

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, October 3, 2022
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
 - Press Release: Dog Running at Large
 - Presentation to Former Recreation Committee Member Tom Heffner
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of September 6, 2022 Council Minutes
 - b.) FY 21-22 Budget Amendment #5
 - c.) Purchase of Vehicle for the Town Administrative Staff
 - d.) Acceptance of a Donation from Joe Lamb Realty & Associates, Inc.
 - e.) Resolution Authorizing the Town to Refund Overpayments of Occupancy Taxes
 - f.) Building Demolition Contract for 5200 N. Croatan Highway
 - g.) Lease Agreement with Bear Drugs, Inc.
 - h.) 2023 Meeting Calendar and Town Council Meeting Dates Resolution
6. Items Removed from the Consent Agenda
7. Planning:
 - a.) Town Code Amendment. Sec. 16-1.- Selling goods on public property; Sec. 18-11.- Outdoor events and gatherings. Staff is proposing amendments to ordinances regulating itinerant merchants and permitted outdoor events.
 - b.) Schedule Public Hearing. Text Amendment: 42-419(7), Standards and requirements, Planned Commercial District overlay. Applicant proposes to amend the maximum building height in a PCD from 35 feet to 45 feet in height. (It is requested the hearing be held November 7, 2022.)
8. New Business:
 - a.) Lease Agreement with the U.S. Post Office/Bath House Parking Expansion
9. Reports/General Comments from Town Manager
10. Reports/General Comments from Town Attorney
11. Reports/General Comments from Town Council
12. Adjourn

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, Town Attorney Casey Varnell, Planning Director Rob Testerman, ASD Melody Clopton, Police Lieutenant Jimmie Helms and PWD Willie Midgett

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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 was held, the Pledge of Allegiance was recited.

- **PRESS RELEASE**

Mayor Garriss read aloud the following: *On October 1, 2022, Kitty Hawk Police Department was dispatched to the 4000 block of Smith Street after a 911 call for a dog running at large and being aggressive towards children. When the officer made contact with the owner of the dog the dog came from under the house aggressively charged the officer and bit him. The officer discharged his duty issued weapon to stop the attack and unfortunately the dog did not survive. The police department will be investigating this incident to ensure the town's policy and criteria for discharge of a service weapon were followed. End of statement.*

- **PRESENTATION**

At this time Mayor Pro Tem Pruitt presented former Recreation Committee Member Tom Heffner with a plaque for his years of service to the town. The plaque shows a photograph of a tree in Sandy Run Park with a marker on it honoring Mr. Heffner.

Mayor Garriss thanked Tom and said council is very appreciative of his service on the committee as well as the town in general.

3. APPROVAL OF AGENDA

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

4. PUBLIC COMMENT

1. Lynette Fenton, 4010 Smith St., Kitty Hawk, NC: *The reason I am here is about an incident at the 4000 area of Smith Street just three blocks from here. Last Saturday our dog and family member was shot in our yard. Any person who has dogs and knows their value knows the emotional, physical and spiritual support of our dogs. They give individuals, families and communities identity and spirit. Dogs equal healthy humans, healthy families, increase in exercise, better health and the kind of community that I believe in my heart that Kitty Hawk is. Something has gone wrong. Something shocking and we should all be poised for a change.*

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These are the events as my family and I recall them. Early last Saturday morning, October 1st, a phone call was made to the Kitty Hawk Police Department concerning a neighborhood dog loose. A dog known in this neighborhood to be kind and sweet to children. Two playful family dogs at some point had made their way off the property, meandered around the cul-de-sac, maybe peed on a mailbox or two, made their way back into their own yard where the owner was doing yard work. Both the dogs were on their own property. They were not close to the road. They were easily 40 feet into their driveway nearly on their own front porch steps.

In that moment my husband, who had been walking up to the porch to get something, looked up to notice a man in all black abruptly walking down into his Kitty Hawk neighborhood driveway with intention. He walked onto the dog's property and directly toward the dogs again. The dogs are in their own driveway. They are within 20 to 30 feet of their porch steps. This unknown man to the property owner is trespassing. Never announces he is a police officer. This man abruptly walking onto private property towards the dogs. Never announces his presence, never announces his gun is drawn, he never announces he will fire, he never announces to my husband to further retain the dogs. Within a few seconds that the owner spots this man shots were fired. Not one, but three shots at a family pet, a family dog on our property down our driveway. One right between the eyes. Of course, she was dead in an instant. She was dead next to our other dog; she is dead to the curious neighbors, and we have shots fired at 9:30 in the morning in our neighborhood (3-minute timer) and she is dead in front of the local onlooking children. Here is the autopsy you can pass around. It has where the shots were fired, and a complete autopsy will be done on Wednesday at Roanoke Island.

Garriss: *Lynn is it possible we can get someone to make copies of this for council tonight?*

Morris: *Yes sir.*

Fenton: *Here is the second page of it. The photos are more poignant where you can kind of see what the actual wounds are, and they are described. Am I done?*

Garriss: *Yes ma'am, unfortunately. You have a great report here for us that I can assure you will be read.*

Fenton: *I know it is graphic and there are some oddities in this situation that I think we all can address as human beings. The situation warrants further investigation. Any one of us that has a dog you know in your heart something is not lining up. I mean you get it. We ... there are so many what ifs we could get into. What if we had kids back by the firepit. Thank goodness it was one adult who witnessed it.*

I was at work. I got called in. I ran springing down the road and Officer Dana who is my neighbor and has known me for 30 years ... that I have known him ... this cannot be true this can't ... and I go Dana, Dana, Dana you ... we do not have somebody with a gun, like we have a gun, a gun, you will know what to do Dana. You will know what to do. I do not even know what to do. We do not

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have a gun at our house. A gun? In a neighborhood at 9:30 in the morning?

I get the whole dog thing. That there could have been fear but what was really ... something was mishandled in this. This did not need to happen. This is something like really intense going on with this person who is a representation of our families and communities, and it is a disconnect. It is a solid. We cannot be for this type of behavior. This could have been any of us. Heck yea we are upset. Our dog slept on our pillows. We loved that dog.

Avalon Pier has like a ... they give her treats. One day she rushed in there she had her ... had lost her collar in the shore break and she goes in, and the bartender is like oh yea, hey Sage. How are you doing. And we are a few steps behind. So, she can go out and check out the pigeon situation on the pier. This was a real dog. This was not some like a beast frightening children.

Garriss: *You have the copies for us Sandy? Thank you, Mrs. Fenton, very much. Thank you for coming forward. I know that was not easy to do. Council make sure we keep this with the information Mrs. Fenton just gave us.*

2. Jonathan Fenton, 4010 Smith St., Kitty Hawk, NC: *Good evening. I am going to continue this statement that Lynette was reading. What happens next in those few moments. As I am in complete shock watching my family member bleed out and what the officer does next is gather all the shell casings off the ground and leaves the scene. Those are the facts leading up to the death of a registered pet that was shot point blank in the head while she was in her own yard. In her own yard where an officer, who did not identify himself, walked directly towards her and shot her in the head. He never announces who he is or that he is an officer. He never announces he is going to fire. He just shoots three times.*

This officer was on duty at 6 a.m. Saturday morning. His partner had stated to me that morning that all officers are required to wear body cameras. They are also required to be sure the cameras are in working condition when they start their shift. The partner of the officer that shot our dog said to me that both of their cameras were in working order that morning. Remember the officer that shot our dog was the only one on the scene when he fired shots and did not park his vehicle in sight of me. He did not announce his presence or ask me to further detain my dog before shooting Sage in the head.

I would like to tell you that was the end of the torment for our family, but it was not. The two same officers were sent back to our street the very next morning after Sage was murdered to investigate an adjacent property. The same officer that shot our family dog came back the next morning while we were digging the hole to bury her. The same officer was sent back and used that opportunity to mock me by laughing at me as I wept. Our sweet pea Sage is dead. She will never wag her tail again, she will never lay her head in the sun, she will never jump in the ocean, she will never be there to ease my PTSD. Dead for doing what she was told by everyone around her. Dead for doing the right thing, dead for being in her own yard. Dead for barking when a stranger rushed up on her own property unannounced with a gun drawn. Sage is dead.

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We would like Officer Meador relieved from his post. We do not feel that he represents our community in the way it should be. Thank you for your time.

3. Marty Griffin, 802 Cardinal St., Kill Devil Hills, NC: *Good evening ... hate to follow up after that one. We are back in front of you again. We left the September meeting, and we were encouraged and left with the understanding that council wanted to ensure us our ability to continue our Sunday art markets at Roanoke Island Artisans. Since then, we submitted applications for four dates in October and November and those applications were denied per the opinion of the town attorney and now there are amendments being proposed to the town code.*

The big question I have is this. Do we really need a permit for this type of event? Do we really need to pay fees to be on privately owned commercial property with full permission of the property owners? If it is decided that a permit is necessary for some reason it should not unfairly restrict small businesses which brings me to the proposed amendments. In Section 18-11, Subsection 5, this is what was used to deny our most recent applications. We agree that this language should be removed from the code. We feel that this is the only amendment that is necessary, and this would allow us to be granted an outdoor event permit. As for other proposed changes to limit to only two events per year would be extremely restrictive especially in our case which is just a one-day event. Also, it is limited to two events per year, per parcel. Our parcel has eight different businesses on site so who gets to have the events?

What I am asking is that the language as proposed be removed from Section 18-11, Subsection 5 of the ordinance which would allow us to comply immediately and not limit the number of events that we could have. Thank you for your time.

Garriss: *Thank you Marty. As everyone can tell this is on the agenda later tonight for discussion.*

4. Donna Griffin, 802 Cardinal St., Kill Devil Hills, NC: *I promise you I have calmed down since my last email that I sent. At the last meeting it was suggested we take a look at the temporary use permits, so I did. It appears that all the types of sales are addressed. Everything from Christmas trees to real estate developments. They were added with careful consideration, addressing the needs of the business to operate as well as _____ to do their job which is to provide public safety and the like.*

Mayor Garriss, you have expressed multiple times that you wanted to accommodate a solution, to accommodate both sides of the road, and we are 100% in agreement. So, the council can actually do this in part tonight if you choose to vote to strike the Subsection 5 in Section 18-11 as proposed. This will remove at least one hurdle to allow both sides the equal opportunity to host art markets inside or outside of their business. This will also be a good show of faith that it is not council's desire to regulate business competition as Councilwoman McClean pointed out at the last meeting. More importantly we ask that the new more restrictive proposed language be tabled for now to afford the same careful consideration that it deserves as much as Christmas tree sales. We all love our Christmas trees, but we need some handmade ornaments to go on them, right?

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We appreciate Rob so much for all the work that he has done on this, but we feel that the proposal needs more direct input from the businesses involved. I would personally be honored to serve on a planning board committee that is specifically purposed to handle the bigger points of this whole thing. We hope that Rob can bring the technical code language and we will bring the creativity and _____ business ideas. Hopefully someone from Trio will bring some caramelized onion dip. I am seriously committed to helping the town work this out. Thank you.

5. Amy Snowden, 103 E. Meadowlark St., Kill Devil Hills, NC: *I am an artist, a maker and business owner since 1996. I remit my quarterly sales taxes and pay federal and state taxes on my profits. Making my business as legitimate as any other and I am here tonight in response to the difference between what came out in the amendments and how we left feeling last month being encouraged that you are ready and willing to help us get back to work.*

Donna addressed some of the specifics and I just want to follow with what art means to a community and what it means to me personally. I would like to read from a website "Americans for the Arts." The arts are fundamental to our community. They ennoble and inspire us. Fostering creativity, empathy and beauty. The arts also strengthen our community socially, educationally and economically. The following reasons show why an investment in artists and art organizations is vital to the nations post pandemic healing and recovery. Arts unify communities regardless of age, race and ethnicity. Arts strengthen the economy. The nations arts and culture sector are 4.3% of the nation's economy. A larger share of the GDP than agriculture, transportation and construction. Arts drives tourism and revenue to the local businesses. Arts travelers are ideal tourists staying longer and spending more to seek out cultural experiences. And arts have social impacts. The University of Pennsylvania researchers have demonstrated that a high concentration of arts in a city leads to a higher civic engagement, more social cohesion, higher child welfare and lower poverty rates.

Please do not underestimate the contribution of individual artists and makers and outdoor markets and festivals, the contribution that we make to this culture on the Outer Banks. The website Outer Banks of North Carolina says we invite you to experience the Outer Banks with a new filter. Through creativity of individuals with the ability to see beyond five senses. Share a deeper understanding of what it means to have an Outer Banks soul with those who create tangible connections to it every day. Does it make sense to offer this invitation and then limit the opportunities for it to happen? And let me point out that people want to truly connect with art which means connecting to the artist who made it. This does not happen in a traditional store. It happens face to face at markets and festivals which leads me to the perspective of the (3-minute timer) artist ...

Garriss: *How close are you?*

Snowden: *Two points.*

Garriss: *Go ahead.*

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Snowden: *Just that we thrive on that connection as artists. We are born to create, and we need to see the joy that it brings to people, and we cannot ... if we do not have the opportunities, we are forced to become wholesalers. We cannot always afford the split of our selling price and we cannot make up the difference in quantity when we are making one-of-a-kind pieces.*

And lastly that sometimes a nontraditional career is necessary for a person or family. Examples are a special needs child is a lifelong dependent with consecutive days of a traditional job making it impossible to be available. Health issues that make it impossible to have a traditional schedule or a traditional career that does not make ends meet and we are forced to find ... so I am just asking that you not make it harder for people who are looking for creative paths to support their families.

6. Aimee Thibodeau: *I did not plan to talk so I do not have anything prepared other than my account of the incident that occurred this past Saturday morning. This is my family, my son, my son's father and his wife. This is considered our family dog. That morning a neighbor made a phone call that the dogs were loose again. They have a tendency to leave the yard at times. There has been an introduction to the neighbor and children. The dog is sweet to them. They know that. It was a Saturday morning that she did not want to see the dog out, so the call was made. The dogs were back in the yard and Jonathan was outside doing yardwork and had made his way just barely up the steps of his yard. The dogs were not directly under the house but right next to the steps of the house. And no police vehicle pulled in sight. Jonathan was up on the porch able to see beyond his driveway ... could not see a police vehicle, did not realize that someone was there until he saw a human approaching abruptly down his driveway. And I do not mean from here to you guys, I mean double that amount into the driveway. Never announced that he was a police officer, never announced he was there. Not even sure Jonathan would have seen him if he had not looked up and seen him. So, in that few seconds timeframe he made his way directly to the dogs and shot sweet pea three times in the head, in her own yard, next to her other dog. Now mind you Jonathan's father, ten years ago, was murdered. This dog was his PTSD registered dog. He witnessed this right in front of him on a Saturday morning. Not only that, the family across the street quickly shuffled out the door with their three crying children and left for the entire weekend.*

Here we are with our dead dog in the yard. At the time she was shot the officer picked up the casings and left the scene. He never said retain your dogs, I have a gun. He never said I am a police officer, he never said anything until a good time into the morning after he had already spoken with my son's grandmother. She asked him why he felt he needed to do that. He later stated the dog bit me. He never stated it to her that entire five-minute conversation that morning. Now when he came out with this supposed bite, he stated that the dog bit him in the buttocks. Okay? He came and approached this dog head on, face first, and shot her in the head (3-minute timer) and as he turned around, she supposedly bit him in the buttocks. She was dead at that point.

I have one more thing to say if you can bear with me. The very next morning we gathered to bury this dog. We had already sent her off for an autopsy to Roanoke Island. We were all there together. Things had calmed down. Who does Kitty Hawk Police Department send to investigate across the

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street? The very officer that this man Jonathan had to witness killing his dog. That very officer came back, stood at the top of our driveway. Jonathan said that is the man that killed our dog ... Lynette is ... I barely ... we cannot even get her off the driveway. She is wailing like she has lost a child, okay? And what does this officer say? Looks at Jonathan and says you are going to cry about your dead dog? We all heard that. We all heard that and besides that there is a live video that went on during this incidence. I was immediately triggered. Immediately. I felt broken. I am looking at this man laughing at my son's father stating that he should not be crying because his dog is dead. And it was clearly an opportunity for Kitty Hawk Police Department to retaliate by sending the very officer that just murdered our dog to come to the property. When asked why those two police officers were sent to our property the next morning across the street why couldn't they send anyone else? They were the only two officers on duty that morning. Okay?

These two officers arrested me, arrested my son, left the two weeping owners of the dog and their daughter. Lydia, I am sorry I did not include you in the yard wailing. Put us both in the vehicle and spent the next two to three hours with us in the Manteo Police Department. So, you are telling me your only two officers on duty that morning, the two they had to send to investigate the property across the street that stopped and mocked us then spent three hours in the police station. So, you all had no duty officers on duty that morning?

And that is where we are left. I now have a criminal charge that I get to go and defend myself for so that they can rack up a couple against us. I know how this works. They were sent there with intention. And I want you all to know that is the rest of the story. It did not end with the death of our dog.

Garriss: *Thank you ma'am.*

7. Text from Peggy Corbell Langley:

Garriss: *Just before the meeting started, I received a text to be read under public comment from someone who was planning on attending the meeting. "Hope the mayor and council work with these folks for popup tents and food trucks. They have gone outside the box to create new, professional and fun businesses. They are struggling to find ways to live in Dare County. Please find a way to work with these people who are trying to make a decent living, provide for their families and stay in Dare County. FYI, I am not associated with any of them, but I have shopped with them. This may be read at the meeting. Thank you, Peggy Corbell Langley."*

Garriss: *We have two more emails and Lynne has graciously accepted the job of reading them.*

8. Email from Janet Mayfield:

McClean: *Dear Mayor and Council Members. I attended the Kitty Hawk Town Council meeting on September 6, 2022. I attended for the purpose of supporting the itinerate vendor issue. I am a permanent resident of Dare County and also an artist vendor. Ami Hill, with her Muse Bus 252,*

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helped me to realize my dream of selling my artwork to visitors as well as locals. I also display my artwork in the former Dare County Arts Council, now known as Dare Arts. I, along with many vendors, was extremely pleased with the support we received from all members of the Kitty Hawk council. We were especially pleased with your decision to lift the moratorium on issuing pop-up markets. To my disappointment, I have recently been notified the RIART was denied the permit for her fall markets because the town manager unilaterally disregarded the council's decision and the public's wishes. I cannot imagine why the town manager would not allow vendors who are our neighbors to be denied the opportunity to make a living or supplement their income from their hard work and entrepreneurial endeavors.

Per your website, the Town of Kitty Hawk operates under the council-manager form of government and the Council makes all local policies and has the final decision-making authority.

I raise the question-why? If the town manager implements the policies created by the council, why did the Town Manager deny the permit when the council lifted the moratorium?

Please read my comments into the public comment section of the October 3rd meeting of the Kitty Hawk Town Council. Thank you.

9. Email from Ami Hill:

McClean: *Good morning, Rob, Mayor, and Council Members. I've spent the last several weeks trying to decide what follow up I wanted to send to you regarding the itinerant vendor issue in Kitty Hawk. The more I've investigated and reread the current ordinance titled Public Sale of Goods the more it appears to me, and my friends in the legal field, that mobile vendors and mobile food vendors actually are allowed currently to operate in the Town of Kitty Hawk on private property. The current ordinance covers public property only and basically the town seems to have been requiring people like myself to secure, and pay for, event permits that were not at all necessary. The last line "or on parking lots (and other areas open to the public) which are contiguous to the state highway and town street rights-of-way" was possibly an attempt at including private property by mentioning properties contiguous to public property. That line could simply be removed and replaced with more appropriate wording to further protect public property to something to the effect of "So long as the use doesn't impede access to public rights of way, highways, etc."*

It has still not been articulated why a mobile vendor selling goods requires restriction or extensive regulation when a mobile vendor offering services can do anything they please in the town. Please note I've said why, not how. The only thing required of a brick and mortar to operate in the Town of Kitty Hawk currently is a one sheet piece of paper with your name, address and phone number on it. I'm not even sure that's required of mobile groomers, mobile chefs, mobile masseuses, contractors, the knife sharpening guy, beach picnic businesses, equipment set up businesses, I could go on. So why would more be required from a food truck that is already regulated by the county health department, to the same extent that every other restaurant is regulated. Or my bus,

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which is a legal vehicle registered, insured by the State of North Carolina, carrying the same liability insurance as any brick and mortar, from which I operate a perfectly legal, federally and state registered, tax paying, revenue generating, business? I can't think of another business that is required to file for and pay for a permit for every single day of its operation. My mobile groomer parked in the street for several hours to groom my dog recently; landscapers do the same thing all day long. Beach equipment set up companies and picnic companies are operating on our public beaches, and parking on public streets and parking lots to do so. (3-minute timer) I'm not asking to park on public streets, simply for the ability to partner with local businesses to operate freely on their private property to the benefit of us both.

McClean: *Was that a warning for me?*

Garriss: *Yes ma'am.*

McClean: *I only have two more paragraphs.*

Garriss: *Go ahead.*

At the September meeting the mayor made it abundantly clear that he wanted to make sure that any and all regulations or changes put into place were fair for everyone and the same for everyone, so does that everyone include myself and other food trucks and other mobile vendors? If a mobile business offering services can operate without excessive restriction, without the expense and burden of a daily permit, then why not a mobile business with goods? All we are asking is for the opportunity to operate mobile businesses on private property within the town, including using parking lots which are adjacent to the highway which promote exposure and more patrons.

I sincerely appreciate the understanding of the council members regarding the urgency to lift the moratorium which shuttered many micro and small businesses at the end of our summer. I've cc'd them here and would also request that this be read during public comment of the October meeting as I may or may not be available to attend and further request that my questions and concerns be addressed.

Thank you for your time. Ami Hill.

McClean: *Next time I will read faster.*

There were no other comments, texts, or emails.

5. CONSENT AGENDA

a.) Approval of September 6, 2022 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 21-22 Budget Amendment #5. This amendment, in the amount of \$41,799.00, is to appropriate funds to purchase a vehicle for town hall administrations services. *(An approval of the consent agenda will approve this amendment.)*

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c.) **Purchase of Vehicle for the Town Administrative Staff** - Due to the limited availability of new vehicles and lengthy delays with NC State contracts, we request authorization to purchase a vehicle "off the lot" at a cost of \$41,799. Administration currently has one (1) vehicle that is ten (10) years old. A sedan was purchased in 2019 and was involved in an accident and was not replaced. A 12-year-old sedan that was formerly assigned to administration replaced an existing Fire Department administration vehicle that was auctioned on GovDeals. It has been determined that another vehicle is necessary for the Administration Department. The replacement does not increase the total number of vehicles in the Town's fleet. *(An approval of the consent agenda will approve this purchase.)*

d.) **Acceptance of a Donation.** Joe Lamb Realty & Associates, Inc. donated \$100 to the fire department. The fire chief is designating the donation for training. *(An approval of the consent agenda will accept the donation and its use.)*

e.) **Resolution Authorizing the Town to Refund Overpayments of Occupancy Taxes.** Dare County discovered some campgrounds remitted overpayments of occupancy taxes and the town desires to refund back to the county overpayment of these funds. *(An approval of the consent agenda will approve this resolution.)*

f.) **Building Demolition Contract.** The Public Works Director requests authorization to enter into a contract with East Coast Demolition for demolition of portions of the recently purchased building at 5200 N. Croatan Highway. The cost of the project is approximately \$167,450.00 *(An approval of the consent agenda will approve this request.)*

g.) **Lease Agreement with Bear Drugs, Inc.** The current tenant, Bear Drugs, would like to continue renting Suites 10 & 11 in the building the town recently purchased at 5200 N. Croatan Highway. The rent is \$69,932 annually and \$794.45 a month for maintenance of the common areas and operating expenses. The lease terms and amounts are consistent with the former lease holder Pasquotank County. *(An approval of the consent agenda will adopt this resolution.)*

h.) **2023 Meeting Calendar and Town Council Meeting Dates Resolution.** The Kitty Hawk Town Council regular meeting is the first Monday of each month at 6 p.m. If that first Monday is observed as a town holiday the meeting will be rescheduled for Tuesday or the following Monday. When the Dare County Board of Elections is using the Smith Room for an election following a council meeting, the council meeting will begin at 5:00 p.m. The resolution also adds a tentative January 30th Capital Improvements Plan workshop and a Budget Workshop on April 24th (both at 9 a.m.) *(An approval of the consent agenda will adopt this resolution.)*

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

6. ITEMS REMOVED FROM CONSENT AGENDA

No items were removed from the consent agenda.

7. PLANNING:

a.) Town Code Amendment. Sec. 16-1.- Selling goods on public property; Sec. 18-11.- Outdoor events and gatherings. Staff is proposing amendments to ordinances regulating itinerant merchants and permitted outdoor events.

Planner Testerman reviewed the following memorandum:

Proposal

Excerpts from the proposed sections to be changed are listed below (full section of the ordinances are attached)

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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.~~ Business activities of itinerant merchants, salesmen, promoters, drummers, peddlers, flea market operators and flea market vendors or hawkers are prohibited within the boundaries of the Town, except as authorized by Sec. 18-11 and 42-502.

Sec. 18-11. Outdoor events and gatherings.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Applicant means any person, group or organization that sponsors, organizes or arranges an outdoor event ~~or gathering~~.

Outdoor event ~~or outdoor gathering~~ means any event or gathering that occurs outdoors and that:

- (1) Represents a use or uses of land, buildings and structures not intended to be of a permanent duration;
 - (2) Is intended to or likely to attract substantial crowds, participants and/or spectators;
 - (3) Is advertised and/or open to the general public;
 - (4) Is held to promote or is sponsored by a commercial business; and
 - ~~(5) Is unlike the customary or usual activities generally associated with the principal use of the property where the outdoor event or gathering is to be located.~~
- (b) *Permit requirements.* No outdoor event ~~or gathering~~ shall be held, commenced or advertised until such time as a permit is applied for and issued in accordance with this section. A permit issued under this section shall be valid for a period of seven consecutive days. All outdoor events ~~and gatherings~~ shall be contained either within the applicant's property or within property upon which the applicant has written permission from the owner to use. If live music or electric sound amplification is being proposed in conjunction with the outdoor event ~~or gathering~~, the applicant must comply with section 18-2. **Outdoor event permits are limited to two permits per parcel in a twelve month period.**

Background

In recent months, it has come to the attention of staff that the manner in which outdoor gathering/event permits have been issued has not followed the regulations listed in the outdoor gathering permit ordinance. For example, twice per year for a number of years, an outdoor gathering permit has been issued to a local retail store to set up in their parking lot and do a tent sale of the same merchandise which is sold within their store. Section 18-11(a)5 dictates that a valid outdoor gathering permit must be for a use that "is unlike the customary or usual activities generally associated with the principal use of the property where the outdoor event or gathering is to be located." Restated, an outdoor gathering permit cannot be issued to allow an outdoor sale of the same merchandise that is offered for sale within the store. The first proposed amendment to Section 18 eliminates this requirement, allowing a commercial owner to have an event permit to conduct an outdoor sale. To be clear, this would also allow a commercial business owner to stage an event where multiple vendors set up to sell their merchandise, even if the business owner conducts the same type of sales within their day-to-day functions.

Currently, there are no limits as to how many outdoor event permits a property owner can request on their commercial property. Outdoor event permits are valid for seven consecutive days. Hypothetically, a commercial property owner could currently pay the separate application fee and submit applications for every week of the year, and what was intended to be written for a temporary event can become permanent in nature. To remedy, staff is proposing a limit of two outdoor event permits per parcel within a twelve-month period. A year would be an extreme scenario. This would allow a total of fourteen days for the outdoor event to be held within a twelve-month period.

Eliminating Sec 18-11(a)5 gives commercial owners more freedom in deciding what types of outdoor events they would like to host, while limiting the permits to two per parcel in a twelve-month period ensures that the events are temporary in nature and do not become a weekly recurring event throughout the year.

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In addition, in an effort to clean up the ordinance staff proposes simply labeling the ordinance and permits as "outdoor events" and striking 'gatherings' from the text.

Additionally, recently, the town has been questioned as to whether Sec 16-1 could be applied to private parking lots, as currently written. The state enables localities to regulate, restrict or prohibit itinerant merchants via NCGS 160A-178. The proposed language for 16-1 is taken straight from the language of 160A-178, which prohibits itinerant merchants, with the exception of those permitted under Sec. 18-11 (Outdoor events) and Sec. 42-502 (Temporary Uses; for example, Christmas tree sales). This proposed language does not change the current prohibition on itinerant merchants, but simply clearly states it; additionally, it provides the exceptions for which itinerant merchants can be permitted, which our current ordinance does not do.

These proposals are not changes to the Zoning Ordinance or Subdivision Ordinance, thus do not require Planning Board review, or a public hearing.

Garriss: *Rob you have worked extremely hard on this. I have been in your presence when you were able to control your composure probably better than a lot of people could have. Seems like we have a no-win situation here. It seems like from the conversation, emails, phone calls that we have gotten what you have come up with Rob is not a real winner. We may have to go back to work. It is not your fault.*

I have been on this council now for 9 years, Jeff and I both have, and the planning board and board of adjustment before that and in all that time we have never had the problems with the town ordinances we have had with this one. Seems like it just happened all of a sudden. We have had a lot of emails and phone calls pertaining to itinerant vendors and outdoor gatherings and yes, I am going to say this in a good way Marty. Your name is very familiar but that is not a bad thing. You do not mind letting us know and I appreciate that. You may not think so, but I do. Some of those phone calls and emails think we need to be more restrictive, some less restrictive. Some think we should have no vendors in our town at all. Somewhere in there, there must be a happy medium.

At our last council meeting we decided that changes need to be made. We decided to take into consideration some of the comments and suggestions that were made by people who were sitting in this room right now and hopefully come up with a new and better ordinance to present to the planning board. We also discussed coming up with something in the interim that would work until we had that presentation to council from the planning board. That plan obviously did not work. Trust me this council is just as frustrated as you are. We have not been able to come up with and agree on an ordinance that will work for everybody.

Tonight, hopefully we can come up with a plan that will at least work in the interim until a new ordinance can be adopted. To help with that new ordinance I have asked Mayor Pro Tem Jeff Pruitt, thank you again Jeff, to take on the role as liaison to meet with you folks and Rob and Andy to see what kind of plan we can come up with. But everyone here, at home listening and those who have emailed and are not here, need to know, I am sure there are going to be some things that are not going to make everybody happy. There are going to be things that are not going to make me happy or this council happy. But we are sitting here to do things and make

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decisions for the betterment of this town. Just because I do not like it, if I think it is best for this town that is what we are going to do. That is why we were elected and are sitting here.

Jeff this is your thing, but I would suggest a committee. We have had some volunteers just tonight to volunteer to be on that committee. Maybe some business owners, some citizens can meet with you. I would involve Rob, Andy and Casey in case any legal matters come up that we can put an end to right now. Try to come up with something to present to the planning board and present to this council. You are in charge. Hopefully that task is going to be easier than we think it is. Let's slow down folks and find a good solution. Something that is going to work for everybody, that is equal to everybody, and we can do the right thing for our town. That is the reason these ordinances are in place because people want to control what happens in their town and that is what we are trying to do with your help and your input. Those are my thoughts.

Hines: *Good luck Jeff. I do want it to work, but you are not going to make everybody happy.*

Pruitt: *No. That's fine.*

Garriss: *I received a phone call at 4 o'clock this afternoon from a very unhappy restaurant owner in this town who does not think we need to have food trucks in Kitty Hawk at all.*

Audience Member: *_____ any more restaurants either though right ...*

Garriss: *She had some good arguments behind what she said. That is not what we are talking about.*

Hines: *I have not personally had one single complaint from anybody. I am curious if I am by myself.*

Garriss: *And I hear the food truck has great food. Have heard that a number of times.*

Walker: *It does.*

Garriss: *I did not say I agreed with what she was telling me.*

Stewart: *May I request that the council, to help staff out, how do you want to handle selecting the members to sit on the committee. Is it going to be a five- or seven-member committee, and do we want to accept applications? What will be the qualifications to sit on the committee? I believe the point you are trying to make is what is it that the town residents and businesses here want.*

Garriss: *If there are some people here tonight that would like to be considered turn in your name before you leave, please.*

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Hines: *Maybe they can get together and nominate who they would like to serve.*

Garriss: *Is that a good idea? Maybe to start with anyway.*

McClean: *I just wanted to say that things are changing the way we do business, the way we operate. Two years ago, when we had that horrible Spring when no one could do anything, people had to get inventive to make a living and one of the things that came out of it was the work at home life. Once you got over the transition of having to establish a mindset of being at work a lot of people were able to be more productive at home. Simply because they had no other distractions. Sometimes working in the office can be more distracting than productive. So now we have a lot of people who work from home. And they can move anywhere in the country and still work for the same company, still work in the same home office, but they are at a remote site. I know several people who have moved out of state simply because they had the opportunity to do it and still retain their employment.*

So, this brings in a whole lot of changes. There are changes in the way we do business. We never had the opportunity to have deliveries, pickup and no contact remote ordering. I love not going to the grocery store. I would rather pull into Food Lion and Wal-Mart parking lots and have someone put my groceries in my car than go to a day spa for 6 hours. You do not know how wonderful it is not to have to push a cart around a grocery store to get groceries. I just think it is the greatest thing that came out of covid besides the vaccine, so I do not die from it.

We need to change our mindset; we need to be more flexible and work with what is available. We have a limited amount of commercial space. If you are an artist, you have a limited amount of inventory that you can produce. You cannot support the rent of square footage to be able to make a profit from your creativity. We do not have an indoor market where you could go and get just a small 8 x 10. Nor do you have the time to sit there at a desk in that 8 x 10 display area and be creative. A lot of times the things you do are not portable. You cannot take power saws with you wherever you go. You need to be able to work in your own space and produce whatever you are producing for the enjoyment of other people. When we are trying to get something that works for everybody you are not going to get something that works for everybody. Some people will not be happy no matter what you do. Other people feel restricted. Jeff, you have my thoughts and prayers. That is all I am going to say.

Pruitt: *Okay. Here we go. Marty is in a tough situation if we do what we are talking about. Then the owner could have whatever he wants, and you could be left out. Here is my big question. We seem to be talking strictly about art. How is this going to apply with somebody that wants to sell vegetables? Are we able to say we are going to let art be sold in the parking lots and no other things like seafood or vegetables or automobile parts?*

One of the remarks is we use the parking lots to set up. From being on the planning board we base all our square footage and number of tables in restaurants and business size and everything around parking. To have so many tables in a restaurant you must have so many

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parking places. There are a lot of questions like that that I think are too much to answer right here tonight. I think some of them can be smoothed over and maybe some of them may not. There are going to be a lot more questions I have. Questions about the food truck. Whether we are going to allow them at all or if you own the business can you have it or can I set up at the thrift shop and sell tacos two times right beside Bad Bean. There are a lot of scenarios that are not answered here for me tonight.

I am going to use an example of the Catholic Church on a Saturday. To me if this was happening there it would be a no brainer to me. I would say go for it. Have fun. There are 35 parking places at 4.5 strip mall. I went by there today. Would we have a limit of a number of tents that could be there? If there are 35 parking spots and we have 35 tents, then we have a problem. And are we going to be parking down US 158 and down Hallett Street and all around. I see numerous problems that we need to work out and so I am all ears. I am willing to help.

I have a house full of art. I bought some of my stuff from seafood festivals and I have been to private parties at the Sea Ranch where they have artists parties. Some of you might participate in that. Artists go and rent a couple of suites and you go before Christmas and buy Christmas presents. There are ways but there are also concerns of businesspeople we must consider. It is not that ... we are not by no means ... I wish we had a common area as a town to offer you. I really do. But we do not and so I hope we can work something out. I am willing to work with you the best I can.

Garriss: *Thank you Jeff. Good points. Charlotte?*

Walker: *It is hard. I know Lynne and I, at the last meeting, stepped up and we tried to lift the moratorium and tried to give them some relief. It set me back when I read a Facebook post from Ami Hill, and it really was not as nice as that letter you read tonight but I am willing to help anyway I can to get it straight and to make it workable for everybody. I have a lot of compassion on both sides. I know restaurants display art that is for sale and a lot of times the Woman's Club has an arts and crafts show. There are a lot of venues. Many artists display their arts and crafts, and we have stores that have that. Some of them are just Outer Banks crafts. I think there is a way to work it out and everybody needs to be patient and kind and try to give it their best to work it out.*

McClean: *Is there a possibility to do something tonight where these folks would be able to have some income before the end of the year?*

Garriss: *We are going to discuss that. I am going to make a motion and if I can get a second then we can have discussion. Sorry about this Rob.*

Mayor Garriss moved to deny the proposed town code amendment regarding itinerant merchants and outdoor events. MPT Pruitt seconded. The vote was 5-0.

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McClean: *What can we do in the interim? Could you summarize why their application for a permit was denied?*

Varnell: *The process we have for applying for those type of permits, and Rob brought it up in his presentation, is that the vendors participating in a gathering must be "unlike customary or usual activity generally associated with the principal use of the property where the outdoor event or gathering is to be located." If, like Jeff said, the Catholic Church opens its doors and sponsors an outdoor gathering event where vendors come, whether it is for charity or for profit, set up and sell their goods, they may do so.*

That is not a situation that requires a lot of thought because those activities are unlike a church and unlike what goes on at a church but when you have these commercial strips that have "x" number of tenants, the problem with the way our code reads is that it says on the property. It does not say must be unlike the use of the business owner that is sponsoring the gathering. In other words, if a restaurant wants to sponsor an art sale, and I am just saying art because that is what comes up most often, that is fine. However, what about the art store or similar store next door to that restaurant on the same commercial parcel. You see now we are running afoul of the ordinance in and of itself. It is not about what I like, what I do not like, what I support or do not support, it is what does our code say.

I think that one portion of the intent of this ordinance is to prevent a brick-and-mortar business owner from kind of expanding its doors right into the parking lot and able to perform more services than what they were permitted for. The other would be to prevent competition amongst other owners on that property. It is a limited space here, the number of commercial type strips that we have that in my mind is what is creating a lot of the issues.

Garriss: *So, it is not the event. It is the location of the event.*

Varnell: *Location is everything right? Yes indeed.*

Garriss: *What can we do in the interim until we ... yes? (recognizing an audience member)*

Audience Member: *I have a relevant thing to say. As long as we are concerned with private property and mixed-use developments and so on, I used to run a photo lab down here for 30 some years. We had to limit the number of pickup spots that we had not because ... well because most people had competing businesses on their properties, and it was in their contract to limit us _____. We were not limited by the town. We were limited by a _____. If I wanted to go in and do something that was in direct competition with one of those businesses their rental agreement with their property developer precluded me from using that and that took care of it. I did not need a regulation from the town to tell them that I did not need to open a burger joint in a burger joint.*

Garriss: *Thank you.*

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Pruitt: *Are we talking about opening this up to produce, seafood, everything?*

Testerman: *The ordinance is really not clear ...*

Pruitt: *How are we going to justify telling a farmer he cannot sell corn?*

Testerman: *The intent was not for this proposal to be a finished product. This is while we do a more comprehensive look at the temporary use ordinance, the outdoor gathering, food trucks the whole gambit. If somebody wants to come in, the way it is worded right now, apply for an outdoor gathering permit and if one through five are met and the other parts of the site plan review are met then we would issue a permit. If somebody wants to pull, Casey correct me if I am wrong, a one week outdoor gathering permit to sell produce in front of the auto parts store I guess we would do it.*

Garriss: *Any suggestions for tonight?*

Stewart: *The counter argument that I have heard, as the gentleman said in the audience, is the business must give approval for an itinerant merchant to be there. In my mind the issue comes down to the business owners and the residents of the town. Those are the two players that are in this. The issue I heard was some business owners will charge rent for their building and then they turn around and they pay property tax back to the town.*

This is not an ordinance that the town put into place with anybody sitting up here. The original intent behind it is to the inhabitants of the town. Back in the day businesses owners used to live in the community so it was a way to protect them. That is why you incorporate as a town. To protect the property owners in the town.

It really comes down to the property owners must give them permission to set up. Those are the ones that should be coming up and generating an ordinance with the input from the itinerant merchants because we cannot control ... we do not know if there is going to be an itinerant merchant from Virginia Beach or Kill Devil Hills. It does not matter. They are coming into town to do business on property that pay property taxes to the town. The council represents the residents. That is sort of the other side of the argument.

It is a very difficult thing to make everybody happy. As you said the existing ordinance that is in place currently allows for this. It just does not allow for the business that sells the art because they are having a market that sells the same thing so it could compete against someone else ... they do not want to have an event that competes with their own business and that is why it is there.

What we were looking to do was accommodate somebody that sells the same product in their store to have a market, but it is limited. If there is another person selling something nearby in that same plaza that it does not compete with them on a full-time basis.

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The ordinance that was denied allowed for two outdoor event permits. The ordinance can be changed. We took the directive from council at the last meeting.

Hines: *Tell me where the competition is on that side of the street.*

McClean: *Across the street.*

Hines: *That is not in the same strip mall though. It is across the bypass.*

Stewart: *But the way it currently reads it does not allow for the same type of market sales that the business owner has.*

Hines: *So, if they do it at NAPA they still complain because it is right down the street?*

McClean: *It is still across the street.*

Hines: *That is what I am having a hard time with right now.*

Stewart: *And they could pull a permit every week and stay open every week ...*

McClean: *They could complain but it would be within the ordinance.*

Hines: *I understand. To the gentleman's point earlier, if I own a strip mall, I would put non ... I have written leases myself where there are non-competes in it. You cannot open a burger joint in a burger joint. You must rent somewhere else.*

Pruitt: *How about in the parking lot?*

Hines: *That is all new.*

Pruitt: *That is where I am going ...*

Hines: *But I am having a hard time with why they cannot ...*

McClean: *... sponsor their own outdoor sales?*

Hines: *If the strip mall owner does not care I do not think we should care what somebody across the street thinks. That is just my opinion.*

Varnell: *I just want to make sure we are talking about the same thing because there have been several different requests that have come to our attention. So, the across the street thing Rob ...*

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Audience Member: *McDonald's, Burger King and all those guys are right there together.*

Hines: *Well, they do that I understand. Go ahead Rob.*

Testerman: *The complaint from the property owner across the street is a similar business and upon looking into the ordinance we saw the outdoor gathering permit was not issued consistent with the ordinance for a couple of reasons. It was not compliant with 18-11(a)5, the one where it talks about the different customary uses, and it was also issued for five consecutive Sundays. The ordinance clearly states that permits are for seven consecutive days. The original permits over the summer should not have been issued the way they were. That is what got us all to this point and looking at the ordinance and trying to figure out how to fix it moving forward. You ask what can be done to allow them to pull permits? The easiest, fastest way to do that is to strike out 18-11(a)5. That is the only thing holding up a permit as it is.*

Stewart: *But to clarify that somebody can have an outdoor gathering permit and they can apply for it every week and do it technically 365 days a year. That is what this ordinance we proposed puts a limit on. If you want to have an event, a marketplace outside your store, we are going to allow that, but we are not going to allow it 365 days being outside with whatever vendors that you want to bring in or whatever you want to sell out front. We have parking requirements and things like that.*

Hines: *I understand all that but ...*

Varnell: *To answer the competition thought. Remember I said there are two prongs to it. One is to not be able to create competition in say a commercial strip because if there is a NAPA store and across the street is an art store that does not matter because that is not on the same piece of property and by our code that is not creating competition. The other prong is to not allow the brick-and-mortar business to expand its boundaries and that is what we are dealing with in this particular case because of the similarity of the business owner and what they are requesting to be able to do.*

Garriss: *We have different things you are exactly right.*

McClean: *We have one issue that is an existing business who wants to have a yard sale a couple times a year. His own inventory. Clean his store out, season change, models of cars change, auto parts store, no matter what kind of a store it is they want to expand twice a year. They want to sell handmade Christmas ornaments to go with their Christmas trees, whatever, they want to go outside of their store. That is one of the issues. I believe that is outdoor display of goods. Furniture stores who would love to fill up their parking lot with outdoor furniture every March.*

We also have an issue where a person who has a particular store hosted an outdoor market so to speak and invited other like merchants to come and work together. Someone on a different

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property, across the street, lodged a complaint because they read the fine points of the ordinance and said this is how I can stop it and called it to our attention.

Garriss: *Council I think we all agree we have an ordinance that needs to be changed. No doubt about it. What can we do tonight for these people and for the community?*

Hines: *I want to add one more point. I do support the brick-and-mortar stores. I want to be fair to both sides, 100%, but I also think times are changing. You take food trucks, RV travel, the people enjoy going to these open-air markets. I am not saying they need to be scattered all up and down the bypass every single day. I would just like to fix it.*

Stewart: *From the town's standpoint we just purchased the Sentara property and there is a parking lot there ...*

Hines: *Why can't we let them go up there?*

Stewart: *We could temporarily ...*

Pruitt: *That is what I was suggesting. That going back ...*

Stewart: *If the town wants to host a market and allow this to take place, we have the land to do it now, but you would have to ... we would advertise it and allow vendors to show up*

Hines: *And they could all go do their open-air markets ...*

Stewart: *But it would not be every day.*

Hines: *I understand.*

Varnell: *Kill Devil Hills did something similar with the First Flight Market.*

Hines: *They do it at Dowdy Park.*

Audience Member: *What do other towns do?*

Garriss: *What does Kill Devil Hills do?*

Varnell: *Kill Devil Hills has a scenario where you can do charitable events wherein the profits of the business owners must be donated to charity. For-profit events outside the season are limited in number. KDH is a totally different setup. Other towns may regulate it or ban itinerant merchants altogether. This is an issue, a lawsuit, that KDH is going through now. Their itinerant merchant ordinance. Other towns are going to be presented with these same issues as times change.*

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Walker: *The mall they were set up in is not ideal. It is very small. The parking is an issue daily, not just when you have a festival there.*

Garriss: *Council we need to decide.*

McClean: *Can we strike that one sentence and not include the limit of two per parcel?*

Varnell: *It can be done.*

McClean: *If we do that these folks can operate every other weekend through Christmas and generate some income for themselves.*

Pruitt: *Does that mean seafood people and farmers, and everybody can do this because I have a lot of people wanting ... I am asking the attorney. I have been asked these questions.*

McClean: *But the health department has things to say about seafood sales. And I believe they must be refrigerated.*

Pruitt: *The health department is going to have something to say about a food trucks, so, I mean ...*

Garriss: *If we are going to limit, I do not like the number two. Four? Six?*

Walker: *I agree.*

Stewart: *If you get it to four, by the way this is written, they would be able to operate four weeks because it is a seven-day permit. They would operate basically for an entire month, or the council can strike it and allow a two-day permit for four different permits. Then they would be able to do four events a year for right now and that would get us probably to December. I mean unless they are wanting to do events every weekend.*

Walker: *I like the two-day permit.*

Pruitt: *I do too.*

McClean: *I like three. Why can't we have six permits for three days each.*

Garriss: *Who would like to make that a motion?*

Hines: *We still need to work on a committee.*

Pruitt: *This is just to get us by until we can clear up some of this.*

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Mayor Garriss asked the audience if this will help them, and many responded yes.

Hines: *I will make that a motion.*

Garriss: *Can you repeat that?*

Stewart: *Each parcel owner gets four permits, and the permits are good for a two-day period so that would be ...*

Hines: *Actually, because it was your idea, I will let you make the motion.*

Stewart: *Over a twelve-month period. So, they can do it January to March. They can do it all of January for two days or they can do it consecutively for the full eight days.*

Mayor Garriss said he would second the motion.

McClean: *I would really like it to be for three days and four times.*

Varnell: *Was there a motion and a second?*

McClean: *I have not made the motion yet.*

Varnell: *Okay. Just making sure.*

Hines: *So, Lynne what is your motion?*

Walker: *Let's do baby steps.*

Pruitt: *Yes.*

Stewart: *The property owner will have to get the permit on behalf of their businesses so if you have twelve businesses, they are only entitled to four. If he wants to sell them or whatever they want to do or work it out in their lease these business owners know they have this. They can do four of these a year and they can divvy it out to four out of the twelve people or whoever requests it, or they can charge for it on their lease. Whatever he wants to do it.*

Hines: *As it should be.*

Pruitt: *I like that.*

Garriss: *Six, two days, is what she is asking.*

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Councilwoman McClean made a motion to approve the proposed town code amendment amending Section 16.1, Section 18-11, Subsection (a)5 and 18-11(b) with the change that the outdoor permits are limited to six permits for two days in a twelve-month period to carry them through the end of the year when we will have a new ordinance for next year.

Garriss: *Is that a good motion sir?*

Varnell: *The motion is fine.*

Mayor Garriss seconded and the vote was unanimous, 5-0.

Mayor Garriss thanked everyone for bearing with council.

b.) Schedule Public Hearing. Text Amendment: 42-419(7), Standards and requirements, Planned Commercial District overlay. Applicant proposes to amend the maximum building height in a PCD from 35 feet to 45 feet in height.

MPT Pruitt made a motion to set a public hearing at the town council meeting on November 7, 2022 to consider the proposed text amendment to Section 42-419(7) which would raise the maximum building height in the PCD overlay from 35 feet to 45 feet. It was seconded by Councilwoman McClean and passed unanimously, 5-0.

8. NEW BUSINESS:

a.) Lease Agreement with the U.S. Post Office/Bath House Parking Expansion

Garriss: *I know that Andy has been working extremely hard on this and trying to get us some extra parking. We finally have some information and what does council want to do?*

Manager Stewart reviewed the following memorandum.

Proposal: Review the Post Office Parking Lease with the United States Postal Service.

Background Information: The Town Manager has been in contact with the United States Postal Service to secure a parking easement/license on the east side of the USPS property.

Staff Analysis: Town Staff has been in discussion with the United States Postal service for the past several years to secure a parking easement/license on the East Side of their parcel.

The proposed license from the USPS allows for a non-exclusive use of 21 parking spaces as outlined and labeled in the license. The annual fee for the license is \$3,983.52 and the license would be for a 5-year period. H&H Land Development as a courtesy has been working in conjunction with the Town and the USPS as the Post Office requires a licensed and insured contractor to make these improvements. The improvements are estimated to cost \$60,000 and would be at the expense of the Town. While Town Staff attempted to secure an easement at no cost this was the license provided by the USPS.

Town Staff is not recommending Town Council approval but rather presenting this license as information to the Town Council.

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Town Council Recommended Motion: No action on the proposed parking license with the USPS.

Varnell: *Where Longboards Island Grill is now, near the post office, the developer reserved an easement essentially over and across the postal service land. If you want to hear more about it in terms of possibilities with what we can do to utilize it for access I will report back. We can get all the way to where the Bath House is.*

Garriss: *As bad as we need parking, I guess we should not be surprised that they are still making us pay this outrageous fee and we are paying to do the improvements on the property.*

Hines: *I have a question. Are we planning to do anymore paved parking this winter on any of the side streets?*

Stewart: *We will take another look at it. We have gotten a lot of compliments on Luke and Bleriot.*

9. TOWN MANAGER

Manager Stewart announced the following events: Drive Thru **Flu Shots** at the Town Hall on October 25th from 1:30 to 4:30, first come first serve. The Outer Banks Hospital is sponsoring the event. **Fall chipping** service starts October 10th. The council meeting in **November** will **start at 5 o'clock** due to the elections held the next day. A **groundbreaking** for the police station is coming up at the end of the month. A press release will be sent out. **Port-a-potties** at the new parking areas will be removed on October 17th for the winter and the **Bath House** is scheduled to close on October 31st. The **demolition** on the older sections of the new police station will not take place until an asbestos assessment is done starting on October 11th.

10. TOWN ATTORNEY

Attorney Varnell said he has nothing else to report this evening.

11. TOWN COUNCIL

Hines: *Back to the new paved parking. I think I asked to have crosswalks looked at for those areas. Is there any update on that?*

Stewart: **We were looking to widen those right?**

Midgett: *Yes. Trying to get the state to widen it. That is what we would like to do, and we are still looking into getting the crosswalk lighting like what is similar at Kitty Hawk Road.*

Council thanked PWD Midgett.

Hines: *And I have something else I want to talk about. Our planning Board consists of five members and two alternate members. The alternate members must prepare the same way as a*

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regular member, yet if all the other five are there those two do not have the ability to vote. We are the only ones ... nobody else does it that way and I am not sure why it was set up that way. Those of you that served on the board are familiar with what I am talking about. They are paid to be here anyway so why don't we consider removing the alternate tag to the name.

Garriss: *I cannot answer you. I know you can provide input, but you are not allowed to vote.*

Pruitt: *I think it was done to make it more streamlined. Bigger boards get more confusing. Five people voting is enough. I do not think we need more voting.*

McClellan: *I think it was done just to make sure there was a quorum for voting.*

Hines: *I just don't know why Kitty Hawk is the only town that does it that way.*

Walker: *The Board of Adjustment has alternates as well.*

Hines: *I understand that. But the Board of Adjustment has different criteria where that goes to Superior Court to get overturned. We cannot overturn that so ...*

Garriss: *It is something we can think about?*

Hines: *I would like us to think about it.*

Pruitt: *Tom, thanks again Buddy. It was fun. I really enjoyed the meetings with you. I loved all those improvements you suggested.*

Andy, thank you for everything in securing our future police station. You have done a great job and saved us a lot of money. I really appreciate it.

Walker: *I guess the property closed?*

Garriss: *Did you not get notification that it was closed?*

Walker: *I did not.*

Stewart: *I cannot remember. I sent so many emails, but I can look.*

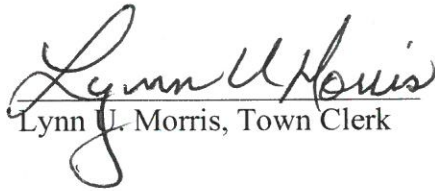
Garriss: *This has been a very emotional night. We talked about a lot of things tonight and I hope we have accomplished a few things. Staff has done an outstanding job with the police station, with the summer tourists, with the lifeguards, everything. We are very fortunate here and I thank you Andy for all the hard work that you do every day.*

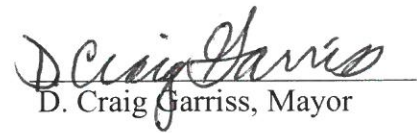
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12. ADJOURN

Councilwoman McClean made a motion, seconded by Councilwoman Walker, to adjourn. The vote was unanimous, 5-0. Time was 7:45 p.m.

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


Lynn U. Morris, Town Clerk


D. Craig Garriss, Mayor