

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
December 5, 2018**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 7:00 p.m. on Wednesday, December 5, 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; Deputy Fire Chief William Walker; 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: Fire Chief Donna Black.

Mayor Kingston called the meeting to order at 7:03 p.m. He asked Councilor Nancy Caviness to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

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

Sandy Whitman of 118 Tuckahoe Drive West was recognized to speak. Mr. Whitman asked that all Council members speak directly into their microphones, so the audience can hear them.

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

SPECIAL PRESENTATIONS

Employee Recognition Program Recipient

Mayor Kingston stated that in December 2011, Council adopted an employee service recognition program that would acknowledge the service of employees of the Town at ten-year intervals by providing them with a certificate of recognition as well as a gift certificate in the amount of \$100 at a Duck business of their choosing.

Mayor Kingston, Town Manager Layton and Police Chief Cueto presented Police Officer Jason Garrett with his 10-year service recognition certificate and \$100 gift certificate.

CONSENT AGENDA

Minutes from the November 7, 2018, Regular Meeting; Budget Amendments; Government and Education Access Interlocal Agreement

Councilor Caviness moved to approve the consent agenda as presented.

Mayor Pro Tempore Thibodeau pointed out that the Government Access Channel portion would allow the members of the Government Access Committee to make budget amendments without having to go back to each town and will save time while not increasing the budget.

Motion carried 5-0.

PUBLIC HEARINGS

Public Hearing/Discussion/Consideration of CUP 18-009, a Conditional Use Permit Application by The Parking House, LLC, for a Conditional Use Permit to Construct a New 2,364 Square Foot Restaurant with 38 Seats and a Small Outdoor Seating Area at 1184 Duck Road

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 Council would be sitting as a quasi-judicial body for the public hearing, meaning that they will sit as a court and must make its decision based upon competent material and substantive evidence that will be presented during the course of the hearing. He stated that anyone wishing to give testimony would have to give it while under oath with the applicant afforded due process rights including the right to present evidence, examine and cross-examine witnesses. He asked that anyone wishing to testify come forward to be sworn in.

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman proceeded to swear in the applicants and staff for the public hearing.

The following persons were sworn to provide testimony during the hearing: Joe Heard and Andy Deel.

Town Attorney Hobbs opened the evidentiary portion of the hearing. He stated that Director Heard would give an overview.

Director of Community Development Joe Heard was recognized to speak. Director Heard stated that the application was for a conditional use permit to demolish the existing

real estate office and construct a new restaurant with 38 seats and 2,364 square feet in size at 1184 Duck Road. He added that a 365 square foot outdoor seating area would also be provided on the deck adjoining the rear of the restaurant. He pointed out that additional improvements associated with the proposed redevelopment included the following:

- Construction of wooden decking and walkways
- Addition of a second wooden walkway connection to the Town's boardwalk
- Relocation of the entrance/exit driveway
- Construction of 13 parking spaces and a loading zone
- Installation of a bicycle rack
- Utility improvements supporting the proposed development

Director Heard stated that as part of the application, conditional use permit approval was also being sought to apply the Village Commercial Development Option to allow a reduction in the minimum parking requirements and the front parking setback.

Director Heard stated that that parcel was 16,748 square feet, which was smaller than the minimum lot size of 20,000 square feet in the Village Commercial District. He stated that as an existing, nonconforming parcel, the lot can be redeveloped so long as the Council finds that the lot is of sufficient size to meet the requirements of the Dare County Health Department, to provide adequate siting for structures, and to provide parking, loading, and maneuvering spaces for vehicles. He stated that the existing development of the property covers 10,011 square feet, which was just less than the maximum lot coverage requirement of 60% in the Village Commercial District. He added that the proposed redevelopment will significantly decrease the amount of lot coverage by 2,476 square feet, making the total lot coverage at 7,311 square feet, which was in much greater compliance with the lot coverage standard.

Director Heard stated that the existing driveway, parking areas, and structures on the site cover approximately 57% of the existing area within the CAMA Area of Environmental Concern. He noted that the existing coverage was nonconforming as only 30% coverage was permitted in the Area of Environmental Concern. He explained that under CAMA regulations, the property was grandfathered and could maintain the nonconforming level of coverage. He added that the proposed redevelopment significantly decreased the amount of the Area of Environmental Concern coverage to 30.8%, which almost brings the property into conformity with the CAMA lot coverage standard. He stated that the paved and gravel parking areas covered 84.3% of the CAMA buffer area extending 30 feet from the bulkhead. He pointed out that no lot coverage was permitted within the buffer area, making the existing development significantly nonconforming. He stated that under the CAMA regulations, the property was grandfathered and could maintain this nonconforming level of coverage. He added that the proposed redevelopment would remove all but 5.4% of the existing lot coverage in the CAMA buffer area, nearly bringing the property into full compliance with current CAMA lot coverage standards.

Director Heard stated that the proposed drive aisle width of 20 feet was the minimum recommended for 90-degree parking by generally accepted traffic standards. He explained that with a width of 24 feet at the property line, the proposed driveway complied with the maximum width standard of 30 feet. He added that the driveway width of 40 feet at the road edge also complied with the Town's maximum requirement of 40 feet. He stated that the distance between the existing access drive and driveway into the Soundside Shoppes to the south was presently 54 feet. He noted that the layout did not comply with the Town standards requiring a minimum 80-foot separation between driveways. He added that the existing driveway was proposed to be relocated 30 feet to the north and will bring the property into compliance with the driveway separation standards. He pointed out that the applicant must obtain a driveway permit from the NC Department of Transportation to relocate the access drive.

Director Heard stated that by the completion of this project, the second phase of the Duck Village pedestrian improvements will have been installed along the western side of Duck Road at the front of the property. He explained that the sidewalk would be located partially on the applicant's property and partially in the public right-of-way for Duck Road. He added that the proposed walkway from the sidewalk to the restaurant will provide access for pedestrians to the restaurant. He pointed out that the applicant was proposing to provide a second connection to the Town boardwalk near the northwest corner of the property. He added that the two boardwalk connections also provide access for pedestrians to the restaurant. He stated that standard walkways and ADA handicap access ramps were being provided from both directions to the restaurant. He stated that the applicant was also proposing to establish a canoe/kayak parking area along the Currituck Sound for customers that wish to arrive by water.

Director Heard stated that the proposed redevelopment included the construction of a new concrete parking area containing 13 parking spaces located near the front of the property. He stated that since the proposed parking area contained only 13 spaces, the amount of parking available was three spaces short of complying with the minimum parking standards. He noted that the applicant was seeking relief through the Village Commercial Development Option to reduce the minimum parking requirement and find that 13 parking spaces was adequate to serve the proposed restaurant on the site. He added that one of the proposed parking spaces was designed to be ADA handicap accessible, which complied with the standards of the Americans with Disabilities Act. He stated that the applicant was also proposing to install a bicycle rack located just west of the parking lot and loading zone. He stated that the bicycle rack location was convenient to the future bicycle lane and sidewalk at the front of the property.

Director Heard stated that Town standards require a minimum setback of 10 feet from the property lines for parking spaces. He explained that proposed parking spaces #6 and #13 were located within the 10-foot setback. He added that space #13 was located approximately 1.5 feet from the sidewalk and four feet from the front property line. He stated that space #6 was located less than one foot from the sidewalk and approximately 4.5 feet from the front property line. He noted that the applicant was seeking approval of

reduced setback requirements for the two parking spaces under the Village Commercial Development Option.

Director Heard stated that the proposed parking area contains a loading zone at the western end of the parking area in close proximity to the restaurant. He stated that since most deliveries would occur during the morning hours when the restaurant was closed, there should be minimal conflict between delivery trucks and customers on the site.

Director Heard stated that the applicant was requesting approval of the Village Commercial Development Option for two purposes: (1) to reduce the minimum parking requirement from 16 parking spaces and find that 13 parking spaces are adequate to serve the proposed restaurant on the site; and (2) to reduce the minimum setback for parking spaces at the front of the property from 10 feet to four feet in close proximity to the adjoining sidewalk. He noted that the Village Commercial Development Option offers flexibility from a variety of development standards in the Village Commercial District on a project-specific basis. He noted that the Planning Board was asked to determine if the proposed development was consistent with the intent of the Village Commercial Development Option and warranted approval of the requested modifications to the development standards for parking and parking setbacks from the front property line.

Director Heard pointed out that the stated purposes of the Village Commercial Development option were as follows:

1. To facilitate appropriate development in the Village Commercial District.
2. To assist in the creation of a mixed-use development of a size, scale, and architectural character that will complement the Village Commercial District that is at the heart of Duck.
3. To provide opportunities for custom site-specific development review to implement Town policies encouraging shared parking, limited vehicular access, pedestrian accommodations, and a mixture of land uses.
4. To reinforce the Village Commercial District as an exceptional and distinctive place to live, work, and recreate.

Director Heard stated that the Village Commercial Development Option standards require consideration of the adopted goals and policies in the CAMA Land Use Plan and architectural design guidelines and regulations for the Village Commercial District. He stated that after evaluating the proposed redevelopment for compliance with the intent and objectives of the Village Commercial Development Option, the Community Development staff offered the following:

- The architectural design of the proposed building blends a traditional, one-story cottage-style design with an open, airy modern design. The modest size of the building is appropriately scaled to the lot. The design of the building is consistent with the scale and character desired in Duck Village.

- The applicant has proposed walkways that provide convenient access to and from the adjoining boardwalk at the rear of the property and sidewalk and bicycle lane at the front of the property.
- The applicant notes that a substantial number of customers will arrive at the site on foot and by bicycle from the adjoining sidewalk and boardwalk. Therefore, the amount of vehicular parking needed is less than typical shopping areas.
- The redevelopment proposal includes removal of an extensive number of impervious surfaces adjoining the Currituck Sound in the CAMA Area of Environmental Concern. These areas of the property will almost be brought into full compliance with CAMA and Town lot coverage standards as part of the site's redevelopment.

Director Heard stated that the Planning Board reviewed the proposed redevelopment at its meeting on November 14, 2018 and found it consistent with applicable Town standards and voted unanimously to approve the conditional use permit subject to the following conditions:

1. The site plan be amended to add two parking spaces in the parking area at the front of the property.
2. The site plan be amended by shifting the building, septic field, and other improvements westward to accommodate the additional parking spaces.
3. An easement must be granted to the Town of Duck to construct and maintain a public sidewalk extending across the front of the property.
4. The applicant must provide a lighting plan in compliance with the Town's exterior lighting standards.
5. The applicant must obtain a driveway permit from the NC Department of Transportation for relocation of the existing driveway further to the north prior to the issuance of a land disturbance permit.
6. The applicant must obtain a permit from the Dare County Health Department for the design and installation of the proposed wastewater treatment system improvements prior to the issuance of a land disturbance or building permit.
7. The applicant must obtain a CAMA Minor permit for all work and improvements within the Area of Environmental Concern prior to the issuance of a land disturbance or building permit.
8. The proposed boardwalk connection must be designed by an engineer to comply with the standards and specifications of the Town's boardwalk and applicable codes.
9. Any new signs must be reviewed and approved under a separate permit by the Community Development Department.
10. The applicant must submit the final engineer-stamped site plan and site plan review fees as provided for in the Town's adopted fee schedule, as may be revised through the approval and condition process, with all required information referenced in the CUP conditions, prior to the issuance of a building permit for the project.

11. The building must be constructed in substantial conformance with the elevation drawings and floor plans submitted with the CUP application, as prepared by Beacon Architecture and dated November 7, 2018.
12. This conditional use permit will expire in 18 months from the date of approval unless construction has commenced with the required site plan and building permit approvals.

Director Heard noted that the first two conditions have been addressed by the applicant and were shown on the revised site plan submitted for review by Council. He stated that staff was recommending that Council consider approval of Conditions 3 through 12.

Councilor Burdick thought he had read in the staff report that parking space #6 would be within a foot of the sidewalk. Director Heard stated that it would be approximately four feet from the front of the property and the sidewalk came in about three feet. Councilor Burdick pointed out that there was no separation between the sidewalk and the parking space. Director Heard stated that there was very minimal space. Councilor Burdick stated that it concerned him that the Town was setting a new standard. He asked if the Planning Board discussed the parking area. He further asked if it would be made from asphalt. Director Heard stated that it was. Councilor Burdick asked if there was a reason not to use stone that would subtract more runoff. Director Heard stated that it was not a topic that came up at the Planning Board meeting. He added that the applicant's engineer was present and could answer that question if it was something that Council wished to consider. Councilor Burdick noted that he wasn't aware that a bicycle rack could be installed in the septic area. Director Heard stated that it was allowed as it was not something that has parts that intrude into the septic field and could be located on top of a septic field.

Mayor Pro Tempore Thibodeau asked if the soundside decking that would be located in the CAMA setback was permitted. She asked if it was calculated as space or due to the fact that it cantilevered over, it wasn't counted. Director Heard stated that it did not count towards the Town standards and the Town specifically does not count it toward lot coverage if it was a wooden deck. Mayor Pro Tempore Thibodeau clarified that it would be elevated over the ground. Director Heard stated that it would except for the back part, which was the kayak pullup area. Councilor Burdick asked if the bulkhead was existing. Director Heard stated that it was.

Mayor Pro Tempore Thibodeau clarified that the Town had to pull the boardwalk off of the bulkhead as part of the former property owner's condition and that was why the Town's boardwalk pulls away from the property. Director Heard stated that he wasn't sure. Town Manager Layton stated that Mayor Pro Tempore Thibodeau was correct. Mayor Pro Tempore Thibodeau asked how far the parking would be from the sidewalk. She further asked if staff was envisioning some grasses to be planted between the parking and the sidewalk. Director Heard stated that the applicant's engineer would address that. He added that there was approximately 18 inches, which was not much, but was six inches less than what existed along Duck Road. He stated that vegetation could be done in that area, but it was a little tighter on the north side as the widest point was about a foot

closer to the access drive was about half a foot. He stated that the proposal that went to the Planning Board had a five-foot landscaped area. He added that with the Board wanting the two additional spaces added in there as well as the sidewalk, the applicant lost some space as a result of that situation and decision by the Planning Board. He stated that they shifted a lot of the improvements on the site back to accommodate it, but that was what was left as they squeezed them in. He stated that the applicant was prepared to discuss it if Council wanted to shift anything on the site.

Mayor Pro Tempore Thibodeau asked if the sidewalk was encroaching into the property. Director Heard stated that it was by approximately three feet on one side and was not part of the lot coverage calculation. Councilor Burdick clarified that it did not change the setback. Director Heard stated he was correct.

Mayor Kingston asked if there was any opportunity to move the parking westward by a foot or two or if it was confined due to the drainage area. Director Heard stated that the applicant's engineer could speak to that. He understood that it was possible.

Mayor Pro Tempore Thibodeau asked if staff heard from any abutting property owners after the notices were sent out about the public hearing. Director Heard stated that no property owners responded.

Town Attorney Hobbs asked the applicant to make a presentation.

Andy Deel of Deel Engineering was recognized to speak. Mr. Deel stated that he was present representing the applicant who could not attend the meeting. Mr. Deel stated that it was the vision of the owner that the restaurant be something that was suited for the space. He added that it was very important that it be oriented back towards the boardwalk to get that connection. He noted that Chris Nason of Beacon Architecture designed the building, which had a lot of traditional Outer Banks elements to it and was in scale with the property. He stated that an important piece was that the property has ADA access from the Town's proposed sidewalk all the way to the Town's boardwalk.

Andy Deel stated that the proposed bicycle rack would not be sitting on the septic drain field. He added that if it happened to be picked up and moved to the drain field, it would not be an issue. He stated that the property was acquired in the fall by the applicant and it was the vision of the owner to incorporate the boardwalk into the property. He stated that the boardwalk walkway was an add-on to the restaurant, along with steps that would come down to bulkhead level with a secondary deck. He noted that it has existing connections to the boardwalk. He added that the second connection was a ramp with no stairs involved.

Andy Deel stated that when the applicant originally started with the site design, they did not have the sidewalk on the site as there was a boundary conflict between what their surveyor had and what the Town's right-of-way surveyor had. He stated that it was determined that the right-of-way on their survey was correct, which meant that the sidewalk was on their property where it wasn't originally. He stated that the original

plans showed a four-foot grass strip with nothing in it and when the sidewalk was added, they brought the plan to the Planning Board with 11 parking spaces shown. He stated that the plan also had the building and drain field shifted to the east, so they were out of the 30-foot CAMA buffer as well as being compliant with the 75-foot CAMA Area of Environmental Concern. He stated that, due to all of the existing coverage, they had the flexibility to slide the building to the west. He anticipated that they would slide the building and parking to the west a few feet and open up some space between the sidewalk and the parking. He explained that the Planning Board asked for two additional parking spaces, so they had to shift the building a foot. He added that the site plan in front of Council reflected those changes. He noted that it brings the property slightly out of compliance with the CAMA rules but were still in compliance due to grandfathering allowances.

Andy Deel pointed out that they do not have a lot of remaining flexibility to move things to the west, but there would be problems with the setbacks from the sound to the wastewater drain field. He stated that the parking surface will be asphalt and concrete as they were not happy with the gravel due to maintenance issues associated with it. He stated that they were in compliance with the State for storm water runoff on the site. He added that the landscaping was the basic minimum required for the site.

Mayor Kingston noted that there was an indentation for the loading zone. He asked if it was possible to straight line it in order to pick up a couple feet for the parking on the west side. Andy Deel stated that it was possible. Mayor Kingston pointed out that it would not be infringing on the drain field because of the loading zone and if they went west, they could pick up more space for parking spaces #6 and #13. Andy Deel stated that the plan did not reflect the wastewater system, which had quite a few components. He added that the wastewater components were located in the open space. He noted that there may be about a foot of space available.

Councilor Burdick stated that Andy Deel had commented that he had some flexibility. He asked for clarification. Andy Deel stated that he was referring to the fact that they still have coverage available within the Area of Environmental Concern based on what was previously there. He added that they could shift the building one or two feet to the west and take the parking with it in order to open up another one to two feet between the sidewalk and the parking lot.

Mayor Pro Tempore Thibodeau clarified that the applicant did not want to get the building too close to the sound. Andy Deel stated she was correct.

Councilor Burdick thought the problem he was having was that it was a real safety problem with having only one foot in that area, unless the applicant wanted to build a wall. He explained that just parking a vehicle, someone could open their car door and hit a pedestrian. He stated that it was an untenable safety situation and outside of the Town's standard. He thought the applicant needed to find a way to get some additional space and a divider that will keep people getting out of their vehicles from hitting pedestrians. Andy Deel asked if a split rail fence and small landscaping could be used as

a visual barrier between the parking space and sidewalk. Councilor Burdick thought if the applicant could pick up a couple of feet to do that, it would be helpful.

Mayor Pro Tempore Thibodeau stated that she liked the idea of a barrier because people sometimes do not park well, especially if they are new to the area. She stated that a fence would visually protect pedestrians. Andy Deel stated that it would not have to be much. Mayor Pro tempore Thibodeau added that it would show the driver that they needed to stay in the parking spot. Andy Deel thought that they could do that without it being obtrusive. He added that they could shift the building a couple more feet.

Councilor Britt asked if the control panel for the septic plan could be moved to the north side of the field to keep it out of sight. Andy Deel stated that it had to be mounted and having the wall from the dumpster enclosure was a convenient place to mount it. He added that if it was mounted on a post, it would have to be set back as they cannot have posts surrounding the field. Mayor Pro Tempore Thibodeau asked if the drain field was a standard one. Andy Deel stated that it was an engineered system.

Mayor Kingston asked if there was an opportunity to pick up a foot or two, either by the building or the drain field. Andy Deel stated that there was. Councilor Burdick clarified that Andy Deel was in agreement that there needed to be a barrier. Andy Deel stated that they could accommodate those conditions and the other conditions that Director Heard reviewed, which were all customary and they would not have an issue with them. Town Attorney Hobbs clarified that if the conditions were added to the permit, it would not be an issue. Andy Deel stated that it would not. Councilor Burdick stated that he would feel comfortable if there was at least three to four feet on both sides. Andy Deel stated that if they shift everything, it would work.

Mayor Pro Tempore Thibodeau stated she was excited about the project and thought it would be a nice addition to the Town. Mayor Kingston added that it was very well designed.

Town Attorney Hobbs asked if any of the sworn witnesses wished to give a presentation or comment on the application. There were none.

There being no one else wishing to speak, Town Attorney Hobbs closed the evidentiary portion of the public hearing and turned the meeting back over to Mayor Kingston. He reminded Council that they could discuss adding a condition along the lines of what was just discussed with the applicant's engineer.

Councilor Burdick moved to add a condition that was discussed with the applicant that they provide a minimum of three feet of space between the sidewalk and the parking as well as installing some type of barrier to ensure that vehicles do not interfere with pedestrians. Mayor Kingston stated that if it was a three-foot separation, he didn't think a barrier was needed. Councilor Britt thought a vegetative barrier could be installed. Councilor Burdick thought a barrier was required because people do not park perfectly in parking spaces. He added that it did not need to be a fancy barrier but fencing that would

keep car doors from hitting pedestrians. Mayor Kingston clarified that it could be vegetative fencing. Councilor Burdick stated that it could.

Councilor Britt thought three feet was fine if it was separated by vegetation. He didn't think a fence would look good in that area. Councilor Caviness thought shrubs could be planted as grasses would not work. She added that it should be some substantial vegetation that could not be driven on.

Mayor Kingston stated that there needed a motion that took into account the conditional use permit and the amendment.

Mayor Pro Tempore Thibodeau moved to approve Conditional Use Permit 18-009 as presented with the conditions as presented by Director Heard and adopting the findings of facts as well as adding the two new conditions of adding a three-foot separation with a substantial vegetated barrier.

Councilor Burdick thought it could be vegetative or fencing. Town Attorney Hobbs thought the applicant could make that call as the vegetation could grow out into the sidewalk, which could cause an issue. Councilor Burdick thought the applicant could install a split rail fence that would be attractive while serving the purpose. Mayor Kingston stated that he would make it a minimum of three feet. Town Attorney Hobbs stated that the motion could be amended to make it a minimum of three feet. Mayor Pro Tempore Thibodeau didn't think they could get any more than three feet. Mayor Kingston agreed. Mayor Pro Tempore Thibodeau noted that that public was benefitting from the sidewalk being on the property, so she liked having that flexibility for the applicant. She added that it also gets two more parking spaces, which was what the Planning Board wanted.

Councilor Burdick pointed out that, even though it was the Village Commercial Development Option, Council will be setting a new standard for parking in the setbacks and it will be very difficult in the future for Council to say no to someone else that has a similar problem. He thought Council needed to recognize that they were doing that. Mayor Kingston pointed out that this was not the first case that Council has done this. He added that Council violated it significantly a while back with Roadside Bar & Grill. Mayor Pro Tempore Thibodeau asked if that was regarding parking. Mayor Kingston stated that it was. Councilor Burdick disagreed, noting that it was not in the setback. Director Heard noted that Travis Costin's project had encroachments.

Councilor Caviness stated that she would argue that every time Council considered the Village Commercial Development Option, it was different sets of considerations and it gets handled on a case by case basis, so if someone comes forward and points out how Council handled another case, it had no bearing because every lot, consideration and concession was different. She stated that sometimes Council wants an applicant to be more generous in terms of what they do with vegetation or lighting and in return Council grants leniency somewhere. She stated that if one project to the next wants to move forward that it was allowed on another project, then so be it, because the other project

was different. She stated that she did not look at it that way. She added that she considers every project under this option as completely different and succinct projects. Mayor Pro Tempore Thibodeau agreed with Councilor Caviness' comments. Councilor Burdick stated that he was comfortable with the project.

Motion carried 5-0.

Public Hearing/Discussion/Consideration of Ordinance 18-06, a Proposal to Amend the Standards of Town Code Section 156.126 by the Establishment of Maximum Size Standards for Single-Family Residences

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

Town Attorney Hobbs stated that Director Heard would give an overview.

Director Heard stated that the Planning Board and Council have looked at this issue over the course of a year, trying to find the best solution for the Town. He stated that Council was considering Attachment A in their packets, which was a proposal to set up a list of maximum house sizes for single-family residential properties. He added that it was a tiered system using the same tiers that the Town has traditionally used in regulating other aspects of development. He explained that lots that were nonconforming lots of 9,999 square feet or less would be able to build a house up to 3,500 square feet; lots of 10,000 to 14,999 square feet would be able to build a house up to 4,000 square feet; lots of 15,000 to 19,999 square feet would be able to build a house up to 4,500 square feet; lots of 20,000 to 24,999 square feet would be able to build a house up to 5,500 square feet; and lots of 25,000 square feet or greater would be able to build a house up to 7,000 square feet. He noted that 84% of all of the houses in Duck would fit under the 3,500 square foot requirement currently, which were the smallest lots with the smallest requirement.

Director Heard stated that under the proposal that the Planning Board made to Council, if a property owner wanted to build something larger than the maximum sizes, there were circumstances under which they have the ability to do so. He noted that there were some criteria that they would have to meet:

1. Conforming lot size of 15,000 square feet or greater.
2. Slightly larger front and rear building setbacks.
3. Additional landscaping requirements.
4. Minimal architectural standards to help break up massive facades.
5. Maximum septic capacity of 1,080 gallons per day, which is equivalent to a nine-bedroom home.
6. Maximum house size capped at 7,000 square feet.

Director Heard stated that for a 15,999 square foot property, they could go from 4,500 square feet up to 7,000 square feet if they could meet the other criteria and fit the house on the lot. He stated that the 20,000-24,999 square foot lots would go from 5,500 to

7,000 square feet. He stated that for lots that were 25,000 square feet or greater, they were already capped at 7,000 square feet so there would be no additional incentive for them.

Director Heard stated that when Council first heard the application at their September 5, 2018 meeting, Council took comments and opted at that meeting to not make a decision to approve or disapprove the proposal. He added that Council asked the Planning Board to go back and take a look at several aspects that were related to comments that were made at the meeting. He stated that after reviewing those issues at their September 9, 2018 and October 10, 2018 meetings, the Planning Board came back to Council with a proposal that recommended an ordinance that regulated only septic capacity and completely removed house size. He stated that that ordinance, which technically is the last ordinance the Planning Board recommended to Council, was in the staff report as Attachment B.

Director Heard stated that Council reviewed it at their November 7, 2018 meeting and opted to set the hearing for the prior ordinance. He added that prior to moving toward the consideration of the septic capacity, the Planning Board had a substantial amount of conversation and consideration of an ordinance that would improve the ordinance in front of Council. He explained that they wanted to look at the issues that Council raised and try to address them. He stated that they have not recommended the ordinance to Council, but they asked that a third alternative be given to Council, which was Attachment C in the staff report. He noted that the concepts were similar to what Council was looking at at this meeting as far as using a combination of the maximum house size and septic capacity; but the difference that the Planning Board had in there was that they increased the top tier to 8,500 square feet; lowered the tier of 15,000-19,999 to 6,000 square feet; took a look at using a tiered system for the septic capacity and rather than having an overall item, they broke it into tiers with the increase depending on the size of the lot; and looked at increasing setbacks for large structures with different criteria for greater setbacks. He noted that they wanted to offer homeowners an alternative if they do not want to meet the greater setback in that they could substitute by installing a sprinkler system in the house. He added that there was a significant cost to that, but if the homeowner felt it fit their needs, it would be offered as an alternative to the greater setbacks.

Director Heard stated that there was an outline in the staff report regarding the memorandum of concerns expressed by Town Attorney Hobbs and Attorney Ben Gallop regarding the use of the septic capacity limitations. He added that there was a lot of data in the staff report regarding existing lot and house sizes for Council to look at if needed.

Mayor Kingston clarified that Attachment A was the same ordinance that was presented to Council at their September 5, 2018 meeting. Director Heard stated that it was. Councilor Britt clarified that Attachment B was the ordinance that Council considered at their November 7, 2018 meeting. Director Heard stated that it was the Planning Board's most recent recommendation to Council. He pointed out that there was no public hearing for Attachment B, but Council discussed the provisions in it. Councilor Burdick clarified

that Attachment C was a combination of Attachment A and B. Mayor Pro Tempore Thibodeau disagreed, explaining that it was another alternative. Town Manager Layton stated that Attachment C was what the Planning Board was working on. Director Heard stated that it was an ordinance that the Planning Board developed but never sent forward to Council.

Councilor Burdick clarified that even though the public hearing was on Attachment A, Council could make minor changes to it. Town Attorney Hobbs thought Council could make some minor changes to Attachment A, but Attachment C has not been recommended to Council by the Planning Board and should not be considered at this time. He added that if Council thought they may like Attachment C, they could send it back to the Planning Board and ask to see if they would recommend it to Council.

Mayor Kingston clarified that Attachment C could be an amendment to Attachment A in the future. Town Attorney Hobbs stated he was correct. He added that Council could adopt Attachment A and ask that Attachment C be sent back to the Planning Board for possible amendments.

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

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

Henry Blaha of 121 Ocean Bay Boulevard was recognized to speak. Mr. Blaha showed Council the CAMA Land Use Plan that was adopted by the Town of Duck years ago. He noted that in the Plan – Chapter 9 Objective #19 stated the following: “...encourage new residential development to respect the rights and consider the concerns of adjoining property owners with respect to issues such as storm water runoff, line of sight, vegetation buffer, and selection...” He stated that he was bringing it up because, as a representative of the Sound Sea Village subdivision, they have had flooding issues. He stated that as more houses are built, more fill has been brought in, and the water has to go somewhere so it ends up going into adjacent yards. He asked Council to think about the homeowners that have lived in their homes for a very long time. He stated that the Sound Sea Village subdivision had homes built as far back as 1965 on 7,500 square foot lots with the size of the home decided by the Dare County Health Department while taking the septic drain field and wells into consideration. He stated that a lot of mistakes were made in the past with wetlands filled and because of the mistakes, it was one reason that Duck incorporated. He stated that when one looks at a home that could be 7,000 square feet as well as pervious and impervious pavement, the number of vehicles, and factor in the existing flooding issue, it was creating more issues without addressing the current issue. He stated that it seemed the flooding issue was not being addressed and it scared him that it wasn't.

Taylor Slaughter of 116 Baum Trail was recognized to speak. Ms. Slaughter stated that she and her husband have 50 years of experience with coming to the Outer Banks and bought a home in Duck 22 years ago in the Palmers Island subdivision. She stated that

they have spent a great deal of time in Duck and have been delighted with the development in the Village area but were concerned that a large lot with a large house has an impact on neighboring homes and the community. She stated that she has a background in history and spent many years as a docent in a museum and was concerned with balance and proportion of houses to their lots as well as the spaciousness of their settings. She stated that she spent the last few days looking at the Dare County GIS maps trying to look at how much space was around houses in the Village and was surprised to see how much there was. She hoped Council will consider the effect on neighbors with regard to increased height. She stated that she heard that it was important to allow a homeowner to build what they want on their property, but she thought there needed to be some consideration as to the impact on neighbors and the community. She stated that the way she understood the new rules, houses would have to be built above a base flood elevation, which means that new homes would be elevated by eight to 10 feet to get the space under the house for outside showers, storage and passage under the house. She noted that the space could not be enclosed for use by the homeowner. She stated that it resulted in a house that needed to be raised to four levels in order to have nothing under it, which has an effect on the neighboring properties. She stated that the increased height has an effect on the appearance of the weight of the house. She stated that by surrounding a home with decks, it lightens the appearance with height and the ground and conceals the bulk. She thought it would be difficult to build a house greater than 7,000 square feet, even on a large lot, and encouraged Council to pass the ordinance.

Victor White of Landmark Engineering was recognized to speak. Mr. White stated he was present to make some points on behalf of some of the residents of the Palmers Island subdivision. He stated that one of the things that Council had originally sent back to the Planning Board was the ordinance in front of them, which was to look at an additional tier for the larger lots, which was not done. He stated that one of the things that the issue was about was density and the character of the Village of Duck, which was very unique, but Palmers Island and most of the lots except for the one in question, have been around for a very long time. He stated that there were several larger houses that, even though they would be grandfathered in the case of flood or fire damage, if they get to the end of their useful life, they would not be able to rebuild to the current size that currently exists. He stated that the Town does have limits on density by impervious coverage and height restrictions. He thought the concerns that he has been hearing was that this is about density, but if Council applied some of the numbers for a 15,000 square foot lot and applied it to the Palmers Island subdivision and what it could be subdivided into, the Town would end up with a lot more density than some of the houses that Council was concerned about. He added that 8,500 or 10,000 square feet would be less density. He understood the concern but thought this was something that does not need to be rushed by Council. He didn't think that several of the large homeowners that he had spoken with were against regulations but were concerned that they were being penalized for living in a neighborhood that was less dense than others. He thought Council should consider adding an additional tier.

Laura Twichell of the Aldridge and Seawell Law Firm was recognized to speak. Ms. Twichell stated that she was present on behalf of Leo and Nancy Grohowski who own a

home in the Palmers Island subdivision. She stated that her clients were deeply concerned about the proposed ordinance and believed that it will cause hardship and affect the value of property for owners of large lots. She stated that the Grohowskis purchased their home at 106 Baum Trail in Palmers Island about two years ago and had rented in Palmers Island for over 20 years before buying their home. She stated that they wished to express their displeasure with the ordinance in that if Council decided to put a maximum limit of 7,000 square feet for homes on any lot in excess of 25,000 square feet was arbitrary and unfair. She stated that they understood and agreed with what the Town was trying to do and did not want to see event homes or large homes on smaller lots. She stated that by Council attempting a simple answer to the problem will have unintended consequences and will result in additional legal expenses for the Town and its citizens. She stated that the Grohowskis knew that owners of existing homes in excess of 7,000 square feet could take comfort in the potential grandfathering should their homes be destroyed, but thought these owners were not sure they were thinking about the consequences of becoming a nonconforming structure should they wish to enclose a covered porch or bump out a room by two feet. She stated that a home over 7,000 square feet can look very tasteful on a lot of the Grohowski's size and added that her clients would argue that all of the homes in Palmers Island which were over 7,000 square feet were visually appealing and appropriate for the lot size. She reminded Council that the Grohowskis were currently working with local builders and contemplating a remodel that would bring the square footage of their home to 8,500 to 9,000 square feet. She noted that the home would not be an event home or a rental. She stated that her clients felt that they should have the ability to build a larger home on a 39,000 square foot lot.

Clark Twiddy of Twiddy and Company was recognized to speak. Mr. Twiddy thought that everyone loved the Town of Duck and the question became how to keep it the wonderful place that it is. He stated that Twiddy and Company's thought was that they were concerned about the industry of tourism in the way people invest in properties and rental homes to achieve returns through the consistent instances of tourism. He stated that he was worried that, for homeowners, the ordinance was a retroactive condemnation that would reduce their ability to achieve the financial outcomes that was the reason for the homes people invest in. He stated that they also worry that this will be a chain reaction in the reduction of values that would reduce the potential tourism value of those homes. He encouraged Council to send the ordinance back to the Planning Board to have further discussion regarding some of the bigger homes in Duck. He noted that bigger homes were not bad, and everyone loves the way bigger homes should conform.

Ben Vorndran of 104 West Sea Hawk Drive was recognized to speak. Mr. Vorndran stated that he had mentioned at the previous public hearing that he grew up in a very big house and he was looking at the size of the lots in Duck. He stated that 7,000 square feet was mentioned. He stated that eight people lived in his house which was 6,500 square feet, but it was on 15 acres. He stated that he remembered a lot of comments about Duck before the road was built, he remembered a lot of comments from people that vacation in Duck and how they did not like Virginia Beach and all of the big developed areas where they had to fight for space on the beach. He stated that one comment he remembered was that Duck was the right size. He stated that there were some that were bullying the Town

by threatening legal action against it just for fighting to keep the Town the way it was. He stated that he was trying to come up with an answer with regard to the bigger houses and one thing that came to his mind was when the homeowner bought the lot, the ordinance was already in place and didn't magically appear. He stated that larger setbacks and vegetation was a good idea but reminded Council that the huge houses and combining lots would always happen. He stated that the Town did not always have huge houses and homes were the right size. He stated that there was consideration and wasn't sure what the solution would be. He thought there could be a different zone for the Palmers Island subdivision, so it wouldn't spread to other communities in Duck. He stated that he was trying to think of a good solution but thought 7,000 square feet was more than adequate. He stated that the huge houses on big lots really fit and thought it should be kept at 7,000 square feet. He encouraged Council to keep the Town the way it was.

Allan Beres of 146 Dune Road was recognized to speak. Mr. Beres stated that he noticed all of the increments in lot sizes and wondered if it was shifted one square foot and could be made the first tier at 10,000 square feet or less and the second one 10,000-15,000 square feet. He stated that he did not know all that much about every neighborhood, but it seemed that a lot of it was based on the lots being 15,000 square feet or less and others that were 10,000 square feet or less. He wondered how that would shift the number of subdivisions or individual lots that fall under each of the categories. He wondered what the answer would be, but also wondered if the Planning Board had looked at that to see what kind of shift would occur and how it would impact the individual communities.

Town Attorney Hobbs asked Council if they had questions.

Mayor Kingston clarified that there were 12 residences in Duck that were over 7,000 square feet and 88 lots that were over 25,000 square feet. Director Heard stated he was correct. He stated that there were 14 lots in the Palmers Island subdivision, all of which were above 25,000 square feet. He stated that there was a total of 88 properties throughout the Town with Palmers Island making up less than 25% of all the large lots in Duck. He added that 74 lots were located elsewhere in Town.

Mayor Pro Tempore Thibodeau asked how many of the 74 lots were already developed. Director Heard stated that seven of the 88 lots were undeveloped and were all outside of Palmers Island, adding that everything in the Palmers Island subdivision was already developed. He noted that there were seven undeveloped properties, outside of the Palmers Island subdivision, that exceeded 25,000 square feet.

Councilor Burdick asked if the lots exceeded 30,000 square feet. Director Heard stated that some did. He noted that one lot was exactly 30,000 square feet and four were over 30,000 square feet. Councilor Burdick asked how many lots in the Palmers Island subdivision were over 30,000 square feet. Director Heard stated that there were a number of lots that were between 25,000 and 30,000 square feet, particularly on South Baum Trail and there were lots on North Baum Trail that were over an acre in size.

Mayor Kingston clarified that there were 3.6% of the lots in Duck that were over 25,000 square feet and only seven were undeveloped. Director Heard stated he was correct.

Mayor Pro Tempore Thibodeau stated that up until this point when Council has been considering the new limitations; what the Town has been operating on was the regulations and rules that were developed in 2015, when the State told all municipalities that they could not regulate bedroom size. She added that Council decided at that time that the existing restrictions such as Health Department regulations, parking and setbacks were going to work for the Town and controlled the size of a property that could be built on any given lot. She asked if that was what the Town has been operating with and not with anything like what was in the draft ordinance. Director Heard stated that she was correct.

Councilor Burdick thought Council needed to remember that there was a parking regulation that did not allow double back parking. He added that Council changed that recently, which allowed homeowners to build much larger houses on smaller lots. Mayor Pro Tempore Thibodeau pointed out that it was done prior to 2015. Councilor Burdick agreed, adding that his point was that Council made a change in the parking regulations that allowed bigger houses to be built on smaller lots because there didn't have to be one on one parking. Mayor Pro Tempore Thibodeau thought the reason Council did that when they changed the parking was that it may have been a consequence of it, but what happened was the Town's parking was so restrictive that it was becoming a lot of parking that was unnecessary for the property. She stated that that was the reason the Town went with a more lenient parking restriction prior to 2015 because Council recognized that what they were creating, by the parking requirements, was just a lot of concrete around houses. Councilor Burdick wasn't sure that was correct as he had to do things by the old regulation and it made a significant difference in what could be done. He reiterated that even though the Town has parking regulations, it was changed sufficiently to allow much bigger homes to be built on smaller lots. He thought there may be less concrete, but there were also bigger homes as a result of 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.

Mayor Kingston stated that the reason Council was where they were today was because when Duck first became a Town, Council put a moratorium on the number of bedrooms and controlled the number of bedrooms until 2015 when the State legislature took that opportunity away from the Town. He stated that Council changed the septic and, in the interim, completed a 2022 and 2027 Vision, because they were concerned about the character, the density and the environment within Duck. He stated that now Council was moving away from the Vision and the Land Use Plan. He noted that Council wanted to solve the problem with respect to density, but now Council was looking at something that could take away from the character of Duck. He thought 7,000 square feet was a large house. He pointed out that the Town of Nags Head had a 5,000 square foot cap and the Town of Southern Shores had a 6,000 square foot cap and now Council was contemplating a 7,000 square foot cap. He wondered if Council wanted the character of

Duck to change that much. He understood that there were some issues with homeowners with large lots and he thought it could be addressed since it was less than 4% of the number of lots in Town. He thought Council could come up with some scheme that addresses that subset. He thought Council was looking at larger houses that could become huge rental machines and create a lot of additional problems with respect to parking, density, impact on the environment and other associated problems with building a larger house in smaller neighborhoods.

Mayor Kingston stated that he agreed with the ordinance in front of Council and thought some additional work was needed with respect to looking at the upper tiers. He stated that he would like to see Council put something in place, at least in the interim, in order to move forward and put some cap in place. He stated that he supported the ordinance. He added that he thought the 7,000 square foot cap was too high but would support the ordinance.

Mayor Pro Tempore Thibodeau stated that she appreciated all of the public interest and comments that were received as Council has looked at this issue. She pointed out that Duck has successfully created a small-town atmosphere with the current development. She agreed that there would be outliers or people that do not use tasteful construction, but she didn't think that was a reason to take away personal property rights of people who have purchased large properties with the idea that they could build something. She felt that 7,000 square feet on a large lot was arbitrary and not fair. She believed that personal property rights were important, and that Duck has a small-town atmosphere and was not getting away from the fact that Council needed to be conscious of its neighbors and encourage vegetation. She thought storm water was an issue that needed to be continually looked at. She noted that Duck has come a long way – she has lived in Duck for over 30 years – she has seen the changes that have come to the area. She stated that Duck was a very successful town and she thought Council was very careful, but she did not want to penalize the larger lot owners. She stated that if Council was to adopt anything, she could not agree with the 7,000 square foot cap on larger lots as she would be more in favor of a 9,000-10,000 square foot cap, which would allow for tasteful decks and could soften the look of a larger structure and would allow someone to make a modification to their large home while not creating a nonconformity.

Mayor Pro Tempore Thibodeau stated that she would want the higher-level tier to be around 9,500 to 10,000 square foot range. She didn't think there would be a lot at that size and thought economics have dictated a lot of what things people have done in Town. She didn't think Duck could compare itself to the Towns of Southern Shores or Nags Head. She pointed out that the Town of Southern Shores has different lot sizes than Duck and wasn't like either Southern Shores or Nags Head. She thought Duck has a character in the sizes of the lots that were pre-platted before the Town incorporated, which have allowed the Town to maintain the appropriate sized home on each individual lot.

Councilor Burdick agreed with Mayor Kingston's comments. He thought Council needed to come up with something that may not be optimal at this time, but it would put the Town in the position that it was not facing someone building a huge house in an area that

would look inappropriate. He stated that he recognized that the larger lot owners would like a little more flexibility than what the Town has shown. He thought a tier of greater than 30,000 square feet could be added to allow an 8,500 square foot home. He noted that it would take care of the large lots that people may want to build a significantly larger home on. He didn't think the tier needed to go to 9,000 to 10,000 square feet as it would get the Town into the 18-bedroom house size. He proposed that a tier of greater than 30,000 square feet with a house size maximum of 8,500 square feet to the draft ordinance and have the Planning Board go back and look at it to see what they think Council should do in the long-term.

Councilor Britt didn't believe that Council should ever pass anything that they knew would need to go back to the Planning Board to fix; he thought Council should pass something that was right. He stated that he agreed with Mayor Pro Tempore Thibodeau's comments in that it was unfair to large lots to tell the owners that they were limited to 7,000 square feet. He stated that taking that option away from people was unfair and not proportional. He stated that if he looked at some of the 35,000 square foot lots and told the owners that they could only build a 7,000 square foot house, the owners would turn the lot into two 15,000 square foot lots with 6,000 square foot houses on each with 18 bedrooms because they didn't have the option to build a 9,000 square foot house on their lot. He added that he did not want to take that option away from people and thought it may not happen that often, but it could. He stated that he would like people to have that option if they wanted to have a proportional house and lot together.

Councilor Britt thought there needed to be a higher tier and agreed with the 9,500 – 10,000 square feet as it would leave only two nonconforming homes in Duck. He stated that he was concerned about making nonconforming houses, adding that he knew there were 81 that were built, but when they want to make a change, he didn't want it to create a nonconformity. He pointed out that large homes could not have 18 bedrooms as there was a clause in the ordinance about septic and limiting the bedrooms to nine. He added that if the home was bigger, it couldn't be taller. He stated that he would like to see a higher cap, was in favor of Attachment C, even though Council couldn't do anything with it at this meeting but did not want to pass an ordinance knowing that Council was going to change it. He reiterated that he was not ready to support the ordinance with a low cap.

Councilor Caviness stated that she was ready to support the draft ordinance in front of Council and was open to some sort of a proposal coming to Council that was similar as to what was written in the draft ordinance regarding people who have larger lots and what might be the parameters that Council would consider in granting a larger structure. She stated that if it came back in the form of a future amendment to the draft ordinance, she would be fine with it. She thought whatever language was needed, had to be carefully considered and crafted, which she didn't think could be done at this meeting. She reiterated that she was in a position where she would support the draft ordinance as well as willing to look into how to deal with the very large lots moving forward.

Mayor Pro Tempore Thibodeau noted that all of Council had given their thoughts on the subject, appreciated everyone's opinions and understood that everyone felt strongly one

way or another. She thought Council has left a small number of people in the community hanging and didn't think it was right. She thought Council was mixing things up with the idea that having a house on every lot in the community or rental homes mixed in with year-round residences, and all that comes with the idea of change that has been completed in Duck. She stated that Council was dealing with this issue due to one property that has caused an issue. She felt that the large lots alone were being penalized in the draft ordinance and didn't think it was fair because there were so few of them, but they were also unique and scattered throughout the community. She thought Council was penalizing a minority of people, but she didn't understand why because it hasn't been an issue. She reiterated that she could not support the ordinance as it was written without going higher for the larger lots with regard to square footage that was permitted.

Councilor Britt pointed out that if the State of North Carolina did not do what they did and tell municipalities that they couldn't regulate bedrooms, this wouldn't be an issue as the current rules that were in place addressed house size through setbacks and parking regulations. He added that the State made the change and now Council has taken it upon themselves with wanting to regulate house size. He noted that Duck was already regulating house size with setbacks and parking regulations. He added that Council was penalizing the people that purchased large lots by telling them that they could not build a house in proportion to the lot size. He stated that it was unfair and not right. He stated that he was not in favor of coming back with an amendment. He stated that Council needed to fix it and do it right. He added that he was a fan for larger limits on larger houses but reiterated that the Town already has regulations in place to control the size of a house. He reiterated that he could not support the ordinance unless a larger tier was added. Councilor Burdick proposed that a larger tier be added to the draft ordinance.

Mayor Kingston stated that approximately one year ago, Council had said with regard to the rules of controlling density by septic, that Council wanted to control it because they did not want people building 12-bedroom houses. He stated that Council looked for a solution and right now, he felt the draft ordinance was the best solution in front of Council, along with all of the other regulations that were already in place. He stated that even though some Council members did not want to send it back to the Planning Board, they could always send it back to the Planning Board, but at this point there needed to be some level of regulation put into effect. He reiterated that Council could always go back and amend the ordinance. Councilor Burdick asked Council if they could support adding another tier. He thought it was a modification Council would want.

Councilor Caviness stated that she could support adding another tier. She stated that she appreciated all of the comments that were said, but the one thing she keeps hearing was that there was one problem that has precipitated all of the discussion, but she wasn't sure if that was true. She stated that Henry Blaha spoke about impacts in his neighborhood. She added that she has lived on a street where there were cascading impacts. She didn't think the entire discussion was about one house in the Palmers Island subdivision that has been creating issues. She thought that this was an issue that touched a lot of people in the Town and Council was trying to make a decision that was best for everyone and not just the people that own the larger lots, which was hard. She added that it would require

some compromise as everyone would not get what they want. She reminded Council and the audience that it was not just one house that has bothered a few people, but thought it was bigger than that – not only in Duck, but everywhere on the Outer Banks. She noted that it was a huge responsibility that Council was dealing with.

Mayor Pro Tempore Thibodeau stated that Council was talking about tiering properties and going to these levels that the Planning Board has recommended. She stated that where Council was at a disagreement was when the discussion turns to the large lots. She understood what Councilor Caviness was saying regarding rental homes having changed the Outer Banks. She noted that they have brought a lot of jobs, tourism dollars, and property values. She added that things change, and they have changed since 1970. She stated that Council was looking at the large lot situation and the Planning Board did not address large lots and left it at 7,000 square feet. She added that she was not saying that the Planning Board did not discuss it and she was not trying to minimize the Board's hard work because they have been at it for a very long time, but they could not come to an agreement. She stated that the Council was at an impasse. She believed that what Council was talking about here and now was the 25,000 or greater situation.

Councilor Britt agreed with Mayor Pro Tempore Thibodeau's comments. He stated that he did not have a problem with the existing rules for smaller lots. He added that it was the unfair way the larger lots were being treated that he had an issue with. Councilor Burdick noted that he had another proposal to offer. He suggested adding another tier for the large lots with a cap of 8,500 square feet. Mayor Kingston asked if it would be for lots that were 30,000 square feet and above. Councilor Burdick stated it would.

Mayor Kingston asked how many lots were at 30,000 square feet and above. Director Heard stated that there were approximately 30 that were within the 25,000-30,000 square foot range. He added that there were some that were over 30,000 square feet.

Councilor Caviness pointed out that there was language in Attachment A that talked about a 15,000 square foot lot and if a homeowner wanted to build a larger house, the things that would have to be done, such as bigger setbacks and landscaping. She didn't think that it was wrong to put something in the ordinance that was dealing with a larger lot. She added that if someone had a lot that was greater than 30,000 square feet, there should be proportional considerations. She thought it was reasonable and thought everyone would want that. She stated they didn't seem unreasonable or draconian.

Director Heard stated that that there would be 59 lots that were over 30,000 square feet with four that were currently undeveloped.

Councilor Britt pointed out that Council was taking 39 lots that were between 25,000 and 30,000 square feet and ignoring them. Councilor Burdick disagreed, noting that they would be capped at 7,000 square feet. Councilor Britt stated that it could also be done on a 22,000 square foot lot. He stated that if Council wanted to add a tier, it needed to start at 25,000 square feet. Councilor Burdick thought 7,000 square feet was adequate for a 25,000 square foot lot. He added that it would house a pretty large structure. He stated

that the problem the Town has been dealing with was the really large lots that were over 30,000 square feet. He added that it encompassed not only the Palmers Island subdivision but all over Duck. Councilor Britt stated that he would not call every big house a problem. He added that there were good big houses that were assets to the community. Councilor Burdick pointed out that it depended on where the house was put. Councilor Britt reiterated that every big home was not a problem. Councilor Burdick reiterated that it depended on where it was put.

Mayor Kingston clarified that Councilor Burdick's proposal was for lots of 30,000 square feet and above, the house would be capped at 8,500 square feet. Councilor Burdick stated he was correct. Mayor Pro Tempore Thibodeau asked if the cap could be 9,000 square feet. Councilor Burdick stated he would be fine with it, adding that the difference of 500 square feet wasn't that important, but what was important was that Council get something in place that was as fair it could be under these conditions.

Mayor Kingston pointed out that the risk was combined lots in the developments. He added that if two lots were combined, it could result in a 9,000 square foot house in a small community. Councilor Burdick stated that it would be a problem no matter what Council did. Mayor Pro Tempore Thibodeau thought if lots were combined, there would be less density because there would be one house instead of two. Councilor Burdick stated that it wasn't the density, but the relative size of the house compared to what was around it. He added that it becomes the "monster" among a lot of small properties. Mayor Pro Tempore Thibodeau stated that there was no way to regulate recombined lots, but the economic forces are not showing anything like that happening. She added that people will try to build the maximum on the lot they own. She stated that recombining a lot was not happening and if it were, she thought it would be very rare, but would be permissible.

Councilor Burdick stated that if there was a tier that started at 30,000 square feet, it would cover 58 properties, of which four were undeveloped, but at the same time, it gave those property owners the option of going up to 8,500 square feet. Mayor Pro Tempore Thibodeau noted that some may even be over that square footage. She thought there were a few that would still be nonconforming. Councilor Burdick thought there may be a couple in the Palmers Island subdivision that exceed the 8,500 square feet.

Councilor Caviness noted that 8,500 square feet was suggested in Attachment C, which Council was not considering. Director Heard pointed out that there were only seven houses in Town that exceed 8,500 square feet. Councilor Burdick noted that Mayor Pro Tempore Thibodeau had asked how many houses were at 9,000 square feet. Director Heard stated that there were six. He explained that there were five in Palmers Island, the large event house on Duck Road, and the large one on Settlers Lane.

Town Attorney Hobbs stated that if Council added a tier, they would also change the maximum size on the last page under D6, the last sentence before Part II. Director Heard stated that the problem was it was not that simple because it would allow a 9,000 square foot house on a 15,000 square foot lot. Councilor Britt stated that the tier was needed as

it would get it back to Attachment C. He added that it wasn't that simple. He explained that if Council just changed Attachment A to 9,000 square feet, it would make it apply to any lot in Town. He thought that was what Council wanted to avoid. He added that it started to point Council to Attachment C somewhat. Councilor Burdick pointed out that it just stated that the maximum house size would be 7,000 square feet.

Director Heard stated that the point was if Council added another tier, then the maximum would be 8,500 or 9,000 square feet. He added that it would have to be changed, which would mean the Town would allow up to an 8,500 square foot house on a 15,000 square foot lot. Mayor Pro Tempore Thibodeau asked how likely that would be to happen. Director Heard stated that there was currently a 7,000 square foot house on a 16,000 square foot lot in the Four Seasons subdivision. Mayor Pro Tempore Thibodeau asked if it was on the oceanfront. Mayor Kingston stated that it was. Mayor Pro Tempore Thibodeau noted that it may have been built before the Town changed the setbacks for oceanfront properties to the first line of stable natural vegetation. Director Heard stated that it was 166 Four Seasons Lane and was built before the Town incorporated and a similar situation has not occurred since the Town incorporated.

Councilor Burdick stated that the Town had the option where it defined large residences as 15,000 feet. He suggested making it 20,000 square feet. He noted that it would still be a challenge even on a 20,000 square foot lot to build an 8,500 square foot home. Mayor Kingston agreed. Councilor Burdick added that it would be a challenge to meet all of the setbacks as well.

Councilor Britt thought the compromise was in Attachment C. He knew Council could not pass Attachment C at this meeting, but the sky was not falling either. Councilor Burdick stated that he was getting an indication that the sky was preparing to fall. He stated that Council started the conversation because there have been inquiries to the Town from people that want to build large homes and that was why Council was trying to do something now as opposed to six months later so that the Town has some protection until Council could get what they feel was the best solution. He stated that he liked Attachment C, but at the same time Council could not do anything with Attachment C and it will be at least two months before Council could act on it. He noted that, knowing the way Council has been working, it would probably take three months. He stated that he had proposed the additional tier because it would get at a good part of Attachment C right now. He appreciated that Council wanted to go in another direction, but that wasn't an option at this meeting. Councilor Britt thought Council did.

Mayor Kingston asked why Council wouldn't pass Attachment A, which was the proposal in front of Council, as presented and send Attachment C back to the Planning Board to refine what was passed at this meeting. Councilor Burdick didn't think Council would agree on the 7,000 square foot limit. He stated that he was trying to find a way through that Council could get a higher limit that everyone will agree on with the premise that Council will go back and have the Planning Board look at Attachment C and optimize it.

Councilor Caviness stated that the top paragraph on Page 2 of Agenda Item B had a memorandum from Director Heard to Council that read: "If a property owner seeks to construct a new residence..." She asked if Council were to change the chart to read 25,000 – 29,999 square feet and add another paragraph in the ordinance similar to the paragraph on Page 2 that talked about conforming lot size of 30,000 square feet or greater with the same regulations, but at the end having the maximum house size capped at 8,500 square feet, it would be too much of a change to the ordinance. She added that instead of adding another tier to the chart, put the chart up to 29,999 square feet and then have an additional paragraph to address what happens with a 30,000 square feet or greater lot. She stated that #6 for that paragraph would be 8,500 square feet.

Mayor Pro Tempore Thibodeau clarified that Councilor Caviness wanted the new language in addition to the existing paragraph. Councilor Caviness agreed, adding that it seemed like adding another tier seemed to throw the existing one out of whack, so she was suggested that the existing was fine as it was giving options for people with a 15,000 square foot lot or greater to go to the 7,000 square foot cap, but Council would add language that stated that if someone had a 30,000 square foot or greater lot, then development criteria #2 through #5 would come into play and #6 would have the maximum house size capped at 8,500 square feet. Mayor Pro Tempore Thibodeau suggested 10,000 square feet. Councilor Caviness wondered if that would be too much of a change.

Town Attorney Hobbs guessed the issue would be looked at on a case by case basis and there was no white line rule that could be applied to it and was a judgment call. He stated that he tended to favor changes that were with some words here and there that could be added or deleted, but when it gets more into the substance of the proposal, then it gets into a more gray area. He urged caution and thought if Council wanted to have a conservative approach, that would be to either adopt the ordinance as is. He thought adding a tier would stay within the spirit of the ordinance, but thought the more Council changed it, the more farther and farther away they were getting from what the Planning Board recommended. He stated that Council would be better sending it back to the Planning Board for further study because that was their job. He added that changes made on the fly could have unintended consequences.

Councilor Burdick proposed adding a tier of 30,000 square feet and above and cap the house size at 9,000 square feet as well as whatever fixes were needed in the language. Councilor Caviness pointed out that Council was back at the question as to if that cap for maximum house size at 9,000 square feet would allow 15,000 square feet lots and up to have a large house. Councilor Burdick stated that Council could change that definition from 15,000 square feet to 20,000 square feet. Mayor Pro Tempore Thibodeau stated that it was at 4,500 square feet and to go from 4,500 square feet to 9,000 square feet was a pretty big stretch. She added that she didn't see it happening. Councilor Burdick thought if it was changed it to 20,000 square feet instead of 15,000 square feet, it would be the minimum for the large lots.

Town Manager Layton stated that one of the items in Attachment C was, as the tier gets higher, the minimum setbacks would change. He stated that if Council added a tier for lots over 30,000 square feet, in order to get at protecting the concern over 15,000 square feet, Council could take out the chart and original attachment with the setbacks that were set at 27,000 square feet and two feet above, and replace it with the chart in Attachment C, it would require lot sizes of 25,000 square feet or more having more setbacks, which may get at one of the concerns. He stated that it seemed if Council was going to add one tier, an amendment could be made to the side setbacks to address the two issues.

Councilor Caviness wondered if it would be better to put Attachment A to a vote and then have an amendment come back dealing with the 30,000 square feet or greater that was thought out with everything that it meant – the cap and setbacks. Town Manager Layton stated that the way things seem to be going was that Council would most likely vote 3-2, which meant it would have to come back at the January meeting and would most like be another 3-2 vote and at that point the ordinance would be adopted. He stated that it seemed presumptuous to send something to the Planning Board before it was adopted. He stated that if the goal of Council was to get something in place, they would be losing a minimum of a month before anything would be put in place because there wasn't anything to amend yet.

Councilor Britt pointed out that Attachment C was very well written. He asked if it could get to the Planning Board for their December 12, 2018 meeting and then have it come back to Council at their January meeting. Director Heard stated that Council would set the hearing in January and have the public hearing in February. Councilor Britt stated that it could be held at a Council mid-month meeting.

Town Attorney Hobbs stated that he was not happy about the column for the septic capacity. Town Manager Layton stated that what he was proposing did not have anything to do with the septic, but it was adding a tier for the setbacks and not for septic. Councilor Burdick asked if the setback chart could be added to the draft ordinance. Mayor Kingston stated that it would be too much of a change. Town Attorney Hobbs clarified that Councilor Burdick wanted to take the chart in Attachment C and substitute that for the one that was currently in Attachment A. Councilor Burdick stated he was correct. Town Attorney Hobbs asked if that was the only change. Councilor Burdick stated that he wanted to have the chart from Attachment C put in Attachment A to balance out the problems with the lots. Town Attorney Hobbs thought that there was no definitive answer with those types of things. He thought that because the charts were very similar between Attachment A and Attachment C, it would be a minor modification.

Councilor Caviness pointed out that Town Attorney Hobbs had recommended at the beginning of the public hearing not to consider Attachment C at this meeting. Mayor Kingston noted that there was a change in the 15,000 – 19,999 square feet as well as some language that changed. Councilor Britt stated that Council seemed to like a lot of aspects of Attachment C. Mayor Pro Tempore Thibodeau pointed out that there were certain things that Council could not do in Attachment C, such as the septic. Councilor Burdick agreed. Councilor Britt noted that there were septic references in all three

attachments. Councilor Burdick pointed out that there was a septic reference on maximum number of gallons. Councilor Britt pointed out that it was in all three attachments. Councilor Burdick stated that the maximum was not the problem, adding that Town Attorney Hobbs was having an issue with the table and Council didn't know how to solve the issue. He thought Town Manager Layton's suggestion was a good one that it was a very minor modification of what was already in Attachment A and it took care of Council's concerns regarding the large lots. He stated that it would offer Council a solution if they could agree on the upper limit for the 30,000 square foot and greater lots. He stated that he was still in favor of a 9,000 square foot cap on houses as he felt it was compromise for all of Council.

Mayor Pro Tempore Thibodeau stated that she was trying to compromise herself. Councilor Britt clarified that Councilor Burdick was talking about the table in Attachment C, Section C and moving it to Attachment A. Councilor Burdick stated he was correct. He pointed out that it had the following language: "...minimum building setbacks for large residences..." Mayor Pro Tempore Thibodeau pointed out that it would get it at by the setback as opposed to worrying about someone getting higher than the 4,500 square feet on a 15,000 square foot lot. Councilor Burdick stated that they would have to meet the setbacks. Mayor Pro Tempore Thibodeau agreed. Councilor Britt thought it was too big of a change. Mayor Pro Tempore Thibodeau stated that she didn't see a lot of people getting to the 9,000 square foot house on a 15,000 square foot lot. Councilor Burdick stated that he didn't either.

Mayor Kingston stated that he would go back to his suggestion of moving the ordinance forward the way it stood and then instructing the Planning Board to look at the issues Council was having, which gives the Planning Board time to come back and then Council could look at it again in January or February. He added that at least there would be something in place. Councilor Burdick stated that the vote would be 3-2 unless Council could come to an agreement. He stated that it didn't get Council where they wanted to go if they adopted the current ordinance as it was written. He thought Council could provide some protection for the larger lot owners. He added that 9,000 square feet was not an unreasonable size for a house and it would also allow the Planning Board time to really go back and work with Director Heard and Town Attorney Hobbs to see if they could come up with anything else that should be done to make the ordinance better. He stated that Council should at least get something in place.

Town Attorney Hobbs thought the most defensible that Council would have in adopting something would be something that came intact from the Planning Board and adopted after that. He added that some minor wording changes, if necessary, with the types of changes Council was discussing would put it in a more gray area and by doing that, it would open the potential for being able to defend the action taken if the adoption was challenged.

Councilor Britt moved to send Attachment C back to the Planning Board in the most expedited manner possible to get it back in front of Council to schedule a public hearing, including using mid-month meetings, if needed.

Councilor Burdick agreed with Councilor Britt's motion but noted that Council hadn't settled the other issue. Mayor Pro Tempore Thibodeau thought that in addition to the Planning Board discussing it, Council needed to get its legal counsel involved. She didn't want the ordinance to come back to Council and have the legal counsel note that there were problems.

Councilor Burdick stated that he was having a problem in that Council was adding one line in one and substituting a table. He asked how they were significant changes. Town Attorney Hobbs didn't say that Council couldn't do it, he said that it was more of a gray area with the more changes that Council makes from what the Planning Board had recommended, especially if they were substantive. He noted that he wasn't saying it wasn't defensible but was saying that it was not as clear as it would be if it was adopted as presented. Councilor Burdick pointed out that Council did not always adopt things as presented. Town Attorney Hobbs understood. Councilor Burdick stated that the reason he was having a problem was because the proposed changes would be broadening Attachment A as opposed to narrowing it. Town Attorney Hobbs noted that all he does is give advice and Council makes the decision. Councilor Burdick thought Council needed to make a choice on Attachment A – either adopt it as it was presented or adopt it with changes. Town Attorney Hobbs noted that the other advantage of having the Planning Board look at it again was that it gives another venue or forum for those that may not be totally satisfied with the current proposal to discuss their concerns with the Planning Board, which may not have been discussed previously.

Councilor Burdick thought Councilor Britt's proposal was to send Attachment C back to the Planning Board. He stated that the question was what Council should do at this meeting. Town Attorney Hobbs stated that Council was not required to take any action at this meeting as there was no motion on the floor, except for the one Councilor Britt made. He reminded Council that they took no action on the subject at their September 5, 2018 meeting.

Mayor Kingston suggested that Council vote on Attachment A and then based upon the vote, come up with a motion to send Attachment C to the Planning Board.

Councilor Britt withdrew his motion.

Town Attorney Hobbs explained that if there was a motion on Attachment A, which was presented previously, and readings do not require a vote, so since there wasn't a vote the first time, this would be a second reading. He stated that a super majority vote was not required to adopt the ordinance.

Councilor Burdick moved to adopt Attachment A with the addition of a tier of 30,000 square feet and above and the minimum setbacks as shown in Attachment C with a 9,000 square foot cap.

Mayor Kingston asked if there were other changes that would go along with that. He noted that currently the maximum size was 7,000 square feet. Director Heard stated that it would still have a 7,000 square foot cap which would conflict the new 9,000 square foot tier. Councilor Burdick stated that the tier should be changed to 9,000 square feet. Director Heard pointed out that a 9,000 square foot house could be built on a 15,000 square foot lot. Mayor Kingston thought it would be cleaner to move forward with Attachment A.

Councilor Burdick withdrew his motion.

Mayor Kingston moved to adopt Ordinance 18-06 as presented.

Mayor Pro Tempore Thibodeau thought Council was completely leaving the large lot owners hanging and was opposed to the ordinance. She appreciated the nuances and issues involved as well as the public input. She stated that the ordinance was too restrictive for the large lots. Mayor Kingston pointed out that the intent was to send it back to the Planning Board to look at amending it.

Councilor Caviness stated that it would be adopted as presented and then another motion would be made to ask the Planning Board to bring back a text amendment to address Council's concerns and desire to try to create some fairness for the 30,000 square foot lots. Mayor Pro Tempore Thibodeau stated that she appreciated the idea that Council was receptive to that. Councilor Caviness thought everyone was wanting to make some kind of an accommodation for those particularly large lots. She added that she thought there was some urgency and fatigue of this being an unknown for the community. Mayor Pro Tempore Thibodeau reiterated that the Town has been operating like this since 2015.

Motion carried 3-2 with Mayor Pro Tempore Thibodeau and Councilor Britt dissenting.

Councilor Britt moved to send Attachment C back to the Planning Board to look at its merits in hopefully replacing what was just passed which he considered unfair.

Motion carried 5-0.

Councilor Burdick asked if Council could add some urgency to the issue. Town Manager Layton stated that Council could suspend bringing it back for a request for public hearing to save a month.

Councilor Britt moved to waive the requirement for a request for public hearing to go to Council on this item.

Motion carried 5-0.

Mayor Kingston called for a 10-minute recess. The time was 9:53 p.m.

Mayor Kingston reconvened the meeting.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Resolution 18-09, a Resolution of the Town Council of the Town of Duck, North Carolina, Establishing the CAMA Land Use Plan Advisory Committee

Town Manager Layton stated that he had brought to Council at their November 7, 2018 meeting the concept of the resolution and putting it in place, so Council would be able to have a framework for a process for re-evaluating and updating the CAMA Land Use Plan. He stated that concurrent with this, staff would be sending out a Request for Qualifications for a consultant. He stated that staff wanted to get a resolution established for a committee in front of Council now, so they could begin soliciting and thinking about who they wished to appoint to the seven-member committee. He stated that staff would be happy to put something out in the e-news and other social media publications to solicit interest. He explained that the resolution establishes a committee with the responsibility to assist the consultant that will be brought on board with the updates to the CAMA Land Use Plan. He noted that it would be a lot of work over a long period of time.

Mayor Kingston asked who normally chairs such a committee. Town Manager Layton stated that staff would work with the consultant and have someone from the group select a chair amongst themselves.

Councilor Caviness moved to adopt Resolution 18-09 as presented.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of the 2019 Council Calendar

Town Manager Layton stated that Council had in front of them the typical meeting schedule for the upcoming year. He noted that the holiday party would be held on Friday, January 25, 2019 and the annual Retreat will be held on February 20-21, 2019. He stated that there were two potential conflicts – one was for January 2, 2019. He stated that in the past, when staff thought the agenda was light, Council would postpone or cancel the January meeting when it was close to the first of the year as well as the holidays interfering with the agenda packet. He stated that Council could change the date and noted that in the past, Council would have their regular meeting at the mid-month meeting. He stated that the other conflict was that he was planning to go on a trip to Italy in April, which was when he usually gave his budget presentation. Councilor Britt noted that he had a conflict in April as well. He stated that he was requesting to change the date for the April mid-month meeting to another date.

Mayor Kingston suggested that the January meeting be held on Wednesday, January 9, 2019, based on Council's discussion on the size of houses. Director Heard pointed out that there was a Board of Adjustment and a Planning Board meeting on that date. Councilor Caviness stated that she would be out of town on January 9, 2018. Councilor Burdick suggested holding it on January 16, 2019. He added that January 4, 2019 was listed, which was a Friday. Mayor Kingston pointed out that Councilor Burdick was looking at the compensation calendar.

Mayor Kingston asked Town Manager Layton when he wanted to give his budget presentation. Councilor Britt suggested it be held on April 24, 2019. Mayor Kingston asked if it could be on May 1, 2019. He thought the budget would not be that complicated. Mayor Pro Tempore Thibodeau thought May 1, 2019 would work. Town Manager Layton stated that he could do it on May 1, 2019. Councilor Britt asked if the presentation would be part of the regular meeting. Town Manager Layton stated that it would be. Councilor Caviness clarified that the April mid-month meeting would be canceled. Town Manager Layton stated she was correct.

Mayor Kingston asked if Council normally had mid-month meetings in May. Town Manager Layton stated that it was usually the budget work session. Mayor Kingston noted that he had a North Carolina League of Municipalities board meeting on May 15-17, 2019. Town Manager Layton stated that staff could watch that and add work sessions if needed. He added that the public hearing could be held for the budget and have work sessions after it. Mayor Pro Tempore Thibodeau and Councilor Britt thought it would work. Town Manager Layton pointed out that the budget would need to be adopted by June 30, 2019, adding that he was not anticipating any controversial items with the budget. Mayor Pro Tempore Thibodeau thought a work session needed to be scheduled. Town Manager Layton stated that the public hearing could be held on June 5, 2019 and Council could plan to have a work session on June 19, 2019. Councilor Caviness noted that May 22, 2019 could be the work session. Town Manager Layton agreed, adding that it could be the budget work session.

Mayor Pro Tempore Thibodeau moved to adopt the Council calendar as amended.

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

Deputy Fire Chief Bill Walker was recognized to speak. Deputy Fire Chief Walker 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.

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

Council Retreat February 20 and 21, 2019

Town Manager Layton reminded Council that the Retreat will be held on February 20-21, 2019 and asked Council to provide him with any items that they wish to have put on the agenda.

Councilor Burdick noted that throughout the year, he had brought up items that he would like to discuss at the Retreat. He asked Town Manager Layton if he had the list. Town Manager Layton stated that he had a few items and would send them to Council.

Board of Adjustment Vacancy

Town Manager Layton stated that Bill Guillaume has resigned his position on the Board of Adjustment. He stated that Mr. Guillaume's term, along with the other members and alternates on the Board will expire on July 1, 2019. He noted that there was no rush to replace Mr. Guillaume at this time, so he suggested that Council wait and make appointments for all of the Board of Adjustment members by July 1, 2019.

Financial Statement for month of November for FY2019

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

MAYOR'S AGENDA

Mayor Kingston stated that Saturday, December 8, 2018 was the annual DCBA meeting and he, Town Manager Layton and Director Legner would be attending it. He stated that he had his mayors meeting in Kill Devil Hills on December 18, 2018. He noted that Bob Woodward was re-elected to the Dare County Board of Commissioners. He stated that he had a North Carolina League of Municipalities board meeting on Wednesday, December 3, 2018 and would be attending a Board meeting on December 12, 2018. He added that the grassroots roundtable that was held in the Meeting Hall recently was very well attended. He appreciated Town staff that attended the roundtable. He congratulated Councilor Caviness and Fire Chief Donna Black on the recent Turkey Trot. He thanked

Director Legner and Public Relations Assistant Betsy Trimble on a successful Yuletide celebration.

COUNCIL MEMBERS' AGENDA

Mayor Pro Tempore Thibodeau stated that there were some great events recently with great community spirit for the off-season. She stated that Skip Wallace has become the director for the Government Access Channels. She stated that she was now on the committee to find a new producer for the channel to replace Mr. Wallace.

Councilor Caviness gave a short recap on the recent Turkey Trot to Council and the audience. She noted that December 18, 2018 would be her last meeting on the Dare County Tourism Bureau. She added that it has been an honor to serve on the board.

Councilor Britt stated that he represented the Town recently at Kitty Hawk Elementary School as they were one of 82 schools that received a National Blue-Ribbon certification. He noted that it was a very nice reception.

Councilor Burdick congratulated Town staff on the recent Yuletide celebration.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments. There being no one 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, January 16, 2019 at 7:00 p.m.

CLOSED SESSION

Mayor Pro Tempore Thibodeau moved to enter closed session in accordance with Section 143-318.11(6) of the North Carolina General Statutes to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.

Motion carried 5-0.

The time was 10:55 p.m.

Upon return from closed session, Mayor Kingston moved to give Town Manager Layton a 3% increase and a \$7,500 bonus.

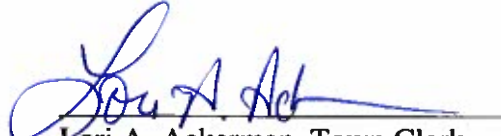
Motion carried 5-0.


ADJOURNMENT

Mayor Pro Tempore Thibodeau moved to adjourn the meeting.

Motion carried 5-0.

The time was 11:58 p.m.


Lori A. Ackerman, Town Clerk

Approved: January 16, 2019

Don Kingston, Mayor

