

Minutes
KITTY HAWK TOWN COUNCIL
Monday, January 10, 2022
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 December 6, 2021 Council Minutes
 - b.) Beach Renourishment Capital Project Ordinance Amendment (Ord. No. 22-01)
 - c.) Revised Resolution Establishing Council Meeting Dates for 2022
 - d.) Records Retention and Disposition Schedule
6. Items Removed from the Consent Agenda
7. Public Hearing:
 - a.) Zoning Text Amendment: Proposal to amend Sec. 42-414(b) adding multifamily dwelling developments as a special use in the PCD (Planned Commercial District), not to exceed 14 dwellings per acre. (Ord. No. 22-02)
8. Planning:
 - a.) Zoning Text Amendment: Proposal to amend Sec. 42-1; 42-619; 42-622; 42-275 to amend existing travel trailer park regulations, and to add as a special use in the VR-3, high density village residential district. (Public hearing held on December 6, 2021. Decision tabled until this meeting.) (Ord. No. 22-03)
 - b.) Commercial Site Plan Review: Retail use at 5201 N. Croatan Highway
 - c.) Schedule Public Hearing: Zoning Text Amendment: Proposal to amend Sec. 42-250(d)7 to allow a reduction in the 50-foot separation zone between commercial and residential zones when certain conditions are met. It is requested the hearing be held on February 7, 2022.
 - d.) Schedule Public Hearing: Zoning Text Amendment: Proposal to amend Sec. 42-1 amending the definition of lot coverage to allow 500 square feet of pool surface area to be exempted from lot coverage calculations. It is requested the hearing be held on February 7, 2022.
9. New Business:
 - a.) Council Liaison to the Recreation Committee
 - b.) Consideration of Condemnation of Property Located at 4240 N. Virginia Dare Trail (Parcel #011068000, Pin #987615534416L1 (Ord. No. 22-04)
 - c.) Memorandum of Understanding with the Dare County Game and Wildlife Commission Concerning Duck Blinds
 - d.) Manns Woodward Studios Architectural & Engineering Services Proposal – Task 2 - New Police Station/Fire/EMS Substation
 - e.) Construction Manager at Risk RFQ *(added during meeting)*
10. Reports/General Comments from Town Manager

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11. Reports/General Comments from Town Attorney
12. Reports/General Comments from Town Council
13. Recess to January 31, 2022, 9 AM, Budget/CIP Workshop

COUNCILMEMBERS PRESENT:

Mayor Craig Garriss, Mayor Pro Tem Jeff Pruitt, Councilman David Hines, Councilwoman Lynne McClean and Councilwoman Charlotte Walker

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Attorney Starkey Sharp, Town Planner Rob Testerman and Police Sergeant Brent Vucinovic

1. CALL TO ORDER

Mayor Garriss called this meeting to order at 6:00 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Mayor Garriss asked for a motion to approve the agenda adding 9(e) a subject pertaining to the police station and **MPT Pruitt made a motion to approve the agenda adding 9(e). It was seconded by Councilwoman McClean and the vote was unanimous, 5-0.**

4. PUBLIC COMMENT

1. Chris Cashin, owner, The Preserve, Kitty Hawk, NC: *Good evening. I am the owner of The Preserve in Kitty Hawk which is the RV park that operates in the VR-3 zone of Kitty Hawk. I am speaking with regards to agenda item 8(a) tonight where you will be deciding whether to allow RV parks in the VR-3 zone. As an RV park owner in that zone, I would like to speak a little to that proposal. As you know, since they are not allowed, The Preserve is an illegal non-conforming use. I have owned the property for 4 years now and I have been talking with Mr. Testerman about how I can make it conform and perhaps even expand the park because I own adjacent property. I have been looking for ways that I could make that happen. It was news to me when I learned that RV parks were being voted on today. My position is absolutely I would love for you to allow RV parks in the zone.*

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An element of what is being asked for, one of the things, is you cannot stay in an RV space for longer than 90 days. I can tell you that 95% of the people that are in my RV park stay for longer than 90 days. They are long term rentals. So, the proposal as it is requested right now would basically exclude my park. You would be allowing RV parks except for the one that already exists in VR-3. And so, I pretty much could not use my property to expand it and to allow other spaces in my RV park.

I guess the long story short is to try to understand a way forward to work with my property. In 2017 the previous owner asked to be able to expand into mobile homes and at that point council decided it was not an appropriate use of the property and yet I cannot expand my long-term RV rentals to my adjacent property. That is also not allowable in the new RV rules. Essentially, I do not have a way forward to do something with my property that already is entered through an RV park.

Like I said I am all for allowing RV parks. I just would like for them to be long term rentals.

Garriss: *Thank you Mr. Cashin and what we have before council tonight is a text amendment regarding language. We are not voting on a specific site. We do not have any plans.*

Cashin: *And I understand that.*

2. Dusty Rhodes, 3822 Elijah Baum Road, Kitty Hawk, NC: *Good evening. I am here to speak on item 9(c). It is the Memorandum of Understanding with the Dare County Game and Wildlife Commission. It concerns the duck blinds. I primarily use the Dare County boat ramp back in the village to come and go for recreational fishing, boating, as well as commercial fishing. I want to let you know that I support the memorandum concerning the issuance of a license for duck blinds in and out of the waterways of Kitty Hawk and outside the mouth of these ditches.*

3. Wyatt Casper, 4000 Poor Ridge Road, Kitty Hawk, NC: *First off, I would like to thank you for bringing the situation of duck blinds to the Town of Kitty Hawk for public comment. And I would like to say as a full-time commercial fisherman and a native of Kitty Hawk I think the duck blinds in Kitty Hawk is starting to get out of hand. I fish here full time, have the gear in the water all year 'round. I think it is a little bit of a hazard to boaters, and my gear itself, and I am a full supporter of the 1,000-yard moratorium in Kitty Hawk Bay.*

4. Gill Perry, 1090 West Kitty Hawk Road, Kitty Hawk, NC: *I am Gil Perry and I live at 1090 W. Kitty Hawk Road. I just want to say I support the moratorium for blinds just because of being able to get in and out with boats and stuff. That is all.*

5. Perry Pruitt, 3890 Poor Ridge Road, Kitty Hawk, NC: *Good evening. I am here tonight to express my support for a moratorium on duck blinds in Kitty Hawk and a thousand-yard buffer being placed on the shoreline. First and foremost, I am in support of this moratorium for many different reasons. I support it first from a public safety perspective. I am sure you are all aware*

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that there has been an increase in these duck blinds in the last few years in the waterways in and out of Kitty Hawk. I am an avid user of these waterways, and I am also a hunter. I noticed the immediate potential threat to the non-hunters using these waterways with the increasing amount of year 'round residents and the tourists that are visiting Kitty Hawk using these resources. The additional granting of these hunting locations will only increase that risk.

Secondly, I support it from a tourism perspective. As I already stated I am an avid user of these waterways and I have noticed firsthand the dramatic increase of visitors and new residents using these waterways in the last few years between the kayak tours, recreational boating, fishing and stand-up paddling. The list goes on. The never-ending tourist season has seemingly become the new normal and the traffic of the waterways is right behind it. With the resources being used more frequently in the year 'round matter the waterways, which used to be pretty much deserted in the hunting season, has become really populated. Although they already provide a risk this will just make it an additional risk. Additionally, blinds being permitted near residential areas could also influence someone negatively from either purchasing a home or visiting a home in Kitty Hawk.

And thirdly I support it from a commercial fishing perspective. As a third-generation commercial fisherman my family has relied on the waters of Kitty Hawk to make our income. This is also the way of life I claim to continue and with additional duck blinds being placed at an increasing rate with no clear end in sight I firmly believe that enough is enough. The construction of these duck blinds has got to stop. The duck blinds continue to be constructed with no end in sight. These areas on which we rely on for our income we will either be forced to give it up or go somewhere outside of Kitty Hawk.

I really hope I have shed just a little light on a few reasons that I personally believe that the moratorium on duck blinds is needed, and the citizens of Kitty Hawk will benefit. The citizens of Kitty Hawk and vacationers alike. I appreciate your time.

6. Trey Luke, 3824 Elijah Baum Road, Kitty Hawk, NC: *I am a resident of Kitty Hawk and grew up in Dare County my whole life. I am a fisherman at heart, I commercial fish and I am completely for this moratorium on the 1,000-yard buffer. Like Perry said before it is a lot more hazardous than what we think. We just keep putting these blinds everywhere. I mean there are a lot of people riding around at nighttime and early in the morning. It is just going to be too much. Too much going on. Enough is enough at some point. I appreciate it. Thank you.*

7. Tim Beacham, 4136 Ivy Lane, Kitty Hawk, NC: *Thank you for having this on the agenda. I just want to speak in favor of the moratorium for duck blinds. I have Earth Resources and Dock of the Bay Marina on the Kitty Hawk Bay and I understand some duck blinds were being proposed to be placed right beside our barge channel. We have barges that come in and out of there. The barges themselves, when they tow them out, are about 400 feet and they might have another 400 feet of line on them behind there. If the wind is blowing, just to keep the barges off of them ... and if a duck blind gets placed anywhere near that channel it is going to be dangerous for the blind, the duck hunters and the equipment on all those barges.*

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Also, we have the marina in there and the boat ramp on the same road. It is Bob Perry Road. Now there are duck blinds on that canal that goes from the boat ramp out to the bay, and you have hunters in there setting their decoys early and if anymore duck blinds get stacked anywhere in Kitty Hawk it is really going to become a problem. With technology and the interest in hunting it is like everybody is trying just to find every little corner just to stick a duck blind. There must be a little more thought put into it. Thank you for considering a moratorium on the duck blinds.

8. Zac Coyle, 3900 Poor Ridge Road, Kitty Hawk, NC: *I would like to state to everybody in here I highly agree with everybody's statements and what everybody has said. I understand there are a lot of boaters and everything like that. I would also like to state on the record that over 90% of the people that have spoken on this and do not want blinds within 1,000 yards of the shoreline already has access to a blind that is within 1,000 yards of the shoreline or owns them. I just wanted that statement for the record, so everybody knows.*

Garriss: *We will be discussing this later in the meeting. You are welcome to stay or you may depart.*

5. CONSENT AGENDA

a.) Approval of December 6, 2021 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) Beach Renourishment Capital Project Ordinance Amendment (Ord. No. 22-01). This ordinance amendment, in the amount of \$5,020,429, recognizes the proceeds from the Special Obligation Bond issuance on December 14, 2021 and the cost associated with the issuance in the amount of \$88,166. *(An approval of the consent agenda will approve this Capital Project Ordinance amendment.)*

c.) Revised Resolution Establishing Council Meeting Dates for 2022. The primary election scheduled for March 8, 2022 has been postponed until May 17th. Therefore, the council meeting on March 7th will begin at the normal time of 6 p.m. *(An approval of the consent agenda will approve this revised resolution.)*

d.) Records Retention and Disposition Schedule. The NC Division of Archives and Records has updated the records schedule. Staff is suggesting council approve the General Records Schedule and the Program Records Schedule and for Local Government Agencies. *(An approval of the consent agenda will approve the updated records schedules.)*

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

6. ITEMS REMOVED FROM THE CONSENT AGENDA

7. PUBLIC HEARING:

a.) Zoning Text Amendment: Proposal to amend Sec. 42-414(b) adding multifamily dwelling developments as a special use in the PCD (Planned Commercial District), not to exceed 14 dwellings per acre.

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Councilman Pruitt made a motion, seconded by Councilwoman Walker, to go into public hearing. The vote was unanimous, 5-0.

Planner Testerman reviewed the following staff report.

Proposal

The applicant has proposed a text amendment that would add multifamily dwellings as a special use in the Planned Commercial Developments (PCDs) with a maximum density of 14 dwelling units per acre.

42-414(b)3. Multi-family dwelling development

a. The maximum permitted density shall be fourteen residential dwelling units per acre.

Background

Planned Commercial Developments are intended to provide developers with an option by which they can achieve flexibility of design, the integration of mutually compatible uses, and optimum land planning with greater efficiency, convenience, and amenity than may be permitted as of right under other parts of the zoning ordinance. PCD's can be approved in within the BC-1, BC-2, BC-3 and BH-1 zoning districts in town [42-411(d)], if certain site requirements are met. A PCD must be at least five contiguous acres in size, with not less than 500 feet of total road frontage on US Highway 158 or NC Highway 12, except that portions of the site may be separated by public or private rights-of-way not more than 60 feet in width.

Currently, multi-family dwellings are permitted as a special use in the BC-1 district, with a maximum density of 10 dwellings per acre, and multi-family dwelling developments are permitted as a special use in the BC-2 district, with a maximum density of 10 dwellings per acre.

Although the proposed language would be in conflict with the standards currently permitted as a special use in the BC-1 and BC-2 districts, Sec. 42-412 states that should there be any conflict between any PCD development standards and the standards elsewhere in the zoning ordinance, the PCD standards shall apply, therefore, approval of the proposed text amendment would have no impact on what is permitted in the BC-1 and BC-2 districts.

It should be noted that 42-414(a) states that the permitted and special uses of the underlying zoning districts within the PCD are the permitted and special uses within the PCD. Sec 42-414(b) outlines additional special uses that are permitted in PCDs and currently include "miniature golf course" and "retail sale of Christmas trees". Currently, a PCD in the BC-1 district could have a multi-family dwelling at 10 dwellings per acre, and a PCD in the BC-2 could have a multi-family dwelling development at 10 dwellings per acre. Approval of the text amendment would allow a multifamily dwelling development in any PCD at 14 dwellings per acre.

Should the text amendment be approved, prior to any multi-family dwelling development being approved, the site would first need to be large enough to meet the PCD requirements, then would go to a PCD preapplication conference, then a conceptual review, followed by preliminary development plan and site plan approval, and final development and site plan approval. All review stages are done with the Planning Board and/or Town Council for approval. The special use review/public hearing would fall under the preliminary development plan and site plan approval. Section 42-419 (attached) lists specific standards and requirements that each PCD must adhere to regarding lot coverage, buffers, building height, etc.

The attached maps indicates where the three existing PCD's within the Town limits exist. The proposed text amendment would apply only to these areas, and any future PCD that the Town might approve.

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.

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Policy #17b: Detached residential structures are the preferred type of residential development.

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.

Planning Board Recommendation

At its December 16, 2021 meeting, the Planning Board voted 3-2 to recommend denial of the proposed text amendment.

Garriss: *Even though the number of dwelling units is increasing we basically have the same density and the same footprint. Correct?*

Testerman: *Right. The approval from the health department will dictate the number of bedrooms that will be allowed on site. There is a 35-foot-tall building maximum no matter what and the lot coverage for the PCD is 50%. That does not count roads and sidewalks so that would remain unchanged. Parking is one space per bedroom so that does not have any bearing on the density. It is whatever the health department approves for the number of bedrooms.*

Hines: *But the building itself does not change. Like you said the health department determines the bedrooms, so I do not have a problem with it.*

Garriss: *Is the applicant here tonight?*

Goodrich: *My name is Eddie Goodrich, and I am the applicant. Rob explained it as thoroughly as anybody could. I am not asking for anything that is not already allowed. Just a different way of doing it and doing it better for that matter. I will do my best to make this a credit to the community. It is a good location and I think it will end up being a good place for young people to live and work in Kitty Hawk as well as the rest of the county.*

Hines: *I think anytime we can provide some extra housing is a good thing.*

Councilwoman McClean made a motion, seconded by Councilwoman Walker, to go back into regular session. The vote was unanimous, 5-0.

Garriss: *I am thinking like David. If we can put just one small dent in the housing problem. I think we need to go for it. Any discussion?*

Pruitt: *I would like to make a quick comment. There was a lot to this. People that read the paper and saw a split decision on the planning board ... it is a tough decision and I appreciate the hard work they put into this.*

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When you think about what is going on here ... it is the same size building with just a different configuration in the interior of it. It took me a little while to get my head around it. For a while I was up in the air but I, like David, once I understood that the density has not changed, and nothing else changes I am in favor of this.

Garriss: *I agree with what Jeff said. I understand the planning board had a lot of conversation on this and I appreciate it.*

Councilman Hines moved to adopt the proposed text amendment to Section 42-414(b) 3 allowing multi-family dwelling developments as a special use in the Planned Commercial Districts with a maximum density of 14 dwellings per acre. The town council has found this proposal to be consistent with the town's adopted Land Use Plan. It was seconded by Councilwoman McClean and the vote was unanimous, 5-0. (Ord. No. 22-02)

Goodrich: *I want to thank the planning board. This is a complicated issue. When it gets down to it, I am not asking for more I just plan on doing it differently.*

8. PLANNING:

a.) Zoning Text Amendment: Proposal to amend Sec. 42-1; 42-619; 42-622; 42-275 to amend existing travel trailer park regulations, and to add as a special use in the VR-3, high density village residential district. (Public hearing held on December 6, 2021. Decision tabled until this meeting.) (The staff memo for this text amendment may be found in the December 6, 2021 minutes beginning on page 7.)

Garriss: *Rob anything further you would like to say on this?*

Testerman: *The only thing I will point out is if this is approved it is not an approval of anything site specific. It is just giving permission for them to come back and request a special use permit.*

Garriss: *Is everyone clear on that? Like I said earlier this is just for the language.*

Councilwoman McClean made a motion to approve the zoning text amendment proposal to amend Section 42-1, 42-619, 42-622, 42-275 to amend existing travel trailer park regulations to add a special use in the VR-3 high density village residential district. The motion was seconded by Councilwoman Walker and passed unanimously, 5-0. (Ord. No. 22-03)

b.) Commercial Site Plan Review: Retail use at 5201 N. Croatan Highway

Garriss: *This is a piece of property we dealt with a few years ago.*

Planner Testerman reviewed the following memo.

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Proposal

The applicant has submitted a site plan for a new two-story, 7,500 sq. ft. (7,000 sq. ft. of area accessible to customers) commercial development to be located at 5201 N. Croatan Highway.

Background Information

The subject property is presently zoned Beach Commercial (BC-2) and is vacant and undeveloped at this time.

The adjoining property to the south is zoned BC-2 and contains Ambrose Furniture. The abutting property to the north is also zoned BC-2 and contains Outer Banks Furniture. Across US 158 to the west is the now vacant medical building, zoned MS-1 (emergency and governmental services). To the east of the subject parcel are eight lots containing single family residences, all zoned BH-1 (beach hotel).

Staff Analysis

Proposed Use: Retail uses. Allowed as a permitted use in the BC-2 district.

Lot Area: The subject parcel is approximately 41,627.28 square feet (0.95 acre). This size exceeds the minimum lot size (15,000 square feet) and is less than the maximum lot size (7 acres) in the BC-2 district.

Lot Coverage: Total lot coverage proposed at 16,996 square feet (40.8%). This figure complies with the maximum allowable lot coverage of 24,976.4 square feet (60%).

Open Space: 59.2% of the parcels would be considered open space. This percentage exceeds the minimum requirement of 25%.

Building Height: The proposed two-story retail building is shown to be 28' in height at its highest point. This is compliant with the maximum height requirement of thirty-five feet (35') from grade.

Building Setbacks:

	<u>Proposed</u>	<u>Required</u>
Front	16.2 feet	15 feet
Rear	20.8 feet	20 feet
Sides	110 feet (north)	10 feet
	146 feet (south)	10 feet

Access: The applicant proposes a single 22-foot-wide ingress/egress drive off of the Byrd Street right-of-way. The applicant also proposes to improve the Byrd Street right of way, up to a distance of approximately 144 feet east of the edge of existing pavement on US 158. The proposal does not include connecting Byrd St to the existing portion of the road, bollards are proposed to prevent any through traffic. As the Byrd Street right-of-way is a Town right-of-way, approval of the proposed site plan will constitute approval to make the improvements within the right-of-way.

Parking:

The minimum number of parking spaces is calculated below:

<u>Parking Calculations</u>	<u># Required Spaces</u>
7,000 sq. ft. retail / 350	20 spaces
4 employees	4 spaces
TOTAL	24 spaces

The site plan contains 24 parking spaces, including two handicapped accessible parking spaces.

For retail uses, the ordinance requires one loading berth per 20,000 sq. ft. of floor area, at a minimum of 12 feet by 25 feet. The site plan shows one loading berth, measured 12 feet by 28 feet.

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Buffers: Buffers would not be required for this project. Although not required, the applicant has proposed to retain a vegetated buffer.

Dumpster: The dumpster pad is located immediately behind the loading area near the southeast corner of the building. The proposed dumpster pad is screen one two sides (must be at least 6') by wall or fence and is screened on the third side by the building itself.

Lighting: An outdoor lighting plan has been submitted which appears to meet the minimum standards outlined by Sec. 42-515. Compliance will be verified on site once installation is complete.

Signs: A sign plan has not been included in the proposed development project but will require separate sign permitting prior to any signage being installed.

Erosion & Sediment Control: An erosion and sedimentation control plan has been submitted and is currently under review. Approval will be required prior to issuance of building permits.

Stormwater Plan: Prior to construction, a state stormwater permit will be required. No permits shall be issued prior to the Town obtaining a copy of the stormwater permit.

Wastewater: The applicant has proposed a private septic system for the development. A copy of the Dare County Environmental Health septic permit must be provided prior to issuance of a building permit.

Buffer/Separation Zone: The 50-foot separation zone does not apply to this proposal, as the abutting residences are in a commercial zone (BH-1), likewise the vegetated buffer requirements are not required as noted in Sec. 42-649, which requires buffers between uses in commercial zones and abutting residential zones. However, the applicant has proposed to include a five-foot wide, "Type C" buffer surrounding the property.

A type C buffer is a 50 percent opaque vegetative screening buffer of a minimum width of five feet that will reach a height of three feet in two years. The buffer may include a stabilized soil berm as part or all of the required height. The buffer shall include local evergreen trees planted not more than 20 feet on centers and which shall reach a height of six feet in three years.

Wetlands: There is a pocket of wetlands under the jurisdiction of the US Army Corps of Engineers. The applicant has obtained a wetland fill permit from the agency.

Attached: Comments from Kitty Hawk Fire Department review site plan narrative provided by applicant.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject property as a "Commercial, Shopping, and Working Area" on the future land use map. As part of its review, the Planning Board is asked to make a determination that the proposed development is consistent with the goals and objectives outlined in the land use plan.

Planning Board Recommendation

At its December 16, 2021 meeting, the Planning Board unanimously recommended approval of the commercial site plan at 5201 N Croatan Hwy.

Garriss: *Any questions for Rob? I think it is important to note this is a permitted use in the BC-2 district.*

Testerman: *I will also note the bollards shown are based off the previous approval for the doctor's office. I pointed out to the planning board I will let council know it is a town right-of-way through there. If the town council wants to open that up it is within the town's right to do so. The applicant*

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just showed it the way he did to take into consideration the comments from the previous site plan review.

Garriss: *Would the engineer like to say anything?*

Michael Strader, Quible Associates and Civil Engineer of record for this commercial site plan: *As you heard previously in the staff report the proposed use is a by right use within the zoning district. The plans submitted demonstrate compliance with the town standards specified in the ordinances and all other state regulatory agencies.*

We did have the benefit of being the engineer of record for the previously submitted commercial site plan which was approved as a conditional use, and we took the feedback we had during that process and tried to incorporate it to the degree that we could on this plan to hopefully present the best possible thing to you this evening. I will be glad to address any questions, whether it is drainage, Byrd Street or any other technical concerns that anyone has.

Garriss: *My first thought was had you referred back and you have evidently, so we are good there. Any questions for Michael? Thank you.*

MPT Pruitt made a motion to approve the commercial site plan for the proposed retail use at 5201 North Croatan Highway. It was seconded by Councilwoman McClean and passed unanimously, 5-0.

c.) Schedule Public Hearing: Zoning Text Amendment: Proposal to amend Sec. 42-250(d)7 to allow a reduction in the 50-foot separation zone between commercial and residential zones when certain conditions are met. It is requested the hearing be held on February 7, 2022.

Councilman Hines made a motion to set a public hearing at the town council meeting on February 7, 2022 to consider the proposed text amendment to Section 42-250(d)7 to allow a reduction in the 50-foot separation area between a residential and a commercial zone when certain conditions are met. It was seconded by Councilwoman McClean and passed unanimously, 5-0.

d.) Schedule Public Hearing: Zoning Text Amendment: Proposal to amend Sec. 42-1 amending the definition of lot coverage to allow 500 square feet of pool surface area to be exempted from lot coverage calculations. It is requested the hearing be held on February 7, 2022.

6:42p.m.

MPT Pruitt made a motion to set a public hearing at the town council meeting on February 7, 2022 to consider the proposed text amendment to Section 42-1 to allow for 500 square feet of pool surface area to be exempted from lot coverage calculations. Councilman Hines seconded and it passed unanimously, 5-0.

9. NEW BUSINESS:

a.) Council Liaison to the Recreation Committee

Mayor Garriss made a motion to appoint Charlotte Walker as the council liaison to the Recreation Committee. Councilman Hines seconded and it passed unanimously, 5-0.

b.) Consideration of Condemnation of Property Located at 4240 N. Virginia Dare Trail Parcel #011068000, Pin #987615534416L1 (Ordinance No. 22-04)

Stewart: *This piece of property is located at 4240 North Virginia Dare Trail. Back in 2019, or early 2020, the town demolished several buildings on this property. However, the one structure that was not demolished we were requested to give extra time by the property owner to make the necessary repairs. That has not been done and so now the town is going through the process of condemnation and demolition of this property if the property is not brought up to code for safety reasons. This is property located at 4240 and it is the old Bonanza Hotel property.*

Pruitt: *Is this building also causing the adjacent property owners to have issues with insurance and stuff similar to the other ones because of how close they are and the shape they are in?*

Stewart: *I do not know how the property sits now but at some point that was an issue. The building is not secured and is a safety issue at this point. The town will, if they do not comply and bring it up to code, place a lien on the property and then upon sale of the property, or before, collect it. The lien will go on the property.*

Pruitt: *Is this the same procedure as last time?*

Stewart: *Correct.*

Hines: *Have the owners been back in touch with the town? I mean has there been any dialogue.*

Stewart: *Yes. I believe the building inspector has spoken with the owner, but nothing has been done. For over two years we have been trying to get them to comply and there has not been any movement.*

MPT Pruitt made a motion, seconded by Councilwoman McClean, for town staff to move forward in the condemnation process on the property located at 4240 North Virginia Dare Trail. Parcel Number 011068000, Pin Number 987615534416L.1. It passed unanimously, 5-0. (Ordinance No. 22-04)

c.) Memorandum of Understanding with the Dare County Game and Wildlife Commission Concerning Duck Blinds

Proposal: Consider a Memorandum of Understanding between the Town of Kitty Hawk and Dare County Wildlife Commission prohibiting new geographical locations for permanent duck blinds within 1,000 yards of the Kitty Hawk shoreline.

Background Information: The proposed Memorandum of Understanding was drafted for Town Council discussion after receiving several complaints from residents in the Town of Kitty Hawk regarding the location of several duck blinds within close proximity to the Town of Kitty Hawk shoreline.

The Memorandum of Understanding that hunting waterfowl is a tradition in the Town of Kitty Hawk and the proposed Memorandum of Understanding attempts to find a balance between the number of permanent blinds, users of the local waterways, and residents within close proximity to the Kitty Hawk shoreline. "See Attached Duck Blind Location Map" (map can be found on the Dare County website). The Memorandum of Understanding does not place any restrictions on the hunting of waterfowl but would prohibit any new permanent duck blind locations within 1,000 yards from the shoreline of the Town of Kitty Hawk.

Town Council Recommended Motion:

Approve the Memorandum of Understanding and present the MOU to the Dare County Game and Wildlife Commission for consideration at their January 12, 2022 Game and Wildlife Commission meeting.

Attachments:

Memorandum of Understanding

Garriss: *Never did I think I would be sitting on council discussing duck blinds, but here we are, and it sounds like we need to be discussing it. The town manager has done a lot of work on this, and Jeff and David have had a lot of input. Especially Jeff. Andy if you could start us off.*

Stewart: *This topic came up at a reserve meeting regarding the location of some blinds that are in the canals, and I have received several phone calls since that time about blinds that have been put up close to the ditches as Mr. Beacham mentioned. After looking at the location of duck blinds on a map around and near Kitty Hawk it was thought there is possibly no need for any more blinds in the area. We have a lot of recreational users of the local waterways as well. This has nothing to do with prohibiting the hunting of ducks it is just the actual physical structures. There are a lot of blinds around Kitty Hawk and there are none towards the Martins Point area. There are other areas the Dare County Game and Wildlife Commission could permit blinds, perhaps around Colington. The commission is appointed by the Dare County Commissioners.*

Walker: *All the blinds that you showed are legally permitted blinds? Even the ones that are in such precarious positions and causing issues?*

Stewart: *When they approve a blind, they do not ask permission from the town. I believe they are willing to work with us, but we will have to see when we present this at their January 12th meeting. Just because we do this tonight it does not really hold any weight. They can say they are not going to work with the town.*

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Stewart: (showing a duck blind location map from the Dare County website) *All of these blinds are in green is my understanding. We are just trying to find a good balance between all the users.*

Pruitt: *This has been going on for a long time. Kitty Hawk lost its representative on the Dare County Game Commission about 15 years ago. At that point we were appointed someone for our area. Our appointee was not from Kitty Hawk, does not hunt in Kitty Hawk and I do not believe he knows anything about the blinds in Kitty Hawk. I do not blame a hunter. A lot of the blinds that are in the ditch, half of them were told if you do not do it somebody else is. And that was true. So, it is not their fault. And by no means are we pointing at somebody's blind or trying to take a blind away. I feel like a lot of these blinds should never have been licensed. The heartache of somebody losing a blind ... once you have had one it hurts to lose it. I know. A lot of blinds have been permitted and moved and pushed around and I personally think it has caused a lot of problems between fellow hunters and residents. I think it is a result of us not having a true Kitty Hawk representative on this commission. That is how I feel about it. I am in favor of this MOU, and I would really love to see Kitty Hawk have a local person on the game commission.*

I think there is a blind under the 300-yard limit right now and when you have a resident afraid to take his two daughters out ... we received the email. It is time. He even said it is time for the politicians of the town to look after them. The hunters are asking us, businesspeople are asking us, so I think it is time do something. This is a start.

Walker: *How do we get a representative?*

Hines: *You must wait for somebody's term to come up and then the Dare County Board of Commissioners appoints someone.*

Pruitt: *Just like the Tourism Board. Kitty Hawk's representative on the Tourism Board should not be somebody from Nags Head nor should our representative on the game commission be from somewhere else.*

Hines: *I am a big duck hunter and if you are going to regulate float blinds why can't you have a set number of stick-built blinds. They have a strict regulation on float blinds. I think it needs to be looked into. Times change and it could be made better for everybody.*

Garriss: *Andy, you, and Jeff especially, and David have put in a lot of work on this subject, and we all appreciate it. I think it is time for a motion.*

MPT Pruitt made a motion to approve the Memorandum of Understanding and present the MOU to the Dare County Game and Wildlife Commission for consideration at their January 12, 2022 commission meeting. It was seconded by Councilwoman Walker and passed unanimously, 5-0.

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d.) Manns Woodward Studios Architectural & Engineering Services Proposal – Task 2 - New Police Station/Fire/EMS Substation

Manager Stewart reviewed the following memo with council.

Proposal: The Town of Kitty Hawk received the Task 2 proposal from Manns-Woodward Studios, Inc for the future Police Station and Fire/EMS Substation.

Background Information: The Town of Kitty Hawk review committee and Town Council selected Manns-Woodward Studios, Inc to begin negotiations for architectural services for the new Police, Fire/EMS substation located on US 158.

Task 2 of the agreement includes survey, design and development, construction documents, and construction administration for the project. The preliminary estimate for the project represents a total fee of 8.63% including allowances that may or may not be expended. The fixed lump sum fees are within line to other project(s) recently completed over the past 10 years by Dare County.

The approval of this proposal will allow the Town to obtain construction documents, bid the project, and allow the architect to administer the oversight of the construction.

Town Council Recommended Motion: Approve Task 2 of the proposal between the Town of Kitty Hawk and Manns-Woodward Studios Inc. in the amount of \$621,950.

Attachments: Task 2 Proposal from Manns Woodward Studios; Previous Architectural Fees Dare County

Not hearing any questions or comments, **Mayor Garriss made a motion, seconded by Councilman Hines, to approve Task 2 of the proposal between the Town of Kitty Hawk and Manns Woodward Studios Incorporated in the amount of \$621,950. The vote was unanimous, 5-0.**

e.) Construction Manager at Risk RFQ

***Garriss:** This has been going on a long time, too long, and nothing has happened. A very frustrated town manager called me Friday afternoon. When the conversation was over you had two frustrated people about not getting anything done, prices going up, the price of the whole project getting higher than this town can afford and the possibility of killing the whole project. Ended up we had a meeting with County Manager Bobby Outten at his office at 10 o'clock this morning. That is the reason for this addition to the agenda. Bobby gave us some things for us to think about and look at. We talked about what would be possible tonight. Andy went to work.*

I have broken one of my own promises to council tonight. I told you we would never come to a council meeting and there would be something laying here that you are not familiar with and have not seen before. But it happened tonight.

This is necessary. We still do not have any numbers so we can decide whether we can go forward with the project. Do we need to cut back some more? I am not in favor of cutting back anything as far as our police station goes. We have already done that. We all know it is necessary, we all know

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it is needed. Andy is not happy about it. Hopefully by this being done tonight we can proceed with getting some numbers quicker than we would have before, correct?

Stewart: *Correct.*

Garriss: *I am tired of that piece of property sitting there and nothing happening to it. We ride by and look. It still has not been cleared; nothing has been done. We need to proceed. Does council agree? Sorry if I vented but I needed to do it.*

Manager Stewart reviewed the following memo with council.

Proposal: Authorize Town Staff to issue a Construction Manager at Risk Request for Proposal (RFQ).

Background Information: The Town of Kitty is currently in the design phase for the new Police Station, EMS Substation, and Fire Department Bay. The Town Manager after discussions with the Dare County Manager is proposing utilizing a construction manager at risk approach vs. the conventional design-bid-build methodology. Given the unique geographical positioning and that the current labor and material markets are volatile, Staff believes this approach will accelerate the schedule, control project costs, and promote project quality. Essentially, a Construction Manager at Risk (CAMR) allows for the Town to engage a Construction Manager to work alongside the design team during the early phases of the project.

In the conventional design-bid-build approach, the design team will complete 100% of the design documents and then issue the project to the public market for competitive bidding, generally awarding the project to the lowest qualified bidder. This approach leaves the design team and Town in somewhat of an exposed position. Essentially, we are designing based upon estimated costs rather than having the capability of soliciting input from the local sub-contractor networks. Further, the design-bid-build approach generally leaves all parties in somewhat of an adversarial position – whereas a Construction Manager at Risk is more of a team approach.

A Construction Manager at Risk arrangement will allow the Town to engage a contractor early in the process so that they can provide us all with more accurate “real time” pricing as the design progresses. Bringing them on board at this phase will also aid in accelerating the project schedule by as much as 60 days according to the Town’s architect. This process generally awards the contract based upon qualifications and controls costs by utilizing a negotiated “cost-plus” fee. In short, the Construction Manager will solicit bids from multiple disciplines and sub-contractors during the procurement phase. They are then responsible for ensuring the scope of work is comprehensive – in which the Town and design team can have input. In short, the bidding process is 100% transparent and the cost is controlled by the pre-negotiated markup and management fee.

Town Council Recommended Motion: Authorize Town Staff to issue a Construction Manager at Risk RFQ.

Hines: *Help me understand where the county is with their EMS station because we need this police station built. We have talked about this to lengths end and there is no movement at all going on out there. This has been going on for a year. I sat in here six or seven months ago talking about it with David Lewis and others and now we are talking about bringing on a construction manager. Why is it taking so long?*

Garriss: *First, I would like to thank Bobby Outten. He fit us in this morning with Dave Clawson the Finance Director. They did a great job, took the time to talk with us. The county is sitting on go, they have been sitting on go.*

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Hines: *I am in favor of doing whatever it takes to expedite this project. But I am not going to sit here and say that I am not beyond frustrated with how this is going. I cannot be more serious about that. We have talked about it over and over and over. Our police officers are sitting down there in flooded water when there are storms. I am not trying to rehash it all, but I really want to see some movement on this project.*

Garriss: *According to Andy and Bobby this is a way to speed up the process. I want to compliment Andy. He had this to me within three hours for my approval so council could talk about it and consider it tonight.*

Stewart: *This is what is going to do it.*

Hines: *I am not frustrated with you Andy.*

Stewart: *I understand your frustration.*

Walker: *The architect is behind hiring this person?*

Stewart: *No, the town hires the construction manager.*

Walker: *I thought you said the architect is in favor of it.*

Stewart: *We hire the architect; we have our floor plan. The county has gotten their approval to move forward to a certain dollar amount. The town is going to have to spend the money to get a set of plans and if we cannot afford it ... but we need to have a price. This will give us the price way earlier. We will know it well in advance if we go this route if we hire a company that has done these types of projects before.*

Hines: *The material prices are such a moving target you cannot even lock it in right now but for a few days. You ask any trade person, subcontractor, how long is the price good for and they will say today. That is the environment we are in. That is another reason why I am frustrated.*

Stewart: *This will give us a max dollar amount at some point in time sooner than later. We will lock them in and then if the prices come in less, we will receive that benefit as well.*

Garriss: *We were told this morning, because of rising prices, we need to proceed with this part as quickly as possible.*

Hines: *I agree with that.*

Stewart: *They will be able to bid the project as they go and we will see the bids.*

Hines: *Are we going to see that continually?*

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Stewart: *Yes.*

Hines: *I definitely want to be looking at it.*

Stewart: *It is going to give us a manager that is going to be responsible for the construction. That is where we all want to get to.*

Garriss: *Very good. Andy, thank you for the quick, great work you did on this. I need a motion regarding 9(e).*

Pruitt: *I would like to thank you mayor for taking the time to really look into this. I know this has been weighing heavy on you wanting to get this done. You and I have talked about this for years and I understand the frustration David has. You and I have been dealing with this for quite a while.*

Garriss: *Thank you Jeff.*

MPT Pruitt made a motion to authorize town staff to issue a construction manager RFQ. It was seconded by Councilwoman McClean and passed unanimously, 5-0.

10. TOWN MANAGER

Stewart: *Town Offices are closed on the 17th in honor of Martin Luther King Jr. Day. Residential Trash collection next week is scheduled for Tuesday and Thursday. Tonight's meeting will recess to our budget meeting on January 31, 2022. If anybody on council has any special projects they would like to be incorporated please email me or get with me anytime between now and then. I will research those and bring them up at our meeting. Also, February 7th is large item pickup.*

11. TOWN ATTORNEY

Sharp: *Casey did not give me anything to bring up to you. Glad to see you and enjoyed being with you again.*

12. TOWN COUNCIL

Garriss: *We have a board and a committee opening that were Charlotte's. We have only received one application and while Andy and I were driving to Manteo today I talked with the applicant who is interested in the Board of Adjustment. I know Charlotte has some more she is working on. That is the reason it is not on the agenda tonight. To give us some time to get more applications in. We need to vote on this at the February meeting. If you have any suggestions let us know.*

This town and council lost a dear friend in November, Mr. Richard Reid. Mr. Reid was a former Kitty Hawk Councilman and was the town planner for us for 11 years. He served on the town council for two terms, 2005 to 2013. Mr. Reid was a good friend to Jeff and me when we were

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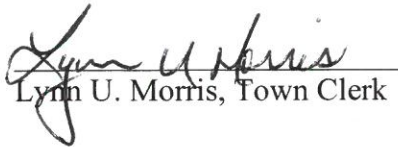
getting started. I do not care where or when you saw Mr. Richard or Miss Sandy you were greeted with a handshake and a smile. I will never forget that. Mr. Reid, in your honor, we would like to thank you for your service. Miss Sandy our condolences. You are still a dear friend to this town, and we hope you are not a stranger.

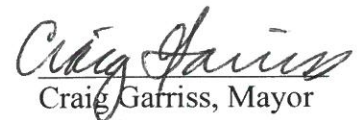
Pruitt: *Richard and Sandy were not only friends of mine but also friends of my parents. When you first get on the planning board it can be kind of tough and Richard had a way of explaining things that made us feel more comfortable. Not only was he a great planner he was a great councilman and the reason he was is because he loved Kitty Hawk. He and his wife lived back in Kitty Hawk Landing. They had retired and have since moved away but they were a big part of our town. Both helped with Heritage Day, everything they could get involved in. After Richard passed away, I was talking to Sandy, and she said this was his family and how much the town meant to him. We are going to really miss Richard being around. I know Sandy is heartbroken, but her memories and her friends are still here. She talks about all her friends she is calling so if anybody wants to reach out and give her a ring from time to time, please do.*

13. RECESS (January 31, 2022, 9 AM, Budget/CIP Workshop)

Mayor Garriss made a motion, seconded by MPT Pruitt, to recess this meeting until January 31, 2022, for a Budget/CIP workshop meeting at 9 AM. The vote was unanimous, 5-0. Time was 7:24 p.m.

These minutes were approved at the February 7, 2022 council meeting.


Lynn U. Morris, Town Clerk


Craig Garriss, Mayor