

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, May 6, 2019
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 April 1, 2019 Council Minutes
 - b.) FY 18-19 Quarterly Financial Statements
 - c.) Purchasing Card Policy Update
 - d.) Resolution Supporting the More Powerful NC Campaign
 - e.) Resolution Opposing North Carolina House Bill 486 That Would Change the Definition of Commercial Fishing
 - f.) Resolution Supporting Jetties at Oregon Inlet
 - g.) Letter of Support to NCDOT About Required Local Matches and Other Contributions for P5.0 Non-Highway Projects in the Draft 2020-2029 STIP
 - h.) Beach Nourishment Year-2 (2019) Post-Construction Monitoring Service Proposal with Aptim Coastal Planning & Engineering
6. Items Removed from the Consent Agenda
7. Public Hearing:
 - a.) Text Amendment - 4-6. Commercial and Noncommercial uses of horses; keeping horses.
8. New Business
 - a.) Proposed Bath House Renovations/Addition
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. Closed Session
 - a.) N.C.G.S. 143-318.11(a)(1): Approve closed session minutes: September 4, 2018.
 - b.) N.C.G.S. 143-318.11(a)(3): To preserve the attorney client privilege concerning possible legal action.
14. Return to Regular Session
15. Adjourn

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilwoman Lynne McClean, Councilman Jeff Pruitt and Councilwoman Tina Tice

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STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Police Sergeant Jimmy Helms and Public Works Director Willie Midgett

1. CALL TO ORDER

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

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

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

There were no public comments.

5. CONSENT AGENDA

a.) Approval of April 1, 2019 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 18-19 Quarterly Financial Statements. *(An approval of the consent agenda will approve acknowledge these statements.)*

c.) Purchasing Card Policy Update. This update to the Town policy includes the preaudit process mandated by G.S. 159-28 for counties, municipalities and public authorities. *(An approval of the consent agenda will approve this updated policy.)*

d.) Resolution Supporting the More Powerful NC Campaign. This resolution asks everyone to join forces in addressing the opioid epidemic. *(An approval of the consent agenda will approve this resolution.)*

e.) Resolution Opposing North Carolina House Bill 486 That Would Change the Definition of Commercial Fishing. This resolution reaffirms the Town's unwavering commitment to North Carolina's commercial fishing industry by strongly opposing HB 486, or any other action that would change the definition of commercial fishing or cause harm to North Carolina's Working Watermen. *(An approval of the consent agenda will approve this resolution.)*

f.) Resolution Supporting Jetties. This resolution supports protecting and stabilizing Oregon Inlet with a jetty project by variance or by rulemaking and asks our state and federal representatives to support the construction of jetties at Oregon Inlet. *(An approval of the consent agenda will approve this resolution.)*

g.) Letter of Support to NCDOT About Required Local Matches and Other Contributions for P5.0 Non-Highway Projects in the Draft 2020-2029 STIP. This letter lets DOT know the Town understands that a local match is required for STI-funded Bicycle/Pedestrian projects. A US 158 sidewalk from Cypress Knee Trail to Jejac Drive is

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planned for 2025 and the Town's projected 20% cost is \$254,000.00. It also states the Town is aware local funding will be due when the project is authorized and is subject to additional requirements to be described in agreements with NCDOT. The Town also understands this letter of support does not guarantee that any project(s) will be included in the final STIP. *(An approval of the consent agenda will approve this letter.)*

h.) Beach Nourishment Year-2 (2019) Post-Construction Monitoring Service Proposal with Aptim Coastal Planning & Engineering. During the February 4, 2019 council meeting, Ken Willson, Aptim Program Manager, reviewed the Year-1 Report and the importance of beach profiles surveys and the data that could be derived from a shore-parallel bathymetric survey. This proposal, in the amount of \$62,040.05, includes: Monthly Progress Reports; Beach Profile Survey Reports; Beach Monitoring Reports; Beach Maintenance Plan Updates; Nearshore Bathymetric Survey; and, Borrow Area A-Dive Investigation Report. *(An approval of the consent agenda will approve this proposal.)*

Councilwoman McClean made a motion to approve the consent agenda. It was seconded by Councilman Pruitt and passed unanimously, 5-0.

6. ITEMS REMOVED FROM THE CONSDENT AGENDA

There were no items removed.

7. PUBLIC HEARING

a.) Text Amendment - 4-6. Commercial and Noncommercial uses of horses; keeping horses. The applicant has requested a text amendment that would create specific requirements for the keeping of miniature horses.

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

Because Planner Testerman was away for training, Attorney Varnell reviewed the following memo with Council.

Proposal

The applicant has proposed a text amendment that would add a new definition for miniature horse and create standards and regulations for keeping miniature horses in Kitty Hawk. The full draft ordinance is attached with the new language in bold print.

Background

The applicant has provided the attached information on miniature horses, which indicates that true miniature horses can be reasonably maintained on as little as ¼ acre of land, provided that its feed is supplemented with hay on a daily basis, and that the miniature horse is provided a structure for shade. Under the current ordinance, miniature horses are viewed and permitted as a standard horse, requiring a minimum of one acre of land to keep one. The proposed text amendment addresses the minimum land area, and structure; however, it should be noted the Town could not require or enforce a miniature horse owner to supplement the animals feed with hay, as suggested above.

To ensure that the horses are true miniature horses, if approved, staff has recommended the requirement in the definition for the horse to be registered with one of the two major miniature horse registries in the United States.

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The attached draft ordinance would maintain that miniature horse owners would be required to obtain an annual permit; just as standard horse owners are required to do. The proposed subsection 4-6(d)8 would limit the keeping of miniature horses to the village zoning districts; (d)9 sets a minimum lot size for keeping miniature horses at 20,000 square feet and sets a maximum density of two miniature horses per acre. It also states that the maximum number of miniature horses on a lot would be four, meaning if the property was 2 acres or more, the owner could have a maximum of four miniature horses on the lot. Meaning if approved:

- Lots under 20,000 sq. ft. – miniature horses not permitted
- Lots between 20,000 sq. ft. and 43,559 sq. ft. – maximum of one miniature horse permitted
- Lots between 1 acre (43,560 sq. ft.) and 1.49 acres (65,339 sq. ft.) – maximum of two miniature horses permitted
- Lots between 1.5 acres (65,340 sq. ft.) and 1.99 acres (87,119 sq. ft.) – maximum of three miniature horses permitted
- Lots 2 acres (87,120 sq. ft.) and larger – maximum of four miniature horses permitted

It should be noted that the 20,000 sq. ft. minimum lot size does not take into account area taken up by a house, driveway etc. The Planning Board recommended language that would set a specific minimum 10,000 square feet space to be dedicated per miniature horse, which was modeled from an ordinance from Evanston, Wyoming provided to the Board by staff. The Wyoming ordinance required 5,000 sq. ft. of open area per miniature horse, however, during the discussion it was pointed out that the documentation provided by the applicant states that a miniature horse can be healthily kept on ¼ acre (10,890 sq. ft.), so the board opted to require a larger area for the miniature horse. The Planning Board also recommended additional language to proposed 4-6(d)7, which would require a 20 foot setback for a horse enclosure; 4-6(d)10, requiring a shelter to be constructed for a miniature horse (this was also based on the documentation provided by the applicant); and added 4-6(d)11, requiring miniature horse owners to remove animal waste in an effort to reduce the likelihood of odors traveling beyond property boundaries.

Kitty Hawk's current standards for keeping horses were adopted in 2000 largely in response to a particular situation in which many horses were being kept in unhealthy and substandard living conditions on a single property and amended in 2011. The process of developing the standards began in 1998 with the appointment of a subcommittee reporting to the Planning Board. The Kitty Hawk Horse Owners Association had membership on this subcommittee and participated throughout the process. Reviewing the standards of the ordinance will be a valuable process that may result in improved standards, but it is important to recognize that the current ordinance seems to have served the Town well over the past nineteen years.

It should be made clear that this text amendment application/request was submitted to staff in response to a violation notice for keeping a miniature horse on a lot that does not meet current minimum requirements for keeping a horse. It should also be noted that Kitty Hawk is continuing to grow, and houses are being built wherever there is land available. In 2018, thirty-three new single-family homes were permitted, eight of which were permitted in the village; so far in 2019, eleven new single-family homes have been permitted, two of them being located in the village. While Kitty Hawk does not currently regulate some other animals traditionally viewed as farm animals (chickens, goats, etc.), there is potential that allowing these on smaller lots, in more densely populated areas, could result in more conflict regarding concerns such as noise or odor emanated from such animals.

Planning Board Recommendation

At its March 14, 2019 meeting, the Planning Board unanimously recommended approval of the requested text amendment, with the additional language shown in the draft language.

Perry: Mr. Bender do you want to speak?

1.) Jay Bender, 3847 Katherine Lane, Kitty Hawk, NC: No sir. I will be happy to answer any questions if you have any and I greatly appreciate any consideration of the amendment.

Hearing no further comments council or the public or any questions, **Mayor Perry made a motion to return to regular session. Councilwoman Tice seconded the motion and it passed unanimously, 5-0.**

Garriss: *My mother and I owned and rode horses when I was younger. I love horses and if I had the room and the location was right, I might buy a miniature horse, but I really do not believe we*

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should change what we currently have in place just to accommodate the size of the horse. I will not be supporting the text amendment.

Perry: *Do I hear a motion to that affect?*

MPT Garriss made a motion to deny the proposed text amendments to Section 4-6 thus continuing to apply the existing minimum requirements for keeping any kind of horse. Town Council finds that the proposed text amendment is inconsistent with the adopted CAMA Land Use Plan and finds these amendments to be in conflict with the public interest. Councilwoman McClean provided a second.

Pruitt: *There was a lot of time spent on this ordinance and a lot of feelings were hurt in the process. Friends that were friends no longer speak because of this ordinance. A lot of research over a long period of time was done. I am not a horse person, but I feel like the committee addressed the miniature horse issue in the ordinance. It was not overlooked and for that reason I must go with the advice of the horse owners that made the rules. I do not know why they chose the size they did and comparing it to somewhere else ... our soil is not the same. I do not know if the horse owners felt they needed more area because of the soil. There was a problem near my house that created the beginning of this, and the horses were in terrible condition. When it would rain the soil ... it just could not hold them up anymore. I do not know if that is the reason, but I must go with what the horse owners themselves set as their standard. That is my reasoning.*

Tice: *I agree with Jeff and with Craig. I feel like any horse, whether it is big or small, requires pasture for adequate living space. I do not feel they should be housed in dog sized areas such as back yards. It is simple enough for the manure to be shoveled but it is very difficult to get rid of the urine odor and I speak from personal experience on that, so I too am against it.*

McClean: *I spent a lot of time doing research and talking with friends who own horses. One of the questions I asked them is how you would feel if there was a miniature horse next door. Several of them did not have an opinion, several of them said their neighborhood is no place for a miniature horse. The lots are not big enough. I remember the agony people went through working on this ordinance over the years and I think we need to stand behind it.*

Perry: *I agree with all your comments and I have some prepared remarks on the tiny horse ordinance:*

As the population and density of Kitty Hawk has grown, conflict between increasingly close together homeowners and animals of either domestic or wild are more difficult to resolve whether through regulation or negotiation. Previous town councils have attempted to grandfather continued use of historic ownership of domestic animals within the town with negotiated regulation to limit conflict. In the case of horses, the current ordinance is a culmination of several different attempts to legislate through common sense a usable regulation. Although not perfect by some folk's measure, it continues to serve reasonably well.

Now, council has a request to add to the current ordinance, something entirely new that has no known precedent from historical use of domestic animals in the Town of Kitty Hawk. From that perspective, council has an obligation to consider how this new entry of farm animals affects neighboring properties with regard to noise, odor or other objectionable issues.

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The reason this proposed ordinance is even before council is due to complaint concerning introduction of a domestic farm animal into a residential neighborhood. Further, allowing this ordinance to pass would allow similar use of property throughout the village regardless of impact to adjacent property owners and more importantly, without adjacent property owner prior knowledge.

Whether we like it or not, change and density has occurred to the Town of Kitty Hawk. Historical use in some cases is no longer compatible with that change and density. Allowing the passage of this proposal will set in motion conflict between adjacent property owners, yet unknown and is not in the best interest of the Town as a whole.

I will not vote for it either. We have a motion to deny and a second. All in favor?

The vote was 5-0.

8. NEW BUSINESS

a.) Proposed Bath House Renovations/Addition

Manager Stewart reviewed the following memo with Council.

Proposal: Approve Cahoon and Kasten Architects to design and draft construction plans for the Bath House renovation project scheduled in the FY 2019/2020 budget.

Background Information: The Town of Kitty Hawk is currently in need of making major renovations to the Bath House facility located on NC 12.

Staff Analysis: Town Staff requested Cahoon + Kasten Architects to draft a proposal to develop a set of design and construction plans to renovate the Kitty Hawk Bath House.

The project is currently scheduled for FY 2019/2020 and the Town will need a set of constructions plans for permitting and to allow the Town to bid the renovation project appropriately. The Bath House is in need of some major repairs since it was constructed in. The renovations will include utilizing more durable materials, improving plumbing, and a slight addition in square footage to the Ocean Rescue garage.

The pre-approval of these construction drawings by the Town Council will advance the project and allow the renovations to be bid and constructed after the Bath House is closed for the summer season. The Town is proposing a budget of \$100,000 in the FY 2019/2020 budget for these improvements.

Town Council Recommended Motion: Approve a fee with Cahoon + Kasten Architects in the amount of \$9,500 for design and construction drawings for the Kitty Hawk Bath House.

Perry: *This is going to be a big project. You must wonder if he will tell us to tear it down and start over. It would not surprise me a bit. Do I hear a motion?*

Councilwoman Tice made a motion to approve Cahoon and Kasten Architects to draft construction drawings for the bath house renovation project. Councilman Pruitt seconded and it passed unanimously, 5-0.

9. TOWN MANAGER

No comments.

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10. TOWN ATTORNEY

No comments.

11. TOWN COUNCIL

Tice: *I am addressing this to the mayor and members of Town Council. It is with regret I must inform you that I have decided not to seek election for my appointed position on the Kitty Hawk Town Council. I found that the demands and responsibilities to my family and family businesses won't allow me to fulfill my duties as councilwoman to the fullest extent needed. I do plan to serve out my appointment time if you all will permit me. I want to say that I have enjoyed working with all the members of council as well as with the great Town staff members and the members of the Recreation Committee. I thank you for all helping me. I only hope that I have been of some value to the Town during my short time on the council.*

Perry: *Sorry to hear this. When you called me today it did come as a shock to me. I was not expecting it. But you have to do what you have to do. We understand that. You will be missed.*

Garriss: *Thank you for your service Tina and your continuing service.*

Tice: *I am always here to help.*

Mayor Perry read aloud a proclamation designating May 5-11, 2019 as the **50th Anniversary of Municipal Clerks Week**. It recognizes the accomplishments of the Office of the Municipal Clerk and extends appreciation to Town Clerk Lynn U. Morris and all municipal clerks for the vital services they perform and their exemplary dedication to the community they represent.

12. PUBLIC COMMENT

There were no public comments.

13. CLOSED SESSION

Mayor Perry made a motion to go into closed session and recited the general statutes below. It was seconded by MPT Garriss and unanimously approved, 5-0. Time was 6:20 p.m.

a.) N.C.G.S. 143-318.11(a)(1): Approve closed session minutes: September 4, 2018.

b.) N.C.G.S. 143-318.11(a)(3): To preserve the attorney client privilege concerning possible legal action.

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14. RETURN TO REGULAR SESSION

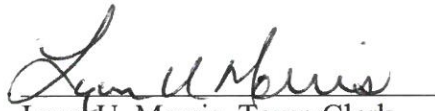
MPT Garriss made a motion to return to regular session. It was seconded by Councilwoman McClean and unanimously approved, 5-0. Time was 6:44 p.m.

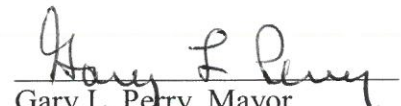
Attorney Varnell announced the council went into closed session to approve the closed session minutes of September 4, 2018 and to preserve the attorney client privilege concerning possible legal action.

15. ADJOURN

Mayor Perry made a motion to adjourn. It was seconded by Councilwoman McClean and unanimously approved, 5-0. Time was 6:45 p.m.

These minutes were approved at the June 3, 2019 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor