

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, July 7, 2015
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation/Donation: Robbie Parker, owner, RPC Contracting, LLC is donating \$933 to the Kitty Hawk Fire Department Association, Inc.
5. Public Comment
6. Consent Agenda
 - a.) Approval of April 27, 2015 and June 1, 2015 Council Minutes
 - b.) Revenues and Expenses Report for May 2015
 - c.) Interlocal Agreement with Dare County for Hurricane/Disaster Debris Removal
 - d.) Request to Purchase Three Scott Breathing Apparatus and Air Bottles
 - e.) Request to Purchase Public Works Service Pickup Truck
 - f.) Request to Purchase a Lawn Mower
 - g.) Request to Purchase 2016 Ford Focus Sedan
 - h.) Resolution of Adoption of Albemarle Regional Hazard Mitigation Plan
7. Items Removed from the Consent Agenda
8. Public Hearings
 - a.) Amendments to Chapter 40, Article III of the town code updating standards for Wireless Communications Facilities consistent with recent changes in state and federal laws.
9. Reports or General Comments from Town Manager
 - a.) Status of Beach Nourishment Project
10. Reports or General Comments from Town Attorney
11. Reports or General Comments from Town Council
12. Public Comment
13. Closed Session: N.C.G.S. 143-318.11(a) (1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. Approve closed session minutes: March 3, 2014 and May 4, 2015. And: N.C.G.S. 143-318.11(a)(3) to protect the attorney client privilege in Town of Kitty Hawk versus Ann Greeson doing business as Winks
14. Return to Regular Session
15. Adjourn

COUNCIL MEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Ervin Bateman, Councilwoman Emilie Klutz and Councilman Jeff Pruitt

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COUNCIL MEMBERS ABSENT:

Councilman Craig Garriss

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Finance Officer Charlene Allen, Management Assistant Melody Clopton, Town Planner Rob Testerman, Police Chief Joel Johnson, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

1. Call to Order

Mayor Perry called this meeting to order at 6 p.m. and welcomed everyone in attendance.

2. Moment of Silence/Pledge of Allegiance

After a moment of silence the Pledge of Allegiance was recited.

3. Approval of Agenda

MPT Bateman made a motion to approve the agenda. It was seconded by Councilman Garriss and passed unanimously, 4-0.

4. Presentation/Donation: Robbie Parker, owner, RPC Contracting, LLC is donating \$933 to the Kitty Hawk Fire Department Association, Inc.

On behalf of Mr. Parker, Rita Phillis, RPC Property Manager, presented a check in the amount of \$933 to Ben Alexander, Treasurer of the association. She explained Mr. Parker won the money at the recently held fire department association fund raiser. Mr. Alexander and Mayor Perry thanked Ms. Phillis and asked her to convey their appreciation to Mr. Parker.

5. Public Comment

No one came forward to speak.

6. Consent Agenda

a.) Approval of April 27, 2015 and June 1, 2015 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

b.) Revenues and Expenses Report for May 2015. *(An affirmative vote for the consent agenda will acknowledge this report.)*

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c.) Interlocal Agreement with Dare County for Hurricane/Disaster Debris Removal. This annual agreement will allow the county to coordinate the collection of disaster related debris in the event it is needed. *(An affirmative vote of the consent agenda will approve this agreement.)*

d.) Request to Purchase Three Scott Breathing Apparatus and Air Bottles. The fire chief would like to purchase this equipment that maintains OSHA compliance for respiratory protection of employees. *(An affirmative vote of the consent agenda will approve this purchase.)*

e.) Request to Purchase Service Pickup Truck. The public works director requests permission to go forward with the replacement of a Public Works service truck. It will take 90-120 days for the vehicle to arrive once ordered. This item was approved in the 15-16 budget and will not exceed \$28,000.

f.) Request to Purchase a Lawn Mower. The public works director requests permission to purchase a mower not to exceed \$10,000. *(An affirmative vote of the consent agenda will approve this purchase.)*

g.) Request to Purchase 2016 Ford Focus Sedan. The town manager would like to purchase this vehicle that will be used by the staff at town hall in the offices of administration, planning, and finance. The vehicle is \$15,901 under state contract plus tax and title. *(An affirmative vote of the consent agenda will approve this purchase.)*

h.) Resolution of Adoption of Albemarle Regional Hazard Mitigation Plan: The Town has been involved in the creation of this multi-jurisdictional plan, which replaces the previous county hazard mitigation plans, under the direction of the state.

MPT Bateman made a motion, seconded by Councilman Pruitt, to approve the consent agenda. The vote was unanimous, 4-0.

7. Items Removed from the Consent Agenda

No items were removed from the consent agenda.

8. Public Hearings

a.) Amendments to Chapter 40, Article III of the town code updating standards for Wireless Communications Facilities consistent with recent changes in state and federal laws.

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Following a motion by MPT Bateman and a second by Councilwoman Klutz, council voted unanimously, 4-0, to go into public hearing.

Testerman: *This is intended to bring the town standards into compliance with state and federal regulations. There are a couple of new definitions and certain types of projects that used to be approved through the planning board and town council review that now have to be done administratively if it is not a substantial modification. Also, the time frame for a review went from 30 to 45 days.*

The second issue being changed is restricting the types of information requested by the planning board and council. The planning board and council are no longer allowed to request any type of information about a company's business or why they are requesting a certain location for the facility. If they decide they need a new tower in a certain location the board and council cannot question the decision of that location. We just have to review it. If it is a conditional use permit we can still deny it if it does not meet the requirements for the conditional use but we cannot question their decision on where they are proposing the tower to be.

The third deals with consultants. Many communities choose to use consultants to review wireless communications facilities. Typically consultant fees were paid by the applicant in the past. The state has now put a cap of \$1,000 on the amount that the community can charge an applicant for the consulting service. Also, the review fee cannot be used to reimburse the consultant for any travel or other incidental expenses. It is only for the actual work performed so any other consulting cost above \$1,000 would be paid by the town.

Number four deals with routine maintenance. Municipalities and counties are no longer allowed to review routine maintenance on wireless structures and in addition the state redefined what we think of as routine maintenance. It now includes a replacement of existing facilities with like facilities. One can be torn down and completely rebuilt as long as it is about the same height and footprint and all that would not come under town review. It is considered routine maintenance.

Number five is the siting hierarchy has been stricken from the ordinance. If the company is looking to locate a tower and finds a place, as I said before, we cannot question their choice of location anymore.

Lastly is the approval process. The changes added to the approval process and timeframe for the town to review are consistent with state law. I mentioned it is now 30 days and goes to 45 days. That has been addressed in the ordinance.

One thing I would like to point out that came up during the planning board review is even if the town does not make the changes to the ordinance we still have to follow the state and federal regulations or face the possibility of getting sued.

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Perry: *What would it take to deny a location if council found it undesirable?*

Testerman: *I suppose the conditional use, depending on which zoning district it would be in, if there is anything about how many feet from a residential area. Scenarios like that.*

Perry: *Fall zones and things like that.*

Testerman: *Right.*

Klutz: *They still have to abide by zoning regulations.*

Testerman: *Correct.*

Perry: *We cannot ask why they want it there.*

Testerman: *Right. A specific property.*

Klutz: *It says the staff is currently developing a sample application that will be available to applicants. The sample is not part of what is being adopted into code and it is not necessary to include it but I just wondered how that is coming along.*

Testerman: *I started working on it and was able to make a little progress. Then I put it on the back burner a little. It shouldn't take more than a couple of hours of work to get a sample application together and I can certainly email that to council as soon as possible.*

Klutz: *No, I was just curious because this is really complex. To your knowledge do we have anybody right now that is wanting to do this?*

Testerman: *There was one that Joe told me about some time ago but since I've been here I haven't heard anything.*

Perry: *If they were asking questions about an area that may not be desirable we want to be kept informed.*

Bateman: *They still have to meet our criteria. In other words it could not go in a residential area where it is not allowed. Although we cannot deny them a location I just kind of ...*

Testerman: *It still has to meet the requirements of the zoning ordinance. If it is not allowed in a residential zone they cannot, as I understand it, they cannot say they are going to put one in and we cannot do anything about it. It would still have to go into zones that allow it. We just can't ask why this property as opposed to that one. As long as it meets our zoning regulations then we do not have any say what property it goes on.*

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Pruitt: *Do we need to make sure that we have that in our residential sections?*

Testerman: *I believe it is and I'll double check.*

Perry: *Has anybody signed up to speak?*

Morris: *No sir.*

Perry: *Does anybody want to speak to this?*

No one came forward to speak.

Councilman Pruitt moved to go back into regular session. Councilwoman Klutz seconded and it passed unanimously, 4-0.

Councilwoman Klutz made a motion to adopt the proposed text amendment to update Chapter 40, Article III of the Town Code with revised standards for Wireless Communications Facilities. The Town Council finds that the proposed text amendment is consistent with the Town's adopted CAMA Land Use Plan and finds this amendment to be in the public interest by maintaining standards that protect the public's interest to the greatest degree possible while remaining in compliance with state and federal laws. MPT Bateman seconded the motion and it passed unanimously, 4-0. (Ordinance No. 15-07)

10. Reports or General Comments from Town Manager

a.) Status of Beach Nourishment Project – Manager Stockton reported Coastal Planning and Engineering has completed 98.6% of the scope of work as of May 1, 2015. The work thus far includes project management, coordination with agencies on environmental documents and permit applications submitted, development of an engineering report and finalizing an off shore sand source investigation and borrow area design report. On April 28th Coastal Planning met with the mayor, manager, public works director and the finance officer and discussed the easement permit applications and beach accesses for construction. During April Coastal Planning and Engineering continued coordination with the Bureau of Ocean Energy Management and the U.S. Army Corps of Engineers on environmental issues. They are also finalizing the major CAMA permit application and presented to town staff the off shore and investigation report.

Town staff has been working on getting out the easement agreements. Approximately two hundred easements were mailed north of Historic Street. The parcels south of Historic still need title searches. Those were the ones that were done before by the county.

Manager Stockton asked the attorney about the easements south of Historic and he replied the title clerk is working on them.

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Councilwoman Klutz asked about the length of time for the easements and Attorney Michael replied these are perpetual. When the county prepared the other easements they drew a line and that line does not work anymore.

11. Reports or General Comments from Town Attorney

Attorney Michael said he does not have anything other than what will be discussed in closed session.

12. Reports or General Comments from Town Council

a.) Councilman Garriss - Mayor Perry noted Councilman Garriss had to travel to Beaufort Hospital for work and that is why he is absent. He is on his way back to town and will try to attend the meeting.

b.) Overton Property - Mayor Perry said he noticed survey stakes on the Overton property and he stopped and talked to the surveyors. They do not know who the new owners are but it is going to be a tear down.

13. Public Comment

There were no public comments.

14. Closed Session: N.C.G.S. 143-318.11(a) (1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. Approve closed session minutes: March 3, 2014 and May 4, 2015.

And: N.C.G.S. 143-318.11(a)(3) to protect the attorney client privilege in Town of Kitty Hawk versus Ann Greeson doing business as Winks.

Councilwoman Klutz moved to go into closed session in accordance with North Carolina General Statute 143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes to approve closed session minutes of March 3, 2014 and May 4, 2015 and in accordance with North Carolina General Statute 143-318.11(a)(3) to protect the attorney client privilege in the Town of Kitty Hawk versus Ann Greeson doing business as Winks. MPT Bateman seconded the motion and it passed unanimously, 4-0. Time was 6:19 p.m.

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15. Return to Regular Session

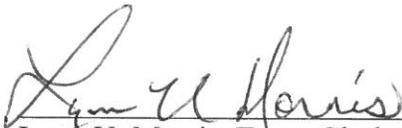
Councilman Pruitt made a motion, seconded by Councilwoman Klutz, to return to regular session. The vote was unanimous, 4-0. Time was 6:30 p.m.

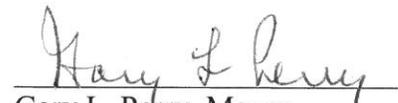
Attorney Michael announced council has approved the proposed settlement with Winks. If it is signed and returned to the town by noon on Friday no further action will be taken.

16. Adjourn

Councilman Pruitt moved to adjourn. It was seconded by Councilwoman Klutz and the vote was unanimous, 4-0. Time was 6:31 p.m.

These minutes were approved at the August 3, 2015 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor