

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, September 6, 2022
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations:
 - Tom Heffner – *Postponed*
 - Outer Banks Tourism Board/Event Center Planning
5. Public Comment
6. Consent Agenda
 - a.) Approval of August 1, 2022 Council Minutes
 - b.) FY 22-23 Budget Amendment #2
 - c.) FY 22-23 Budget Amendment #3
 - d.) FY 22-23 Budget Amendment #4
 - e.) Capital Project Ordinance Fund 41 (Ord. No. 22-14)
 - f.) Ordinance Amendment to the Special Revenue Fund 20 (Ord. No. 22-15)
 - g.) Beach Renourishment Capital Project Ordinance Amendment Fund 30 (Ord. No. 22-16)
 - h.) Resolution for Exemption from Architect, Engineer, Surveyor Qualification Selection Process for the Project of Remodeling the Building at 5200 N. Croatan Highway
 - i.) Acceptance of a Donation from Mr. & Mrs. Zeigler.
 - j.) Government & Education Access Channel Committee Attendance Policy
 - k.) Kitty Hawk Baptist Church Site Plan Review Fees
 - l.) Proclamation: Diaper Need Awareness Week
 - m.) Resolution in Support of Legislation Concerning Digging Dangerous Holes on the Beach
7. Items Removed from the Consent Agenda
8. Public Hearing:
 - a.) Text Amendment: 42-1. Definitions; 42-194, Unlisted uses; 42-250, BC-1; 42-251, BC-2; 42-253, BC-3; Proposed reclassification of certain permitted and special uses. (Ord. No. 22-17)
9. Planning:
 - a.) Land Use Plan update consultant review. Staff will present results from the recent RFPs for the Kitty Hawk CAMA Land Use Plan update.
 - b.) Itinerant merchants/Outdoor gatherings. Staff will present options moving forward to address recent concerns/issues with itinerant merchants and outdoor gathering permits and requests direction.
10. Old Business:
 - a.) Due Diligence Update on Property Under Contract at 5200 N. Croatan Highway
11. Possible New Business
12. Reports/General Comments from Town Manager
13. Reports/General Comments from Town Attorney
14. Reports/General Comments from Town Council
15. Adjourn

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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, Planning Director Rob Testerman, ASD Melody Clopton, Finance Officer Liliana Noble, Police Sergeant Anthony Edwards, and PWD Willie Midgett

1. CALL TO ORDER

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

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

After 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 Councilman Hines and the vote was unanimous, 5-0.

4. PRESENTATIONS:

- Tom Heffner – *Postponed*
- Outer Banks Tourism Board/Event Center Planning – Chairman Tim Cafferty gave a brief overview of why the Outer Banks Visitors Bureau exists and Executive Director Lee Nettles gave an update of what is planned for the Event Center in Nags Head. He said he hopes council will support the proposal.

5. PUBLIC COMMENT

1.) Donna Griffin 802 Cardinal St., Kill Devil Hills, NC: *Thank you for hearing from us this evening. I run and own Roanoke Island Artisans in Kitty Hawk. I have been nurturing creativity on the Outer Banks for 30 years with the Art Extravaganza, church groups, scouts and homeschool groups. You name it. All on a volunteer basis. So, I am a collaborator, a facilitator and a connection maker and I take that into my business. In July this year we planned to do a little art market and it literally was meant to just meet a great need in our community for local artists to have more opportunities to sell their work and show their work. It was extremely well received by locals and visitors who were delighted to participate in a cultural event while supporting small businesses and local artists. Many people found our studio and other shops in Kitty Hawk for the*

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first time because the art market caught their eye and prompted them to slow down and take a look.

The artists who sat in 90 plus degree heat on Sunday afternoons are not itinerant. They are not blowing through our town. They are our neighbors, and they are just trying to make a living like you and me. They are young adults like Isabella who grew up here and jumped at the opportunity to get her feet wet selling her art and testing the market and making a living doing something she loves. Abby and her sister who attend First Flight Schools were there and they do not even drive yet but their mom is committed to nurturing their entrepreneurial spirit and stood by their side as they learned to navigate running their budding art business. The artist community is one of the many things the Outer Banks is known for. The number of artists has grown considerably over the last two years. Making a decision to allow artists and business owners to innovate together is a win for all including the Town of Kitty Hawk. Business competition has given way to collaboration. Collaboration is the wave of the future. It allows for mutual growth and expands networks. It saves time and precious resources for small businesses and fuels innovation.

Ami Hill has been a forerunner for this way since 2020 with her Muse bus and I encourage you to follow her lead. As you move forward, I hope that the language you choose will prevent any new ordinance from being used arbitrarily to pick winners and losers which is what happened when the town denied any further permitting during the busy summer season unfortunately. I hope you will find your way to act quickly and allow for a successful fourth quarter. There are a great number of reasons why we should make it easy for businesses to collaborate in this way but tonight I ask you why not? I cannot for the life of me think of a reason. I invited Ami to our market (3-minute timer). Giving businesses the freedom to work together as we see fit is what we are asking for and so I challenge you to set the bar for allowing small businesses and artists to thrive in Kitty Hawk. Let's all rise together.

2. Marty Griffin, 802 Cardinal St., Kill Devil Hills, NC: *Donna is my wife which makes me her business partner by default. I will be short and sweet with what I want to say. I am a realtor here on the Outer Banks. I have been for over 20 years. I talk to a lot of people, residents, homeowners, visitors and wannabe homeowners. One thing that I hear often is that the Outer Banks in general has become more and more like any town USA with big box stores and chains. Just becoming more of the norm for the area. I just want to say that I feel that these small art markets and similar events kind of will help us maintain the charm and the unique character that we have always been known for. I hope you will work with us to make these events happen and lead the way for other towns and the county to keep us moving in the right direction. I thank you very much.*

3. Ami Hill, 308 Cameron St., Kill Devil Hills, NC: *I have homework for you. I will cover that first. I did a petition back in June. An on-line petition and this is a copy of it and the 785 signatures as of last week, 791 now, asking not just Kitty Hawk but all of the towns here to start building a path for local artisans rather than building bigger walls. I will pass those out.*

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My first request this evening is regarding the moratorium on event permits you all issued in August. Simply put please lift it. Not allowing events is unfairly handcuffing my business and local artisans as well as brick and mortar like Roanoke Island Artisans during a very crucial time. We are all local residents and small business owners working hard to earn a living in order to feed our families and continue to be able to afford to live here. I personally hosted multiple events just like the _____ in the Town of Kitty Hawk. Successfully and without incident. By refusing to issue event permits you have now shut down the ability of dozens of local residents and small business owners we partner with from simply trying to generate revenue and in turn tax revenue. Local businesses are a benefit to the brick-and-mortar businesses that we partner with. The businesses see increased traffic and revenue as we run an event on their property. In the case of both my food truck trailer and the markets I have hosted at milepost 4.5 and Longboards and the food trailer at Stack 'em High we are generating revenue on commercial property which would otherwise be sitting idle. _____ strip center at 4.5 is closed on Sundays when we have those markets out there. Stack 'em High closes at noon. My food trailer opens at 11:30 and runs to 9:30 at night. In cases where the businesses are open, they see increased revenue as well as just doubling the revenue from other businesses being on that property and generating _____.

For these reasons and many more I am asking that you please create a committee of business owners, residents and affected people to go over these itinerant ordinances before making any decisions. And I will leave you with one question which is why? Why would you want an ordinance in your town that would prohibit people from increasing revenue generation on commercial property and limit the local people's ability to earn a living. Thank you.

4. James Creekmore, 308 Cameron St., Kill Devil Hills, NC: *I live in Kill Devil Hills but just barely. I am right behind Henry's on the first street. Kitty Hawk receives the majority, the overwhelming majority, of my discretionary spending here in town and I like it a lot. Kitty Hawk has a huge advantage over Kill Devil Hills and Nags Head in that you have space, and it is not quite so busy so we can move around a lot easier.*

The pandemic brought a new way of doing business to Kitty Hawk and everywhere on the beach by forcing people outside. We are a beach town and that makes perfect sense. If I never had to eat inside a restaurant or shop inside a store again, I would be perfectly thrilled. But what some retailers did, including Ami and other artisans, they created an outdoor festival environment through which they could retail their goods. I am speaking to you as a resident and purchaser of those commodities. I have been to many, many, many of the Muse original markets they put together during the pandemic. They started at Rundown and then they were at Longboards. I went to both of those restaurants and ate at both of those restaurants that day because the market was there. So, the old coastal proverb of a rising tide lifts all ships, both of those businesses benefitted by my family going there to shop at the Muse village and then eating at those restaurants.

The last time that I went to the market was when it was at Roanoke Island Artisans shopping center. I had never been in that retail store. I did not realize it was more than a place to make art. I did not realize that it actually retailed art. I was there at the bus that day to buy gifts for a party I was

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going to. All of them were purchased and then I met Marty in there. Purchased four gifts that day and one of them I liked so much I contacted the artist and purchased thirteen or fourteen more directly for Christmas gifts. Then, while I was standing there talking to Ami outside, I thought of something across the street at Trio and the bookstore that I wanted. When I left, I went over there and picked up something at each of those places before going back home. So again, the markets bring visibility to the retailers and the establishments that are around them. And everyone benefits from it. Those were all purchases I would not have made that day because I would not have gone out other than to go see the Muse village at the 4.5 milepost shops.

What I would like to ask this council and all the other beach councils that are facing and grappling with whether you need to change or adapt your ordinances just like Mrs. Griffin said think of them as your neighbors, think of them as your local businesspeople. These are no longer carpetbaggers from the '50's and '60's peddling goods at the walkovers to the beach. That is not what we are dealing with at all. We are dealing with people who adapted their businesses during the pandemic to sell outside and to maximum the commercial returns at private commercial space. When I go to these, I like to purchase from a variety of them and it is a lot of fun. So do not take that away from the community or the vendors. Thank you.

5. Gary Perry, 3831 Herbert Perry Road, Kitty Hawk, NC: *I have a different concern. I have some concerns based on articles in the Voice and Times. First, I congratulate your efforts to add and improve public beach parking. Please continue that effort as time and finance allow.*

Now, my concerns center on the ongoing issue of providing a replacement police station safe from flooding. Given the inflationary cost overruns of the plans when I was on council, your decision to buy the Sentara property is a good one. That said, from articles I have read there is some discussion of putting the Aycock Brown Tourist Center in the building with police and Bear Drugs and other medical offices. That is a bad idea for the following reasons:

- 1. A police station should not be encumbered with external visitors in need of toilet facilities in the same building or wandering around aimlessly.*
- 2. A police station in today's environment requires a level of security that other uses beyond a public safety facility would hamper.*
- 3. While use of the existing building was not the original plan it does present this and future councils some unseen benefit.*
- 4. Long before I sat on council, the state was pushing Kitty Hawk to build and equip a second fire station in the area, in that area up there. That push could become a mandate as the town grows. Additionally, the fact that our very nice fire station was built in a flood zone creates other problems. Twice now, the fire station has been completely surrounded by flood waters several feet deep making response with fire trucks from the fire station either impractical or unwise. As a result, when a storm is expected, one truck with crew is dispatched to high ground thus weathering the storm unprotected. The Sentara site gives you the additional option to add shelter for that truck and crew now plus future fire department expansion. You must look at the larger long-range picture for this facility.*

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5. *Letting the county build their proposed EMS facility separate from a town facility is probably in the best interest of town and county.*

Now to my second concern of a museum on the existing Aycock Brown visitor site. Since Mr. W. Cress first approached the town looking for a large parcel of property to build a place displaying numerous replicas of the Wright flyers, size and purpose seems to have expanded exponentially. Some things council and the citizens of Kitty Hawk need to understand:

1. *Mr. Cress is a first-rate salesman.*
2. *Is he selling this for the benefit of the Town of Kitty Hawk? I asked at the outset why this project was not better suited to the NPS site. The response was NPS would be too difficult to work with and take too long. However, as the scheme gained ground, I learned that another purpose was to provide a place for the current owner of the replicas to also be the curator of the museum, something the NPS would be unlikely to permit.*
3. *As the scope and size of this museum began to matriculate, I had serious concerns whether Kitty Hawk really wanted something of this size in the locations first examined. I mean, people seem happy, content with the current level of tourists driving through enroute to other towns and leaving us kind of laid back and underwhelmed by additional visitors. Will a super large facility such as this be acceptable to the citizens?*
4. *Early on, I advised Mr. Cress that Kitty Hawk did not have financial resources to build, maintain or staff such a facility. This council must consider what would happen if outside money builds and operates for a while only to have it fail and become a white elephant. Who will take over maintenance and operation?*
5. *The county just finished a new COA facility. Why is another S.T.E.M classroom set up needed? Where would students lodge?*

Finally, I do not understand how the police station, visitor center and a museum became connected. I do know they need to be disconnected. You have a lot to think about. Thank you for listening.

6. Jessie Piacenza, 1407 Captains Circle, Kill Devil Hills, NC: *Thank you for having us here tonight. I wanted to just remind everybody that a lot of us either moved here or continue to because we love the Mayberry feel and that is what still draws people to the Outer Banks. People like this slower way of life and getting to meet us. It is always funny when I get to talk with visitors, and they are like is that what it is really like here on the Outer Banks or what do you do in the winter. That is what these markets have allowed for me. To connect with a lot of our guests and our locals alike. During covid, as it was already said, a lot of people found a love for dining and shopping outside. We as vendors took that risk and we were out there, face to face with the public making ends meet and still being a welcoming committee for the Outer Banks. I am very thankful. It made for some life changing decisions in my life that I was able to do that. I ask, as that phase of our lives is coming to an end, I ask that we continue to adapt and evolve as the Outer Banks has many times and to still allow us to go outside and to enjoy restaurants and shopping. I understand that regulations may be necessary. I propose making sure the businesses are registered or if we need to have permits for such events that is all well and understood. I offer that as a business entity and*

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pay my taxes and all of that. It adds value to my life, my children's life and from the feedback I have gotten from my customers as a five-star business on Etsy as well we are enhancing the lives of our guests too. Thank you.

7. Danielle Hutchison, 8911 S. Old Oregon Inlet Road, Nags Head, NC: *What is better than fresh cut flowers at a farmers' market or an outdoor popup? I have no interest in being indoors. I have bought and resold flowers from seven regional or local farms and I sell other goods like candles I make, and these flowers never hit a refrigerator. They are not shipped in a truck. They are from right here to people so I am all for all outdoor popups. Thanks.*

8. Mayor Garriss read aloud an email from: Ralph Calfee, 3048 Martins Point Road, Dare County, NC: *Mayor, Mayor Pro Tem and Town Councilmembers. Review and discussion of itinerant vendor sales permits by the Town of Kitty Hawk and associated issues with those permits have brought to light the need for rewrite of the Kitty Hawk Town Code with respect to itinerant vendor sales, events and gatherings and temporary uses. Please ask the planning department to develop a rationale for regulation and to proposed regulation of the uses.*

In the development of the rationale and regulations please consider both the desire of itinerant vendors for temporary sales and the impact of itinerant vendor sales on brick-and-mortar businesses in the town. And please include as well consideration of other nearby town regulations; if Kitty Hawk adopts regulations which are significantly more permissive than other nearby towns Kitty Hawk should be expected to become a target community for such sales with consequential impacts on Kitty Hawk brick and mortar businesses. Thank you for your consideration, Ralph Calfee.

Garriss: *Council, as you know, and many people here in attendance tonight very well know, this has been discussed before. We have an ordinance in place. I know Rob is here tonight to give us some discussion and planning, other ideas and options. Do we enforce the ordinance, do we come together as council and feel the need to change that ordinance. We need to talk, and I have heard it from people that this side of the road needs to be treated just like that side of the road. We need to be equal whatever we do. Whatever decision we make. Whether we make that tonight or continue to work on it.*

This past Friday we had a special council meeting and I left to go to a business in town to get my wife a gift card for her birthday. It was a good decision by the way. When I walked in the front door the lady said "uh oh" here comes the mayor. Are you here to get on us about tents and stuff out front? I said no ma'am. I am here to get a gift card for my wife and suddenly a smile came on her face. We need to get this thing settled one way or other so we will have a direction to go and the people sitting out there will have a direction to go. They deserve it, we all deserve it.

6. CONSENT AGENDA

a.) Approval of August 1, 2022 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

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b.) FY 22-23 Budget Amendment #2. This amendment, in the amount of \$22,000, is to replace the current phone system in the town hall to VoIP Services. *(An approval of the consent agenda will approve this budget amendment.)*

c.) FY 22-23 Budget Amendment #3. This amendment will allocate \$5,750,000 in interfund transfers to the Capital Project Fund 41 for the remodeling project at 5200 North Croatan Highway for the new police station. *(An approval of the consent agenda will approve this budget amendment.)*

d.) FY 22-23 Budget Amendment #4. This amendment, in the amount of \$17,517, encumbers open purchase orders from FY 21-22. *(An approval of the consent agenda will approve this budget amendment.)*

e.) Capital Project Ordinance Fund 41 (Ord. No. 22-14) This capital project ordinance, in the amount of \$5,750,000, will be used for the purchase of property at 5200 North Croatan Highway, legal fees and building renovations. *(An approval of the consent agenda will approve this budget amendment.)*

f.) Ordinance Amendment to the Special Revenue Fund 20 (Ord. No. 22-15) The town has elected to take the standard allowance under the revenue loss expenditure category to use the grant funds for government services. The total grant amount of \$1,138,068.58 is transferred to the FY 22-23 annual Budget Ordinance for appropriation to the town's law enforcement department to cover salaries for the period of July 1, 2022 through June 30, 2023. *(An approval of the consent agenda will approve this budget amendment.)*

g.) Beach Renourishment Capital Project Ordinance Amendment Fund 30 (Ord. No. 22-16) This capital project ordinance is recognize and appropriate the contribution from Dare County to the project and the allocation of cost among line items. *(An approval of the consent agenda will approve this budget amendment.)*

h.) Resolution for Exemption from Architect, Engineer, Surveyor Qualification Selection Process for the Project of Remodeling the Building at 5200 N. Croatan Highway. G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services and design build services to be based on qualifications and without regard to fee. G.S.143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of G.S.143-64.31 if the estimated fee is less than \$50,000. The estimated fee for design services for remodeling this building is less than \$50,000 and the town council resolves this project is hereby made exempt from provisions of G.S.143-64.31. *(An approval of the consent agenda will adopt this resolution.)*

i.) Acceptance of a Donation. Mr. & Mrs. Zeigler donated \$200 to the police department. The police chief is requesting that this money be used for AED (automated external defibrillator) supplies. *(An approval of the consent agenda will accept the donation and requested use.)*

j.) Government & Education Access Channel Committee Attendance Policy. The GEAC Committee approved an attendance policy at their August 24, 2022 meeting. Included in the policy is faithful attendance at the regular meetings of the committee. *(An approval of the consent agenda will approve this attendance policy.)*

k.) Kitty Hawk Baptist Church Site Plan Review Fees. The church has requested that site plan review fees, in the amount of \$1,326.50, be waived for an upcoming expansion. *(An approval of the consent agenda will approve this request.)*

l.) Proclamation: Diaper Need Awareness Week. On August 25, 2022, Mayor Garriss proclaimed September 24 – October 2, 2022 as Diaper Need Awareness Week as requested by the Children & Youth Partnership for Dare County. *(An approval of the consent agenda will acknowledge this proclamation.)*

m.) Resolution in Support of Legislation Concerning Digging Dangerous Holes on the Beach. This resolution supports the Town of Nags Head's initiative to ask the state to provide stronger enforcement mechanisms for the incredibly dangerous issue of holes on the beach. *(An approval of the consent agenda will adopt this resolution.)*

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

7. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

8. PUBLIC HEARING:

a.) Text Amendment: 42-1. Definitions; 42-194, Unlisted uses; 42-250, BC-1; 42-251, BC-2; 42-253, BC-3; Proposed reclassification of certain permitted and special uses.

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

Planner Testerman reviewed the following staff report with council and the audience.

Background & Proposals

Attachments: Proposed revisions to Sec. 42-1; 42-194; 42-250; 42-251; 42-252

Staff is proposing to reorganize the permitted and special uses in the BC-1, BC-2 and BC-3 zoning districts, specifically, moving several current special uses into the permitted use category of the districts. A special use permit typically adds flexibility to a zoning ordinance while still retaining oversight over particular proposals that may not be as appropriate of a use as others within a specific district.

In addition to any specific standards and conditions listed for any special use in the zoning districts the Planning Board and Council must find that a proposed special use:

- a. Does not materially endanger the public health or safety,
- b. Does meet all required conditions and specifications,
- c. Will not substantially injure the value of adjoining property or be a public nuisance, and
- d. Will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.

If any of those four conditions listed in Sec 42-100(b)8 of the zoning ordinance are not met, the special use permit would be denied. The uses that staff has proposed to add to "permitted uses" or relocate from "special uses" to "permitted uses", are those that would meet the four conditions listed above, and, in many cases are less intensive uses than several of the already permitted uses in the districts, yet are required to go through a 2.5 – 3 month review process while waiting for a public hearing.

In addition to the revisions to proposed BC-1, BC-2 and BC-3 listed in the attachments to this staff report, staff is recommending the following additions and revisions to definitions listed in Sec. 42-1:

Day care center: A child day care facility as defined in G.S. § 110-86(3). An adult day care facility as defined in G.S. § 131D-6(b).

Delicatessen means a retail store with no customer seating specializing in the sale of prepared cooked meats, smoked fish, cheeses, sandwiches and other specialty food items.

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Hospital means an institution providing physical services primarily for human inpatient medical or surgical care for the sick or injured. A hospital may include related facilities such as laboratories, outpatient services, training facilities, central service facilities, mental health and staff offices. A hospital shall include an on-site heliport.

Medical clinic means a building or structure or portion thereof where medical services are provided from licensed practitioners, for outpatients only. This definition shall include doctor's and dentist's offices, and the offices of any other licensed and/or certified health care providers.

Place of worship means churches, mosques, synagogues, temples and the like.

In addition to the proposed reorganization of the permitted and special uses, staff is proposing the attached revisions to section 42-194, currently titled "unlisted uses". The proposal, in addition to providing a process for reviewing potential unlisted uses, sets out a list of uses that would be prohibited in all zoning districts. These are intended to be uses that Council would deem to be inappropriate in any of our residential or commercial districts.

The lists of permitted uses, special uses, and proposed prohibited uses have been reviewed and recommended as presented by the Planning Board. If Council wishes to add or omit any additional uses, this would be the opportunity to do so.

In coming months, staff will bring forward similar proposals to other zoning districts in town.

Planning Board Recommendation

July 14, 2022 meeting, the Planning Board unanimously recommended approval of the proposed text amendment, as presented.

Not hearing any questions or comments, **Councilman Hines made a motion to go out of public hearing and into regular session. It was seconded by Councilwoman McClean and unanimously approved, 5-0.**

MPT Pruitt made a motion, seconded by Councilman Hines, to approve the proposed text amendments, reclassifying certain special and permitted uses in the BC-1, BC-2 and BC-3 districts and defining specific uses prohibited in all districts. Town council has found this proposal to be consistent with the town's adopted land use plan. (Ordinance No. 22-17)

9. PLANNING:

a.) Land Use Plan Update Consultant Review. Staff will present results from the recent RFPs for the Kitty Hawk CAMA Land Use Plan update.

Following a brief review of the only proposal the town received in the amount of \$90,000 to \$105,000, **Councilwoman McClean made a motion to accept the CAMA Land Use Plan update proposal submitted by Stewart Incorporated. The motion was seconded by Councilwoman Walker and the vote was unanimous, 5-0.**

b.) Itinerant Merchants/Outdoor Gatherings. Staff will present options moving forward to address recent concerns/issues with itinerant merchants and outdoor gathering permits and requests direction.

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Garriss: *You all heard earlier what I have to say. In case anybody leaves, thank you all for coming and speaking tonight. I know it is not an always an easy thing to stand up and speak in front of a group.*

Rob reviewed the following staff memorandum.

Background & Analysis

As reported to Council in July, currently, Section 16-1 of Town Code prohibits the sale of any goods within the street and highway rights-of-way, on the ocean beaches of town, or on parking lots (and other areas open to the public) which are contiguous to the state highway and town street rights-of-way.

Sec. 16-1. - Selling goods on public property.

(a) It shall be unlawful for any person to expose for sale, offer to sell, barter or exchange, or sell, barter or exchange any goods, wares, or merchandise within the street and highway rights-of-way of the town, or on the ocean beaches of the town, or on parking lots (and other areas open to the public) which are contiguous to the state highway and town street rights-of-way.

Although not written into the language, one exception to that is vendors that participate in permitted outdoor gatherings per Sec. 18-11 of Town Code. Additionally, for a number of years, the town has permitted a mobile food vendor (food truck/trailer/cart) to be located at an existing commercial establishment if the owner of that establishment also owns the mobile vendor. Based on events from another North Carolina town a few years ago, it is evident that this practice is not a viable practice.

In addition, it has been recently discovered that for the past several years there have been some discrepancies between how the outdoor gathering ordinance is written, versus how it has been applied in practice, dating back to the early 2010's. Specifically, the ordinance states that outdoor gathering permits may be issued for seven consecutive days. In practice, the town has been issuing them for seven days at a time but allowing those days to be spread out.

After discussing with the Town Attorney, it is evident that the town cannot continue its current interpretations based on the language in the Town Code. Staff requests guidance from Council in determining how Kitty Hawk would like to handle mobile vendors and outdoor gatherings. Additionally, it is the opinion of staff that some of the uses that have been permitted as outdoor gatherings are not consistent with the intent of the ordinance and would be better suited under Sec. 42-502, Temporary uses. The recent artisan market that was permitted at the MP 4.5 shops, for example.

Two options moving forward would be to either a) leave the ordinance as is and enforce the ordinance as written, or b) direct staff to draft language that could allow, but also regulate, mobile vendors in certain scenarios as well as clean up portions of the outdoor gathering ordinance and expand on the temporary uses ordinance.

Directing staff to draft language would not obligate Council to adopt any proposed language that is ultimately presented. If Council disagrees with whatever proposal staff might bring forward, it could be amended to better suit what Council would prefer to see in the ordinance and for the town, or the proposal could be denied outright.

Recommended Action by Town Council

Staff is requesting direction from Town Council as to whether Council would prefer to leave the ordinances as is and enforce them as written; or to have staff draft language for Council to consider amendments to the ordinance regarding itinerant merchants, outdoor gatherings, and temporary uses.

Walker: *I would be open to getting suggestions from Rob and the planning board for how this needs to be rewritten so it can be addressed and enforced.*

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Garriss: *I have copied down the speakers concerns and if we can take them into consideration with whatever we decide to do that would be great.*

Testerman: *My contact information is on the town website. Any interested party can contact me with suggestions. I do planning and zoning and am not an expert on the markets and vendors. Any suggestions that are sent I cannot guarantee it is going to be included in what is presented to the planning board and council but the more information I have to go on is important.*

Pruitt: *We are not passing the buck. Our process is we have a planning board and usually we send your ideas as well as the ideas from staff to them and then they send us a recommendation. That is what I would like. I would like your voices and staff voices heard and then bring back what they come up with.*

McClean: *We need to come up with something comprehensive. In the meantime, what can we do to help these folks out for the rest of the season this year. Is there anything that can be done? Could we issue permits for the fall season?*

Testerman: *If we want to keep issuing outdoor gathering permits while we are in the process of rewriting the ordinance it should follow the ordinance. A strict application of Section 18.*

Garriss: *Basically, we have an ordinance in place that is not being enforced properly.*

Testerman: *Correct.*

McClean: *What would that mean to these folks? Can you capsulize so that they can hear what they could do for the remainder of the year if anything.*

Testerman: *Like I mentioned, the one I think stirred everything up and drew people out tonight is the market that was done at milepost 4.5. It was issued for five separate Sundays. If it was done the way the ordinance is written the permit would have been issued for seven consecutive days. If they wanted to do a separate Sunday, they would have to get another permit.*

McClean: *So, they could run ...*

Testerman: *Yes, the way it is written right now is there is no limit on how many ...*

McClean: *They could run concurrent permits. They just have to reapply for every weekend or every week.*

Testerman: *Anything that we would issue in this time being would have to be for seven consecutive days and would have to comply with the other components of the ordinance as well.*

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McClellan: *Just trying to find out if there is anything we could do to help them right now.*

Hines: *I want to help them too. I have not had one phone call from a brick-and-mortar store opposed to what is going on. I personally like it and I think there is enough room for everybody. It will weed itself out in its own right. You talk about food trucks. We can go down all the paths, but I do not have a problem with folks setting up and displaying their artwork and flowers and things of that effect. I think it is good for the community.*

McClellan: *I really do not think the brick-and-mortar stores need protection. Their ideas need to be heard but if they are going to bring business in, they are going to bring business in one way or the other whether it is somebody having an art festival in a parking lot ... and if they feel it is competition well competition is what makes businesses thrive. It brings out creativity.*

Hines: *I do not know that it really is so much competition either. Everybody has their own product. I think they all work hand in hand. In my eyes anyway.*

Garriss: *I think we are looking at two ... outdoor gathering is not the same thing as what they are wanting to do.*

Testerman: *I think this example is better suited under temporary uses. Issue permits for these temporary sale type events. Outdoor gathering is more like an event such as Bike Week. It is something I will look at before I take it to the planning board.*

Garriss: *I know these people want a decision tonight. Do we have a motion?*

Walker: *How quickly can we get that rewritten with the suggestions you have.*

Testerman: *I can probably have something to the planning board in October or November.*

Hines: *I would like to get it on there as soon as we could so it can get back to us and they can be prepared for the next season.*

Testerman: *October is going to be the earliest because of the timing. Rather than trying to do it all in one presentation to council with itinerant merchants, outdoor gatherings, temporary uses, I will break them apart so there is less chance of getting confused when we are talking about one or the other.*

Walker: *The moratorium that is in place right now. Is that something we can relax, and they can get a permit as it is written at this time?*

Testerman: *Yes. The town attorney and town manager are not here right now but I think if council wants to lift that, with the understanding any outdoor gathering permits written will comply with the current ordinance.*

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McClean: *They could get it for one week.*

Hines: *And only use it for the weekend.*

McClean: *Use it for the weekend and then another one for the next weekend. Cover September and October.*

Pruitt: *To be honest I did not realize we had done a moratorium. I knew we wanted to look at it and stop breaking out the seven days and make them consecutive, so they were more in line with the code ... I think if we have a code in place then they should be able to go by that code until we can correct it or leave it like it is. Seems the fair way for these folks.*

Hines: *I agree.*

Garriss: *Is that going to benefit these folks?*

Testerman: *It might. I cannot answer if it will benefit them or not.*

Hines: *I cannot speak for them, but I feel like it gives them the availability to go on next weekend.*

McClean: *It gives them the chance to do something.*

Hines: *It helps them in the short term.*

Testerman: *If that is what you want to do you could include in a motion that we will grant outdoor gathering permits, as written, while this goes to the planning board with a text amendment.*

Councilman Hines said he would like to make what Planner Testerman just stated into a motion: outdoor gathering permits will be allowed subject to the town code while a text amendment is being considered by the planning board and town council. Councilwoman McClean seconded. The vote was unanimous, 5-0.

10. OLD BUSINESS:

a.) Due Diligence Update on Property Under Contract at 5200 N. Croatan Highway

Hines: *We are moving through our examination period. Surveying, site plans, environmental impact studies are all just about at the finish line. Inspections have come back more or less as we expected they would. We have some things to work through, but I do not see anything that is going to prohibit us from moving forward. I still think it is a good purchase, looking at the reports. I will be happy to answer any questions.*

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Garriss: *Casey is working on the title and the closing date. Do we have anything further on that?*

Hines: *We were going to utilize the provision in our contract that automatically grants an additional 30 days for an examination period. We are going to trigger that to move into the extra 30 days. I suspect we will have it closed inside that timeframe too.*

Walker: *David was there any study done concerning removal of asbestos.*

Hines: *We held back on inspecting any of those buildings because we knew we were going to get rid of them.*

Walker: *Okay.*

11. POSSIBLE NEW BUSINESS

There was not any new business.

12. TOWN MANAGER

Garriss: *Our town manager left earlier because he had another meeting in Manteo at 7 o'clock regarding some ongoing town business.*

13. TOWN ATTORNEY

Garriss: *Our town attorney is under the weather and did not feel up to attending this meeting.*

14. TOWN COUNCIL

Pruitt: *Our lifesaving service is wrapping up their season and I just want to thank them. They did a great job this summer. They make our guests feel so welcome. I did a drive along with Captain Cole and he explained how he has been working to educate people on digging the large holes. He has noticed a big decrease since they have started making people aware. It was an enjoyable ride and a nice way to say goodbye to some of our fantastic lifeguards that put their life in danger every day when they go to work. That is a heck of a job.*

Garriss: *Thank you very much. I went to the beach Sunday and stopped at the lifeguard stand and the young lady that was there it was her last day. She was leaving yesterday and going back to Liberty University. The young man there said it was his last day also. I asked had they had any complaints about beach renourishment, and they had not. I asked how their summer went and they said it was a very enjoyable, pleasurable summer and they look forward to coming back next year. I agree that they did a great job.*

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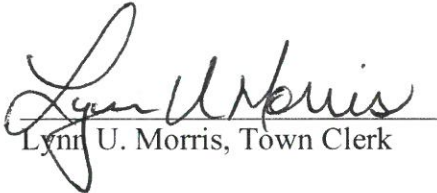
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McClean: *We made it through the Labor Day Weekend. It is now into the official shoulder season, and I am looking forward to some fall temperatures. Not so much the temperature, how about some fall humidity.*

15. ADJOURN

Councilwoman McClean made a motion, seconded by Councilman Hines, to adjourn. The vote was unanimous, 5-0. Time was 7:12 p.m.

These minutes were approved at the October 3, 2022 council meeting.


Lynn U. Morris, Town Clerk


D. Craig Garriss, Mayor