

**TOWN OF DUCK  
TOWN COUNCIL  
REGULAR MEETING  
May 5, 2021**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, May 5, 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; Director of Marketing and Special Events Christian Legner; Deputy Town Clerk Kristiana Nickens; and Town Clerk Lori Ackerman.

**OTHERS ABSENT:** Public Relations Administrative Assistant Betsy Trimble.

Mayor Kingston called the meeting to order at 6:00 p.m. He asked Councilor Caviness 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.

Mayor Kingston stated that he wanted to add a closed session to the agenda and asked for a motion to add it.

Mayor Pro Tempore Thibodeau moved to add the closed session to the agenda.

Motion carried 5-0 via roll call.

**PUBLIC COMMENTS**

Mayor Kingston opened the floor for public comments.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman went on to read the public comments that had been received.

Patti Bossert of 102 Pelican Way was recognized to speak. Ms. Bossert wrote the following: "My name is Patti Bossert, and I am a full-time resident of Duck. My concern continues to be the lack of a Dare County EMS ambulance permanently stationed at the Duck Public Safety building. Residents and visitors to the Town of Duck deserve to know that Duck is providing the highest level of Advanced Lifesaving Services by ensuring our town addresses the shortfalls of not having a permanently assigned Dare County ambulance at our Public Safety building. In the interest of public safety for myself and my fellow residents as well as visitors, I would like to know when this year's deployment strategy of a Dare County ambulance into the Town of Duck will take effect? Will it be Memorial Day through Labor Day weekend? Sincerely, Patti Bossert".

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

### **CONSENT AGENDA**

#### **Minutes from the April 7, 2021, Regular Meeting and Resolution 21-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Establishing Financial and Budgetary Policies**

Councilor Caviness moved to approve the consent agenda as presented.

Motion carried 5-0 via roll call.

### **SPECIAL PRESENTATIONS**

#### **Employee Recognition Program**

Mayor Kingston stated that in December 2011, Council had adopted an employee service recognition program that would acknowledge the service of employees of the Town at five-year intervals by providing them with a certificate of recognition as well as a gift certificate at a Duck business of their choosing.

Fire Chief Donna Black was recognized to speak. Fire Chief Black went on to present Master Firefighter Brandon Boyd with his 5-year service recognition certificate and \$50 gift certificate.

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

There was no Old Business to discuss.

### **NEW BUSINESS**

#### **Discussion/Consideration of Authorizing a Public Hearing on Ordinance 21-01 Amending Chapter 156, Zoning Ordinance of the Town of Duck, North Carolina, for Consistency with NCGS Chapter 160D and Discussion/Consideration of**

**Authorizing a Public Hearing on Ordinance 21-02 Amending Chapter 155, Subdivision Ordinance of the Town of Duck, North Carolina, for Consistency with NCGS Chapter 160D**

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that there were two ordinances – 21-01 and 21-02 – that were related and were reviewed at the same time. He noted that since they were separate and distinct parts of the Town Code, they were set up as separate items for Council to vote on but there was no reason why the changes could not be covered in one presentation.

Director Heard stated that Chapter 160D of the North Carolina General Statutes was the first major recodification and modernization of municipal and county development regulations in many decades. He explained that the process of developing the revisions was initiated by the Zoning & Land Use Section of the N.C. Bar Association in 2013 and completed with the passage of law on July 11, 2019. He added that during the process, drafts were reviewed, and comments received from a variety of stakeholders including the UNC School of Government, attorneys, local governments, planners, and the development fields. He stated that consensus changes were included in the enabling legislation while debatable or controversial measures requiring further consideration were not. He noted that in order to conform with the new statutory framework, all municipal and county development standards in the state were required to be updated by July 1, 2021.

Director Heard stated that in order to comply with the standards of NCGS Chapter 160D in a timely manner, the Town contracted with Stewart Engineering to conduct a thorough review of the Town’s zoning and subdivision ordinances. He stated that Stewart has provided a memorandum that outlined the proposed amendments as well as marked up copies of the ordinance amendments. He noted that the proposed amendments were not intended to change the standards of the Town as a vast majority of the recommended amendments involve the addition of definitions, wording changes, and minor updates to existing standards and processes to achieve consistency with the new State statute. He added that two amendments involved the following necessary changes to approval processes:

1. Conditional use permits and special exceptions no longer exist as such but have been consolidated into a special use permit process.
2. Subdivision review is now solely an administrative function.

Director Heard stated that during their consideration of the proposed amendments, the Planning Board discussed their future role as part of the development review process. He stated that the Board agreed that they have a minimal role in future subdivision review and accepted their recommended removal from the review process. He added that although not a best practice from a legal standpoint, it was noted that amendments maintain Planning Board review and recommendations for special use permits. He stated that at their meeting on April 14, 2021, the Planning Board voted unanimously to recommend approval of the proposed text amendments as they will ensure consistency

with standard development practices and bring the Town Code into compliance with the NC General Statutes Chapter 160D.

Mayor Kingston asked if there was a strip of land and someone wanted to develop it as a subdivision, Council would need to be involved if it was zoned commercial and they wanted to rezone it residential. Director Heard stated that Council would be involved if the land were rezoned since it would be a legislative decision. He added that the general subdivision itself would not require Council to be involved. Mayor Kingston asked how it was handled previously. Director Heard stated that Council and the Planning Board would review a preliminary plat and Council would approve the design. He added that the developer would go back and install the improvements per the ordinance and then come back with a final plat. He stated that once that was approved, the developer could begin to sell the lots. He pointed out that almost any subdivision that staff would see would already be considered an exempt subdivision because the developer would only be able to divide one larger lot into two. He noted that it was already exempt under state law.

Councilor Caviness asked if this chapter would impact the covenants that exist in the subdivisions. She further asked if this would impact the Village Commercial Development language. Director Heard stated that with regard to the Village Commercial Development Option, the wording was the only change to it. He explained that it was currently set up as a special exception and will now be a special use permit. He added that the proposal did not change any of the standards or the findings. He stated that there would be no impact as far as Council was concerned. He stated that with regard to covenants and deed restrictions, the Town could not enforce the restrictions of covenants since they were private contracts. He noted that if a neighborhood chooses to enforce their covenants, then they follow those as the stricter regulations apply.

Mayor Pro Tempore Thibodeau clarified that all of the municipalities in the state were going through the same process. Director Heard stated that she was correct.

Councilor Caviness moved to authorize a public hearing for Ordinance 21-01 for June 2, 2021, as presented.

Motion carried 5-0 via roll call.

Councilor Caviness moved to authorize a public hearing for Ordinance 21-02 for June 2, 2021, as presented.

Motion carried 5-0 via roll call.

**Discussion/Consideration of Authorizing a Public Hearing on Ordinance 21-03, Establishing Allowances for the Installation of Post-and-Rail or Post-and-Rope Structures on Dune Walkovers in the Beach Nourishment Area**

Director Heard stated that the ordinance proposes to maintain prior allowances for beach access matting and permit the installation of post-and-rail structures as well as post-and-rope structures over the top and down the eastern side of the primary dune to provide greater physical support for people with limited mobility accessing the beach in the beach nourishment project area. He added that the proposed ordinance requires removal of portions of post-and-rail or post-and-rope structures that extend eastward of the toe of the dune or would potentially interfere with a beach nourishment or dune maintenance project.

Director Heard reminded Council that sand that was added during the beach nourishment project in 2017 buried many existing dune walkover improvements and substantially changed the profile of the top and east side of the frontal dune system in the project area. He stated that in recognition of the changes, the Planning Board had considerable discussion about accessibility concerns at its meeting in June 2017. He added that the Planning Board members discussed alternatives such as allowing post and rope barriers, railings, or wooden walkways down the eastern side of the dune. He noted that the Board members acknowledged that there may be individual situations requiring these alternatives but opted to recommend a less obtrusive approach with beach access matting instead of hardened ramps or stairways, which was viewed as a better initial approach until the Town could observe how the dune and beach were reshaped over time. He stated that in July 2017, Council adopted the gentler approach recommended by the Planning Board as an initial step.

Director Heard stated that on several occasions during subsequent months and years, Council requested that the Community Development staff and the Planning Board evaluated options for providing better access for people with limited mobility. He pointed out that as far back as 2017, the Planning Board discussed the following issues and options relating to providing more convenient beach access for people with limited mobility:

- Due to the height of the dunes, narrow width of beach accesses, and maximum slope standards for handicap ramps, it is unlikely that any community beach access in the nourishment area would be able to accommodate complete ADA handicap access. The Planning Board members focused on standards to improve access for people with lesser mobility limitations.
- Beach access matting and planting vegetation help guide people to stay on the beach access pathway, not disturbing other parts of the dune.
- While helpful for keeping people on the pathway, sand fencing and post-and-rope structures will not provide physical support for individuals with mobility limitations.
- The consensus of the Planning Board was that an allowance for a single railing adjoining the beach access pathway would provide physical support for individuals with mobility limitations, while minimizing impacts on the dune system.
- This allowance would apply to community and individual beach accesses in the beach nourishment area.

Director Heard stated that in October 2017, the Planning Board recommended ordinance revisions allowing post-and-rope and post-and-rail structures to be constructed on the east face of the primary dune; however, after receiving dozens of public comments and reviewing current conditions of the beach and dune in the beach nourishment area, the Council opted against making any amendments to the previously adopted standards. He added that in response to several recent public comments, Community Development staff brought the beach access concepts back for further review by the Planning Board.

Director Heard stated that the initial proposal presented by staff included allowances consistent with the prior Planning Board recommendations for multiple post-and-rope structures, but only a single post-and-rail structure. He stated that after discussing different scenarios, the Planning Board opted to recommend allowing the installation of a second post-and-rope structure at neighborhood beach accesses.

Director Heard pointed out that staff proposed requirements for removal of any sections of post-and-rail or post-and-rope structures extending onto the beach beyond the toe of the dune due to westward erosion or movement of the dune. He stated that the Planning Board concurred with this solution and had additional discussion about dune walkover structures during beach nourishment and annual dune maintenance projects. He added that after considering several concepts, the Planning Board recommended removal of structures in these areas, when necessary, to avoid conflicts with the public projects. He stated that at their April 14, 2021 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment.

Mayor Pro Tempore Thibodeau asked if there was any regulation regarding the height of the post-and-rail or post-and-rope structure. Director Heard stated that there wasn't.

Mayor Kingston asked about the minimum and maximum spread between the posts. Mayor Pro Tempore Thibodeau thought it was six and 10 feet. Director Heard stated that the Planning Board did not discuss it as the intent was to allow the second rail for the common or association access in order to have enough room for people to pass going up and down the dune with their equipment. He noted that it wasn't intended to be something that a person could grab. He added that if it were something that Council wanted the Planning Board to look at, they could come up with some thoughts or recommendations.

Mayor Pro Tempore Thibodeau asked how the Town would give notice to the subdivision that it was time to remove the structure. Director Heard stated that staff would notify the public through announcements and notifications sent out to specific individuals.

Mayor Kingston thought there wouldn't be any difficulty with homeowner associations but wondered if there could be a waiver for individuals. Director Heard stated that he would have a conversation with Town Attorney Hobbs.

Mayor Pro Tempore Thibodeau moved to authorize a public hearing on Ordinance 21-03 for June 2, 2021, as presented.

Motion carried 5-0 via roll call.

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

Town Attorney Hobbs stated that he did not have anything to report.

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

#### **Departmental Updates**

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.

Fire Chief Black 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.

Director of Marketing and Special Events Christian Legner was recognized to speak. Director Legner gave a brief overview of activities to Council and the audience. She asked for Council's thoughts regarding the Town's ordinance of allowing dogs on the beach.

Mayor Pro Tempore Thibodeau stated that she was in favor of leaving the ordinance as is and suggested educating the public. Councilor Mooney thought some modifications could be done such as asking people to put their dogs on a leash. He felt it wasn't a big inconvenience. He reiterated that modifications were needed and didn't think it was too late to make changes to the ordinance. Councilor Whitman stated that he was in favor of leaving the ordinance as is and see how the summer goes. Councilor Caviness stated that people were supportive of the ordinance as it existed and agreed with Mayor Pro Tempore Thibodeau that educating the public would be helpful. Mayor Kingston agreed with Council to leave the ordinance as it was while educating the public.

#### **April 2021 Financial Presentation**

Town Manager Havens gave a short presentation on the April 2021 financials to Council and the audience.

### **MAYOR'S AGENDA**

Mayor Kingston stated that he had the chairman and mayors meeting the week prior and they were now moving to holding monthly meetings as required. He stated that vaccinations were running close to 50% and no more clinics would be held in Dare County since the vaccination is now widely available. He stated that he had his mayors meeting last week with a lot of discussion about the labor shortage on the beach as well as the housing shortage. He stated that he tried to probe the other mayors regarding taxes, adding that Dare County will not be increasing taxes and the Town of Southern Shores will be increasing taxes due to their beach nourishment project. He added that he could not get an indication from the other mayors as to what they were going to do. He thought most of them will remain flat. He stated that he has his League of Municipalities Local Leadership Foundation meeting on May 6, 2021. He congratulated Town Manager Havens for being re-elected to the League of Municipalities Board of Directors for a two-year term. He noted that Paul Meyer, the Executive Director of the League of Municipalities would be coming to Duck for a visit in the next week and he was planning to meet with him and hoped to have the other mayors meet him as well.

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

Mayor Pro Tempore Thibodeau gave a Visitor's Bureau meeting update to Council and the audience. She encouraged the audience to speak during the Public Comment periods.

Councilor Mooney had nothing to report.

Councilor Whitman had nothing to report.

Councilor Caviness thanked the volunteers that have been helping with the trash pickup each week.

### **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 Mid-Month Meeting on Wednesday, May 19, 2021 at 1:00 p.m.

### **CLOSED SESSION**

Mayor Pro Tempore Thibodeau 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 materials terms of a contract or proposed contract for the acquisition of real property for any public purpose 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 8:30 p.m.

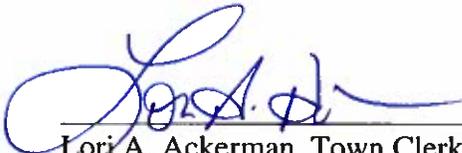
Upon return from closed session, Town Attorney Hobbs stated Council gave instructions to staff, but no action was taken.

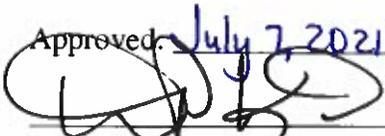
**ADJOURNMENT**

Councilor Caviness moved to adjourn the meeting.

Motion carried 5-0 via roll call.

The time was 9:09 p.m.

  
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Lori A. Ackerman, Town Clerk

Approved: July 7, 2021  
  
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Don Kingston, Mayor

