

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
January 3, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, January 3, 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; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 7:03 p.m. He asked Police Officer Jason Rigler to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

Mayor Kingston suggested that the discussion regarding maximum size/occupancy of residences be moved to the Council Retreat.

Mayor Kingston moved to have the item moved to Council's annual Retreat.

Motion carried 5-0.

PUBLIC COMMENTS

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

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that he saw in the agenda packet that there was a contract with Coinjock Lawn Care that Council was considering later in the meeting for the pedestrian trail. He stated that he looked at previous agendas and there was a bid that was to be put out for \$180,000 for landscaping. He stated that in the past, the prices have been shown for the bids that came in. He stated that he did not find any mid-month meeting notes on it in September, October or November. He assumed that the bids were received. He stated that he looked through the budget sheets on the website and they were dated March 2017. He thought it was a clerical error on the Town's part. He hoped that Council would not

authorize the contract with Coinjock Lawn Care because he didn't like their past performance in Town and didn't feel that they were the right company for the bid project.

Sandy Whitman of 118 Tuckahoe Drive West was recognized to speak. Mr. Whitman stated that he was present to ask Council not to approve Ordinance 18-01 until Ordinance 17-16 was passed and the Tuckahoe homeowners could see if they want to have the Town police the subdivision with regard to parking.

Robert Marchegiano of 115 Tuckahoe Drive East was recognized to speak. Mr. Marchegiano stated that he was present to ask Council to approve Ordinance 18-01.

Robert Frech of 129 Fawn Court was recognized to speak. Mr. Frech stated that he was present to ask Council not to approve Ordinance 18-01.

Sharon Kingston of 135 Fawn Court was recognized to speak. Ms. Kingston stated that she wasn't sure how Ordinance 18-01 would change the parking issue in the Tuckahoe subdivision during the summer months.

Bob Armentrout of 131 Fawn Court was recognized to speak. Mr. Armentrout stated that he was present to reiterate his previous comments about Ordinance 18-01. He stated that he was asking Council to approve the ordinance. He added that with regard to the contract with Coinjock Lawn Care, he was not happy with them personally and felt that Council should not approve the contract.

Police Chief John Cueto was recognized to speak. Police Chief Cueto stated that Police Officer Jason Rigler recently was promoted to Police Sergeant with the Duck Police Department. He asked Officer Rigler's wife to come forward to pin his new badge on his uniform. Afterward, Police Chief Cueto presented Sergeant Rigler to Council and the audience.

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

CONSENT AGENDA

Minutes from the November 15, 2017, Mid-Month Meeting, Minutes from the December 6, 2017, Regular Meeting, Authorization for the Town Manager to Execute a Contract with VHB Engineering NC, P.C., for Services related to the Duck Living Shoreline Design

Councilor Caviness moved to approve the Consent Agenda as presented.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 17-15, an Ordinance to Amend Subsection 156.037(C) of the Zoning Ordinance to Allow the Construction of Sills and Groins, Use of Riprap, and Fill in Wetland Areas to Prevent Shoreline Erosion and Re-establish Wetlands in the Ocean and Sound Overlay (OSO) Zoning District

Mayor Kingston turned the meeting over to Town Attorney Robert Hobbs.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that the public hearing was open. He asked Director Heard to give a presentation.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the owners and an environmental consultant for the Waterfront Shops have designed a shoreline protection and beautification project to re-establish wetlands along the Currituck Sound shoreline of the development. He stated that in order to accommodate the project, the applicant has proposed a text amendment to Section 156.037(C) that would allow the construction of sills and groins, use of riprap, and fill in wetland areas to prevent shoreline erosion and re-establish wetlands in the Ocean and Sound Overlay zoning district.

Director Heard stated that at their November 8, 2017 meeting, the Planning Board voted unanimously to recommend approval of the proposed text amendment that would update the Town's zoning ordinance to allow the features necessary to establish living shorelines and encourage wetland restoration within the Ocean and Sound Overlay district. He added that staff was also recommending approval.

Town Attorney Hobbs asked Council if they had questions.

Councilor Burdick asked if the text amendment would be administered by the Community Development Department. Director Heard stated that it would, adding that the recommendation was for it to be via administrative approval. Town Manager Chris Layton was recognized to speak. Town Manager Layton stated that it would still require CAMA permits. Councilor Burdick stated that there was a house in Duck that recently obtained CAMA permits and the Town spent a lot of time trying to figure out if it was acceptable or not. He stated that he was concerned that it was a blanket approval of doing a lot of different things. He added that he was concerned that it would only be implemented through an administrative process. He stated that there were so many variations that could come from the living shoreline work and it seemed that there should be more public discussion instead of having it through an administrative process. He reiterated that he was uncomfortable with the amendment.

Mayor Kingston asked if there was any discussion from the Planning Board regarding the administrative approval process. Director Heard stated that there was and the rationale for them to consider it as an administrative process was that it would encourage this type of living shoreline. He explained that if an owner put in a bulkhead or hardened shoreline, it was viewed as less desirable. He added that it was an administrative process, with

automatic CAMA approval and then the Town approval, as long as the bulkhead met building code. He stated that it seemed that if this type of solution was encouraged, it was a better alternative instead of making it more difficult to obtain approval.

Councilor Burdick stated that with regard to hardened structures, the Town has some fairly stringent guidelines as to what could and could not be approved administratively. He pointed out that with this issue, it would be wide open with no guidance. He stated that he was still uncomfortable with it.

Councilor Britt stated that he understood Councilor Burdick's concern. He noted that it wasn't Council's position to install guidelines on sills, groins and riprap. He added that the sound was a living thing and it would be different everywhere. He stated that if the Town tried to make it specific or more difficult, it could keep people from being able to do anything. He stated that it was not an easy process to get a living shoreline since there were a lot of agencies involved. He stated that he liked the administrative process.

Mayor Pro Tempore Thibodeau stated that when the CAMA approvals were sent out, the adjacent neighbors were informed of the project. She asked what could be the worst that could happen with respect to the concerns expressed. She further asked if an applicant would be able to go out 100 feet as opposed to 25 feet. She wasn't sure what the downside would be other than it could get away from the Town and the shoreline would end up encroaching. She asked what the downside would be for a living shoreline. Director Heard stated that staff specifically put in wording that all of the features would have to be tied to the development of a living shoreline. He stated that it was a fair statement that, conceivably, someone could try to take it out further in the sound.

Councilor Burdick stated that his concern was the impact on the neighboring properties. He stated that he was in favor of a living shoreline, but thought the question was if Council wanted it to be unlimited or to have some degree of control over it so that the community would be participating in the issue to make sure that everyone is on board. He wondered how it could happen. Mayor Pro Tempore Thibodeau thought CAMA did that. Director Heard stated that the notification that adjacent properties receive come from CAMA.

Councilor Caviness asked if there would be impacts to adjacent properties. She stated that it didn't seem like there would be with a bulkhead. She added that it was hard for her to envision that a living shoreline would create a problem. Director Heard stated that a lot of the education comes from the agencies involved. He wasn't sure what the impacts would be for this type of proposal as far as being less than for putting in a hardened structure. He thought there would be a lot of benefits to allowing a living shoreline as an alternative.

Councilor Burdick thought it was a great idea, but he was worried about the potential impacts because it was so open-ended. Mayor Kingston noted that the process could be re-addressed in the future if issues arose. Councilor Burdick agreed. Councilor Britt thought it was a good idea.

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

Town Attorney Hobbs asked if any members of the public wanted to address the proposal. There were none.

Town Attorney Hobbs asked if there were any final questions or comments. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that a vote of the majority – four Council members – would be needed to approve the ordinance on the first read; otherwise, it would require two readings.

Mayor Pro Tempore Thibodeau moved to approve Ordinance 17-15 as presented.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Ordinance 18-01, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending Chapter 72: Parking Schedules of the Town of Duck Code of Ordinances by Adding the Tuckahoe Subdivision

Councilor Burdick suggested that Council consider Ordinance 18-02 before voting on Ordinance 18-01. Mayor Kingston thought they were two separate issues and Ordinance 18-01 needed to be considered first. Councilor Burdick stated that Council would deal with them separately, but added that there was a point made during public comments. Mayor Pro Tempore Thibodeau asked if it would make a difference. Councilor Burdick thought it made it clearer. Mayor Kingston stated that Council would proceed as planned.

Town Manager Layton stated that there was a request that was made to him in August from the Tuckahoe Homeowners Association and due to concerns that were received by other residents of Tuckahoe, he recommended that the ordinance be delayed until there was a change to vet it at the Tuckahoe HOA meeting. He noted that there was discussion of it at that meeting and, as a result, an ordinance came before Council at their November meeting, at which point the motion failed due to lack of action. He pointed out that it was not voted down, but there was no action taken at that meeting.

Town Manager Layton stated that at that point, there was a request to review the ordinance and it was now back in front of Council. He stated that the ordinance would place the Tuckahoe subdivision on the list of streets where the police can enforce parking.

Mayor Kingston stated that there was a comment made at the December meeting that he should recuse himself. He stated that he would not be doing that and asked Town Attorney Hobbs to comment on it.

Town Attorney Hobbs handed out a memorandum to Council. He explained that at the previous Council meeting where the issue was discussed, Bob Armentrout had suggested that Mayor Kingston recuse himself from any consideration on the future of this ordinance. He stated that he researched the issue and found that Section 160A-75 of the General Statutes requires Council members present at a meeting to vote except for limited circumstances. He stated that in his opinion, none of the circumstances listed in the memorandum were raised by Council considering this ordinance. He added that if Mayor Kingston failed to vote on the proposed ordinance, any refusal would be prohibited by statute. He read the statute to Council and the audience: "A member shall be excused from voting except upon matters involving a consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under GS 14-234.168-381(D) or 160A-388(e)(2). In all other cases except votes taken under GS 160A-385, a failure to vote by a member who is physically present in the Council chamber or who has withdrawn without being recused by a majority vote of the remaining members present, shall be recorded as an affirmative vote."

Town Attorney Hobbs reviewed the five exceptions with Council and the audience:

1. The member's own financial interest. Town Attorney Hobbs noted that there has been no allegation that the outcome of the subject matter of the ordinance would have any direct, substantial or directly identifiable financial impact on the mayor; therefore, the exception does not apply.
2. The member's own conduct. Town Attorney Hobbs stated that there has not been any allegation of the subject matter of the ordinance, which had to do with adding the private streets of the Tuckahoe subdivision to the list of Town-regulated parking, had nothing to do with the mayor's conduct as a Council member and therefore; the exception would not apply.
3. Situations where the Council is considering a public contract with a third party in which a Council member has some financial stake in the contract. Town Attorney Hobbs stated that this meant that the mayor would be the other party that the Town was contracting with and this exception did not apply.
4. Situations where the provision that was being discussed would have a financial impact on the Council member due to the zoning amendment. Town Attorney Hobbs noted that this exception did not apply because the subject matter of the ordinance would not have a direct, substantial, and identifiable financial impact on the mayor.
5. Situations where the Council or other body was holding a quasi-judicial hearing as part of the Council's consideration of the matter. Town Attorney

Hobbs pointed out that Council was considering an ordinance as a legislative action and not as a quasi-judicial hearing and therefore; this exception would not apply.

Town Attorney Hobbs stated that it was his opinion that that the mayor must vote on the ordinance and was not eligible to be recused.

Councilor Burdick moved to adopt Ordinance 18-01 as presented.

Mayor Pro Tempore Thibodeau pointed out that there was quite a bit of discussion about the ordinance. She felt that it was good to see the Tuckahoe subdivision working towards parking education and was very pleased to see that effort. She stated that, for as much effort as there seemed to be, there was no signage or public outreach regarding the problem other than putting it to Council. She understood that the subdivision was working towards getting some signage and educational materials out to the public. She did not see any issue with adding the Tuckahoe subdivision to the list.

Mayor Kingston stated that the issue has been going on for a very long period of time, first coming to Council in August. He didn't think the Council questioned the Tuckahoe board's authority and thought Council reacted to a homeowners' association that did not have full support of what was being requested of Council. He thought Council was put in a position to act as a referee for a debate. He pointed out that there was still opposition to the enforcement of parking within the homeowners' association. He added that the Town never had an issue in the past as other homeowner associations as the ones that came before Council in the past were unanimous in moving through without issue. He stated that this one has lingered and he didn't see anywhere within the homeowners' association that the homeowners have tried to reconcile themselves with respect to the disagreements they had internally for parking, irrespective of coming to the Town for enforcement. He stated that the homeowners' association was going to address the issue, but thought that there were bigger issues in that the community was still divided on the issue. He thought it was up to the board and the homeowners' association to come together with a reconciliation as they move forward.

Councilor Caviness stated that one of her concerns was that she was never convinced that there was an understanding of how the issue was executed. She thought maybe some of the comments were better held for a later discussion. She added that, in every other community in Duck, the enforcement was complaint-driven. She didn't think it was good use of the police officers to drive randomly up and down the streets looking for parking problems. She noted that if there was a complaint, a law enforcement officer would be dispatched to contend with it. She stated that it sounded like people thought by having this subdivision added to the ordinance, that somehow, they were going to have constant patrolling, which was not the case.

Motion carried 5-0.

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 17-16, an Ordinance to Add Standards for Exempt Plats and Expedited Review for Certain Types of Subdivisions

Director Heard stated that during the recent legislative session, the NC State Legislature adopted Session Law 2017-10, which added a couple of changes to the subdivision review process. He stated that at its public meeting on December 13, 2017, the Planning Board voted unanimously to recommend approval of the proposed text amendment which would add standards for exempt subdivisions to bring the Town's Subdivision Ordinance into compliance with recently adopted State law. He added that staff was also recommending approval.

Councilor Britt moved to authorize a public hearing on Ordinance 17-16 at Council's February 7, 2018 meeting.

Motion carried 5-0.

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 17-17, an Ordinance to Add a Review Process for Building Inspection Decisions

Director Heard stated that during the recent legislative session, the NC State Legislature adopted Session Law 2017-130, which added a mandate for local governments to establish an administrative procedure for appealing building inspection decisions. He stated that at its public meeting on December 13, 2017, the Planning Board voted unanimously to recommend approval of the proposed text amendment adding an informal review process from a building inspector's decision in Chapter 151: *Buildings and Structures*, in compliance with recently adopted State law. He added that staff was also recommending approval.

Councilor Burdick moved to authorize a public hearing on Ordinance 17-17 at Council's February 7, 2018 meeting.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Ordinance 18-02, an Ordinance of the Town Council of the Town of Duck, North Carolina, Amending Chapter 72: Parking Schedules of the Town of Duck Code of Ordinances by Adding the Definitions of Street and Road

Town Manager Layton noted that this ordinance had nothing to do with adding the Tuckahoe subdivision to Ordinance 18-01, but was an issue that came about as staff reviewed the ordinance after receiving the request from Tuckahoe. He reiterated that it was not in relation to that request.

Town Manager Layton stated that while reviewing Chapter 72: Parking Schedules, of the Town's Code of Ordinances, it was discovered that a definition of street and road was not included in the section of the ordinance dealing with private streets and roads. He stated that due to the differences of rights-of-ways and improved surfaces on private streets and roads, it was recommended, that for the purpose of enforcement by the Duck Police Department, the definition should be narrowly defined as the improved surface of the right-of-way. He noted that the definition did not make parking off the improved surface on private streets allowable, since the area was governed by covenants and other restrictions of each individual subdivision, but limited how the Police Department could enforce parking in the ordinance. He added that the definition would be in line with how the Police Department currently enforces parking in subdivisions subject to Chapter 72.

Town Attorney Hobbs stated that Council had in front of them a slight change to new Subsection B of Ordinance 18-02. He explained that he took out the words "and road" because "road" was not used in Section A3. He noted that he added "private" before the word "street" because the nature of the ordinance was that they were privately maintained roads, not publicly maintained roads and so the purpose for the change was for clarity. He stated that the intent and effect of the provision remained the same.

Mayor Pro Tempore Thibodeau stated that she was confused between roads and streets as it looked like streets were private and roads were public. She pointed out that Buffell Head Road was not a public street. She asked what the reason was for some being called roads and others referenced as streets. Town Attorney Hobbs thought that the way the ordinance was organized, the subdivisions were privately maintained roads and were identified streets. Mayor Pro Tempore Thibodeau agreed. Town Attorney Hobbs stated that under Subsection A4, the State maintained roads were identified as roads. He thought in the future, Council could further refine some of the terminology, but thought the new definition was added specifically to refer to Section A3, which was the list of subdivision private streets.

Mayor Pro Tempore Thibodeau stated that she thought the idea was that Town Attorney Hobbs was trying to equate roads and streets. She asked why they should be distinguished. She pointed out that the second paragraph of the ordinance read: "...a town may regulate the stopping, standing, or parking of vehicles on the public streets..." She noted that the ordinance already spoke of public streets and she assumed by adding roads and streets, that Town Attorney Hobbs was saying roads were streets and streets were roads. She noted that Town Attorney Hobbs was picking it apart with his change, which confused her. Town Attorney Hobbs thought the goal was to not address the other provisions in the section except for one for subdivision streets. He stated that the definition only applied to Subsection A3.

Mayor Pro Tempore Thibodeau asked if the Town would be applying the ordinance equally for roads and streets. Town Manger Layton stated that if Mayor Pro Tempore Thibodeau's question was as it related to public and private streets, the answer was no. He added that the definition that was added was specifically for private streets. Mayor Pro Tempore Thibodeau asked what definition was added to the ordinance. Town

Manager Layton stated that it was the definition that was being proposed to be added. Mayor Pro Tempore Thibodeau clarified that the proposed definition to be added would only be regarding private streets. Town Manager Layton stated she was correct. Mayor Pro Tempore Thibodeau clarified that it was the reason why it was only in reference to Subsection A3. Town Manager Layton stated she was correct. He added that the whole issue with streets and roads should be clarified and it morphed into streets and roads. He thought they could be used interchangeably, but thought Town Attorney Hobbs' change related to Subsection A3 specifically for streets and the definition to be added only related to Subsection A3, so there was no point in having it refer to roads as well.

Mayor Pro Tempore Thibodeau thought if streets and roads were to be blended in the ordinance and they were both the same thing, this ordinance would be a good place to state such. Councilor Burdick disagreed, adding that they were not the same thing, which was the point of the ordinance. Mayor Pro Tempore Thibodeau asked Councilor Burdick why he didn't think so. Councilor Burdick stated that state roads were completely different than streets. He explained that the Town does not want parking along the shoulder of Duck Road. Mayor Pro Tempore Thibodeau pointed out that Duck Road was completely excluded from the ordinance. Councilor Burdick disagreed. Mayor Pro Tempore Thibodeau stated that she had asked the question and was told it was excluded. Councilor Burdick stated that Duck Road was on the list. Councilor Caviness stated it was a public road. Councilor Burdick stated that it was on the public road list. He added that Buffell Head Road and all of Carolina Dunes were on the public road list.

Mayor Pro Tempore Thibodeau asked if the Town would be handling the public roads differently than the private streets. Councilor Burdick stated that they would. Mayor Pro Tempore Thibodeau asked how they would be handled differently. Councilor Burdick stated that they would be handled differently in terms of where someone could or could not park. Mayor Pro Tempore Thibodeau thought it was a very bad idea. Councilor Burdick disagreed. Mayor Pro Tempore Thibodeau reiterated that it was a very bad idea. Councilor Burdick stated that people were not allowed to park on the shoulder of a public road with the way the ordinance defines it as long as it was within the right-of-way of that public road. Mayor Pro Tempore Thibodeau clarified that, in application, if the Town moves forward with the ordinance, anyone that parks on the shoulder off of the road – off of the asphalt of a public road – would be in violation of the ordinance. Councilor Burdick stated she was correct and that it has been that way. Mayor Pro Tempore Thibodeau stated that it was not happening in Duck.

Town Manager Layton stated that nothing in the proposed ordinance allowed parking on the shoulders. He added that it states that, for the purposes of enforcement, on the private streets, if a vehicle or any part of a vehicle was on the improved surface, the police would have the power to enforce parking. He added that if the vehicle was completely off the street on the private streets, the ordinance was not saying that it was legal, it was saying that the police would not enforce it. He noted that if the Town received a complaint, the police would go investigate it; however, when it came to towing and ticketing, the Town was hesitant to go that route. He stated that the reason was because there could be a wide variety from private street to private street as to what constitutes the right-of-way, that the

Town did not want to get into a situation where someone receives a ticket that was parked on private property. He emphasized that this would not apply to public roads as there were no homeowners' association that could enforce parking on the right-of-way, so the Town becomes the default on public roads. He stated that public roads have to be up to State standards, which means that there was uniformity.

Town Manager Layton stated that, in going through the existing ordinance, Section A1 was specifically related to the multi-use path, Section A2 dealt specifically with the issue on public roads and Section A3 dealt specifically with issues on private streets. He added that the new definition in Section B relates to the section of only private streets. He stated that the roads were re-affirming the current public roads in Duck.

Councilor Caviness asked if it would bring clarification if "road" was listed as "public road" and "street" would be listed as "private street". She felt it was semantics. She thought when one would see "road", it would mean a public road and "street" would mean private street. She wondered if anyone thought a street was different from a road. Mayor Pro Tempore Thibodeau agreed. Councilor Caviness thought if clarification was needed, they should be listed as public roads and private streets. Mayor Pro Tempore Thibodeau thought it was a good idea.

Town Manager Layton thought it would help with clarity in Subsection A3 to add the language: "...on private streets or parts of private streets..." and then for Subsection A4 have the language read: "...following public roads..." Mayor Pro Tempore Thibodeau clarified that it would be followed up with the definition of streets. Town Manager Layton stated she was correct.

Mayor Pro Tempore Thibodeau thanked Town Manager Layton for his clarification and added that she was fine with changes to the draft ordinance. Councilor Burdick thought Mayor Pro Tempore Thibodeau's suggestion on the other parts of the ordinance was good as it was a good clarification. Town Attorney Hobbs stated that he did not have any issue with the suggested changes.

Mayor Kingston thought the title of the ordinance should be changed to read: "...Definitions of Private Street and Public Road...". Mayor Pro Tempore Thibodeau thought the title was fine as it was drafted. Councilor Caviness felt if it was too confusing, add "private" in front of every street and "public" in front of every road in the ordinance. Councilor Burdick thought it should be adopted as public roads and private streets.

Councilor Caviness moved to adopt Ordinance 18-02 with the following revisions: that clarity be brought to the definitions of streets and roads; on Section A2 change "or any street maintained" to "or any public road maintained"; on Section A3 change "on streets or parts of streets" to "on private streets or parts of private streets"; on Section A4 change "on the following roads" to "on the following public roads"; on the proposed additional Subsection B change "definition of street" to "definition of private street"; as well as the other changes to that section that was discussed; change the term "street" to "private

street”; and change “public streets” to “public roads” in the second “whereas” at the beginning of the ordinance.

Motion carried 5-0.

Discussion/Consideration of Authorizing the Town Manager to Enter into a Contract with Aptim Coastal Planning & Engineering of North Carolina, Inc. related to Beach Nourishment Post-Construction Monitoring Services

Town Manager Layton stated that, as part of the beach nourishment project, a one-year post construction beach profile monitoring survey and report was part of the post nourishment maintenance and was required to meet FEMA guidelines in the event of a request for reimbursement for a named disaster. He added that the monitoring would include those areas of the Town outside of the beach nourishment project and if approved, a budget amendment would be brought back at Council’s February 7, 2018 meeting, which would transfer \$30,657 from the Beach Nourishment Capital Reserve Fund along with \$19,838 from Contingency to fund the project.

Mayor Kingston asked if this was just for the beach in Duck and not north or south of the Town line. Town Manager Layton stated that it was just for Duck. Mayor Kingston asked if there were savings because the Towns of Kitty Hawk and Kill Devil Hills were also doing this. Town Manager Layton stated that there were savings associated with it and it also updated the Town’s beach management plan, which was a requirement of the Town to do on a yearly basis.

Councilor Burdick clarified that FEMA would replace that portion of the sand that would be lost if Duck had a named storm. Town Manager Layton stated he was correct. Councilor Burdick clarified that FEMA would not if a nor’easter hit. Town Manager Layton stated he was correct. He added that it was subject to appropriation, which meant that just because it was a named storm did not mean that the Town would automatically receive the funding. He stated that this was considered infrastructure so it was eligible for the same funds.

Mayor Pro Tempore Thibodeau asked if it had to be a FEMA disaster. Town Manager Layton stated that it did. He explained that the State declares an emergency and the Federal government follows up on it and then FEMA releases the funds. He noted that there were instances where FEMA may do some mitigation and there may be some funds available if there was a particular storm that hits but didn’t rise to the level of a named, Federal emergency. He stated that there may also be some State funds, which was extremely rare. He stated that the Town could not base its loss of sand on a profile survey that was two to three years old, but could compare it on an annual basis.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to enter into a contract with Aptim Coastal Planning & Engineering of North Carolina, Inc., as presented.

Motion carried 5-0.

Discussion/Consideration of Authorizing the Town Manager to Enter into a Contract with Coinjock Lawn Care, LLC related to Landscaping for Phase I of the Duck Pedestrian Improvements

Town Manager Layton stated that as part of the current phase of the Duck Pedestrian Improvements, bids were solicited for landscaping related to the project. He stated that two bids were received with Coinjock Lawn Care submitting a bid of \$35,067.50 and The Grounds Guys submitting a bid of \$55,920. He recommended that Council authorize him to enter into a contract with Coinjock Lawn Care.

Mayor Pro Tempore Thibodeau asked if there had been any issues with maintenance with Coinjock Lawn Care. Town Manager Layton stated that he did not have any issues and was very happy with their work.

Mayor Kingston asked if Barnhill Contracting would be putting in the soil before the landscaping was completed. Town Manager Layton stated that they would. He added that Barnhill was required to excavate the sand, mix it with a specific combination of soils and then put it back so the plants would not die once they are planted.

Councilor Burdick stated that he found it interesting the difference in pricing for the plants between Coinjock Lawn Care and The Grounds Guys. He thought it was strange that there was such a difference in the price of the plants. Director Heard explained that there was one type of plant that was required to be planted. Councilor Burdick noted that it was a \$15,000 difference.

Councilor Britt stated that it was a little misleading that Coinjock Lawn Care had \$0.00 for maintenance but clarified that it would be provided with the existing contract. He asked if it would show up in the maintenance of the existing contract later on. Councilor Burdick noted that the \$15,000 was just for plants. Town Manager Layton stated he expected additional maintenance costs, but not in the current contract. He added that it would likely happen when the contract renews since there would be additional costs related to it. He stated that it was very clear that the cost difference for this contract would not change his recommendation. Councilor Britt thought it was deceptive of Coinjock Lawn Care to put \$0.00 for the maintenance because it would end up showing up elsewhere in the contract. Councilor Burdick assumed the maintenance cost would be equal to what was quoted. He reiterated that the \$15,000 difference was due to the plants. He clarified that it was for one plant. Director Heard stated that it was.

Mayor Pro Tempore Thibodeau asked if Director Heard took the recommendation for planting Lantana or if other plants would be used. Director Heard stated that he didn't feel it was fair to consider as part of the bid process and if the Town made the decision to use another plant, it would do so independently from the bid process. He noted that it was not a factor in the decision.

Mayor Kingston asked how long the maintenance contract was with Coinjock Lawn Care. Town Manager Layton stated that it was five-year contract, adding that he thought there were two two-year renewals. Mayor Kingston clarified that it was pretty much a fixed price. Town Manager Layton stated he was correct.

Councilor Caviness noted that there were a couple of unpleasant comments raised about Coinjock Lawn Care during public comments. She asked Town Manager Layton if he would review the comments with them. Town Manager Layton didn't think it was appropriate. Councilor Burdick asked Town Manager Layton if he had covered some of the concerns that were raised. Town Manager Layton stated that he discussed issues where he felt it was appropriate.

Mayor Kingston moved to authorize the Town Manager to enter into a contract with Coinjock Lawn Care for Phase I of the Duck Pedestrian Improvements as presented.

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.

Town Manager Layton noted that he made an offer for the Director of Public Information, Marketing and Special Events position and it was accepted by Christian Legner. He stated that she currently works at the aquarium and will be starting employment with the Town on January 17, 2018.

Public Relations Administrative Assistant Betsy Trimble was recognized to speak. Public Relations Administrative Assistant Trimble gave a brief overview of the past month's activities to Council and the audience.

Update on Beach Nourishment Project

Town Manager Layton stated that an update on the beach profile surveys will be presented at the Council Retreat. He stated that the last bills have come in and he has to finish up with the Corps property before closing out the project.

Council Retreat February 21st and 22nd

Town Manager Layton reminded Council and the audience that the annual Council Retreat will be held on February 21 and 22, 2018. He stated that items that will be on the Retreat will be an update by Aptim on the profile surveys; an update on the erosion shoreline project; an update on the pedestrian plan from VHB; an update on the coyote issue; and maximum size occupancy of buildings. He stated that if Council had anything specific that they wanted staff to address, to please email him and he will make sure it gets on the agenda.

Councilor Burdick thought Council had discussed other items that were to be on the agenda, but he couldn't recall what they were. He asked if there was a list available. Town Manager Layton stated that he had a list of other items, with most related to planning, which would be covered under Director Heard's presentation.

Mayor Pro Tempore Thibodeau clarified that anything that Council was interested in discussing should be emailed to Town Manager Layton. She further asked what the deadline was. Town Manager Layton stated that the sooner, the better. He added that he would be putting together a draft agenda in the next couple of weeks.

Discussion of July Town Council Meeting Date

Town Manager Layton stated that when Council approved the annual meeting calendar, it was noted that Independence Day fell on the date of the regularly scheduled Council meeting. Staff had suggested the meeting be moved to Thursday, July 5, 2018, but there would be a concert happening on the green the same evening and staff didn't want to have both at the same time. He stated that the question was if the date of the Council meeting should be changed or have the concert date changed.

Mayor Pro Tempore Thibodeau stated that she liked the idea of moving it to July 18, 2018, which was the date of the mid-month meeting. Councilor Burdick and Councilor Caviness agreed, adding that it would be their preference. Mayor Kingston noted that there would be six weeks between the June and July meeting if it was pushed to July 18, 2018. He suggested having it a week earlier.

Town Manager Layton stated that as long as staff knew ahead of time if there was something that needed attention, it could be addressed. Councilor Britt stated that his concern was a delay between the Council meeting and the Planning Board meeting. Mayor Pro Tempore Thibodeau stated that it could be tentatively scheduled for July 18, 2018 and be adjusted if needed.

Councilor Britt asked if the July 18, 2018 meeting would be held in the evening. Mayor Kingston thought it should be. Councilor Burdick agreed.

Mayor Pro Tempore Thibodeau moved to reschedule the Town Council July monthly meeting to Wednesday, July 18, 2018 at 7:00 p.m.

Motion carried 5-0.

Financial Statement for December 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 stated that he has his mayor's meeting on January 16, 2018 in Kitty Hawk. He added that the new mayors for Nags Head and Manteo joined the other mayors at their December meeting and he was looking forward to spending time with them in the future. He stated that he has an NCLM Finance Committee meeting via video conference the week of January 8, 2018. He stated that he has an NCLM board meeting on January 17-18, 2018 in Raleigh. He stated that the recent OBX Leadership and DCBA presentations went well. He stated that he was looking forward to the upcoming holiday party at the end of the month.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau stated that she recently participated in the beach planting in the nourishment area and recommended others doing it.

Councilor Britt commended the Police Department on the process to appoint a sergeant. He stated that he participated in the beach planting recently and recommended others do it. He stated that former Planning Board member John Fricker and his family recently suffered a tragedy over the Christmas holiday. He asked everyone to keep them in their prayers.

Councilor Caviness had nothing to report.

Councilor Burdick echoed Councilor Britt's comments about John Fricker and his family. He thought there would be a memorial service coming up at the church they attended. He stated that he was excited for the new year and was looking forward to the holiday party at the end of the month.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Joe Blakaitis of 115 Sandpiper Cove was recognized to speak. Mr. Blakaitis stated that with regard to John Fricker and his family, there may be a service at the church in the future, but he wasn't sure of the date. He thanked Councilor Burdick on behalf of the Planning Board for his service to the Planning Board as the Council Liaison.

Bob Armentrout thanked Council for passing Ordinance 18-01.

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 7, 2018 at 7:00 p.m.

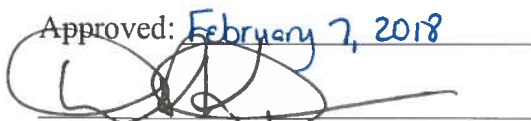
ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:44 p.m.


Lori A. Ackerman, Town Clerk

Approved: February 7, 2018

Don Kingston, Mayor

