trends regarding the drain of youth in Dare County, the aging population and how the aging population eventually moves away.

Councilor Britt thanked staff for a great Retreat.

### **Councilor Burdick – Beach Flyers**

Councilor Burdick stated that his daughter was an environmentalist to the Corps of Engineers and played a significant public relations role in trying to stop the repeal of the plastic bag ban, but was disappointed by the result. He stated that she has now gotten involved with the plastic ocean project by the Town of Wilmington. He explained that their original plan was to get restaurants to stop offering plastic straws except at the request of diners in order to cut down on the plastic pollution. He stated that his daughter convinced them to add the plastic bag ban to the entire program and was able to sign up 12 different restaurants and businesses in Dare County over the course of two days.

Councilor Burdick stated that his daughter was asking Council to write a resolution supporting the ban on plastic straws. He wondered if staff could work with the Duck Merchants Association to try to get the merchants on board with the ban.

Councilor Caviness stated that she tried to take it up when it first came out and there were some members that did not want the Merchants Association to wade into that issue. She stated that she didn't understand the position, but it was the stance that they took. She thought it would be worth presenting to them again.

Councilor Burdick stated that this was a different approach as it was a voluntary one that as a business, they could make their individual decisions. He added that he didn't think everyone would be on board with it, but thought that the majority of the businesses feel it's the right way to go. He thought bringing it up with the merchants, it was more a matter of letting them know of what was going on and the opportunity to participate.

Mayor Kingston asked Councilor Burdick if his daughter had suggested language for a resolution. Town Manager Layton stated that he would draft a resolution.

Mayor Pro Tempore Thibodeau stated that she recently watched a news item regarding a gentleman in Bali off the coast of a pristine beach who filmed massive amounts of plastic underwater while scuba diving. She stated that it was quoted in the news clip that an environmental group associated with the United Nations had indicated that by the year 2050, there would be more plastic in the ocean than fish. She stated that she was in favor of raising awareness on the issue.

Councilor Caviness suggested that Councilor Burdick be on the Duck Merchants Association agenda for their April meeting. She stated that, during incorporation, she found it interesting to see what happened with recyclables. She thought it wasn't the same consumer market as it was back in 2002. She stated that it would be interesting to hear from Waste Management and Tidewater Fibre Corp. where the recyclables go. She noted that in some communities, certain recyclables were no longer collected because it was costing too much money to deal with.

Mayor Pro Tempore Thibodeau stated that the recycling companies in Virginia have said that they need to re-educate Virginians as to what recyclables were accepted. She added that it was very enlightening what was and was not accepted. She thought it would be great to get that information to educate the citizens in Duck.

Councilor Caviness wondered if people put their recyclables in a Hefty bag and then put the bag in the recycling can, it contaminated the rest of the recyclables. She wasn't sure if the recycling company took out the items that weren't recyclable.

Mayor Pro Tempore Thibodeau stated that the public should be re-educated. Councilor Burdick agreed. He thought that the larger rental houses in Duck should have enough recycling containers to accommodate their needs.

Mayor Kingston asked if the Town still gave out the stickers for the trash and recycling cans. Town Manager Layton stated that staff does give them out.

Town Manager Layton stated that he would bring back a draft resolution at Council's April meeting.

## **OTHER BUSINESS**

### **Additional Public Comments**

Mayor Kingston opened the floor for public comments.

Willo Kelly of the Outer Banks Homebuilders Association was recognized to speak. Ms. Kelly stated that the comment period for the dwelling rate filing was open. She stated that the filing showed proposed increases for dwelling policies. She noted that the public comment period for it ends on March 23, 2018 and she was in the process of compiling talking points to distribute.

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

Councilor Britt suggested that a staff member contact Susan Jackson to answer her questions from earlier in the meeting. Town Manager Layton stated that staff will be contacting her.

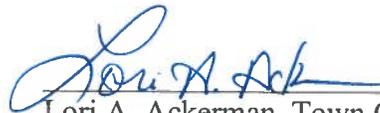
Mayor Kingston noted that the next meeting will be the regular meeting on Wednesday, April 4, 2018 at 7:00 p.m.

**ADJOURNMENT**

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:39 p.m.

  
Lori A. Ackerman, Town Clerk

Approved: April 4, 2018  
  
Don Kingston, Mayor

