

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, September 4, 2012
Kitty Hawk Town Hall, 6:00 PM

AGENDA

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
 - a.) Presentation of Check to the Town from Dominion Power
4. Presentation

Mr. Steve Lambert, Albemarle Commission's Transportation Coordinator
5. Public Comment
6. Consent Agenda
 - a.) Approval of August 6, 2012 Regular Meeting Minutes
 - b.) Revenues and Expenses Report for July 2012
 - c.) Tax Pick Ups and Releases
 - d.) FY 12-13 General Fund Transfer #1
 - e.) FY 12-13 Budget Amendment #1
 - f.) FY 12-13 Budget Amendment #2
 - g.) Surfrider Foundation Resolution
 - h.) North Carolina Municipal Fire District Report of Fire Conditions
 - i.) FY 12-13 Inter-Local Agreement with Dare County for Solid Waste Collection Services
7. Items Removed From the Consent Agenda
8. Planning
 - a.) Call for Public Hearing. Text Amendment: Proposal to add Subsection 42-252(c)(17) allowing "electronic gaming operations" as a conditionally permitted use in the Community Shopping Mall/Center (BC-3) district, provided that certain criteria are met.
9. Unfinished Business
 - a.) Memorandum of Agreement between the North Carolina Sedimentation Control Commission and the Town of Kitty Hawk
10. New Business
 - a.) Proposed Changes to the Emergency Preparedness, Response, and Recovery Plan
11. Reports or General Comments from Town Manager
 - a.) Thank You Letter from U.S. Department of Homeland Security
 - b.) Than You Letter from Southern Shores Chief of Police
 - c.) Update on Stormwater Permits
 - d.) East Kitty Hawk Road and Lillian Street Dune Walkovers
 - e.) Sandy Run Park Phase II
12. Report or General Comments from Town Attorney
13. Reports or General Comments from Town Council
14. Public Comment
15. Adjourn

Kitty Hawk Town Council Minutes: September 4, 2012

Page 2

COUNCIL MEMBERS PRESENT: Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

STAFF MEMBERS PRESENT: Town Manager John Stockton, Town Clerk Lynn Morris, Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Fire Chief Lowell Spivey (PW Director Midgett absent)

1. CALL TO ORDER

Mayor Perry called the meeting to order at 6:00 p.m. and welcomed and thanked everyone for attending the meeting.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Councilwoman Klutz made a motion to approve the agenda with the addition of item 3(a) a presentation by Mike Thompson of Dominion Power. MPT Perry seconded and it passed unanimously, 5-0.

3(a) PRESENTATION BY DOMINION POWER

Manager Stockton announced that Mike Thompson with Dominion Power is in attendance and he would like to present the town with a check for one thousand dollars to go towards the replacement of the "Welcome to Kitty Hawk" sign.

Mr. Thompson said it is with great pleasure to present a check from the Dominion Foundation to the Town of Kitty Hawk for replacement of the sign.

Mayor Perry thanked Mr. Thompson on behalf of council and the citizens of Kitty Hawk.

4. PRESENTATION - Mr. Steve Lambert, Albemarle Commission's Transportation Coordinator, will present Dare County's updated Comprehensive Transportation Plan. The plan is being developed utilizing seasonal traffic counts from 1993 to 2010. Since the traffic patterns in Dare County change conditioned on the time of year, the committee decided to use the average weekday traffic counts in June in order to determine the present and projected needs of the public roadways. It is requested that council officially approve of the projected data used to determine future deficiencies.

Kitty Hawk Town Council Minutes: September 4, 2012

Page 3

Lambert: *Thank you for having me here tonight. If you have never met me before my name is Steve Lambert. I work with the Albemarle Commission and oversee the Albemarle Rural Planning Organization. I oversee the northeast ten counties and the transportation planning programs for the commission.*

In August of 2011 the Transportation Planning Branch of North Carolina DOT and Dare County initiated a study to develop the Dare County Comprehensive Transportation Plan (CTP) which includes the Towns of Duck, Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo. Existing and anticipated deficiencies will be determined through an analysis of the transportation systems of both current and future travel paths. The Dare County CTP travel demand will be projected from 2012 to 2040 using a trend line analysis based on seasonal traffic counts from 1993 to 2010. Typically travel demand is based on trend line analysis using AATB which is average annual daily traffic history. The Dare County CTP committee which includes Mayor Pro Tem Gary Perry, John Stockton, and Joe Heard, opted to instead look at the traffic counts that are based not just on AATB history but converted into traffic counts which represent the average weekday in June. There was much debating in the committee and we wanted to make sure that our traffic count shows more on the higher side of the volume because of the traffic we get during the summer. We wanted to make sure because we do not know when they are going to be doing the traffic counts that is put into this calculation. We looked thoroughly through the traffic counts and looked month by month for an average through the years and we decided June was the best month to pick. It was not the busiest part of the season but it was busy enough that when you look at it in the future it shows good data for the county.

In addition to this data local land use plans and growth expectations are used to further refine future growth rates and patterns. The Dare County CTP committee worked with NCDOT to estimate the population growth, economic development potential, and land use trends, to determine the potential impact on the future transportation system in 2040. Existing and future travel demand is compared to existing roadway capacities and we look at what we can fit on our roads and what we have. Capacity deficiencies occur when the traffic volume of a roadway exceeds the roadway capacities. Roadways are considered near capacity when the travel volume is at least 80% of capacity.

We are using the June data and asking each one of the towns and county for their approval to use it. When it is put into the trend analysis we can use it for future recommendations for the county CTP. Are there any questions?

Klutz: *This is for Dare County only?*

Lambert: *Yes.*

Klutz: *The biggest traffic problem we have is on weekend days during the summer and when you are doing a plan for Currituck County is that going to be taken into consideration? Or is it also going to be these weekday numbers?*

Kitty Hawk Town Council Minutes: September 4, 2012

Page 4

Lambert: *We finished Currituck's over a year ago and we did look into that. They decided to go the normal route with their statistics but overall the major roads to get to Dare County, US 158 and 168, were over capacity in the future anyway just based off that data. That was the reason why they stuck with the numbers they had. There were future recommendations for upgrading 158 and 168 for Currituck and that is what they chose to do. This plan is only for Dare and like I said we are going to all the towns and the county. We have a committee of about 14 people that we work with on a monthly basis and we have talked about this. The one thing we wanted to make sure we did was not use the highest volume traffic count because at the end of the day the recommendation for that is going to be much bigger than anybody would want. At the same time we want something that will work with us. At the end of the day, when this plan is done, whatever we recommend is going to be looked at thoroughly and coming out with multiple recommendations for the future. That is very far down the line. This is just the initial data.*

Klutz: *One other question I have was about the growth estimates. For years the growth estimates always went up for Dare County but starting in 2008 that trend turned around and there have been some losses of population in the county. Not necessarily the tourist population but...what kind of time horizon are you using for that and what are the growth...*

Lambert: *The growth rate we used I think were for the past 10 years estimate.*

Klutz: *Is it census data?*

Lambert: *Census data. We have talked about renter-ship. The percentage of renter-ship that went up and down over the years. The growth rate we chose was actually very minimal because we know a lot of the area in Dare County, on the beaches, is almost up to capacity and that is basically what we chose.*

Mayor Perry: *Is the Currituck mid-county bridge being considered in this?*

Lambert: *Because it is in Currituck that was a recommendation. As you know it is already in the system and is its own ballgame. I do not want to state anything on it but it was a recommendation for the Currituck CTP plan and they did their study based off that it was being constructed. And we are basing this study off it being constructed too. For instance when we put in this traffic data estimate we are putting in that the mid-Currituck bridge is being built. Hopefully they do not take it out and we have to redo this but we will see.*

MPT Perry: *Over on 158 across from the post office in that low section, we get flooded. The Halloween storm and every deluge of rain causes problems. If this is a comprehensive transportation plan why was raising that portion of the road not considered? That is an imperative corridor for any kind of access north or south. We could give you stories if you needed them that showed when it is impassable it impacts people going to hospitals and other things, not just normal travel.*

Kitty Hawk Town Council Minutes: September 4, 2012

Page 5

Lambert: *This study does not really look into raising or lowering the roads but we can put into the appendices of the CTP the flooding hotspots. We did it for hotspots on Ocracoke Island and Hyde County mainland. It said these are the areas in the county where it floods when it typically rains very hard. When DOT goes in there they can look at it and ask what can be done to fix this problem when they are repaving or redoing the road. That is something we can add into the appendix of this report. Fully raising the road is something they will look into in the future when they actually start getting into the full-on engineering and environmental studies for the project.*

MPT Perry: *Thank you. I want it in the report so it does not get overlooked and you might as well add the causeway over in Nags Head because there is the same problem. I am worried about Kitty Hawk and I noticed it was not in there and that is why I put myself on the panel. I wanted to make sure it got where it needed to be.*

Lambert: *We can definitely put an item in the appendices stating that and we can map it out.*

Klutz: *Is there any further input you need from the town or are you familiar with it and can get it done?*

Lambert: *We will probably discuss it at our next committee meeting and we can put together the documentation needed to put it in the appendices. We are about halfway through the plan so the final document will not be fully finished for about another year. It will then go to local adoption, the RPO adoption, and State adoption.*

Mayor Perry: *One of the things that needed to be looked at for the causeway is raising it to stop from flooding and there also needs to be some way the water can go under it. It needs to be raised on pilings some way to stop flooding on this whole end of Dare County.*

Lambert: *Yes. That is something we can sit down at the committee meeting and kind of map out different points. There might be certain types of drains they can use when they rebuild the road or repave the road. I do not know. I am not a water engineer. I am a transportation planner and that is something we can map out with the State when they actually look at that project which is already in the TIP.*

Mayor Perry: *That was a relief valve when a hurricane came. Water could go over the road and could get out. Of course they have several feet of stone there now which stops that...but if you raise the road completely...I just wanted to bring that to your attention.*

Lambert: *They are doing the full engineering study of redoing the road in Hatteras and one of the things they are looking at is the flooding issue and how they can work with flooding. Draining away from the road and away from the businesses. We just have to put it in the plan we are doing now and they will look into it when they go on to the engineering part of the study.*

Kitty Hawk Town Council Minutes: September 4, 2012
Page 6

MPT Perry thanked Mr. Lambert for coming and then **moved for approval of the projected data as proposed by the Albemarle Rural Planning Organization for the development of the Comprehensive Transportation Plan for Dare County per the letter from Mr. Steven A. Lambert, Albemarle RPO Coordinator, dated August 15, 2012. Councilman Reid seconded and it passed unanimously, 5-0.**

Lambert: *Thank you.*

5. PUBLIC COMMENT. The General Public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the podium. Please limit comments to 3 minutes.

There were no public comments.

6. CONSENT AGENDA. Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

a.) Approval of Minutes. August 6, 2012 Regular Meeting Minutes. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

b.) Revenues and Expenses Report for July 2012. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

c.) Tax Pick Ups and Releases. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

d.) FY 12-13 General Fund Transfer #1. This amendment will transfer \$20,021.00 of unspent computer monies from FY11-12 to Capital Reserves for future information technology improvements. *(An affirmative vote for the Consent Agenda will approve this transfer.)*

e.) FY 12-13 Budget Amendment #1. This amendment is a second revision for additional grant funds for purchase of investigation software and administrative costs for the Region 1-A Law Enforcement Liaison program. The amount of \$11,000.00 is provided by the NCGHSP. The original grant award of \$10,000.00 for the FY10-11 cycle will now total \$35,500.00 and this action will appropriate remaining funds of \$29,605.00 to complete remaining purchases authorized by the granting agency. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

f.) FY 12-13 Budget Amendment #2. This amendment in the amount of \$9,515.00 is re-appropriate funds budgeted last year and encumbered prior to the fiscal year ending June 30, 2012. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

g.) Surfrider Foundation Resolution: This resolution supports the 26th Annual Big Sweep Day on September 29, 2012. *(An affirmative vote for the Consent Agenda will approve this resolution.)*

h.) North Carolina Municipal Fire District Report of Fire Conditions, Local Firefighter's Relief Fund Board: It is recommended the town council reappoint Don Stallman and appoint Ben Alexander to replace Mike Eubank on this board. *(An affirmative vote for the Consent Agenda will approve this recommendation.)*

i.) Fiscal Year 12-13 Inter-Local Agreement with Dare County for Solid Waste Collection Services: This is a renewal of the existing agreement and provides for the following: Twice per week residential collection from Labor Day through Memorial Day. On the beach side of the by-pass only a third pickup per week from Memorial Day through Labor Day. Residential collection services will be \$110.21/hour (\$112.19 last year). Commercial collection services will be \$92.27/hour (\$93.74 last year). Commercial collection will be three times per week January 1st through Memorial Day, four times per week Memorial Day through Labor Day, and three times per week Labor Day through December 31st. Large item collection will be conducted twice annually and the Town will be billed at the rate of \$250.00 per hour for such service. These sums shall remain in effect until June 30, 2013. The Town is responsible for all tipping fees incurred for the disposal of its solid waste. *(An affirmative vote for the Consent Agenda will approve this Inter-Local Agreement.)*

Councilwoman Klutz moved to approve the consent agenda. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed from the consent agenda.

8. PLANNING

a.) Call for Public Hearing. Text Amendment: Proposal to add Subsection 42-252(c)(17) allowing "electronic gaming operations" as a conditionally permitted use in the Community Shopping Mall/Center (BC-3) district, provided that certain criteria are met.

Councilman Reid made a motion to set a public hearing for the town council meeting of October 1, 2012 regarding the proposed text amendment to add subsection 42-252, paragraph (c), paragraph (17) allowing electronic gaming operations as a conditionally permitted use in the Community Shopping Mall/Center (BC-3) district. MPT Perry seconded the motion.

Kitty Hawk Town Council Minutes: September 4, 2012
Page 8

MPT Perry: *I know from my point of view there are a number of objections to what has been proposed. We have to go through this and then if the rest of council after discussion agrees, we go through a second public hearing. Is that the way it is going to work?*

Michael: *Depending on what you change. If it is a substantial change to what is proposed then it would have to go back and be held again. If there are tweaks to it that are not substantial changes you can proceed on with those minor changes.*

MPT Perry: *My changes would fit the definition of major. If we are going to proceed I noticed there is an omission and it would probably go under item (9). There was talk about no firearms but it is not included. Not permitted. It was one of the recommendations in the other issues and yet it did not get put into this particular item. Was that an omission?*

Michael: *I think the State has preempted the towns on firearms except on your own properties. I do not know that you have the ability to pass an ordinance that says where firearms are allowed. I think the State has pretty much preempted everything as far where firearms are...I will have to check on that.*

MPT Perry: *Would that include here for example?*

Michael: *No. In your buildings you decide.*

Mayor Perry: *There was some question about just State property or beach accesses and...*

Michael: *Right. The State determines what is allowed on theirs, we do not control any of that. They changed some of the definitions for concealed weapons and places where concealed weapons are allowed. We do not have any say in any of that.*

MPT Perry: *That is why it was left out.*

Michael: *Yes.*

Reid: *Can we advertise what you propose to be different from this and then take that as an option?*

MPT Perry: *I do not know that the rest of council will agree with me.*

Reid: *I know but it would give us the option of voting on it next month rather than delaying another month to redo it if we...*

Klutz: *I would like to see us discuss it because I have a couple of things as well that are different from what we have here. I do not know if they would fall into a major or...I am interested in having a discussion among council members about whether we should...if we are*

Kitty Hawk Town Council Minutes: September 4, 2012

Page 9

allowing this use in a district whether we need to restrict it to an accessory use. I also have a question about the limitation in terms of the numbers that are in this proposal. I would really like to have a good discussion with council members about that. I feel like it is worth it to have the discussion, make the changes if there is agreement, and if they happen to be major changes then have another public hearing. I think we should go through the process.

MPT Perry: *We have not had a public hearing yet so the question is do we do it now or next time and re-advertise again?*

Mayor Perry: *The important thing is we are working on it.*

Michael: *The important thing is you are working on it and you can hold this public hearing which may bring public comments you will want to consider. This is your proposed ordinance. It is not a text amendment that has been proposed by somebody who is coming in and making application to the town. You can pretty much do what you want with it at this point although because it is zoning it does need to go through the planning board. If you make some substantial changes such that it needs to go back and it needs to be done again, you may want to send it back to the planning board with what you want in it.*

Heard: *If I may, I want to add one comment in terms of the advertisement. Unless there were completely significant changes to the document it is unlikely it would actually change the wording of the advertisement. The advertisement is a relatively general description and does not list every one of the criteria the council will be considering or that the board has proposed. It would unlikely result in a change to the advertisement. Whether or not the changes are significant enough to rehear it, the attorney would have to advise you on that.*

Klutz: *But when the advertisement goes out it says you can review it at town hall and what would be reviewed is what we have in our hands tonight.*

Michael: *That is what you will have the public hearing on and you are going to take input and have discussion. There are some things you can probably change that would not be major such as going from two machines to five machines. That is probably not a major change. What I am hearing is there may be major things and you may have to re-advertise. Until we get there and actually talk about it, it is hard to say.*

MPT Perry: *We are not in a hurry.*

Klutz: *As long as advertising a second time is not going to put us in jeopardy. We are working on this and we want to get something we think will go forward and be reasonable and acceptable in terms of the law. I feel like there is discussion that we have to have to get there.*

Mayor Perry: *We are not required to do this. It has been recommended by the School of Government that we proceed and set up some location for this...with very little direction. It is*

not like the Sexually Oriented Businesses that the court said we have to provide a place if asked. This is not the case. This has not come to pass if I am correct on that. They only suggest we look into this and may set up a place for it in case the State comes along and says you have to do it or the courts come along and says we have to do it. We are not under any gun but it is recommended and the attorney recommends it.

Michael: *That is correct and that is what you are seeing across the State. Most towns and counties are adopting an ordinance and the Supreme Court is ultimately going to decide whether this is legal or not. Right now it is legal based on what the Court of Appeals has said. This is not an illegal type of business and it can be operated in a town or county. I am not optimistic that the Supreme Court is going to find it is not illegal and I do not think many folks are either. That is why we are moving along with saying we need to go ahead and regulate it because we are probably going to have to deal with it anyway.*

MPT Perry: *And I agree with that because we have already had an issue. And because of the issue that came before us we are kind of behind and we need to deal with it. There is no question we need to discuss it but I think the central element is going to be about what is in front of us tonight. It is basically attempting to limit, severely limit, any kind of gaming operation anywhere and that is my basic objection because if a gaming business is allowed then it should be allowed to prosper the same as any other business in a properly regulated place. That to me is the question before us and is the kind of major change I foresee coming from me.*

Klutz: *And I am kind of on that page as well.*

Michael: *That is fine and obviously if you say, "we are going to allow this in the BC-3 and we ought to allow it somewhere else as well," that is going to be a major change. But if you already have an ordinance in place that set the requirements then the next thing is to come up with an ordinance that says it will be allowed in this district as well with some conditions.*

MPT Perry: *I am all right to go ahead with it.*

Klutz: *I am fine with going ahead with it. If we have to hold another public hearing we have to hold one and I think we need to have a discussion as a council on what we want to do with this.*

Mayor Perry: *I do not mind a discussion. I will just say that at this point, except for a legal matter changing it, I am okay with it the way it is. Unless it is a legal problem and then I would be...*

MPT Perry: *That is where we differ. We think it is a legal problem.*

Mayor Perry: *It may be. I am open for the discussion but at this point I am happy with what we have.*

Michael: *Right now what you have proposed is narrow but it is pretty much in line with what the county is doing and what Nags Head has done and probably what Kill Devil Hills may do.*

MPT Perry: *Let's move on with this and vote to hold the public hearing.*

The motion passed unanimously to hold the public hearing.

9. UNFINISHED BUSINESS

a.) Memorandum of Agreement between the North Carolina Sedimentation Control Commission and the Town of Kitty Hawk: This agreement would allow the Town to continue offering local assistance, permitting, inspections, and enforcement of State erosion and sedimentation control standards.

Klutz: *I had some questions and it had to do with the wording of the statute which was attached to this memorandum of agreement. My question was it makes reference to a so called limited role for towns that are administering and enforcing the sedimentation control. I wanted to be sure this agreement was not signing us up for more than we intended to do. Since this is the first time we are signing this type of an agreement I thought it was important to look into it. Joe has done that and if he would be good enough to come up and share what he learned in his phone calls to the commission.*

Heard: *Thank you again for letting me know ahead of time so I was able to contact the right people. The main question and focus of what I was asking had to do with the enforcement end of this ordinance. The standards are all spelled out in the State act and everybody has to enforce the same standards. What are the responsibilities of the town versus the responsibilities of the State regarding enforcement? I had some discussion on this at some of the annual training we do but I needed to call them to ask a few questions point blank. We understand the town engages in all of the initial enforcement activity just as we would for any other type of ordinance. If someone is in violation we will issue a notice of violation.*

The main question then is if we reach a situation where it cannot be resolved except by going to court, taking further legal action, and we reach that point in the process, who is responsible at that point. The bottom line is the town is technically on its own in that circumstance. The attorney general's office provides legal services to support the permits that are issued by the State but not the ones that are issued through the local programs. They will provide us with indirect technical and legal support. In other words they will offer us advice on the best way to go about dealing with cases and can assist us but the financial burden, if the town decides to pursue legal action, would be borne by the town. We are responsible for the initial enforcement and we would also be responsible for taking it forward through the process if we chose. They did note there are a number of other options for resolving an issue and the town is free to use any of those. The State is not going to force us to enter into litigation for something. It would be the town's choice.

Kitty Hawk Town Council Minutes: September 4, 2012
Page 12

Klutz: *That is not the understanding I had with what we...*

Mayor Perry: *I thought we were doing it for the citizens so they would not have to get the State here to do it.*

Heard: *That is the main benefit to the town providing this service. It is for the convenience of citizens and developers who are doing projects. Rather than sending something off to the State and waiting 30 days for a permit and maybe waiting 6 months for an inspection. That is the kind of schedule they are looking at. The State does not get around that frequently so it is a convenience and a service the town can offer by participating in this program.*

Mayor Perry: *And that is the same we do for some of the CAMA permits.*

Klutz: *Have we had any problems with violations?*

Heard: *I have issued one notice of violation in the three years I have been doing it and it was resolved within a week.*

MPT Perry: *Steve, could the State come back on us if we chose not to go further with it in court? Or make us continue to court?*

Michael: *The State can come back and say anything they want. There is nothing in the legislation that requires you to do this, it just creates this opportunity. They have created dual jurisdiction. The State has jurisdiction but if the town will sign up you have jurisdiction to do this as well so it is a benefit to your local folks not having to go to the State and face the delays that are involved with that. While administering it locally you pick up the tab for it. There is a fee and what do we get to keep 20 % of it or...*

Heard: *We do get money back for these but I do not know the exact figures.*

Michael: *And you can collect a local administrative fee I think based on your actual...*

Heard: *For an erosion and sedimentation control permit the fee is \$150.*

Mayor Perry: *If we issued a violation and they decided not to correct it we could also go to the State and tell them about it. Ask them if they want to do anything and if not we are not going any further. It is your problem.*

Heard: *If we refuse to enforce the erosion, sedimentation control act as written the State will tell us we are no longer...there is a process involved in this, there would be warnings and things like that but their authority would be to say we are no longer authorized to act as a local program.*

Kitty Hawk Town Council Minutes: September 4, 2012
Page 13

Michael: *Your memorandum of agreement obligates you to do those things. If you approve this you are agreeing with the State that we are going to do certain things and that is part of what you are agreeing to do. You are agreeing to enforce it and if you do not you are in breach of the agreement. As Joe says they can come pull the program and it would be back to them at that point.*

Klutz: *But that would be the only punishment? We could not do it anymore?*

Michael: *I do not think they are going to sue you.*

Klutz: *They are not going to get money from us or anything. If that is the case and since there has been such a good history in terms of people following...*

Mayor Perry: *And for the benefit of the citizens I would agree to do it. Otherwise I would not.*

Klutz: *I was just uncomfortable with the limited role we thought we had and I guess we do not have that limited role if you take it to the ultimate of the enforcement. If the only consequence to us is if somebody is not doing what they are supposed to do and they refuse to do it and the State wants us to enforce it and we say no then we do not get to do this anymore.*

Heard: *Again, the reason we would enter into enforcement in the first place is if somebody has created a situation where they are damaging other adjoining properties. They have done something where it is causing erosion onto a neighbor's property or into a road or onto an adjoining waterway. Those are types of what this whole act is meant to protect it. It is meant to protect those adjoining owners and those public resources.*

MPT Perry made a motion to approve the Memorandum of Agreement between the North Carolina Sedimentation Control Commission and the Town of Kitty Hawk. Councilwoman Klutz seconded the motion and it passed unanimously.

10. NEW BUSINESS

a.) Proposed Changes to the Emergency Preparedness, Response, and Recovery Plan:
Based on discussion with department heads and staff the town manager is recommending certain changes to the existing plan to be more in line with the actual operations during an emergency storm event.

Manager Stockton reported after reviewing the Emergency Preparedness, Response and Recovery Plan, and based on past experiences, it was determined certain changes should be made to be more in line with the actual operations during an emergency event and is asking for approval of the changes.

Kitty Hawk Town Council Minutes: September 4, 2012
Page 14

Councilwoman Klutz said she asked for this item to be taken off of the consent agenda because it is something the public should know about. The town has a plan and it is reviewed and updated.

Mayor Perry agreed this better reflects what happens in many cases. The policemen and the firemen should stay at their buildings to sleep and work rather than coming to the town hall. If need be they can evacuate to the town hall or one of the other places. As long as there is communications this should work.

MPT Perry moved for approval of the proposed changes to the Emergency Preparedness, Response and Recovery Plan as proposed by the town manager dated August 14, 2012. Councilman Bateman seconded the motion and it passed unanimously.

11. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) **Thank You Letter from U.S. Department of Homeland Security** - Manager Stockton said he has received a letter from our U.S. Department of Homeland Security, United States Secret Service, thanking the Kitty Hawk Ocean Rescue for providing the U.S. Secret Service Swimmer Program on Monday, June 18th of this year. The letter paid particular reference to the work of Captain Cole Yeatts and lifeguards Sam Crest, Brett Kennedy, Joe Case, Terry Sheehy and Ryan Garrott. This is an annual training the Ocean Rescue provides.

b.) **Thank You Letter from Southern Shores Chief of Police** – Manager Stockton said he received a letter of appreciation from David Kole, Southern Shores Chief of Police, for the fire department's assistance in the search for a mentally challenged individual who was missing on August 3, 2012. Chief Kole commented he was personally overwhelmed by both the paid and volunteer staff for their professionalism and assistance.

c.) **Update on Stormwater Permits** – Manager Stockton said he, Planning Director Heard, and Albemarle and Associates will be attending a meeting at the DENR in Little Washington tomorrow to discuss the permitting applications for the stormwater projects.

d.) **East Kitty Hawk Road Dune Walkover and Lillian Street Dune Walkover** – Manager Stockton said the town has received notification the access grant in the amount of \$12,873 for the East Kitty Hawk Road walkover and \$30,675 for the Lillian Street walkover has been prioritized for funding. The contracts should be forthcoming soon but they could not provide a definite time.

e.) **Sandy Run Park Phase II** - Manager Stockton reported this project has not been closed out and staff is trying to get interpretative signs made for the park. There has been some difficulty in getting that accomplished and an extension of time from the Visitor's Bureau has been sought to allow us to get the signs and get them installed.

Kitty Hawk Town Council Minutes: September 4, 2012
Page 15

MPT Perry asked how long of an extension was asked for and what is the problem with obtaining the signs.

PD Heard replied it is a six month extension. The main problem with the signs is after working back and forth for a while with one company communication broke down. The order was then broken up and several companies are now involved. It should all come together shortly.

12. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

There were no comments from Attorney Michael.

13. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

There were no comments from the town council.

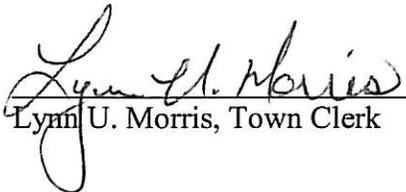
14. PUBLIC COMMENT

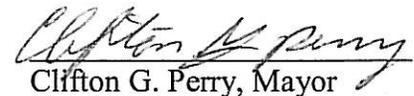
There were no comments from the public.

15. ADJOURN

MPT Perry made a motion to adjourn, seconded by Councilman Bateman. The vote was unanimous, 5-0. Time was 6:54 pm.

These minutes were approved at the *October 1, 2012* council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor