

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
January 16, 2019**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, January 16, 2019.

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 Sergeant Melissa Clark; Fire Chief Donna Black; Director of Community Development Joseph Heard; Attorney John Leidy; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Police Chief John Cueto and Town Attorney Robert Hobbs.

Mayor Kingston called the meeting to order at 7:07 p.m. He asked Police Sergeant Melissa Clark to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He asked that any comments regarding the public hearings be held off. There being no one wishing to speak, Mayor Kingston closed the time for public comments.

CONSENT AGENDA

Minutes from the December 5, 2018, Regular Meeting and Resolution 19-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Opposing Seismic Testing and Offshore Oil Exploration and Drilling Off North Carolina's Coast

Councilor Burdick moved to approve the consent agenda as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 18-07, a Proposal to Amend the Standards of Town Code Section 156.126 by the Establishment of Maximum Size Standards and Septic Capacity Standards for Single-Family Residences

Mayor Kingston turned the meeting over to Attorney John Leidy.

Attorney Leidy stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that at its public meeting on December 12, 2018, the Planning Board voted unanimously to recommend the draft ordinance, which set standards for the maximum size and septic capacity for single-family residences, featuring the following concepts:

- A tiered system based on the size of lots, adding a sixth tier for lots 30,000 square feet or greater in size.
- Maximum size limitations for residences within each tier, with a maximum size of 7,000 square feet for the largest tier of lots.
- Incentive-based criteria allowing large residences with a greater maximum size if more substantial development criteria are met. The maximum size of large residences is limited within each tier, with a maximum size of 9,000 square feet for the largest tier of lots.
- Septic field capacity limitations within each tier, with a maximum capacity of 1,080 gallons per day for the largest tier of lots.

Director Heard stated that after holding a second public hearing on the proposed ordinance on December 5, 2018, the Council voted 3-2 to approve the ordinance that was included in the packet as Attachment C. He noted that Council had expressed that approval of this ordinance was a stopgap measure and requested that the Planning Board further consider a draft ordinance containing similar concepts but improving several aspects of the adopted ordinance. He added that Council expedited the approval process by setting the public hearing for the revised Planning Board proposal for this meeting. He explained that the adopted ordinance established maximum house sizes for different tiers of lot sizes with an incentive that allowed larger houses in certain situations if more stringent development standards were met. He pointed out that the ordinance contained an overall maximum house size of 7,000 square feet and maximum septic capacity of 1,080 gallons per day for larger houses, which would allow up to a nine-bedroom, 18-occupant house.

Director Heard stated that Town Attorney Robert Hobbs and Attorney Ben Gallop have stated that the Town of Duck has been granted clear authority to regulate the maximum size of residences in the N.C. State Statutes. He stated that they both expressed several concerns about the Town's ability to regulate the maximum capacity of septic systems, including: (1) as septic capacity is tied to occupancy/bedrooms, regulating septic capacity

may be indirectly regulating the number of bedrooms, which is not permitted under State law. (2) State law grants the authority to regulate septic systems to health departments. This may pre-empt municipalities from regulating septic systems. (3) Without specific factual support for the proposed septic capacity amounts, they may be at risk of being shown to be arbitrary and capricious.

Director Heard stated that since the draft ordinance contained both concepts, one aspect of the ordinance may withstand a legal challenge even if the other aspect was found to be lacking. He stated that in previous discussions, the Planning Board stated that they understood and respected the Town Attorneys' opinions that this requirement may not be as legally defensible as other alternatives but thought that regulating septic capacity directly addressed a significant issue relating to the scale of residences in Duck by limiting the construction of homes with excessive occupancy/density. He noted that the Planning Board found a similar restriction on septic capacity in the Town of Nags Head's current ordinance.

Director Heard stated that the approach of Attachment B recommended by the Planning Board offered a property owner the opportunity to build a very sizable home under the typical development standards of the Town. He explained that if an owner seeks to construct an even larger house, it could be allowed subject to more substantial development standards. He added that in return for allowing a large house, the Town would receive higher quality development that reduces potential impacts on the surrounding properties. He stated that the inclusion of a standard limiting septic capacity by tiers was intended to prevent the development of residences with an excessively large number of occupants.

Director Heard stated that the Town's CAMA Land Use Plan contained goals, policies, and objectives related to the regulation of density and preservation of community character. He added that with the frequency of mentions in many different categories of the Land Use Plan, it was clear that the Town placed high importance on maintaining the density and scale of residences to preserve the character of the community and minimize impacts to the surrounding neighborhoods. He noted that as part of its recommendation, the Planning Board found the proposed text amendment to be consistent with the Town's CAMA Land Use Plan as well as the Town's 2027 Vision.

Mayor Pro Tempore Thibodeau stated that she had a question regarding the exceptions when a property owner may want to go to the maximum size and meets some of the requirements for landscaping, setbacks and architectural features. She asked if that would be under the Town's administrative control or if the homeowner would have to obtain a special use permit. Director Heard stated that it would be an administrative permit. He stated that there was some conversation regarding the possibility of having a conditional use process for larger residences, but this way it wouldn't slow someone down and make it a more burdensome process. He stated that if Council was comfortable with the standards, then there would be a firm set of standards in place that everyone could look at to make sure they could meet them or not. He added that if this was something that Council wanted, then it could be approved administratively since Council

already have defined the criteria. He noted that one of the challenges of a conditional use permit was the potential for things that may be looked at as arbitrary decisions.

Councilor Burdick asked how this compared to the ordinances and discussions that were occurring in the other towns. Director Heard stated that the Town of Kill Devil Hills has been discussing the issue for the better part of a year, and the Town of Southern Shores has had similar issues. He stated that they were still discussing ideas and he had not talked to anyone recently as to where they were at with the issue. He didn't think either town adopted anything yet.

Attorney Leidy asked if any members of the public wished to address the draft ordinance.

Allan Beres of 146 Dune Road was recognized to speak. Mr. Beres stated that he had sent a letter to Council recently and hoped they had a chance to read it. He stated that everyone was concerned about density, the Town's Vision and the CAMA Land Use Plan, which reflect the Town's strong interest in preserving the community character and small-town atmosphere by regulating building intensity and the size of structures. He stated that everyone that has visited or lived in Duck knows why density control was so important to the health and prosperity of the Town. He stated that the infrastructure was limited by its size and geography. He pointed out that Duck Road was the only north/south road through Town and was limited to one lane in each direction with all of the side streets feeding into it. He stated that the reason people were drawn to Duck was because of the beach, which could not be lengthened, and from time to time, will need to be re-nourished. He stated that increased density of people and vehicles may have other adverse consequences associated with overcrowded beaches and traffic congestion. He stated that rising groundwater may create more problems with flooding and septic concerns as the Town continues to grow.

Allan Beres stated that since incorporation in 2002, the Town had controlled density through a zoning ordinance that limited the number of bedrooms in residences based on lot size. He added that in 2015, the North Carolina General Assembly passed a new law that revoked the authority of local governments who limit the number of rooms in a residence. He stated that, in order to be in compliance with that law, the Town Council enacted an ordinance on December 5, 2018 which amended a previous ordinance by setting standards for the scale of residential development. He stated that Council had requested that the Planning Board provide them with a new ordinance that would include a new lot size tier of 30,000 square feet or greater and for each of the six tiers to show corresponding standard maximum size standards for septic capacity of gallons per day. He stated that the Planning Board include a table in the draft ordinance that reflected an increased setback for large residences. He pointed out that the revisions were the subject of this public hearing.

Allan Beres stated that the only item that would limit density was the maximum septic capacity and without it, it would cause major problems in Duck. He stated that he did not know of any other alternative other than making the State Legislature see the light at the end of the tunnel and change things. He stated that he liked the septic capacity column in

the draft ordinance as it needed to be there. He stated that he was afraid that neighborhoods would begin to build like they have in Corolla with very large sized homes. He went on to pass out an alternative to the table in the draft ordinance which would limit the impacts of larger homes with a maximum house size of 8,000 square feet.

Theresa Cullen of 122 Martin Lane was recognized to speak. Ms. Cullen thought it wasn't a good idea to just use septic size to control the size of a house. She wondered if anyone was enforcing the rules that septic systems need to be cleaned out on a regular basis. She didn't think it was happening. Director Heard stated that the system has to function properly under a Town permit. He added that there were inspectors that document septic systems. Theresa Cullen stated that she didn't see where the Town could rely on septic systems to control what happens in Town. She added that she didn't think the proposal was good enough for the Town's Vision.

Attorney Leidy asked if members of the Planning Board wished to make a presentation. There were none.

Attorney Leidy asked if Council wished to receive any other information on the proposed text amendment.

Councilor Burdick stated that the proposed ordinance looked reasonable, given what the Town was trying to do. He stated that it was a balance of trying to minimize the size, and at the same time, allowing sufficient size that Duck remained an investment opportunity for people. He stated that the Town was always in a balancing act. He stated that he was having a problem with the ability of people to combine lots and build a larger house in a neighborhood that could not accommodate it. He noted that it was not addressed in the draft ordinance. He added that he wasn't sure how to address the issue and wasn't sure if there was anything that was currently in the Town Code that would help the Town or if it was a moot point. Director Heard stated that it addressed it in terms of combining two 15,000 square foot lots to achieve a 30,000 square foot lot. He stated that a homeowner had the ability under the proposed ordinance to develop a significantly larger house. He stated that it did not address subdivisions directly, but the zoning standards were tied to subdivisions. He stated that a homeowner could still build a larger house but couldn't build one that would be twice as large under the proposed ordinance.

Councilor Burdick stated that it was an area where it could go from 6,000 to 9,000 square feet for a large house. Director Heard stated he was correct. Councilor Burdick pointed out that it would put it as a structure that was completely out of character for the neighborhood, which was one of the things Council was trying to avoid. He wasn't sure if there was anything the Town could do about it. Attorney Leidy stated that other than establishing the maximum size on residential structures that was lower than the 9,000 square feet, he wasn't sure what else could be done. Councilor Burdick pointed out that if someone comes in and does it, the Town would be stuck with that size. Attorney Leidy agreed.

Mayor Kingston asked if a homeowner association stated in their covenants that a property owner could only build 4,500 square feet on a 15,000 square foot lot, if the owner decided to combine the lots, it could be done, or would the covenants control it. Attorney Leidy stated that the covenants would control it. Mayor Kingston asked how the covenants would work if a lot was combined. He further asked if it would be treated as one lot. Attorney Leidy stated that it would depend on the covenants.

Mayor Pro Tempore Thibodeau clarified that a subdivision could come up with more restrictive covenants as long as they went through the process of getting it ratified by their homeowner association. Attorney Leidy stated she was correct. Mayor Pro Tempore Thibodeau asked if it would apply to homes that were controlled by homeowner associations. Attorney Leidy stated she was correct.

Attorney Leidy asked if Council wished to receive any other information.

Councilor Burdick asked Director Heard how many lots in Town were 30,000 square feet and over. Director Heard stated that there were approximately 44-45 lots. Councilor Burdick asked how many of those lots were vacant. Director Heard stated that four were. Councilor Burdick stated that it suggested that the Town was dealing with a rather small problem with the exception of combining lots.

Councilor Caviness asked for an explanation. She asked if in the chart where if someone were to choose to go to the larger maximum size, what the setback triggers would be. Director Heard stated that it was a decision that a property owner would make at the time that they were looking to develop a property or expand an existing property. He noted that this would apply to situations where someone was placing an addition on an existing house as well. He stated that if they were willing to do all of the things that were in Subsection D, they could go up to the larger size residence. He added that it was a balancing act. He didn't think any of those things would be a major factor from an expense standpoint, but there may be challenges from some lots in meeting some of the criteria due to the characteristics of the lot. He noted that if it was a relatively narrow lot, the larger side yard setbacks may cause the homeowner to not be able to build the house they want architecturally. He added that there were tradeoffs that a homeowner would have to consider in designing a project if they wanted to do something bigger.

Councilor Caviness asked if there was any discussion at the Planning Board level regarding fire sprinklers or emergency lighting. Director Heard stated that there was. He noted that the Planning Board had a provision where an owner could choose to install residential sprinklers instead of having the larger setbacks. He stated that the discussion at the Planning Board meeting was that while it addressed one issue, one of the most important reasons the Town has setbacks was to provide fire separation. He added that where a sprinkler system would address that issue, it did not address all of the other reasons why the Town has setbacks. He stated that the Board felt that it did not achieve the other goals of having greater setbacks, so they opted to remove it from the draft ordinance.

Mayor Kingston asked how many lots were in Duck and how many were developed. Director Heard stated that there were 2,200 lots with 200 undeveloped. Mayor Kingston stated that he remembered that of the 25,000 square feet and above lots, only seven were undeveloped. Director Heard stated that there was a total of 88 lots with seven undeveloped.

Councilor Burdick stated that it sounded to him that if the Town's residents wanted tighter restrictions, it would be in the hands of the subdivisions to put them in.

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

Mayor Kingston stated that he was once again perplexed as to how the Town got to this point. He stated that Director Heard gave a history on the issue, there was a moratorium in effect when the Town incorporated that limited the number of bedrooms which was eliminated in 2015 by the General Assembly. He stated that the Town went to the septic capacity to control occupancy and density. He added that a house was built about a year ago with 12 bedrooms and in closed session, Council was extremely concerned about the escalation of houses and now there is a discussion of what he considered to be mega-houses. He thought Allan Beres made a good point about the Town's Vision where it was stated that neighborhoods reflect our small-town atmosphere. He added that the commercial buildings were only 5,000 square feet in Town right now and Council was looking at allowing residential homes to go up to 7,000 square feet on approximately seven lots. He noted that the Town was dealing with a very small percentage and, although there hasn't been a lot of public comment at the Council meetings, outside of the meetings Council has heard a lot of comments; however, there hasn't been any comment endorsing larger houses, but wanting to know where Council was going with the issue. He thought there were a lot of issues with occupancy, density and the environment with regard to septic systems.

Mayor Kingston stated that even though he endorsed at the last meeting having the Planning Board take a look at what was Attachment C, he commended the Planning Board and Town staff for the work they did, but he did not support maximum sizes for the large houses. He thought Council has put something in place that would allow 7,000 square foot homes, while the Town of Nags Head allows 5,000 square feet and 6,000 square feet in the Town of Southern Shores. He understood that Duck was not those two towns, but the Town of Southern Shores' Planning Board was recommending that their Council go back down to 5,000 square feet. He thought that there wasn't an outcry by the public to put this ordinance in effect and create large houses, but Council was bringing it upon themselves and therefore, based on everything that has been discussed, he didn't agree with implementing the ordinance with the maximum sized houses.

Mayor Pro Tempore Thibodeau appreciated Mayor Kingston's point of view. She stated that there was the history of Duck developing over the Outer Banks. She stated that the Town was working within a framework before the State Legislature took away the Town's ability to limit the size of homes and now the towns were working diligently to

try to figure out what they might want to do. She stated that her point in bringing up the history was because the Town has worked within some framework and she would argue that the framework that Council had before them was very similar, particularly when the septic capacity is added to what the Town has been dealing with as it has grown. She pointed out that the Town has been very successful with the growth. She added that it was subjective in terms of the small-town atmosphere as the Town encourages walking, single-family homes, and no common area septic systems. She stated that she was in favor of what the Planning Board has done for Council with the 5-0 vote. She noted that it was the first time since the Town has started discussions about the issue that they have had a unanimous decision. She commended the Planning Board for all of their hard work and their stand on the side of personal property rights.

Mayor Pro Tempore Thibodeau noted that it was not just the economics of vacation rentals, but it was people buying property and having the right to do what they want on it. She stated that she sees lots in Duck that she doesn't want developed because she was in favor of open space. She thought there would be more of that since people do like open space. She added that rather than maximizing their home size, people may want some open space. She stated that Duck does not have a lot of open lots and will see some homes that are functionally obsolete and have to be torn down. She thought that what Council had before them was a good thing and didn't think people would maximize everything. She thought it gave people some flexibility and latitude with their own desires. She didn't think that just because people are told that they could go to the maximum that they would. She stated that, in terms of environmental health, she thought it was a great suggestion as it would create more awareness about the importance. She didn't think that these lot sizes affect the ground water and anything the Town could do to encourage people to be good stewards environmentally would be good. She reiterated that she was in favor of the ordinance.

Councilor Britt stated that he was in favor of personal property rights and didn't believe the Town would be here if the State had not changed things. He noted that the Town previously did not have a square foot limitation as the size of homes were limited by other controls that were in place such as setbacks, parking and septic. He stated that Duck will not be anything like Corolla because they have a sewer system and a lot more density. He thought the biggest concern about density was about the amount of people and the impact on the roads, sanitation and taxing public safety. He stated that he hears mostly from the public that the concern was over density of people and not the building density. He noted that the density of people will not be fixed by this ordinance. He added that there was a spec house on the market that was 2,800 square feet with six bedrooms. He stated that the square footage would not limit bedrooms. He agreed with the septic capacity in the draft ordinance. He agreed with the ordinance as it was written and could agree with backing Part I – 156.126(D) for large residences back to 20,000 square feet instead of 15,000. He thought there were a lot of subdivisions that have these concerns that the larger houses would come in that were 15,000 square feet or less. He reiterated that he supported the ordinance and if Council wanted to discuss taking Section D for large residences and applying it 20,000 and larger, that would be fine with him.

Mayor Pro Tempore Thibodeau clarified that Councilor Britt's suggestion would eliminate the 6,000 square feet and would be 4,500 square feet. Councilor Britt stated she was correct, adding that it would allow the flexibility for the larger homes on the big lots where the square footage of the lot would not be doubled, but increasing the setbacks and giving the people that have those lots the option to build a bigger home. He added that they would only be allowed but so many bedrooms and there could be a 6,000 square foot, four-bedroom house or a 7,000 square foot, four-bedroom house and the Town would be telling that homeowner they weren't welcome in Duck. He stated that he wanted to protect the 20,000 square feet and above.

Mayor Kingston stated that Council was assuming that people that would be building these large homes would be individuals that would live in them. He projected that if someone has the opportunity to build a bigger house, they would be building it for an investment, which becomes a rental house. He pointed out that Duck was a rental community and he didn't see people coming in wanting to build a 9,000 square foot house but would want to build a 9,000 square foot mini hotel. He thought Council was fooling themselves to think that people are going to want to build a personal residence versus people that want to build an investment rental income home.

Councilor Britt stated that he was not assuming they would all be personal rights but wanted to protect their right to do that. He pointed out that, obviously they could build a house, but it was maxed out at nine bedrooms. He added that the concern was more people density, but it would be maxed out at nine bedrooms. He reiterated that he was not assuming they would all be like that but remembered taking that option off the table for people that may want to, which gets back to personal property rights.

Mayor Kingston stated that he goes back to the numbers. He stated that Council was discussing seven lots that were undeveloped at 25,000 square feet and above versus the 2,200 lots that were already developed. He stated that Council was discussing a very small percentage. He added that Council was looking to change something that could alter the Town for years to come. He pointed out that Council had two visioning sessions and one thing that was liked was the small-town atmosphere, which was in the Vision Statement and now Council was moving away from that. He thought it was interesting that a business could be built in Duck up to 5,000 square feet, but a house could be 9,000 square feet. He felt it was very perplexing.

Councilor Burdick stated that he was torn between the two sides. He stated that on one hand, he thought property owners should have the right to build a reasonable house on their property. He thought what Council was attempting to do was to find it reasonable as it pertained to the Vision. He stated that he had a problem with the maximum size of large houses as it really bothered him. He liked Councilor Britt's suggestion of moving up one level, then the Town would be down to a bare minimum of lots that would be affected with the possibility of very large homes. He added that they were located mostly in areas where one would not even notice them because they would be on very large lots. He thought it was an important point to remember because when Council talks about housing density, they envision one house after another like the ones in Pine Island, but

Council was not talking about that. He added that they were talking about very large lots and an occasional large house on them.

Councilor Burdick stated that he lives in a neighborhood where the houses run from 1,500 square feet to 5,500 square feet and they are right next door to one another. He added that the 5,500 square foot looks out of place when in fact the 1,500 square foot house should be the one that looks out of place. He stated that under the proposed ordinance, the homeowner with the smaller lot could put a 9,000 square foot house on it. He noted that he could do the same with his property, but his house was big enough already. He stated that his point was that he thought there was a balance that needed to be achieved and thought Council needed to do something and could go with the middle ground of leaving room for the very large houses in the small percentage of lots. He added that the Town needed to get control of what it wanted and hoped that the septic capacity will stand up. He asked what the probability would be that the septic capacity would hold up if challenged.

Attorney Leidy stated that there were a couple of different arguments on the issue with one being that the Health Department – which has been given the authority on septic capacity – would be what a court would uphold and would take away regarding what a local government could do to regulate it based on septic. He stated that the other issue was that the septic capacity and trying to limit growth or development based on septic capacity may be an indirect way of limiting the size or number or type of rooms, which was prohibited by legislation. He added that there was no case law on the issue as the statute was only three years old, so it was unclear how it would turn out if challenged in court.

Councilor Burdick asked if the risk was worth taking. Councilor Britt thought it would be more of a risk to leave it out. Attorney Leidy pointed out that one way to look at it was by how many challenges there would likely be because it seemed like it was unlikely to affect but so many properties. He stated that the other question was if the Town wanted to take the risk given the fact that it would only affect a limited number of properties. Councilor Burdick stated he was comfortable with it, but there was a risk that Council needed to be aware that it was taking.

Mayor Kingston stated that Council was reacting to some very limited public input and was looking at house size because of one homeowner that has a 4,500 square foot house who may want to go to 9,000 square feet. He added that this homeowner brought his engineers, his lawyer and his realtor to one of the public hearings. He noted that other than that, there has not been anyone else coming and asking Council to create the maximum sized houses. He stated that it was just his observation, adding that Council has been discussing since the spring and more heavily since September and no one has come forward wanting Council to grant the large houses.

Mayor Pro Tempore Thibodeau thought Council heard quite a bit from the people that own the larger homes, particularly in the Palmers Island subdivision. She added that it was the main public comment that Council has been receiving that were concerned that

they were being limited unfairly. She thought what got everyone's attention was the issue with the one house in Palmers Island that went around with what Council thought they were going to do with regard to bedroom size, which was before the Town even had the limitation. She stated that Council agreed that the larger lot tier was a very small amount of population and unless Councilor Burdick's concern about recombination comes to fruition – which economically would not happen – the top tier was a very small population. She noted that Council did hear from quite a few people in the top tier.

Mayor Kingston disagreed. He stated that one couple from Palmers Island came in and supported the smaller homes. He added that they did not want the large homes built in that subdivision. He stated that the other individual never showed up for the meeting but sent representatives and was the one that potentially may want to double the size of his home. He stated that unless someone else could identify who came forward, they were the only ones that spoke at the public hearing.

Councilor Burdick stated that although Council did not get a lot of feedback at the public hearings, he received a lot of feedback from people who own smaller homes. He stated that they did not want to see the bigger homes.

Mayor Pro Tempore Thibodeau pointed out that Council was talking about different things. She stated that Council was talking about people's rights to build on different sized properties; Council has been going through on a tract that allowed standards; everyone was not addressing the larger homes, which was done with the Planning Board voting 5-0 and bringing in the largest tier, which was a very small population. She thought that people were conflating a few issues together as Council was talking about a couple of different things. She pointed out that Council was discussing addressing the largest tier homes to give them some flexibility and some proportional flexibility on their property, which she was in favor of. She asked if the larger issue of overall development was another issue Council was talking about. She stated that she didn't understand what Mayor Kingston was stating. She stated that the Town has grown with very similar regulations to what was in the ordinance and Duck was almost completely built out. She thought the Town has been very successful but understood that some people do not want to have the Town be a rental community where people come in and rent, but that is not the case. She added that Duck was not going to be a year-round town because it was a vacation destination. She noted that the regulations that Duck has had up to this point have got the Town to where it presently was. She asked if she was hearing that now Council wants to roll it back and become more restrictive.

Mayor Kingston wasn't sure if it would be all that bad. He stated that when looking at the chart, normal subdivisions were 15,000 square feet and two lots could be combined. He added that there were houses that were approximately 2,500 to 3,000 square feet. Mayor Pro Tempore Thibodeau asked who was combining lots and who has combined a lot in the last 15-20 years. Mayor Kingston stated that if a homeowner had the opportunity to do so, they would. Mayor Pro Tempore Thibodeau stated that homeowners had the opportunity to do it. She pointed out that there was no evidence that people were combining lots, adding that no one was doing it.

Councilor Britt stated that if two 15,000 square foot lots were combined, then an owner could get two structures of 4,500 square feet or more, based on what Council decides, next to one another or they could have a 30,000 square foot lot that has one house that would be 7,000-9,000 square feet with larger setbacks, less people in it, and less impact on other aspects of the community. He didn't see what was wrong with that.

Mayor Kingston pointed out that the neighborhood would need to be looked at because if an owner was given the opportunity to build a 7,000 square foot house, that was a large house. He stated that if Council approves larger houses, they could go to 9,000 square feet. He added that if someone had a 2,500-3,000 square foot home, they could end up with a 9,000 square foot house next to it. He noted that it didn't mean that people would do that, but the fact was that the Town was allowing it by moving forward with the draft ordinance. Mayor Pro Tempore Thibodeau pointed out that the Town has been allowing it all along. Mayor Kingston stated that it wasn't to the 9,000 square feet as there were other things controlling it. Councilor Britt stated that there were never size limitations. Mayor Pro Tempore Thibodeau stated that no one has ever combined a lot in Duck. She stated that the Town was forced to put some limitations in and by simply addressing it didn't mean that people would go to the limit or combine lots. She stated that she did not see it happening as people were not combining lots. Councilor Britt noted that it was not happening. Mayor Pro Tempore Thibodeau noted that if anything, people were buying lots and not doing anything with them, so they have some open space.

Councilor Caviness stated that she did not like the maximum size piece of the ordinance. She stated that she was hoping that the larger the house became, the more restrictive the setbacks would be. She stated that she was disappointed that Council would consider allowing someone to build a 7,000 square foot house and not require residential sprinklers and exit lighting. She stated that it was a matter of balance because a commercial structure could only be 5,000 square feet and the Town requires all kinds of life-safety aspects to it. She noted that houses that were 7,000-9,000 square feet would not be single-family residences that people live in year-round but would be mini hotels. She added that it was not the same thing with a 4,700 square foot house on a commercial piece of property that was required to install exit lighting and over time the house was diminished by what grew around it. She reiterated that it was a balance issue for her. She stated that she would like to see the maximum column stricken from the draft ordinance. She noted that Councilor Britt made the suggestion to bump up the 15, and if that was the case, she thought she could be fine with lots that were 30,000 square feet. She stated that she was not in favor of the enormous houses and all of the potential negative implications of them.

Councilor Britt thought if Council could do that, people would be unhappy. Councilor Caviness stated that she's been in big houses and has been with the Duck Fire Department for 20 years. She explained that she was in a large house after a fire that had no exit lighting and she wasn't sure where she was in the house. She noted that there was no smoke in the house, no one in the house or anything at a crisis level, and it was crazy to have a house that big and not have an obvious way of existing the structure. She stated

that if darkness, no lighting and smoke were added to it, someone would end up dying. Mayor Pro Tempore Thibodeau pointed out that it was North Carolina Building Code. Councilor Caviness agreed. Mayor Pro Tempore Thibodeau stated that she was talking about the whole state, which had nothing to do with the municipality. Councilor Caviness agreed. Mayor Pro Tempore Thibodeau stated that sprinkler systems were not required in commercial structures, but exit lighting was. She reiterated that it was all building code.

Councilor Burdick stated that he liked Councilor Britt's suggested change. He stated that it would take the 15,000-20,000 standard up to 5,000 feet and leave it as the maximum size house instead of 6,000 square feet. He added that the last three tiers should be left alone since there were so few lots of those sizes. He noted that Council was arguing over 1% of the problem. Councilor Britt clarified that Councilor Burdick wanted to change the 4,500 to 5,000 square feet for lots that were 15,000-19,999 square feet. Councilor Burdick stated he was correct. Councilor Britt clarified that Councilor Burdick wanted to change the language in D Section 1 to 20,000 square feet. Councilor Burdick stated he was correct.

Mayor Pro Tempore Thibodeau clarified that Councilor Burdick wanted 5,000 square feet for the maximum column instead of 6,000 square feet. Councilor Burdick stated she was correct. Councilor Burdick stated that where it shows 4,500 square feet, it would be changed to 5,000 square feet. Councilor Britt noted that it would be the maximum size. Councilor Burdick stated that it would be standard and maximum.

Mayor Kingston asked what the largest house that has been built in Duck in the past year. Director Heard stated that since December, the Town has permitted an oceanfront residence of 5,700 square feet at 184 Ocean Way. He added that it would not be permitted under the draft ordinance, but presently it was allowed. He stated that it was a nine bedroom, 20-occupant house. Councilor Britt asked how big the lot was. Director Heard thought it was over 25,000 square feet.

Councilor Britt moved to adopt Ordinance 18-07 with the following changes – in Section C under Maximum Size Standard between 15,000-19,999 square feet be raised to 5,000 square feet; in Section D(1), the minimum lot area for large residences be 20,000 square feet.

Councilor Burdick thought it was a reasonable approach to what Council was trying to do. Councilor Caviness agreed.

Attorney Leidy clarified that the motion would change the 6,000 square feet down to 5,000 square feet. Councilor Britt stated he was correct, adding that there would be no maximum size for that tier.

Motion carried 4-1 with Mayor Kingston dissenting.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with Millstone Marine Construction for Repairs to the Canoe/Kayak Ramp, Crabbing Platform, Northern and Southern Boat Piers, and Miscellaneous Items

Town Manager Layton stated that as a result of the storm surge in the Currituck Sound from Tropical Storm Michael, significant damage occurred to the canoe/kayak launch, the crabbing platform and the boat piers. He added that in a few areas there was a piling lift on the boardwalk that has rendered these areas uneven and in need of leveling. He stated that the Town utilized the informal bid procedures that were authorized by the NC General Statutes and solicited bids for the work from several marine contractors. He noted that three bids were received: Northeastern Marine with \$43,800; LSI Marine with \$60,145; and Millstone Marine with \$61,961. He added that Northeastern Marine could not provide a time when they would be able to start or complete the work and indicated that it was likely that would not be able to start until late summer. He stated that LSI Marine's bid included a cost for treated timber that was below the specifications desired by the Town. He added that Millstone Marine had indicated a completion date of work on or near April 30, 2019 and included the timber that met the Town's desired specifications. He stated that Millstone Marine's bid was the lowest responsive, responsible bidder and he was recommending that Council authorize him to execute a contract with them.

Councilor Britt asked if Millstone Marine was also installing the bulkheads for the pedestrian project. Town Manager Layton stated that they were.

Councilor Burdick moved to authorize the Town Manager to execute a contract with Millstone Marine Construction for the repairs to the canoe/kayak ramp, crabbing platform, boat piers and miscellaneous items as presented.

Motion carried 5-0.

NEW BUSINESS

Overview of Ocean/Surf Rescue

Town Manager Layton stated that Mirek Dabrowski would be giving a presentation on how the Town goes about providing surf rescue services, plus some discussion points on supplementing the service. He added that one of the things presented would be considering additional guards and coverage. He stated that it was prudent for Council to know how the Town was providing the services and whether they should consider adding additional lifeguards. He stated that there would obviously be a cost associated with it and one of the things he would be looking for was whether or not it was something that Council wanted him to explore regarding impacts for additional services, so they could see them at the upcoming Retreat in order to consider whether or not the current contract should be altered to supplement lifeguard services.

Ocean Rescue Director Mirek Dabrowski was recognized to speak. Ocean Rescue Director Dabrowski gave a short presentation on the activities of his surf rescue staff as well as the costs to add more lifeguard stands and lifeguards for the coming years to Council and the audience.

Mayor Pro Tempore Thibodeau asked if both the Towns of Duck and Southern Shores have to go hand in hand with the contract for lifeguard services. Ocean Rescue Director Dabrowski stated that they did not because the Town of Southern Shores pays for what they receive. Mayor Pro Tempore Thibodeau clarified that the \$90,000 figure was for Fiscal Year 2020. Ocean Rescue Director Dabrowski stated she was correct.

Councilor Burdick clarified that for Fiscal Year 2020, the base was \$400,000. Ocean Rescue Director Dabrowski stated that it was a seven-year contract and Fiscal Year 2020 is the seventh year and was \$405,000. Councilor Burdick stated that Ocean Rescue Director Dabrowski was talking about going from \$405,000 to \$717,000, which was a 75% increase. Ocean Rescue Director Dabrowski pointed out that it was over six years. Councilor Burdick stated that it didn't make any difference and that it was a 75% increase. He asked if the Town was willing to accept the 75% increase for what was being described as additions. He asked how much of the increase was just a salary increase. Ocean Rescue Director Dabrowski stated that lifeguard stands were 1,000 hours per stand for the season. He stated that he had to factor in \$12.00/hour, taxes, workers compensation and uniforms which got to \$20,000. Councilor Burdick clarified that the figure was per stand. Ocean Rescue Director Dabrowski stated he was correct.

Councilor Britt clarified that Ocean Rescue Director Dabrowski was looking at paying his lifeguards \$15.00/hour by Fiscal Year 2023. Ocean Rescue Director Dabrowski stated he was correct.

Councilor Burdick asked how much of the total was an increase from \$12.00 to \$15.00/hour, how much was for the average stands. Ocean Rescue Director Dabrowski stated that, salary-wise, the stands were about \$120,00-\$135,000 over six years and the majority of the cost was salaries. Councilor Burdick asked out of a \$312,000 increase, how much were salaries. Mayor Pro Tempore Thibodeau stated that it was \$120,000. Ocean Rescue Director Dabrowski noted that it was just for lifeguard stands. He added that if services were increased for the fall, it would add \$66,000. Councilor Burdick pointed out that it came to \$180,000. Ocean Rescue Director stated that it was about \$22,000 with a \$1.00/hour increase and he was looking at a \$3.00/hour increase, which brought the figure to \$66,000. He added that Council was looking at \$240,000. Councilor Burdick pointed out that it was over \$300,000. Ocean Rescue Director Dabrowski noted that he added a COLA increase as far as an increase for equipment. Councilor Burdick stated that Council was not buying into the COLA increase, he noted that what was being asked was the proposal on people and placement of stands, which was different from what was being done presently. He thought the COLA aspect was in the contract currently. Town Manager Layton stated that the COLA was not in the contract and that there were gradual increases. He explained that if Council was behind the proposal, then the next step would be to do an analysis on what it would take to implement it and then

the contract would be updated, and the COLA would be worked on with that. Councilor Burdick pointed out that Ocean Rescue Director Dabrowski had a COLA increase in the contract. Town Manager Layton stated that it was a discussion piece. Councilor Burdick stated he was trying to figure out was how much was an increase in things that will need to be increased. He added that COLA was not part of it.

Town Manager Layton asked Ocean Rescue Director Dabrowski what he used for the COLA increase. Ocean Rescue Director Dabrowski stated that he was showing Council everything, including the salary increases. He stated that he could show that lifeguard stands may cost \$30,000, but he wasn't; rather he was showing what his salary increases were and what it would cost per person. He added that he was also showing that he needed additional money in order to run his business. He stated that if Council told him they were going to give him \$240,000 to use over the next six years, he would then show the services that he could provide for that cost as well as how many lifeguards he would use, how much of an increase in manpower would be needed for the fall, but there would still be a COLA involved in it. Councilor Burdick stated that it wasn't a problem for him, but his problem was trying to separate out where all of the money was going.

Mayor Kingston thought the bottom line was that Council needed more detail and a better chart than what was provided. He added that Council needed to better understand everything. Councilor Burdick stated that Council needed to decide how much money should be spent. Ocean Rescue Director Dabrowski understood as they have to decide how much they want to spend and then he can let them know what kind of services he could provide, adding that he was showing Council what they would receive for the money he was asking.

Councilor Britt asked how many lifeguard stands were being proposed. Ocean Rescue Director Dabrowski stated that it would be 15 stands. Councilor Britt noted that it would be seven more stands, which was a significant increase. Ocean Rescue Director Dabrowski agreed. He explained that it was 240 hours for one person just for the month of September for lifeguard services.

Councilor Burdick thought Council needed to know where the Town was. Mayor Kingston agreed, adding that they needed a better grasp on it with more detail. Councilor Burdick asked what the starting point was with how many stands and people there were as well as the equipment needed and what the Town would be paying for all of it.

Mayor Pro Tempore Thibodeau noted that Council understood and saw what Ocean Rescue Director Dabrowski was proposing, but some of the numbers were a little confusing. Ocean Rescue Director Dabrowski understood, explaining that what he did was break down what he was doing, what they were trying to do, what they wanted to have for the fall and then amortizing it, so it would increase in increments. Mayor Pro Tempore Thibodeau clarified that the \$240,000 was after Fiscal Year 2021. Town Manager Layton stated that under the plan, it was like the last contract where Council implemented additional stands over a period of time. He stated that it could be done again and show the costs of it as well as the breakdown of the COLA. He added that it was a

Retreat-level discussion that Council could build on. Councilor Burdick stated that he did not have a problem with where Ocean Rescue Director Dabrowski wanted to go, but thought Council needed more details in order to make some decisions on what they wanted to do.

Councilor Britt stated that there was a 75% increase and when it's all said and done, there would be 50% more lifeguard stands. Ocean Rescue Director Dabrowski stated that there would be 22 lifeguards during the summer and eight to 10 in the fall.

Councilor Caviness asked if it was going to take until Fiscal Year 2025 to get his lifeguards to minimum wage. Ocean Rescue Director Dabrowski stated that it would not.

Town Manager Layton stated that the Surf Rescue director for the Town of Nags Head was proposing \$15.00/hour for his lifeguards and the Town was factoring in at least \$1.00 increase in the next fiscal year as well as \$1.00 increase for the subsequent fiscal years.

Mayor Kingston thanked Ocean Rescue Director Dabrowski for his presentation.

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 18-08, an Ordinance Amending the Zoning Ordinance of the Town of Duck, North Carolina, by Establishing Allowances and Standards for Accessory Dwelling Units

Director Heard stated that the proposed amendment was intended to eliminate discrepancies between Sections 156.126 and 156.140 of the Zoning Ordinance that were created by the adoption of Ordinance 18-06, which changed the manner in which the Town limits the scale of single-family residential development from standards based on occupancy to standards based on building size and septic capacity. He stated that the current standards for accessory dwelling units require that an addition of an accessory dwelling unit not cause the property to exceed its maximum permitted occupancy or density. He noted that the maximum occupancy standard for single-family residences was recently removed from the ordinance and replaced by standards for maximum house size and septic capacity. He added that the proposed ordinance was intended to make changes which clarified that the addition of an accessory dwelling unit could not exceed those standards.

Director Heard stated that at their December 12, 2018 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment and that it move forward for a public hearing.

Mayor Pro Tempore Thibodeau moved to authorize a public hearing for Ordinance 18-08 for the February 6, 2019 meeting.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Attorney Leidy stated that 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.

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

Police Sergeant Melissa Clark was recognized to speak. Police Sergeant Clark gave a brief overview of the past month's 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 upcoming activities to Council and the audience.

Council Retreat February 20 and 21, 2019

Town Manager Layton stated that Council had a draft Retreat agenda in their packet.

Homeowners Insurance Rate Increase Proposal

Town Manager Layton stated that the press release from the Outer Banks Association of Realtors was in Council's packets. He explained that the North Carolina Rate Bureau has submitted a Homeowners Insurance Rate Filing to the NC Department of Insurance for a proposed rate increase for Dare County of 30%, which equated to approximately \$700 per \$200,000 in coverage. He added that comments on the proposed rate increase may be submitted prior to February 26, 2019. He thought it was never too early to provide comments but wanted to see how it played out before the Town weighed in on the issue.

Financial Statement for month of December for FY2019

Town Manager Layton reviewed the financial statements with Council and the audience.

Town Manager Layton noted that a meeting has been set up with the Army Corps of Engineers to start the environmental assessment process for January 28, 2019. He stated that staff and the consultants will be meeting with the Corps of Engineers for a kickoff meeting.

MAYOR'S AGENDA

Mayor Kingston passed out a letter from the Town of Southern Shores to Representative Bob Steinburg regarding house size. He explained that several times over the last several months, he has had brief conversations with Council to let them know he has been dealing with the Mayor of the Town of Southern Shores with respect to potential legislation on the number of bedrooms. He stated that the Town lost that in 2015 to the General Assembly because they had made changes. He stated that the Town of Southern Shores has made some headway on the issue from the standpoint of communications with legislators and, more specifically, Representative Bob Steinburg. He stated that Southern Shores approved a resolution on January 8, 2019 to move forward as well as a draft of a local bill. He stated that Mayor Tom Bennett of the Town of Southern Shores had a conversation with Representative Steinburg, adding that he will be attending meetings in Raleigh on January 29, 2019 to meet with Representative Steinburg, the local and state Homebuilders Association and possibly Representative Bobby Hanig.

Mayor Kingston stated that he had an opportunity earlier in the day to talk to Representative Hanig who said he would be glad to work with Duck and support the Town. He stated that for the Town to move forward and run parallel, he didn't feel he was authorized to move forward with having further conversations or attending meetings where the Town would be looking to discuss and secure local legislation. He stated that he was asking Council if they wished for him to continue the discussions and move forward. He noted that if the Town was able to secure the legislation, it would be another item Council could look at with respect to controlling houses and density.

Councilor Burdick thought Mayor Kingston should move forward with it.

Mayor Pro Tempore Thibodeau stated that the Town of Southern Shores resolution has a general provision to regulate density and occupancy by setting a maximum number of bedrooms within one or two-family dwellings. She clarified that that was what Southern Shores was asking the legislature to do. She added that the resolution was amended by adding a new subsection where it stated the following: "...to regulate density of population and limit occupancy, limit the maximum number of bedrooms within structures and family dwellings, so long as the limit adopted was not less than seven bedrooms..." She asked for an explanation. Mayor Kingston thought it was a draft and Attorney Ben Gallop has been working with the Town of Southern Shores with respect to how they might approach the issue. He thought in those conversations that were had with the General Assembly and the Senate, that would come to light as to if they would want to move it forward. He noted that it was an unknown at this time. He stated that the ordinance was signed, but it was just draft legislation.

Mayor Pro Tempore Thibodeau clarified that Mayor Kingston did not want to just participate without the approval of Council. Mayor Kingston stated she was correct. Mayor Pro Tempore Thibodeau stated she could support it.

Councilor Burdick moved to authorize the Mayor to engage in discussions with the General Assembly representatives and the Town of Southern Shores with regard to limitations on the Town's ability to limit the number of bedrooms in houses.

Mayor Kingston noted that he would not take any legislation for the Town of Duck forward without obtaining Council's consent first. He added that the motion was to authorize him to move ahead to have the conversations. He asked Attorney Leidy if he has been in any discussions regarding the issues. Attorney Leidy stated that he has been involved in the discussions. He noted that all of the towns in Dare County have some general concerns.

Motion carried 5-0.

Mayor Kingston stated that he attended his mayors meeting recently in Nags Head and the next one will be in February in Manteo. He stated that he has a NC League of Municipalities board meeting on February 20, 2019 but won't be attending because of the upcoming Retreat. He stated that he had attended the Outer Banks Chamber of Commerce State of the County breakfast earlier in the day, which was very well attended. He stated that he was looking forward to the upcoming Winter Celebration.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau stated that she was involved in the beach planting earlier in the day with a good number of volunteers. She suggested that a party be held to honor the beach planting volunteers only. She stated that she would be attending the upcoming Rotary Club meeting on January 17, 2019. She noted that she was in her office the previous evening and felt the earthquake that happened off the coast of Virginia.

Councilor Burdick stated that he would be attending his first Dare County Tourism Board meeting on January 17, 2019. He noted that he would not be present for the February 6, 2019 meeting as he will be in Florida for a few weeks.

Councilor Caviness stated she had nothing to report.

Councilor Britt stated he had nothing to report.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that he hoped Council would overturn the ordinance that was passed recently as 9,000 square feet was way too big. He noted that the Police Department could not enforce how many people would be allowed to stay at a house as it would take up all of their time. He noted that the Four Seasons subdivision had a controlled septic community system and thought the Town of Southern Shores does as well in one area. He thought there should be more people, more often, that own houses in the off-season, since

Council was not really seeing how many full-time residents live in Duck. He thought that people that build bigger homes would be building mini-hotels. He stated that a lot of the mini hotels could not fit the furniture in the rooms as they would be considered closets. He stated that there needed to be private property rights to protect properties and that there needed to be some balance. He reiterated that a 9,000 square foot home was ludicrous. He stated that people could do what they wanted on their property but felt there needed to be some provision for it. He stated that the numbers speak for themselves as homes have quadrupled in size over the years. He thought it spoke to growth. He pointed out that there was a home in the Sanderling subdivision that had been auctioned off. He wasn't sure how Council would control density, but he saw a lot of cars at a house that was supposed to be only three to four bedrooms. He wondered why people couldn't carpool instead of driving individual cars to the house. He thought enforcing it should be considered, but it would be hard to do for the Police Department or the Zoning Department.

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

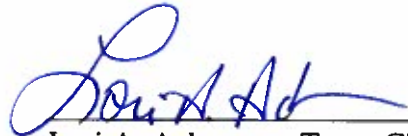
Mayor Kingston noted that the next meeting will be the regular meeting on Wednesday, February 6, 2019 at 7:00 p.m.


ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 10:31 p.m.


Lori A. Ackerman, Town Clerk

Approved: February 6, 2019

Don Kingston, Mayor

