

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, September 8, 2020
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of August 3, 2020 Council Minutes
 - b.) FY 20-21 Budget Amendment #1
 - c.) Flood Insurance Promotion Summary
6. Items Removed from the Consent Agenda
7. Public Hearing
 - a.) Sec. 42-1, Definitions & Sec 12-141, Land Disturbance. The applicant has requested a text amendment that would measure maximum building height from finished grade and place a limit on the amount of fill permitted on a lot.
8. New Business
 - a.) Discussion Concerning a Letter from the Outer Banks Association of Realtors Regarding Remotely Held Meetings
9. Reports/General Comments from Town Manager
10. Reports/General Comments from Town Attorney
11. Reports/General Comments from Town Council
12. Public Comment
13. Motion to go into Closed Session:
 - a.) NCGS 143-318.11(a)(1) Approval of the August 3, 2020 Closed Session Minutes
 - b.) NCGS 143.318.11(a)(3) To consult with the town attorney to protect the attorney-client privilege
14. Return to Regular Session
15. Adjourn

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman David Hines, Councilwoman Lynne McClean and Councilman Jeff Pruitt

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Planning Director Rob Testerman, Public Works Director Willie Midgett, (Police Chief Johnson attended remotely)

This meeting was live streamed on YouTube and could be listened to by telephone.

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1. CALL TO ORDER

Mayor Perry called this meeting to order at 6:06 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Mayor Perry stated this town council uses the phrase “under God” when pledging. A moment of silence was observed, followed by the Pledge of Allegiance.

3. APPROVAL OF AGENDA

MPT Garriss made a motion, seconded by Councilwoman McClean, to approve the agenda. The vote was unanimous, 5-0.

4. PUBLIC COMMENT

1. Gary Vloedman, 106 Captain Hobbs Ct., Kitty Hawk, NC: Mayor Perry read aloud the following from Mr. Vloedman: *“I would like to request that the Town of Kitty Hawk look into the possibility of fixing the issue on the beach road that deals with the sand covering the east shoulder of the road. The shoulder is utilized by walkers and bikers. If you have driven north on the beach road, I am sure that at one time or another you have noticed that due to the sand that is covering the shoulder both walkers and bikers have to come out into the road, your right-of-way, and you have to slow or swerve out and around the biker or walker. Therefore, we need to eliminate the sand covering the shoulder. I would like to suggest the town put up a retaining wall along the east side of beach road where it would help keep the shoulder available to the walker, biker and benefit all.*

Another item that goes along with this is accessing the beach. There are too many people crossing the beach road from where they are staying and taking a short cut by climbing up and over the dune which causes the sand to flow down and out into the road. This needs to stop and I believe the retaining wall would help.

Also, there are places, like Sea Dunes, which have a private beach access with lots of client traffic crossing the beach road. They do not have a crosswalk but should and I believe they should be responsible for the cost of installation. Private beach access on the beach road maintained by an owner should be either wood steps or a ramp that helps maintain the dune side facing the beach road. However, just having a private beach access across from your house does not mean they need a crosswalk. Myself and others do stop to let people cross to the beach where there is not a crosswalk, but I do get frustrated by it as they expect it and the actual crosswalk is only a couple of houses away or less.

Thank you for your time and consideration. Gary Vloedman.

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Perry: *Before I go any further with that comment is there anyone else who wishes to speak?*

2. Curt Baskette, 3605 Rabbit Hollow, Kitty Hawk, NC: *I am here to talk about the proposed raised pipe leading from the Rabbit Hollow drainage basin into the ditches along US 158. I understand that during the closed hearings this evening you will be discussing some concerns raised by individuals about some legal ramifications of the project and potential health issues. I cannot discuss the, or know anything about the legal issues, that is out of my purview, but the health issues ... what I would like to suggest is an alternative that may get this thing constructed and address the health issues. Both of the property owners in the Rabbit Hollow basin that are being impacted do not want to have another flood period where we would not be able to pump to the ditches when the town is pumping into the ocean.*

As an alternative I ask the town to consider, what I consider, a low risk. Go ahead and build the project, and once it is built and flooding does occur, at that time test the waters. Test the waters before the gates are opened and see what the health issues are. Then test the waters once the gates are opened. Test the property, the basin and test the ditches. Once the pumping is concluded and the gates are closed again test the waters that remain in the ditches to see what the health considerations are then.

If at that time it is determined there are significant health issues, abandon the pipe. That is low risk in my opinion. You have been pumping either to the sound or to the ocean for a number of years. To my knowledge there has never been any indication of adverse impacts to any citizen, any animal, any marine life.

I also think it is a low risk because you have an 8-inch pipe that is going to be flowing into a ditch with water that is coming from the sound and coming from the north along 158. It is going to be mixing with water that is coming to the west along West Tateway. It is going to be mixing with water that is coming from the south along 158. So, whatever is in the water in Rabbit Hollow is going to be diluted by all these other waters. It is my understanding that the check valve will not be opened until the pumps are ready to be turned on. It is also my understanding that the check valve to the Rabbit Hollow basin will be closed when the pumps are made to cease so whatever waters that remain in the ditches should be very diluted.

Again, I think it is going to be a low risk on behalf of the town to go ahead and take that chance. Go ahead and build this project. Again, if it is a risk ... what you have lost is 2 days of water standing in the ditches. Historically, that is about how long it takes to it pump out and turn it back on. I understand you have bigger pumps now so they should go even faster.

That is my comment. I hope you will consider it. I do not want to see this drag out any longer. I definitely do not want to see us have to wait for the next occurrence of flooding in the area and have to wait for tests to be made and wait for the results before we can do anything. Because that is going to be worse than in the past. Thank you for your time.

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3. Chris Effenberger, 117 Ascension Dr., Kitty Hawk, NC: *Most of you do not know me but some of you do. I have lived on Ascension Drive for 27 years and up until Kitty Dunes Realty was sold, I spent about 20 years pumping water out of Rabbit Hollow. So, I am here to thank you for all the work you have done for flood mitigation in this area or at least helping. I would also like to thank Willie for all the help he has been. It is one of the better public works departments since he has been here. I would also like to thank Curt for speaking up for all of us. Anything you guys can do to continue moving this project forward would be great. Thank you.*

4. Nurruddin (Rudy) Noori, owner of CRT (Glass and Screen Services), 3600 N. Croatan Highway, Kitty Hawk, NC: *I am all about flood mitigation and help and I appreciate the town's concern for helping out. This evening Mr. Baskette admittedly said there might be issues and we are counting on diluting these issues. I have no problem with flood mitigation. My biggest concern is I would like to do it in a healthy way. Thank you.*

Perry: *Before you go. To install the project, it requires access across basically an easement. It is a utility easement correct?*

Varnell: *Correct.*

Perry: *If there is a legal objection to that then we have a problem doing the project since you are part of that easement. What are your feelings, notwithstanding the health issues you have raised, but what are your feelings about allowing the town to go across that easement? We do not have any other place to put it.*

Noori: *Mr. Mayor I have counsel on this issue I am not sure if it is appropriate for me to make any comment on that. I defer to my counsel.*

Perry: *Well that is not helpful to us. Thank you. Anyone else?*

Morris: *That is all that have signed up.*

Perry: *Is anyone listening in and want to comment? Let the record show I am not getting a response.*

Now I want to address the comment on the beach road. Regarding people crossing the road anywhere other than at a crosswalk. Willie, a designated crosswalk is done by the state.

Midgett: *On the beach road that is correct.*

Perry: *We can ask for it but that is the way it happens. Does everybody understand? Now about jaywalking. He did not call it jaywalking but basically that is what it amounts to. Chief Johnson, what is the status as far as somebody not using a crosswalk to cross the beach road.*

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Johnson: *There is a state law wherein it is a pedestrian violation if they obstruct the flow of traffic. That is why the crosswalks are there and that is where they are legally able to cross the road with cars having to stop. They are not allowed to interfere with traffic.*

Perry: *But in a practical sense you do not have enough cops, I do not think Dare County has enough cops, to really control something like that. It is not doable to try to stand out there and somehow direct that kind of foot traffic.*

Johnson: *No sir it is impossible.*

Perry: *Fencing. Some sort of a retaining wall. The fact is we have blowing sand. Kitty Hawk is unique in so many ways. We have lost our beach through erosion many, many times. We now have a dune and it was built very close to the road because of CAMA requirements. Correct?*

Midgett: *Mostly, yes sir.*

Perry: *Then we added sand and it is a constant source of replenishing. It then creeps onto NC 12 and we have to clean it up. The state is actually responsible for it is that correct?*

Midgett: *That is correct.*

Perry: *You sometimes do it when it gets a little bit out of hand and they are too busy?*

Midgett: *Yes. The biggest issue for us is at the beach access points. As the guy stated as people walk across the sand it pushes it out into the road. At least once a week it gets pushed back into the accesses. We cannot take the sand away because CAMA does not allow it. It must remain in the system. They do not restrict us to putting it right there, but it still has to go on the beach.*

The state has had some equipment, personnel and budget issues this summer. They have not done it as well as they have in the past. I got an email from them today saying they understand and will try and do better.

Perry: *We are not doing away with the dune. Anybody want to do that? (Councilmembers said no.) I am not sure who to ask this question of, maybe you Casey. Where people from the west side cross over dunes there are paths. If the town does not own that do we have any say over it?*

Varnell: *It would depend. We have an ordinance regarding destruction of dunes and things of that nature but if there is a path then you are not destroying anything. If it is not a public access where we hold fee simple title to the land itself whether it is an unbuildable lot, as all of ours essentially now are, it would be a private property issue. Unless of course there was some form of destruction that was occurring as they were crossing the dune. At that point I think we could probably get involved. I know from my private practice many people on the west side of NC 12 are buying these unbuildable lots for the sole purpose of access to the beach.*

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Perry: *Let's talk about sand fencing. Where you sand fence is solely for the purpose of trying to catch sand is that correct?*

Midgett: *Absolutely.*

Perry: *There are places where the top of the dune has been fenced which would in effect catch sand and prevent egress across that dune. Have you ever done private property that way?*

Midgett: *When we first started the sand fence project, we requested permission to do it on all the properties along the oceanfront. Some people gave it to us, some did not. Most of the properties have some sort of sand fence if there is space for it. Most of the unbuildable lots have some sort of sand fencing.*

Perry: *But they gave permission. We did not do it to deter public access.*

Midgett: *We did it to build a dune.*

Perry: *A retaining wall on the east side of 12. Is any councilmember in favor of that? (Councilmembers replied no). That is a dead issue.*

Pruitt: *At the Black Pelican beach access when you go across you are basically on the beach. If you are at Maynard Street, the access cuts through the dune line and then you could spread out and go to the beach in several different directions going across private property. Those people were complaining to the north and south where the path is so long and the sand fence had built up a nice dune. They just cut between the sand fences and the kids are playing on top of the dune. I spoke with Andy and he put the sand fencing straighter and longer so that it directed them instead of letting them fan out. It corrected that problem really well. We put the owners in contact with Better Beaches OBX. They have signs that say "Baby Dunes" and it may help him and others in some kind of way.*

Perry: *When we get someone that has a problem you are trying to take care of it.*

Midgett: *Yes sir.*

Perry: *And we are not infringing on property rights. We are not here to deny people access to the beach from wherever they come.*

Midgett: *Correct and we are trying to maintain it as we go. We are adding sand fence all the time.*

Perry: *That sand is blowing and I am not ready to take it away from there. The state spends an awful lot of time down on Hatteras Island trying to keep all that mess clear. They really only have a certain number of people and it is unreasonable to expect them to be up here day in and day out. Is that something you can take on to kind of help out a little?*

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Midgett: *I do. They will call me sometimes and ask if I can push up the sand and I will.*

Perry: *Do you have to wait for their call?*

Midgett: *I do not. And if it is bad, I will do it. Especially at the Bath House.*

Perry: *Do we all agree? (Councilmember replied yes.)*

Garriss: *I have gone out early many mornings and I have seen you out making your rounds. Just for the record that is part of your regular route every morning going down NC 12 looking at sand on the road.*

Midgett: *If I am not there every morning, I am there the next or in the afternoon. I am on that road at some point.*

Garriss: *I have seen you and thank you.*

Hines: *I have seen joggers and people walking in the morning and it can get kind of dangerous for them on that road.*

Perry: *We do not have a true path. It is also dangerous on West Kitty Hawk Road. That is not nearly wide enough but there is a limit to what we can do. The uniqueness of Kitty Hawk dictates that sometimes people must be careful. Enjoy Kitty Hawk for its uniqueness and be aware we cannot fix everything. Thank you, Willie, Joel and Casey.*

Anyone else wish to speak during public comment? Let the record show I heard nothing.

5. CONSENT AGENDA

a.) Approval of August 3, 2020 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 29-21 Budget Amendment #1. Joe Lamb Realty, Jr. & Associates donated \$100 and Patrick and Ann Wilkerson donated \$25 to the police department. The police chief would like both to be allocated for future purchases of AED (automated external defibrillator) supplies. *(An affirmative vote for the consent agenda will approve this amendment.)*

c.) Flood Insurance Promotion Summary. As part of the Town's CRS activities, staff is required to prepare and present the flood insurance promotion summary to Town Council every 5 years. *(An affirmative vote for the consent agenda will acknowledge this summary.)*

Councilwoman McClean made a motion, seconded by Councilman Pruitt, to approve the consent agenda. The vote was unanimous, 5-0.

6. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed from the consent agenda.

7. PUBLIC HEARING

a.) Sec. 42-1, Definitions & Sec 12-141, Land Disturbance. The applicant has requested a text amendment that would measure maximum building height from finished grade and place a limit on the amount of fill permitted on a lot.

Mayor Perry made a motion to go into public hearing. It was seconded by MPT Garriss and unanimously approved, 5-0.

Perry: We are now in public hearing and there is something I want to add for the record that we need to consider. Kitty Hawk this year is 39 years young. Before we became a town there were height issues that were encountered. If you go back in the records, and we have the records, throughout our history height was an issue. The reason I raise this is because what we are considering tonight changes history. If we do what has been asked of us tonight, then we have changed what everybody in the past has been adamant not be done.

It started out at 25 feet. When we were with the county it was 25-foot lots, 25-foot height, a flat roof would do, a house on wheels would do, those sorts of things. It had nothing to do with building a house with 3 floors or 2 floors with vaulted ceilings. To my surprise when I did the research building houses on stilts had nothing to do with flood damage prevention. They did not have those rules at the time. It had to do with people wanting to park a car underneath the house. People were getting more affluent and they needed a place to park on a small lot. That is when the 35-foot height started.

So, for the record, we are being asked to change history. I will leave it at that. We will listen to what is presented to us and I think we will find maybe history needs to be changed. It is on us.

Planning Director Testerman reviewed the following staff report:

Proposal

The applicant has proposed a text amendment that would change the way Kitty Hawk measures the 35' height maximum from original grade to measuring 35' from finished grade.

42-1. Definitions

Ground elevation means the mean elevation of the ~~undisturbed land~~ final grade computed at the perimeter of the proposed building's foundation or piling location.

12-141. Land disturbance.

~~An owner or possessor may make reasonable use of his land, but~~ Fill shall not be permitted to exceed the established Regulatory Flood Protection Elevation (RFPE), the fill height required by the Dare County Environmental Health Department for septic purposes, or 6 inches above the adjacent road surface, whichever is highest. Interference with the flow of surface water shall not be unreasonable so as to cause harm and substantial damage to other property or public rights-of-way. Unreasonable use and substantial damage may subject the owner or possessor to a civil action for injunctive relief and damages.

Other related definitions, not proposed to be changed:

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Height means the vertical distance measured from the highest point of the top plate of the permitted structure to the ground elevation.

Height, total, means the distance from ground elevation to the horizontal plane of the highest point of the building.

Top plate means the structural member of a building located at the point where the structural wall framing and the structural roof framing join together at the top of the uppermost habitable floor and should the building be designed having top plates at more than one horizontal level, the uppermost plate shall be considered insofar as usage in this chapter is concerned.

Background & Analysis

The proposed text amendments would keep the current maximum building height as required by individual zoning districts, however, instead of measuring that height from average original grade, as is currently done, the measurement to the roof peak would be from the finished grade.

In March, the Town adopted the new Flood Insurance Rate Maps, along with a new Flood Damage Prevention Ordinance. Portions of the ordinance had an unanticipated effect on building height. Currently, the Town's maximum building height is 35', measured from the average original grade, except in the BH-2. To obtain this information, before any land disturbing activities take place, we require a site plan, showing the original elevation shots at the four corners of the structure, we then take the average of those four numbers.

In the BH-2 district, if the ground elevation is lower than Base Flood Elevation (BFE), building height is measured from either the BFE or finished grade, whichever is lower. Also, as a conditional use, hotels in the BH-2 district can be up to 76' in height, measured either from BFE or finished grade.

With the previous flood damage prevention ordinance, the reference level (point that had to be elevated to or above the Regulatory Flood Protection Elevation) was the top of the bottom floor of living space. This meant the floor system could be below RFPE, as long as the top of the finished floor met the requirement. With the ordinance adopted in March, we now use the bottom of the lowest floor as the reference level, meaning that the bottom of the floor system must now be elevated to or above RFPE. This, in combination with the existing maximum building height, and measurement process, effectively reduces your functional building height by a foot or more.

Parcels that are within the AO flood zone are impacted to a greater degree. Regardless of the ground elevation in the AO zone, the RFPE is 3' above the highest adjacent grade to the proposed structure. That is to say, if your existing grade is 9' NAVD (North American Vertical Datum), the bottom of your lowest floor must be at 12' NAVD, minimum – if your existing grade is 12' NAVD, the bottom of your lowest floor must be at 15' minimum. In this area, there are lots that under the 2006 maps/ordinance, due to the existing grade being higher than the RFPE, a house could have been built on grade; however, now in the AO zone, the bottom of their lowest floor must be 3' above grade, putting the top of the bottom floor approximately 4' above grade. So again, the first floor of living space is getting pushed upward, but the maximum building height, measured from original grade, remains the same, resulting in reduced functional building height.

It should be noted that there have been various applications to increase maximum building height in the past, which have been denied for various reasons, but typically citing that 35' from original grade was felt to be the appropriate height for Kitty Hawk. The difference in this moment, is that another of the Town's ordinances (the flood damage prevention ordinance) is impacting the design of houses in certain areas by eliminating some previously usable space.

Likewise, it should be noted that in 2009, Council discussed an ordinance regulating fill, but ultimately adopted the existing language in 12-141 because Council at the time felt that the Town should not police how much fill property owners wanted put on their lot.

As noted above, as the ordinance is currently written, the Town does not regulate the amount of fill that is permitted on a lot, however, they are capped to a degree, because of the building height being measured from original grade. It is staff's opinion that should the amendment to measure building height from finished grade be approved, that the proposed limit on fill should also be included to prevent the ordinance from being abused.

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Linked to the 2009 discussion about fill requirements is stormwater management. The idea was discussed for this proposal to include a threshold, that if a certain amount of fill was exceeded, an engineered stormwater management plan would be required to ensure that adjacent properties were not negatively affected. Ultimately, it was decided to omit any specific stormwater management requirements for this proposal. It is staff's understanding that with the language added in 2009 for Sec. 12-141, it was Council's preference to not have staff policing stormwater issues for this type of development. Additional consideration was given to the fact that the Town does not have an engineer on staff, so stormwater management plan reviews would have to be outsourced to a third party engineer, which would add costs and wait time for property owners during the permit approval process.

The issues with the current procedure of measuring building height from average original grade are not solely linked to the flood damage prevention ordinance. There have been several instances where by either natural occurrences, or due to the development of surrounding lots, a vacant lot has been left in a hole. At times, significant amounts of fill may be required to bring the building pad level with adjacent lots, or even with the adjacent road surface, which in turn shrinks the usable height of the new house.

A concern is that the proposed regulations may allow for new construction to be significantly taller than existing homes. With the proposed fill limitations, in most areas of town that would not be a great concern. The proposed language would limit the fill height to either RFPE, the adjacent road elevation, or the amount of fill required by the health department for septic (up to 36"). In most areas east of 158, the existing grade is within two to three feet from the RFPE, and the lots are relatively even with the roadway, in most cases, therefore the fill limit would either be RFPE or the fill amount required by the health department (no more than 36"). When compared to the existing language, the highest horizontal plane of the house would be 38' from original grade, as opposed to the 35' that is currently enforced.

The majority of X zoned properties are at an elevation that is higher than 8', which is the newly adopted RFPE for X zones, so fill would only be permitted to bring a property even with the road elevation, or up to the level required by the health department, so again, it is the difference of a couple of feet versus what is currently enforced.

The areas that may cause some concern are in the lower lying areas of the village. In the Landing for example, existing grade is typically around 3' NAVD, and the RFPE is 8'. In a case such as this, up to 5' of fill would be permitted, and the highest roof peak would be at 40' from original grade, as opposed to the 35' under the current language. It should be noted, for runoff concerns, that we would currently allow 5' or more on any given lot, as we do not limit fill amounts currently, but that would impact the design of the house. Looking back through erosion and sedimentation control permits that have been issued in the village, it appears that the average original grade for most of them have ranged between 3' and 6' NAVD in elevation, which, under the proposed language would allow between 2' and 5' of fill to get to the RFPE, the 35' height max would then be measured from there.

Other Outer Banks Communities

Duck:

(1) The vertical distance measured from the tallest roofline of a building (not counting chimneys and similar features subject to exception) to the top of the slab at the approximate center of the structure or to the average finished grade where no slab is present. Finished grade below the slab shall be established in accordance with the town's land-disturbing activities regulations.

(2) *Special flood zone regulations.* In any A or V special flood hazard area, height will be measured as follows:

(a) In cases where the regulatory flood protection elevation is higher than the average finished grade in an A flood zone, the height measurement shall begin at the top of the slab at grade with non-habitable space, or from the regulatory flood protection elevation when no portion of the structure is located at grade, whichever is applicable.

(b) In cases where the regulatory flood protection elevation is lower than the average finished grade in an A flood zone, the height measurement shall begin at the top of the slab at the approximate center of the structure or to the average finished grade where no slab is present.

(c) In a V flood zone, the height measurement shall begin at the bottom of the lowest horizontal member consistent with the town's standards for free and clear of obstruction, as defined in Chapter 150, Flood Damage Prevention.

Southern Shores:

Maximum building height shall be 35 feet, measured from the average of the existing, undisturbed grade at the building corners. If the average of the existing, undisturbed grade at the corners of the building is less than 8 feet above mean sea level, the maximum building height may be measured from up to 8 feet above mean sea level.

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Kill Devil Hills:

BUILDING, HEIGHT OF. The distance between the *average elevation of the finished grade*, such point to be computed at the corners of the proposed building foundation and the highest point of the structure, excluding chimneys, cupolas, cooling towers, elevators, bulkheads, scenery lots, monuments, domes, spires and parapet walls.

Nags Head:

8.6.4.1. Measurement of height. Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

8.6.4.1.1. In any AE special flood hazard area, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.

8.6.4.1.2. In coastal high hazard areas or VE zones, height shall be measured from regulatory flood protection elevation. In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure.

Dare County:

Building height - The vertical distance measured from the *lowest finished grade under the approximate center of the structure to the top of the highest roof structure*. Cupolas and other similar architectural features are not to be included in the determination of the highest roof structure. Basements shall not be used in the determination of building height and shall be defined as the lowest story of a building located below the natural ground level. All sides shall be located below the natural ground level to qualify as a basement.

Note: Staff was unable to locate Manteo's regulation on building height, but will attempt to have that info before the meeting.

Consistency with Land Use Plan

The following policies and objectives relevant to this application are stated in the CAMA Land Use Plan:

Goal #5: Remain aesthetically pleasing while maintaining coastal village image.

Policy #5a: Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to regulate and improve community appearance.

Objective #5a: Enforce and amend as necessary, Town zoning ordinances and provisions regulating signs.

Policy #17a: Kitty Hawk will continue to adapt, enforce, and amend as necessary ordinances and procedures to regulate residential development and redevelopment. The town supports applicable state and federal laws and regulations regarding building, land uses, and development.

Policy#17d: Kitty Hawk will continue to regulate building intensity and oversized structures by enforcing, and amending as necessary, the zoning ordinance. The zoning ordinance regulates building intensity factors such as building height, lot coverage, and building setback(s) for commercial and residential building development. The ordinance also specifies maximum and minimum building sizes for commercial buildings.

Objective #17a: Ensure the continuance of established residential development patterns.

Objective #17b: Ensure future development is consistent with adopted goals, objectives, and policies and regulations including building code requirements and is in character with existing development with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

Objective #17d: Enforce, and amend as necessary, the Town zoning ordinance including designation(s) of permitted and conditional use intensity and density criteria.

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Planning Board Recommendation

At its July 16, 2020 meeting, the Planning Board unanimously recommended approval of the requested text amendment to change the definition of "ground elevation", allowing the maximum building height to be measured from finished grade, rather than average original grade. The recommendation also included the reported changes to Sec. 12-141, imposing limitations of the amount of fill allowed on any given lot.

Perry: *The septic line, shown in the photo encased in concrete bollards, blew me away. It caught me by surprise. I had no idea that something like that was being built. I appreciate Randy Saunders bringing that to our attention because the septic systems are having as much to do with this as the flood prevention ordinance in what we are discussing.*

1. Jay Overton, Albemarle & Associates: *Good evening. I reside in Colington Harbor and have been there about 30 years. I have seen a lot of the changes like you are mentioning tonight sir. Rob has done a great job of outlining how we got here. Mainly the flood ordinance brought this to our attention back in March. Many of you have lived here all your lives and have seen a lot of things change and we are seeing things change as well.*

You mentioned the septic systems. Some of you may be aware that the health department a few years ago had an audit by the state wherein they started requiring them to come up with greater fill requirements. Now we are having to do these Brunswick systems.

There are a lot of little things here and there and the next thing we know they are adding up and they are affecting the lives of our community. I think what you are realizing with the new flood ordinance and other things is that you all have the oversight to make sure we all are being serviced correctly and safely.

When we are looking at flood waters one of the things we have seen is not so much just the houses flooding but it is the cars and other things. You mentioned putting houses up on pilings so folks could have a place to park their cars. I do not think the first folks who did that envisioned ending up with 2 or 3 feet of flood water underneath of the houses. That is a lot of what we are dealing with.

We are looking at the ability to refine what we are doing for the betterment of our community. That is our request for how we measure the height. It is not a desire to have larger houses. It is to keep things where they are. The baseline for what do we need to do in site preparation to better manage our stormwater, better manage our septic systems, to better protect personal properties and lives is really where this is coming from.

I commend you because of having to deal with all the counties and municipalities. It is refreshing to come back to Kitty Hawk. When I was reading the fill ordinance where we are putting the responsibility on the property owner, it is our responsibility to make sure what we are doing is not going to adversely affect our neighbor. I think all too often we want government to be out of our lives until we want government to go make our neighbor do what we want him to do. And to put that here in writing to make people understand from the beginning you are responsible for your action and how you affect your neighbor is very important.

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When Rob and I were talking about this ... we all need to have parameters. We all need to have some type of idea and right now with our fill ordinance it basically says we are responsible. I do not know that we have seen anybody want to put 8 or 10 feet of fill on a property but what we are finding out is in order to get properties up higher so that we are protecting for these other issues there is going to be the need to do that. The question is going to be asked about what a good guideline is, where is a good place to start. The health department says you have to have the 24 inches or you have to have the 30 inches. We just passed a new flood prevention ordinance which we went through and we saw what FEMA came out with but in spite of what FEMA said as a community all the towns got together and said we have seen flooding. What would be a minimum elevation we would want to construct to so that we do not have adverse situations most of the time. We are never going to be able to make sure we build to when the great flood comes through here that we do not have some water but we picked an elevation and that was based upon trying to help the property owners understand that parameter.

Another thing is any time we have done anything with subdivisions whether it has been here or inland you want your property to be above the road. Willie does not want to be dealing with public water draining on private property. It was talked about a little earlier this evening. That is an issue going on and we want to prevent that so giving this type of guidance on the fill was not trying to make people do that, but it was trying to give some commonsense parameters. At some point someone is going to ask Rob what do I do? How much is a good amount? I think these are some good parameters.

And the final thing. I know you talked about history. The town is full of history and at the same time as you go through and look at history there have been milestones along that path in which decisions were made and they were made not because we are going to live in the past but because we are looking at what we have walked through in the past, what we have experienced and from that we see are some refinements that we can make that will make life better for the residents of Kitty Hawk. I see this as one of those things, one of those milestones.

With that I thank you and if you have any questions for me, I will be around to answer them.

2. Duke Geraghty, Outer Banks Home Builders Association: *Good evening and thank you for the opportunity to speak tonight. I am with the Outer Banks Home Builders Association. I have a little bit of history too. I remember sitting in this room and sitting upstairs with Richard Reid putting the last major zoning ordinance together, going over parking regulations. Everybody had a fear of these mini-hotels, and I hate that word, but the mini-hotels. We have to do something before they start coming in. We tried to keep it as simple as we could, and I think Kitty Hawk has done that. They have done a great job, but some things change.*

One is price. You are paying a lot of money for a lot and you want to justify the price you just paid. I am not going to talk about a 12, 15- or 20-bedroom home but a 4- or 5-bedroom family home and you want 9-foot ceilings. You can build a house right now with 8-foot ceilings and it is obsolete before you are finished with it. People want 9-foot ceilings. You need a little bit more height.

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We have had the health department change their specifications. The water separation from the water table used to be 18 inches. It was common to put 24 inches of fill. The health department changed their determination and said we need 30 inches of separation. And that may change again if we continue to see any kind of sea level rise.

Hurricane Irene in 2011 ... I have a very good friend who sold her house recently on Pineway Drive in Kitty Hawk Landing and is getting ready to build another house on Tackle Ridge. They got flooded for the second time. She had to change all the insulation and all the stuff in the garage was flooded because the house was built too low. Another foot of fill would have been fine. It would have saved the property. We are trying to take preventive measures when we start the new house.

This is not a builder issue. This is for the citizens. They deserve it. You cannot keep making the same mistakes and going through the same flood issues that we have had in the past.

Jake covered everything pretty good as thorough as he always is. I do not want to repeat anything, but I am hoping you pass this ordinance tonight. It is very simple and I hope that most people who build do not flood from property to property with fill. You need to keep your water on your property. That is a very basic thing. We said take care of your own water and do not dump it on your neighbors. I am hoping through education and through the building permit process you can reiterate that. Bring the fill up, at least get it higher than the street. It makes common sense. Thank you.

3. Dave Stormont: *Good evening. I have been a property owner in Kitty Hawk since 1995 and I built a business here over the years. I am here to ask that you approve this recommendation tonight with respect to the fill. It is controlled by the height of the street, septic ordinances and stormwater runoff considerations for neighbors.*

The flood maps have changed the way we measure from the floors as Rob pointed out. From top of the floor now to the bottom of the floor basically. I just see that this is a positive thing for the community going forward. I see it as a win/win. I do not really see a downside to being able to measure from finished grade versus natural grade. I would like to see it so that we do not continue to have, as Duke pointed out, repeating flood issues we have had with stormwater and some ocean over wash. Thank you for your time. I appreciate the opportunity to speak.

4. Blair Meads: *I am a resident of Kitty Hawk as well as a builder. I recently developed some properties on Lindbergh. There were six lots side by side. Two lots worked out to be above the street level and two lots worked out to be about six or eight inches below the street level. Those two properties in heavy rain water will run off the street down to the lower level and if I had just been able to put eight to ten inches of fill on those properties they would have had the same value as the adjacent properties. It would have made it much more suitable and I would have been able to protect those properties in a much better way. I feel like this text amendment is a responsible way that encourages people to protect their property and to also to protect their neighbors. I hope you will consider this a good amendment for our town.*

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5. Vaughan Robinson: *Good evening mayor and councilmembers. I am the current president of Outer Banks Home Builders Association and I am in favor of the text amendment for how height is measured. I hope you approve this text amendment. I have been getting a lot of calls from builders in the area wanting to know what is going on with the height and the way height is measured. Also, some contacted me about issues as far as them being forced to build at a lower level the way that you currently measure the height from the existing grade. I hope you approve the proposed amendment change. Thank you.*

6. Keith Dobie: *Thanks for letting me speak. I want to talk about a specific project that I have been working on, on the beach road, or trying to work on. It was an older house, one story, on pilings. The homeowner decided it was not really worth saving so they decided to knock it down. I went and got the demo permit and design plans were drawn up. Everything would work under the last regulations. The house was demo'd in March. To get a permit for the house that was totally fine previously was not allowed to be built because of the new flood maps and flood zones. It is the exact same house but now because of the new flood regulations ... the homeowners know they need to bring in fill or elevate a little bit. They are willing to spend the money, but they have just been in limbo since they started this process in the fall. There is no house there now. It is an empty lot and they have not been able to use it all summer. Just wanted to give that context for one specific project. Thank you.*

Perry: *While I am waiting for the next gentleman to come up, I want to thank each of you for taking the time to come and speak to us directly.*

7. Jake Overton: *Mr. Mayor, members of the council. I am a Kitty Hawk resident and I am also a builder. I want to thank you for allowing me an opportunity to speak to you. I am in favor of this text amendment. We go in and look at a piece of property and we are looking at a couple of different things. What do the adjacent properties look like? Where are we at with the road and then what is the health department going to require based upon how high we are from the water table. We deal with all the different towns and multiple counties. This excites me a little because it is something that is very simple and practical. Every day we are looking at trying to maintain proactiveness and working with the surrounding lot owners but then also being able to build so that we are meeting the requirements of the health department.*

One of the reasons I decided to raise my family in Kitty Hawk is because of the nostalgia and the history. We see so much other stuff going on in the county and I feel like that even though times have changed you as a council and the mayor still have an open mind. We want to try to keep Kitty Hawk the way it was, but some things have to change in order to deal with the surrounding issues that we are dealing with. I would just like to thank you for the opportunity to talk and hope that you will consider approving this text amendment tonight.

8. Carlos Gomez: *Good evening. I am president of Coastal Engineering & Surveying. We are engineers and construction managers. Coastal has been in business for over 30 years and we are in Kitty Hawk on the bypass at milepost 3.*

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This has been a persistent issue throughout the years, and it is a minor thing that creates so many problems for everybody. This issue is not of elevation but how we measure it. We are not changing the 35 feet just how we measure it from the ground level. Thank you so much.

Perry: *Anybody else wish to speak that is here in the town hall? (No one answered.) Is there anyone on the telephone that wishes to speak on the subject matter of this hearing? Let the record show I am not getting a response. If anybody is listening please mute your phone.*

Randy Saunders brought to our attention the pictures that are being shown on the overhead monitor. He is recommending a change and I will ask the attorney if it is something that can be done.

Mayor Perry read aloud the following:

9. Randy Saunders, R.M. Saunders General Contractor, Kill Devil Hills, NC:

"Dear Mayor and Board members of the Town of Kitty Hawk. I am contacting you today concerning the upcoming request changing the way we measure the height of our new homes from original grade to measuring the height from finished grade. I am a Kitty Hawk property owner and a builder who has been building on the Outer Banks for over 40 years. In my opinion I feel we need to change the way we measure to allow the home to be brought up 24 to 30 inches all depending on what the health department is requiring for fill. It has been the policy of the Dare County Health Department in the past couple of years to require at least 24 to 30 inches of fill for lots that cannot meeting the 36-inch requirement to the average water table. In doing so the health department also requires the septic tank be set flush with the top of the fill. Unfortunately, this causes a couple of problems.

First of all, the main sewer lines leading from the house to the sewer tank being exposed and creating a trip hazard as you will see in the picture I am attaching. I took this picture of a house in Kitty Hawk Landing. The sewer pipe is unsightly for one and a hazard sticking above ground also. I do not feel the Town of Kitty Hawk wants this for future homes built when we can solve it with simply allowing the builder to raise the house the same as the fill level so that the main sewer line will be hidden under the soil and not be a hazard for someone to trip on or worse. I feel we should allow the owner to fill under the house and around the perimeter of the house 36 to 48 inches then slope the fill to a 2 to 1 slope leaving the remainder of the property at original grade so we will not be directing our water runoff toward our neighbors.

I have attached pictures as an example of a home we are currently building. As you can see, we only filled under the house and out around 36 to 48 inches. The remainder of the lot with the exception of the small drain field area will remain at original grade for water runoff not affecting our neighbor on either side of us. I do not feel the entire lot should be filled and cause a problem for our neighbors. I have also included a picture of a lot just down the street that has been completely filled and will certainly cause problems for the adjoining neighbors. Hopefully, you will be able to adopt this new ordinance change with these modifications.

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Perry: *The text amendment before us has specifics and he is recommending an alteration. I know when we have a text amendment like this if we try and make too much of a change, we must go through the whole process again. Please bring us up to date.*

Varnell: *It looks like Randy is proposing essentially to measure from wherever Dare County Environmental Health Services requires fill to be brought in for septic purposes. But that is not really answering the question or dealing with the problem that a lot of folks are talking about today. Even if this is done what if it is still below the road? If we were to remove the language regarding whichever is higher ... I think it is a substantial deviation. The slope requirements are another issue.*

We have the applicant in attendance. If the applicant approves the variation, then we could certainly consider it. If the applicant does not, then it becomes an issue.

Perry: *That is what I thought. How many of you would like to see this recommendation go forward? It means we would have to do this all over again. Please raise your hand. No one is raising their hands, so it is a nonissue.*

Gomez: *Just one question. Rob is in the middle of all this with the contractors, engineers and architects and I would like to know what his opinion is.*

Testerman: *I think the proposal has merits. Especially after seeing the picture sent in illustrating the kind of issue our current method of measuring can create. Nobody wants their sewer lines exposed in the parking pad under their house. The current way sometimes punishes the last person to build on the street because the neighbors have built up their lots and they are left in a hole and restricted with what they can do to get up high enough to not take all the water. Some residents that have been required to build to the 35 foot from original grade may have an issue with the new ordinance but it makes more sense to fix it than just keep doing it the way it has been done.*

Perry: *Anyone else? Let me state we will not pass this tonight because we are in a remote hearing and that requires 24 hours at a minimum before we can consider the final verdict.*

Morris: *Mayor there is one more comment to be read into the record.*

Perry: *I will take care of that. Thank you for speaking up.*

Mayor Perry read aloud the following:

10. Michelle & Heiko Sunkler, 4029 Tackle Ridge Road, Kitty Hawk, NC: *"Regarding #7 on the agenda. I would like to have the following comments read at tonight's meeting. I sincerely hope that approval is given to the text amendment to change measuring maximum building height from finish grade. We are in the process of building a home in Kitty Hawk Landing and have had to discard our house plans once we received notice from the health department regarding the*

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amount of fill required for the septic permit. We had plans for a modest 1 ½ story low country home on pilings that has a ridge height of 34 feet 7 inches which is no longer viable with the 30 inches of fill required for the septic permit. We have looked at hundreds of plans trying to find one that we can only build that is not a single-story home or a two-story flat roof home on pilings. A flat roof home is certainly not ideal for our hurricane prone area and the single story would be very small to fit within the setbacks. The amount of fill required by the health department is going to be an ongoing requirement for every lot and every septic permit in Kitty Hawk Landing. We have lived in Kitty Hawk Landing for 20 years in one of the original two bedroom ranch homes on Pineway Drive and had hoped to build a new one on Tackle Ridge with three bedrooms and a decent sized kitchen but finding it hard to do with the current way the ridge height is measured. Thank you for your consideration.

Perry: *I apologize and we do hear you.*

Council do you have any questions for Rob or anyone else? Hearing none, I am going to make a motion we go back into regular session. MPT Garriss seconded and the vote was unanimous, 5-0.

Perry: *Do we hold a special session and come back sooner than the next meeting or do we hold this in abeyance until the next meeting?*

With regards to voting Clerk Morris explained council could vote on the text amendment tonight. It is only a remote meeting if one or more of the councilmembers is attending remotely. (This new law is effective only while under a state declaration.)

Attorney Varnell said all councilmembers have been in attendance. There was a hearing in June and council delayed voting that night as a courtesy. Council may vote tonight, hold a special meeting, or wait until the next regular meeting.

Perry: *The floor is open for a motion.*

MPT Garriss made a motion to adopt the proposed text amendment to Section 42-1 establishing final grade as a definition of ground elevation and amending Sections 12-141 limiting fill amounts on any give lot. The town council finds that the proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments to be in the public interest. Councilman Hines seconded and it passed unanimously, 5-0.

8. NEW BUSINESS

a.) Discussion Concerning a Letter from the Outer Banks Association of Realtors Regarding Remotely Held Meetings

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Perry: *The Outer Banks Realtors want us to continue video live streaming and providing access to the meeting through the telephone during the pandemic and then on a permanent basis. Council how do you feel about this?*

Pruitt: *I am willing to be as open as we can. If the people want it, I am in favor of it.*

Garriss: *I think it is a good thing for those that cannot be here in person. I think it is great.*

Hines: *I agree.*

McClean: *Being accessible is a good thing. You can listen by calling in, you can watch from the website or you can watch it later. I think keeping them all is probably the best we can do for everybody.*

Perry: *Lynn are you still having trouble when we do the telephone part of it? As far as being able to get it for the record.*

Morris: *I will let you know after this meeting because of the new telephone we have now.*

Perry: *If it works well do you want to keep it?*

Pruitt: *If it works out.*

Perry: *All right. If it works out, we will keep it.*

9. TOWN MANAGER

Stewart: *September 14 is the town's **large item pickup**. We now pick it up inhouse with our bucket truck.*

*I sent council an email last week about rental agencies saying bookings are strong. We will be continuing some **lifeguard services** after the Labor Day weekend which is usually our last day of a full lifeguard staff. We usually drop back to about two roaming ATV's for a little while but now we are going to probably have three lifeguards since we are going to have more visitors staying a little longer.*

*We will be bringing back before the council a **budget** amendment in October. I think we are probably going to see a slight increase in some of the revenues that we thought we were going to lose several months back before we adopted the budget. We have some history now about how the pandemic has affected some of those revenues. We will be able to bring back a budget that is going to reflect the year so far more clearly. It will probably be done through a budget amendment and I believe the news will be fairly good compared to what we were thinking in the spring.*

10. TOWN ATTORNEY

There were no comments from the town attorney.

11. TOWN COUNCIL

Pruitt: *I was excited to see the turnout tonight. It was good to see the people it affects.*

Like it was said it looks like we are going to have some extended time with our visitors. I would like to thank everybody for getting us through the summer and once again our lifeguards. I think this year they did a fantastic job of being ambassadors to the vacationers as well as the residents on the Outer Banks. I am really happy at the job the chief has done with the fire department and the ocean rescue. Well done.

Garriss: *I agree about the continuation of the lifeguards. I have only heard positive comments. Thank you to Chief Talley and Chief Johnson. Thank you to Willie and the town staff. The town has been through some stressful times in the last couple of months with Covid and a lot of other things. You have done a great job. Thank you for what you are doing and keep it up.*

McClean: *Echoing what Jeff and Craig have said. Thank you everybody and I was also looking forward to a break in the fall. We will get one.*

Hines: *I also appreciate the way the lifeguards greet and say goodbye to everybody. I saw them yesterday tell a guy to get off the dunes and not walk on the sea oats. I think they really are doing the best job I have seen in a while with everything going on. I do not make it to the beach often, but I have personally watched them space people out and just make everybody aware.*

12. PUBLIC COMMENT

Perry: *Are there any further public comments? (There were none.) If any newshounds are listening please be aware, we are going to go into closed session, and I expect a decision at the end of it, but it will not be broadcast this way. If you want to know the result you will have to call the clerk.*

13. CLOSED SESSION

Mayor Perry made a motion to go into closed session for the following:

a.) NCGS 143-318.11(a)(1) Approval of the August 3, 2020 Closed Session Minutes

b.) NCGS 143.318.11(a)(3) To consult with the town attorney to protect the attorney-client privilege

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Councilwoman McClean seconded the motion and it passed unanimously, 5-0. Time was 7:38 p.m.

Following a short break council began the closed session at 7:45 p.m.

14. RETURN TO REGULAR SESSION

Mayor Perry made a motion, seconded by Councilwoman McClean, to return to regular session. The vote was unanimous, 5-0. Time was 8:05 p.m.

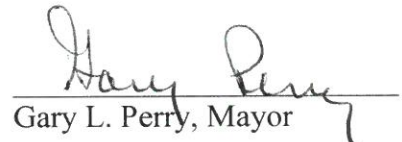
During the closed session council decided to terminate the Drainage Improvements in the Rabbit Hollow Area Project.

15. ADJOURN

Mayor Perry made a motion, seconded by Councilwoman McClean, to adjourn. The vote was unanimous, 5-0. Time was 8:05 p.m.

These minutes were approved at the October 5, 2020 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor