

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, December 3, 2018
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations:
 - Dare County Commissioner Ervin Bateman/Former Kitty Hawk Councilmember (2003-2018) and Mayor Pro Tem (2005-07, 2013-15)
 - Video of 2018 Motorcycle Toy Run and Presentation to Police Chief Johnson
 - NC Coastal Federation Update on the Living Shoreline along Moore Shore Road
5. Nomination(s) for Vacant Seat on Town Council
6. Public Comment
7. Consent Agenda
 - a.) Approval of November 5, 2018 Council Minutes
 - b.) FY 18-19 Quarterly Financial Statements
 - c.) FY18-19 Budget Amendment #4
 - d.) Designation of Applicant's Agent Resolution
 - e.) Agreement with Albemarle & Associates for Professional Services Related to Stormwater Management in Kitty Hawk Estates and Kitty Hawk Landing
 - f.) Amendment to the Government Education Access Channel (GEAC) Interlocal Agreement
 - g.) Moore Shore Road Living Shoreline Bid Award and Resolution
8. Planning
 - a.) Vegetative Buffer Review: Vegetative buffer detail review for OBX Urgent Care, 5112 N. Croatan Hwy, OBX Urgent Care
 - b.) Schedule Public Hearing: Text Amendment 42-250(c)2; 42-251(c)2; 42-253(c)10. The applicant has requested a text amendment that would reduce the required setback for fuel pumps from rights-of-way in the BC-1, BC-2 and BC-3 districts.
 - c.) Schedule Public Hearing: Zoning Map Amendment, 6100 N. Croatan Hwy. The applicant has requested that the subject parcels be classified as a Planned Commercial Development (PCD).
9. Reports/General Comments from Town Manager
10. Reports/General Comments from Town Attorney
11. Reports/General Comments from Town Council
 - a.) Culvert Bid on West Tateway
12. Public Comment
13. Adjourn

COUNCILMEMBERS PRESENT:

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

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STAFF MEMBERS PRESENT:

Town Clerk Lynn Morris, Town Attorney Casey Varnell, Planning Director Rob Testerman, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Police Chief Joel Johnson, Fire Chief Mike Talley and Public Works Director Willie Midgett

OTHERS PRESENT:

Council Appointee Candidates: Tina Tice, David Hines and Charlena Ambrose

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

Mayor Perry noted an amendment to the agenda. It is item 11(a) "Culvert Bid on West Tateway."

Councilwoman McClean "so moved" for the amended agenda and Councilman Pruitt seconded. The vote was unanimous, 4-0.

4. PRESENTATIONS:

- **Dare County Commissioner Ervin Bateman/Former Kitty Hawk Councilmember (2003-2018) and Mayor Pro Tem (2005-07, 2013-15)**

Mayor Perry invited newly elected Dare County Commissioner Bateman to the lectern and presented him with a plaque. He said everyone appreciates everything he has done for Kitty Hawk and knows he will continue to help everyone as a commissioner. He will be missed.

Commissioner Bateman thanked the mayor and said he takes a lot of pride in helping. He remembers Jeff's father, former Kitty Hawk Councilmember Paul Pruitt, telling him if he wanted to change something he should get involved. He took it to heart and that is when he started volunteering for the planning board and recreation committee. He feels blessed and has grown as a person emotionally, intellectually and spiritually. Giving back is much, much more important than receiving. He thanked all for their friendship and is psyched about what he will be doing in the future.

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- **Video of 2018 Motorcycle Toy Run and Presentation to Police Chief Johnson**

Terry Gray: *Thank you for letting us come here. I am with the Dare County Motorcycle Toy Run. Chris DeCou, a member, and a Kitty Hawk resident, is also here tonight.*

I want to say congratulations to Ervin. He is one of the first ones that I go to every year for a donation and he helps us do what we do.

I would like to give you a little history about the Toy Run. It was founded in 2016. We are a 501(c)(3) and our first year we raised \$14,000 and helped 400 underprivileged kids in Dare County. Everything that we raise, all the money that we make, stays in Dare County. Our second year we raised \$25,000 and helped 573 kids. This year we raised \$32,000. We are going to help a lot of kids.

The Governor's Volunteer Service Award was awarded to us this year. We took a lot of pride in that. We have also had the distinct honor of having Mr. Jonny Waters, a local singer, volunteer to give us a theme song for this year's Toy Run video.

This year we rode to the Aycock Brown Welcome Center and toured the Monument to a Century of Flight. We celebrated 1903. There were three things that happened in 1903. It was an introduction to the Ford Motor Company, the Wright Brothers first flight and Harley Davidson was introduced. So, we celebrated that with our theme this year.

A short video of the Toy Run was shown.

Gray: *Like I said this is the third year we have done this. We had about 160 motorcycles that participated in the ride. We were expecting about 225 but Hurricane Florence had just come through and many riders in the western part of the state could not make it. Despite that we raised quite a bit of money.*

This year we have done something new. We started three educational scholarships. One for the Manteo mainland, one for Hatteras Island and one for the northern beaches. It will be awarded to graduating seniors to help them with their education.

The next thing we have done is changed our name. We are now the Dare County Motor Sports Charity Group. We are trying to branch out into other events. We have partnered with the First Flight Society and that is going to prove to be a very big benefit to us. We have also partnered with Michael Tillett, First Flight Cruisers, and Richard Quidley from the Gift Garden in Kill Devil Hills. They are putting on a classic car and custom rod show that is going to be down here this year. There are going to be hot rods everywhere. They have, I think, probably 400 rooms already rented at various motels in Dare County. Mayor, if I could, I would like to introduce Michael. He is in the audience.

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Michael Tillett: *Good evening. Like Terry said we are putting together OBX Rod and Custom Festival with cars, trucks and hotrods, customized from all over the country. They will be coming to the Outer Banks the first week in May 2019 and we are doing it to help two charities, one of which is the Toy Run. We are trying to branch out and help each other to get more going for the kids in Dare County. I just wanted to let you know what was going on. I know you have a busy meeting, so I will not carry on. I will be meeting with different townships to let them know what is happening. I really appreciate you letting me get up and tell you a little about it.*

Gray: *Now we will get right down to the meat and potatoes of this. Your police chief. This year we put a lot on them because we went to the Aycock Brown Welcome Center and turned around and went back across. Your police department did a fabulous job. They have helped us all three years. It is a police officer escorted ride and we have not had a single incident and it is because of the law enforcement of the municipalities that help us. I am going to tell you the same thing I tell you every year. He makes you look good. Chief Johnson, thank you so much. We appreciate it.*

Johnson: *Thank you and we appreciate everything you do for the community.*

- **NC Coastal Federation Update on the Living Shoreline along Moore Shore Road**

Erin Fleckenstein, Coastal Scientist; Manager, Northeast Regional Office, Coastal Federation: *I was asked to provide a very brief update on where we are with the Moore Shore Road project. This is a project that I know has been on Mayor Perry's mind for at least the last decade and I am excited to report where we are with it.*

As a refresher, the Coastal Federation is a non-profit environmental organization. We work in all 20 coastal counties of North Carolina and we have an office on Roanoke Island. We are big proponents of the use of living shorelines. These are techniques that protect our shorelines from erosion while at the same time create new habitats and improve water quality.

Along Moore Shore Road I am sure you have seen the shoreline eroding away at a pretty rapid rate. We have been working with the Town, Department of Transportation, Coastal Surveying and Engineering, as well as a few other partners, including the landowners, to come up with a plan for restoring some of the marsh along the road and slowing down that erosion. Hopefully it will eliminate any further erosion and impacts. Moore Shore Road is an important thoroughway for the Town for emergency purposes as well as for the Outer Banks Marathon that you had here a few weeks ago. It is an important community asset.

In 2016 the Coastal Federation secured a small grant from NOAA, the National Oceanic Atmospheric Administration. That allowed us to move forward with some planning for a living shoreline. We brought a plan to you which you approved in 2017. You also put forward \$170,000 to implement the project. We were then able to use the leverage from NOAA and you to get the Department of Transportation to add additional funds. They contributed \$30,000. We then got further support from the county through their Soil and Water Department.

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We have brought all these different funding sources together and brought all of the different landowners together. It has not been a simple process. We finally received the permits for the project in August of this year. Then we put together a bid package with the Department of Transportation's standards. If you have ever done projects with DOT you know their process can be quite cumbersome but they were wonderful to work with. They really stepped out of their box to help us put together some bid documents that met the standards and specifications for them as well as the goals of the project from shoreline erosion control and marsh reestablishment.

Once the bid packages were in hand, we moved forward to receiving bids and finally we selected a contractor just before Thanksgiving. Hatchell Concrete has been selected as the contractor.

This past Friday we held a pre-construction meeting. Hatchell was out with the CAMA representative to make sure that as construction moves forward, we are following all the permit requirements. Construction should be moving forward in the next couple of days. Hopefully as you are driving along Moore Shore Road you will start to see some of the activity. Initially they are going to knock down some vegetation in order to use it as a staging location for the construction, putting in erosion controls, silk fencing and that type of thing. Construction should begin this month and you should start to see some pilings being put in the water.

There is a spectrum of living shoreline techniques and the type of technique that was finally decided on is going to be an offshore sill. It is going to be placed almost 50' offshore in the water. It will be a vertical structure, but it will not be like a bulkhead. It might look like one to some people, but it will have slits in it that allows water to pass through. It allows the water to circulate around and fish passage to move in and out of the structure. It will not be very tall, only 6" to 12" above the normal water level. It will act like a speed bump for waves, but it is not going to be a hard wall that the waves are going to hit and then ricochet off. It is going to act like a speed bump to slow down wave energy and allow it to dissipate. Once it gets warmer next summer, we will plant some marsh grass behind that structure to reestablish the vegetation and get the marsh back.

That is all I have for you this evening. If there are any questions, I will be happy to answer them. We are very excited to be at this phase and are very pleased to have been a part of this project with you all.

Perry: *The homeowners saw the erosion as well as the state. It was visible to everybody and we knew the road needed to be saved. Rather than just putting rock down to save the road this gives us a chance to rebuild the shoreline. It gives the public a place to see whether this will work or not and then perhaps it will be used in other places throughout the county.*

An important point I did not know until we went through the bid process was this is the first time NCDOT has participated in a living shoreline. They always do their bulkheading like everybody else. This is an important project for them to see and see if it is something they should expand into for the future.

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5. NOMINATION(S) FOR VACANT SEAT ON TOWN COUNCIL

Perry: *First I want to state, assuming a candidate is selected, actual seating will occur in January. This will allow family and friends to be present for the new member. We do not have a controversial agenda tonight so there should not be a problem with any kind of split vote.*

I also need to say that Nick Martini and Charlena Ambrose have withdrawn their names due to other considerations. We only really have two candidates that have come forward and with that I will go into some preamble:

A vacancy on the Kitty Hawk Town Council has been created by the 2018 election of Ervin Bateman to the Dare County Board of Commissioners. Ervin is, or has been, sworn in to that new position as this council meets.

At our last meeting, council decided to advertise for persons interested in serving out the remainder of Ervin Bateman's term that ends December 2019. As of this meeting we have received four interested persons, two of whom have removed their name from consideration.

The Town Code does not specify how to fill an unexpired term of office but in all matters of rules and procedures for a city council, town officers have followed the guidance established by the University of North Carolina School of Government. Central to the question of does the law require the council to use any particular process to select the person to fill the vacancy the answer is no. However, a public body may not consider or fill a vacancy among its own membership except in open meeting.

If council majority agrees, I propose we consider filling the vacancy of Ervin Bateman using a motion to nominate a candidate, with a second required to proceed to discussion and then a vote with a majority needed to confirm the nominee. It should be noted that a councilmember is not limited to a nomination of only those persons whom responded to advertisement and formal application.

Mayor Perry asked if councilmembers concur with this method and they replied yes. He then opened the floor for nominations.

Pruitt: *Mr. Mayor I would like to nominate Tina Tice to fill the vacant council seat on the Kitty Hawk Town Council.*

Perry: *Does that have a second?*

McClean: *Mr. Mayor I will second that.*

Perry: *Are there any other nominations? Hearing no other nominations, nominations are closed. Is there any discussion?*

Pruitt: *I would just like to say this has been a tough decision to make. We were very lucky to have people come forward and I hope everybody stays interested. There is an election coming up pretty soon. That is all I have.*

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Perry: *I agree. We do appreciate all the candidates that came forward. I am going to vote for Tina. Tina has been in the Town most of her life. She has worked here and she has been on the planning board. When she left the planning board Oscar Northen said that of all the people that were on the board at the time, she came to the meeting the best prepared, asked the best questions and knew the code. That is important. She already comes to us knowing the code. She does not have to learn it. The attributes are there. For all those that we will not pick tonight there is an election next year. Throw your name in the hat. It only costs \$5.*

Garriss: *I agree this was a tough decision. We had four good applicants narrowed down to two tonight with the withdrawals. When I looked at the whole picture, based on experience, training and knowledge it came out to me to be Tina Tice.*

McClean: *I cannot say anything more because you have said it all. It was difficult and I hope we do not have to do this again.*

Perry: *All in favor of Tina Tice to fill the vacancy of Ervin Bateman.*

The vote was 4-0.

Perry: *Tina. Welcome aboard. We will seat you next month.*

Tice: *Thank you.*

Garriss: *David and Charlena thank you too.*

6. PUBLIC COMMENT

There were no public comments.

7. CONSENT AGENDA

a.) Approval of November 5, 2018 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 18-19 Quarterly Financial Statements. *(An approval of the consent agenda will acknowledge these statements.)*

c.) FY18-19 Budget Amendment #4. This amendment, in the amount of \$29,000, will recognize additional funds for Phase IV for debris removal in the streams around Kitty Hawk Estates, Eckner Street and Sandy Run Park. *(An approval of the consent agenda will approve this amendment.)*

d.) Designation of Applicant's Agent Resolution. This resolution is required paperwork for the North Carolina Division of Emergency Management and the Federal Emergency Management Agency with regards to Hurricane Florence. *(An approval of the consent agenda will adopt this resolution.)*

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e.) Agreement with Albemarle & Associates for Professional Services Related to Stormwater Management in Kitty Hawk Estates and Kitty Hawk Landing. This agreement, in the amount of \$13,650.00, will provide engineering for the preparation of a culvert replacement plan and swale renovations in the Kitty Hawk Estates and Kitty Hawk Landing areas. *(An approval of the consent agenda will approve this agreement.)*

f.) Amendment to the Government Education Access Channel (GEAC) Interlocal Agreement. This amendment allows the transfer of money between line items in their annual budget as long as it does not affect the total annual operating budget. It also clarifies that funds in the contingency line item can be transferred to objects of expenditure as needed. *(An approval of the consent agenda will approve this amendment.)*

g.) Moore Shore Road Living Shoreline Bid Award and Resolution. Three bids were received for this project. Because NCDOT is involved and is a funding source, DOT is recommending Hatchell Concrete, Inc be awarded the bid in the amount of \$163,301.76. Other partnering agencies will provide a total of \$64,600 and the Town will pay the remaining balance of \$98,701.76. In addition, a Resolution for the bid acceptance is required. *(An approval of the consent agenda will approve this recommendation and ratify the resolution.)*

MPT Garriss made a motion to approve the consent agenda. It was seconded by Councilwoman McClean and approved unanimously, 4-0.

8. PLANNING

a.) Vegetative Buffer Review: Vegetative Buffer Detail Review for OBX Urgent Care, 5112 N. Croatan Hwy, OBX Urgent Care

Testerman reviewed the following staff report with council.

Per Sec. 42-651, buffer details, including vegetation type and size are to be reviewed by the Planning Board and approved by Town Council. Per the Conditional Use Permit, approved May 7, 2018, a Type A vegetative buffer was to be required on the southern and western property boundary for the above referenced property. A Type A buffer entails an opaque vegetative buffer of a minimum width of ten feet that will reach a height of six feet in three years.

The attached landscaping plan shows the use of Ligustrum japonicum (curlyleaf Ligustrum/Japanese privet) along the western and a portion of the southern property boundary. These plants grow to a height of 6-12 feet tall. According to the NC State Extension, they grow to be approximately 5-6 feet wide, however, according to Jim Gallagher, with Grounds Guys, in our environment on the coast, they tend to exceed that mark and noting that it would not be uncommon for them to reach 10'. It is an evergreen shrub/small tree that grows rapidly. It is drought and salt spray tolerant.

Additionally, along the southern boundary, closer to the front of the lot, the landscape plan calls for Elaeagnus x ebbingii (Elaeagnus). This is an evergreen to semi-evergreen planting that grows to 8-10 feet tall, and 8-10 feet wide. This plant is also drought, salt spray and wind tolerant. It is noted as being good for screens.

It should be noted that while it was not a requirement, the applicant has shown the buffer extending north to the three properties previously approved for medical offices.

Sec. 42-655 states that the buffers shall be maintained to meet the criteria of the ordinance, maintenance of the buffers is a continuing condition of the site plan approval and a condition of compliance. Failure to maintain the buffers shall constitute grounds for revocation of any occupancy permit.

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Planning Board Recommendation

At its November 15, 2018 meeting, the Planning Board unanimously recommended approval of the proposed buffer detail at OBX Urgent Care, 5112 N. Croatan Hwy.

Testerman added that while they show the full landscape plan the buffer review is simply for the vegetation between the zones. The plantings between the parking aisles is not what is being reviewed.

Perry: And that is on the east side. That is not something we had anything to do with. It seems they are bending over backwards to make it palatable for everybody as best they can.

MPT Tem Garriss made a motion, seconded by Councilwoman McClean, to grant approval of the proposed buffer detail at 5112 North Croatan Highway. The vote was unanimous, 4-0.

8(b.) Schedule Public Hearing: Text Amendment 42-250(c)2; 42-251(c)2; 42-253(c)10. The applicant has requested a text amendment that would reduce the required setback for fuel pumps from rights-of-way in the BC-1, BC-2 and BC-3 districts.

Perry: This is for a proposal where the old filling station is, near the Kitty Hawk Elementary School.

Councilwoman McClean made a motion to set a public hearing at the Town Council meeting on January 7, 2019 to consider a proposed text amendment to amend sections 42-250(c)2 42-251(c)2 and 42-253(c)10 regarding the minimum setbacks from rights-of-way for gas pumps.

Perry: They are thinking about putting in some new gas pumps. Our code requires pumps further from the right-of-way than the state. In order to make this site work we would have to amend our code.

Councilman Pruitt seconded. Vote was unanimous, 4-0.

8(c.) Schedule Public Hearing: Zoning Map Amendment, 6100 N. Croatan Hwy. The applicant has requested that the subject parcels be classified as a Planned Commercial Development (PCD).

Perry: This is in the same area as just mentioned and I want to say we are not reviewing a site plan. Council is only scheduling a public hearing on the zoning map amendment. There are many more details they must go through before getting to a point where they could build anything.

Councilman Pruitt made a motion to set a public hearing regarding the proposed zoning map amendments at 6100 North Croatan Highway and the adjacent unaddressed lot for the Town Council meeting on January 7, 2019. Councilwoman McClean seconded and it passed unanimously, 4-0.

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9. TOWN MANAGER

Mayor Perry noted the manager is ill and not in attendance.

10. TOWN ATTORNEY

There were no comments from the town attorney.

11. TOWN COUNCIL

Council expressed their sadness in having Commissioner Bateman no longer on the Town Council and will miss him. They know he will continue to work for Kitty Hawk as well as for all of Dare County.

Council expressed their appreciation to Terry Gray and all the volunteers for another successful Toy Run.

MPT Garriss brought forth the suggestion he made at an earlier meeting. He wondered if everyone had a chance to think about starting council meetings at 5 p.m. when the Board of Elections is using the Town Hall on a Tuesday after a Monday night Council meeting.

Council agreed with the suggestion.

Mayor Perry asked the Town Clerk to put it on the next agenda.

11.(a) Culvert Bid on West Tateway

Perry: *There were two bids for the West Tateway culvert installation. When there is flooding, there is a way to pump to the ocean, when given permission. This area is blocked from the site where the sump is and it is a problem. We are trying to open it up and have a way to better deal with floodwater over in the Rabbit Hollow area.*

H & H was the low bid for \$3,081.87 and I recommend by motion that we accept H & H's low bid.

MPT Garriss seconded and it passed unanimously, 4-0.

12. PUBLIC COMMENT

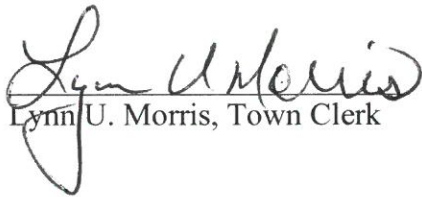
No one came forward for comment.

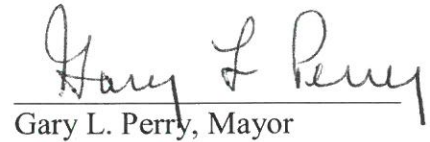
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13. ADJOURN

MPT Garriss made a motion, seconded by Councilwoman McClean, to adjourn. The vote was unanimous, 4-0. Time was 6:43.

These minutes were approved at the January 7, 2019 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor