

Minutes
KITTY HAWK TOWN COUNCIL
Monday, April 3, 2017
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations
 - Will Sassorossi, Maritime Archaeologist/Proposed Boundary Expansion of the Monitor National Marine Sanctuary (*Rescheduled for May 1, 2017*)
 - Michelle Clower, Coastal Specialist/North Carolina Coastal Federation Moore Shore Road Project
5. Public Comment
6. Consent Agenda
 - a.) Approval of March 6, 2017 Council Minutes
 - b.) FY 16-17 Budget Amendment #8
 - c.) Memorandum of Agreement between Dare County Towns and the County of Dare Concerning an Alert and Notification System
 - d.) Nonexclusive Assignment of Rights under Easement Agreements
 - e.) Dare County Land Transfer Tax Appeals Board
 - f.) Proclamation Recognizing April as Child Abuse Prevention Month
 - g.) Revised Scope of Work for Stream Repair and Debris Grant
7. Items Removed from Consent Agenda
8. Planning
 - a.) Town Code Amendment: Proposed additions of subsections 6-26(b) regulating use of sandbags as temporary erosion controls measures on the Atlantic Ocean shoreline
9. New Business
 - a.) Floodwater Management System Bid Recommendation - Fonck, Bennett, Starfish & Hallett/Perry Streets
 - b.) Resolution In Favor of Maintaining the Current Ban on Retailers Providing Customers with Plastic Bags and of the Defeat of House Bill 271
 - c.) Resolution Opposing Proposed Changes to Municipal Elections
 - d.) Stream Debris Removal Grant (*Added during the meeting*)
10. Reports/General Comments from Town Manager
11. Reports/General Comments from Town Attorney
12. Reports/General Comments from Town Council
13. Public Comment
14. Recess to April 24, 2017: Budget Workshop, 9 AM, Kitty Hawk Town Hall

COUNCILMEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman Ervin Bateman, Councilwoman Lynne McClean and Councilman Jeff Pruitt

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STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Town Planner Rob Testerman, Police Chief Joel Johnson, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

1. CALL TO ORDER

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

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

After the moment of silence the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

Mayor Perry said there is an item that needs to be added to the agenda. Item 9(d) Stream Debris Removal Grant.

Councilman Bateman made a motion to approve the amended agenda. Councilwoman McClean seconded the motion and it passed unanimously, 5-0.

4. PRESENTATIONS

***Will Sassorossi, Maritime Archaeologist/**Proposed Boundary Expansion of the Monitor National Marine Sanctuary --- *(Mr. Sassorossi was unable to attend the meeting and has reschedule to the May 1, 2017 meeting.)*

***Michelle Clower, Coastal Specialist/**North Carolina Coastal Federation Moore Shore Road Project

Ms. Clower delivered a PowerPoint presentation on the proposed living shoreline along Moore Shore Road and the benefits of stabilizing it from erosion. They have received a NOAA Coastal Resiliency grant (\$25,000) and funding through Dare County Soil and Water District (\$45,000). They are hoping to receive funding from the NC Department of Transportation (\$25,000 to \$30,000) and concerned community members (\$1,000 - \$5,000). Left to fund is \$145,400 at the very most.

Two scenarios were provided: 1) move forward with the two secured grants and only cover between 318-466 linear feet of the 840 linear feet needed; 2) construct the entire 840 linear feet and have the Town pay the \$145,400 if NCDOT does not participate. Also, the Town and/or NCDOT will need to be committed to long term maintenance.

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Perry: *I asked Andy to tell me whether or not we could fund what is left. Were you able to come to a conclusion?*

Stewart: *I would like to discuss this at the budget work session on April 24th if possible.*

Perry: *When do you need to know something?*

Clower: *We would need to know something by June probably.*

Perry: *We will have our budget workshop at the end of the month so we can let you know soon.*

Clower: *Thank you.*

Perry: *Andy has already been asked to see if that amount of money at a maximum could be available and I assume the rest of council has no objection for future maintenance. I think we are going to have to do that anyway for public purposes. Homeowners started this process but for Town purposes the tax money that would go into this is for saving the road, the path and stopping the erosion so we have the corridor in the future. We are not saving homeowners waterfront property. Easements must be obtained. Homeowners will retain riparian rights out to whatever their property lines were before it eroded away.*

The other thing I want to bring up to council is all the things we have done and the money we have spent east of 158 on all of the infrastructure we are putting in for drainage. When you look at that and you ask yourself what are we doing on the west side? Essentially not much. This is something we can do if Andy can find the money. It is needed. It gives us something to do for the village so to speak and I hope you agree with me.

Garriss: *And I assume you prefer option #2 correct?*

Clower: *We do.*

Perry: *Next is public comment. One of the complaints I have read on The Outer Banks Voice is our representatives in Raleigh are not listening to the public. We are trying to listen and would like to know what you are thinking.*

5. PUBLIC COMMENT

1. Donny King: *Most of you know me from Ocean Boulevard and Better Beaches OBX. I was happy to see Michelle's presentation for the Coastal Federation because we have parallel goals as far as protecting our way of life here in Kitty Hawk as we face more and more erosion. We want to keep trying to do what we can.*

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I want to thank you all for your efforts in actualizing a beach nourishment project for Kitty Hawk. Most of the hard work is behind us and we have something to look forward to in just a couple of months.

I am also here to offer some help with the maintenance stewardship of the newly augmented beach. Regardless of how the project turns out we know we will have a fairly wide berm to stabilize, some sort of starter dune, and the means to grow it and beautify that starter dune as time moves on. If you ask anyone involved with our shoreline committee in Nags Head our major concern regarding the 2011 beach nourishment project there is blowing sand. Stabilizing sand is not extremely difficult or extremely costly but it needs to be done. A professional effort by landscaping contractors and/or dune stabilization contractors is needed for the winter of 2017 to 2018.

I would also like to offer a volunteer effort to begin establishing the protective dune and/or augment the contractors efforts where needed. We at Better Beaches OBX have a growing roster of over 60 volunteers working in Nags Head on a casual basis sprigging dunes. Some team leaders and people who have brought other skills and ideas to the table are also available and we expect to grab many more volunteers. We also consult with regional experts to better understand how to apply these efforts.

Being volunteers we want to offer this work and experience however we will be requesting a system for obtaining materials from the Town of Kitty Hawk to be used within the Town limits. We set up a system with Nags Head that has allowed us to stabilize some key areas and gained experience with other areas that have proven more difficult. We understand that the degree of difficulty is due to the fact that we started over four years after the nourishment project and a lot of work that could have been done had not been done after the nourishment in regards to stabilizing the sand, keeping it where you would like it, using it more effectively. We look forward to presenting to you in the upcoming May 1st meeting and hopefully getting started this fall. We will have a more in depth presentation at that meeting if we are allowed.

Perry: *Sand fencing is a part of our project and are you aware that council has passed ordinances to keep people from damaging or disrupting the sand fence once it is put in place?*

King: *Yes and one of the more effective things that we have been doing is the sprigging. It is easy and we can get a lot of people out there. It is relatively low impact.*

Perry: *Council is going to turn this over to the manager and public works.*

King: *Thank you.*

Perry: *With all of the beach nourishment that is going on there is no money coming in for sand fencing anymore. Is that correct?*

Noble: *That is correct.*

6. CONSENT AGENDA

a.) Approval of March 6, 2017 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 16-17 Budget Amendment #8. This amendment will recognize and appropriate additional funding for the roof replacement at the police department. The amount is \$13,000. *(An approval of the consent agenda will approve this amendment.)*

c.) Memorandum of Agreement between Dare County Towns and the County of Dare Concerning an Alert and Notification System. The benefits of entering into an agreement for a notification system was discussed at the January 9, 2017 council meeting. This agreement is with Regroup Mass Notification at a cost of \$1,792 for one year. *(An approval of the consent agenda will approve this agreement.)*

d.) Nonexclusive Assignment of Rights under Easement Agreements. Southern Shores has requested that Kitty Hawk assign to Southern Shores nonexclusive rights in and to the easements to facilitate their portion of the beach nourishment project. *(An approval of the consent agenda will ratify approval of this assignment.)*

e.) Dare County Land Transfer Tax Appeals Board. Councilwoman McClean has offered to serve on this board. Dare County will make the appointment on June 5th and the term of office is June 2017 to June 2021. *(An approval of the consent agenda will approve this recommendation.)*

f.) Proclamation Recognizing April as Child Abuse Prevention Month. This proclamation calls upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to increase their participation in efforts to support families, thereby preventing child abuse and strengthening the communities in which we live. *(An approval of the consent agenda will approve this proclamation.)*

g.) Revised Scope of Work for Stream Repair and Debris Grant. It was reported at the last council meeting the Town was awarded \$117,500 out of the requested \$239,000 for removal of vegetative debris in the canals. Staff has since learned the Town will receive \$190,050 and has revised the cost per linear foot from \$5.00 to \$4.00 in the application to offset the shortfall. *(An approval of the consent agenda will approve the revised scope of work form.)*

MPT Garriss made a motion to approve the consent agenda. Councilwoman McClean seconded and it passed unanimously, 5-0.

7. ITEMS REMOVED FROM CONSENT AGENDA

There were no items removed from the consent agenda.

8. PLANNING

a.) Town Code Amendment: Proposed additions of subsections 6-26(b) regulating use of sandbags as temporary erosion controls measures on the Atlantic Ocean shoreline.

The proposal would insert the following language into the Town Code:

6-27. – Beach erosion control.

(a) It shall be unlawful to remove, move, or otherwise tamper with sand fencing.

(b) The use or placement of new sandbags for the purpose of temporary erosion control as outlined in the North Carolina Administrative Code (15A NCAC 07H .0308) and the North Carolina General Statutes (§ 113A-115.1) is prohibited except in the following situations:

- (1)When such work is performed as a part of a hurricane or erosion protection project sponsored by the town or any local, state or federal government agency;**
- (2)When such work is performed at the direction of, and with authorization by, the town for the purpose of beach maintenance;**
- (3)When such work is authorized by issuance of a general waiver of this section by the Town Council following a natural disaster.**

Background Information

Previously staff had been advised that the Town should amend its Land Use Plan and take a position of opposition to the use of sandbags as a means of regulating the use of them. However, upon drafting language to amend the LUP, and sending said language to the Division of Coastal Management for review, staff was then informed that the preferable method would, in fact, be regulated through an ordinance prohibiting them. An ordinance, according to DCM would be cleaner, and would not require Coastal Resource Commission (CRC) approval. They did indicate that if we would like to follow up the ordinance with a stance in the Land Use Plan, that that would be even better. As the LUP is due for an update, staff will insert this language into the plan when the overall update is being conducted. Also, to be clear, DCM also noted that by state statute they will be required to permit repairs of existing sandbags, but with an ordinance in place, they will not issue permits for new sandbags.

The use and placement of sandbags, while intended to be a temporary erosion control measure, actually function as “hardened” structures and will have impacts similar to seawalls, including but not limited to, reducing the width of the beach directly seaward of their location, deflecting wave energy and accelerating erosion to adjacent property owners commonly referred to as the “flanking” effect, and disrupting the natural ability of the beach to recover from acute erosion.

Land Use Plan

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

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POLICY 1b: Kitty Hawk will adopt, enforce, and amend as necessary and appropriate ordinances to protect the Atlantic Ocean Shoreline.

OBJECTIVE 1c: Adopt and apply development policies that balance protection of natural resources and fragile areas with residential and economic development.

OBJECTIVE 16a: Monitor and consider redevelopment proposals for consistency with stated Town land use and development goals.

Councilwoman McClean made a motion to adopt the proposed text amendment to add subsection 6-27 item (b) to the Kitty Hawk Town Code prohibiting the use of sandbags as temporary erosion measures. The Town Council finds that the proposed text amendment is consistent with the town's adopted CAMA Land Use Plan and finds this amendment to be in the public interest. The ordinance is to become effective upon commencement of the beach nourishment project or June 1, 2017 whichever occurs first. Councilman Pruitt seconded the motion and it passed unanimously, 5-0. (Ordinance No. 17-03)

9. NEW BUSINESS

9(a.) Floodwater Management System Bid Recommendation - Fonck, Bennett, Starfish & Hallett/Perry Streets

Manager Stewart explained the four additional pumping stations will come close to completing the Stormwater Master Plan from 2012. Town savings from the last several years will be used. The Tateway area is still under contract for design and hopefully DOT will get involved. These are underground utilities that will pump under NC 12 into the ocean when the water rises above 16 inches.

The Town received three bids and the low bid was H&H in the amount of \$152,546. They recently completed the portions under the roadway before DOT resurfaced the road and this is a continuation of that project. Staff recommends awarding the contract to H&H and the work is scheduled for mid-April to the first of May.

John DeLucia, Albemarle and Associates told Council the Town received good bids on this project and everyone would like for the project to be completed before the major tourist season starts. They have been given 60 days for construction purposes.

MPT Garriss made a motion to award completion installation of an engineered flood water management system for Fonck, Bennett, Starfish and Perry (Hallett) Streets to the lowest bidder H&H LLC in the amount of \$152,546 plus a \$5,000 contingency for a total cost not to exceed \$157,546. Councilwoman McClean provided a second. The vote was unanimous, 5-0.

9(b.) Resolution In Favor of Maintaining the Current Ban on Retailers Providing Customers with Plastic Bags and of the Defeat of House Bill 271

Perry: *Next we have a proposed resolution in favor of maintaining the current ban on retailers providing customers with plastic bags and defeat of House Bill 271 and it seems to be rather controversial. When I was at the meeting when Senator Marc Basnight originally brought this up he was proposing a 10 cent tax per plastic bag. I did not like that and when it was finalized there was no tax and was just a ban. I personally thought it was a littler overhanded but have since gotten used to it. As others have according to what I have been reading.*

Garriss: *I think we need to keep it and I think it's a shame that we are having to do this tonight.*

McClean: *The plastic bag ban does need to stay in. Personally I noticed within a year after the ban went in very few bags were blowing around. It used to be they would be hanging from the trees and out on the beaches hanging on the sand fences. It is nice they have gone away. I have talked to a lot of stores and they do not consider it a hardship. Everybody has gotten used to it and a lot of people are proud of it.*

Perry: I will add for public consumption I never received any heads up that this was coming. This just happened and I think it was that way in the rest of the towns. Did any of you have any idea this was coming?

Councilmembers replied no.

We have a resolution and you can read the whole thing or the summary I have provided.

Councilman Pruitt read aloud the following remarks and later confirmed this is a motion. ***Council has before it a proposed resolution in favor of maintaining the current ban on retailers providing customers with plastic bags and of the defeat of House Bill 271. To summarize, this resolution is asking that the current ban on retail use of thin plastic bags for customer use continue in the current form along the Outer Banks of Dare County. The public has accepted this ban as an acceptable method of reducing plastic waste into marine and land environments, reduces landfill overburden and enhances the aesthetic appearance of our area for the tourist oriented industry.***

Now therefore the Town Council of Kitty Hawk, a municipality located on one of North Carolina's coastal barrier islands in Dare County, and benefitting from the pristine beauty of the area by its residents and returning seasonal visitors enjoying an enhanced quality of life, does resolve that the findings of the General Assembly in Session Law 2009-163 are hereby adopted as finding of this governing body, that part 2G "Plastic Bag Management" of Article 9 of Chapter 130A of the North Carolina General Statute should not be repealed and House Bill 271 be withdrawn from further consideration. MPT Garriss provided a second.

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Bateman: *I was at the same meeting at Marc's restaurant and I even called the next day to get clarification on what the thought process was behind this but he wanted it and we knew it was going to get done. Nobody has contacted me to say why this came up it, just something out of the blue. I am fully in favor of not having this bill go through.*

The vote was unanimous, 5-0, to approve the resolution.

9(c.) Resolution Opposing Proposed Changes to Municipal Elections

Perry: *This started out with one thing and now they are trying to go partisan on everything. If they try to make everything partisan it makes it difficult. I have a summary if you want to read it or you can read the entire resolution.*

Bateman: *I'll make a motion. Council has before it a proposed resolution objecting to current efforts in North Carolina General Assembly to make all elections partisan and change election cycles. The resolution, if approved by council, affirms a belief that the rights of local municipalities to choose their own forms of government and election cycles should remain non-partisan at a local level and not subject to the dictate from the state legislature. Now therefore be it resolved that the Town Council of the Town of Kitty Hawk, in order to protect the rights of local municipalities to choose their own forms of government, urge the Dare County Legislative Delegation and all members of the state legislation to oppose any legislation with the intent of mandating partisan elections and/or changing election cycles to even numbers years unless requested by the municipalities. Councilwoman McClean seconded.*

Perry: *The current proposals before the North Carolina General Assembly appear intended to turn every electoral office in the state to partisan affairs. The amounts to an attempt at suppression of citizen participation in representation at local or statewide government levels. It is similar in many respects to voter suppression. An unaffiliated citizen desiring to serve his or her community is placed at a huge disadvantage to even getting on a ballot in addition to competing with well-financed partisan candidates. As a result, good people that would bring reasoned, moderate voice to local government, will not be an alternative choice for citizens to evaluate and judge on merits other than party affiliation.*

The often radical views and unyielding positions of both political parties have driven huge numbers of citizens to register unaffiliated. In some states that is called independent. The current effort by the General Assembly is an attempt to maintain absolute political party control in the face of that growing threat. The current attempts by the majority party to obtain party control at the General Assembly level is detrimental to responsible citizen government and I strongly believe it should be vigorously opposed.

McClean: *Well said.*

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Pruitt: *I agree 100%. I do not think there is any place for that in local elections. I think the people should be able to vote for the person to represent Kitty Hawk no matter what affiliation they are. This should not have been brought up.*

Garriss: *Agreed. I think this council, as well as any other governing body that I know of in Dare County, does their best to make the right decision for their citizens. If you get politics involved it is going to cause problems. I have no idea why this resolution came up in the first place. I think it is a bad idea and is going against what everyone on the council believes in.*

The vote was unanimous, 5-0, to approve the resolution.

9(d.) Debris Stream Debris Removal Grant

Perry said this paperwork was recently received and added to the agenda so the ditches can be cleaned out before summer hits.

Councilman Bateman made a motion to approve the revised stream repair and debris contract for the Town of Kitty Hawk. Councilwoman McClean seconded and it passed unanimously, 5-0.

10. REPORTS/GENERAL COMMENTS FROM TOWN MANAGER

Manager Stewart announced the following:

Annual Spring chipping service will take place April 10th. Vegetative debris should be in the right-of-way and no larger than 4" in diameter and 6' long.

Large Item Pickup is April 11th. The county will come through and dispose of large items. This is residences only, not for commercial businesses.

The Town received a **CRS Rating** of six through the National Flood Insurance Program. This allows homeowners a 20% discount in flood insurance. The hard work by the Planning and Inspections Department for this rating is appreciated.

Planning Director Rob Testerman is now a Certified Flood Plain Manager for the Town.

Budget Workshop is April 24th at 9 AM.

Mayor Perry added after he learned what goes into obtaining and keeping a good CRS Rating he appreciates all the efforts by staff. It is time consuming and the Town is inspected annually.

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11. REPORTS/GENERAL COMMENTS FROM TOWN ATTORNEY

Attorney Varnell informed Council the time to receive an answer from one of the two remaining condemnations has expired so the Town is entitled to a default judgement. The other parcel owner has until May 2 to answer.

Attorney Gallop's current plan is to attend the May 29th session in Currituck County Superior Court. He expects to get the judgements then and be done, unless there are compensation issues.

12. REPORTS/GENERAL COMMENTS FROM TOWN COUNCIL

Councilmembers congratulated Rob on his certification and Lynn on her 30 years of service to the Town.

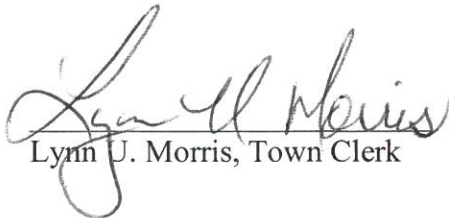
13. Public Comment

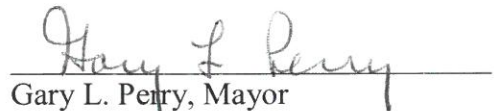
There were no public comments.

14. RECESS

MPT Garriss made a motion, seconded by Councilwoman McClean, to recess to April 24, 2017 for a budget workshop at 9 AM at the Kitty Hawk Town Hall. The vote was unanimous, 5-0. Time was 6:49 PM.

These minutes were approved at the May 1, 2017 council meeting.


Lynn J. Morris, Town Clerk


Gary L. Perry, Mayor