

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, November 4, 2019
Kitty Hawk Town Hall, 5 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations:
 - Northern Beaches Library Committee Survey Results/Mike Fletcher
 - FY 18-19 Audit Report/Teresa Osborne, CPA, Dowdy & Osborne, L.L.P.
5. Public Comment
6. Consent Agenda
 - a.) Approval of October 7, 2019 Council Minutes
 - b.) Quarterly Financial Statements as of September 30, 2019
 - c.) Resolution Designating Applicant's Agent for Hurricane Dorian
 - d.) A Resolution Supporting the 2020 Census Partnership
 - e.) Enter into Agreement with the Dare County Tourism Board for Grant Funding in the Amount of \$47,592 for the Kitty Hawk Park Trail Connection
 - f.) Award Bid for Bath House Remodel
7. Items Removed from the Consent Agenda
8. Public Hearing
 - a.) Text Amendment: 42-94(b)2; 42-247(d)5; 42-248(d)5; 42-249(d)5; 42-273(d)5; 42-274(d)5; 42-275(d)5; Minimum Roof Pitch - Recent state legislation has made a portion of our ordinance regulating a minimum roof pitch unenforceable.
9. Old Business
 - a.) Ordinance Amendment: Ch. 6, Sec. 6-28 Beach Equipment and Sec. 6-29 Excessive and Unsafe Digging or Piling of Sand on the Ocean Beach Prohibited
10. New Business:
 - a.) Discussion of Establishing a \$254,000 Capital Reserve in the FY 19/20 Budget to Fund 20% of a Proposed Sidewalk on US 158 from Cypress Knee Trail to Jejac Street
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

Kitty Hawk Town Council Minutes: November 4, 2019

Page 2

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Planning Director Rob Testerman, Finance Officer Liliana Noble and Police Officer I Aaron Nelson

1. CALL TO ORDER

Mayor Perry called this meeting to order at 5 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Councilwoman McClean made a motion to approve the agenda. It was seconded by Councilwoman Tice and unanimously approved, 5-0.

4. PRESENTATIONS:

- **Northern Beaches Library Branch Committee Survey Results.** Mr. Mike Fletcher, Chairman of the Library Branch Committee, said the committee was charged by the Southern Shores Town Council to investigate the possibility of having a library branch on the northern US 158 corridor. The survey had 14 questions with the first being are you interested in this and of 407 respondents 80% answered yes to having a branch located in Southern Shores. The committee will offer site proposals and costs later.

Perry: *Any library extension will be a part of the East Albemarle Regional Library System that we all come under and a big question is will it cost additional money or will it be, as you said, zero sum, that may detract from a branch we already have.*

Fletcher: *That is for Dare County, for the most part, to decide.*

Perry: *I understand, and everybody needs to understand that those two options exist. It may be something new and added to or it may be something is taken away from a branch that exists now. What this council, and all the other councils, need to know from the public is are you willing for the Town to chip in money to put something like this in the Southern Shores area? We need to know if you think it is redundant or something that is worthwhile. We want to make sure we get feedback so contact us or the Town staff.*

Kitty Hawk Town Council Minutes: November 4, 2019

Page 3

Fletcher: *The support of the local councils in addition to the citizens is what we are working towards. There are various proposals on how to get funding and maybe the towns can chip in or we can get grants from charities. All those things are being investigated and again it is Dare County's decision on how and if they want to proceed.*

- **Fiscal Year 18-19 Audit Report.** Teresa Osborne, CPA, Dowdy & Osborne, L.L.P. began her report by saying the Town has received an unmodified opinion on its financial statements which is the best opinion you can receive. That is on pages 1 and 2 of the audit. Also, there are no material weaknesses or significant deficiencies noted in the financial statements and that is in the internal control report on pages 58 and 59. The first two pages and the last two pages have the good news.

After the budgeted transfers to Capital Reserves, revenues exceeded expenses in the General fund by a little over a \$1,034,000. This was largely due to revenues that came in over projections and expenses that came in under budget projections. Sales, Occupancy and Land Transfer taxes were slightly less last year due to a decrease in the proportionate share of these revenues based on tax levies of neighboring towns. Investment income showed a strong increase last year due to higher investment earning rates and larger balances that were invested. The Town's Unassigned fund balance increased a little over \$1,227,000 and that is due to the revenues over expenses as mentioned before. The Town has an emergency fund balance policy that says \$3.5 million will remain in the Unassigned fund and after it is subtracted out it still leaves a remaining balance of \$4,284,919. The details are on page 41.

The Town's tax rate for the audit year was the same as the prior year, 34 cents with 4 cents of that restricted for beach nourishment. That is Town wide. There is a 12 cent Municipal Service District tax that is also designated for beach nourishment. There is \$2,136,795 in this fund as of June 30, 2019. The Town's tax base increased about 1.15% last year and the overall tax collection rate was 99.35% which is a very good tax collection rate.

Additionally, the Town had reserves for future capital purchases of \$609,988. That is taking a little bit of money each year and putting it in a Capital Reserve fund for future capital purchases.

The Town has a traditional debt of 3 years left on the beach nourishment debt. In addition, there are two unfunded liabilities. They are not really considered traditional debt like the beach nourishment debt. One of those is the Law Enforcement Officers' Special Separation Allowance pension fund. That has a liability of a little over \$725,000 at June 30, 2019. The second one is the OPEB debt which is other post-employment debt and is for retiree health insurance. That is \$1,619,688 at June 30, 2019. The Town has made a conscious decision not to fund those. It has been talked about pretty much every year since the standards came out a few years ago. A reminder that it is a reporting standard not a funding standard. For there to be a reduction of the liabilities in the financial statements that money must be set

Kitty Hawk Town Council Minutes: November 4, 2019

Page 4

aside in a separate trust fund that would have to be set up with the North Carolina State Treasurer's Office. It is less of a worry with this Town because there is a very strong fund balance and there is some protection.

Ms. Osborne finished by saying the fiscal year ended in strong financial condition. She thanked the manager and finance director and will be happy to answer any questions.

Perry: *Management did a better job of investing for us and it is reasonably safe from what I gather.*

Osborne: *They are pretty much invested in the North Carolina Cash Management Trust which is a very safe investment.*

The mayor and council thanked Ms. Osborne.

5. PUBLIC COMMENT

No one came forward.

6. CONSENT AGENDA

a.) Approval of October 7, 2019 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) Quarterly Financial Statements as of September 30, 2019. *(An approval of the consent agenda will acknowledge these statements.)*

c.) Resolution Designating Applicant's Agent for Hurricane Dorian. This standard resolution designates the Town Manager and Finance Director as agents authorized to execute and file applications for federal and/or state assistance for the purpose of obtaining financial assistance under the Robert T. Stafford Disaster Relief & Emergency Assistance Act as well as act for the Town in all dealings with the state and Federal Emergency Management Agency for all matters pertaining to disaster assistance. *(An approval of the consent agenda will adopt this resolution.)*

d.) A Resolution Supporting the 2020 Census Partnership. The Dare County Complete County Committee (CCC) has asked for this to be adopted. The resolution states that the Town of Kitty Hawk is committed to partnering with the U.S. Census Bureau and the State of North Carolina. In addition, Brittany Wheatly, Partnership Specialist with the Census Bureau for eastern NC, may attend a future council meeting to talk about the importance of next year's census. *(An approval of the consent agenda will adopt this resolution.)*

e.) Enter into Agreement with the Dare County Tourism Board for Grant Funding in the Amount of \$47,592 for the Kitty Hawk Park Trail Connection. The Tourism Board has advised the Town to enter into this agreement while awaiting other possible funding options for this project. *(An approval of the consent agenda will approve this agreement.)*

f.) Award Bid for Bath House Remodel. The Town received two bids for the expansion and remodeling of the Kitty Hawk Bath House. The low bid was from Godfrey Construction, LLC for \$132,000. The Public Works Director recommends accepting the bid and to enter into a contract for the project. *(An approval of the consent agenda will approve this recommendation.)*

Kitty Hawk Town Council Minutes: November 4, 2019

Page 5

MPT Garriss made a motion to approve the consent agenda. Councilwoman McClean seconded and it passed unanimously, 5-0.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

8. PUBLIC HEARING:

a.) Text Amendment: 42-94(b)2; 42-247(d)5; 42-248(d)5; 42-249(d)5; 42-273(d)5; 42-274(d)5; 42-275(d)5; Minimum Roof Pitch - Recent state legislation has made a portion of our ordinance regulating a minimum roof pitch unenforceable.

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

Testerman: Recently the state legislature passed laws stating towns and counties cannot regulate building design elements on one- and two-family homes. Building design elements specifically includes the style and material of roof structures among some other design elements. This is only for one- and two-family homes and if the council wants to continue to require the 3 by 12 pitch on multi-family structures you may. The planning board's motion opted to do away with it altogether but that is for council to decide. I was asked if the elimination of the minimum roof pitch would allow for additional living space and I guess the short answer is it depends.

Planning Director Testerman reviewed the staff report printed below.

Proposal
42-94(b)2

(b) Single-family residential structures shall comply with the following requirements:

- (1) The structure shall not have more than one full kitchen and food preparation area;
- (2) ~~The structure shall have a minimum roof pitch of three feet by 12 feet;~~
- (32) The structure shall not exceed a total height of 35 feet, as provided in the standards of the zoning district regulations;
- (4-3) Building plans or blueprints and specifications showing utility systems, outlets, and maximum loads of each system shall be filed with the building inspector in addition to the building permit application. The system shall meet or exceed any minimum requirements for the state in addition to the requirements of this chapter. A change in utility system layouts or maximum loads will require the building permit holder or owner to file an amendment to the original building permit describing the change or modification in the utility system. The amendment must be approved in writing by the building inspector; and
- (54) A building site plan prepared by a licensed surveyor or engineer showing the building foundation footprint (perimeter) and the mean elevation of undisturbed land area at the building location.

42-247(d)5 (BR-1), 42-248(d)5 (BR-2), 42-249(d)5 (BR-3), 42-273(d)5 (VR-1), 42-274(d)5 (VR-2), 42-275(d)5 (VR-3)

(d) Dimensional requirements.

- (1) The minimum lot size is 15,000 square feet. Marsh and wetland areas, as determined by CAMA and/or CRC regulations, which are contiguous with estuarine waters, sounds and bays, and areas waterward of the oceanfront vegetation line, as determined by CAMA regulations, may not be used for the minimum lot size.
- (2) The minimum lot width is 75 feet. The minimum lot width shall be measured at the minimum front building setback line as set forth in each zoning district in this chapter.

Kitty Hawk Town Council Minutes: November 4, 2019

Page 6

(3) The minimum yard setbacks shall be in accordance with the following chart:

Dwelling (in square feet)	Size	Side Setback (in feet)	Front and Rear Setbacks (in feet)
3,000 and under		10	25
3,001-3,500		12.5	25
3,501-4,000		15	25
4,001-5,000		17.5	25
5,001-6,000		20	25
6,001 and over		25	25

(4) The maximum allowable lot coverage by principal use and all accessory structures is 30 percent.

(5) Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerials. ~~The structure shall have a minimum roof pitch of three feet by 12 feet.~~

Background

Recently, staff was posed with a question of the enforceability of a minimum roof pitch for single family homes. Legislation was recently passed (NCGS 160A-381) which prohibits zoning ordinances from regulating building design elements on one- and two-family homes, unless one of a handful of circumstances are met. None of these exceptions are applicable in Kitty Hawk. "Building design elements" specifically includes style or materials of roof structures, among other design elements. After discussing the question and issue at hand with the Town Attorney, staff was advised that the current minimum roof pitch required by those subsections listed above is not enforceable, and should be stricken from the ordinance.

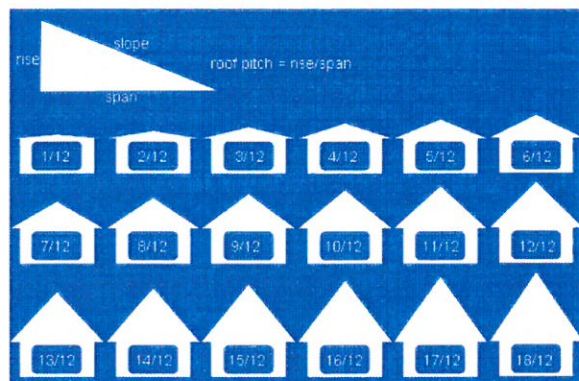
It should be noted that NCGS 160A-381(h) relates to one- and two-family homes. Multi-family dwellings (3 or more dwelling units) are not included in the prohibition of regulating building design elements. Therefore, should the Town desire to retain the minimum roof pitch requirement for multi-family dwellings it could do so with the following language in the BR-2, BR-3, VR-2 and VR-3 districts:

(5) Maximum total height shall not exceed 35 feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerials. ~~The structure~~ Multi-family dwellings shall have a minimum roof pitch of three feet by 12 feet.

It was asked of staff whether the elimination of the minimum roof pitch would allow for additional living space, since a sloped roof could be eliminated in favor of a flat-top roof. In some scenarios this could be possible, depending on how much space exists between the regulatory flood protection elevation (RFPE) and the 35' height maximum dictated by the zoning ordinance.

For example, a potential 35' tall two-story house with a steeper roof, could opt to eliminate the steep roof and attic space in favor of additional heated square footage. Alternatively, a 35' tall house with the existing minimum of a 3/12 slope would likely not gain enough height to provide for additional living space, as the height gained by opting for a flat-top roof, in many cases would not provide sufficient space needed to achieve the minimum ceiling height of 7', as dictated by the building code.

The same considerations would apply to a multi-family dwelling, additional heated living space could potentially be gained by eliminating a sloped roof, in favor of a flat-top roof, dependent on a number of variables. However, additional dwelling units could not be gained since that is regulated by the maximum density of the zoning district (four dwelling per acre in the BR-2, BR-3 and VR-3; ten dwellings per acre in the BC-1 and BC-2 with a conditional use permit)



Kitty Hawk Town Council Minutes: November 4, 2019

Page 7

NCGS 160A-381(h) is listed below:

NCGS 160A-381. Grant of Power

(h) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

- (1) The structures are located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes.
- (2) The structures are located in an area designated as a historic district on the National Register of Historic Places.
- (3) The structures are individually designated as local, State, or national historic landmarks.
- (4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.
- (5) Where the regulations are applied to manufactured housing in a manner consistent with G.S. 160A-383.1 and federal law.
- (6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160A-383 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

Consistency with Land Use Plan

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

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.

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.

Planning Board Recommendation

At its September 19, 2019 meeting, the Planning Board unanimously recommended approval of the requested text amendment. It should be noted that the Planning Board's recommendation included eliminating the minimum roof pitch for multi-family dwellings in addition to the one- and two-family homes.

Perry: *The only real consideration, because we do not have a choice on the houses, is rather or not we want to extend this to multi-family structures.*

Tice: *What would be the benefit of not having this regulation on multi-family?*

Kitty Hawk Town Council Minutes: November 4, 2019

Page 8

Testerman: *I do not know if there is necessarily any specific benefit or drawback, just what the preference is.*

Mayor Perry made a motion, seconded by MPT Garriss, to go back into regular session. The vote was 5-0.

Councilwoman Tice made a motion to adopt the proposed text amendment as recommended by the planning board eliminating the current minimum roof pitch requirement for one- and two-family dwellings in subsections 42-94(b)2, 42-247(d)5, 42-273(d)5 additionally subsection 42-248(d)5, 42-249(d)5, 42-274(d)5 and 42-275(d)5 are to be amended to eliminate the minimum pitch requirement in one- and two-family homes and retaining the minimum roof pitch requirement for multi-family dwellings as noted in the staff report. Town Council finds the proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments are in the public interest. MPT Garriss provided a second and it passed unanimously, 5-0. (Ordinance No. 19-07).

9. OLD BUSINESS:

a.) Ordinance Amendment: Ch. 6, Sec. 6-28 Beach Equipment and Sec. 6-29 Excessive and Unsafe Digging or Piling of Sand on the Ocean Beach Prohibited

Mayor Perry said this was tabled for feedback and noted council and staff did not receive any. He then asked for a motion.

Councilwoman Tice made a motion to approve an ordinance amending the Town Code for the Town of Kitty Hawk for Section 6-28 regarding beach equipment as proposed this evening along with Section 6-29. Councilwoman McClean seconded.

Pruitt: *When it says altering the shape of a dune ... that is not going to be for a person moving sand for a set of steps or something like that is it? If he throws it over on the dune beside his house, then he is not altering the shape of that dune?*

Perry: *In fact, he is required to do something like that. He cannot truck it off that is for sure.*

The vote was unanimous, 5-0. (Ordinance No. 19-08)

10. NEW BUSINESS:

a.) Discussion of Establishing a \$254,000 Capital Reserve in the FY 19/20 Budget to Fund 20% of a Proposed Sidewalk on US 158 from Cypress Knee Trail to Jejac Street

Proposal: Establish a \$254,000 Capital Reserve for a future sidewalk along US 158 from Cypress Knee Trail to Jejac Street.

Kitty Hawk Town Council Minutes: November 4, 2019

Page 9

Background Information: NCDOT has identified the construction of a pedestrian/bicycle sidewalk along US 158 from Cypress Knee Trail to Jejac Street. The current State Transportation Improvement Plan (STIP) identifies the construction of this sidewalk in 2025.

Staff Analysis: The ARPO submitted the non-highway improvement and the project was identified in the plan. A local match of 20% is required once the project is scheduled for construction. These projects are contingent on yearly funding and re-prioritized each year, however, the Town will need to be prepared if this project continues to advance in the STIP. This project continues to score high each year, therefore, restricting these funds now will put the Town in a financially advantageous position.

The Town is also required each year the project is identified in the STIP to sign a letter recognizing the 20% match required by the Town. Funds are not required to be restricted or earmarked, however, by establishing a reserve the Town is essentially fully committed to this project.

If approved, Town Staff will prepare a budget amendment formally recognizing the established of a \$254,000 reserve for this project at the December 2, 2019 Town Council Meeting.

Perry: *Is this 20% our total obligation.*

Stewart: *We are required to contribute 20% of the project costs. It will probably end up being more than this 5 years from now.*

MPT Garriss made a motion to establish a \$254,000 Capital Reserve for the proposed sidewalk on US 158 from Cypress Knee Trail to Jejac Street. Councilwoman McClean seconded it passed unanimously, 5-0.

11. TOWN MANAGER

Veteran's Day trash collection schedule trash will be Tuesday, November 12th instead of the regular service on Monday and also Thursday, November 14th.

Flu shots again on Thursday, December 5th, 2:30 to 5:30, at the Town Hall. It is free and for anyone 18 years old and over.

12. TOWN ATTORNEY

No comments or reports.

13. TOWN COUNCIL

Tice: *For those of you who do not know tonight is going to be my last meeting on the council. I would like to thank my fellow councilmembers for the honor and privilege of serving over the past year. The citizens of Kitty Hawk are fortunate to have such an exemplary group of Town employees and Town leaders who do their very best to make this place successful and such a wonderful place to live and work. Thank you to everyone.*

Kitty Hawk Town Council Minutes: November 4, 2019
Page 10

The mayor and councilmembers thanked Councilwoman Tice for serving and said they will miss her.

MPT Garriss added tomorrow is **Election Day** encouraged everyone to get out and vote.

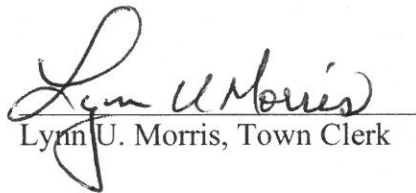
14. PUBLIC COMMENT

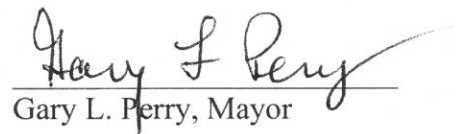
There were no comments.

15. ADJOURN

Mayor Perry made a motion, seconded by MPT Garriss, to adjourn. The vote was unanimous, 5-0. Time was 5:35 p.m.

These minutes were approved at the December 2, 2019 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor