

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MID-MONTH MEETING
March 20, 2019**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 1:00 p.m. on Wednesday, March 20, 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 Chief John Cueto; Fire Chief Donna Black; Director of Community Development Joseph Heard; Town Attorney Robert Hobbs; Director of Marketing and Special Events Christian Legner; Public Relations Administrative Assistant Betsy Trimble; and Town Clerk Lori Ackerman.

OTHERS ABSENT: None.

Mayor Kingston called the meeting to order at 1:06 p.m.

**DISCUSSION OF ITEMS RELATED TO DOMINION ENERGY AND THE
CURRENT PHASE OF THE PEDESTRIAN IMPROVEMENTS**

Overview of Dominion Energy Line Conflict

Mayor Kingston thanked Council, Town Attorney Hobbs and Town staff for adjusting their schedules to make this meeting on short notice. He stated that he and Town Manager Layton spent quite a bit of time discussing the subject the week before and time was of the essence now. He added that Council has some decisions that need to be made.

Town Manager Chris Layton was recognized to speak. Town Manager Layton stated that he would like to address the issue at hand so that everyone was on the same page with the individual details. He stated that the Town has a limited waiver for conflicts of interest as Hornthal, Riley, Ellis & Maland has represented Dominion Energy.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that, unrelated to this matter or any Town business, his firm represents Dominion Energy and helps them with legal matters.

Town Manager Layton stated that the Town has granted a waiver to the extent that it applies, and Dominion has granted a limited waiver to deal with some of these issues except for anything that may go into litigation. He noted that he did not anticipate that at this point but wanted to notify Council as a starting point with Town Attorney Hobbs.

Councilor Burdick asked how it was determined when there was a conflict. Town Attorney Hobbs explained that it meant if either the Town or Dominion were to file a lawsuit, then it would move to a litigation phase, his firm would have to withdraw, and the Town would have to hire a new counsel.

Town Manager Layton stated that the area in question was from south of the northern entrance of the Town park up to the Aqua Restaurant. He noted that Council should think of that section and divide it by two because the separation point was roughly at Super Wings south and the Town park to Ocean Atlantic Rentals. He wanted to make it clear that this issue was something that caught Town staff by surprise because staff has had numerous meetings with Dominion Energy regarding the project. He stated that the project went through an entire phase on the east side with a different issue that was a little similar and there were no issues of this type that came up.

Town Manager Layton stated that staff held pre-construction meetings and walk-throughs before this phase. He added that it caught staff by surprise when on January 2, 2019, staff had a meeting with Dominion Energy because the issue was that a line was discovered near the entrance to the Town Hall and when they were getting ready to put the bulkhead in, it was discovered that there was a large, 34,000-volt feeder power line under the ground in that area. He added that there were two concerns that were brought up at that time – (1) there was supposed to be a minimum of 36 inches of ground cover over that line and (2) there were concerns about its location with where the bulkhead was located.

Town Manager Layton pointed out that this was the first time staff had heard about the concerns as there is always a concern about running into conflicts, but this was the first time it was brought up as a major concern and not one that would entail moving or lowering the line. He stated that staff left that meeting with Dominion Energy charged with coming back to staff with a plan of action. He added that nine weeks passed, and he made a telephone call to the Town's external affairs representative to explain that there had not been any movement on it and the Town needed to figure it out because the Town's contractors were at the point where they needed to prepare to pour concrete in that area for the sidewalk.

Town Manager Layton stated that the telephone call was made on a Tuesday or Wednesday and then the following Tuesday, a meeting was held. He explained that at that meeting, which included the external affairs representative and an operations engineer, Town staff were told that no work could be completed in this entire area until the line was relocated in the park area. He noted that they made a decision on what they were going to do with the line in the area near Aqua Restaurant with the statement that the lines could not be located under a sidewalk and that it was likely that Dominion would have to relocate not only this line but the other line and that their preliminary estimates just for moving the one line at the park were over \$200,000.

Town Manager Layton stated that staff felt that they were greeted with a lack of understanding of the Town's primary issue which was that the project needs to be

completed before the end of May and that the way it looked now could not continue after that time due to it not being safe for vehicles and pedestrians. He added that it wasn't a condition that could continue to exist.

Town Manager Layton stated that he didn't hear anything back immediately from Dominion Energy and in the meantime, he made efforts to determine who would be able to escalate the issue to try to figure out how to move things forward. He stated that one of the main reasons for it was because staff was told that the earliest Dominion could move the line near the Town park would be at the end of May, so no work would commence until the end of May. He added that it was without having a determination or statement on what would happen with the other sections. He stated that the earliest would be the end of May.

Town Manager Layton stated that he made some telephone calls and contacted Attorney Ben Gallop, where the conflict of interest issue was discovered. He stated that he also had a conversation with the external affairs representative and asked who he could contact to escalate the issue because Dominion was being insensitive to the Town's concerns. He stated that the external affairs representative assured him that she would be in touch and subsequently, a meeting was set up on March 15, 2019 with the operations manager. He stated that they came back with a proposal that contained a few items. He explained that the first one was if the Town agreed to indemnify Dominion specifically for any repairs that may be required in the area from Wings south to the Aqua Restaurant, any repairs to the sidewalk in that area once it was in place, that they would allow the Town to install the sidewalk. He noted that the other piece to that was that the Town would have to do some "potholing". He explained that potholing was, every 20 feet the Town would have to dig a hole in the area to determine where the line was located and if it needed to be lowered to meet the 36 inches, then the Town would have contact Dominion Energy so that they could lower it. He noted that the line would not have to be relocated and the sidewalk could still be installed as long as the Town had the indemnity agreement.

Councilor Caviness clarified that Town Manager Layton was discussing the southern half. Town Manager Layton stated she was correct.

Town Manager Layton stated that the second part was that in the area of the Town park, Dominion still wanted to relocate the line as Dominion felt that the line was compromised because it was uncovered, and they needed to remove it from that area, so they could properly repair it in the event of an issue. He added that because the line was compromised, the likelihood of that was high. He stated that he told the representatives at Dominion that it could not have been compromised because it hadn't hurt anyone, but it didn't seem to carry much weight.

Councilor Caviness asked how the line had been compromised. She asked if it meant that the line had been exposed or damaged. Town Manager Layton stated that Dominion used the term compromise and he took that to mean it was damaged; however, the line has not been damaged, but has been exposed for a period of time. He added that Dominion was

correct in that the line was exposed and could have been nicked or something could have happened to it. He noted that Dominion was adamant that the line has been compromised, that it needs to be replaced, and that it needs to be replaced because of the project.

Mayor Pro Tempore Thibodeau asked where Dominion Energy wanted to put the line. Councilor Burdick asked how much of the line had been exposed. Town Manager Layton stated that whole area along where the bulkhead was located has been exposed. He explained that the whole length south of the entrance towards the Loblolly Pines entrance was exposed. Director Heard added that it was also exposed at the Ocean Atlantic Rentals entrance.

Councilor Britt asked if at the pre-meetings, Dominion knew the line was there or not or how deep it was. Town Manager Layton stated that everyone knew the line was there, it was just not brought up as an issue as part of the project. Mayor Pro Tempore Thibodeau thought it didn't make sense. Town Manager Layton pointed out that the local representative from Dominion Energy that the Town had been dealing with had retired in January and that was when the issue came up. He added that the representative's replacement was also involved with the project and clearly something happened that kicked the issue up to a higher level and something changed. Director Heard stated that the Town had faced similar issues elsewhere along the project and this was not brought up until January.

Councilor Britt asked if a line of this size had been exposed in any of the other phases of the project. Director Heard stated that it wasn't exposed. Mayor Pro Tempore Thibodeau asked if the lines ran on both sides of Duck Road. Town Manager Layton stated that it was a bulk feeder line. Director Heard noted that the line only ran on the west side of Duck Road. Town Manager Layton pointed out that there were other lines on the east side of Duck Road. Councilor Burdick asked how far down the line was. Town Manager Layton stated that it was presently not underground but was under some dirt. Councilor Burdick asked how far it would be underground. Town Manager Layton stated that it was supposed to be 36 inches underground. Councilor Burdick asked where it was located. Town Manager Layton stated that he did not know where it was and that no one knew where it was. He asked which line Councilor Burdick was referencing. Councilor Burdick stated he was asking about the compromised line. Town Manager Layton stated that it was currently on the other side of the bulkhead under some dirt. Councilor Burdick asked if it was on the street side. Town Manager Layton stated that it was on the Town park side of the bulkhead. Mayor Pro Tempore Thibodeau clarified that the line had been moved. Town Manager Layton stated that she was correct. Councilor Burdick asked who had moved the line. Town Manager Layton stated that RPC Contracting had moved it.

Town Manager Layton stated that at the meeting, Dominion Energy addressed the southern portion with the indemnity agreement. He noted that they did not back off on the need to relocate the line on the Town park portion. He added that their estimate for that, which the Town would have to pay, would be \$250,232.91, which was the

maximum cost. He stated that they also wanted an easement from the Town to relocate the line; however, the line Town staff saw would bring the line from south of the playground entrance, down the Town property, underneath the entrance to the parking lot, onto the Town green, and then follow the tree line of the green and pop out and continue on to Ocean Atlantic Rentals. He noted that this would be completed through underground boring.

Town Manager Layton stated that Dominion told Town staff that if the Town were to sign the letter of authorization, they would agree to allow the Town to continue the sidewalk, so it could be finished, and they would schedule to have the boring done by mid-May in that area, but the biggest item would be that that sidewalk would be finished in both sections, putting the project back on track.

Town Manager Layton stated that staff asked Dominion to look at conduit in that area instead of them boring and the drawback would be if they were to agree to it, which he noted that they would not, it would take time to put the conduit in and it wasn't guaranteed that it would be put in soon enough in order to have the sidewalk completed. He stated that the positive to that would be that the conduit would be a much cheaper option. He noted the following language regarding the conduit option from an email from Dominion Energy read as follows: "...to address the conduit option that we discussed in our meeting, Dominion's bulk feeder cable should not be located underneath the concrete sidewalk and relocated away from that congested area as discussed..."

Councilor Burdick clarified that Town Manager Layton was talking about putting the existing line in conduit. Town Manager Layton stated that Dominion would have to put in a new line with conduit. Councilor Burdick clarified that Dominion wanted the Town to pay to replace the line that was uncovered. Town Manager Layton stated that it was one way to look at it. Mayor Pro Tempore Thibodeau noted that they wanted the Town to move it. Councilor Britt added that Dominion also wanted the Town to make it deep enough. Mayor Pro Tempore Thibodeau added that they did not want the line under the sidewalk. Councilor Burdick pointed out that it was an incidental. He added that if the Town gave Dominion an indemnity for the other part under the sidewalk, there was no difference. Town Manager Layton stated that Dominion was adamant that they did not want the line under the sidewalk. He noted that they were willing to concede that in the southern area, but not in the Town park area.

Councilor Caviness asked why. Town Manager Layton stated that he could not answer the question. Mayor Kingston stated that Dominion was saying the line was compromised. Councilor Britt thought that because the line was exposed to the air, Dominion felt the line was compromised. Town Manager Layton stated that they do not want it under the sidewalk because they said it would be hard to fix. He stated that Dominion wants to be able to get to it as quickly as possible.

Town Manager Layton stated that, ultimately, this was Council's decision. He stated that if the Town agreed to this, in all probability the sidewalk would be installed and ready to go by the end of May. He added that any delays in this, would be a delay to the schedule

which puts the project in jeopardy. He stated that there were a lot of points he would like to make to Dominion Energy, but his primary goal was to get the project done before the summer season starts. He thought the Town has taken it as far as possible without putting major delays on the project.

Mayor Kingston noted that if the project was delayed, there would be a cost involved to get RPC Contracting back to do the work so people will be able to walk on the path. Town Manager Layton stated that the Town would already be paying some of that cost because RPC Contracting has mothballed any activity with regard to the project and moved on to another project. He added that the Town would have to get them back to remobilize things. He noted that they were kept in the loop with regard to the issue, adding that there were some culpability issues that the Town knows of, but he looked at it in the respect that anything of that nature, the Town will have to deal with after the project is completed or it will increase the intrangence that the Town was already dealing with and it won't get completed.

Mayor Kingston pointed out that there are businesses that are impacted by this project. He stated that they will need some sort of temporary pathway so people accessing those businesses will not be easy. Town Manager Layton agreed. He stated that if the decision was to explore other options rather than moving forward with this plan as Dominion has provided, then the other part was that the Town will have to figure out how to make things safe and have the ability for people to walk on the west side of Duck Road. He added that it would be an additional cost.

Mayor Pro Tempore Thibodeau asked Town Manager Layton if he got into the specifics about whether the line has to be 36 inches below ground level rather than being tucked into the bulkhead. Town Manager Layton stated that there has to be a separation from the bulkhead and it was 36 inches below grade. He added that Dominion did not want it in the hill because of the change, which was why they want it up higher on the Town green. Mayor Pro Tempore Thibodeau clarified that it would be on the Town green but up a little more and 36 inches underground. She asked how it would affect the roots of the trees in that area. Town Manager Layton stated that there will be boring, and Dominion has a general idea where to go. Councilor Burdick noted that they were pretty good at where they will be going with the boring machine.

Mayor Pro Tempore Thibodeau clarified that the Town park could be quarantined off in that section for a while. Town Manager Layton stated that Dominion still maintains that they will finish the work before the end of May.

Councilor Burdick stated that the Town was caught with the issue because the line was uncovered and should not have been. He added that no one should have gone near the line once the Town knew where it was. He stated that how the Town got to that point would not help matters at this point. He added that the only saving the Town has was to move forward with having the work done and see if there was some way to negotiate with Dominion Energy and RPC Contracting to try to diminish the total cost. He stated that it seemed to him that RPC Contracting bared some responsibility in the whole issue.

Councilor Caviness asked when the line was uncovered and/or exposed and RPC Contracting moved it, if they legally bared some responsibility for the disruption to the infrastructure that they should not have touched. Town Manager Layton stated that he could not comment on the legality but thought the practical side of it was that it was something that needed to be explored before the Town cuts the last check to RPC Contracting. He added that it was not something that he wished to advertise as the Town needed RPC Contracting to come back to finish the project.

Mayor Pro Tempore Thibodeau noted that there was a lot of pre-planning completed where things were identified and how Town staff noted that there were more utilities on the west side of Duck Road. She stated that Council and staff were discussing the project planning with VHB and everyone involved, so it seemed logical that Dominion knew about the feeder line.

Councilor Caviness stated that they had to have known about this level of infrastructure, yet it never came up in any meetings. Town Manager Layton thought the attitude that was conveyed prior to January 2, 2019 was that Dominion Energy knew the line was there and if there was a conflict, it would be dealt with at that point. He thought the understanding from everyone was that they weren't talking about a major relocation of a line but what was proposed for the southern end, where if RPC ran into a conflict, Dominion would be notified to move it to the side and down. He pointed out that it clearly did not happen in this case and he thought Dominion was justified to be irritated by the way the line was handled. He stated that the response to it by Dominion was what left staff disappointed. He noted that staff proposed through the Town's engineers some solutions that staff felt would be adequate; however, staff did not get anywhere with them.

Town Manager Layton stated that, with regard to the issue about having major feeders under sidewalks, staff did not know legally what authority Dominion Energy has to do that. He noted that they do have authority to protect their infrastructure, but he had conversations with representatives from NC Department of Transportation and they were not aware of anything with regard to the sidewalks. He stated that he understood the indemnity piece of it in that if the Town puts a sidewalk over the feeder line and Dominion has to get in there, it made sense to him to have the indemnity. He stated that staff also knows that having lines, even major lines under sidewalks, are common in many cities. Councilor Caviness agreed. Town Manager Layton added that arguing those details at this point did not meet the Town's goal of getting the project completed.

Councilor Britt noted that it was frustrating that Dominion was allowing part of the sidewalk and not another part of it. He thought Council knew what had to be done.

Councilor Burdick didn't think the sidewalk was the issue. He thought the issue was that Dominion had photographs of someone walking on the line and they are saying that the line needs to be replaced. Councilor Britt noted that the line has been exposed to air for quite a while now and he thought that was why they were considering it as well. Town

Manager Layton stated that the only thing that was giving him some hope was when the Town paid to move the transformers, the estimated cost was about \$140,000 - \$160,000, but it came in much lower. He hoped that this could be turned around and have some cost savings.

Mayor Kingston thought as he and Town Manager Layton had discussed, when the issue is all said and done, it will be time to send a letter of dissatisfaction to Dominion Energy noting the lack of partnership and communication. He thought the Town didn't have any choice at this time. Mayor Pro Tempore Thibodeau thought that the Town had to play nice for now. Councilor Burdick stated that the Town needed to get on with it.

Councilor Caviness asked when RPC Contracting resumes their work, the southern half will be completed first and then the park area next. Town Manager Layton stated that staff had to get RPC Contracting back and focused, which could be a source of frustration. He didn't think the project will not be completed in time, but there was some posturing that staff will have to break through. Councilor Caviness clarified that it was with RPC Contracting. Town Manager Layton stated she was correct. Councilor Burdick pointed out that the Town was stuck no matter what. Town Manager Layton agreed. He added that once the issue was resolved, there was still a contract in place and there was no reason for them not to get back on track with the project.

Councilor Britt clarified that it wouldn't change RPC Contracting's contract at all. Town Manager Layton stated that it wouldn't, but their argument will be that they will want extra time to complete some items and staff could deal with that. He added that their original timeline was to have the project completed, except for the punch list items, by the middle of April. He stated that the Town would still meet the mid-May timeline.

Councilor Burdick moved to authorize the Town Manager to carry out the indemnification agreement, the letter of authorization for the underground power line relocation and to grant an easement to Dominion Energy related to the underground power line relocation.

Town Attorney Hobbs noted that the indemnity reimbursement was fine. He stated that with regard to the letter of authorization, he suggested that Dominion Energy better clarify the project to be more specific. He suggested that the motion be withdrawn so they could be voted on individually.

Councilor Burdick withdrew his motion.

Councilor Burdick moved to authorize the Town Manager to execute an indemnity agreement with Dominion Energy for future repairs to the southern portion of the sidewalk located on the west side of NC 12.

Motion carried 5-0.

Councilor Britt moved to authorize the Town Manager to execute a letter of authorization with Dominion Energy with the stipulation that they identify the project more specifically.

Motion carried 5-0.

Councilor Burdick moved to authorize the Town Manager in conjunction with the Town Attorney to execute an easement agreement with Dominion Energy for the project.

Town Attorney Hobbs clarified that it would be an easement over Town owned property. Town Manager Layton stated he was correct.

Councilor Caviness asked where the easement would be. Town Manager Layton stated that the metes and bounds would need to be determined, but from south of the Town's horse to the end of the Town property south. Town Attorney Hobbs asked if easements from other property owners would be needed. Town Manager Layton stated that an easement would be needed from Sound Feet Shoes and Ocean Atlantic Rentals. Councilor Caviness asked if they owned or rented the building. Town Manager Layton stated that they owned the property.

Mayor Kingston asked if the language for the Town property was adequate. Town Attorney Hobbs thought the motion was delegating to the Town Manager and Town Attorney to develop and approve the location easement and Council was delegating it to him and Town Manager Layton. Town Manager Layton stated that Dominion would prepare the easement and he and Town Attorney Hobbs would review it to make sure it was correct.

Councilor Caviness asked if all of the pieces had to be secured before the work could be done on the sidewalk. Town Manager Layton stated that Dominion did not indicate that it would be an issue. Councilor Caviness asked if it could be clarified. Town Manager Layton stated that he would not let it impact Council's approval. Councilor Caviness wondered if Dominion would not allow RPC Contracting to move forward with the sidewalk because the other property has not granted the easement. Town Manager Layton stated that staff was told that if they could get the documents in place and a letter of authorization, Dominion would allow the sidewalk to be put in. He noted that the delay may be when they would actually relocate the line, which means that there could be a pit that they could access until they get it taken care of.

Councilor Burdick asked where the north end was for where Dominion was tying in. Mayor Pro Tempore Thibodeau stated that there was an electrical box near the Town horse. Town Manager Layton stated that there was an area just south of the horse where Dominion would be tying in. Councilor Burdick pointed out that it was the south end. Councilor Caviness stated that it was the north end. Town Manager Layton stated that staff knew where Dominion was talking about tying in, which would be in the area between Ocean Atlantic Rentals and the Osprey Landing Shops. He added that staff has told them that they should not propose that location because they would not be able to

obtain an easement. He stated that there was another junction box that would be appropriate for Dominion to tie in, which staff relayed to them. He anticipated that once they move forward, they will figure it out as well.

Councilor Burdick stated that it seemed to him that if the Town gave Dominion what they wanted, in return the Town would have the line that is currently there buried. Town Manager Layton stated that the line was already buried except for one area. Councilor Burdick added that Dominion would let it run until they get the new line in. Town Manager Layton agreed.

Councilor Caviness asked if the work on the new line would commence soon or if they would wait until late fall or winter. Town Manager Layton stated that Dominion wanted to move it as quickly as possible and he thought they recognized that if it wasn't done in May, they would have to wait to have it done. He stated that they have given staff every indication that they would make sure to push the project up in order to get it done.

Mayor Pro Tempore Thibodeau clarified that the sidewalk was not dependent on Dominion moving the line. Town Manager Layton stated that she was correct. Councilor Burdick pointed out that the authorization was. Mayor Pro Tempore Thibodeau agreed, adding that the actual, physical work was not.

Motion carried 5-0.

Town Manager Layton explained that at Council's April 3, 2019 meeting, he would bring back a budget amendment that would appropriate the funds for this as well as a couple of other items that won't offset it.

Councilor Burdick asked if Town Manager Layton would need to tell Dominion in writing where things were authorized. Town Manager Layton stated that when the letter of authorization was signed, it will be in the agreement to tell them.

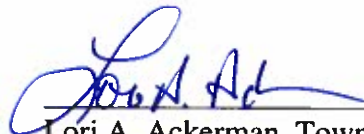
Mayor Kingston noted that the next meeting will be the Regular Meeting on Wednesday, April 3, 2019 at 7:00 p.m.

ADJOURNMENT

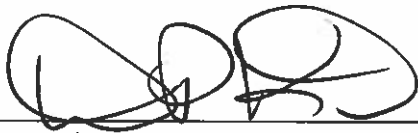
Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 1:57 p.m.


Lori A. Ackerman, Town Clerk

Approved: May 1, 2019



Don Kingston, Mayor

