

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, August 1, 2011
Kitty Hawk Town Hall, 6:00 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Service Recognition: Mike Eubank, Finance Officer, 10 years
5. Request for Beach Access at 4408 Virginia Dare Trail from Mr. and Mrs. Gallagher
6. Comprehensive Transportation Plan Presentation
7. Public Comment
8. Consent Agenda
 - a.) Approval of Minutes. July 5, 2011 Regular Meeting
 - b.) Revenues and Expenses Report for June 2011
 - c.) Tax Pick Ups and
 - d.) Report of Deposits and Investments
 - e.) FY 11-12 Budget Amendment #1
 - f.) FY 11-12 Budget Amendment #2
 - g.) FY 11-12 General Fund Budget Transfer #1
9. Items Removed From the Consent Agenda
10. Public Hearing
 - a.) Text Amendment: Proposal to add provisions to Chapter 14, *Flood Damage Prevention*, allowing small accessory buildings in Coastal High Hazard Area (VE) flood zones when installed to FEMA safety standards.
11. Return to Regular Session/Action for Public for Public Hearing Item
12. Planning
 - a.) Call for Public Hearing. Text Amendment: Proposal to amend subsection 42-587(n), *Costumed mascots/wavers*, to broaden the use of costumed mascots and wavers for advertising. Specifically, the applicant is seeking allowances to use costumed mascots/wavers on a year-round basis with no limits on dates or time periods. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.
 - b.) Call for Public Hearing. Text Amendment: Proposal to amend Section 42-225(c) by allowing "home occupations" as conditional uses in the Kitty Hawk Woods (KHW) zoning district. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.
 - c.) Call for Public Hearing. Text Amendment: Proposal to amend subsections 42-251(c)(24)b, c, f, j, and k of the Kitty Hawk Town Code by revising standards for motor vehicle dealerships in the Beach Commercial (BC-2) district. Specifically, the proposed amendments would change the minimum lot size requirement from six (6) acres to 0.75 acre (32,670 square feet) and allow secondary frontage on any type of street. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.
 - d.) Call for Public Hearing. Conditional Use Permit: Application for conditional use permits to establish motor and electric vehicle dealerships in a Beach Commercial (BC-2) district at

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6100 N. Croatan Highway. The dealership would involve sales, rental, and service of motor and electric vehicles (including cars and road-ready golf carts) and an electric vehicle charging station. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.

e.) Call for Public Hearing. Conditional Use Permit: Application for a conditional use permit to establish a shared parking arrangement between businesses in the Ocean Centre shopping center at 5230 N. Virginia Dare Trail. The Town's shared parking provision in Section 42-544(j) allows up to a 50% reduction in parking requirements for a business when its hours of operation do not overlap with another business(es) on the same property. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.

13. New Business

a.) Resolution in Memory of Joey Monroe. This resolution responds to a request by the Recreation Committee that the Town Council ask Dare County for permission to place a plaque at the Skateboard Park in Kitty Hawk in memory of Joey Monroe.

14. Reports or General Comments from Town Attorney

a.) Kitty Hawk Park Update

b.) Update on Sandy Run Park Phase II Project

c.) Storm Drainage Study Update

15. Reports or General Comments from Town Attorney

16. Reports of General Comments from Town Council

a.) Access to beach from E. Kitty Hawk Road Sidewalk - *MPT Perry*

b.) July 26, 2011 Recreation Committee Meeting Update – *Councilwoman Klutz*

17. Public Comment

18. Adjourn

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 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

STAFF MEMBERS ABSENT:

Town Manager John Stockton

1. CALL TO ORDER

Mayor Perry called the meeting to order at 6:00 PM and welcomed everyone to the meeting.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Mayor Perry announced there are two changes to the agenda: Item (5) the Gallagher's asked to be removed and placed on a later agenda and item 8(f) will be placed under "Items Removed from Consent Agenda."

Hearing no other changes, **Mayor Pro Tem Perry moved to approve the agenda as amended. Councilwoman Klutz seconded the motion and it was approved unanimously, 5-0.**

4. SERVICE RECOGNITION: Mike Eubank, Finance Officer, 10 years

In the absence of Manager Stockton, Planning Director Joe Heard recognized Mr. Eubank for his years of service to the town.

PD Heard said he knew Mr. Stockton would liked to have been here for the presentation but in his absence and on his behalf he thanked Mike for his service to the town over the last 10 years. It has been a good partnership and he has done very well because of the sterling financial reputation the town has. At this time he read the recognition of service: *"The Town of Kitty Hawk, NC is forever grateful to Mike Eubank for 10 years of faithful and dedicated service to the Town. July 9, 2001 through July 9, 2011. Presented the first day of August, 2011 by the Mayor and Town Council.*

Mayor Perry thanked Mike and said he wished he would stay around for 10 more years.

5. REQUEST FOR BEACH ACCESS AT 4408 VIRGINIA DARE TRAIL - *Mr. and Mrs. Gallagher wish to construct and maintain a set of stairs/platform over the dune onto an oceanfront lot owned by the Town. (This item was postponed.)*

6. COMPREHENSIVE TRANSPORTATION PLAN – *Ms. Kerry Morrow, Transportation Engineer, will present an overview of this study which will identify long-range multi-modal transportation needs for Dare County.*

Ms. Morrow: *Good evening and thank you for having me. My name is Kerry Morrow and I am with the Department of Transportation in the Transportation Branch. I am here tonight just for an informational presentation to let you know about the Comprehensive Transportation Plan that we are getting started this summer for Dare County. This presentation will basically give you a background of the steps in the process.*

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Some of the previous transportation plans that have been done in the area, which some of you may be familiar with is the 1972 Thoroughfare Plan done for Nags Head and Kill Devil Hills. In 1988 there was a Thoroughfare Plan for the entire county and most recently in 1995 there was a Thoroughfare Plan done for the Outer Banks. In talking to people about that one I do not think it was formally adopted.

You will hear me referring to this as a Comprehensive Transportation Plan, or for short, a CTP. We used to call it a Thoroughfare Plan and over the past, probably 7 or 8 years now, we have been phasing that into a more comprehensive plan. The main difference is we used to only focus on highways and now it has become more of a multi-modal plan. We focus on many things such as biking paths and public transportation.

A CTP is a long range multi-modal transportation plan. DOT will be taking the lead on this plan and will work co-operatively with local planning organizations including the Albemarle RPO as well as representatives from the county and all the municipalities. It emphasizes incorporating local Land Use Plans, community goals and it is adopted at three levels. First, it is adopted locally by both the county and all of the towns in the county. The next level will be endorsed by the rural planning organization and finally by the State Board of Transportation.

I believe Kitty Hawk has a Land Use Plan but it has not been recently adopted. One of the handouts is the General Statute that talks about comprehensive transportation planning and the highlighted section talks about the requirement to have the Land Use Plan adopted locally within the past 5 years. Since that is not the case for Kitty Hawk, the Land Use Plan could be reaffirmed in order to be an active participant in the CTP.

The final handout is a sample resolution to affirm a Land Use Plan for the purposes of participating in the CTP. It allows that you agree the Land Use Plan that is in place is sufficient to do the transportation plan with. So the resolution is something we would want to explore the next few months because we are getting the process started now.

MPT Perry: *Has it been explained that the reason we have not endeavored to update the Land Use Plan is because the CAMA folks themselves recommended we do not do it yet?*

Morrow: *That is right. And I spoke to Joe Heard and John Stockton and they have explained that to me. We just need to reaffirm that locally the town council agrees this is sufficient to base our Comprehensive Transportation Plan on. This can be done outside of CAMA.*

Mayor Perry: *I discussed that with the town manager and thought if we went through the... and updated all the dates and submit it as we still affirm this as our Land Use Plan. It is not our fault that we have not updated it. It is because of CAMA. We even changed it in two years so we would line up with everybody in Dare County.*

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Morrow: *This would be sufficient for our purposes. The CTP is used by the RPO to be prioritized for future funding. Basically the CTP's are not fiscally constrained so there is no funding attached to any of the projects that come out of the CTP. However many of you are familiar with the TIP, the Transportation Improvement Program which is fiscally constrained. Basically the way it works is we are looking 25 to 30 years into the future and we are going to make recommendations for projects that address those future long-range transportation goals and needs. The RPO will take those recommendations and prioritize them along with all the projects that are in the region. This kind of pushes it along and helps it be selected for inclusion in the TIP. I have talked about the Albemarle RPO which is a 10 county area in the Northeastern part of the State. Dare County is a member of this RPO.*

As I mentioned, the CTP is a multi-modal plan and the recommendations will cover highway transportation, public transportation, bicycle and pedestrian. Also since this is the coastal area there is the possibility of varied recommendations. Right now there is actually a CTP being done for Hyde County and I think they are looking to the possibility of some varied recommendations on Ocracoke. We will explore that as well.

Klutz: *Have you gathered up any of the work that was done by a transportation task force that was in being on the Outer Banks? They started up primarily to support the hundredth anniversary of flight but went on. They did get a study done and there is material out there that has already been accomplished.*

Morrow: *Yes and I would be happy to get more information. I have been trying to track that down. I have met with all the planners and managers of all the towns and county and that were mentioned a couple of times. I have identified one person that may have been involved with that but if you know of any more...*

Klutz: *There was a website and I do not know if it has been taken down. I think Dare County took it over. I am just about certain they would have the material because there was always a county commissioner serving. I was on it and may still have some of the documentation and the study. I also see Andy in the audience. Do you still have a lot of that material Andy?*

Szakos: *My name is Andy Szakos and I served on the Outer Banks Transportation Committee. I have not looked at the web site lately but can take a look at that and see if there is anything there. I can get you contact information and would be happy to try to help facilitate that. Willow Kelly may have some...*

Willow Kelly: *I think I have copies of everything that we gave to the commissioners. I made the presentation and I think I still have copies. I think the commissioners with the Dare County Transportation Committee decided not to keep the website from what I recall.*

Morrow: *Thank you. The finished product will basically be a set of maps as well as a written report. The recommendations for highways are broken down into categories: freeways,*

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expressways, boulevards, and major and minor thoroughfares. That is the terminology that we will use when you see the final product. Also, what will be included in the CTP will be strategic highway corridors. The street strategic highway corridors were established a number of years ago and basically they are an ultimate vision for maintaining mobility throughout North Carolina. It identifies high mobility roadways. I am sure it is not surprising that US 158, US 64, and NC 12 are the three that are included for this area.

Ms. Morrow showed examples of what the final product map will look like. The recommendation will be on it as well as an adoption sheet identifying all of the adopting parties including the county and towns.

Morrow: *A timeline of the CTP process. I am in the process right now of forming a small steering committee for the CTP that will meet regularly throughout the entire process. We will have representatives from the county and from all six towns to serve on the committee as well as citizens. I believe Andy was named as somebody that would give input on the committee from Kitty Hawk as well as Joe Heard and John Stockton. The entire process takes approximately two years. Some of the more detailed technical steps for the CTP include collecting data, and analyzing capacity and safety deficiencies. The final steps are getting the CTP adopted, the finished documentation, and as I mentioned earlier the RPO's role in prioritizing projects for future programming.*

I think that is about it. This is my contact information and please feel free if you have any questions or comments or input to share, call or email me. I have also listed my supervisor's contact information, Steven Lambert from the Albemarle RPO, and Donna Creef with Dare County. That is who I will be working closely with. Do you have any more questions or comments?

Mayor Perry: *I just hope you take into consideration neighborhoods and those types of things and not put freeways through places where it would not be accepted. I think it was in the '95 study that the town voted we received it but we did not approve it. I hope we do not get into that again...a freeway through Kitty Hawk Village. Lindbergh Avenue replacing NC 12. I think 158 was suggested to be seven lanes. Those things created quite a problem. So I hope you take into consideration the neighborhoods.*

Morrow: *Thank you.*

Mayor Perry: *Anybody else have any questions? We thank you for coming and hope you are successful with this.*

Morrow: *Thank you very much.*

7. PUBLIC COMMENT

There was no public comment.

8. 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.** July 5, 2011 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*
- b.) **Revenues and Expenses Report for June 2011.** *(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.)*
- d.) **Report of Deposits and Investments.** This semi-annual report to the Local Government Commission, as required by G.S. 159-33 and 115C-446, shows where and how the Town's finances are deposited and invested. It is Town policy for the Finance Office to report this to the Town Council after the report has been filed. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- e.) **FY 11-12 Budget Amendment #1.** This budget amendment in the amount of \$38,918.00 is to recognize and re-appropriate funds that were budgeted in the prior fiscal year and encumbered prior to the fiscal year ending June 30, 2011. Approval of this amendment is in accordance with the current fiscal year's adopted budget ordinance permitting encumbered operating funds to be carried forward into this budget year.
- f.) **FY 11-12 Budget Amendment #2.** This budget amendment in the amount of \$29,663.00 will recognize and re-appropriate remaining eligible reimbursement funds in the amount of \$5,040.00 provided by NCDOT through a reimbursable agreement for the Storm Drainage Study (WBS42983) approved in the prior fiscal year. Approval of this amendment will additionally appropriate Powell Bill funds in the amount of \$24,623.00 for completion of the final Phase III of an engineering study to evaluate the potential impacts associated with local flooding.
- g.) **FY 11-12 General Fund Budget Transfer #1.** Approval of this action will recognize and authorize transfer of available insurance monies in the non-departmental line item (10-4100-5450-000) in the amount of \$4,500.00 to the Finance Department insurance line item (10-4130-5183-000). This transfer employs a portion of non-departmental insurance monies that remain available in this line item for possible reclassification and transfer to town departments for changes in open-period employee coverage requirements or insurance audit

findings resulting in additional premium payments. Further appropriation of General Fund balance is not required with approval of this transfer.

Councilwoman Klutz made a motion to approve the consent agenda minus item 8(f). MPT Perry seconded and it passed unanimously, 5-0.

9. ITEMS REMOVED FROM THE CONSENT AGENDA

Councilwoman Klutz clarified that when council voted on providing the matching funds for the stormwater drainage study it was designated to be from Powell Bill funds. It turns out that Powell Bill funds cannot be used and this amendment will designate the General Fund for the matching funds in the amount of \$24,623.00. She then **moved to approve the Budget Amendment #2 for FY 2011-2012. MPT Perry provided a second and it passed unanimously, 5-0.**

10. PUBLIC HEARING

MPT Perry said "so move" to go into public hearing. Councilman Bateman seconded and it passed unanimously, 5-0.

a.) Text Amendment: *Proposal to add provisions to Chapter 14, Flood Damage Prevention, allowing small accessory buildings in Coastal High Hazard Area (VE) flood zones when installed to FEMA safety standards.*

Heard: *The proposal council is considering tonight would be a text amendment to add provisions to the flood damage prevention ordinance, Chapter 14 of the town code. It would allow small storage buildings to be placed in VE flood zones when installed according to certain standards and conditions outlined by FEMA. Staff drafted this for consideration by the planning board and at their meeting on June 16th the board voted unanimously to recommend approval of this text amendment with the provisions as recommended by FEMA.*

Mayor Perry asked if anyone wished to speak at this portion of the public hearing. Hearing no one he asked for the record to show that no one came forward.

Klutz: *I have a recommendation on the definition. The definition for small low cost accessory structures was added in alphabetical order under "s" and there is already a definition for accessory structure or appurtenant structures at the beginning of the definitions paragraph. I recommended that at the end of the accessory structure or appurtenant structure definition a note be added that says "see also small and low cost accessory structure." The reason being if somebody reads the definition for accessory structure and then sees exceptions for small ones it might be easier if there were a note to point out there are two places in the definitions that address accessory structures.*

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Mayor Perry: *That would not change the intent would it?*

Michael: *No.*

Klutz: *In reading the flood damage prevention ordinance there was a section that had accessory structures in it, Section 14-90, subsection 8. After the last subparagraph where you are adding accessory structures located in a VE zone, there was a paragraph that says "an accessory structure with a footprint of less than 150 square feet that satisfies the criteria outlined in this subsection does not require an elevation or flood proofing certificate. Elevation or flood proofing certificates are required for all other accessory structures in accordance with Section 14-62(c)." There is already an exception for an accessory structure with less than 150 square feet. Now there will be another small accessory structure that has a different definition which has no dimension bigger than 12 feet. Was it considered to use the 150 square feet? Why was the 12 used, which is 144 square feet, just 6 square feet less. For consistency purposes was it looked at?*

Heard: *Staff spent a couple of weeks thinking about any potential changes related to this that would need to be made. The 150 was not specifically discussed but it was brought up that the 12 x 12 was one that would be consistent with a key cut off point in the building code for when a structure needs to obtain a permit. The staff felt that was a nice trigger. We had an opportunity to run the proposal by the folks with the National Flood Insurance Program and they gave us a nod of approval on the way it was proposed for council tonight. If you would like to amend that to the 150 it would probably not be an issue with them as long as it could be tied to another figure like that. In other words, the justification would be similar in their eyes. It would be a good idea to run that by them officially before the council gave final consideration.*

Klutz: *You explained there was rationale using the 12 feet and I am okay with leaving it the way it is. The planning board was also in favor of the language.*

MPT Perry: *The question is why we are stipulating two separate categories for accessory structures.*

Klutz: *There would actually be three with this because any accessory structure that has to be elevated does not really have to be less than 150 square feet.*

Heard: *That is correct. If it is elevated none of this applies.*

Klutz: *That is an accessory structure. Then there is one that does not need the elevation of a flood proofing certificate and that is based on a 150 square feet. The definition for the new one is a small and low cost accessory structure with no dimension exceeding 12 feet and having a value less than \$2,500. This is confusing and I do not expect people who are trying to follow this feel good about having all of those different standards but for a 12 x 12 if you do not need a building permit or something for 12 x 12, it sort of makes sense.*

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MPT Perry: *The fact that one accessory structure is located in a VE zone and the other paragraph does not mention it, does that make a difference?*

Heard: *The proposed changes would only deal with the VE zone structures. It would not change anything in the other types of flood zones. They would still need to be elevated...*

MPT Perry: *That is perhaps why there are two separate distinct paragraphs?*

Heard: *The other one that Councilwoman Klutz just mentioned is the one that mentions 150 and would apply to any zone.*

MPT Perry: *I do not have a problem with people building that is not the issue at all. But a couple of things that stand out, that may not stand out to somebody reading it is: a design professional must determine the effect that debris from the accessory building will have on nearby buildings. Where in the world did that come from? Joe provided me with the information and it came straight out of FEMA. It is a requirement. It was not dreamed up locally and I want folks to know that. It is hard to imagine a design professional putting a stamp on something that might wash away on the beach and saying "no, that will not happen" but that is their problem. I will pass this. I do not have a problem with it.*

Michael: *The usage of the terms that say small and low cost and then it talks about value. Are the words value and low cost synonymous? Value and cost is not the same thing.*

Heard: *I would be glad to hear of any other recommendation. The way FEMA explained it is the figure is to be based on the cost of materials and construction, whatever it would cost you to build or install that structure. It includes both and I do not know if the term value encompasses that or whether there would be a more appropriate term to use. The model states some States and communities can recommend other values when it refers to the figure but it does not specifically say we have to use that word.*

Michael: *My suggestion would be instead of using the word "value" use the word "cost" so there is something that can be defined simply by how much it cost to build it instead of trying to have somebody value it. In the definition, instead of saying having a "value" of less than \$2,500, say a "cost" less than \$2,500.*

Mayor Perry asked if there were any other questions or comments.

Hearing no further questions or comments, MPT Perry made a motion to go back into regular session. Following a second by Councilman Reid, the motion passed unanimously, 5-0.

11. RETURN TO REGULAR SESSION/ACTION FOR PUBLIC HEARING ITEM

a.) Council Action. Council may approve, deny, approve with modifications, or table action on agenda item 10(a).

Councilwoman Klutz suggested all of the changes be made and brought back and then **made a motion to table this item until the next regularly scheduled council meeting on September 6th with the changes we have discussed implemented.** Councilman Bateman seconded and it passed unanimously, 5-0.

12. PLANNING

a.) Call for Public Hearing. *Text Amendment: Proposal to amend subsection 42-587(n), Costumed mascots/wavers, to broaden the use of costumed mascots and wavers for advertising. Specifically, the applicant is seeking allowances to use costumed mascots/wavers on a year-round basis with no limits on dates or time periods. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.*

Councilman Reid made a motion to set a public hearing for the September 6, 2011 council meeting for the text amendment proposal to amend subsection 42-587(n), costumed mascots/wavers, to broaden the use of costumed mascots and wavers for advertising. Specifically the applicant is seeking allowances to use costume mascots/wavers on a year-round basis with no limits on dates or time periods. The public hearing would be set for September 6th. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

b.) Call for Public Hearing. *Text Amendment: Proposal to amend Section 42-225(c) by allowing "home occupations" as conditional uses in the Kitty Hawk Woods (KHW) zoning district. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.*

Councilman Reid made a motion to call for a public hearing for a text amendment proposal to amend Section 42-225(c) by allowing home occupations as a conditional use in the Kitty Hawk Woods Zoning District. Again, the public hearing would be set for the September 6, 2011 town council meeting. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

c.) Call for Public Hearing. *Text Amendment: Proposal to amend subsections 42-251(c)(24)b, c, f, j, and k of the Kitty Hawk Town Code by revising standards for motor vehicle dealerships in the Beach Commercial (BC-2) district. Specifically, the proposed amendments would change the minimum lot size requirement from six (6) acres to 0.75 acre (32,670 square feet) and allow secondary frontage on any type of street. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.*

Councilman Reid made a motion to call for a public hearing on a text amendment proposal to amend Section 42-251 paragraph c, (24) b, c, f, j, and k of the Kitty Hawk Town Code by revising standards for motor vehicle dealerships in the BC-2 district specifically the proposed amendments would change the minimum lot size requirement from 6 acres to .75 acres or 32,670 square feet and allow secondary frontage on any type of street. The public hearing would be scheduled for September 6, 2011 town Council meeting. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

d.) Call for Public Hearing. *Conditional Use Permit: Application for conditional use permits to establish motor and electric vehicle dealerships in a Beach Commercial (BC-2) district at 6100 N. Croatan Highway. The dealership would involve sales, rental, and service of motor and electric vehicles (including cars and road-ready golf carts) and an electric vehicle charging station. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.*

Councilman Reid made a motion to call for a public hearing for a conditional use permit application for a conditional use permit to establish a motor and electrical vehicle dealership in the BC-2 district at 6100 N. Croatan Highway. The dealership would involve sales, rentals, and service of motor and electrical vehicles including cars and road ready golf carts and an electric vehicle charging station. The public hearing would be scheduled for the September 6, 2011 council meeting. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

e.) Call for Public Hearing. *Conditional Use Permit: Application for a conditional use permit to establish a shared parking arrangement between businesses in the Ocean Centre shopping center at 5230 N. Virginia Dare Trail. The Town's shared parking provision in Section 42-544(j) allows up to a 50% reduction in parking requirements for a business when its hours of operation do not overlap with another business(es) on the same property. A public hearing is requested to be scheduled for the September 6, 2011 Town Council meeting.*

Councilman Reid made a motion to call for a public hearing for a conditional use permit. Application for a conditional use permit to establish a shared parking arrangement between businesses in the Ocean Center Shopping Center at 5230 N. Virginia Dare Trail. The town shared parking provisions in Section 42-544 (j) allows up to a 50% reduction in parking requirements for a business when its hours of operation do not overlap with another business(es) on the same property. Public hearing would be scheduled for September 6, 2011. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

13. NEW BUSINESS

a.) Resolution in Memory of Joey Monroe. *This resolution responds to a request by the*

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Recreation Committee that the Town Council ask Dare County for permission to place a plaque at the Skateboard Park in Kitty Hawk in memory of Joey Monroe.

Councilwoman Klutz said the Recreation Committee met on July 26th and asked the Town Council to request that Dare County grant permission to place a plaque at the skateboard park in Kitty Hawk in memory of Joey Monroe. She then read the following:

***“RESOLUTION
IN MEMORY OF JOEY MONROE***

WHEREAS, Joey Monroe, a beloved mentor and friend of our community's youth, and a founding member of the town of Kitty Hawk's Recreation Committee, died unexpectedly on June 2, 2011, and

WHEREAS, Joey devoted years of hard work and dedication to creating wholesome recreation opportunities for the youth of Kitty Hawk and Dare County, and

WHEREAS, as a member and Chairman of the Kitty Hawk Recreation Committee, Joey was the first and most committed advocate for the development of a Skateboard Park in Kitty Hawk, and

WHEREAS, over the years, Joey never missed an opportunity to advance the project, and

WHEREAS, Joey's persistence and hard work laid the groundwork for the newly opened skateboard venue at the Dare County Park in Kitty Hawk, and

WHEREAS, the Kitty Hawk Recreation Committee voted unanimously on July 26, 2011 that the Kitty Hawk Town Council request Dare County to place a commemorative plaque at the Skateboard Park honoring Joey's contribution, and offered to provide the plaque at no cost to the town or Dare County.

NOW THEREFORE, BE IT RESOLVED that the Town Council of Kitty Hawk requests that Dare County place a plaque at the Skateboard Park in Kitty Hawk, commemorating Joey Monroe's vision and dedication to achieving this welcome addition to recreation for the youth of Dare County.

Adopted this 1st day of August 2011 by the Kitty Hawk Town Council.”

MPT Perry provided a second. Mayor Perry mentioned it would be nice to have the plaque fastened to the park on the flat part of the surface rather than have something separate. Councilwoman Klutz said they would see what the county would allow. Joey was a very persistent advocate for years and hopes they are able to do it. **Vote was unanimous, 5-0.**

14. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

Town Clerk Lynn Morris on behalf of Manager Stockton provided the following updates:

a.) **Kitty Hawk Park Update** - Town Clerk Morris said as far as the Kitty Hawk Park is concerned, the town has been informed by Tim White it is now open and they are working on the ribbon cutting.

b.) **Update on Sandy Run Park Phase II Project** - A pre-bid conference was held on July 19th and bids for the project will be opened on August 9th. It is hoped a recommendation for award of a contract to be made at the September 6th council meeting. Work on the project should commence this fall.

c.) **Storm Drainage Study Update** - Mr. DeLucia has reported they are evaluating routing options and inlet structure locations for the six areas east of US 158 and developing cost estimates for the areas. Mr. Wood is working with Mr. DeLucia to develop funding options. Mr. DeLucia also informed us they will begin the hydraulic testing of the Rabbit Hollow area this week. In addition, he is starting the design graphics for inclusion in the final report and everything is still on schedule.

Mayor Perry provided that he had an update on the park dedication. It is to be held at 10:00 am on August 16th. This is about the fourth different date but that is their plans at this time.

15. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

Attorney Michael said he did not have anything else for you.

16. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

a.) **Access to beach from E. Kitty Hawk Road Sidewalk** - MPT Perry said he knew there have been questions to various council members and other questions about access for the new East Kitty Hawk Road multi-use path. Access over the dune to the beach and why there is not something going on there. It should be brought to the attention of the public of the things going on. The manager left notes he will speak about and then ask a couple of questions of others. This whole process began as an inquiry about beach access directly across from the multi-use path back as far as 2007 when the path was being planned. The owners of record are Mr. Hall and Mrs. Shirley Baggett. Mr. Hall lives in Florida and no one knows where Mrs. Baggett is or if she is even alive. The attorney was asked by the manager to work up an easement agreement and it was sent to Mr. Hall and what they thought was the correct Mrs. Baggett. Numerous phone calls by Ervin and John to Mr. Hall have been made in an attempt to obtain his signature on the easement agreement. Mr. Hall was finally spoken with and he told us that Mrs. Baggett was his aunt but he did not know her whereabouts. Mr. Hall indicated he had not seen or spoken

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with her for some 15 years and she had supposedly moved from Florida to South Carolina or North Carolina. There are several problems. Mr. Hall has not given the town an easement and we are having trouble getting in touch with him to follow up. And there is a missing person that is the person of record for this particular property.

Attorney Michael said the agreement had been prepared according to the parameters that John obtained from Mr. Hall. The manager sent it to Mr. Hall and does not believe John has heard back from him at this point. A "people search" was done and three Shirley Baggetts were found. One in Key Stone and two others but they did not fit the parameters as far as dates of birth that would have coincided with what is known. Right now it is at a standstill of trying to find where Mrs. Baggett is or if she is still alive. If she is not alive the heirs need to be found because they will need to participate in this process to bring it to a conclusion.

MPT Perry said he knew Ervin has made a lot of calls and asked if he has made any progress.

Councilman Bateman replied it has not gone anywhere yet.

Mayor Perry offered he knew the manager had talked with Mr. Hall before he travelled to South Carolina. He was told when he got back to Florida he was going to read it over again.

Councilman Bateman said he does not want to do anything to harm anybody. He does not want to take anybody's property but this is the situation we are faced with. There is a multi-use path that goes down to the ocean but it does not get people to the ocean. He parks at the Black Pelican Restaurant and walks from there across East Kitty Hawk Road and across NC 12 to access the beach across Shirley Mays' property. It is really dangerous with cars turning both ways. The path was put in and now the visitors and residents cannot access the beach. That really is upsetting. Taking somebody's property is not something that he wants done but asked for a mechanism to get the town 10 feet to get across the dune. It should be a simple thing. Get 10 feet and public works can have a crossover built in a day. Make it work.

Attorney Michael said he thought Mr. Hall was agreeable but he cannot grant the easement without Mrs. Baggett.

Mayor Perry said Mr. Hall was agreeable but had not signed it and was going to read it over again. He wanted to save the land for his children. Mr. Hall was not going to do anything with it and there is really nothing to do with it. If the town cannot get something solved this year for next year, he is willing to do whatever it takes to go across the dune.

Councilman Bateman mentioned he talked with Shirley Mays and she wants \$50,000 to get across her property.

MPT Perry asked if the town went through the process of "a taking" is it possible if the missing person cannot be found?

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Attorney Michael replied yes. Due diligence must be used in trying to locate somebody and that is certainly being done. If they cannot be found they are served by publication for three consecutive weeks at their last known address. If they do not respond to that within 40 days then you can proceed on with action at that point in time.

MPT Perry said that is something for council to think about.

Councilwoman Klutz added there was some discussion when the sidewalk was put in that there was really no way to get from the end of Kitty Hawk Road across the street and over the dune because it was privately owned. It was a decision at the time that it was worth it to at least put the sidewalk along Kitty Hawk Road because a lot of people walk down that way. Since the end of a crosswalk would land someone in the right-of-way and the right-of-way extends under the dune for a couple of feet, could a crosswalk be put in and nothing else be done. Put the crosswalk in, close the entrance that is on the north side of the end of Kitty Hawk Road and open an entrance across from the sidewalk. Change the behavior that is currently involved in going over one person's property to another person's property. Put in a crosswalk and end it in the town's right-of-way.

Mayor Perry said there is access about 50 feet to the south but it is deemed too dangerous at that intersection to route people to it.

Councilwoman Klutz agreed and said there is not much area to work with because of the turn lane but the turn lane should stay.

Mayor Perry said it is a safety situation and whatever it takes to correct it should be done by next summer.

Councilwoman Klutz thought the crosswalk should go in regardless of what the status is of access.

MPT Perry closed the discussion. Discussion was opened for the benefit of the public to let them know how difficult this has been. Council needs to think about it and come up with some solutions, maybe by the next meeting.

b.) July 26, 2011 Recreation Committee Meeting Update - Councilwoman Klutz said the Recreation Committee met on July 26th and council is already aware of their wanting to commemorate Joey's contributions on the skateboard park.

The committee also discussed a recommendation from Dusty Rhoads. They talked about the origins of the *Heritage Day Festival* and how it was originally envisioned for the community and at no cost to the town. Dusty has discussed this event with the watermen and thought about holding it next year perhaps in November. It might be some type of "seafood fest" with a fish fry and the kinds of things that would attract the people in town. It could be held at one of the

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public areas in town. Maybe the new Dare County Park or the boat ramp if there was ample parking. That is something the Recreation Committee will probably be working on with the hope of maybe holding it sometime next year.

They elected officers and Chairwoman Christine Buckner will continue to be the Chairwoman, Dusty Rhoads will continue as Vice-Chair, and Rita Phillis as secretary. She is the volunteer who prepares the minutes for the committee and does a really nice job.

The committee discussed the work the State will be doing on elevating Kitty Hawk Road which could wind up including a multi-use path from The Woods Road. The manager has written a letter to include a multi-use path in that project and it will be added back into the master plan for recreation.

Mayor Perry said with regards to the "seafood fest" he thought the Tourist Bureau offers funds for events that are scheduled in the off season.

MPT Perry said he did not believe what was mentioned is within the scope of what the Tourist Bureau funds.

Fire Department - Councilman Reid said he would like to publicly thank Jeremy Smith and Jeremy Wilkins with the fire department. Within the past couple of weeks his wife received a phone call from an elderly person who did not have air conditioning and she had, he believed, some dogs which she was very concerned about. She had purchased a window air conditioner and did not have any way of putting it in. She called his house and he and his son were out of town. His wife ended up calling the fire department and those two gentlemen were kind enough to go over and install her window unit so she did not have to suffer in the 100 degree weather we had. It was a very nice thing they did for her and he appreciates it very much.

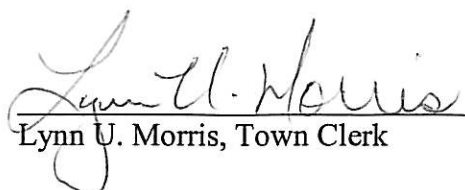
17. PUBLIC COMMENT

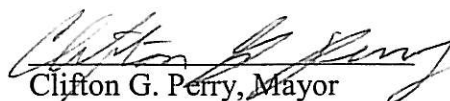
There was no public comment.

18. ADJOURN

MPT Perry said "so move" to adjourn. Councilman Bateman seconded and the vote was unanimous, 5-0. Time was 7:03 pm.

These minutes were approved at the *September 6, 2011* council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor