

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, June 5, 2023
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of April 17, 2023 and May 1, 2023 Council Minutes
 - b.) FY 22-23 Budget Amendment #19
 - c.) FY 22-23 Budget Amendment #20
 - d.) Transfer Within Functional Areas in the Fire Department Budget
 - e.) Transfer Within Functional Areas in the Public Works Department Budget
 - f.) The Wall that Heals
 - g.) Clarence A. "Dusty" Rhoads, III Honorary Town Council Member Proclamation
6. Items Removed from the Consent Agenda
7. Public Hearings:
 - a.) Fiscal Year 23-24 Budget (FY 23-24 Budget Ordinance: Ordinance 23-02)
 - b.) Text Amendments: 42-1 & 42-528. Proposal to amend the definition of accessory dwelling unit and eliminate the regulation restricting accessory dwelling units from being served by a driveway separate from that of the primary residence. (Ord. No. 23-03 and 23-04)
8. New Business:
 - a.) Dills Architects Proposal for Architectural Design Services for the New Police Department Building
 - b.) Resolution Authorizing Exchange of Property for an EMS Station and Lease Agreement with Dare County for a Fire Bay
 - c.) Re/Appointments to the Planning Board
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 Melody Clopton, Town Clerk Lynn Morris, Attorney Starkey Sharp, Planning Director Rob Testerman, ASD Laura Walker, Finance Officer Liliana Noble, Interim Police Chief Jimmy Helms, Fire Chief Mike Talley 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

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

3. APPROVAL OF AGENDA

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

4. PUBLIC COMMENT

There were no public comments.

5. CONSENT AGENDA

a.) Approval of April 17, 2023 and May 1, 2023 Council Minutes. *(Approval of the consent agenda will approve these minutes.)*

b.) FY 22-23 Budget Amendment #19. This amendment, in the amount of \$45,461, will allow for a 2023 Chevy Silverado to be purchased for Ocean Rescue. *(Approval of the consent agenda will adopt this amendment.)*

c.) FY 22-23 Budget Amendment #20. This amendment, in the amount of \$21,000, will appropriate funds to various expenditure accounts that are low in funds. *(Approval of the consent agenda will adopt this amendment.)*

d.) Transfer Within Functional Areas in the Fire Department Budget. The town manager is reporting to the council the transfer of \$3,642 to the maintenance and repair equipment account from the Capital Outlay Equipment account. *(Approval of the consent agenda will acknowledge this transfer.)*

e.) Transfer Within Functional Areas in the Public Works Department Budget. The town manager is reporting to the council the transfer of \$18,000 to the service and maintenance contracts account from the maintenance and repairs building and grounds account. *(Approval of the consent agenda will acknowledge this transfer.)*

f.) The Wall that Heals. Staff is recommending a Stars and Stripes sponsorship in the amount of \$500 for the Wall that Heals event. *(Approval of the consent agenda will approve this recommendation.)*

g.) Clarence A. "Dusty" Rhoads, III Honorary Town Council Member Proclamation. Mayor Garriss has signed a proclamation designating Mr. Rhoads an honorary council member. *(Approval of the consent agenda will acknowledge this proclamation.)*

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

6. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

7. PUBLIC HEARINGS:

a.) Fiscal Year 23-24 Budget

Manager Clopton reviewed the fiscal year end projects and accomplishments of the staff and went over the highlights of the budget for the coming year.

Councilman Hines noted he believes the Tourism Board awards grants for crosswalk signs and the application time is soon.

Manager Clopton said staff will budget for them and be prepared in case the town does not receive any grant money. The same is being done for the sidewalk project.

Mayor Garriss said he has heard two things he likes. A balanced budget and no tax increase.

Councilwoman Walker said she appreciates the increase in pay for staff.

Not hearing any further comments from council or the public, **Councilwoman McClean made a motion to go out of public hearing and back into regular session. It was seconded by MPT Pruitt and passed unanimously, 5-0.**

Mayor Garriss noted some of the other towns around Kitty Hawk cannot say there will not be a tax increase. Kitty Hawk is fortunate to have good, capable staff on hand.

MPT Pritt made a motion to adopt the Fiscal Year 2023-2024 Budget, Capital Improvements Plan and all other budget related documents as presented. The motion was seconded by Councilwoman Walker, and it passed unanimously, 5-0. (Ordinance No. 23-02)

b.) Text Amendments: 42-1 & 42-528. Proposal to amend the definition of 'accessory dwelling unit' and eliminate the regulation restricting accessory dwelling units from being served by a driveway separate from that of the primary residence.

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

Planner Testerman reviewed the following staff report with the council.

Proposal

42-1.- Definitions

Accessory dwelling means a secondary dwelling unit established in conjunction with and clearly subordinate to a

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~~principal single family dwelling unit, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot. The use of manufactured homes, travel trailers, motorhomes, campers or similar vehicles as an accessory dwelling unit is prohibited.~~

Accessory dwelling unit means a secondary dwelling unit established in conjunction with and clearly subordinate to a principal dwelling unit, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot, with or without independent cooking facilities. The use of manufactured homes, travel trailers, motorhomes, campers, or similar vehicles as an accessory dwelling unit is prohibited.

Sec. 42-528. Accessory dwelling units.

(a) Accessory dwelling units may be attached (located within the principal residence) or in a detached structure on the lot, provided requirements for lot coverage and setbacks for the district are met.

(b) Accessory dwelling units shall not be larger than 50 percent of the living area of the primary residence, or 800 square feet, whichever is lesser.

~~(c) Accessory dwelling units shall not be served by a driveway separate from that serving the principal dwelling.~~

~~(c-c)~~ One additional off-street parking space shall be provided for the accessory dwelling unit.

~~(d)~~ No more than one accessory dwelling unit shall be permitted on a single residential lot.

~~(e)~~ Detached accessory dwelling units shall not exceed 28 feet in height, measured from finished grade, or the height of the principal dwelling on the property, whichever is lower.

~~(f)~~ The owner must obtain a permit from the county environmental health department that indicates the septic system is sufficient for the increased occupancy. Total occupants residing on the property shall not exceed the number specified by the septic improvement permit.

~~(g)~~ Accessory dwelling units may be used for home occupation uses, in compliance with section 42-522, but in no instance shall more than one home occupation be conducted or permitted on a single lot. Additionally, the accessory dwelling unit is not permitted to be used entirely for commercial purposes.

Background & Analysis

During the number of revisions to the accessory dwelling unit language, at some point there was a second definition that was inadvertently inserted into Sec. 42-1, instead of amending an existing definition of accessory dwelling unit. The first amendment above combines the two existing definitions and deletes the inadvertent definition.

The second proposed amendment is to eliminate the existing requirement that an ADU shall not be served by a driveway separate from that serving the principal dwelling. Our ordinances currently do not have any restrictions against having a second driveway entrance to your property, except for the ADU. This means that a property owner could currently get site plan approval for a single-family dwelling, with a detached garage (not an ADU), and have a separate driveway accessing each structure. As long as setbacks and lot coverage requirements are met, the residential site plan would be approved. In contrast, if that detached garage has second level accessory dwelling unit the Town could not permit a driveway to access the garage portion.

During Planning Board discussions, it was brought up that in addition to creating more density by allowing accessory dwelling units, allowing second driveways to access the ADUs, creates additional curb cuts, which could give a more densely developed feel to the area as well.

Consistency with Land Use Plan

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

Policy #17a: Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to

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regulate land use, development, redevelopment, and to protect the unique character of the Town and supports applicable State and Federal laws and regulations regarding building, land uses and development.

Policy #17d: Kitty Hawk will continue to regulate building intensity and oversized structures by enforcing, and amending as necessary, the zoning ordinance. The zoning ordinance regulates building intensity factors such as building height, lot coverage, and building setbacks for commercial and residential building development. The ordinance also specifies maximum and minimum building sizes for commercial development.

Objective #17b: Ensure future development is consistent with adopted goals, objectives and policies and regulations including building code requirements and is in character with existing develop with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

Objective #17c: Adopt regulations and procedures that provide clear direction to assist local decision making and consistency findings for zoning, divisions of land, and public and private projects.

Planning Board Action

At its April 13, 2023 meeting, the Planning Board recommended approval of amendment to Sec. 42-1, clarifying the definition of 'accessory dwelling unit' by a vote of 3-0 (there were several absent Board members); additionally, by a vote of 2-1, the Board recommended **denial** of the proposed amendment to Sec. 42-528, citing that they felt that eliminating the restriction to one driveway was inconsistent with the original intent for allowing accessory dwelling units.

Garriss: *It looks like the planning board broke this into two parts.*

Testerman: *Yes. There are two suggested motions. One is for definitions and the other is for the driveway.*

Hines: *This conversation is not about accessory dwelling units as a whole. That is already there, right?*

Testerman: *Right.*

Hines: *What we are talking about tonight is the fact that you can have two identical structures and if one is a home office over a garage ...*

Testerman: *If it is a detached garage with a home office above it you can have a separate driveway access but as soon as you put in a bedroom in it is defined as a dwelling unit and ...*

Hines: *So, let's use that same building footprint. Call it a garage with an office and that office becomes a bedroom, that is what changes it but the actual building itself is the exact same. You can do it one way, but you cannot do it the other.*

Testerman: *Correct.*

Hines: *I just want to be clear that this isn't about accessory dwelling units anymore, it is about being fair to everybody to have the right to do what the next neighbor has the right to do. I think it is unfair for somebody to have a home gym or an office above a garage and they can have a driveway but the moment you have a bedroom you cannot.*

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Testerman: *During review when people come in to apply for a home office or a home gym, but their septic permit shows they are getting more occupants in a bedroom ... there is a way we can track it on our end as well.*

Hines: *I am pretty sure there are some bills in Raleigh right now that are going to kind of tighten some of this stuff up for all of us to do it one way too. Which one of these motions again?*

Testerman: *The first one deals exclusively with definitions. You can recommend approval or denial of the definitions. The second one approves or denies the change to 42-528 and would take out the restriction for the driveway.*

Pruitt: *In the beginning, when all this was brought to us, the idea of ADUs was never really intended to be rental income. Years ago, they were primarily supposed to be for family. Then Airbnbs became popular. The reason that the driveways was established was so that ... I don't mind my son driving through my driveway to get to his place, but I certainly would not want every week different people or every night people driving through my yard to get to their place in my front or my back yard or whatever. Really it was made as a deterrent for people to build these kinds of structures for rentals. That is the reason I think they put them behind the house and all the restrictions were put on this because they did not want them to end up like they are being used right now. That is just my personal belief.*

I knew we were going to have problems and I voted against it. I do not know how many times we have been over this. I do not have a problem with them, but I think there are zones where they would be more appropriate. I have a residential home and when I bought it, I was expecting another residential home. I was not expecting a rental income next to me. I do not have one. I am just thinking about my neighbor if it was to happen to him. I think some of these rules were made so it made it harder to rent them and we were making it easier and easier for people to turn a residential neighborhood into where everybody now has rental income next to them. We always talk about density in zoning and the Land Use Plan. To not say that it is increasing density ... it is going to increase trash.

But just the driveway, David is right. They are putting gravel up to the road, they are crushing it to the edge of the road. But I feel like it was fouled up from day one. I just want to get that out there. That is all I have.

Hines: *And I appreciate that. I was not sitting on council when the vote was taken for accessory dwelling units. Whether I would have supported it then or not we have it and I just want it to be fair for everybody. That is all I am asking. I do not know how I would have voted for it had I been sitting up here.*

Testerman: *To your point I think when it was first discussed we were talking more about family members living in them. I guess the courts have kind of limited how much we can regulate Airbnbs. If that is a concern, we can classify short term rentals as a land use, and you can restrict where*

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your short-term rentals are or are not permitted. Referring to the legislation that David is talking about, if it goes through the way it is written accessory dwelling units are going to be permitted everywhere that single family residences are permitted.

Hines: *I think including multi-family of some sort.*

Testerman: *If single family residences are allowed in a zoning district, then accessory dwelling units will be allowed there also by this proposed legislation. We might be back here to adjust our ordinance to make it align with the state someday.*

Garriss: *Any more questions during public hearing?*

There were no speakers during the public hearing.

Councilman Hines made a motion, seconded by Councilwoman McClean, to go out of public hearing. The vote was unanimous, 5-0.

Garriss: *Rob, if these motions pass, do you think they will relieve some of your headaches that you have had and make things a little simpler for you and for the public?*

Hines: *I will say that the trends are already starting to show, especially on the west side properties, Airbnbs are really starting to slow down. People are starting to put them back into year-round living. I can name 14 right now. The trend is starting to die off. Now if you are between the highways, it is a different story.*

Garriss: *Good point David. Any more questions? Let's address the definition of accessory dwelling units first.*

Councilman Hines made a motion, seconded by Councilwoman McClean, to approve the text amendment to the definition of accessory dwelling unit, Section 42-1. Town council has found this proposal to be consistent with the town's adopted Land Use Plan. The vote was unanimous, 5-0. (Ordinance No. 23-03)

Garriss: *Now we need a motion regarding the second driveway.*

Councilman Hines made a motion to approve the text amendment to Section 42-528 eliminating the regulation pertaining to driveways accessing ADUs. The town council has found this proposal to be consistent with the town's adopted Land Use Plan. Councilwoman McClean seconded the motion and it passed 3-2 with MPT Pruitt and Councilwoman Walker voting no. (Ordinance No. 23-04)

8. NEW BUSINESS:

a.) Dills Architects Proposal for Architectural Design Services for the New Police Department Building

Manager Clopton reported the new estimate of \$354,453 is based on a revised proposal from Dills and it is the recommendation of staff to approve the contract.

Councilman Hines commented their proposal still has a good amount of money for site work. As the project progresses, what is not used is not spent and Manager Clopton said that is correct. He said if that is the case, he is good with it.

Councilwoman McClean made a motion to approve the staff recommendation to execute the contract with Dills Architects for architectural design and oversight of construction services and utilize \$354,453 from Fund 41. It was seconded by Councilwoman Walker and the vote was unanimous, 5-0.

b.) Resolution Authorizing Exchange of Property for an EMS Station and Lease Agreement with Dare County for a Fire Bay

Manager Clopton said this is the proposal wherein Dare County will build the town a fire bay in exchange for two town owned lots located at 4907 and 4911 Putter Lane. The lots were appraised in December for \$230,000 each. Dare County will use those lots to construct a much-needed EMS station in the northern part of town. The size of the proposed bay is 1,026 square feet at an approximate construction cost of \$651, 510. If the council agrees the proposed property exchange resolution needs to be adopted along with the lease agreement.

Mayor Garriss thanked Councilman Hines for suggesting a 40-year lease and said that is the way it should have been the whole time.

MPT Pruitt made a motion to adopt the resolution authorizing the property exchange with Dare County and enter into a lease agreement for a constructed fire bay. Councilwoman Walker seconded and the vote was unanimous, 5-0.

c.) Re/Appointments to the Planning Board

MPT Pruitt made a motion to reappoint Chuck Heath, Jim Geraghty and John Richeson as regular members of the planning board with a term of office to expire June 30, 2025. The motion was seconded by Councilwoman Walker and the vote was unanimous, 5-0.

Councilwoman McClean made a motion, seconded by Councilwoman Walker, to reappoint Matt Spencer as an alternate on the planning board with a term of office to expire June 30, 2025. The vote was unanimous, 5-0.

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Mayor Garriss made a motion to reappoint John Richeson as chairman and Bryan Parker as vice-chairman of the planning board for a one-year term. It was seconded by MPT Pruitt and the vote was unanimous, 5-0.

9. TOWN MANAGER

Manager Clopton said she is happy to announce the town has completed a lease agreement with **Beach Medical Center** to lease three of the office suites at 5200 North Croatan Highway. Zoe Sherman, the owner of Beach Medical, is here tonight. She added it is nice to have a medical provider on the town's property and she hopes to be moved in no later than December.

On Monday, June 26th at 9 a.m. there will be another **Monday with the Mayor** session. The public is encouraged to attend.

A reminder that the July town council meeting is going to be on the **second Monday in July**, July 10th, due to the 4th of July holiday.

10. TOWN ATTORNEY

There were no further comments from Attorney Sharp.

11. TOWN COUNCIL

***Garriss:** During tonight's consent agenda we approved a proclamation for Dusty Rhoads, and I would like to say a huge thank you to Jeff Pruitt, Charlotte Walker, and Lynn Morris with regards to it. He is a good friend of this town. His official name is Clarence A. "Dusty" Rhoads, III and everybody knows him as Dusty. Let me tell you a little bit about him. He is currently serving on the Planning Board. He served on the Recreation Committee and was very instrumental in our Heritage Day Festival. From 2005-2009 he was co-chair of the Kitty Hawk Folk Life Heritage Watermen Committee. He is very passionate about this, as Jeff is, and very passionate about the old time Kitty Hawk. We all feel that way.*

Dusty is having some tough times. Our prayers and thoughts need to be with him, his family, and friends. I know everyone in this room and those watching at home will join me in that.

At this time Mayor Garriss read aloud the proclamation:

PROCLAMATION

Clarence A. "Dusty" Rhoads, III

Honorary Town Council Member

Whereas, Clarence A. "Dusty" Rhoads, III has been a faithful and engaged citizen for many years in the Town of Kitty Hawk; and

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Whereas, Dusty was an integral part of the Heritage Day Festival Committee, served on the Recreation Committee and is currently serving on the Planning Board; and

Whereas, the Town Council has long felt his respect and commitment for the governing body of Kitty Hawk; and

Now, Therefore, in appreciation of his dedicated service and support, I, Craig Garriss, Mayor of the Town of Kitty Hawk, proclaims Clarence A. "Dusty" Rhodes, III an honorary member of the Kitty Hawk Town Council.

This the 2nd day of June 2023. Signed: D. Craig Garriss, Mayor

Mayor Garriss said he does not believe designating someone an honorary council member has been done before. He was sworn in this past Friday by Town Clerk Lynn Morris.

Pruitt: *We met over at Dusty's, and it was a great gathering. I would like to thank former mayors Gary Perry and Clifton Perry for coming to help us honor the achievements he has made for our town. When he wanted to talk with me, he would always leave a card on my windshield with "please call me, very important" written on it. I would think it was something bad and it usually was not. Just something about the town. He took it to heart, and he is one heck of a planning board member and a great friend. I want to thank Charlotte and Lynn. I really appreciate it. It was very nice.*

Walker: *It was a happy, not a sad, day and everybody there was genuine and kind and there for all the right reasons.*

Garriss: *I would run into Dusty at the Post Office, and he would shake my hand, thank me, and it soon turned into conversation. If there was something on his mind, he was going to tell you.*

Mayor Garriss welcomed Zoe and said everyone is excited to have her in town. He thanked staff again for an outstanding budget. Summer is here and the beach has not been very enjoyable for families lately, but the lifeguards are out there just in case.

Councilman Hines and Councilwoman McClean thanked everyone involved with the proclamation for Dusty and thought it was a great idea.

MPT Pruitt welcomed Zoe. He said he had just left her office and did not know if he was going to make the meeting because of the heavy traffic. Her staff was great to his mother today and asked her to thank her staff for him.

He said everyone has been through a lot with the police department building. It has been a lot of work, a lot of back and forth. He thanked the staff and everybody for putting up with him. He also thanked David Hines who did a fantastic job helping guide him to make very good decisions for the town.

Walker: *A member of the Recreation Committee's daughter competed on Saturday in the state AA Soccer Tournament, and they won! Congratulations to Lizzie Mantz. Her parents, I know, are as*

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proud as they can be. I wanted to pass that along about a Kitty Hawk girl. That is about all I have except to say again it filled my heart on Friday.

Garriss: *Council we have accomplished a lot tonight. A lot of hard work. Thank you. Any further conversation?*

Walker: *When I was elected one of my priorities was pay for the staff and I thank you so much for looking after that and making them happy.*

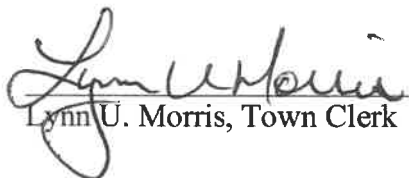
Garriss: *You must look out for your employees. You are right Charlotte.*

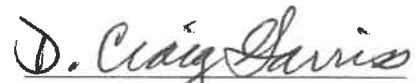
Clopton: *They are our best asset.*

12. ADJOURN

Councilman Hines made a motion, seconded by Councilwoman McClean, to adjourn. The vote was unanimous, 5-0. Time was 6:48 p.m.

These minutes were approved at the July 10, 2023 council meeting.


Lynn U. Morris, Town Clerk


D. Craig Garriss, Mayor