

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, April 7, 2015
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 January 12, 2015, February 9, 2015 and March 2, 2015 Council Minutes
 - b.) Revenues and Expenses Report for February 2015
 - c.) Government Education Access Channels Committee (GEAC) FY 2015-16 Budget
 - d.) Amended Government Education Access Channel Interlocal Agreement.
 - e.) FY 14-15 Budget Amendment #5
 - f.) Child Abuse Prevention Month April 2015
6. Items Removed from the Consent Agenda
7. Discussion on Municipal Service District(s) and Resolution for Establishment of MSD(s)
8. Public Hearings
 - a.) Text Amendment: Application to amend Sections 42-544 and 42-546 of the Kitty Hawk Town Code to allow shared parking as a conditional use, between two adjacent sites.
 - b.) Conditional Use Permit: Application for a conditional use permit to allow a shared parking agreement, subject to certain conditions, between Johnson Mizelle Burgess & Straub and BK Shuckers Restaurant.
9. Planning
 - a.) Call for Public Hearing. Text Amendment: Proposal to amend Chapter 42, Division 3 of the Town Code to update standards for temporary signs and banners.
10. New Business
 - a.) Lillian Street Beach Access Parking Expansion Project Additional Improvements
 - b.) FY Budget Amendment #6
 - c.) Resolution In Opposition to Senate Bill 369
 - d.) Interlocal Agreement between Dare County and the Towns of Duck, Kill Devil Hills and Kitty Hawk for Beach Nourishment
11. Reports or General Comments from Town Manager
12. Reports or General Comments from Town Attorney
13. Reports or General Comments from Town Council
 - a.) Thank you to Staff
14. Public Comment
15. Recess to Monday, April 27, 2015, 10 a.m., Kitty Hawk Town Hall, for a Budget Workshop

COUNCIL MEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Ervin Bateman, Councilman Craig Garriss, Councilwoman Emilie Klutz and Councilman Jeff Pruitt

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STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Town Planner Rob Testerman, Management Assistant Melody Clopton, Fire Chief Lowell Spivey, 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

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

3. Approval of Agenda

Councilman Garriss made a motion to approve the agenda. It was seconded by Councilwoman Klutz and unanimously approved, 5-0.

4. Public Comment

(1) Kentwood Turner, 4104 Lindbergh Avenue, Kitty Hawk, NC: *I was at one of the meetings and made a short comment that did not probably get off the ground good. My name is Kentwood Turner, I'm a resident of Pasquotank County across the sound, and we have a place on Lindbergh.*

It seems to be the easterners now against the westerners the way you have the map and I would like to talk a little about the disadvantage of being an easterner. The small place that we have is 4104 Lindbergh and I'm sure all of you know what hail and wind insurance is. I had to drop mine this year. It was up to \$2,752. I believe I could replace a whole roof if it blew off for that if we have a strong storm come in. It seems like we're fighting the ocean because the water will stand around ten days before we get a chance to get to drive in and utilize our property. Seems to be the water comes over the berm and it is going to stay until it is pumped back. I mean I guess we have resolved to the fact that that is nature. You have to pump it back to where it came from. From what I have checked we are paying on the eastern side about 4 to 1 per square foot for land. This helps the tax books quite a bit and it is not easy to tell somebody to come use your cottage and give them waders to go to the cottage but sometimes it is ten days before we get in there and I know they are trying. It is just nature. We can't beat that ocean but it seems like we forget that. Everything is against the easterners.

My observation about this beach is if it wasn't for the sun worshippers and the sun lovers I don't believe people would travel the distance they do just to come here to see the dunes or see our barefoot senators peer down it. We easterners are not the only ones that enjoy it. The westerners come over and enjoy it also. That was brought up I think at one of the meetings. The bath house is used just as much by the people on the west side as it was the travelers that come and visit. So we have some strikes against us.

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We are kind of defending a situation that we are helpless on. We cannot fight that ocean alone but yet somehow the figures got up to 5 dollars per 100 and 14 per one hundred and that 14 drops on the easterner again. That is almost a 4 to 1 extra tax on our back and I am wondering if the five people that vote on this council have stopped to think we might be driving people away from what used to be a good thing. It has gotten to be a right expensive thing.

I like to pay my taxes and I like to get along with people. Unfortunately you can't be at both places at the same time. I have a residence in Elizabeth City and I do admire the people that live here 24/7 because they pull their civic duty down at the court house sitting on juries, doing their part where we don't do it. I would like to let it be known how many people that are voting on this assessment of extra money we have to pay live on the east side and how many live on the west side.

Klutz: *I'm east.*

Turner: *You're in tough shape then. How many are the westerners, live on the west side? Have you ever thought that it is not fair to make judgement on the easterners with an almost 4 to 1 ratio there on taxes? Have you given that any consideration? If not I would like for you to run it by your conscious and help us a little bit. We seem to be losing the battle slowly but surely. I don't know why there are not more people here that are concerned. Maybe I am in the old generation that doesn't have the funds that these new guys have but I do know there is quite a bit of expenses over there on the eastern side, right lady?*

Klutz: *Yes but some of the expenses you mentioned are also on the west side. The wind and hail I'm pretty sure ...*

Turner: *... and the high water...*

Klutz: *Yes the high water is definitely ours.*

Turner: *When you see some aired out furniture back there it is not good. Not good. When that ocean decides to come aboard it comes aboard. We're in this game together. Without the sun lovers and the sun worshippers we're all in it together. It would hurt bad to lose it. I'm 100% in favor of nourishment but I would like for you to consider a more equalized distribution of the way it is done. Even if it is a dollar per dollar for everybody. We all benefit from it and if I were in business I would even benefit more from it because I'd be looking for the tourists to help. So if you will, give that consideration before you throw the cat out of the house and sell us out. Thank you.*

There were no further comments.

5. Consent Agenda

a.) Approval of January 12, 2015, February 9, 2015 and March 2, 2015 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

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b.) Revenues and Expenses Report for February 2015. *(An affirmative vote for the consent agenda will acknowledge this report.)*

c.) Government Education Access Channels Committee (GEAC) FY 2015-16 Budget. The GEAC Committee has submitted its FY 15-16 budget (\$320,337) and requests the Kitty Hawk Town Council approve it. *(An affirmative vote for the consent agenda will approve the GEAC Committee FY 15-16 budget.)*

d.) Amended Government Education Access Channel Interlocal Agreement. The committee has recommended the following change to Section 8(a) Programming (p.9) and relates to candidate forums. *(An affirmative vote for the consent agenda will approve the amended GEAC Interlocal Agreement.)*

e.) FY 14-15 Budget Amendment #5. This amendment will appropriate and recognize \$17,647 in grant funds from the Dare County Tourist Bureau for the Lillian Street Beach Access Parking Expansion. *(An affirmative vote for the consent agenda will approve this budget amendment.)*

f.) Child Abuse Prevention Month April 2015 Proclamation. This proclamation calls upon 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 affirmative vote for the consent agenda will approve this proclamation.)*

MPT Bateman made a motion, seconded by Councilman Garriss, to approve the consent agenda. It passed unanimously, 5-0.

6. Items Removed from the Consent Agenda

No items were removed.

7. Discussion on Municipal Service District(s) and Resolution for Establishment of MSD(s)

Perry: *Let me say right from the start I expect council to make a decision on whether or not to have one municipal service taxing district, or more, or none. Any rates, any actual rate, will be established at a later date during the budget process.*

Where do we go from here with beach nourishment? *I'm going to talk a little in addition to what you see on the monitor. The total projected cost is \$23.3 million with 80%, or an estimated \$18.6 million, will be contributed from Dare County using Occupancy tax funds. The Town of Kitty Hawk must contribute 20% or approximately \$4.7 million dollars.*

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Findings from the legal review. As we did the initial hearing we found out there were some issues and legally we had to hold a second hearing. The first issue was the district should only include areas subject to storm damage from ocean flooding. Council has never considered trying to save ocean front homes or property as a priority. It has always been about infrastructure protection, damage control, flooding reduction, those sort of mitigating circumstances. That covers everything basically from 158 east and in order to be able to defend that legal has advised we need to reduce what we had.

A summary of input from the public hearings that were held is that a majority of the citizens who responded support a beach nourishment project. We had over 3,000 packets sent to property owners and we had well under 300 responses. The percentage was pretty low. That does not mean that individual council members didn't get input from the town citizens. We did. And they told us things. They didn't respond by email or at the hearing but we got their input. A number of the respondents felt the tax rates between districts was not equitable. Others believed additional districts should be added such as separate east of 12 and then between the highways.

For consideration, after legal review and much thought on each of our parts, I am going to propose to the council tonight some options, discuss each individually and then we are going to have to make a decision. The first option is to adjust the original Municipal Service District to include only those properties subject to storm damage from ocean flooding. The second option would be to establish a Municipal Service District for ocean front property east of NC 12. The third option is to establish a town wide property tax and not have a Municipal Service District and then of course there is always the option of doing nothing. The next hearing on any of this as far as rates is at the hearing for the budget proposal.

Municipal Service District must include flood prone areas. An option is to adjust the MSDs, the two that we had, to include only those properties subject to storm damage from ocean flooding. You will notice there is no MSD B on this adjusted map. The MSD A we originally had was between the highways and east of there and some that were west. Those boundaries have to be adjusted to include only areas subject to ocean water impacts. One of the options is to remove properties west of 158 not damaged or flooded by ocean water. Only properties receiving direct benefit from a beach nourishment project would remain in the district. The MSD B would not be established. It does not meet those standards and it does not receive ocean water storm damage or flooding. It has no direct benefit, and those are key words, direct benefit from beach nourishment projects. A beach nourishment project provides indirect benefits to the whole town and the council has long recognized that.

Possible MSD funding reflecting legal review results. Proposed rates to fund Kitty Hawk's share based on direct and indirect benefit under this option. A town wide 2 cent property tax increase to add to the existing 2 cents in a capital fund for flood damage prevention. We already have 2 cents that we set aside. We would add 2 cents to it. MSD A, the one that you see proposed at 12 cents, plus town wide 2 cents, for a total of 14 cents.

Establish an MSD for ocean front property is another option some folks suggested. One cent generates approximately \$5,000 in revenue per year on the ocean front and that includes the

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Hilton. We do not get much revenue east of Highway 12. Five cents is only \$25,000 per year for a five year special obligation bond so you are only getting \$125,000 over the life of the construction project. This option would require an additional notification and hearing process according to the North Carolina School of Government. Even though we sent packets to all the people we would have to redo that again. There is very little cost to benefit considering the expense of another hearing process and future administrative costs for trying to establish a separate ocean front MSD.

***Establish a town wide tax** was a third option. In other words do not establish a Municipal Service District and fund the project with a town wide tax. Not dedicating funds in a special service district could affect acquisition of special obligation bonds, in other words our ability to raise the money to do the project. Another key point, and this one was brought up many times by people that responded, if you don't have a taxing district it does not ensure that future councils will not use the tax funds for something other than the intended beach nourishment project.*

*Our last option is **do nothing**. That is totally inconsistent with a majority of opinion of the property owners. At least those that responded and the ones that we have talked to individually. Also to consider, the Kitty Hawk share would then go to the other towns, a Buxton project and now probably dredging Oregon Inlet. Also, having passed on an opportunity to try something to save our infrastructure, Kitty Hawk will be in a poor position to ask for state or federal assistance after a disruptive storm.*

I'm now going to ask council to give us comments before I ask what we want to do next.

***Klutz:** One of the things you mentioned is the flooding that comes from the ocean. It is pretty much dedicated to us on the east side of the road and the definition of a Municipal Service District is that the district is established to provide funding for services or projects which add benefit to a section of town that needs it. That is called direct benefit.*

The county's Occupancy tax contribution is 80% of the project cost. The county is generously providing that large percentage of the tax.

The town wide tax covers the benefits that are received town wide. For instance the inconvenience from evacuations, the lack of access to properties because of roads being closed, not flooded but closed while pumping operations or whatever are taking place, loss of utilities. Those things happen town wide in a hurricane.

Hurricane Irene, which affected the west side of town, this beach nourishment project would really do nothing to mitigate the kind of flooding they got. If there were a project that could go into effect to help with that kind of flooding an MSD would probably be appropriate for that as well.

I'm not sure if it was you but I remember one gentleman at the public hearing came up with different ideas on how we could fund this based on commercial or residential properties. I believe that was you was it not?

***Turner:** It was.*

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Klutz: *The law does not allow that. The law requires that there be a map and it has to reflect the area that receives the direct benefit from the project. If you wanted to put a name on that MSD it would be ocean impact area and that is us and it is unfortunate but that is just the way it is. So to comply with the law that is how the MSD was developed.*

I have made some notes on the comments that we received at each of the public hearings and they fell into categories. For instance a very significant majority supported the beach nourishment project and that included people who also supported the MSD. They voted for the MSD approach in significant majority numbers because they understood this was the way we would have to fund a beach nourishment project. Many people thought the rates were unfair and I have some comments on that which I will get to a little later. For the do nothing option I think that was totally inconsistent with the public support for the project so I would say that option should not be supported.

The other thing is that for Kitty Hawk this is the only shot we have for a beach nourishment project. If the county were not putting up an 80% share of the project we would not even be having these discussions because Kitty Hawk does not have the tax base, does not have the wherewithal to do a project like this on our own. The 20% share of the project is a challenge but at this point we have this one opportunity and doing nothing is an option that we should not really take too seriously.

Creating an ocean front MSD with the highest tax rate, many people thought they would get additional benefit because of the damage they would not get to their properties which they currently do whenever there is a northeaster or even a less powerful storm. Storms that work at their steps and decks and leave a lot of debris near their houses.

The thing about Kitty Hawk's project is there are three prioritized goals. The first of those is to reduce the vulnerability of public infrastructure, including the beach road and town roads between the highways and utilities. The second prioritized goal is to reduce the flooding experienced in many non-ocean front areas like Lindbergh Avenue between the highways. This flooding often makes roads impassable and does not allow efficient emergency services when those roads are impassable. The last of the priorities is the vulnerabilities of ocean front homes and the benefit that the project would provide to those.

When you consider that of the three goals the ocean front properties are the least important in terms of Kitty Hawk's goals then the difference between the property tax rate on the ocean front and the property tax rate that would be applied to the west side of the beach road and between the highways would really not have to fluctuate too much because the ocean front properties are receiving the benefit of those first two goals. And the additional benefit for the third goal would probably not amount to much in terms of an increase in the tax rate over the tax rate for the east side as a whole. A penny tax increase only raises \$5,000 and the mayor went over how that is really not cost effective in terms of the time it would take to develop another MSD and also the expense that would be associated with the hearings and all the notifications that would be required.

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Raising the property tax town wide, everyone I think that spoke had something to say about the whole town receiving benefits from the beach nourishment project and that is true. The whole town does receive benefits from the beach nourishment project but only the eastern part of town, as currently defined in the MSD map, receives the benefit of protection from ocean water flooding. The rest of town is not flooded by the ocean or at least historically it has not been and it is that additional benefit, the direct benefit that has to be covered in the Municipal Service District.

MSD B was improperly developed because it represented the town wide benefit in that MSD. Instead town wide benefits need to be covered by the town wide property tax and that was the reason MSD B was deleted. By law the MSD has to fund services and projects which are needed in addition to those that are financed for the entire town. So the whole town does not require protection from the impacts of ocean water flooding and that would in effect require an additional tax rate for the eastern part of the town in the Municipal Service District.

This slide shows the total project cost. As you can see Dare County, using Occupancy tax, is paying approximately 80% and Kitty Hawk's share is approximately 20%. The MSD share of the project, the additional 12 cents that is being adding to the MSD, is for the direct benefit of protection from ocean water and it is two times the share of the town's piece of this project. Two times the share of what is brought in by the town wide tax rate.

Staff has looked at what the rates could be. There is a 12 cent proposed tax rate for the proposed MSD plus the proposed town wide property tax which would be levied on that district and it is two and a quarter times the town wide share which would be levied for the rest of town. What I have done in coming up with that two and a quarter figure is added the MSD rate and the total town rate for what the MSD will be paying and only the town wide rate for the rest of the town. The collection would be two and a quarter times on the MSD. It is not 4 to 1, it is twice as much but that has to account for the direct benefit received by the Municipal Service District. The MSD share of the total project cost, and remember, this is with the county paying 80%, the MSD share is 14% approximately, and the rest of the town share is 6% of the project cost. What we have been talking about are just the proposed rates the staff has come up with to see how we can fund this project. The final rates will be established in the budget process.

My conclusion in going through all of these options was that I do support the creation of the ocean impact Municipal Service District. Given the majority support for the project and as a resident of the Municipal Service District and paying the higher rate I believe that a Municipal Service District share of the project cost is a fair allocation based on the direct benefit received by the district.

Perry: *If you haven't figured it out by now each of us has put a lot into this and listened carefully to everything that was brought to us. Jeff?*

Pruitt: *Emilie has touched on most everything. I want to thank everybody for showing up and I don't want everybody to feel that this is an east/west ... it certainly isn't. This is a town situation we have been dealing with for quite some time. What to do with the lack of beach and it is getting mighty close to the road at the Black Pelican right now. We have worked very hard as a group and*

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we've had to make some changes and I feel like we have come up with what we can legally do to try to make this happen. As said this is our one shot. The boat is going to be going by and we are either going to have to get on or it's going to keep going. With that being said I also feel that the creation of an ocean water impact MSD seems to be the most sensible approach to achieve our goal.

Garriss: *This has been an emotional subject for a lot of people including us sitting up here. We have put a lot of hard work into this. I was in church recently and a very good friend of mine came up to me and wanted to discuss beach nourishment so I said sure. It was not during the service so don't worry. He happens to live in Kitty Hawk Village and didn't think he should have to support beach nourishment at all because he lived in the village. He said he doesn't go to the beach and his children don't go to the beach so he doesn't see where it would affect him. He shouldn't have to pay for it. I'm sure I stood there with my mouth wide open not believing what I was hearing from a good friend of mine. Kitty Hawk is our home and our home needs our help. It needs our help now. Doing nothing is not an option. I am very much in favor of establishing the Municipal Service District or districts. I feel we have no choice but to do that and we need to do it as soon as possible.*

Bateman: *I agree with what everybody has said. The law tells us what we have to do and they said we had to do the districts and the areas that were impacted for the district. I have family members that absolutely do not believe in this beach nourishment. I'm serious. They say I cannot believe you are doing that but the bottom line is we are in the service industry, to serve the public. We are restaurateurs, police officers, firemen and we make our living off of the tourists that come here and they are not going to come if there is no beach. I agree with that so for me, the decision, although very, very, tough ... I look at what is the shortest point between A and B. A being where we are now, B being nourishment to the beach with the least amount of resistance and the least amount of impact on people and how do you do that? I came up with those who most benefit from the nourishment which is what the MSD is and are the ones that would be taxed the most. The ones in the village who, as my relatives say, it is not going to affect. He needed to be taxed also and so that is where the other 2 cents is going to come from. I'm in favor of the way it's laid out.*

Emilie you did a great job of explaining and going through the details and so forth much more eloquently than I could. It is a very difficult decision for everybody involved. We spend a lot of time behind the scenes talking about this amongst ourselves and it was a very difficult decision to come up with but we are never going to get this deal again. If it had not been for Commissioner Judge, County Manager Bobby Outten and others at the county, we wouldn't be here now. They came up with an option that enabled us to do this. That is kind of where I stand. I know it might not be popular with some but you have to do what you have to do for your community. I think this is something the Town of Kitty Hawk needs to step up and do.

Perry: *Thank you. I appreciate all the thought process put into it. It has been long and we have heard a lot. I agree with you that a Municipal Service District needs to be set up because that's the best way to protect your money and make sure it goes where it needs to go. I believe it needs to be set up, not only legally, but practically for those that benefit most directly. That said we all*

share in it in some way. We are one of the few towns that has considered trying to charge the whole town. We are taking it serious and now we need to make a commitment. Yes or no to a MSD. The proposed rates we have given you as a courtesy because we don't want you to be blindsided. Do I hear a motion on a MSD?

Councilwoman Klutz made a motion for the resolution entitled Resolution Establishing and Creating a Kitty Hawk Beach Erosion Control and Flood and Hurricane Works Municipal Service District to be approved and authorized the mayor to sign and the town clerk to attest said resolution. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

8. Public Hearings

Councilman Garriss made a motion, seconded by Mayor Pro Tem Bateman, to go into public hearing. It passed unanimously, 5-0.

a.) Text Amendment: Application to amend Sections 42-544 and 42-546 of the Kitty Hawk Town Code to allow shared parking as a conditional use, between two adjacent sites.

Testerman: *This first public hearing is for a text amendment to add language to Subsections 42-544 and 42-546 that would allow shared parking on two adjacent sites. The way the ordinance is written now shared parking is allowed but it is between two uses within the same site such as a shopping center.*

There are three subsections that were brought to us by the applicant. Subsection 42-544 would be amended to read within any one site, or on two adjacent sites, the required parking for any number of separate uses may be combined on the site. Subsection 42-544(k) would read any off street parking space required by any use permitted in any residential district or commercial district shall be provided on the same lot with the use by which it is required, or in combination within an adjacent lot, provided the applicant has secured a shared parking agreement and conditional use permit as described in 42-544(j). In 42-546 the number of off street parking spaces required in this subsection shall be provided on the same lot with the principal use, or in combination with an adjacent lot, provided the applicant has secured a shared parking agreement and a conditional use permit as described in 42-544(j).

The proposed text amendment, if it is adopted, would allow two adjacent sites to form a formal shared parking agreement which could potentially eliminate additional unnecessary costs, land disturbance, impervious coverage and lot coverage on each site. I believe in this case the applicant has a large oak tree that would most likely need to come down to meet the parking requirements so it is preserving some hardy vegetation as well.

Looking at some of the other local communities, Nags Head, Duck and Currituck have means of allowing shared parking between adjacent sites that is not necessarily a by right use. For example, Duck says the required parking space for any number of separate uses may be combined in one

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lot, however a special exception permit by town council may modify the requirements contained in the parking regulations. Essentially the same as doing a conditional use permit to allow shared parking between the two. It looked like Kill Devil Hills, Southern Shores, Manteo and Dare County all require it on one lot.

In discussion with the town attorney it is suggested that if we do allow shared parking between two adjacent lots that as part of the conditional use permit the town would require a pedestrian access between the two sites in the event that there is a ditch running between the two sites. Build a little bridge cross over so you would not get hurt going from the parking area to the principal use. I have added a proposed 42-544(j)(4) that would state in the event that the shared parking agreement exists between adjacent lots, adequate and safe pedestrian access shall be provided from and to the shared parking areas.

The planning board reviewed this at the February 26th meeting and voted unanimously to recommend approval. With the staff recommendation included and in the recommendation the planning board found that the proposal is consistent with the CAMA Land Use Plan.

That is all I have and if there are any questions I cannot answer the agent for the applicant, Warren Eadus, is here.

Perry: *It is my understanding that the town has wanted shared parking in the past wherever it was possible. Is that true Richard?*

Richard Reid, former town planner for Kitty Hawk, replied he believed during in his tenure there had been several proposals where off-site parking was desired.

Perry: *I remember when they built the OBX Bank and that was one of the things they wanted them to do and they did not want to do it. Does council have any questions for Rob?*

Pruitt: *When you enter into one of these agreements of shared parking with another business what happens if an owner sells or that business moves? How does the agreement carry on? Is this something that is going to carry with that piece of property for ten years or forever?*

Testerman: *That came up at the planning board meeting and Steve might be able to speak better on the legalities of it. It was discussed a certain time frame could be agreed to. If it does sell they have to either work out that they can continue the agreement or the business that is using the extra parking would have to bring their site into compliance in the event that the new tenants or the new owner did not want to continue with the agreement between the two.*

Michael: *They would have to have a written agreement that would be recorded to verify the fact and supply it to the town that they have entered a shared parking agreement and the town will have to verify that both businesses meet the parking requirements by sharing the parking. How long they have this agreement is up to the parties. If the agreement ends for whatever reason and the shared parking is no longer in effect, then those businesses have to be in compliance with the*

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parking requirements, absent a new shared parking agreement. So they could be out of compliance at some point if that happened.

Pruitt: *And if there is not enough property on this site to comply?*

Michael: *Then they are going to be forced to restrict the use of some of their property.*

Klutz: *The agreement is actually between two businesses.*

Michael: *It is between two businesses, not with the town.*

Klutz: *If somebody moves the business or a new business comes into being in one of those locations does that mean that it automatically has to be renegotiated?*

Michael: *They can set their agreement up however they want to set it up. They could make it a permanent arrangement between the two properties if they wanted to. I don't know how that would work if uses change the parking requirements.*

Klutz: *Or owners change.*

Michael: *That is correct.*

Klutz: *That is what I'm interested in.*

Pruitt: *This agreement would be between the owners of the property correct?*

Michael: *If they desired to make it run with the land they could do that. I don't contemplate that that is going to happen. It is probably going to be an agreement between the two businesses for a set period of time.*

Klutz: *So if one of them is leasing the property they can still do the agreement because they are responsible for how many parking spaces they have and whatever according to the use that they have.*

Michael: *That is correct.*

Perry: *The concern I hear is if the town approves this, as is, we are not obligating an owner to continue on.*

Michael: *No. That is between the ...*

Garriss: *I think the applicant would like to speak.*

Warren Eadus: *Johnson Burgess Mizelle & Straub is the business that wants this agreement and their neighbors are amenable to it and the town is also a party to the agreement. At any time any*

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one of the three involved could decide something was wrong or there needed to be a change. I think the town has that control.

Michael: *That is strictly for notification purposes. If they come out of compliance or the agreement ends, if the parties want to cancel it, the town knows. It does not obligate us to do anything.*

Klutz: *We do not have to sign the agreement or anything.*

Michael: *We are a party to it in the sense that we want to be notified when it changes or there is some other arrangement that is going to be made.*

Klutz: *Do you get to look at this agreement?*

Michael: *Yes.*

Klutz: *I am assuming when you say adjacent lots they share a property boundary. There is not a street in between. You do not consider something that is divided by a street as adjacent property.*

Testerman: *Right. This is considered a shared border.*

Perry: Any other questions before I call for speakers? (There were no further questions)

(1) Dave Hunt: *My name is David Hunt and I'm a resident and business owner in the Town of Kitty Hawk. Looking at the way this is it is broken out into two parts. The text amendment simply gives someone the right to get a conditional use permit. It does not mean it is automatically granted so I see no harm in doing the text amendment and then doing a case by case basis on the conditional use permit. So as far as passing the text amendment I can see no reason how that could negatively impact any part of the town and I am in favor of it.*

No one else came forward to speak.

MPT Bateman made a motion, seconded by Councilwoman Klutz, to return to regular session. It passed unanimously, 5-0.

Councilwoman Klutz made a motion to adopt the proposed text amendments to Section 42-544 and 42-546 of the Kitty Hawk Town Code to allow shared parking between two adjacent sites as a conditional use. 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. Councilman Garriss seconded the motion. Attorney Michael asked if the motion included the staff comment about adequate pedestrian access. Councilwoman Klutz replied yes and added to be specific, the addition of paragraph 42-544 (j)(4). Vote was unanimous, 5-0.

b.) Conditional Use Permit: Application for a conditional use permit to allow a shared parking agreement, subject to certain conditions, between Johnson Mizelle Burgess & Straub and BK Shuckers Restaurant.

Councilman Garriss made a motion, seconded by MPT Bateman, to go into public hearing. The vote was unanimous, 5-0.

Clerk Morris administered the oath to Planner Testerman. (No one else came forward to take the oath.)

Testerman: *This is the conditional use permit that is running concurrently with the text amendment. The applicant is requesting the approval of a conditional use permit to establish a formal shared parking agreement between the adjacent property of BK Shuckers restaurant and the applicant, Johnson Burgess Mizelle & Straub.*

Some time back the accounting office got a building permit to convert approximately 1,453 square feet of existing attic space into 703 square feet of file storage and 750 square feet of office space to support additional employees. The additional floor space requires additional parking spaces to stay in compliance with the town parking standards. The main time of year the additional staff and employees are needed at the accounting firm is towards the end of this time of year, January to April.

The proposed shared parking agreement would share seven parking spaces on BK Shuckers site which would bring the applicant into compliance during their peak season when they have that additional staff. The applicant has agreed not to use BK Shuckers parking spaces during restaurant peak season business hours which is 11 a.m. to 11 p.m. from May to September and also not during special events such as Bike Week.

The proposed shared parking would allow the applicant to fulfill town parking requirements without expanding their own paved parking area. Allowing the shared parking would result in the preservation of the existing landscaping and avoid any potential detrimental effects to adjacent properties.

The applicant's peak season is January to about April 15th with their operating hours being Monday through Friday from 8:30 in the morning to 5 p.m. This is when the additional staff and parking is needed. The applicant is proposing that during the restaurant's off season, October through April, they would be allowed to use the seven shared parking spaces from 8:30 a.m. to 5 p.m. During the restaurant's peak season, May through September, the seven shared parking spaces would only be available to the applicant from 8:30 a.m. to 11 in the morning when the restaurant opens.

The standards of Section 42-99(b) (7), in order to approve the application, council must make findings that the proposed conditional use: (a.) does not materially endanger the public health or safety. The proposed shared parking agreement creates no changes to existing conditions on the ground and from a public health or safety standpoint there is no change to existing conditions. I

think it would actually, at least in the short term, be a benefit to the public health and safety because you would not have any construction traffic going in to create the additional parking spaces; (b.) it does meet all the required conditions and specifications. As was described in the staff report the proposed agreement has been designed to comply with all the applicable standards of the town code; (c.) it will not substantially injure the value of adjoining property or be a public nuisance. The only adjoining property that is impacted by the shared parking agreement is BK Shuckers who is signing the agreement. I don't think they envision this as being a public nuisance or injuring the value. As I mentioned there are no other on the ground changes happening so it is not going to affect any of the other surrounding properties, and; (d.) it will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan. The proposed shared parking agreement has no impact on land use other than preserving existing open space and vegetation so that would not be applicable to the comprehensive plan.

At the February 26th meeting the planning board voted unanimously to recommend approval of the conditional use permit to establish a formal shared parking agreement between Johnson Burgess Mizelle & Straub at 4016 North Croatan and BK Shuckers at 4020 North Croatan subject to the conditions outlined in the proposed shared parking agreement. Discussion was also held on adequate pedestrian access and the applicants are willing to add in some access point to get them from BK Shuckers parking lot over to the accounting office.

Pruitt: *I'm glad you are going to have them build a walk over. I went to the site and because of the terrain I think it would be a lot safer for the people going back and forth.*

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

Councilman Garriss made a motion, seconded by MPT Bateman to return to regular session. The vote was unanimous, 5-0.

Councilman Pruitt made a motion to grant approval of this conditional use permit application to establish a formal shared parking agreement between Johnson Burgess Mizelle and Straub at 4016 North Croatan Highway and BK Shuckers at 4020 North Croatan Highway, subject to the conditions recommended by the planning board. The town council concurs with the conditional use findings in the staff report, finds that the approval of this conditional use permit is consistent with the town's adopted CAMA Land Use Plan and finds that granting approval is in the best public interest. Councilman Garriss seconded the motion and it passed unanimously, 5-0.

9. Planning

a.) Call for Public Hearing. Text Amendment: Proposal to amend Chapter 42, Division 3 of the Town Code to update standards for temporary signs and banners.

Councilman Garriss made a motion to set a public hearing for the town council meeting on May 4, 2015 regarding the proposed text amendments to update temporary sign and banner regulations. Councilman Pruitt provided a second and the vote was unanimous, 5-0.

10. New Business

a.) Lillian Street Beach Access Parking Expansion Project Additional Improvements

Stockton: *It has been recommended by our engineer John DeLucia that we replace the existing asphalt curb and gutter at the Lillian Street Beach Access Parking lot. When people back up they run into the existing asphalt curb and gutter and it is starting to deteriorate and is eventually going to have to be replaced. Since there is a contractor on site it would be cost effective for us to go ahead and replace that asphalt curb and gutter with concrete curb and gutter and give it a long life. This is in addition to the concrete curb and gutter that is going in for the new parking area. It would require replacement of about 300' of concrete asphalt curb and gutter at a cost of \$9,290.*

Perry: *I went out there to have a look and I do not see the degradation of the existing curbing. It looks to me like it's doing well. This is an awful lot of money to me to tear up what is actually in pretty good shape, with the exception of at the end where they are doing construction. It looks like they have done some damage and I hope they fix it with no cost to the town. How does the rest of council feel?*

Pruitt: *I also went and observed and on the southwest end of the asphalt it seems like some of that has been torn up. It's a small section, roughly 10', maybe a little longer. There are a couple of places where people have backed over the asphalt and actually put a couple of indentations in it. Some of the grass has grown up into the asphalt and maybe something could be sprayed to fix that. Other than that I think it is holding up for the job it is intended to do which is to direct the water into the swale. Some of those need to be cleaned out but it has nothing to do with this project. I think if you put a brand new one up it's going to have wear and tear in a very short amount of time. With the amount of projects we have I hope we can wait on this to a later date.*

MPT Bateman made a motion to deny spending \$9,290 for removal of the asphalt curb and gutter and replacing it with concrete. Councilman Garriss seconded the motion and it passed unanimously, 5-0.

b.) FY Budget Amendment #6 – Should the town council approve the above agenda item (10a) for concrete curb and gutter at the Lillian Street Beach Access Parking Expansion Project this budget amendment needs to be approved appropriating Powell Bill funds in the amount of \$9,290.

There was no need to take action on this agenda item.

c.) Resolution In Opposition to Senate Bill 369

Stockton: *A resolution has been prepared to be sent to the county and state representatives in opposition to Senate Bill 369. This Bill would result in the town losing \$467,000 in annual sales tax revenue and a requirement to raise the property tax by 4.74 cents in order to maintain our existing services. It is recommend to oppose the Senate Bill 369 since it will have a tremendous negative affect on the financial health of the town residents as well as the ability to provide and protect the health and safety of our town residents.*

Councilman Garriss moved to adopt the resolution entitled **Resolution in Opposition to Senate Bill 369** and authorized the mayor to sign and the town clerk to attest said resolution. **Councilwoman Klutz** seconded the motion and it passed unanimously, 5-0.

d.) Interlocal Agreement – This agreement is between Dare County and the Towns of Duck, Kill Devil Hills and Kitty Hawk for Beach Nourishment.

Stockton: *Dare County has asked that we approve the Interlocal Agreement for beach nourishment. It includes estimated amounts for permitting costs and construction costs related to beach nourishment. The agreement does not include the interest on the debt service, legal fees, beach maintenance re-nourishment costs, tax collection fees and other operational costs related to the total project costs. That is something important to remember.*

Page 4 of the agreement lists the project funding of Kitty Hawk's contribution of \$10,185,309 and county contribution of \$11,254,691 and an estimated project cost of \$21,440,000. The total estimated project cost figure represents permitting costs of \$870,000 and construction costs of \$20,570,000 for the total estimated project cost of \$21,440,000. The Kitty Hawk contribution of \$10,185,309 is the amount the town will pay for the project as set forth from the special obligation bond financing with a financial institution. Of the \$10,185,309 Dare County will help pay a total of \$7,424,882 on the principal and interest paid by the town. This is shown on page 5 of the agreement. It has been estimated that the interest paid by the town would be \$1,069,457 for a total amount borrowed of \$11,254,766.

In addition, like I said, our costs related to tax collection fees, legal fees and the maintenance brings the total cost to the town of \$23,327,770. That has been discussed before and since the county is paying \$7,424,882 on principal and interest for the town's debt service the town would be paying \$4,648,197 over the five year period.

Attorney Michael has reviewed the agreement and is okay with the contents of the agreement. The county manager is requesting that the council go ahead and approve the agreement. There will be one small change per the request of Kill Devil Hills. The change is adding Project Manager means Coastal Planning and Engineering of North Carolina P.C. on page 2, Article I, fifth line.

Perry: *Basically the county is the bank. Each town is in charge of actually doing the project but the money is mostly coming from the county and they are going to be the bank where everything funnels through.*

Councilwoman Klutz made a motion to approve the Interlocal Agreement with Dare County for the beach nourishment project with a small change forthcoming from the county manager as documented in the email from Kill Devil Hills and described herein and further authorized the mayor, town clerk and finance officer to sign said agreement once revised by Dare County. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

11. Reports or General Comments from Town Manager

There were no further comments or reports from the manager.

12. Reports or General Comments from Town Attorney

There were no further comments or reports from the attorney.

13. Reports or General Comments from Town Council

a.) Thank You to Staff

Councilman Pruitt reported the police department received inquiries about a citizen's neighborhood watch and under the instructions of the police chief Officer Deaton was assigned to conduct a meeting on Poor Ridge Road. He complimented the department and Officer Deaton for doing a fine job of addressing the concerns of the residents of Poor Ridge Road and thought everybody was quite pleased.

Councilman Pruitt also thanked the public works department for a great job of cleaning up the debris on the beach. It was as clean as they could get it without doing more damage. Staff manually loaded and unloaded some of the concrete and cinder blocks. An excavator was also used and it required a lot of work. He said he and the residents really appreciate it.

Councilwoman Klutz also thanked the public works director and staff and thought a lot of money was saved by renting the equipment and doing the work in house. She added it has been a long haul with all of the beach nourishment activity and thanked staff for their hard work, being so responsive to answering questions and helping out every chance they could.

Mayor Perry agreed with all of the comments made and as he stated at the last hearing staff went above and beyond with beach nourishment. Punching numbers, probably seeing numbers in their sleep and answering the calls. He witnessed the receptionist at the town hall with a citizen in her face telling her what for. She had nothing to do with it, it was council that they should have been talking to but she met them with a smile.

14. Public Comment

(1) Richard Reid, Tackle Ridge Road, Kitty Hawk, NC: *I did not really come here to comment but a thought came to me when you were talking about beach nourishment. When I was employed with the town and they were preparing for the federal project, county personnel person came to me and we went over the project that affected Kitty Hawk. They were in the process of getting easements on the ocean front properties and the easements were basically to prevent the individual properties from recouping what they lost as a result of the beach erosion. In other words, if half of the lot was washed away beach nourishment was not intended to allow them to have their full lot back. They could not build a bigger house. The easements were being acquired under the federal project to prevent that. The beach nourishment project benefits everybody in the sense that it would prevent further erosion but it was not necessarily to provide a benefit directly to those ocean front properties. My question is does the current project propose to have easements such as that?*

Perry: *Yes. Being able to add onto a structure as a result of beach nourishment, as we all understand it from legal study, no. Something else would have to change including CAMA rules. Those sorts of things would have to go on and I do not see that happening.*

Reid: *Thank you.*

(2) Kentwood Turner: *Don't have much to say but this. Bring us up to date on where we are on these pumping stations that we have to get rid of excess water from a storm. It seems we've kind of forgotten that with beach nourishment. Are we going to wait for a storm to come and figure it out?*

Perry: *We have two pumping stations and one sump.*

Turner: *Where are they located?*

Perry: *There is one off of Poseidon. That is a station with a standpipe and there's one off of Hawks Street. That is a station with a standpipe. We had already put in the sump by Byrd Street and the public works director advised it worked well and suggested waiting to see if the standpipes do what is needed before adding anymore. We have not forgotten anything. We just put a pause into it until we know if we're wasting money or not.*

Turner: *Makes sense. Are we planning on buying any pumps or are we just going to rent them like we did before?*

Perry: *We will always rent because it's the better way to go. It's cheaper. We only use them when we need them and someone else does the maintenance on them.*

Turner: *Right, makes sense. Do we have a standing permit to immediately take action to pump that water back or do we have to apply and wait so many days?*

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Perry: *We have to apply but they have been very good about getting us a permit quickly.*

Turner: *All right. As long as it's not a dead issue and we have somebody watching out for us.*

Perry: *None of that's a dead issue. If we didn't go into beach nourishment we were actually looking to try to do some sort of outfall.*

Turner: *Thank you.*

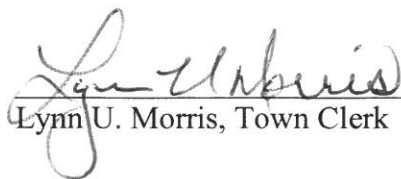
(3) Donny King, Ocean Boulevard Restaurant, Kitty Hawk, NC: *I just wanted to personally thank you all for your efforts and that of your staff and everyone you have been working with to reach this pass in regards to beach nourishment. I know not a lot of people showed up tonight or even at the last public hearing but a lot of people I have spoken to think it is a really good idea. They agree with the way you have needed to work to get it done. Maybe they don't understand how much work has gone into it and how much you've had to do and how much you've had deal with to get it done but I think there are a lot of people that are proud of you and I really appreciate it.*

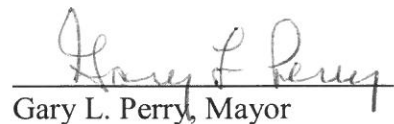
Councilmembers replied thank you.

13. Recess to Monday, April 27, 2015, 10 a.m., Kitty Hawk Town Hall, for a Budget Workshop

Councilwoman Klutz made a motion to recess to Monday, April 27, 2015 at 10 a.m. at the Kitty Hawk Town Hall for a budget workshop. Councilman Garriss seconded the motion and it passed unanimously, 5-0. Time was 7:23 p.m.

These minutes were approved at the May 4, 2015 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor