

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, June 3, 2019
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations:
 - Police Detective Justin Langley/5 Years of Service
 - Outer Banks Sporting Events/Jenny Ash, Race Director
5. Public Comment
6. Consent Agenda
 - a.) Approval of April 29, 2019 and May 6, 2019 Council Minutes
 - b.) FY 18-19 Budget Amendment #7
(Budget amendment #8 was approved at the April 29, 2019 recessed council meeting.)
 - c.) FY 18-19 Budget Amendment #9
 - d.) FY 18-19 Budget Amendment #10
 - e.) FY 18-19 Budget Amendment #11
 - f.) Disaster Recovery Service Contract
7. Items Removed from the Consent Agenda
8. Planning:
 - a.) Site Plan Amendment at 5112 N. Croatan Hwy, Urgent Care. The applicant has proposed replacing the existing roll carts with a bulk container (dumpster).
9. Public Hearing:
 - a.) Fiscal Year 2019-2020 Budget
10. New Business:
 - a.) Appointments to Town Boards
11. Reports/General Comments from Town Manager
12. Reports/General Comments from Town Attorney
13. Reports/General Comments from Town Council
14. Public Comment
15. Adjourn

COUNCILMEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Planning Director Rob Testerman, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Police Chief Joel Johnson, Fire Chief Mike Talley and Public Works Director Willie Midgett

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1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 p.m. and welcomed those in the audience and those that may watch later on a computer or a television set.

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. PRESENTATIONS

- **Police Detective Justin Langley/5 Years of Service:** Police Chief Johnson presented Detective Langley with his plaque for five years of service with the Kitty Hawk Police Department. Council thanked him for his service.
- **Outer Banks Sporting Events/Jenny Ash, Race Director:** Ms. Ash presented the 2018 Partner Report between the Town and OBSE and what is new in 2019. She thanked council for all the assistance provided by staff for the races and presented the Town with the official framed artwork associated with the thirteenth marathon.

5. PUBLIC COMMENT

1.) John Canning, 4041 Tarkle Ridge Road, Kitty Hawk, NC: *I am John Canning and I live with my wife on Tarkle Ridge. We have been here 14 years and I have cut the lot next to me probably more than 60 times and it continues to grow. I really did not get upset with this until I mentioned it to the Kitty Hawk Landing Association and one of the officers went over and said to the gentleman that he should start cutting his lawn. He told the officer that if he caught him on his lot, he was going to have him arrested for trespassing.*

This is the type of person that he is. I said to my wife that I am not cutting the lot anymore. Well since I said that I have cut it twice.

Today Mr. Midgett was driving by and he stopped, and we chatted. He can attest that we need a hay baler there to pick up the grass that I cut. It is a fire hazard. Prior to cutting it had someone gone by and flipped a cigarette into there we would have had a fire.

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I talked with Mr. Alexander last year and he said the Town does not enforce it anymore. It is too ambiguous. I offered to give him a yard stick so he could measure the grass if he wanted to, but he did not want to go there. I would like something to be done with this. It is a problem.

The man that owns that lot stopped me from getting a permit from CAMA to put a dock up so my grandkids could put their kayaks in the water. He said it would devalue his property. Well there is not too much that devalues your property more than a stand of weeds next to it. I would like to know what we could do about this if anything. I have been to the Kitty Hawk Landing Association and there is nothing they can do.

Perry: *Mr. Alexander cannot enforce something if he does not have an ordinance. There was an ordinance in the past that was repealed for a couple of reasons. One is the definition of noxious weed and they had to be a certain height. If you look up the definition of a noxious weed it is more or less in the eye of the beholder. The last thing anybody wants is a bureaucrat walking your land telling you you have noxious weeds to cut. For that reason and the fact that any law passed includes all of the Town. That became another issue. Out on the beach we do not want to cut what weeds we have on the sand because they retain the sand. It is not something, unless a member of this council objects, this council is willing to do. Telling people to cut their grass. Does anybody object to that statement?*

Councilmembers replied no.

Perry: *You will have to deal with your property owner next door in whatever fashion you can. It did not work, it caused problems, and it is an intrusion on private property. That is not what we are here for. You will need to get along with your neighbor however best you can.*

Casey might be able to tell you more if it is of a safety nature. Perhaps a civil suit of some sort might be in order. Casey?

Varnell: *I am interested in the HOA's opinion. I would question as to why they feel as though they cannot take any action. Part of what I do in my private practice is draft and amend covenants. I would be surprised if there was not something in there regarding a defined nuisance or something of that nature as these covenants are really designed to protect your property value. I agree with you regarding the weeds and things of that nature. I would look deeper and perhaps hire an attorney to look into your covenants. Maybe a letter can be written to the HOA to force action. That is going to be the simpler route and save you from having to file a lawsuit.*

Canning: *If someone driving down the street flipped a cigarette butt and the whole lot starts on fire it is a fire problem. I cut it two weeks ago and then I cut it again Saturday and there is a lot of grass laying there in rows. If you took a hay baler you could make several bales of hay out of it. It does become a safety problem.*

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Varnell: Which goes back to why I think you would have a strong cause of action and could force your HOA to do something. It comes up often with bulkheads. If they become safety issues HOA's can act. They can repair the bulkhead, do what they need to do and file a lien against the owner for the cost of doing so. It is exactly what you are talking about when it comes to safety hazard issue. I would be shocked if there isn't something your HOA can do about this.

Canning: I will deal in that aspect with them and see what they have to say about it. Thank you for your time.

Perry: One more thing. The fact that you were denied a permit to put a dock in. I take it CAMA denied that based on ...

Canning: He would not sign the paper for CAMA to permit it.

Perry: It does not matter. You make your case and CAMA can override a neighbor if the neighbor is just being obstinate. If he does not acknowledge the paper, then CAMA can act based on other parameters. You are not done on that either.

Canning: The problem is my grandson is now 18 years old, has a captain's license, and runs a charter boat out of Hatteras. He has no interest in kayaking in my back yard. Thank you.

No one else came forward to comment.

6. CONSENT AGENDA

a.) Approval of April 29, 2019 and May 6, 2019 Council Minutes. (An approval of the consent agenda will approve these minutes.)

b.) FY 18-19 Budget Amendment #7. This budget amendment, in the amount of \$62,041, is to recognize the cost of the 2-Year Post Construction Monitoring Service Agreement by APTIM that was approved at the council meeting on May 6, 2019. (An approval of the consent agenda will approve this budget amendment.)

(Budget amendment #8 was approved at the April 29, 2019 recessed council meeting.)

c.) FY 18-19 Budget Amendment #9. This budget amendment, in the amount of \$10,000, is to recognize the grant allocated to the Town by the Government Education Access Channels Committee for history videos. (An approval of the consent agenda will approve this budget amendment.)

d.) FY 18-19 Budget Amendment #10. This budget amendment, in the amount of \$5,000, decreases the original amount of \$125,000 to \$120,000 to be transferred to the capital reserve for the new police station. The \$5,000 will be allocated to the account Professional Services Architect for work performed by Cahoon and Kasten, Architects, for the new station. (An approval of the consent agenda will approve this budget amendment.)

e.) FY 18-19 Budget Amendment #11. This budget amendment, in the amount of \$49,775, is for the East Tateway Emergency Pumping pipeline repairs. (An approval of the consent agenda will approve this budget amendment.)

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f.) Disaster Recovery Service – The Town has a *Hurricane/Disaster Debris Removal Interlocal Agreement* with Dare County and will be a part of the agreement if the county activates its contract. If the county does not activate their contract, or a disaster only happens in Kitty Hawk, the Town needs to have its own contract in place for the service and in order to be reimbursed by FEMA. Three bids were received for the three-year service ending 6/30/22. The Public Works Director is recommending CrowderGulf, LLC be awarded the bid. *(An approval of the consent agenda will approve this recommendation.)*

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

7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed.

8. PLANNING

a.) Site Plan Amendment at 5112 N. Croatan Hwy, Urgent Care. The applicant has proposed replacing the existing roll carts with a bulk container (dumpster).

Planning Director Testerman reviewed the following staff report with Council.

Proposal

The applicants are requesting approval of a site plan amendment to place a commercial dumpster on site, rather than continuing to use the previously approved roll carts. Urgent Care representatives have expressed concerns that the roll carts will not be sufficient during the busier summer months, as they are currently filling them up on a weekly basis. In addition, they have experienced issues with wind blowing the cans open and blowing garbage out of the cans and offsite.

If approved, the dumpster would be located toward the northeast corner of the lot, as indicated on the attached site plan. In placing the dumpster, Urgent Care representatives took into consideration the concerns raised during the original site plan approval regarding the originally proposed dumpster and its location in relation to adjacent single-family residences. As a result, they have attempted to place the dumpster as far from the single-family residences as possible. The closest residence is approximately 225 feet from the proposed dumpster pad. Additionally, as required by Sec. 34-3(e), bulk containers (dumpsters) shall be placed on a concrete pad and shall be screened from public view on three sides. It should be noted that according to Dare County Sanitation, the dumpster would be emptied three times per week, and that the collection time would be approximately 4:30 to 5:00am.

Staff also inquired with the applicant as to whether the addition of the dumpster could eliminate the need for roll carts at the other three medical buildings located in the vicinity. It was indicated to staff that this would be acceptable.

Planning Board Recommendation

At its meeting on May 16, 2019, the Planning Board voted unanimously to recommend approval of the site plan amendment to replace the existing roll carts with a dumpster, screened on three sides, in the location shown on the attached site plan.

Perry: *Would you point out which three sides are going to be covered?*

Testerman: *I believe it is the west, north and east sides.*

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Perry: *It will be good if the other buildings can use it also. Might be a long walk for some but we will see how it goes. The building in the middle is going to be operated out of Chesapeake so I don't know how that is going to work.*

Garriss: *I think Chesapeake is aware.*

Councilwoman McClean made a motion to grant approval of this site plan amendment to replace the existing trash roll cans with a screened dumpster as shown on the site plan. Councilwoman Tice seconded and it passed unanimously, 5-0.

9. PUBLIC HEARING

a.) Fiscal Year 2019-2020 Budget

MPT Garriss made a motion to go into public hearing. It was seconded by Councilwoman McClean and passed unanimously, 5-0.

Stewart: *This evening we will present the final 2019-2020 budget for the Town of Kitty Hawk. As you recall we have had two meetings on this. We went over our capital improvements and some of the major projects the Town is looking to accomplish in the next 5 years in January and then in April we went over some of the details of the budget document itself. I will go over the highlights of the budget for this public hearing.*

The budget maintains an existing tax rate of \$.34 cents on each \$100 valuation of taxable property. There is a strong emphasis on budgeting for future capital purchases and projects. We put away quite a bit of yearly operating revenues and we dedicate those to future projects which helps reduce any type of debt service in the future. It keeps the Town basically debt free. The budget maintains a positive and rewarding work environment for our employees and the budget continues to focus on fiscal responsibility. Our audits every year show a pretty solid fund balance. We have a good cushion and our taxes are being maintained. It is a good budget.

The total revenues for the budget are \$10,152,437 and the total expenditures is the same. The budget must balance. Once again, the tax rate is .34 cents of which .4 cents is dedicated to beach nourishment. The budget continues to maintain the .12 cent Municipal Service District which is also earmarked for beach nourishment.

Revenue Highlights:

- Revenue trends remain stable
- 4.6% increase in revenues as compared to FY 18/19
- No unrestricted fund balance needed to balance budget
- Highlighted revenue changes:
 - Occupancy Tax collection increase of \$130,000

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- Transfer from Capital Reserve of \$145,000
- Increase in investment revenues
- Beach nourishment contribution from Dare County is \$1,169,681

Expenditure Highlights:

- One step increase (2%) for employees
- 5% health insurance premium increase
- No new positions funded
- Increase in employer retirement contribution
- Corrects several compression issues within existing pay play
- Operating expenditures (day to day) remain relatively neutral at department level

Capital Expenditures:

- Financial software - \$90,000
- Bathhouse repairs - \$100,000
- 8-inch dewatering pump - \$75,000
- Police department equipment - \$36,000
- Three police patrol vehicles - \$115,000
- Fire department on-site training equipment - \$15,000
- Fire department equipment - \$40,000
- Street resurfacing - \$142,000

Capital Reserves (for future years):

Fiber optic phone system replacement - \$5,000
Fuel storage tank replacement - \$12,000
Boardwalk and dock repairs - \$8,000
Police department station - \$200,000
Fire truck - \$100,000
Land Use Plan update - \$5,000

Manager Stewart added the budget continues to maintain healthy reserves and the \$3.5 million emergency reserve. He thanked staff for their hard work with the budget.

Perry: *I want to echo that thank you to everybody and want to make one clarification. The only reason we are considering a new police station is the one we have has flooded twice. Once during Hurricane Irene and then during Hurricane Michael. It is in an area that is subject to flooding and it is probably smaller than we need in today's world where everybody needs police year 'round and 24/7. But the main reason we are looking at this is because of flooding. If the station is flooding at a time when we need the police doing other things to protect citizens that is not good. That is*

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why we changed direction and I just wanted to make it clear to people we are not building something just because we want to build it. There is a reason behind it.

Hearing no further comments or questions from councilmembers and noting no one came forward to speak, **Mayor Perry made a motion to return to regular session. It was seconded by MPT Garriss and the vote was unanimous, 5-0.**

Councilwoman Tice made a motion that council approve the budget as presented. Councilman Pruitt seconded and it passed unanimously, 5-0.

10. NEW BUSINESS

a.) Appointments to Town Boards

Perry: *I learned on Friday, after the packets were delivered, that David Morton, the chairman on the Board of Adjustment, does not wish to continue. I asked the clerk if we could leave that open until I had a chance to talk to the board members and find out who is willing to do what. She said it is fine to do so. In the meantime, let's make the appointments before us.*

MPT Garriss made a motion to reappoint Jim Geraghty and Chuck Heath as regular members on the planning board with a term of office to expire June 30, 2021. The motion was seconded by Councilwoman Tice and unanimously approved, 5-0.

Councilwoman McClean made a motion, seconded by Councilman Pruitt, to reappoint Matt Spencer as an alternate on the planning board with a term of office to expire June 30, 2021. The vote was unanimous, 5-0.

Councilman Pruitt made a motion to reappoint John Richeson as Chairman of the Planning Board and Bryan Parker as Vice-Chairman for a one-year term. MPT Garriss seconded the motion and it passed unanimously 5-0.

MPT Garriss made a motion to reappoint Charlotte Walker as a regular member on the Board of Adjustment with a term of office to expire June 30, 2022. Councilwoman McClean seconded and it passed unanimously, 5-0.

Councilwoman Tice made a motion to reappoint Natalie Smith as an alternate on the Board of Adjustment with a term of office expiring June 30, 2022. Councilman Pruitt seconded and it passed unanimously, 5-0.

11. TOWN MANAGER

There were no comments.

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12. TOWN ATTORNEY

There were no comments.

13. TOWN COUNCIL

Councilmembers thanked staff for their work on the budget and Councilman Pruitt added it is especially nice for the citizens by keeping the tax rate the same.

Mayor Perry reported Southern Shores Councilman Jim Conners is asking for a Town representative to help explore the possibility of some type of library annex in one of the northern beach towns. Hearing no one volunteer he said he would attend the meetings.

Mayor Perry held up a plaque presented to Dare County and the Towns of Kitty Hawk, Southern Shores, Duck and Kill Devil Hills by the American Shore and Beach Preservation Association in recognition of having a 2018 Best Restored Beach. It salutes the efforts taken by all of those involved with the beach nourishment project.

14. PUBLIC COMMENT

There were no public comments.

15. ADJOURN

Mayor Perry made a motion to adjourn. It was seconded by MPT Garriss and unanimously approved, 5-0. Time was 6:46 p.m.

These minutes were approved at the July 1, 2019 council meeting.

Gary L. Perry, Mayor

Lynn U. Morris, Town Clerk