

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
April 3, 2019**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, April 3, 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 7:02 p.m. He asked Police Officer Charles Edwards 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 hearing be held off.

Ben Vorndran of 104 Sea Hawk Drive West was recognized to speak. Mr. Vorndran stated that he had mentioned at a previous meeting the issue with the lifeguards. He thought whatever the Town could do to get the best lifeguards it could get would be a great thing. He stated that lifeguards are around the tourists that come to the beach and that the Town could put its best foot forward and get the best lifeguards possible. He thought it would be a huge step forward in making Duck a better place for people to visit.

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

CONSENT AGENDA

Minutes from the February 20, 2019, Retreat; Minutes from the March 6, 2019, Regular Meeting; Approval of the North Carolina Department of Natural and Cultural Resources Records Retention and Disposition Schedule; Resolution 19-04, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring the Month of April as Child Abuse Prevention Month; Budget Amendments

Councilor Burdick moved to approve the consent agenda as presented.

Councilor Caviness pointed out that April was Child Abuse Prevention Month and added that five children die every day as a result of child abuse. She stated that during the course of a two-hour Council meeting, there will be 720 reports of child abuse in America. She noted that if the meeting ends at 9:00 p.m., there would be 720 reports, not all founded, but it was a staggering number. She stated that she appreciated that the Town puts forward a resolution for it.

Councilor Burdick asked for clarification on why the budget amendment was \$310,000 and not \$250,000. He stated that Town Manager Layton had pointed out that there was some contingency for the contract.

Town Manager Chris Layton was recognized to speak. Town Manager Layton that, due to the anticipated change orders for the mobilization and demobilization and things of that nature, he wanted to make sure that there was additional funding available to cover any of those costs.

Motion carried 5-0.

SPECIAL PRESENTATION

Employee Service Recognition Program Recipient

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

Mayor Kingston, Police Chief John Cueto and Town Manager Chris Layton went on to present Police Officer Charles Edwards with his 5-year service recognition certificate and \$50 gift certificate.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of Ordinance 19-02, a Zoning Text Amendment Proposal to Amend the Standards of Subsection 156.036(C) of the Duck Town Code by Adding Beach Buggy Rentals as a Conditional Use in the Village Commercial (V-C) Zoning District, Subject to Certain Conditions

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

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the applicant has proposed to amend Subsection 156.036(C) of the Duck Town Code by adding Subsection (18) *Beach Buggy Rentals* as a conditional use in the Village Commercial zoning district, subject to the following conditions:

“(18) Beach buggy rental, provided the following conditions shall be met:

- (a) There shall be a management office on site.
- (b) No more than six beach buggies may be parked on site at one time.
- (c) Only one beach buggy may be parked in front of the building where the office is located.
- (d) No repair work may be undertaken on site.”

Director Heard noted that if the text amendment was approved, the applicant planned to seek approval for a dune buggy rental business in one of the existing units at the Barrier Island Station shopping center under a separate conditional use permit application.

Director Heard stated that in reviewing the applicant’s proposal – specifically the proposed conditions – staff found that it successfully addressed several of the important issues associated with this type of use:

- The location of a management office on-site ensures some level of awareness and responsibility for business activities on the property.
- The overall limitation on the number of vehicles ensures that the business does not sprawl into a large operation dominating the site.
- The limitation of one display vehicle limits the visual impacts of the business, preventing a used car lot appearance.
- The restriction on repair work prevents noisy, unsightly, and environmentally impactful work on site.

Director Heard pointed out that whether or not the proposed use was consistent with the interests of the Town, a policy decision had to be made by Town Council. He added that after reviewing the text amendment, Community Development staff had some comments regarding the proposal for Council’s consideration.

Director Heard stated that if Council decided to recommend approval of the proposed use, staff would recommend that Council consider related definitions and/or provisions to clarify what was permitted. He pointed out as an example that the applicant was requesting approval for “beach buggy rentals” and if Council wished to limit rentals to that specific type of vehicle, adding a definition for the term “beach buggy” would be important to differentiate this type of vehicle from jeeps or other vehicles that may be rented. He added that alternatively, if Council wished to consider broadening the application to include other types of vehicles, then the proposed ordinance could be amended to include all types of vehicles under a broader term such as “vehicle rentals”.

Director Heard noted that the proposed limitation on “repair work” was a positive step, but it was staff’s opinion that the proposed limitations may not go far enough. He added

that this has been an issue that has come up with similar rental operations in Kill Devil Hills. He stated that Council may want to consider additional conditions limiting maintenance work and that tools, parts, and equipment be stored indoors.

Director Heard stated that the proposed limit of one vehicle in the front of the business deals with the issue of visual clutter; however, Council may wish to address where vehicles on the site will be parked such as a designed parking space or allowed elsewhere on the property and if the other vehicles would take up required on-site parking spaces. He pointed out that Council may want to consider if inoperable vehicles should be stored on site or if all vehicles on site must be operational.

Director Heard stated that at its public meeting on February 13, 2019 the Planning Board voted unanimously to recommend denial of the proposed text amendment adding beach buggy rentals as a conditional use in the Village Commercial zoning district. He noted that during deliberations, the Planning Board members raised concerns about the rental and maintenance operations, parking of vehicles, and consistency with the character of Duck Village. He added that the board members cited concerns that the proposed use was not consistent with the character of Duck Village as outlined in the Town's adopted CAMA Land Use Plan and Vision 2027.

Town Attorney Hobbs asked the applicant to make a presentation.

Ben Cahoon of Cahoon and Kasten Architects was recognized to speak. Mr. Cahoon stated that he was representing the applicant who was also present. He stated that they were bringing the text amendment forward against the recommendation of the Planning Board for a few reasons – one being that it was not site specific. He explained that if Council approved the text amendment, it could occur anywhere in the Village Commercial zone. He stated that, while the applicant does own one piece of property, thinking in terms of the parking issues on the piece of property, it was not appropriate for this zoning text amendment. He added that if Council approved the text amendment, another applicant could come in and do this on another site or if the site-specific issues were problematic for this applicant and their site, they could go and lease space somewhere else or do a swap of offices.

Ben Cahoon stated that there was some discussion about the fact that these were not permitted on the beach in the summer in Duck. He explained that what was being proposed was the rental of a licensed, unroofed vehicle, generally with a fiberglass body and a roll-bar to protect the occupants that was open to the air and is rented for entertainment purposes. He added that they are driven through Duck and also driven on the roads in the Town of Nags Head even though they do not have a rental location. He stated that driving on the beach in any kind of vehicle was not permitted in any of the other towns, which was not the purpose of the rentals of the beach buggies. He explained that the rentals were for sunny days, driving around while people are on vacation. He asked that Council have that image in their minds as they consider the use. He added that on a sunny day, people on vacation want to leave their personal vehicle in order to enjoy the open air and sunshine while looking cool in a beach buggy. He stated that the

question was, given the constraints that were being proposed, with the additional considerations by Town staff, if Council was interested in that kind of rental in Town, he agreed at some point with Director Heard in that there was really not much of a difference between this kind of vehicle and a Jeep rental. He noted that a beach buggy was very similar to a Jeep or any other kind of vehicle. He added that they were not very loud, and nothing was different about them versus a Jeep with its top off. He thought the question was, given the restraints of how many vehicles would be permitted on the property, how many would be permitted in front of the property with the restrictions of maintenance being done, and whether it was a use that Council was interested in. He added that if Council was not interested in the use, the applicant understood. He stated that if Council was interested and wished to modify the restrictions that Town staff put forward and if it came down to an issue on the number of vehicles on the site or how restrictive the maintenance aspect would be, the applicant would be amenable to see if it would work or not.

Beaman Hines of 3817 Elijah Baum Road in Kitty Hawk was recognized to speak. Mr. Hines stated that he was trying to get things completed. He didn't think the beach buggy business would be a deterrent or cause issues in Town. He stated that he has lived on the Outer Banks his entire life and worked for Councilor Britt's father after he graduated high school. He reiterated that he wasn't trying to do anything that would cause issues in Town. He added that he wanted to do something that would be fun for families. He noted that if Council wanted to change anything, he would be amenable to it.

Town Attorney Hobbs asked if any Planning Board members wished to address the application. There were none.

Town Attorney Hobbs asked if any members of the public wished to address the application.

James Blose of 105 Waxwing Court was recognized to speak. Mr. Blose encouraged the Council to follow the Planning Board's recommendation and deny the application. He thought the Planning Board had valid concerns and it would be in the best interest of the Town to follow their recommendation.

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 in order to adopt an ordinance it would require two reads; however, if there was a unanimous or super majority vote, which was four members in favor of adopting the ordinance, it could be adopted at the first read.

Councilor Burdick asked for clarification on rentals and what was allowed in Town. Town Attorney Hobbs noted that the public hearing would have to be reopened for questions to be answered.

Town Attorney Hobbs reopened the public hearing.

Councilor Burdick asked if the Town allowed any other type of motorized rentals in Town. Director Heard stated that some of the rental companies have branched out into golf cart rentals. He stated that most of them started with the kayak/canoe rentals and branched out into the golf cart rentals. Councilor Burdick clarified that the Town did have golf cart rentals. Director Heard stated that Ocean Atlantic Rentals have golf cart rentals. Councilor Burdick asked if the golf carts were on-site or at another location. Director Heard stated that they were on-site and were parked under the new deck that was built on the adjoining boardwalk.

Mayor Kingston clarified that there were no limitations on speed with the beach buggies like there were with golf carts. Director Heard stated he was correct as they were regular vehicles with license plates and can travel at fast speeds. Town Attorney Hobbs pointed out that they were street legal, so they would have to follow the traffic rules. Director Heard stated he was correct. Mayor Kingston noted that golf carts could not drive on Highway 158, but the beach buggies could. Director Heard stated he was correct.

Mayor Pro Tempore Thibodeau noted that there were go-carts that used to be in Town. Councilor Britt stated that they were 3-wheelers. Mayor Pro Tempore Thibodeau asked if they would be part of the golf cart category. Director Heard stated that they were not street legal and would be more in line with a golf cart. He added that there some that were similar but were more along the lines in the sense that they could not be driven on Duck Road. Mayor Pro Tempore Thibodeau clarified that the golf carts were electric powered instead of gas powered. Councilor Burdick stated that they could be either electric or gas.

Councilor Burdick stated that several years ago, Council had denied something similar to this. Director Heard stated that the use comes up just about every other year and staff advises potential applicants on what they need to do. He noted that this was the first applicant to pursue it.

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

Councilor Britt stated that from a policy standpoint, the Town would be allowing the rental of cars because they were street legal vehicles. He thought Council needed to think about them as such from a policy standpoint. He added that he wasn't saying that Council should or should not, but it was essentially what would be done since they were street legal vehicles that can go up and down the road. He stated that he did not disagree with some alternate thoughts of using retail space as retail was hard in Duck and was changing, which was something Council should think about on some level. He stated that he had concerns about parking with the ordinance, how it would be addressed and how it would fit in the Village Commercial district, as it may cause more clutter. He wondered if Council wanted to allow rental vehicles in the Village Commercial District, whether it was a beach buggy or a Jeep.

Mayor Kingston stated that he was also concerned about the parking. He noted that there may only be one beach buggy visible, but the others would need to be parked somewhere. He added that Duck already has parking problems in most areas in Town. He thought it would exacerbate the parking problem.

Councilor Britt felt if Council came up with some parking regulations, it would not fit a lot of places in Duck. He added that as much as he liked the idea of alternative uses of rental spaces, he felt the Village was cramped.

Councilor Caviness agreed, adding that she didn't feel that Duck had the infrastructure to support the use, whether it was where they existed or where they would go. She reiterated that she had concerns about introducing more vehicles into what was already a cramped space in terms of vehicles on the road and where they would park.

Councilor Britt stated that what the applicant was thinking of doing would be a decent fit for Duck but that wasn't what Council was discussing as they were discussing the entire Village Commercial District.

Councilor Burdick thought Council would have to deal with the parking as a separate issue. He stated that the question would be if Council could make it restrictive enough that it won't be a problem. He agreed with Councilor Britt in that Council needed to broaden whatever it could do with the retail spaces in Town and make sure that they were fully occupied. He stated that the Town was already allowing beach buggies and he thought that Council should seriously consider it but do it on the basis of making it very restrictive so that it doesn't get out of hand. He thought the applicant wanted six beach buggies and if he were to allow it, he would allow only two, because the applicant has access to them in another location, so he would not need them all on-site all of the time. He thought the comments from staff about repair and maintenance limited what could be done so it does not become a nuisance. He added that the idea that the applicant would have to use an existing parking place would put the onus on the tenants to justify within the parking restrictions that were in place. He stated that it seemed to him that Council should consider it more on the basis of whether it was a reasonable request as Council was not trying to solve the parking issues in Duck as it was ongoing problem. He stated that it didn't sound to him that this business was going to generate a need for a lot of parking spaces, but that would most likely come from an applicant that would want to do it. He stated that he did not see the value with Council to restrict and not allow the use. He thought it was more valuable to Council to permit the use but put the right restrictions on it so that it could not get out of hand and stays within the confines of what Council envisioned Duck should look like.

Mayor Pro Tempore Thibodeau clarified that Councilor Burdick's comment about the Town permitting beach buggies was about golf carts. Councilor Burdick stated she was correct. Mayor Pro Tempore Thibodeau stated that it has been a great discussion and the input of the Planning Board was weighing heavily on her as she knew they discussed it extensively. She appreciated Councilor Britt's comment about the retail space and thought something like this could be done with a lot of restrictions but wasn't sure if this

was the time or place for Council to try to craft a lot of restrictions as she would rather give it more thought. She noted that for a retail space, there were certain allocations for parking requirements for the number of employees. She added that it would get a little complicated. She thought the beach buggies would add to the congestion of the Town if it wasn't restricted. She felt that she was not prepared to support the ordinance in the condition it was in.

Mayor Kingston moved to deny Ordinance 19-02 as presented.

Mayor Pro Tempore Thibodeau thought it would be an interesting topic to discuss at the annual Retreat. Councilor Britt thought it could be considered in the future. Councilor Burdick thought from a policy standpoint it needed to be developed at the Retreat. He thought it should not be denied but taken to the next step to make it fit in Town.

Motion carried 5-0.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion of Increased Surf Rescue Services

Town Manager Layton stated that at its March 6, 2019 meeting, Council authorized him to bring forward the proposal from Surf Rescue Director Mirek Dabrowski, for additional lifeguard stands and manpower for Council to discuss. He noted that the recommendation was being made to add two additional lifeguard stands, increase the pay for the lifeguards, add two to four additional guards in October and begin an international recruiting effort of Australian lifeguards through an H2B Visa process. He pointed out that the additional cost for these services in FY 2020 would be \$90,000 and for FY 2021 through FY 2024, a plan for additional services had been developed. He stated that Council was only being requested to provide guidance for the FY 2020 costs.

Surf Rescue Director Mirek Dabrowski was recognized to speak. Surf Rescue Director Dabrowski stated that he was trying to give Council as much information as possible and made some amendments to show that he could be flexible in subsequent years so that the value of the additional lifeguards would be built in to the contract.

Mayor Pro Tempore Thibodeau asked if the current contract ended after 2020 and then a new contract would be started. Town Manager Layton stated that there were two years – next year and the year after that. Mayor Pro Tempore Thibodeau asked how many years the Town signs up for a contract renewal. Town Manager Layton stated that it was usually for five years. Mayor Pro Tempore Thibodeau clarified that the Town was amending the last two years of a five-year contract. Surf Rescue Director Dabrowski stated that it would be amending the last two years of a seven-year contract. He added that he had a seven-year contract for the last two years and it just happened that they needed to look at things a little closer and that was what he came up with.

Councilor Britt clarified that the Town would be starting a new five-year contract. Mayor Pro Tempore Thibodeau noted that the Town was amending the last two years of a seven-year contract and then would be looking to add another five-year contract. Town Manager Layton stated she was correct. Mayor Pro Tempore Thibodeau clarified that the Town would be scratching the existing contract and starting a new five year one. Councilor Britt stated she was correct, adding that the Town was only committing to the \$90,000 raise for this year. Town Manager Layton agreed, explaining that the Town could either draw up a new contract or amend the existing one with the additional term.

Mayor Pro Tempore Thibodeau clarified that it would be starting a new five-year term. Town Manager Layton stated she was correct. Mayor Pro Tempore Thibodeau asked when analyzing each year moving forward, it would happen in September of this year. She added that the lifeguards would finish the summer and then see how it went and ask what would be needed for next year, so the decision would be made around October. Town Manager Layton disagreed, adding that at the end of the season he would re-evaluate and as part of the package that would be brought forward at the Retreat, it would be presented then with what would be anticipated and what they were looking at in the budget. He added that it would not be completed as early as October.

Councilor Britt thought doing it early enough so Surf Rescue Director Dabrowski could plan for it was good. Mayor Pro Tempore Thibodeau agreed, adding that she had wondered how it would work.

Surf Rescue Director Dabrowski stated that he would evaluate it at the end of the season and then if Council made the decision during the Retreat or if Town Manager Layton felt during the evaluation in October that things should move forward to be presented in November or December, would be totally up to him, depending on what he gets or what he has in place. He explained that the whole issue started because it was said that there needed to be more of a presence on the beach in the fall. He added that when he looked at the presence in the fall as well as what it would take to do that, he started looking at everything, which was why he came up with the new figures. He stated that he discussed it with Town Manager Layton and with his guidance, he redid the contract to come up with what Council had in front of them. He added that it was a more comprehensive contract that would keep him current and competitive. He noted that he wasn't saying that Duck needed to compete with Nags Head, as they weren't his competition, but his competition was the dishwashers that were making \$15.00 per hour. He added that his lifeguards were risking their lives to save people while making a lot less. He stated that it wasn't an excuse, but a nationwide survey for lifeguards showed that they made over \$15.00 per hour. He pointed out that locally, the other towns were around \$12.00 per hour, which was where his lifeguards were, but they were competing with restaurants since they pay more.

Councilor Britt asked if \$13.50 per hour was enough that would make Surf Rescue Director Dabrowski's lifeguards competitive. Surf Rescue Director Dabrowski stated that he did. He added that he didn't think it needed to jump to \$15.00 in one year as that was a big step but believed that \$13.50 per hour would be fine. He added that the total

staff he uses was about 50 lifeguards and right now he had 46. He stated that he was close to what he needed to include Duck as well as the other places that he services. He noted that his hiring started last year for next year, so he was constantly looking for lifeguards that would be a good fit. He stated that his best recruiters were the lifeguards that work for him as they come back with someone that wants to work for him. He stated that he was trying to hire more people locally and would be starting work with the swimming coach at First Flight High School and hoped to get a program together.

Mayor Pro Tempore Thibodeau asked if Surf Rescue Director Dabrowski's lifeguards in the Town of Southern Shores and Ocracoke had to go along with the same salary increase and if it was paid out of each town's bucket. Surf Rescue Director Dabrowski stated that for the National Park Service, he has to pay a rate that they set and when he bid on the contract, he did it based on that rate. He added that for the Towns of Duck and Southern Shores, he tries to keep everyone working in the same direction. He stated that if Duck moves forward with this, there will be a discrepancy between the Town of Duck and the Town of Southern Shores, but he thought he would be able to work with the numbers. He noted that he also has rental income from chair rentals. He stated that he would not be paying the lifeguards that work for the Town of Southern Shores less as he has another year or two on that contract.

Mayor Kingston stated that his concern was the cost was going up by 25% with it being \$90,000. He thought Council needed more definition on the \$90,000. He understood the salary increases and saw that there was a cost of living, but he wasn't sure if there would be salary increases and cost of living increases. He noted that there would be a couple of lifeguard stands added but wondered how it went from \$0.00 to \$90,000 so quickly in one year. He stated that he did not see the definition in the presentation. He thought Council needed some knowledge. Surf Rescue Director Dabrowski explained that Current was the current contract value, Services by Year increases the fall presence by four to six lifeguards from two, meaning he was adding four employees for a month to six weeks, depending on what would be needed. He stated that the two additional lifeguard stands were listed as well as \$1.50 raise for each lifeguard, the initiation increase for the fall rate as well as the H2B Visa. He stated he could break it down more if needed.

Mayor Kingston stated that if Council determined some of it wasn't affordable and decided instead of having four to six additional lifeguards, there should be two to four, there was nothing to base that decision on when looking at the \$90,000 increase.

Councilor Burdick stated that he was having the same issue Mayor Kingston was. He stated that Council was talking about two lifeguard stands. Surf Rescue Director Dabrowski disagreed, adding that he wasn't just talking about two lifeguard stands with regard to the \$90,000. Mayor Pro Tempore Thibodeau agreed, adding that it was also the lifeguards that go with the stands. Surf Rescue Director Dabrowski stated she was correct.

Councilor Burdick clarified that Surf Rescue Director Dabrowski was wanting to add two lifeguards for the summer. Surf Rescue Director Dabrowski stated he was correct. Councilor Burdick stated that he was having an issue with Surf Rescue Director Dabrowski asking for four to six lifeguards for the fall. He asked if it was four or six. He further asked what needed to be done as a starting point and wondered if it made sense to add six lifeguards. He didn't think it was right and felt that four should be added and see how it works. He asked what the cost was for the H2B Visa program. Surf Rescue Director Dabrowski stated that the legal fees would be \$6,000 and depending on how many lifeguards were hired, he would have to pay their transportation from Australia to North Carolina, which was by law and would cost about \$1,000 for each lifeguard. Councilor Burdick asked if Surf Rescue Director Dabrowski would have to pay for travel to and from North Carolina. Surf Rescue Director Dabrowski noted that if he hired six lifeguards, it would be another \$6,000.

Mayor Pro Tempore Thibodeau clarified that it would cost \$500 each way for the lifeguards to travel from Australia and back. Surf Rescue Director Dabrowski stated that it depended on when he gets them here. He added that he was able to find an attorney in Washington, DC to help him with the H2B Visas. He stated that once the lifeguards are hired, they would show up towards the end of April. He thought that time for travel would not be bad as their summer was opposite of the Town's, so their heavier travel time would be in the November-February timeframe. Mayor Pro Tempore Thibodeau clarified that it would be approximately \$10,000 for the H2B Visa and some transportation at about \$4,000. Surf Rescue Director Dabrowski stated that it would be closer to \$12,000 since he was looking to hire six lifeguards.

Councilor Britt clarified that the strong point of the H2B Visa is that they will be the lifeguards that will stay through October. Surf Rescue Director Dabrowski stated he was correct. Councilor Britt clarified that they would be the ones that would give Surf Rescue Director Dabrowski the fall staff. Surf Rescue Director Dabrowski stated he was correct.

Councilor Burdick clarified that there would be four lifeguards coming from Australia. Surf Rescue Director Dabrowski stated that he was trying to get six. He explained that when one applies for an H2B Visa, there needed to be a specific number and he would have to go through a certain number of hoops and advertise in specific places that they tell you and then he would get a number which he would have to fulfill. He added that if he didn't fulfill that number, the chances of obtaining an H2B Visa next time would be reduced. Councilor Burdick stated that if there were going to be six lifeguards, it would take care of the two additional for the fall. Surf Rescue Director Dabrowski explained that the numbers for the fall were to give Council an idea, just like the salary increase. He added that it did not have to jump up that high to eight right away, which was his recommendation.

Town Manager Layton pointed out that even if Council were to approve everything now, the chances of Surf Rescue Director Dabrowski being able to obtain eight lifeguards in the fall would be limited because the H2B would not happen. Surf Rescue Director Dabrowski stated that the H2B was more of a guarantee, adding that if he obtained the

H2B Visa and got the six lifeguards, then he would have six lifeguards through October. He noted that he currently has people that have graduated from college that would be coming back. He stated that there were some that graduated but would not be coming back and it's hurting him. He stated that he does have other lifeguards that have committed to working through the fall for him. He thought he did a really good job with recruitment and retention. Town Manager Layton stated that his point was that the four to six lifeguards for the fall were based on what he gets out of this meeting, which was the challenge.

Mayor Kingston stated that the Town was paying for a level of service. Councilor Burdick stated that he was looking at the level of service in the chart that was handed out to Council for all of the different towns and he could not see the Town needing six lifeguards in the fall at this time. He thought four was a reasonable move, but six was unreasonable. Surf Rescue Director Dabrowski pointed out that he has had four lifeguards and put them on the beach even though it was not in his contract. He added that he paid for the other two lifeguards out of his own pocket, just like he paid for a second lifeguard at Barrier Island, which happens to be one of the busiest beaches. He stated that when he asks for four to six lifeguards, he was giving Council the option and he was estimating that he would be able to get six lifeguards. He noted that he would be covering 6.2 miles of beach and the lifeguards stands were not on the beach in the fall. He added that he was trying to justify the number but noted that it was 6.2 miles.

Mayor Kingston stated that his issue was that there was a certain cost for four lifeguards, there was a certain cost for six lifeguards, but Council was looking at one cost and it could include four or six lifeguards, which was why he wanted to have the level of service defined. He added that when Council gets to the budget discussion, they could make a decision on what they want to spend. Surf Rescue Director Dabrowski stated that he budgeted for four lifeguards. He noted that the value has decreased due to the H2B. He explained that the H2B program was approximately \$30,000 by the time he was finished. He added that if he paid his lifeguards \$13.00 per hour over \$12.00 hour, that was an easy way to look at since his lifeguards are paid anywhere from \$13.00 per hour to \$17.00 per hour. He stated that increasing the payroll for each lifeguard by \$1.00 would total \$22,000 for the year. Mayor Kingston pointed out that it was an unknown. Surf Rescue Director Dabrowski agreed, explaining with the H2B, the whole program was approximately \$20,000 - \$30,000 depending on what needed to be done. Mayor Kingston clarified that the cost would be shared with the Town of Southern Shores and the National Park Service. Surf Rescue Director Dabrowski disagreed, noting that the Town of Southern Shores does not pay for lifeguards in the fall as there was only one that worked there in the fall.

Town Manager Layton stated that Council was looking for was the breakdown of costs, so they could look at its ala cart. He stated that this discussion about the fall and adding the lifeguards in the fall was because at the end of the last season, staff had a discussion on the issues that they experienced, which was a drowning, which this discussion was not a knee-jerk reaction. He added that staff wanted to look at the communications, whether it be red flags in the summer being added to the messaging, and as part of that discussion,

the issue of being down to two lifeguards responsible for the beach in the fall came up. He noted that it was a level of service that has been in place for 15 years.

Councilors Britt and Burdick pointed out that Surf Rescue Director Dabrowski had quoted four lifeguards on the beach. Mayor Pro Tempore Thibodeau pointed out that he was absorbing that cost. She added that he has a fixed contract and has been adding services little by little just from a need basis and feeling hamstrung by the contract.

Town Manager Layton stated that staff sat down and one of the recommendations that came out of the discussion was looking at adding some lifeguards in the fall to ensure that there were more than the two existing. He noted that there may be four at times, but he was only guaranteeing that there would be two lifeguards there. He stated that that was where the discussion regarding adding lifeguards in the fall came from.

Councilor Burdick stated that he did not have a problem with adding lifeguards in the fall but was having a problem with the fact that they have already been added, but Surf Rescue Director Dabrowski was paying for them out of his own pocket. He stated that if the proposal was that the Town should start paying for them, he didn't have a problem with it, which meant four lifeguards. He stated that Council needed to look at whether or not they were in favor of having an additional two lifeguards. Surf Rescue Director Dabrowski stated that if he were to break it down by order of importance, the first would be a raise, which would keep him current and competitive. He stated that the second was recruiting, which would be the H2B Visas, as the lifeguards were strong, and their skills were excellent. He stated that the last was the operational costs. He added that things were getting a little more expensive and he wanted to increase and improve the equipment that he has as well as improve and increase the amount of equipment on hand. He noted that after that, he would like to increase all staffing, but it was entirely up to Council, adding that there has been an increase in the population in the fall on the beach.

Mayor Pro Tempore Thibodeau clarified that the H2B Visa money that the Town would put into the FY 2020 year would really get the Town towards Fiscal Year 2021. Surf Rescue Director Dabrowski stated that at the end of calendar year 2020, the lifeguards would show up for the last part of the year, meaning May through June. Mayor Pro Tempore Thibodeau clarified that the Fiscal Year 2020 for \$90,000 was for the 2019 summer. Councilors Caviness and Britt disagreed. Surf Rescue Director Dabrowski stated that he did not put the full amount for the H2B program, but the legal fees needed to go in in September. Mayor Pro Tempore Thibodeau clarified that the summer of 2019, nothing would happen. Town Manager Layton stated that the H2B Visas would not happen. Surf Rescue Director Dabrowski stated that 2019 ends in July for him and 2020 starts on July 1st. He explained that the H2B Visa initiation starts when he hires an attorney in September and in April 2020 he would be purchasing airline tickets for the lifeguards. Councilor Burdick clarified that the lifeguards would be in Duck for calendar year 2020. Surf Rescue Director Dabrowski stated he was correct.

Mayor Pro Tempore Thibodeau clarified that nothing was for the summer of 2019. Town Manager Layton stated that it would not be for the H2B Visas, but everything else would

such as the two lifeguard stands. Councilor Burdick added that it would be the two lifeguard stands and the additional lifeguards in the fall. Mayor Kingston noted that the pay raise would also be in there. Mayor Pro Tempore Thibodeau clarified that it was all for the summer of 2019. Town Manager Layton stated she was correct. Mayor Pro Tempore Thibodeau clarified that the \$90,000 would kick in with the July initiation of the Fiscal Year. Town Manager Layton stated she was correct.

Councilor Britt asked if the legal fees would be the same each year or would it decrease in the future. Surf Rescue Director Dabrowski stated that if he got 10 guards, it would still cost \$6,000 annually. He noted that over time it may increase, but it has been between \$5,000 – \$6,000.

Mayor Kingston thought there needed to be some definition of the \$90,000 and some decision points for Council to consider. He added that it was just a number right now. He understood all the fees that have to be paid to get there, but something has built up to that \$90,000. Surf Rescue Director Dabrowski pointed out that the raise for his lifeguards totaled \$34,000. Mayor Kingston understood, but pointed out that Council didn't know that and were not looking at anything that breaks the \$90,000 down. Surf Rescue Director Dabrowski explained that it was \$22,000 to give his lifeguards \$1.00 raise and he was looking at \$1.50, which totaled \$34,000; the H2B Visa was approximately \$30,000 and because he wouldn't have those guards this year, it would really total \$20,000; and then \$6,000 for transportation as well as whatever else he has to provide for his lifeguards. He added that he was planning to increase the rate just for the fall, which would give his lifeguards a bonus to stay in the fall.

Mayor Pro Tempore Thibodeau asked what the figure would be for the fall. Surf Rescue Director Dabrowski stated that it was closer to \$15,000. Mayor Pro Tempore Thibodeau asked how much the lifeguard stands cost. Surf Rescue Director Dabrowski stated that they were \$20,000 per stand.

Councilor Caviness stated that she respected what Surf Rescue Director Dabrowski does and that he was very flexible and responsive. She added that if he needed stands, lifeguards, etc., and he had a pool of money, she knew he would make it work. She stated that she didn't know how Council could sit there and know what the conditions would be in the summer or fall or where the stands should be. She stated that she did not feel comfortable micro-managing what Surf Rescue Director Dabrowski does. She appreciated the rest of Council wanting to have some specifics, but she could not cherry pick what he was doing down to the penny. She added that she could look at a pool of money and the potential resource that would be needed in the future and let him decide how to put it to use. She understood that Council needed to approve a pool of money for potential resources and was in favor of the lifeguards being paid more money.

Town Manager Layton stated that he and Surf Rescue Director Dabrowski did not have an issue with breaking down the \$90,000. He understood that it was a significant increase but thought that there were things that could be tweaked and as the budget process progresses, it could be tweaked. He stated that from a fundamental issue of

Council's comfort with adding lifeguard stands, it would be a big one to contend with as everyone wants a lifeguard stand everywhere. He thought with regard to the two lifeguard stands, the population has increased in those areas and that was where that recommendation was coming from.

Councilor Burdick didn't think there was a problem with the two lifeguard stands but thought that the ancillary items needed to be clarified. Mayor Pro Tempore Thibodeau thought Surf Rescue Director Dabrowski had to do some planning so Town Manager Layton was asking the general question of how Council felt about two more lifeguard stands and the raises.

Mayor Kingston didn't think Council was trying to tell Surf Rescue Director Dabrowski how to do his business, but fiscally, it was more than 25%. He added that Council had a responsibility to the taxpayers and needed to know what was being done with the 25% increase. Mayor Pro Tempore Thibodeau thought Council received the breakdown. Mayor Kingston stated that when it gets to the budget, he would like to see a breakdown of the \$90,000.

Councilor Britt noted that the Council members were taxpayers and agreed with Councilor Caviness' comments. He thought Council had to decide on a level of service – if they agreed with two lifeguard stands, the fall coverage, and the raise to be competitive. He added that if Council agreed with those things, then it should move forward.

Mayor Kingston didn't think Council was disagreeing about moving it forward, but at the same time, it was an unknown if it would fit in the budget and he didn't want the Town to come up short.

Councilor Caviness asked if the services came up short, Surf Rescue Director Dabrowski would hold tight to the raises and buy only one lifeguard stand. Surf Rescue Director Dabrowski stated that if that was what Council wanted to do, he would make it work.

Councilor Burdick thought Council was asking if they agreed with the things that Surf Rescue Director Dabrowski had to do. He further asked if there was any area that was in question. He noted that the two lifeguard stands were discussed last fall and agreed that it was the right thing to do. He added that Council was quibbling over something that was already agreed upon. He thought it was up to Surf Rescue Director Dabrowski to decide what he paid his lifeguards as well as where he gets them to be able to do the service and it would obviously be built into the price of the service. He stated that Council was now down to the last area in that Surf Rescue Director Dabrowski started with the fall, which was the number one priority and now it was the last priority. He asked Surf Rescue Director Dabrowski if he needed four, five or six lifeguards. Surf Rescue Director Dabrowski stated that four to six lifeguards were in addition to the two existing. He added that a good recommendation would be to add four lifeguards, so he would have six in total.

Councilor Burdick asked if Surf Rescue Director Dabrowski if the Town was adding two or four lifeguards for the fall. Town Manager Layton stated that he would like to see six added, but what would happen if it was a really rough day, Surf Rescue Director Dabrowski may need more people. He added that in the fall it was harder as it was hard to determine how busy the beach would be. He stated that he would prefer to see six lifeguards added. Councilor Burdick asked what would be put in the contract. Town Manager Layton stated that he would put six in. Councilor Burdick clarified that the six would be included in the budget. Town Manager Layton stated that it would be included in the \$90,000. Councilor Burdick thought Council should move forward.

Mayor Pro Tempore Thibodeau thought that one of the things that the Town does is focus on public safety which includes surf rescue. She added that the Town was very lucky to have a contractor such as Surf Rescue Director Dabrowski who was very committed to the Town. She stated that she did not want to micro-manage him and would support his recommendation. She pointed out that when the Town added more police officers and firefighters, it was done because it was important to the safety of the Town.

Mayor Kingston thought Council was asking Town Manager Layton to come forward with a new budget to include the \$90,000 and provide a definition. He added that if there were any issues with it, it could be discussed during the budget work session. He didn't think anyone was disagreeing about the lifeguard stands or pay increases, it was just that Council needed to have some information in hand.

Councilor Burdick stated that he did not have a problem with the request from a dollar standpoint because it seemed reasonable. He added that Council will have to see what happens when they look at that whole budget. He felt that Council should go with what Surf Rescue Director Dabrowski proposed.

Councilor Britt asked Town Manager Layton if he needed anything from Council. Town Manager Layton stated that it was clear what he needed to do. He stated that he hasn't settled on where his recommendation will be, but he put the money in the budget as part of it. He stated that he was not as comfortable with the additional years, which he discussed with Surf Rescue Director Dabrowski. He stated that as discussions were held for surf rescue, there was an overall Public Safety discussion that will be held. He added that he would go forward with trying to prioritize it in the budget and when it comes back for discussion, he would have the breakdown of the \$90,000.

Discussion/Consideration of Resolution 19-03, a Resolution of the Town Council of the Town of Duck, North Carolina, Authorizing the Execution of a Planning and Management Grant with the North Carolina Department of Environmental Quality

Town Manager Layton stated that Council previously approved the submission of a grant to the North Carolina Department of Environmental Quality for a project known as *Town of Duck Hazard Vulnerability Assessment* in cooperation with Western Carolina University. He noted that the total project cost was \$26,805 with \$20,000 in grant funds as well as a match of \$6,805. He added that the match was \$3,403 from the Town and

\$3,402 from in-kind services from Western Carolina University. He noted that Resolution 19-03 would authorize him to execute the grant contract with the North Carolina Department of Environmental Quality.

Mayor Pro Tempore Thibodeau moved to approve Resolution 19-03 as presented.

Motion carried 5-0.

NEW BUSINESS

Planning Board Appointments

Town Manager Layton stated that the terms of Marc Murray and James Cofield to the Planning Board would be expiring on May 1, 2019. He stated that both Mr. Murray and Mr. Cofield have indicated their desire to remain on the Planning Board. He noted that Council could either re-appoint Mr. Murray and Mr. Cofield to the Planning Board for a term to expire on May 1, 2022 or appoint other individuals for the position.

Councilor Burdick moved to re-appoint Marc Murray and James Cofield to the Planning Board for a term to expire on May 1, 2022.

Motion carried 5-0.

Discussion/Consideration of Authorizing the Town Manager to Execute a Contract with APTIM Coastal Planning and Engineering of North Carolina, Inc. for Post-Construction Beach Nourishment Monitoring Services

Town Manager Layton stated that as part of the Town's beach nourishment project, the Town was required to conduct annual survey monitoring of the project area. He stated that the Town has expanded the monitoring to cover the whole Town as part of the Town's efforts to proactively review the entire Town's beaches. He added that staff was recommending an updated SBEACH analysis be conducted with the updated profile survey information to identify potential threatened structures in Town. He noted that the contract also included the establishment of ground controls for drone survey analysis and shared costs with the Towns of Southern Shores, Kitty Hawk, and Kill Devil Hills for a dive investigation of Borrow Area A. He added that the total cost to the Town for these services were \$84,467.61. He pointed out that there was sufficient funding in the Beach Management budget to cover these costs.

Mayor Kingston asked if the other towns agreed to sharing the cost for the dive. Town Manager Layton stated that he has not heard back on it, but he did not anticipate them not sharing in the cost.

Mayor Pro Tempore Thibodeau asked how often the SBEACH analyses were completed. Town Manager Layton stated that the last one was when the Town was defining the nourishment area.

Mayor Kingston moved to authorize the Town Manager to execute a contract with APTIM Coastal Planning and Engineering as presented.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that he had no report.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Update on Departmental Activities

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

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 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.

Police Chief John Cueto was recognized to speak. Police Chief Cueto gave a brief overview of the past month's police activities to Council and the audience.

Update on Public Safety Building

Town Manager Layton stated there hasn't been a lot of activity, but staff have met with the Corps of Engineers and scoping letters were sent out on March 7, 2019 with a scoping period of 30 days. He stated that staff was waiting on results of the scoping. He added that VHB performed a site visit and confirmed that there were no wetlands on the property. He added that VHB has initiated the drafting of the affected environment and alternative section with the environmental assessment as well as drafting a coastal management consistency review. He stated that the next items would be to review the scoping responses and impact assessment and work will then begin on finalizing the purpose and need and then the draft environmental assessment will be developed for the Town and Corps of Engineers to review.

Financial Statement for month of March for FY 2019

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

MAYOR'S AGENDA

Mayor Kingston stated that he has his mayors meeting on April 16, 2019 in Duck. He stated that he and Town Manager Layton were both members of the Economic Development Stakeholders which was coordinated by the Outer Banks Chamber of Commerce. He added that they have a meeting on April 10, 2019 at the Chamber offices. He stated that the mayors started a discussion a few months ago on stormwater management and have scheduled their third meeting for April 12, 2019, pending availability by others. He noted that Town Manager Layton would likely attend the meeting with him again. He thought Alan Moran from the NC Department of Transportation would be attending as well and thought it would be a good discussion with regard to stormwater management.

Mayor Kingston stated that he was invited to attend the Dare County Board of Commissioners meeting on May 7, 2019 along with the other towns and Dare County to accept an award on beach nourishment from the American Shore and Beach Preservation Association. He noted that the Town's beach was named one of the best restored beaches of 2018. He stated that he has a North Carolina League of Municipalities finance meeting on May 6, 2019 in preparation for the North Carolina League of Municipalities board meeting and CityVision 2019 on May 14-16, 2019 in Hickory, North Carolina. He stated that the First Annual Dare County Education and First Responders Appreciation Day at Captain George's Restaurant was scheduled for May 16, 2019; however, when he spoke to Al Friedman and because of all of the activities happening on the Outer Banks, it has been pushed back to next fall. He stated that he was looking forward to the next two Bias Speaker Series discussions.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau gave an update on the Government Access Channel meeting.

Councilor Burdick gave an update on the recent Tourism Board meeting.

Councilor Caviness gave an update on the recent Duck Merchants Association meeting.

Councilor Britt had nothing to report.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments.

Allan Beres of 146 Dune Road was recognized to speak. Mr. Beres thanked Council for their response to the dune buggy request as it did not tie in with the Town's Vision. He

noted that the Town was more concerned with pedestrian safety. He added that he never had someone say that they wanted to use a dune buggy in Duck.

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, May 1, 2019 at 7:00 p.m.

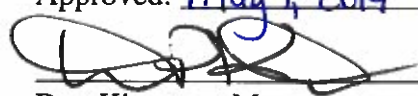
ADJOURNMENT

Councilor Britt moved to adjourn the meeting.

Motion carried 5-0.

The time was 9:42 p.m.


Lori A. Ackerman, Town Clerk

Approved: May 1, 2019

Don Kingston, Mayor

