

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, April 2, 2012**  
**Kitty Hawk Town Hall, 6:00 PM**

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
  - a. Approval of Minutes: February, 23, 2012 Recessed Meeting and March 5, 2012 Regular Meeting
  - b. Revenues and Expenses Report for February 2012
  - c. Tax Pick Ups and Releases
  - d. Acceptance of Donation from Joe Lamb Jr. & Associates
  - e. Annual Audit Contract for FY 11-12 with Dowdy & Osborne LLP, CPA's
  - f. FY 11-12 Budget Amendment #8
  - g. FY 11-12 Budget Amendment #9
6. Items Removed from the Consent Agenda
7. Public Hearing
  - a. Town of Kitty Hawk Solid Waste Management Plan, 2012 –2022
8. Return to Regular Session
  - a. Resolution to Approve the Town of Kitty Hawk Solid Waste Management Plan, 2012 – 2022
9. Planning
  - a. Call for Public Hearing/Conditional Use Permit: Application for a conditional use permit to establish a temporary lawn and garden center within the existing parking area at Home Depot.
  - b. Call for Public Hearing/Text Amendment: Proposal to amend subsection 42-577(l) by adding a ten (10) day time limit for removal of temporary construction signs in residential zones after completion of a project, consistent with the standard for commercial zones.
  - c. Call for Public Hearing/Text Amendment: Proposal to amend the *Required Parking Spaces* chart in subsection 42-546(a) to clarify that only storage areas can be excluded from gross floor area when calculating parking requirements for retail uses.
10. New Business
  - a. A Resolution That There Exists Significant Public Interest in the Nature and Extent of Public Trust Rights Under North Carolina Law and the Nature and Extent of Local Government Regulation of Ocean Beaches Within Their Jurisdictions
  - b. Extension of Franchise Agreement for Recycling with Bay Disposal and Recycling/Outer Banks Hauling
11. Reports or General Comments from Town Manager
  - a. Letters of Appreciation from the Heron Pond Montessori School
  - b. Sandy Run Park Update
12. Reports or General Comments from Town Attorney
  - a. Update on Procurement of 3907 N. Virginia Dare Trail
13. Reports or General Comments from Town Council
14. Public Comment
15. Recess to April 16, 2012, 9:00 a.m., Kitty Hawk Town Hall for FY 12-13 Budget

**Kitty Hawk Town Council Minutes: April 2, 2012**  
**Page 2**

**COUNCIL MEMBERS PRESENT:**

Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

**STAFF MEMBERS PRESENT:**

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

**1. CALL TO ORDER**

Mayor Perry called the meeting to order at 6:00 p.m.

**2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE**

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

**3. APPROVAL OF AGENDA**

Mayor Pro Tem Perry made a motion to approve the agenda as promulgated. It was seconded by Councilwoman Klutz and passed unanimously, 5-0.

**4. PUBLIC COMMENT**

There was no public comment.

**5. CONSENT AGENDA**

Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

**a.) Approval of Minutes.** February, 23, 2012 Recessed Meeting and March 5, 2012 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

**b.) Revenues and Expenses Report for February 2012.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

**c.) Tax Pick Ups and Releases.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

**Kitty Hawk Town Council Minutes: April 2, 2012**

**Page 3**

- d.) **Acceptance of Donation.** Joe Lamb Jr. & Associates made a \$200.00 donation to the Kitty Hawk Police Department for the purchase of alarms that are placed in vacant homes. *(Approval of the Consent Agenda will accept this donation.)*
- e.) **Annual Audit Contract** – This contract to audit the town's accounts for FY 11-12 is with Dowdy & Osborne LLP, CPA's and is in the amount of \$17,750.00, the same amount as last year. *(An affirmative vote for the Consent Agenda will approve this contract.)*
- f.) **FY 11-12 Budget Amendment #8** - This General Fund budget amendment will recognize and authorize the appropriation of Federal (FEMA) and State (NC Dept. of Crime Control & Public Safety) emergency grant funds in the amount of \$302,773.71 for extraordinary expenses incurred by the town during Hurricane Irene (a Federally declared disaster). *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*
- g.) **FY 11-12 Budget Amendment #9** - This General Fund budget amendment will recognize and appropriate \$35,867.00 in flood property contents damage settlement funds to the Town from claims arising from Hurricane Irene. Approval of this amendment will authorize assignment of funds to the Public Works department for contents damage reimbursements in the amount of \$11,203.43 for their offices and an additional reimbursement in the amount of \$24,663.65 to cover contents damaged and expenses incurred by the Police Department. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

**Councilwoman Klutz moved to approve the consent agenda. The motion was seconded by Councilman Bateman and passed unanimously, 5-0.**

**6. ITEMS REMOVED FROM THE CONSENT AGENDA**

There were no items removed from the consent agenda.

**7. PUBLIC HEARING**

**A motion was made by Mayor Pro Tem Perry, and seconded by Councilman Bateman, to go into public hearing. The motion passed unanimously, 5-0.**

a.) **Town of Kitty Hawk Solid Waste Management Plan, 2012 –2022:** This solid waste management plan has been completed in compliance with applicable State of North Carolina standards. The plan has been developed for the purposes of protecting public health and the environment, conserving the use of our natural resources, improving our solid waste management system, and controlling the cost of solid waste management. Kitty Hawk's adopted plan will be merged into the Dare County Solid Waste Management Plan.

Planning Director Heard said every three years the town is required to adopt a ten-year Solid Waste Plan. It is important because it is a large part of the budget every year and any positive steps that can be made toward reducing the amount of waste can have significant impacts on the budget.

**Kitty Hawk Town Council Minutes: April 2, 2012**  
**Page 4**

The first section of the plan is background information and with regards to population projections, according to the State data center, Dare County is projected to lose year around residents over the course of the next decade or so. The figures for Kitty Hawk were adjusted accordingly on a percentage basis.

Beginning on page 4 is where the town really takes a hard look at some of these issues and talks about ways to reduce the amount of waste produced, ways to increase the amount of recycling, and reuse of materials. How are we going to go about disposing of the waste that is produced? There are a variety of things in the plan and it encompasses ideas gathered from town staff.

Once this plan is adopted by council there is a resolution that also needs to be adopted. This plan will then be incorporated into the Dare County Plan.

MPT Perry noted it states that Dare County is planning to go through the year 2035 at the East Carolina Land Fill but the landfill operators were not sure they would have that extension. It might be a question to ask the next time to make sure we do not get short changed.

Councilwoman Klutz said on page 7 there is a statement, "Some commercial waste from Dare County and the towns is transferred through the Currituck transfer station to ECE Landfill." Then under disposal it talks about the contract we have with ECE and Dare County sends all of its solid waste to ECE. Is the only difference that some of it goes through a Currituck transfer station and some of it goes through our transfer station but it all goes to the ECE?

MPT Perry explained all of Dare County, with the exception of the Town of Duck, goes through our transfer station and into ECE. Duck chose to do their own contracting and that contractor was using another place until they were stopped and now it is going to ECE. It is going to Currituck, around Maple. The bottom line is everything in Dare County goes to ECE but Duck goes a different route and they are independent.

Councilwoman Klutz said they are not part of the Albemarle Regional and Duck could wind up with a landfill someplace else. That would have to be changed in the plan.

MPT Perry said they could except the chances of finding another place to put it does not exist.

Mayor Perry agreed they could wind up with nowhere to put it. The county had to guarantee all of it was going to go and does not know how they got out of it when they incorporated.

MPT Perry said they asked and were allowed to do it. The question came up if they decide not to would Dare County ever let them back in and they would so it was written in. They could join Dare County if they wanted to. The first contract was so large nobody knew what was in it and the second contract allowed it.

Councilwoman Klutz said under "intended actions" there is mention of composting and mulching. "The Town of Kitty Hawk plans to support local efforts to establish a large scale composting facility." She asked if Dare County will be doing that.

**Kitty Hawk Town Council Minutes: April 2, 2012**

**Page 5**

PD Heard said there are some efforts and interest in establishing a large composting facility and believes it would be located in Currituck County. It would be something the town could potentially participate in and wanted to leave the door open to it.

Councilman Reid said citizens have a choice of taking items to the Recycling Center or they can contract for curb side pickup. He asked which one is better for the town.

PD Heard said it might be more appropriate to state it would benefit Dare County more than the town because they handle the recyclable materials. Dare County can get money for those whereas if it is a private hauler they get the money. Maybe indirectly the town benefits but Dare County benefits directly from that standpoint.

PWD Midgett added the town gets credit on the annual report for the recyclables picked up by Bay Disposal. They provide a monthly report and it is credited as being recovered by the town.

Mayor Perry asked if anyone wished to speak during the public hearing. No one came forward.

**MPT Perry made a motion to go back into regular session. Councilwoman Klutz provided a second and it passed unanimously, 5-0.**

**8. RETURN TO REGULAR SESSION**

**a.) Resolution to Approve the Town of Kitty Hawk Solid Waste Management Plan, 2012 – 2022:** Council action may include approval, denial, approval with modifications, or tabling action.

**MPT Perry made a motion, seconded by Councilman Bateman, to approve the Resolution for the Kitty Hawk Solid Waste Management Plan update for 2012 through 2022. The vote was unanimous, 5-0.**

**9. PLANNING**

**a.) Call for Public Hearing/Conditional Use Permit:** Application for a conditional use permit to establish a temporary lawn and garden center within the existing parking area at Home Depot. The proposed lawn and garden center would be located near the front entrance toward the eastern side of the parking lot and take up 20 existing parking spaces and the drive aisle between these parking spaces. The temporary lawn and garden center is proposed to operate from the date of approval (potentially May 7<sup>th</sup>) through July 8, 2012. A public hearing is requested to be scheduled for the May 7, 2012 Town Council meeting.

**b.) Call for Public Hearing/Text Amendment:** Proposal to amend subsection 42-577(l) by adding a ten (10) day time limit for removal of temporary construction signs in residential zones after completion of a project, consistent with the standard for commercial zones. A public hearing is requested to be scheduled for the May 7, 2012 Town Council meeting.



c.) **Call for Public Hearing/Text Amendment:** Proposal to amend the *Required Parking Spaces* chart in subsection 42-546(a) to clarify that only storage areas can be excluded from gross floor area when calculating parking requirements for retail uses. A public hearing is requested to be scheduled for the May 7, 2012 Town Council meeting.

Councilman Reid made a motion for council to call for a public hearing for a conditional use permit for an application to establish a temporary lawn and garden center in the existing parking area of Home Depot. The temporary lawn and garden is proposed to be operated from the dates of approval, potentially May 7 through July 8, 2012, and the request for a public hearing would be set for the May 7, 2012 town council meeting. Second, council calls for a public hearing on a text amendment to amend Section 42-577(1) by adding a ten day time limit for removal of temporary construction signs in residential zones after completion of a project consistent with the standard for commercial zones. Again, setting the public hearing for the May 7<sup>th</sup>, 2012 council meeting. Thirdly, call for a public hearing for a text amendment to amend the required parking spaces chart in subsection 42-546(a) to clarify that only storage areas can be excluded from gross floor area when calculating parking requirements for retail uses. Set the public hearing for the May 7<sup>th</sup>, 2012 town council meeting. Councilwoman Klutz seconded and the motion passed unanimously, 5-0.

#### **10. NEW BUSINESS**

a.) **A Resolution That There Exists Significant Public Interest in the Nature and Extent of Public Trust Rights Under North Carolina Law and the Nature and Extent of Local Government Regulation of Ocean Beaches Within Their Jurisdictions**

Councilwoman Klutz asked why this resolution would go to the Supreme Court of North Carolina because a decision has been decided against the Town of Nags Head by an appeals court. It seems for the Supreme Court to take up the case their decision would not be based on resolutions coming from the towns but rather a matter of the law. In this case whether the Supreme Court sees there are, or are not, precedents or let it stand in the Court of Appeals. If the decision stands then towns could go to the legislature to try and change the law. There would be some local control over matters of this type. Is this the appropriate time to weigh in?

Attorney Michael replied it is appropriate if council wants the Supreme Court to consider what the Court of Appeals did and maybe reach a different resolution to the case. There are arguments on both sides of the Court of Appeals although it was a unanimous decision to adopt the opinion that is in this case. One of the things the Supreme Court looks at when it decides whether or not it will take an appeal from the Court of Appeals in which the panel is unanimous, and because there is no automatic right of appeal from a unanimous panel, is whether or not the subject matter of that case is of significant public interest. Should the Supreme Court review it and enter some final decision from the Supreme Court. That is the reason they are asking you to adopt this resolution. To show that the coastal towns do have a significant public interest in having that decision reviewed by the Supreme Court. To get an opinion from the highest court in the State as to whether or not the Court of Appeals is correct or whether or not what the Town of Nags Head contends is correct.

**Kitty Hawk Town Council Minutes: April 2, 2012**  
**Page 7**

Councilwoman Klutz asked what would be the impact of a resolution that does not pass unanimously. Would it be better to do nothing or to have a vote that is not unanimous?

Attorney Michael said he did not know if the Supreme Court is going to know how many people voted for it.

Councilwoman Klutz said it usually states the vote on resolutions and Clerk Morris offered it can be written either with or without the vote.

Councilwoman Klutz said she could not vote for the resolution the way it is written and Attorney Michael suggested adopting the resolution he had edited for the Town of Kill Devil Hills.

**MPT Perry made a motion for council to approve the resolution that the Town of Kill Devil Hills approved and substitute the wording of Kitty Hawk in place of Kill Devil Hills. Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.**

**b.) Extension of Franchise Agreement for Recycling with Bay Disposal and Recycling/Outer Banks Hauling**

Manager Stockton reported he had recently contacted Bay Disposal and Recycling/Outer Banks Hauling about the possibility of extending the franchise agreement, dated February 2, 2009, for a period of 3 years. The agreement stipulates it may be extended for one successful 3 year period. Bay Disposal sent a letter, dated March 16<sup>th</sup>, consenting to the exercise of their option to extend the franchise agreement for a one three-year period.

Councilman Reid asked if granting a franchise to Bay Disposal means it excludes other companies from coming in and requesting to do the same thing.

MPT Perry and Councilwoman Klutz replied yes. MPT Perry added he has noticed more people participating in the program, at least on his road, and asked if that was true throughout the town.

Manager Stockton replied there are 175 carts put out on a regular basis and Mayor Perry said it has increased.

MPT Perry, announcing for those that may watch this meeting on television, for \$9 a month recyclables will be picked up and it does not have to be separated. Just put it all in the can and they come pick it up. **He then moved for the franchise agreement with Bay Disposal and Recycling/Outer Banks Hauling, dated February 2, 2009, be extended for a period of three years. From February 2, 2012 to February 2, 2015. It was seconded by Councilwoman Klutz and passed unanimously, 5-0.**

**11. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER**

**a. Letters of Appreciation from the Heron Pond Montessori School** – Manager Stockton said the police department received letters of appreciation from the Heron Pond Montessori School.

## **Kitty Hawk Town Council Minutes: April 2, 2012**

### **Page 8**

The letters were from 5 and 6 year old students thanking the officers for helping our world and doing a good job.

**b. Sandy Run Park Update** – Manager Stockton reported the Sandy Run Park Phase II project is just about completed. There was a walk through today with the contractor and engineer. Left to do is installation of interpretive and mile marker signs and stocking the pond with fish. Some type of dedication or ribbon cutting ceremony will be held.

Councilmembers noted how many positive comments they have received about the park.

### **12. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY**

**a.) Update on Procurement of 3907 N. Virginia Dare Trail** – Attorney Michael reported they have found Mrs. Baggett. She is alive, well, and as pleasant as she can be. She was thrilled to find out she still owned the property in Kitty Hawk and has agreed to sell the town her one half interest in the property for \$4,000, which is one half of the appraised value. Council had authorized the transaction and there is a contract with her. The town will pay the \$40 transfer tax, revenue stamps of \$8, and recording charges of \$26. She will net \$4,000. Council will need to approve the contract tonight and the closing should be scheduled within the next week.

The other half of the property is owned by Mr. Hall and his wife Kimberly. He heard from them through his attorney last week and he is interested in going ahead and selling his half to the town also. He wants a bit more because he has employed an attorney to review all the documents and represent him. He wants \$4,800 for his one-half interest in the property, and again, the town would pay the transfer tax of \$48, revenue stamps of \$10 and recording fees of \$26. It would cost \$4,884 to net him out to \$4,800.

It is recommended council do this because it is less money than what it would be to go through the process of condemnation. Once the contracts are received the condemnation proceeding will be dismissed and the town will get back the money from the courts.

**Councilwoman Klutz moved to approve the contracts for the amounts stated above by Attorney Michael. Councilman Bateman provided a second and the vote passed unanimously, 5-0.**

### **13. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL**

**a.) Pedestrian Signal/Crosswalk at Eastern Entrance of Shoreside Center Shopping Center from Juniper Trail, Southern Shores**

Councilman Bateman said a representative from Gateway Bank approached him about looking into having a “walk, don’t walk” signal at the intersection of Juniper Trail in Southern Shores and the eastern entrance to Shoreside Center Shopping Center in Kitty Hawk. There are six lanes of traffic and there have been pedestrian accidents and near misses there.

**Council concurred to ask NCDOT look into the request.**



**Kitty Hawk Town Council Minutes: April 2, 2012**  
**Page 9**

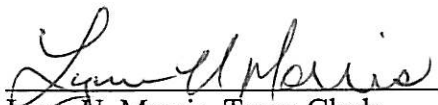
**14. PUBLIC COMMENT**

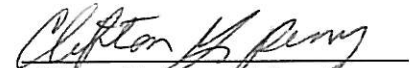
No public comment.

**15. RECESS** to April 16, 2012, 9:00 a.m., Kitty Hawk Town Hall for FY 12-13 Budget

**Councilwoman Klutz made a motion to recess this meeting until April 16, 2012, at 9:00 AM for the Fiscal Year 2012-13 budget. MPT Perry seconded the motion and it passed unanimously, 5-0. Time was 6:40 PM.**

These minutes were approved at the *May 7, 2012* council meeting.

  
Lynn U. Morris, Town Clerk

  
Clifton G. Perry, Mayor