



Minutes
Recessed Meeting

KITTY HAWK TOWN COUNCIL BUDGET REVIEW

Tuesday, March 19, 2024
Kitty Hawk Fire Department
9:00 am

1. Call the Recessed Meeting of March 4, 2024, to Order
2. Council Decision Making Options
David Owens, MPA, JD - Retired Professor of Public Law and Government – UNC Chapel Hill
3. Fiscal Year 2024-2025 Budget Presentations and Discussion
4. Adjourn

Council Attendees: Mayor D Craig Garriss, Mayor Pro Tem Jeff Pruitt, Councilman David Hines, Councilman Dylan Tillet, Councilwoman, Charlotte Walker

Town Staff: Town Manager Melody Clopton, Director of Planning & Inspections, Robert Testerman, Finance Director, M Lilliana Noble, Police Chief, Mike Palkovics, Fire Chief, Mike Talley, Public Works Director, Willie Midgett, and Administrative Services Director, Laura Walker.

Guest: David Owen, MPA, JD, Retired Professor of Public Law, and Government at UNC Chapel Hill.

At 9:04 am Chief Talley provided a brief safety briefing advising all present of exits, rally point, and location of AED and fire extinguishers.

Town Manager, Melody Clopton welcomed all in attendance.

1. Call the Recessed Meeting of March 4, 2024, to Order

At 9:05 am, Mayor Garriss called the recessed meeting to order. He thanked Fire Chief Talley for hosting the event at the Fire Department.

Town Manager, Melody Clopton, provided a brief overview of the planned agenda and then introduced David Owen to speak regarding planning decision-making for the Town.

2. Council Decision Making Options

David Owens, MPA, JD - Retired Professor of Public Law and Government – UNC Chapel Hill

In Mr. Owens overview, he discussed the decision-making process and the rules that are set by the State of North Carolina. There are four types of decision processes open to municipalities to consider.

The definition of each of the following is detailed in the attached memo provided to the Town Council as part of the agenda packet for this meeting.

- 1. Legislative
- 2. Administrative
- 3. Quasi-Judicial
- 4. Advisory

Councilman Hines would like more clarity on the Planning Board’s authority to deny the application which is in support of the Plat plan.

Mayor Pro Tem Pruitt feels this subdivision request goes against the nature of the land use plan. What kind of action can be taken if the residents want to have more say, the land use plan references wildlife and run off so what would be the approach to indicate it is not in compliance with the Land Use Plan? He would also like to know if the Land Use Plan can be a reference for a denial.

Mr. Owens indicated a change in the zoning would preclude this if you determined the minimum lot size and then rezoned in that area. It can take up to 3 months to complete a rezoning process and in many cases, the developer will walk away.

Councilman Hines requested clarification, so going forward this can potentially be fixed, but existing applications would not be subject to the revised zoning if this is correct. Mr. Owens confirmed that is correct.

The Council thanked Mr. Owens for his time and education in the process.

5. Fiscal Year 2024-2025 Budget Presentations and Discussion

10:20 am

Town Manager Melody Clopton provided the council with an update of accomplishments for the fiscal year to date 2023-2024.

Some of the items discussed included:

- Development of the lead team and targeted training
- Development of a formal Performance Appraisal Process
- Development of onboarding process for employees and council members
- Software installation for document management, more to come with New PIO/Clerk on this project
- Two new communitywide events Halloween and Santa's Motorcade
- Renovation of Beach Medical facilities
- Implementation of the Town's retiree benefit plan and policy
- Ongoing projects for the New Police Station, EMS Fire Bay with Dare County, and the Multi-Use path

Project updates were provided as well on the following projects:

The Police Department Building Renovation, bid opening will happen on Friday, March 22, 2024. We require a minimum of three bids from responsible, responsive bidders which we expect to receive.

Ocean Rescue Housing, thank you to the Public Works and Fire Department for doing the renovations on this facility to provide dorm-style housing for Ocean Rescue this year. We have all six beds filled at this time and look forward to the team's arrival in May.

NCDOT Multi-Use Path is moving forward, and we have signed the contract and paid the Town's portion of the fund. NCDOT is awaiting final federal funding, once received we will move forward to the engineering phase of the project.

The performance management process will incorporate our Mission, Vision, and Core Values, which have been something the lead team has been working on for a few months.

Town Manager Melody Clopton proposed the following as the **Mission Statement** for the Town.

The Town of Kitty Hawk emphasizes community involvement, family values, and responsible use of Town resources. Our top priorities include preserving the town's rich history, enhancing natural resources and promoting resilience. We are committed to striking a balance between the needs of our year-round residents and visitors, while continuously improving the quality of coastal living.

Town Manager, Melody Clopton proposed the following as a **Vision Statement** for the Town.

We are committed to maintaining the tradition of persistence and innovation that has been the foundation of our community for centuries. We aim to be highly skilled, adaptable, and resilient so that we can successfully navigate through any challenges that come our way. We will follow our TIDES to create abundant opportunities for our team and community.

Town Manager, Melody Clopton presented the Core Values adopted by the Lead team.

TIDES

T*eamwork* - We strive to go beyond our individual efforts and viewpoints to establish a shared objective and responsibility. Our goal is to develop the necessary skills to build a strong and effective team. We place great value on cooperation and encourage it through fostering a positive culture and partnering with our community. Our combined efforts are aimed at achieving our stated goals and organizational vision. By working together, we will improve ourselves, our team, and our community.

Key Terms: collaboration, improvement, encouragement, development, shared purpose, competence

I*ntegrity* - Integrity is the backbone of high moral and professional standards that guide our actions and decisions. It is a value that stands alone and must not be compromised for anything. We will always be truthful and transparent in all our actions, words, and decisions, and will follow through on our commitments without fail. Never compromise on doing what is right, irrespective of who is watching. Our integrity sets us apart from the rest.

Key Terms: Truthfulness, high morals, transparent, follow through/commitment.

D*edication* - We are deeply committed to achieving the goals set by the Town and our Departments. We approach every opportunity with a proactive mindset, always seeking to learn and collaborate and bring forward innovative solutions that will help us all succeed. With a positive attitude and unwavering presence, we will remain dedicated to our mission.

Key Terms: Commitment, proactive, learning, collaboration, innovative, positive attitude, presence

E*ngagement* - We are enthusiastic about our roles, highly motivated to meet expectations, and empowered to make valuable contributions. We understand what is required for professional success and will take responsibility for our own behavior by remaining proactive. We take our positions seriously and actively seek development opportunities to learn, grow, and improve.

Key Terms:
Motivation, empowered, take responsibility, proactive, seek development opportunities.

S*ervice* - We will prioritize the interests of our organization and community, making strategic and intentional decisions that benefit those we serve. We will communicate openly, with a friendly and helpful approach.

Key Terms: strategic, intentional decisions; focus on organization and community, open communication, friendly approach

Councilman Pruitt inquired how we would differentiate the merit pool and whether would it continue year over year. Ms. Clopton indicated the merit piece will be annually reviewed. If employees do not meet the criteria the following year it will be suspended.

Councilman Hines indicated he was in support of paying those who are high performers.

The council asked Chief Palkovics his thoughts on the process, and he indicated he believes that individuals who exceed expectations should be rewarded. Chief Talley indicated it was a developmental process for leadership to do this, and it can be difficult, to be honest.

Town Manager Melody Clopton presented her recommendations for the Non-Departmental Budget for the Council

- Establishing a Community Relations budget of \$10,000
- Provide a 401K match of 5% for General and Fire employees, creating equity with the Police and keeping pace with local municipalities), \$72,000
- Four percent pay plan adjustment for all employees
- Merit pool of 1-3%

10:58

Finance Director, Liliana Noble presented revenue projections.

Ms. Noble explained to the Town Council the reduction in project revenues related to the County and municipalities' shared revenue related to Sales, Occupancy, and Land Transfer tax.

Due to other municipalities increasing their tax base in 2023-2024, the Town of Kitty Hawk's portion of this shared revenue will decrease for the fiscal year 2024-2025 by \$177,732. It was noted historically that Kitty Hawk, unlike other municipalities has not had an increase in taxes in the last ten years, while neighboring municipalities have increased, some as much as three times (Kill Devil Hills).

Options presented to the Council to mitigate the revenue reduction included.

1. Increase Property Taxes by 0.01
2. Increase Property Taxes by 0.02
3. Reallocation of 0.01 of the Beach Nourishment funds to the General fund

Councilman Hines voiced concerns about the funds required for Beach Nourishment for the next 5 years as an unknown factor. He was not aligned with raising taxes and wanted to review the overall Town budget to ensure we could not find savings in other areas.

Councilman Pruitt expressed concerns about raising taxes just because other municipalities were doing so, Ms. Noble explained the allocation of that fund and the impact long term for not making a change.

Town Manager Melody Clopton indicated the budget being presented to the Council includes all requests by department heads. It does not provide any contingency funds, no funds for repairs or infrastructure, and leaves only \$12,000 not assigned.

The Council determined they would hold further discussion of this subject until they have reviewed in detail the departmental requests and a special meeting would be held to review the budget in detail with the Town's leadership.

Rob Testerman, Director of Planning & Inspections reviewed his budget request for his department. His requests centered around upgrades to the Planning Software iWorQ to assist in automating many tasks to make the team more efficient and effective. He also reviewed the recent restructuring of his department roles including adding a trainee for a building inspector in preparation for David Lewis's planned retirement in May of 2025.

Chief Tally presented requests for the Fire Department. The challenges include continuing to save funds for much-needed Fire apparatus replacement. An Engine needs replacement in 2026 and the ladder truck in 2030. Currently, we are saving \$200K annually in anticipation of purchases. One other item discussed is the lead time of potentially 2 years to secure the equipment.

Additionally, we have a vehicle that is past the 8-year 80K guideline for Town Vehicles. It was removed from last year's budget request. The vehicle is beginning to be costly in terms of maintenance, so it needs replacement. Other requests are related to AED equipment, new chainsaws, and other extrication tools.

Chief provided the operations and maintenance remained flat based on this year's budget. In addition, they have partnered with Kill Devil Hills on annual physicals to save money. Chief Talley wanted to ensure the Town Council is aware of ongoing mechanical challenges with equipment which is costly and ongoing.

Councilwoman Walker inquired how many AEDs were needed, Chief Talley confirmed it was a total of five. Councilman Hines indicated he may be aware of a grant and would make sure Chief Talley has the information.

Chief Palkovics invited his leadership team who assisted with the budget to join him in reviewing the requests for the department. Joining him was Det Jason Rigler, Records Clerk, Sharon Davenport, Det Jeff Gard, and Lieutenant James Helms.

Chief Palkovics reviewed the statistics for the department compared to the last four years. His review included traffic enforcement, traffic crash data, DWI arrests, and crime review by major categories. The crime rate is calculated in Kitty Hawk at .016 percent.

The Chief presented the Mission, Vision, and Values of the Kitty Hawk Police Department.

Mission

The Kitty Hawk Police Department will provide outstanding police services to the public. We will prioritize the improvement of the overall quality of life for our residents, business owners, and visitors. Our mission is to protect the public's rights, safety, and property, which will ultimately enhance the well-being of everyone.

Vision

We will address crime in an impartial and fair manner by taking proactive measures towards crime prevention, enforcement, and rigorous follow-up. We will utilize technology in a highly efficient and effective way, while emphasizing advanced training and offer development. By doing so, we aim to exceed the high expectations that our community has and deserves from our department.

Values

Integrity – Being honest and demonstrating a consistent adherence to strong moral and ethical principles.

Professionalism – Producing exemplary and thorough work while maintaining a high standard of conduct, behavior, and attitude.

Respect – Treating others as you expect them to treat you. A positive feeling towards another person, their skills, opinions, or other unique characteristics and honoring a person's beliefs, ideas, or culture.

Compassion – Appreciating and being empathetic to the difficulties of others and what they may be experiencing through our expressions of kindness, caring, and helpfulness, creating greater trust and learning for all involved.

Current activities at the department include:

- Active participation in establishing a police presence this summer with beach patrol and cross-training once again with Fire and Ocean Rescue.
- Establishment of the Officer of the Quarter with the recognition of peers as well as the privilege to drive the department's Mustang for the quarter.
- Creation of a community advisory board, they need one more participant.

The department is looking at beginning the process for CALEA or NCLEA accreditation process. This is a detailed review of policies and procedures by peer departments to obtain this accreditation.

The Chief is also looking at enhanced career development programs for the team.

The Operating budget requested totals \$189,028. The Maintenance and repairs budget is \$53,000 and is no increase from the prior year. The capital outlay requested is \$289,487 and includes a drone for police search and rescue as well as town use.

There is a need to replace a 2017 Ford Explorer with over 80K miles which has also become a maintenance challenge. The plan was to find a reliable used sedan and this vehicle to be used for non-marked services such as out-of-town training.

1:55 pm

Liliana Noble, Finance Director, presented the needs for the finance department for the coming year. The only request is capital savings to prepare for potential upgrades and enhancements to the Town's Finance Software platform, InCode. The request is to defer \$10k annually to prepare for those potential costs in the future. As a reminder, the implementation of the program five years ago was a cost of \$90k to the town.

2:07 pm

Willie Midgett, Public Works Director provided some accomplishments for the Public Works team this year.

1. Renovation and refurbishing the Coastal Reserve building and creating an Ocean Rescue Dormitory-like living space for our team this summer.
2. Renovation and maintenance of the Medical Center and Bayer Drugs locations. Assuming the role of the maintenance team for that location.
3. Byrd Street deck replacement

Mayor Garriss thanked the entire team for their participation in the budget process and preparation for the meeting. In agreement, the council determined they would take some time to review in detail the information provided and consider the options.

Mayor Garriss made a motion to adjourn, Jeff Pruitt made the motion and Dylan Tillett seconded.

The meeting was adjourned at 2:22 pm.




D. Craig Garriss, Mayor

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MEMORANDUM

TO: Mayor Garriss and Members of the Town Council
FROM: Rob Testerman, AICP, CFM, CZO
DATE: March 8, 2024
RE: **Council Decision Types**

Attachments:

Types of Development Decisions – Adam Lovelady, 8/24/21

Making a Quasi-Judicial Decision – Jim Joyce, 4/4/23

Can I Be Heard? Who Gets to Speak on a Quasi-Judicial Matter? – David Owens, Rev. 6/13/22

The attached articles are being provided as educational materials for Council as we move forward in discussion of how to look at subdivision applications. Staff has highlighted some of the key points in each article. Please read through them, as they provide a very detailed and clear discussion of each topic.

Types of Development Decisions, by Adam Lovelady

Details the three types of decisions the Town makes as it relates land use/development. Those being administrative (site plan review, subdivisions); quasi-judicial (variances, special use permits); and legislative (Town Code, zoning map amendments).

As noted in the article, administrative decisions are based on “clear, objective criteria” (regulations set forth within the ordinances). If an application meets those criteria, the Town is legally obligated to approve the application.

Quasi-judicial decisions are also based on standards written into the ordinances. However, these decisions are to be based on an evidentiary hearing. Witnesses are sworn in, must testify on relevant facts, and may require expert witnesses on some technical matters (for example – the opinion of a neighbor who thinks a development would create too much traffic cannot be considered as “evidence” and cannot be considered during the decision making process – however, if a traffic engineer testified that they have studied the proposal, and in their professional opinion, the development would create unsafe traffic conditions – then Council could factor that into their decision.

During the hearing, if an applicant provides sufficient evidence that to prove the proposal meets the requirements of the Town, burden then shifts to any opponents with standing to present their evidence that it does not. If the opponents counter with relevant evidence, Council must weigh the evidence of both side, resolve any contested facts, and apply the standards of the ordinance while making a decision. If the applicant presents sufficient evidence, and opponents do not

have relevant, fact based evidence – the applicant is entitled to approval.

In his article, Mr. Lovelady specifically addresses the option of using the quasi-judicial decision making process for subdivision review. In such cases, in addition to the clear, objective standards in the ordinance (lot size, density, etc), we can apply additional requirements (is it in harmony with the area? Will it harm property values?). If this is the case, it is the responsibility of the applicant to present fact based evidence that it meets the requirements, and would be on opponents with standing to present their fact based evidence to the contrary, possibly hiring expert witnesses to testify to technical matters.

Legislative decisions are the only decision type of the three where Council can, and should, consider the opinions of the public. Legislative decisions are where we set the standards that we hold our quasi-judicial and administrative decisions to. If we feel that a number of recent development proposals are too dense for an area, if they meet the ordinance, they still are legally obligated to be approved. If the consensus is that it is too dense, then we change the ordinance and apply the new regulation to any future development.

Can I Be Heard? By David Owens

In this article, Mr. Owens illustrates the purpose of the evidentiary hearing, where he highlights that the purpose of a quasi-judicial hearing is **not to solicit public opinion and comment about policies** (density, lot size, etc) – those policies have already been set in a previous legislative hearing. The sole purpose of a quasi-judicial evidentiary hearing is to gather facts regarding whether a proposal meets the existing standards.

Persons who are not parties to the case do not have a constitutional right or statutory right to present evidence to the Council. Further, if Council allows persons who are not parties to the case to present – if they present irrelevant evidence, Council should make clear that that testimony will not be considered when making a decision. Any person permitted to be sworn in and testify during a quasi-judicial hearing should be reminded that this is not the time or place to offer opinions, or suggest policy changes

Making Quasi-judicial Decision, by Jim Joyce

In this third article, Mr. Joyce goes into more detail about the quasi-judicial decision making process. He very early on notes that quasi-judicial decisions **must** apply standards and regulations that have already been previously set through legislative hearings – regardless of policy preference or political pressure. Mr. Joyce quotes state statute in stating that “every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.”, so again, opinions are not considered in this type of decision making process (unless professional opinions of an expert witness) – as noted in the article where traffic impacts are discussed.

Material evidence is required for the decision. That is to say evidence presented should relate to the standards that the applicant is trying to prove compliance (or opponents are trying to counter to show non-compliance).

Mr. Joyce excellently explains the burden of proof, highlighted on page four of his article. If an applicant provides sufficient evidence, the burden shifts to the opponents. If opponents do not provide sufficient competent, material and substantial evidence in response- **Council lacks authority to deny the request.**

Given the information presented by Mr. Lovelady, Mr. Owens, and Mr. Joyce, it is staff's strongly held opinion that rather than rewriting the subdivision ordinance and recreating our entire process for subdivisions – the Town would be better served to identify what aspects of the recent subdivision that Council, and the residents of the town, are uncomfortable with (density, lot sizes, etc.) and direct staff to write text amendments that would go through the legislative decision making process and invite the residents to voice their opinion, during a decision in which Council can actually legally consider their opinions. To be clear, any changes would only apply to developments that are applied for after adoption of any changes.