

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, August 5, 2013**  
**Kitty Hawk Town Hall, 6:00 PM**

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations:
  - Certificate of Appreciation to Eagle Scout Liam Kenny
  - Fire Captain JP Askew, 15 years
  - Public Works Supervisor Mark Dean, 10 years
5. Public Comment
6. Consent Agenda
  - a.) Approval of July 1, 2013 Council Minutes
  - b.) Revenues and Expenses Report for June 2013
  - c.) Tax Pick Ups and Releases
  - d.) Lease Agreement with State of North Carolina.
  - e.) Request from Fire Department for Capital Expenditure
  - f.) Improper Governmental Action (Whistleblower) Policy
7. Items Removed From the Consent Agenda
8. Public Hearing:
  - a.) Conditional Use Permit: Application for a conditional use permit to convert office/storage space on the second floor of the existing building at 4009 N. Croatan Highway to a two bedroom apartment per the standards of the Beach Commercial (BC-1) zoning district.
9. Planning:
  - a.) Call for Public Hearing: Zoning Amendment: Application to rezone a portion of the property at 108 Ascension Drive from Beach Commercial (BC-1) to Beach Residential (BR-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-1) and the remaining portion is zoned Beach Commercial (BC-1).
10. New Business:
  - a.) Agreement with Albemarle and Associates for Stormwater Management Design Services for Hawks Street Emergency Pumping Facility
11. Reports or General Comments from Town Manager
  - a.) Meeting with Department of Transportation Officials Scheduled
  - b.) Coastal Planning & Engineering Draft Report
12. Reports or General Comments from Town Attorney
13. Reports or General Comments from Town Council
  - a.) Thank You to Staff
  - b.) Recreation Committee Update
14. Public Comment
15. Adjourn

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**COUNCIL MEMBERS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Police Chief Joel Johnson, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

**STAFF MEMBERS ABSENT:**

Charlene Allen, Finance Officer

**1. CALL TO ORDER**

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

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

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

**3. APPROVAL OF AGENDA**

Mayor Perry noted Public Works Supervisor Mark Dean would not be in attendance and asked if anyone else had any changes to the agenda.

Hearing no other changes, **Councilman Bateman moved for approval of the agenda. Councilwoman Klutz seconded and the motion passed unanimously, 5-0.**

**4. PRESENTATIONS:**

- Certificate of Appreciation to Eagle Scout Liam Kenny
- Fire Captain JP Askew, 15 years
- Public Works Supervisor Mark Dean, 10 years

Manager Stockton presented the certificate of appreciation to Liam on behalf of the Town Council. Liam, along with mentor Forrest Seal, built a shelter located in the Dare County Dog Park in Kitty Hawk which will provide shelter for both dogs and owners.

Fire Chief Lowell Spivey presented Fire Captain JP Askew a certificate for completing 15 years of dedicated service to the town.

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**5. PUBLIC COMMENT:**

There were no public comments.

**6. CONSENT AGENDA:**

- a.) Approval of July 1, 2013 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*
- b.) Revenues and Expenses Report for June 2013. *(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.) Lease Agreement with State of North Carolina. This agreement is for property south of E. Kitty Hawk Road used by the town for the bath house and beach access. The first lease was signed in 1984 and this agreement is for 25 years and will expire June 30, 2038. *(An affirmative vote for the consent agenda will approve this agreement.)*
- e.) Request from Fire Department for Capital Expenditure. The department is requesting approval to purchase a jet ski in the amount of \$8,550. *(An affirmative vote for the consent agenda will approve this request.)*
- f.) Improper Governmental Action (Whistleblower) Policy. This policy is required to be in place before grant money can be spent from the Governor's Crime Commission. *(An affirmative vote for the consent agenda will approve this policy.)*

**MPT Perry moved to approve the consent agenda as promulgated. The motion was seconded by Councilman Bateman and it passed unanimously, 5-0.**

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

There were no items removed from the consent agenda.

**8. PUBLIC HEARING:**

- a.) Conditional Use Permit: Application for a conditional use permit to convert office/storage space on the second floor of the existing building at 4009 N. Croatan Highway to a two bedroom apartment per the standards of the Beach Commercial (BC-1) zoning district.

Clerk Morris administered the oath to Planner Heard and Tricia Riley the applicant.

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**Heard:** *This is a public hearing for a conditional use permit to convert the existing office and storage space on the second floor of the building at 4009 North Croatan Highway to a two-bedroom apartment. In 2010 the building was converted for use as a day care center, The Wright Place Child Care Center, and at that time the space was dedicated for office and storage use. Since then the business has moved the office facilities down stairs. From speaking with the applicant it is her intent initially to rent the space to an employee of the business but long term it could be rented to anyone.*

*With regards to town standards, it is only converting an existing space so items such as lot coverage, building setbacks, access and traffic flow, none of those things are changing as a result of this application. All of those will continue in the manner that they have in the past. The key things we took a look at were evaluating the parking requirements for the use. The conversion of the space from office to a two-bedroom apartment actually reduces the minimum parking requirement on site and whereas the site was already compliant it is now even more compliant. The calculations, as shown in the staff report, would be 21 parking spaces required to accommodate the day care center and the apartment and there are 29 spaces existing on site. It complies with that standard.*

*The Dare County Department of Environmental Health has issued a permit for approval of the existing septic system to accommodate the apartment as well as the day care center with a maximum of 70 children at the day care center. Presently the business has a license through the North Carolina Department of Health and Human Services Division of Child Development and Early Education for up to 90 children and with the conversion to the apartment and the health department only approving it up to 70 children that would cause a change in the state permit to reflect the health department requirements. The number of children allowed would now be a maximum of 70 when the permit is updated should this be approved.*

*In the staff report we listed the conditional use findings the town council is asked to make as part of the deliberations. Staff has put forth some comments and ideas for consideration. Other than that I want to note the planning board reviewed this application on June 13<sup>th</sup> and the board members voted unanimously to recommend approval of this conditional use permit. The board found this proposal to be consistent with the town's adopted Land Use Plan and recommended approval subject to the condition that compliance must be achieved with all building and fire code requirements before issuance of a certificate of occupancy for the second floor apartment.*

**Mayor Perry:** *Mr. Michael we did not make a motion to go into public hearing.*

**Michael:** *You do not actually have to make a motion. We are in a public hearing at this point simply by declaration.*

**Michael:** *Ms. Reilly do you wish to address the council?*

**Reilly:** *No.*

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**Michael:** *Does council have any questions? Does anyone else wish to address the council on this matter? That seems to be all mayor.*

**Mayor Perry:** *Do we need to go out of public hearing?*

**Michael:** *You can by motion or you can simply close the public hearing. However you wish.*

**Mayor Perry:** *All those in favor to close the public hearing? Vote was 5-0.*

**MPT Perry:** *I have noticed the county chairman states when going in and out of public hearing without a vote.*

**Michael:** *Yes. It is not required that you actually have to have a motion.*

**Councilwoman Klutz** moved to grant approval of this conditional use permit application to convert the existing office storage space on the second floor of the building at 4009 North Croatan Highway to a two-bedroom apartment subject to the condition that compliance must be achieved with all building and fire code requirements before issuance of this certificate of occupancy. Town council concurs with the conditional use findings in the staff report and finds 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 public interest. Councilman Reid seconded the motion and it passed unanimously, 5-0.

**9. PLANNING:**

**a.) Call for Public Hearing: Zoning Amendment: Application to rezone a portion of the property at 108 Ascension Drive from Beach Commercial (BC-1) to Beach Residential (BR-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-1) and the remaining portion is zoned Beach Commercial (BC-1). A public hearing is requested to be scheduled for the September 3, 2013 Town Council meeting.**

**Councilman Reid** moved to set a public hearing regarding the proposed zoning amendment at 108 Ascension Drive for the town council meeting of September 3, 2013. MPT Perry seconded and the motion passed unanimously, 5-0.

**10. NEW BUSINESS**

**a.) Agreement with Albemarle and Associates for Stormwater Management Design Services for Hawks Street Emergency Pumping Facility**

Manager Stockton said at the July council meeting it was determined the best location for a sump basin would be on the property at 4400 North Virginia Dare Trail. This will require an easement and once the easement is obtained the drawings and bid documents will be done and it will be

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advertised. Mr. DeLucia submitted an agreement for professional services for surveying, an easement plat, engineering, bidding and construction administration of the project. The total cost for this is \$7,800 and funding can come from Powell Bill funds. There is presently a balance of \$454,031 in the Powell Bill fund.

**MPT Perry made a motion for approval of the agreement for professional services for stormwater management design services per the attached agreement and authorized the town manager to execute said agreement for \$7,800 and authorized the funding to come from Powell Bill. Councilwoman Klutz seconded.**

MPT Perry asked if anyone anticipates problems obtaining the easement. Manager Stockton replied he has been in touch with the property owner and received an email stating they are willing to grant the town an easement.

Mr. DeLucia added it is a small easement probably 10 feet wide and 15 or 20 feet long. Also, after checking the Dare County health department records there is plenty of separation so it will not affect any of the owner's septic system or any future development ability on the property.

MPT Perry said when this was first brought up there was discussion about placing it on the east or west side. Will it be the east side? Mr. DeLucia replied he thought it should be placed on the east side and DOT is allowing the road to be cut.

Mayor Perry, hearing no further questions or comments, called for the vote. **The vote was 5-0 to approve the motion.**

Mr. DeLucia added ULOCO is supposed to locate the underground utilities this week and the survey should also be finished this week.

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

**a.) Meeting with Department of Transportation Officials Scheduled** – Manager Stockton reported he will be meeting with Jerry Jennings, Division Engineer for NCDOT, and Malcolm Fearing, transportation board member on the 12<sup>th</sup> to discuss the possibility of getting NCDOT involved in the outfall project at East Kitty Hawk Road and NC 12.

**b.) Coastal Planning & Engineering Draft Report** – Manager Stockton said he received a draft report on the Beach Management Concept Assessment from Coastal Planning and Engineering. It was distributed to council and a presentation on it will be made at the September council meeting. Once the presentation has been made a date for the public hearing on municipal service districts should be established. Staff is waiting on the maps from Dare County and they should be ready by then. The town's financial situation and cost elements will also be reported.



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

Attorney Michael reported the town has received an appeal in the Winks matter and it will proceed through the court system.

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

a.) **Thank You to Staff** - Councilman Bateman thanked the police, fire and public works departments for all of their help in the *Sandbar 5k* race. It was a great success and a lot of money was made which in turn will be given to those in need.

b.) **Recreation Committee Update** - Councilwoman Klutz reported the Recreation Committee met on Tuesday, July 30<sup>th</sup> and re-elected their current officers. Christine Buckner as Chairwoman, Dusty Rhoads as Vice-Chairman and Rita Phillis volunteers to keep the minutes of the meetings. She does a great job with the minutes and the committee and town are in her debt. The committee welcomed new member Tom Heffner. They discussed some bike rack issues and according to Christine the public works department has already taken care of it.

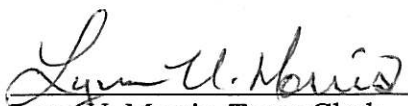
**14. PUBLIC COMMENT**

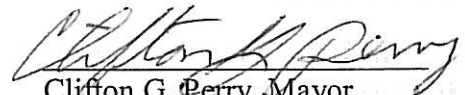
There were no public comments.

**15. ADJOURN**

MPT Perry made a motion to adjourn. It was seconded by Councilwoman Klutz and passed unanimously. Time was 6:24 p.m.

These minutes were approved at the *September 3, 2013* council meeting.

  
Lynn U. Morris, Town Clerk

  
Clifton G. Perry, Mayor