

**Minutes**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, December 5, 2011**  
**Kitty Hawk Town Hall, 6:00 PM**

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Abstract Votes for the Municipal Election held on November 8, 2011
5. Oaths of Office: Emilie Klutz and Ervin Bateman
6. Selection of Mayor Pro Tempore for a 2-year term. Oath of Office for Mayor Pro Tempore
7. Public Comment
8. Consent Agenda
  - a.) Approval of November 7, 2011 Regular Meeting Minutes
  - b.) Revenues and Expenses Report for October 2011
  - c.) FY 11-12 Budget Amendment #6
  - d.) FY 11-12 Budget Amendment #7
9. Items Removed from the Consent Agenda
10. Public Hearing
  - a.) Continuation of Public Hearing held on November 7, 2011 for Beach Ready Auto Conditional Use Permit: Application for a conditional use permit to establish a motor vehicle service and repair business in a Beach Commercial (BC-2) district in Units I & J of the existing Quail Run business center at 500 Sand Dune Drive. The proposed use would include the service and repair of vehicles for the applicant's business (Wild Horse Adventure Tours) and the general public.
  - b.) Text Amendment: Proposal to amend subsection 42-587(a), Temporary sign/banner permits, to lengthen the amount of time that a temporary sign or banner can be used to two 50-day periods per calendar year.
11. Return to Regular Session
12. Planning
  - a.) Call for Public Hearing. Text Amendment: Proposal to amend Section 42-1, *Definitions*, and Section 42-577, *Signs Allowed on Private Property With and Without Permits*, of the Kitty Hawk Town Code to establish standards for the use of commercial and noncommercial flags. A public hearing is requested to be scheduled for the January 9, 2012 Town Council meeting.
13. New Business
  - a.) Public Access to Beach at E. Kitty Hawk Road and NC 12
  - b.) Appointment of Town Manager as Representative to the Transportation Advisory Committee for the Albemarle Regional Planning Organization
  - c.) Status of Oak Trees at Windgrass Circle
14. Reports or General Comments from Town Manager
  - a.) Transportation Coordinating Committee Meeting Update
  - b.) Compliment for Officer James Helms
  - c.) Sandy Run Park Phase II Update
  - d.) Storm Drainage Study Meeting Update

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15. Reports or General Comments from Town Attorney
16. Reports or General Comments from Town Council
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 Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Police Chief David Ward, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

**1. CALL TO ORDER**

Mayor Perry called the meeting to order at 6 PM and welcomed everyone to the meeting. He then asked everyone to join in a moment of silence and Pledge of Allegiance to the flag.

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

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

**3. APPROVAL OF AGENDA**

MPT Perry made a motion to approve the agenda as promulgated. Councilwoman Klutz seconded and it passed unanimously, 5-0.

**4. ABSTRACT VOTES FOR THE MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2011**

Town Clerk Morris announced the town has received the Dare County Board of Elections abstract votes for the municipal election certifying Emilie Klutz and Ervin Bateman won the election held on November 8, 2011.

**5. OATHS OF OFFICE**

Town Clerk Morris administered the oath of office to council-elect Emilie Klutz and Ervin Bateman.

**6. SELECTION OF MAYOR PRO TEMPORE AND OATH OF OFFICE**

**Councilman Bateman made a motion to nominate Gary Perry for Mayor Pro Tem. Councilwoman Klutz seconded.** Mayor Perry asked if there were any other nominations. Hearing none he called for the vote. **The motion passed unanimously, 5-0.**

Town Clerk Morris administered the Mayor Pro Tempore oath of office to Gary Perry.

**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.** November 7, 2011 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

**b.) Revenues and Expenses Report for October 2011.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

**c.) FY 11-12 Budget Amendment #6:** Recognize and appropriate \$3,660 to the town from the Dare County Government Channel Operations (PEG) for purchase of video equipment to be used in producing items of public interest. There is no funding match from the town required. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

**d.) FY 11-12 Budget Amendment #7:** Recognize and appropriate \$105,257 in flood and property damage settlement funds to the town for claims from Hurricane Irene. Assignment of funds: (1) \$92,091 to public works for facility repairs; (2) \$1,380 to the fire department for vehicle flood repairs; (3) \$11,786 to the police department towards replacement of the message board. *(An affirmative vote for the Consent Agenda will approve this budget amendment.)*

**MPT Perry made a motion to approve the consent agenda as promulgated. Councilman Bateman seconded and it passed unanimously, 5-0.**

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

There were no items removed from the consent agenda.

**10. PUBLIC HEARING**

**a.) Continuation of Public Hearing held on November 7, 2011 for Beach Ready Auto Conditional Use Permit:** Application for a conditional use permit to establish a motor vehicle service and repair business in a Beach Commercial (BC-2) district in Units I & J of the existing Quail Run business center at 500 Sand Dune Drive. The proposed use would include the service and repair of vehicles for the applicant's business (Wild Horse Adventure Tours) and the general public.

**Councilwoman Klutz moved for council to return to public hearing which was continued from November 7, 2011 for Beach Ready Auto Conditional Use Permit. Councilman Bateman seconded and it passed unanimously, 5-0.**

**Attorney Michael:** *If you want to speak you will need to come forward and be sworn in.*

Clerk Morris administered the oath to: Planning Director Joe Heard, Clarence Snyder, Linda Craig, Sandra Standley, Andrew Cole, Nikki Hise, Tom Watkins, Richard Brown, Steve Sheppard, and Jeanne Griffin.

**Michael:** *If you would Mrs. Morris give us the first name on the list and just let them come up in that order.*

**Clarence Snyder, 103 Sonny's Lane, Kitty Hawk, NC:** *Members of council my name is Clarence Snyder. My wife Mary and I own a home at 103 Sonny's Lane. Sonny's Lane is adjacent to the north entrance to the Quail Run Business Center which is the closest entrance to the units in question. It should be noted that all access to the Quail Run Business Center is via two residential streets, Worthington Lane to the north and Sand Dune Drive to the south.*

*I have several concerns regarding the requested change of use. First, the requested use is inconsistent with the historical and current businesses occupying the center. The center is and has been used exclusively for retail, office, and warehouse businesses. In fact, the current "space for lease" sign in the window of a vacant business so specifies. An auto repair business lies outside this usage and description. Further, repairs and servicing specifically for off-road vehicles which the requester is offering is really a truck service facility.*

*Second, the intended hours and days of operation for the business are unusual for this type of activity and inappropriate both to the proximity to the other businesses in the center and to the proximity to the adjoining residential properties as well as to the available access via the streets serving those residences.*

*Last, and probably most important, if this change of use is granted without significant restrictions imposed by council it will establish a precedent for the entire center that the council will find it difficult to reverse or change in the future. I cannot see the quieter current businesses*



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*continuing to share the center with an off road-vehicle service activity. Nor can I see the center attracting quiet retail office or warehouse tenants. I also question whether the council will be able to deny a similar change of use to the next requestor wanting to open a similar business in the center.*

*For these reasons I believe the change of use requested is inappropriate. However, if it is granted I would ask council to restrict both the days and hours of operation and place restrictions on placement and storage of vehicles and on operations external to the closed confines of the shop. Thank you.*

**Mayor Perry:** *I need to clarify something. It is not a change of use. It is in the code and has been in there for many years. It is a conditional use.*

**Snyder:** *I understand sir. Change of use is the specific term that was used in the advertisement by the town that was posted. I used the same term.*

**Mayor Perry:** *Okay. I just want to clarify that it is not a change of use.*

**Snyder:** *I understand it lies within the definition of commercial. However it is the same term that the town used in posting it.*

**Mayor Perry:** *I just wanted to make sure you understood because...*

**Snyder:** *I do sir.*

**Mayor Perry:** *Okay, thank you.*

**Linda Craig, 3102 Coral Reef Ct., Kitty Hawk, NC:** *Good evening council. My name is Linda Craig and I am Vice-president of the Sandpiper Cay Property Owners Association. I am here to represent the board of directors in our feeling of the operation of the auto repair so close to the Sandpiper Cay community. I speak for 280 units of homes and we have other speakers here tonight that are going to offer their comments also.*

*We have concerns about toxic material, any hazmat materials that might be stored here at this location and ask that the council understand these items would need MSDS sheets on file in their office. And it would also need to be handed to any person that may receive any hazmat material and they would be required to have a MSDS sheet as required by federal law. I understand this because I had a company myself and understand the rules of OSHA and hazmat material. At one point, for 15 years, my location was next to the fire department and this worked very well for me because I was constantly inspected by EPA, the town, and Dare County. I understand the importance of things being in order and chemicals or any hazmat material that requires close attention.*

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*The other thing of course is the property value of our property in Sandpiper Cay. We have not experienced an auto repair so close to our community. It is a quiet community with the owners being very proud to be in a community such as Sandpiper Cay. I have been there since 1992 and I can vouch that it is a well kept community, well manicured, well taken care of, and we as a board continue to see that all phases of that community is attended to as quickly as possible.*

*And we are a bit curious, I for one and the board, why this location was chosen in Kitty Hawk next to a community like Sandpiper Cay when the location of the tours is way up north. I would like to have an answer to that as well as the board and the 280 owners in Sandpiper Cay. If I could have an answer to any of these things I would appreciate it very much and if there are any questions I would be happy to answer those.*

*I see where we...you all should have seen these letters...you have seen many letters of our concerns and I hope that you have taken the opportunity to read and evaluate those before you make a vote on anything involving the auto repair. I thank you for listening and I thank you for your time.*

**Mayor Perry:** *Thank you.*

**Michael:** *Does anyone have any questions? Who is next on the list?*

When Clerk Morris called Jeanne Griffin she asked to wait until the end to speak.

**Sandra Standley, 1707 Sand Dollar Circle, Kitty Hawk, NC:** *Good evening. I am Sandra Standley and my husband and I live in Sand Dollar Circle. I would like to have a little bit of follow up from my comments from last month's meeting. I kind of get emotional about this because this is our home and I would submit that the council's obligation should be to the communities at large, not only Sandpiper Cay, but also the ones adjoining, such as Worthington Lane and Sonny's Lane. This obligation should supersede, in my opinion, one business property owner's request for a conditional use permit that will disrupt our neighborhood. These neighborhoods were well established before the structure Quail Run was built in 1997-98. This general area comprises many people's homes and our homes were purchased to enjoy the Outer Banks environment and this does not include garage sounds in either our front or back yards.*

*Shouldn't the council support the majority of its constituents and not a business venture that may provide a few jobs and would definitely open the door to similar undertakings in the future? After all, the Outer Banks is counted as a lifestyle destination. It certainly was for us and should remain so for those who call this area home.*

*Beach Ready Auto is a business more appropriately situated in an industrial zone area. In this currently depressed real estate market is it advisable to further depreciate property values and in turn lower the tax revenue generated by our community by permitting this type of business into*

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*the neighborhood. Are the building owners and tenants residents of Kitty Hawk? And if not let's find...but why should their petition outweigh the best interests of our communities?*

*In closing I ask each of you, if your home were threatened by an invasion of noise and inconvenience...and I wake up and I hear the ocean roaring. I do not want to wake up at 7 o'clock and hear...and I have heard pneumatic sounds of tools. Anyway, how would you vote? Thank you for your attention, I appreciate it.*

**Andrew Cole, 617 Skimmer Arch, Corolla, NC:** *I am here as a good friend of Rich and also as an employee. I want to make a couple of comments on things that other individuals have said. First of all is the noise. I have been there numerous times. The garages are always closed, every single door, and I have never heard a single noise outside of the facility.*

*Another thing is here on the Outer Banks we like to enjoy recreationally and that includes going fishing off-road. Also enjoying the north beaches. We need an area or a place that we can get those vehicles serviced. I know a lot of the popular ones are very far away on the mainland. It would be nice to have something local and convenient. And again I do not believe that the noise is even an issue.*

*I have known Rich for a long time. I moved here from Virginia and he was a manager of a small horse tour company. We became friends through that horse tour company and I eventually worked for him. He is a very, very, good guy, a respecting individual. I have always admired his work not only with his employees but with the community around him. He is pretty much the kind of guy that if you run into at the grocery store or something like that you are definitely going to stop and see how he is. Have a good conversation with him and then continue on your day.*

*On a professional level Rich is the kind of owner that an employee would love to work for and definitely benefit from. I believe it was about 4 years ago he opened Wild Horse Adventure Tours in Corolla. I spent my last 4 summers working with him and personally experience the growth of the company. Unlike other companies I have worked for his main goal has always been customer satisfaction, community acceptance, and has always been...he has always made it a point to hire people that live around here and not people here just for the summer. I highly respect him for that.*

*I truly respect his belief in always maintaining constant, open communication with his neighbors and people that his business might affect. For instance the Wild Horse Tours. It is a very developed area and a lot of people could be opposed to certain things but he has always...for instance hired people that live in that community to work for him. Trying to impact the community in a positive experience and not negative.*

*I always enjoy seeing people move here from other areas and make the most of it. I moved here like I said from Virginia and...very different from the area I grew up in...very small town, local*

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*businesses, a lot different than the franchises that are up north. I believe that having somebody with a very community based, I guess personality, very concerned; he would be an excellent asset to this area. It is not like he is coming in from somewhere else and trying to blow everything up out of the water.*

*I also believe in chances. Everybody deserves a chance. Driving down Route 12 and 158 I see a lot of small businesses run by our friends, family, and neighbors. And I have seen people come together especially in the times of disaster and things like that. He has always been the kind of person that is concerned with not necessarily in making money but mostly pleasing people and generally the outcome is positive. People are more likely to develop a good relationship with somebody who is more concerned about the people around them than making money.*

*Basically to sum things up I cannot think of any negative reasons Beach Ready Auto would have on the community or with the neighborhood of course as long as he complies with all of the ordinances. Thank you for all of your time and I hope you take my word into consideration.*

**Nikki Hise, 772 Sunrise Ct., Corolla, NC:** *Good evening council. My name is Nikki Hise and I am also here for moral support for Rich. He has to go through a lot to get this. I have been at the shop as well and I am a manager for him in Corolla, North Carolina. I heard a question earlier about why we do not open a shop in Corolla. You cannot have a car wash in Corolla. We cannot really do anything like that. This company is not for him to become a millionaire. It is mainly just for him to help out the local cars.*

*He is probably the best to have around town if you want any kind of help with the community. He does charity events. We are the grand sponsors of charity events this year. And he is always for sheriff's departments, fire departments, he is always donating money. I think he would be a great asset to Kitty Hawk as far as helping out the council or helping out the town with charity events, anything like that. He is not here just to take all the money and run with it. I have seen him give away money left and right. He is not...he is not a crook is what I mean to say. He is not here to take the Town of Kitty Hawk's money as I have heard here and there.*

*As far as Beach Ready Auto I have been around there as well. I have stood outside in the back with the door closed...I can understand if somebody did not want to live near it. I live behind a bar in Corolla. There are bands that play late at night. I understand levels of noise. It is...also I see him as a growing company in the area. We can close our windows and close our doors at night. I love to hear the beach in the morning as well. I do not think an air compressor in the shop is going to stop you from hearing the ocean at night. It is not a very noisy area if the bay door is closed. If he had all the specs with his hazmat and all that I think that this company should be able to operate in the area it is in. Thank you.*

**Tom Watkins, 1907 Neptune Way, Kitty Hawk, NC:** *Good evening. I had thought maybe we could do this as a bit of reaction back and forth but I read the rules so I will...I was going to start out with a question to you but...I would still like to pose it as maybe a rhetorical question*



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*since I do not expect an answer. I would like to know what factors you are considering in making your decision.*

*You have already heard from local residents and I would like to go through and mention a few things where we do have concerns. One concern was about property values and I do not think enough was said about that particular issue yet. I really believe that in Sandpiper Cay we make an effort to maintain the appearance of our community and to keep the property values up for the owners of the properties. And when I am speaking here...now I am a resident of Sandpiper Cay and I am also on the board at Sandpiper Cay. Please think about this. If this non-conforming use is approved, do you really believe that it would have no affect on property values for the owners of the properties who live in direct proximity to the Quail Run project? Put it this way. If one of those properties on...right at Quail Run and it is not their backyard. Those buildings have the four units on the back of each of those buildings. It is their front yard and then Quail Run. If one of those properties was for sale and then another comparable property was for sale at the opposite end of our development and there is a buyer out there doing a comparison do you think that would not be a factor in that decision for whoever might make an offer on the property? I would like for you to just take that into account before you make your decision. We are talking property values. I am not naively saying it would affect the value of all properties in Sandpiper Cay but I feel for the people who are faced near that project or that facility...because I quite frankly believe that it will affect our property values.*

*The issue of noise. I know you have received letters from residents because some of them have shared them with us. There was one in particular from Mark Wertz who is in unit 1708 and he was particularly concerned about the noise. Mark is going to be retiring in two years and planned to retire to his unit which again is 1708. His current business is mechanical repair, automotive repair, where he lives in Virginia. If you look through your notes on his...I will just very quickly say that he basically is saying there is no way you can stop that noise. You can muffle it, you cannot stop it. He also goes on to say, this would not have merit for us in Kitty Hawk, but he researched in Kill Devil Hills and there was a request for a kennel that was going to be installed and noise was a consideration there because of the animals. Their feeling in interpreting that was if you can hear a noise beyond the boundaries of that particular facility or business then it should not be happening if you are affecting people in a residential area. Again, I just wondered...I believe you have that copy I would just want to...if you do not I would like for you to take a look at that before you take any action on this.*

*Air quality. I am not saying like 100% everyone in that building or around there is going to have problems but the potential does exist. It is there, we cannot deny that.*

*One other thing. Mark could not be here this evening, but he asked me also to speak in terms of congestion from automobiles. I know there is an adequate number of parking spaces there but he says the reality of this business is that you get a vehicle in and many times do not know until you begin to do your diagnosis or even remove some parts that you find something that you had not anticipated and you are going to need to do that repair. That vehicle is going to be sitting*

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*there until that happens and if it is something that is not available from NAPA or a same day service you are going to be dealing with more multiple days for it. He said the reality of that business also is that not all vehicles, when they are repaired and the owner comes to reclaim them, not everyone has the full amount of cash to take them away and in the case of his business he hangs on to them until they are paid. So that potential exists.*

*As a resident my other concern is about what precedent we are setting and in that same development there are other storefronts available right now and a yes to this one...how do you say no to something comparable to another already open and available unit in that building? I really have a concern about it.*

*And I want to stress I have no problem...we had a lot of folks here attest to the personality of the owner of that facility. This is not about personalities. I have no problem with the individual. I have a problem with the precedent and I have a problem with what it is going to do to the community. I do not envy you being in the position that you are in but I am asking for your consideration. We are pleading with you to consider our best interests in making your decision and asking that you put yourself in our shoes and do this before you exercise the responsibility of your office.*

*I also have a question. I do not even like to think that it could be granted for this non-conforming use but if you do grant it, what safeguards do you plan to put in place to prevent the concerns that we have voiced to you from happening?*

*I know last month when we met we discussed the noise and how much noise was too much noise and we talked about decibels. I put it to you that if it can wake up somebody it is too much noise. Thank you.*

**Richard Brown, 251 Woodland Dr., Southern Shores, NC:** *I am Richard Brown owner of Beach Ready Auto. First of all I want to obviously make it clear that I am renting, I am not the owner. My broker showed me two locations, this one in Kitty Hawk and another one in Kill Devil Hills. I looked at them both and this one really seemed to fit my business perfectly. It had beautiful waiting rooms which is a service I wanted to offer and the one in Kill Devil Hills did not and I just...one little bench and you were kind of right up on top of the service bay. So it is an ideal location.*

*I know there were a lot of complaints submitted to everyone. I believe twenty or so complaints. How many of those complaints actually came from residents that can conceivably be affected by the noise levels? I believe if you look on a map it is only about two of them that actually live in adjacent properties. The rest of them obviously come from the letter sent out from the Sandpiper Cay Association. To be honest many of the Sandpiper Cay residents are excited to have this Auto Repair facility here. We have had numerous people come in and say, "Hey we have a vehicle service. This is great. We can drop off our vehicles, walk home, get some lunch, this will be ideal for us." Obviously right now without the permit I just say, "No, we cannot do it right*



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*now, but hopefully in the future we can do it." So yes there are a lot of Sandpiper Cay residents but obviously the fact that there are already twenty complaints compared to the vast majority of people that live in Sandpiper Cay. The vast majority I believe are in favor of it.*

*And I do want to thank...I mean a lot of the things that have been said are completely conjecture. They are assuming this, assuming that, the only valid point that I can see which basically what it all seems to stem around is the noise levels. I can definitely appreciate that they will be concerned about that. If there was very loud noise levels then yes it could reduce property values but again it is all conjecture. Well it could do this, we could have noise.*

*I really want to thank the council members, each and every one of you came out. I put it out there that the council members and anyone from Sandpiper Cay could come out and listen to the noise. Anyone. The only people that took me up on that offer are you and I thank you. You came out and checked it out. Not all of them arranged meetings which is great. They came around, snuck around back to check when we were actually operating, so that we were not quieting things down. We did tests for people, we ran the air compressor, and even though they were in front of the sound barrier they still could not hear any auto repair noise. I have moved the air compressor now to inside the building which further reduces the noise level. I have done everything I can to reduce that. Everyone that came out was very positive about the noise level. I think that they did a great job of looking at the perceived problems and it served both parties. It could have been that they came out and yes there was a lot of noise then obviously I would have been in trouble. They did their job and I think they did a great job in coming out and actually checking the facts rather than just listening to the conjecture. That is it. Any questions?*

**MPT Perry:** *I do. There was a question by the young lady earlier about why here and not north. Can you elaborate on that please?*

**Brown:** *I actually live in Southern Shores so to be honest I did not want to travel to Corolla every day. This is a lot more local to me. Plus, to be honest, in Corolla it would not be a year 'round business. It is a very seasonal area. I mean all I would do is basically service my own vehicles. Wild Horse Adventure Tours is just a very good customer of Beach Ready Auto and that is the way it works. It has given me the confidence to open this location. Without knowing that I had that really good customer that I could rely on I would not have had the confidence to actually open this shop. But the way I am expecting it, I am thinking 50% is going to be Wild Horse Adventure Tours and then 50% are going to be residents and locals.*

*There has been a lot of positive reaction to this auto repair shop. I did find what I found to be the best mechanic on the Outer Banks and I have experienced a lot of mechanics on the Outer Banks. Owning a business where you have 10 vehicles in the peak season running 12 hours a day on a beach 7 days a week, they get a lot of abuse. They break down a lot. I have tried everywhere from here all the way up to Nags Head and all the way to Spruill Automotive. Spruill Automotive did a great job but it is a long way to travel to get my vehicles serviced. This is a good location, kind of right in the middle. I set up my own little office in there. I could*

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*spend about three days a week at the auto repair shop and then two in Corolla. That way it is a lot closer.*

**MPT Perry:** *I have one more question. I understand you were there for some time before anyone knew that you were there working on your vehicles. How long was that?*

**Brown:** *About three months. And that is the thing. Nobody actually came and complained until the little things went out in the ground to say this is what is going to be put here. Nobody had a single negative thing to say, nobody heard any noise. I even went to the units at the back side, knocked on their door before any of this even came about and said "Hey guys, I have been operating out here for a couple of months, have you heard any noises?" And everyone I spoke to said we did not even know you were there. So I think the fact that they did not even know that I was there for three months kind of proves the fact that it is...*

*And as I say I can definitely understand their concerns with decreased property value and things like that but it is only going to decrease if there is a problem and to me we have satisfied all the problems, parking and hazmat. I mean I am not going to be doing any paint booths things like that. So we really are not going to have any hazmat problems with used oil and things like that. Or you arrange for a service that will come out and actually take that. Everything is stored inside. There is no outdoor containers so I think I have addressed...the only thing really I get out of this is the noise and any fumes but you get a thousand times more coming from the road there than you will from our auto repair shop. You know these days you do not sit there revving an engine. You hook a computer up and it says, "The o2 sensor is bad." You change the o2 sensor. You do not even run the engine. So there is not going to be any fumes or anything like that. I am closing the back door and I am going to be fixing an A/C and heat unit to keep my techs comfortable and also that stops us from wanting to open the back door which greatly reduces any noise.*

**MPT Perry:** *You just raised one more question. On the hazmat issue, my nephew runs an automotive repair shop and I asked him about oils and glycol, anti-freeze, and things of that nature that have to be disposed. I asked him if there was a law, I know you cannot dump it the EPA and everybody would be all over you if you did that, but I asked him if there was a law that said you had to have it carried away. He said the way that is done is the State, every 6 months, sends him a form that he has to fill out that has to account for all of those fluids. Is that right?*

**Brown:** *Yes and to be honest I do not even have to do much of that work because I am employing somebody that specializes in this. They are called "something or other Clean" and they give us the anti-freeze and they give us a separate barrel that we put the used anti-freeze in. Basically what they give us should equate to what we give them back. And oil, they actually pay me for the used oil, so obviously I am not going to be dumping that out or anything like that. They actually give me back a little bit of money on the used oil because some auto repair shops use it for heat and things like that. I personally do not. So it is worth a little bit of money.*

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*And I am all about recycling as well. My head tech asked why we are getting these 55 gallon drums, let us get the bottles, fill them up, and throw the bottles away. I am like no, we get the 55 gallon drums, and there is no waste. I am all about the ecology and things like that. Even with the tours. I am probably the only company in Corolla that has recycling bins.*

**Klutz:** *One of the speakers, Mrs. Craig I believe, talked about MSDS sheets. What I gather from what you have just said, you are okay with all of the requirements for the hazardous materials that you will be handling. Is that correct?*

**Brown:** *Yes, definitely. And I obviously invite anyone to come out to check that.*

**Reid:** *I do not know if it is a question for you per se but probably more for the fire chief. It was my understanding that the fire department has to have a list or at least some way of knowing what chemicals and hazardous materials are in a business. Is that a standard part of our fire inspections? So if you have a fire at a given location and you know they are handling certain types of chemicals you are prepared to deal with that fire based on that.*

Town Clerk Morris administered the oath to Fire Chief Spivey.

**Spivey:** *Yes, we do have the authority to request them to produce MSDS sheets and any vendor that he purchases from is required to give them to him at his request. In a situation such as his type of business we pretty much know what is going to be there based off other automotive shops. I do not foresee it being a significant amount of any product that would cause us a problem but places like The Home Depot and ACE Hardware that carries a multitude of different products would. They also provide them in books so we can research and see what kind of reactions we have when we mix chemicals and things like that. Does that answer the question?*

**Reid:** *We are basically covered by existing ordinances as far as any public safety issue with handling hazardous materials?*

**Spivey:** *Yes sir. We can request those and he has to provide them at our request.*

**Mayor Perry:** *And I understand there will be two more layers of wall board, sheetrock...*

**Brown:** *Yes. When I originally applied for the permit the first thing I was advised to do was speak to the fire chief and he came out. You are right. It has to be a 3 hour firewall so even without that, there still have been no noise levels...with the extra...you are talking about a thick firewall. I mean it will completely cut out any noise and obviously that is what is required for this type of business. Yes that will be installed but obviously I was waiting on getting that done after I got this approved.*

**Michael:** *Any other questions of Mr. Brown?*

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**Klutz:** *Not for him. I do have a question I want to address to you based on what a couple of people have said but that is for later?*

**Michael:** *Yes. All right you can sit down Mr. Brown.*

**Jeanne Griffin, 2002 Neptune Way, Kitty Hawk, NC:** *Thank you for allowing me to reserve my questions. My name is Jeanne Griffin and I reside at 2002 Neptune Way and I am a little bit late to this party, so please forgive me. I strongly encourage and support the entrepreneurial spirit but I really do have some sincere concerns surrounding this proposed business and location.*

*Again I do not...I am not too familiar with the correct way to do this. I do not know if you are going to be able to answer me but I am concerned about the size of the fleet. The number of off-road vehicles and the number of jeeps. Will they be stored at this location? Noise and the eyesore, we have talked about those, but how many spaces are reserved for this particular tenant? Because my concern is that it is going to look like Seto's and we all know what that looks like.*

*Besides the noisy compressor it is the hydraulic tools that are used to fix cars. It is not the machine that goes "shuuuut." It is not that air thing. It is the pneumatic drill or whatever they use. I do not know what you really call it but...*

*Because he is going to be expanding or broadening his client base how many cars and clients does he anticipate servicing or forecasts to service a day? Because now all of a sudden we are going to have some traffic concerns. How many bays will be inside this confined quarters?*

*He keeps saying that everything is going to be inside and people even mentioned washing the cars. Are you telling me that he is going to wash the cars inside? Where is the water going to go? I mean it is kind of crazy.*

*What kind of license does this body shop actually have? Is it for big trucks, cars, regular people's cars, buses, vans? I do not know...I am not well versed in this area and if there is any type of differentiation.*

*There will be cars delivered by tow trucks. Will we be hearing "beep, beep, beep" at all hours of the day and night while they are dropping things off? It was mentioned that "Oh, we are such quiet people, that people did not know we were there for three months." Nonsense. I knew it. I walk my dog through that area every night. There were people there numerous occasions between nine and midnight on I cannot even tell you how many times since the late summer. I think the gentleman is awfully nice I am not challenging him as an individual. I bet he is a really great guy and a great citizen but this is not a business that we as a community can afford to have right here in our general locale. That is all I have.*

**Mayor Perry:** *Maybe the owner can answer some of those questions.*



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**Brown:** Yes, I would like to. I think things have gotten a little bit mixed up. I am not an auto body shop, I am not specializing in off-road stuff, it is just my vehicles go off-road. I am not storing any vehicles. Wild Horse Adventure Tours is open year 'round. Right now my manager here and assistant manager are both working up there at Wild Horse Adventure Tours. It is not like I close down for six months, we are open year 'round. January and February are dead admittedly but there is a lot of stuff to be done at the office.

I do not see why we would be washing vehicles there. I am an auto repair facility. I am not a car wash so I am not going to be washing vehicles. That is not what I am going to do. My vehicles will come there; they will get fixed, they will go back to Wild Horse Adventure Tours.

As I say Beach Ready Auto is going to be separate from Wild Horse Adventure Tours. The two are very separate. Just pretend I do not even own Wild Horse Adventure Tours to be honest because it is just I am going to be servicing Wild Horse Adventure Tours vehicles just like if I was any other auto repair shop. I have even told them, the people from Wild Horse do not even text me with the vehicle complaints. You call the office of Beach Ready Auto. We will answer and we will draw up a ticket. I even invoice Wild Horse Adventure Tours for the work done. That way I can keep everything separate. I can see what Beach Ready Auto makes and what Wild Horse Adventure Tours spends in auto repairs. I keep the two very separate.

Again, I am not going to wash vehicles. It is not a body repair shop and the part about us being there from nine till midnight, I do not know where that comes from. I mean I certainly do not work those hours and I know my mechanic, a very professional mechanic, is not going to work those hours. I mean to be honest he gets paid \$44 an hour. He is the most highly qualified mechanic I have found on the Outer Banks and I took him from Outer Banks Chrysler. He is the best that I have found on the Outer Banks. He is not going to work unsociable hours like that. We just work regular hours. If it is 7 days a week it will only be 7 days a week in the peak season because Wild Horse Adventure Tours is fully booked Monday through Friday so the only time I get to do preventative maintenance is Saturdays and Sundays. So that is when the vehicles, my vehicles, will come down on Saturdays and Sundays to get worked on. Oil changes and the regular stuff that an auto repair shop offers.

I am not going to be washing them there. I have facilities for all that stuff at Wild Horse Tours. I have ample storage. It has already been approved at Wild Horse Adventure Tours so I...it is not like I do not have enough parking at Wild Horse Adventure Tours. I have all the permits for that. I do not need any additional parking here and the parking has already been approved for here anyway I believe based on me having 5 vehicles outside. I can definitely appreciate the concern though about certain auto repair shops having a lot of vehicles sitting outside and I think we addressed this at the last meeting. That is not something I am going to do. To me, as a customer, before I even opened this I have been a customer as I say 5 years on the Outer Banks, if I see 20 vehicles sitting outside an auto repair shop I am not going to go in that auto repair shop. To me it is like they are not going to get to me for 3 weeks if they have this many vehicles ahead of me so I want to keep that to a very minimum.

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*There was a concern, very legitimate concern, about customers not paying and then having to keep those vehicles. I do not know, to be honest, why other shops do not do this, but I plan, if it is anything, say over \$600, I am going to require a 50% deposit up front. If they cannot afford the deposit then it is a bit of a risk for me to take them on anyway. So they should at least be able to afford that deposit for me to have to take on that work.*

*I am aiming, as I said...I know there is a lot of stuff going on about off-road vehicles that is...I have off-road vehicles at Wild Horse Adventure Tours but I plan to service customer vehicles. We are going to go after the high end stuff. It is going to be the BMWs and Mercedes and things like that. My tech is one of the only ones on the Outer Banks that can work on European vehicles and diesels and that is going to be a huge benefit to Kitty Hawk I think. I know a lot of people that are very frustrated they have to go all the way up to Virginia to spend their money because they do not have anyone out here to service their European or diesel vehicles and we can do all of that at our shop.*

**Mayor Perry:** *If I understand it, your vehicles are going to remain in Corolla.*

**Brown:** *Yes.*

**Mayor Perry:** *You are going to come down and service your vehicle and take it back.*

**Brown:** *Just like it was any other repair facility.*

**Mayor Perry:** *And you say 5 spaces are all you need for customers to park in.*

**Brown:** *I believe that will be the maximum that I would need. I do not even foresee having that many but that would be the maximum I believe I would need at any one time. You know someone might say they cannot come in today and could pick it up tomorrow but I am all about the high turnover. Again I want to do things a little differently. A lot of repair shops I have found, you take your vehicle in and they wait two days to bring it in. Then they say they need to order a part and you wait another two to three days to get the part. So yes, it is sitting there for a week, week and a half, and that was my frustration as a business owner. I have three or four months to really make my good money at Wild Horse Adventure Tours and if my vehicle was down for a week and a half I was losing \$10,000. That is another reason why I really wanted to do this. I am all about making it efficient and getting the vehicles in and out. As soon as that vehicle gets in we are going to check it out, get the parts ordered. My plan is definitely to cut the repair time down by half to what I have experienced locally. Not every repair facility is...but a lot of them around here that I have experienced.*

**MPT Perry:** *I have two questions that have come up with some of the comments. Vehicles that, for whatever reasons you cannot get the parts for and I know European cars are bad about being able to get parts, they are expensive and timely. Did you say at the last hearing that you had a place in Currituck or something that you would haul those to?*



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**Brown:** *Yes, my mechanic could possibly take those to his place and store them there. That would not be a problem. I do not foresee that any part should take more than two days to get. I have actually got, I know I am going into it a bit, but Amazon has two day shipping and they have just a tremendous amount of parts. You would not think it but they have many European parts and I have an account with them where I pay four bucks and I get overnight shipping. So I can even get it the next day. I am all about customer service and getting it done and getting it out. But yes, worst case scenario, if one was on back order and I had to wait for a couple of weeks then yes I would tow it out of there if I exceeded those five vehicles.*

**MPT Perry:** *And one other point that was kind of a valid point to me is the tow truck noise. "Beep, beep" when they are backing up. We had the problem that existed in a residential area already. How do you curtail that?*

**Brown:** *They would only be delivered during business hours anyway and even then that is still going to be in front of the building. There is no way I can foresee that the noise would travel back behind the building then behind the sound barrier and then over to the residents.*

**MPT Perry:** *I can see where some noise might...just because of the direction of wind but I think the main problem would be if it was done at night. If tow trucks are delivering vehicles at night or something like that.*

**Brown:** *No, we are only operating from the seven to five. Again, there is no way my mechanic is going to work outside of that so...*

**MPT Perry:** *Yes, but that is not always the time that a tow truck will bring something in. All right that answers my question.*

**Bateman:** *I need to expand on that. Do you have any intentions of buying a tow truck?*

**Brown:** *No. No body repair, no tow trucks, none of that. It is just an auto repair facility, small you know...*

**Bateman:** *The reason I ask that is to save money. If you had 10 trucks in Corolla, instead of paying someone to haul it down here, if you had your own truck you could haul it here.*

**Brown:** *It is cheaper just to pay these guys to drive it down to me. We get it serviced and we drive it back. The occasion when I do have to get it towed I have an AAA membership. It costs me \$150 a year and I get eight tows for that. Again, taking Beach Ready Auto out of the picture, before I had this facility I still had to get things towed to the facilities and I have never exceeded my eight tows. It would not make financial sense to do that.*

**Bateman:** *Is the company you are speaking about picking your oil and transmission fluid up, is that "Safety Clean?"*

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**Brown:** *Yes. That is it.*

**Klutz:** *One more question on the tow business. From what I hear you saying about the way your business is going to operate: if someone's car breaks down and they get it towed...for instance their car breaks down at night. The towing company would not be taking cars to your business unless the person who owned the car was one of your customers. Correct?*

**Brown:** *Yes. It is client based.*

**Klutz:** *It would be not something that would be continuous. There are noises that you get from the road that you hear in lots of neighborhoods. I live about three houses back from US 158 and of course you hear sirens, those "beep, beep, beeps" when the trash trucks come, and that is pretty loud. What would the frequency be of the kind of noise that we are talking about with tow trucks? And then based on that, how much of it would be during night time hours? What would you speculate?*

**Brown:** *I could not really speculate too much other than from my own experience with Wild Horse Adventure Tours. With that I mean I always have them towed during the day and as I say Wild Horse Adventure Tours is going to be my biggest customer. They are hopefully going to make up 50% of my customers and that is always towed during the day. As I say, just looking at the numbers I have eight tows a year and I have never exceeded that. Eight tows a year during the day would account for 50% of the business...*

**Klutz:** *And then customers that you may have once...if the business opens how often...*

**Brown:** *Exactly. They would be the other 50% but yes ideally I am not going to get random people from the beach. I am all about trying to get customers and then keeping those customers. It is only going to be a small repair shop. It is not huge. It does not have 50 bays, it does not even have...it has two bays. It is small. There is no way it can get but so big*

**Mayor Perry:** *You are not going to have wrecked vehicles towed in there because you have to have an impoundment to put them in when they bring them. Wrecked vehicles would not be a thing that came in at night.*

**Brown:** *They would not come in at all. I would not deal with wrecked vehicles. That is not something...*

**Klutz:** *No body work.*

**Brown:** *No. No body work whatsoever. Not what I do.*

**Steven Sheppard, 9182 Ivy Springs Place, Mechanicsville, VA 23116.** *Good evening, I am Steve Sheppard and I own 4205 Worthington Lane. It is the first house on Worthington and is*

*right at the intersection of where Sonny's and Worthington come together, directly across from the Quail Run facilities. I am concerned about the lack of complete information that has been presented to this council and I would like to address a more complete picture here. The pictures that were handed out tonight are a tunnel vision view out the back of the building. If you pan from where these air compressor units are, immediately to the right, you will see the six-lot platted subdivision, Sea Scape Fairway. My lot on Worthington Lane is one of the six lots in that subdivision. The gentleman that was the first speaker tonight is one of the other owners on Sonny's Lane. Nowhere is there anything addressed here about the impact on those six residential lots directly across the street. My wife and I have owned our lot since 1989. We were there long before anything else business-wise was immediately in that area.*

*I have heard nothing addressing what noise concerns would be to us on Sonny's Lane or immediately in that area on Worthington Lane. I have heard nothing addressed about the property values on that residential subdivision, only the impact on condos in Sandpiper Cay which is directly behind. I have heard references to a sound barrier and you would think it is a 12 foot VDOT concrete wall that is behind this facility. It is not. It is a row of hedges that have grown taller and taller over the years. It is not a concrete barrier that is going to stop noise.*

*As to gases that would be admittedly emitted out of the front of the building. If the wind is coming from the south direction they will blow directly towards the Sea Scape Golf Course directly at the platted subdivision Sea Scape Fairway. Directly at our lots. Nothing has been addressed tonight to that.*

*I am concerned about the hours of operation. We can talk about people not having complained about something but you have to look...you do not have a fully operational business. This gentleman has not yet begun his full advertising campaign to attract other businesses. He is not going to turn down business. When he starts advertising, tourists will see it and bring their cars there. You have heard many times about parts cannot get there immediately and they will have to sit. He is not going to turn away business and cars will sit there.*

*It will be a significant increase on the use in that area and I ask the council to consider that. So anything about noise at the rear of the building or modifications being made to the rear of the building has no benefit to Sonny's Lane and Worthington Lane. And I ask you to keep in mind that there are home owners that have been there for years and they will be impacted by this.*

*And the property values are going to be impacted by this non-conforming use if it is approved. My wife and I, as I said, bought in 1989. It is our second home. I am retired, my wife retires next year and we look forward to spending a lot more time there. I do not want to sit on my deck, and I can see the back of the building from my deck...I can see it from the driveway. My eastern boundary is less than 50 yards from the rear of that building. I do not, in warm weather, want to hear that business going on over there. I am not here to impute the integrity of the owner here in any way. I am sure his "doonbuggy" business is a fine business up in Corolla but*

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*I am concerned about property values and about increased noise. There is already a dumpster on that facility that is dumped at least twice a week.*

*And I am concerned about any increase from Safety Clean or whatever. It may be when they come to get the various hazardous materials are they are safely stored, are they in compliance with material safety data sheets, it does not matter. There will be an increase in traffic to take care of business like the things that you do not see in a normal business. You will have an increase in Fed X trucks, you will have an increase of US Postal Service trucks, and you will have an increase of brown parcel service coming in there. The traffic will be increased on what is an already heavily travelled road. And ask you to look beyond...use your knowledge of that area. There is a residential facility right there that has not been addressed as presented and there will be an impact. I ask you to consider that. Thank you.*

**Michael:** *Was there anyone else who wanted to speak?*

**Craig:** *May I respond? Could I respond to the gentleman's remarks?*

**Michael:** *You can have sixty seconds to respond if you want to come up and speak.*

**Craig:** *I feel like I am being patronized here by these lovely gentlemen and I want you to know that I do not live close by there. I live up the hill on Coral Reef Court and many times it is comfortable to us because we can hear the ocean. But right now there are retail businesses there and that is the way I feel that it should be and should remain because so many of the other people that have spoken have said...laid out their case exactly why this should remain a retail area. We have no problems with that.*

*Parts. I have a son-in-law who has a Mercedes and I can tell you right now when he needs a part it is wait and wait and wait. They are not over-nighted to him and it is expensive. I do not know what you would do with a broken down Mercedes but I know that it has to be left some place.*

*And I would like to ask how many parking places have been allotted to this gentleman because usually when there is other storage you are allotted so many parking places and there are associations that run operations.*

*How much time do I have left? Probably none.*

**Michael:** *You need to wind it up.*

**Craig:** *I would like to define hours. What is his definition of hours? Is it eight to five? What is it he said? Regular hours?*

*And I am sure we have all driven by Seto's which has been mentioned this evening. We see the lineup of cars and the parts. Sometimes it is hard to get in there to get gas.*

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*I have no problem with these folks trying to make a living and starting a business. It is just the wrong location for this area. He mentioned the reason he chose this location was because he lived in Southern Shores and it was an easy drive. I lived in the Washington DC metro area for many years and it took me an hour and a half to get down there and an hour and a half to get back around the beltway through traffic to make my living and I cannot buy that. It sounds nice, it is a great thing for the beach for him to live so close, but I do not think that should be considered as a determination. I thank you for the extra time.*

**Michael:** *Thank you. If you have already spoken please address the council with something new.*

**Standley:** *(speaking from the audience) ...because I did hear noises. I am the person who initially heard the noises...*

**Michael:** *If you want to speak come up here.*

**Standley:** *I would like to. I was waiting for your permission. I initially did see the sign and did hear the noises and actually Mr. Brown, you apologized last time to me personally. He said I am sorry you heard that.*

**Brown:** *That was before \_\_\_\_\_.* (Brown and Standley are talking at the same time)

**Standley:** *Exactly. That was before and supposedly this is...business is, as seen on the various postings right now, it is opening tomorrow. It is not a matter of "may" open it is definitely opening tomorrow with hours of seven to five. That is posted on five different papers down there which is nice to know. So what is the point of all of this was my question also but I did hear noises. They were not compressor. They were pneumatic tools and at the last meeting Mr. Brown apologized for that and there was not even supposed to be a business there yet. Anyway, thank you.*

**Michael:** *Thank you. Identify yourself again so that we can pick it up on the recording if you do not mind.*

**Watkins:** *If you each take a look at the handout of the pictures that were taken from this property. The one on the bottom of the page where you see the Russian olive hedge, the caption says that you can see no properties in Sandpiper Cay. I would ask each of you to go into that cul-de-sac on the other side of that or any of us in the 16, 17, 18, or 1900 buildings. We see over this.*

**Michael:** *Anyone else?*



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**Griffin:** *A couple of things. I too am a Mercedes Benz owner so I have to do everything with a \_\_\_\_\_. You cannot get a part here no matter what for four or five days if you get it \_\_\_\_\_. So that is that.*

*Who is going to monitor all of this? If he is allowed five spaces, he is the manager, he has a receptionist, and he has a technician, so that means two client cars. Is that realistic? I do not know.*

*The other thing is, if he is marketing to high end clients for high end automobiles, if I break down tonight, whether I am a resident, a local, or from out of town, I am going to be looking in the phone book or asking Seto's, who is going to tow me for AAA, whose the closest place that will service me? And Seto's is not going to say, "Well lady, wait on the side of the road for a couple of hours and I will pick you up at seven to drop you off at the store." It is unrealistic. There is going to be overnight deliveries of these cars because they are broken down whether you are a tourist or a local.*

*I am getting conflicting messages here. On one hand he is saying it is independent of the tour guide and then the next minute it is yes, then no, and then client based. I still do not understand what his business plan looks like. He does not have to share that with us but from a forecasting prospective we do need to know that and we have not gotten a solid answer on it.*

*The last thing is a normal progression for a body shop is to test drive these cars. Where the heck is he going to test drive these? He is going to scoot up...it is going to be a natural behavior, he is going to scoot up Worthington or he is going to scoot up Sand Dollar or Sand Dune. There are safety concerns here. These roads were not created for that kind of traffic. There are kids, there are people with dogs. It is a quiet community with a speed limit of 25 miles an hour. And people are not even paying attention to that today. I mean the cops are sitting out here. There are speed signs out in front of the town hall all the time saying "slow down." Here is your speed. It is unrealistic to have this type of business in this area.*

*I understand that he wants to do something to make it nice for his clientele. To have a little seating room. I think that is awesome. Put it in the place in Kill Devil Hills. Do something up in Corolla. Why are we even being considered if he has this grand space in Corolla? Why is he looking to Kitty Hawk? Thank you.*

**Heard:** *Joe Heard, Planning Director for the town. I just want to take one minute to put a few things on the record as part of the public hearing. In your packets, prior to the last public hearing on November 7<sup>th</sup>, we included, if my counting was right, seven letters that had been submitted at that time as part of the packet for the record. I want to note we received sixteen other letters. All of those were presented to the council and the ones we got in time were presented in your packet for this meeting. There were others that we received in the interim that were presented to you before the meeting.*



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*I also received another one during the meeting and so that it is on the record I would like to read it: "Dated December 3, 2011. Dear Mr. Heard, this is to inform you that I am opposed to the establishing of a motor vehicle service and repair business at 500 Sand Dune Drive. I did not hear about this until now and feel it would have adverse affects on my property. Sincerely, Joan Peltier, 3107 Coral Reef Court." She goes on to note she will not be able to attend the meeting tonight and asked that it be read.*

**Mayor Perry:** *Joe, do you have any idea how long auto repair shops have been in this particular zone?*

**Heard:** *I do not have a definitive answer on when it may have been added but I am not aware of it not being in the code.*

**Mayor Perry:** *I was not either and meant to go back.*

**Heard:** *I can tell you it was definitely in the ordinance when Quail Run was originally approved in the late '90's. It was in there at that time. It was a conditional use.*

**Mayor Perry:** *In that zone. Do you remember if it was a BC-2 zone when Quail Run was built?*

**Heard:** *It did not involve a rezoning. The zoning did not change and as part of the approval of that project the applicant requested that certain conditional uses, either three or four different types of conditional uses for businesses, such as electrical and plumbing supply, be approved as part of the consideration by council. That was done at the time.*

**Klutz:** *A couple of the speakers used the term non-conforming use. This is not a non-conforming use. It is a conditional use.*

**Heard:** *That is correct.*

**Klutz:** *And a conditional use is in the code as being allowed with specific conditions and it is not...*

**Heard:** *Correct. With the approval of council.*

**Klutz:** *With the approval of council and specific conditions. There is nothing non-conforming about this use.*

**Heard:** *Should it be approved by the council there would be nothing non-conforming. That is correct.*

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**Klutz:** *I believe it was the first gentleman who spoke said the ad in the paper used language which did not include conditional use.*

**Snyder:** *I believe it was on the sign that was posted, not the ad in the paper. Believe it spoke to a change of use.*

**Klutz:** *I want to clarify that everything was correct in the advertising. The sign posting and whatever was supposed to have been done to advertise this conditional use was done accurately.*

**Heard:** *I have a copy in my hand of the notice of public hearing that was posted on the property for each of the hearings as well as...the same information is what is sent to all adjoining property owners. It does not reference a change of use as part of this. It refers to a conditional use permit application. I would be glad to have anybody look that over.*

**Snyder:** *I apologize.*

**Klutz:** *I just wanted to make sure that everything was kosher.*

**Michael:** *Anybody else have any questions of Joe while he is up here?*

**Mayor Perry:** *I want to make a statement.*

**MPT Perry:** *I have a question for the attorney. I do not know if this is the right place to do it or not.*

**Michael:** *I will let you know if it is or is not.*

**MPT Perry:** *Refresh for the council and the people here the conditions under which something that is already in the ordinance is allowed in that zone. Refresh for all of us the conditions under which we could or could not accept or deny.*

**Michael:** *The rules for conditional uses are if the applicant meets the conditions the council has imposed, and that could include any reasonable conditions, to the use of the property then he is entitled to a conditional use because it is permitted by the ordinance. If he does not meet it then you deny his conditional use but you have to consider all of the evidence that has been presented and you have to have evidence to grant it or deny it. Evidence to support whichever position you take. You have heard a lot of evidence from all these speakers. We know that some of you have been out to the site and in just a minute each one of you that has been to the site is going to have to put on the record: what you saw and what you are going to consider after your visit to the site. Once you have done that and talked about it, if you have a motion to approve or deny it, you will have to include some discussion of the reasons why you are approving it or denying the permit. How it failed or how it meets the conditions.*

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**MPT Perry:** *Thank you.*

**Michael:** *Is there anyone else? With that said, Mr. Mayor, I know you went to the site so if you want to start.*

**Mayor Perry:** *I hope we have clarified because I know that generally if you are not involved with the way things operate and how the code is, we do not think about those things unless it comes and affects us. I think the attorney made it pretty clear but this is not something new for this zone. This has been allowed in this zone for many years. This is just an applicant who has applied for a conditional use. There are permitted uses and then there are conditional uses and conditional uses allow the council to add other restrictions that an applicant would have to comply with. That is the difference. It is not that we are adding something new. It has been there all the time. We can put restrictions onto it that we feel would apply.*

*I did go out and visit the site. I talked to him previously and then I just showed up one day. I asked him to turn the air compressor on and the tools and make all the noise they could. We went out the back, closed the door, and went to the vegetation line. Not on the other side but just on the side behind the building. I could not hear any noise. There was a lot of noise and we had to wait until that stopped. In Sandpiper Cay somebody was trimming the...what they were doing I do not know but there was a lot of noise in Sandpiper Cay going on right behind us at the time. But I did not hear any noise and I did not see anything that would...or smell anything that...*

*I was concerned when this came forward about outside storage and how Seto's or anyplace that has vehicles towed in automatically. Those types of things really concerned me. And I hope if we approve this those things will not be allowed. So that is what I found.*

*I would be surprised if somebody could hear beyond that vegetation line. Any noise if that back door is closed. I do not know how. And they have to add two more rows of sheetrock in the building itself. That is what I found.*

*I also want to make it clear I want to listen to all of your concerns and listen to the concerns of the person who is applying. It is not something we are adding. You could have come in a long time ago and said, "We would like to have this taken out." Council could have had a public hearing and may or may not have taken it out of the ordinance. But once somebody applies for something we do not have the option to remove it from the ordinance. There are certain restrictions we have to go by. That is my statement.*

**Michael:** *Who else went?*

**Klutz:** *I also went to the site of the business and I did not call and make an appointment. I just showed up. The gentleman who was there, who I believe was the mechanic, demonstrated all of the equipment for me, the nosiest equipment. I went to the back property line and I stood in front of the vegetated area. The equipment ran with the front door open and the back door closed and*

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*there was really no noise that was discernable at the back property line. I did not go out the front door and listen to the noise from that aspect.*

*What I would like to add though is at that point the equipment had been moved into the interior of one of the bays. Sound proofing was not completed. The sound proofing around the equipment had been started but it had not been completed and even without the completion there really was no noise discernable to me when I stood at the back property line.*

**MPT Perry:** *I also went out unannounced and with an easterly wind. That put any noise that might travel windborne towards Sandpiper Cay. I also have read every one of the letters and postings and emails that we have received from the various people.*

*When I went out there, I must have gone out a little earlier than Emilie did because the compressor had been moved. The one thing that was of most concern to folks at that time. The compressor had been moved to the interior but it did not have any sound proofing around it. I asked that the pneumatic tools and the air compressor and things that would make the noise be started up. I went out the back, closed the door, and like Emilie, could barely hear anything. Even with an easterly wind and the front doors open. I checked the front and could hear it, but again, most of the noise makers were central to the building and they were not really undue. There was not a high decibel level at all. The noise part of it I really did not have a concern with as far as bothering people neighbor wise.*

*As to the Worthington side of it, until you brought that up I really did not go there, but then there are several buildings between those points plus the hedgerows. And it just does not seem to me, if I am directly behind a building, with an easterly wind that that could possibly be more of a problem. It had to be less as far as any noise.*

*I have read your concerns and I have listened to you very carefully. I have taken it upon myself to go out and make sure that I understood the problems or potential problems and the only area right now that I have a real concern with is the afterhours towing but we will address that if someone here decides to make a motion. I will defer.*

**Bateman:** *I also went out there. I went two times and entered the front door and announced myself and they gave me a tour of the place. I also went two times unannounced. I went and walked around the whole perimeter of the building. I even walked on the property behind the hedgerow. I know someone was looking out the window at me and I apologize for that but I was trying to be very objectionable about what I was seeing because I was on the Planning Board when those buildings went up. We had a big turnout from the Sandpiper Cay folks because they were losing their view. And it was important to you. I understand why you came out and even mentioned to one of my fellow council members that these folks are going to turn out in droves.*

*I wanted to make sure that I was as informed as I possibly could be of what I heard and what I did not hear. I did not hear anything at all. I did not hear anything and when I was walking*

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*behind the hedge on the property, all I heard was a dog that was barking because he was concerned that I was back there. At that time they had also moved the compressor inside.*

*The Worthington area, I do not see how the sound can travel down there but like I said I am not there. I am not saying you do not hear anything but it seems like it is a long way for that sound to go especially when you have as many buildings there and walls to absorb the sound.*

*The Land Use Plan, when we do it again, you can always come in and request a change. It is difficult for us and me as a council member to make a decision to deny something on a conditional use when they meet all the criteria. I and my fellow council members did try to see whether it was intrusive or not. I went out there trying to find... not saying that I wanted to deny this but I tried to find it too loud and have to deny it, but I did not find that and I really tried to.*

**Reid:** *I went out to the site. It was a number of weeks ago and I did not specifically go around the building. I am relatively familiar with the site because I was on the staff and town planner at the time the building originally went up. I agree with Mr. Bateman. There were a number of issues that were discussed then. I would like to reaffirm that to my knowledge the BC-2 district has had this conditional use in it all the time that I worked for the town so that goes back to 1993. It is not something that just came out of the blue. It has been there for a long time.*

*I would note too that as the staff report points out very clearly there are two specific conditions in the ordinance that they must comply with. I think as the attorney indicated we can add other reasonable conditions and one of the things that I have tried to do is go through here listening very carefully to everyone and trying to come up with conditions that hopefully would at least reduce the impacts that people are concerned about to the extent that we can. Can I make a motion now or close the public hearing?*

**Michael:** *You do not have to close the public hearing now. You can go ahead and make the motion. Just before the council votes on the motion you would need to probably close your public hearing.*

**Reid:** *I would like to put a motion on the floor for discussion by the council. I move to grant the approval of this conditional use permit to establish a motor vehicle service and repair business in unit I and J of the Quail Run Business Center at 500 Sand Dune Drive as presented in the application. And I emphasize "as presented in the application" and with the following conditions. The first two conditions in the ordinance says, number one, "there shall be no storage of wrecked, junked, or abandoned vehicles." I would propose to expand that to this statement, "that there shall be no storage of wrecked, junked, or abandoned vehicles in the parking areas or the rear yard of the property" and an additional sentence that "all repair work on vehicles shall take place inside the building." The second condition, which is in the ordinance, "there will be no fuel dispensing devices." I put that "there shall be no fuel dispensing devices on the site." My third condition being proposed is "vehicles being repaired may only be parked in the front parking spaces, none behind the building." Number four, "no*



*outside storage of any kind shall be located in the rear yard.” Number five, “the hours of operation shall be limited to 8 AM to 5 PM.” Number six, “while the repairs are taking place the building shall be closed.” And there is some language in the application, in the applicant’s presentation that was...confirms that that would be acceptable. Number seven, “if exhaust vents or fans are installed, they shall exhaust to the front of the building not towards the residential in the rear.” “The compressor shall be insulated as described in the application.” I was going to add an eighth one but I believe we already have this covered because I thought maybe we needed an eighth one that all chemicals and flammable materials shall be registered with the fire department but since...I understand that would be covered by current law and I do not think there is a need for that condition. And to complete my motion I would say that the town council concurs with the conditional use findings in the staff report and finds that approval of this conditional use permit is consistent with the town’s adopted CAMA Land Use Plan and in granting approval is in the public interest by allowing a compatible business to operate from this location. Council may wish to modify or make some additions to those conditions if I get a second.*

**Michael:** *Just for clarification your motion does include the conditional use findings that are in the staff report.*

**Reid:** *Yes.*

**Michael:** *Just wanted to make sure your motion includes those findings. I thought I heard you say it.*

**Mayor Perry:** *I think he said it. Did anybody have any comments, changes, or additions or...*

**MPT Perry:** *Do we want to add a condition that vehicles will not be dropped off after hours? In reference to the concern over tow trucks.*

**Reid:** *That is acceptable to me.*

**Klutz:** *My question would be how about people that just want to drop their car off and park it at the facility and then arrange in the morning...*

**MPT Perry:** *I am talking tow truck drop offs. That is all I am concerned with. Somebody wants to pull in there and park that would not be any different than anybody that is...*

**Mayor Perry:** *No tow trucks after working hours.*

**MPT Perry:** *Yes between...after 5 or before 8. Something like that.*



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**Bateman:** Would you be there when the tow truck would drop off? What I am trying to find out is if we could only limit between 8 and 5 o'clock? Do you have to be there to receive the vehicles or would you want to be there?

**Brown:** *I probably would want to be there but to be honest I have not experienced that.*

**Bateman:** If we put between 8 and 5 o'clock that would not be a big inconvenience to you? You are open from 8 to 5 and you would have to be there, so it would be fine?

**Brown:** *Yes.*

**MPT Perry:** *The only reason I add that caveat is, again my nephew, somebody gets towed and they drop it off and he may or may not be there. They are concerned about the noise and I understand that we had the problem over here so I think maybe we ought to add that sentence.*

**Mayor Perry:** *If somebody wants to come and leave his car there so it will be there in the morning that would be okay?*

**MPT Perry:** *I am just talking tow truck. The sound proofing. Read that to me again. The sound proofing of the air compressor.*

**Brown:** *That was in my first handout and in this handout as well. We relocated the air compressor which we have already done now but then we are going to build a wall around that so that it will be boxed in there.*

**MPT Perry:** *Okay, you did not address that.*

**Mayor Perry:** *That was something he volunteered to do.*

**MPT Perry:** *I understand.*

**Reid:** *What I said was while the repairs are taking place the building shall be closed. Now what I quoted when I was dealing with this is in his application he makes several statements which I think reinforce what I was trying to get at. The unit has no windows for noise to travel through. The compressor will be moved closer to the center of the building behind an additional wall and a sound proof box will built around the compressor. So it seemed like rather than including that, that is part of the application. What he stated so I did not include it.*

**MPT Perry:** *That is what I was leading to. Joe, I have a question. If we put a stipulation that he has to sound proof it. Sound proofing it such that you cannot hear it at all. It has to breathe, suck air, ventilate. Should there be some loosening so that he is not obligating himself to sound proofing it which cannot be done. Should we say as far as practical? That is what I am really leading up to. Is that necessary to do?*

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**Heard:** *Rather than being definitive which might not be possible.*

**MPT Perry:** *Correct.*

**Heard:** *There should be some leeway but of course that is at least at some level open to interpretation. I do not know that it would be practical to say you have to surround it completely. It would not be functional and it might be unsafe.*

**MPT Perry:** *Steve can we do that in a way that we do not get everybody in a bind, him and the town?*

**Michael:** *Yes. I think you are requiring him to sound proof it as far as is practical, boxing it in or doing whatever he is going to do. There would be no way you could totally eliminate the sound. The word sound proof would mean you could not hear it.*

**MPT Perry:** *We need to tweak that just a bit.*

**Klutz:** *I believe in the original application the statement was made that the vehicles would be always worked on indoors. Does that mean that all of the doors have to be closed or just the back doors because you need some air in that building when...*

**Mayor Perry:** *I was going to bring that up. The back doors definitely have to be closed. The front door closed all the time would not be practical.*

**Brown:** *No that is right, but we will keep the back door closed and then the bay doors, if it is nice weather then we may open those. But as you have seen that is what we have been doing all along and it did not create any additional noise. I think the main thing is there was concern about us actually working on vehicles outside. I think that is what that addresses. That was in the parking spot with the hood open and the oil draining out to the floor. That is what that was meant to address I think. We would not be doing any repairs outside of the actual confines of the building.*

**Klutz:** *What I would recommend for the motion is that "vehicle repairs will be conducted indoors with the back door closed at all times."*

**Mayor Perry:** *That sounds good to me. And the other doors, I do not see how you could be in there all the time in good weather and keep those doors closed when you are not making a lot of noise.*

**Brown:** *If I know it is a particular noise maker then I will require my mechanic to close the doors just to get that part of the job done and then it can be reopened.*

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**Reid:** *In the first condition I have all repair work on the vehicles shall take place inside the buildings so that is covered. Number six says while the repairs are taking place the building shall be closed. Will we say the back door shall be closed?*

**Klutz:** *Yes.*

**Mayor Perry:** *The back door and if you want to add the front doors during noisy operations.*

**MPT Perry:** *Just go with the back door.*

**Klutz:** *You know I have to feel like the owner of the business has seen that he is upsetting neighbors with the potential for noise. It would be a good business decision to make sure that when you are making a lot of noise you close the front door.*

**Brown:** *I really do not want to step on anyone's toes.*

**MPT Perry:** *Where are we Richard?*

**Reid:** *I think I have added those changes. "Building" to "back door" and then add number eight "no tow truck drop off after 5 PM. That is the one you added.*

**Michael:** *I think you need to say "tow truck or car carriers."*

**MPT Perry:** *Okay, understand. That is true.*

**Reid:** *I think that has covered everybody's discussion.*

**Michael:** *Sound proofing as far practical for the air compressor which has been relocated inside the building.*

**Mayor Perry:** *And then the extra wall board has to be done anyway, right Joe?*

**Heard:** *Correct. In order to meet the fire code standards he will be adding those additional sheets.*

**MPT Perry:** *Time to close the hearing.*

**Michael:** *Does everybody understand Richard's motion? Is there any second to his motion at this point in time?*

**MPT Perry:** *Second.*

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**Michael:** *You may close the public hearing at this time but that means you cannot ask any more questions of anybody.*

**MPT Perry made a motion to close the public hearing. Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.**

Mayor Perry called for the vote made by Councilman Reid and seconded by MPT Perry to approve the conditional use permit for Beach Ready Auto. **The vote was unanimous to approve, 5-0.**

**b.) Text Amendment:** Proposal to amend subsection 42-587(a), Temporary sign/banner permits, to lengthen the amount of time that a temporary sign or banner can be used to two 50-day periods per calendar year.

**Councilwoman Klutz made a motion to go into public hearing. A second was provided by Councilman Bateman and passed unanimously, 5-0.**

**Heard:** *The second public hearing relates to a text amendment that is intended to allow the use of temporary signs or banners for up to two 50-day periods per calendar year. If the council members will recall at your meeting on October 3<sup>rd</sup> we had a member of the public comment on the town's current standards which is two 30-day periods. One of the main issues that were brought up is that it did not allow for a business to put up a temporary sign during the primary season that most businesses on the Outer Banks have which runs from Memorial Day to Labor Day. The council at that meeting asked staff to work with the Planning Board to consider that issue and come up with a solution.*

*The Planning Board has offered the following recommendation to you. It is actually a fairly simple change and the only change is to Section 42-587(a). It simply changes the allowance from two 30-day periods for temporary signs and banners to two 50-day periods. After looking at the typical dates from Memorial Day to Labor Day the board came up with the fact that in looking at that hundred day period it would typically suffice for serving businesses during that period. At their meeting on October 13, 2011 the board voted unanimously to make this recommendation to the council.*

Noting no one had signed up to speak, Mayor Perry asked if anyone wished to speak. No one came forward.

**Councilman Bateman made a motion, seconded by MPT Perry, to go back into regular session. The vote was unanimous, 5-0.**

## **11. RETURN TO REGULAR SESSION**

a.) Council action for 10 (a and b) may include approval, denial, approval with modifications, or tabling action.

Council took action on 10(a) earlier in the meeting.

MPT Perry made a motion to amend Section 42-587(a) temporary sign banner permits of the Kitty Hawk Town Code to allow the use of a temporary sign or banner for two 50-day periods per calendar year. Town council finds this amendment to be consistent with the Town's adopted CAMA Land Use Plan and in the public interest by allowing a greater opportunity for local businesses and organizations to advertise promotions and events for a longer period of time. Councilwoman Klutz seconded and it passed unanimously, 5-0. (Ordinance No. 11-13)

## **12. PLANNING**

a.) **Call for Public Hearing. Text Amendment:** Proposal to amend Section 42-1, *Definitions*, and Section 42-577, *Signs Allowed on Private Property With and Without Permits*, of the Kitty Hawk Town Code to establish standards for the use of commercial and noncommercial flags. A public hearing is requested to be scheduled for the January 9, 2012 Town Council meeting.

Councilman Reid made a motion to call for a public hearing to hear the text amendment proposal to amend Section 42-1, *Definitions*, and Section 42-577, *Signs Allowed on Private Property with and without Permits* of the Kitty Hawk Town Code to establish standards for the use of commercial and noncommercial flags. A public hearing would be advertised for the January 9, 2012 town council meeting. MPT Perry seconded and it passed unanimously, 5-0.

## **13. NEW BUSINESS**

### **a.) Public Access to Beach at E. Kitty Hawk Road and NC 12**

**Mayor Perry:** *I brought this up at the last meeting and we need to make some kind of decision on what action we are going to take and where we are going. I asked the manager to contact one of the owners. Have you heard back from him?*

**Stockton:** *No sir, I have not heard back from the owner.*

**Klutz:** *I have a question. When we sent out a letter or something from the attorney previously, it followed conversations that we had with the owner in which he agreed he would be in favor of the easement that we were requesting. There were certain conditions he laid out which one was when he died his heirs could have the property. The easement would in fact not transfer to his heirs.*



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**Mayor Perry:** *If they requested it be removed then we would agree to remove it.*

**Klutz:** *Have we sent to the one property owner that we know where he is, a document which is ready for his signature? That grants the easement with the conditions he set forth and with whatever we offered in terms of compensation for the easement such as paying the taxes. Something ready for his signature that the Town of Kitty Hawk has executed. With action to find the other owner then we could move forward.*

**Michael:** *The document was prepared and it was sent to him.*

**Stockton:** *Yes. I did send him the document for signature. As far as any compensation goes, I do not think we included that because at the time it was not discussed with the council. It had not been determined if there was to be any compensation.*

**Mayor Perry:** *I had offered to you we would pay taxes on the property. I do not know if you conveyed...*

**Stockton:** *In the last letter it stated that there could possibly be compensation for the easement.*

**Klutz:** *I feel like since the property owner seemed to be in favor of granting this easement with some conditions, I would like to see a letter offering to pay the taxes and document granting the easement with the conditions sent to him. And upon receipt of the letter or as of the date of the letter he has 45 days in which to respond with either his signature or some other modification he might want to the easement. Something that would in effect say, "If we have not heard from you after 45 days then we are going to start a proceeding whereby we can take this easement."*

**Michael:** *The only problem I have with what you are saying is we still have to have the easement from the other property owner. We cannot acquire an easement and the property unless both owners sign off on it.*

**Mayor Perry:** *But at the same time we can have it published in the paper where we last...*

**Michael:** *No. You are going to have to file a condemnation to get to that point. To cut off her rights to the property...*

**Mayor Perry:** *We are going to have to do that anyway.*

**Michael:** *If both of them would sign a document that granted you an easement, no you would not have to do it.*

**Mayor Perry:** *Right, but if we cannot find her.*

**Michael:** *You cannot create a right in her property without filing a condemnation.*

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**Mayor Perry:** *If we try to reach her and we cannot find her through the newspaper or through all the avenues, then can we condemn her rights?*

**Michael:** *Yes.*

**Mayor Perry:** *But not his. He would still have the option but we could condemn his if he does not respond to us.*

**Michael:** *Yes, but the problem you have is the document he wanted gave his heirs the right to take that easement away.*

**Klutz:** *If we condemn it then he cannot do that.*

**Michael:** *There are no options at that point in time. I would not recommend that to you. Either we get both of them, or get her heirs if she is not alive, get them to sign a document that gives us an easement or lets us buy the property from them. If you proceed with the condemnation that is one of things we are going to do. In a condemnation you have to send them a letter and say, "We are getting ready to file a condemnation. This is what we think the property is worth." They have the option to sell it to you.*

**Klutz:** *This is not taking just the easement; it is taking the whole lot?*

**Michael:** *Taking the whole thing.*

**Bateman:** *I know where Emilie is going with this because we talked about it. Let me ask this again. Can we just take 10 feet? All we need is 10 feet.*

**Michael:** *It is probably going to cost you the same. You are destroying the entire value of the lot.*

**Bateman:** *It does not matter, it is perception and also in his...ten feet...is not going to say whether he can or cannot build on that property in 25 years if we have some gigantic storm and it puts 300 feet of sand on his property he can still build something with only losing 10 feet. It is going from the right-of-way over 25 feet...*

**Michael:** *The truth of the matter is we do not know how much of the lot is left until we get a survey of it.*

**Bateman:** *I have looked on the plat and I was out there with John DeLucia, as well as DOT, and it is boarder line right where the line is, where the path is now. You just take 10 feet over.*

**Mayor Perry:** *It is the north side.*

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**Bateman:** *Yes, just 10 feet of the easement. What is that going to hurt? But I know Emilie does not want a condemnation and I do not either. For a whole piece of property.*

**Michael:** *Well, again, I do not know what is there. What I am going to tell you is it is going to cost you the same to take 10 feet as it is going to cost you to take the whole lot. There may be a little difference in the value of the lot but all the other expenses are going to be exactly the same.*

**MPT Perry:** *And perception wise, he is going to be just as mad about that as if you took the whole thing.*

**Mayor Perry:** *When you go look at it, when you take the right-of-way out of what is left there, and you go to the east side to where the FEMA put their sand on it, you do not have maybe 20 feet of the top of the dune that DOT has built.*

**Michael:** *And that is what I am getting at. When you do a survey of the property there may not be much there that you take anyway.*

**Mayor Perry:** *I suppose they signed a release. We put FEMA sand across there.*

**Klutz:** *I think at the time the only thing they signed was permission for the work to be done.*

**Mayor Perry:** *I do not know what was signed. I think I agree with Emilie that we need to notify the party and give "X" number of time to make a decision. There is a deadline. Either sign it or say you are not going to sign it. He had agreed to do what we are asking but has never done it. Put a deadline on it and at that point condemnation will begin.*

**Michael:** *That is something we have not done before. We have not talked about condemnation as an option for the town, trying to avoid that.*

**Mayor Perry:** *But after 45 days if we have not received that or a counterproposal that we can agree with, then we are going to start condemnation.*

**Michael:** *I think maybe we will get a response if we tell them that. We can send that letter.*

**Mayor Perry:** *Does that seem reasonable?*

**MPT Perry:** *Can I read something into the record? And my reading of this is going to require each councilmember to chime in on 8 different questions. I want these questions on the record because of what we are discussing. I will give each of you a copy of this.*

*"Informational comments prior to multi-use path discussion. My fellow citizens, your elected representatives are about to embark on an area of discussion I never wanted to enter. The question revolves around public safety versus private property rights. While the outcome of this*

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*meeting is unknown I want you, the citizens, to understand the kind of questions and thought process that will formulate my judgment on the issue.*

*Question **number one**: "Is there a genuine safety issue where a multi-use path terminates at Highway 12 with no immediate crosswalk and associated beach access over a dune to the public beach?"*

**Mayor Perry:** *Yes.*

**Klutz:** *I have a different opinion on that. I know that all along people have been crossing over the beach from the other side of the road because that is where they park. They walk down in front of Hurricane Mo's and they go over the dune. That is on public property and they have been doing it.*

**Mayor Perry:** *Until the State says you cannot park there one day. Go ahead.*

**Klutz:** *But there is no crosswalk there. This has been going on for I do not know how long and I do not think we have had any kind of incident involved with it.*

*The other thing I wanted to talk about, and now based on what the attorney is saying, it looks like the only option we have if we are going to be using condemnation proceedings is to take the lot. We have an easement already on State property. From my understanding it is 50 feet south of where the crosswalk would be at the termination of the sidewalk. And with a crosswalk across the street from the termination of the sidewalk to the east side where there is a 20 foot right-of-way, walking 50 feet is the same as walking in front of just one lot. We all know what kind of a walk that is. It is not a problem. When you get onto the other side of the road there would have to be some sort of clearing done in order to provide a walkway. I do not know if it would be a wooden deck or what but I think that is an option we certainly should consider seriously in terms of the costs to the town and every other aspect of getting involved in a condemnation proceeding. I want to throw that out there because I feel it is just as good an option as trying to go through all of these legal hurdles and then take somebody's lot when all we really need is a 10 foot path across.*

**Mayor Perry:** *Here is the problem. That was my first idea when we got permission from the State to do it. I have looked at all the avenues and I think the safest way to do this is to go straight across and not run a boardwalk. You are going to have to build something to get there and then when a storm comes and tears it up you have to rebuild it again. I really think the safest way to do it is to go straight across. It is not taking a lot. If it was a buildable lot I would not even consider it. It is not enough to even consider taxing in my opinion. After looking at it.*

**Klutz:** *But he is paying taxes on it. Somebody considers it taxable.*

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**MPT Perry:** *Let me ask some other people. Ervin, can you give me your feelings on question number one? She has kind of jumped ahead to question number two. Do you consider it a public safety issue?*

**Bateman:** *I think it is a public safety issue if we do nothing. Like I have said before, we should have made sure we had a way to get to the beach before we put the path there. We did not but it is beyond us. I am with Cliff, just go over the dune straight ahead.*

**MPT Perry:** *Richard?*

**Reid:** *I agree with that.*

**MPT Perry:** *Going straight across?*

**Reid:** *Yes.*

**MPT Perry:** *Then question number two: "Are there alternative and safe highway crossing points for beach access near the multi-use path termination?" Emilie seems to think there is. The only question I have with what you are talking about is the dune line. It is a high dune and it comes straight down to the road. How do you build a walkway? Are you going to cut the dune out or are you going to build up the walkway above the dune and have a ladder going to it. In order to do that you are disturbing the dune.*

**Klutz:** *And that is a problem because right now there is hardly any room between the base of the dune and the edge of the road. If it is some sort of an elevated walkway there is definitely going to be pilings and there would have to be some construction involved. What are you talking about for straight across? Just a sand path or building something?*

**Mayor Perry:** *I was planning on building something so the dune would not get eaten away like it is on the other side. Something simple but you could walk across.*

**MPT Perry:** *Question number three: "Has the town explored easement, purchase, or permission options from property owners before proceeding with a possible taking?" I think we all agree the answer to that is yes.*

*(Several council members said yes)*

**MPT Perry:** *Many things, many times. Question number four: "Is the property in question buildable?" To my knowledge the answer is no.*

**Klutz:** *That is correct I think.*



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**MPT Perry:** *And to my knowledge it is going to be that way during all the lifetimes we can think of.*

**Mayor Perry:** *Not only that, you could not even build a parking spot there.*

**MPT Perry:** Number five: *"Does the owner have property west of Highway 12 that is enhanced by retaining ownership to the east side?" The reason I ask this question is very simple. Some property owners on the west side still own a lot that is not buildable on the east side. Like with the Hedgepeth's trailer court, that becomes valuable to them as a selling point. In this particular case, unless someone corrects me, the answer to that question is no. The Black Pelican owns, I think, both pieces across from this so it is commercial property. He has no interest in that at all. He cannot park, etcetera, etcetera. (Council concurred)*

*All right six: "Might the property in question accrete to a buildable state in the foreseeable future?" In other words, build up naturally. According to current law if it accretes naturally then the owner retains rights but if it is built up unnaturally, nourished, and in this case it has been with a FEMA berm, he does not retain the right to build onto it. I think council will agree that the answer to that question is no. (Council concurrence)*

Seven: *"How much property is existing Highway 12 right-of-way?" And the survey stake that was done for our benefit shows 21 feet east of the highway as it sits now. There is 21 feet into the dune as you go out and look at the dune that belongs to the State. It does not belong to the owner.*

**Mayor Perry:** *Which is to the top of the dune.*

**MPT Perry:** *Then finally, eight: "Considering highway right-of-way combined with public domain beach..." and here I am a little fuzzy on the FEMA berm. I will ask that question in a second. But, "considering highway right-of-way combined with public domain beach, how much of the actual lot remains nonpublic domain?" From what I can see I would estimate possibly 10% is actual property that is owned by the owner unless you can count the FEMA berm which is almost gone anyway. Can you tell me if the FEMA berm under this condition would be to his advantage?*

**Michael:** *I think he probably still owns what is under that FEMA berm because it was not built up from the beach side. You remember when we were going to do the enhancement on the sound back here; anything they built up was going to be State property. It was not going to belong to the property owners, but this was a different situation I think.*

**Mayor Perry:** *It was built to the east of the dune.*

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**MPT Perry:** *Right. All right, for example the FEMA berm, which was not that wide, add that to 10%. It is not more than 15% of the property, that whole piece of lot that is still retained by the owner.*

**Michael:** *That is correct. That is why I say you have to have a survey of the property to see exactly what the lot consists of. It probably does not consist of very much square footage.*

**MPT Perry:** *Em, I share your concerns. I never wanted to go with condemnation but the fact is if you take a piece you have already made somebody mad. There is not much of a piece left. If we see it as a true public safety issue then we need to do it in the proper manner with proper compensation. And from all I have heard and all we have attempted to do we need to take the property. There is my take onto it.*

**Mayor Perry:** *That is why we built the path. Because of the safety issue of people going down Kitty Hawk Road back and forth to the 7-11. There are a great many people going back and forth down that highway which is to me unsafe. That is why we built the...*

**Klutz:** *At the time we built it though, I want to point out the issue of not being able to get across the street to go over to the beach came up. Everyone agreed it was worth it to still improve the safety of walking from the 158 to NC 12 and that should not stand in the way. The fact we could not then extend the walk to the beach should not stand in the way of that sidewalk going in there. We did not go into building the sidewalk with the provision we were going to do something to get that property on the other side of the highway to get over to the beach.*

**Mayor Perry:** *We tried to go through the post office property...we tried every avenue to go through the post office property to get to the bath house and that would not work. We went beyond the call of duty to try to get that done.*

**MPT Perry:** *And even though we did not go across the dune, we did not acquire the property or make whatever arrangements were necessary to do so, we knew in building the path there existed to the north a diagonal access that has been used for years as you said. The path increased the safety by getting the people off the road. We got them off the road and then they could at least make a diagonal turn and go across to an access they have been using for a long time. Now that still exists but is it safe? When you are going diagonally across the road versus straight across the road? Is it safer to go straight across the road to the degree that we can make it better for the public?*

**Klutz:** *You could not put a crosswalk across Kitty Hawk Road and go straight across that access they are using because the access is also over private property.*

**Mayor Perry:** *That is right and we could not direct people to do that.*

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**Klutz:** *We could not direct people to do that so the whole issue is you cannot paint the crosswalk because there is...*

**Mayor Perry:** \_\_\_\_\_ *directing people to go there.*

**Klutz:** *Nobody has complained in terms of the property owner where all of the people are now going over the dune.*

**Mayor Perry:** *That is why we eliminated the two crosswalks when we had the path built. It was in the plan but we eliminated them because we could not direct people across private property. I have looked at going with the State lot but I did not find a safe way we could get there. I have toyed with both ideas of going on the west side of the beach road or the east side. To go to the east side you have to build a high walkway all the way down and to go on the other side you are going to have to put a bulkhead. There is a chance of being jammed between the bulkhead and an automobile so I think going straight across is the way we have to do it.*

**Stockton:** *As far as the compensation council mentioned. Are we talking about compensation for the easement? And you also mentioned something about taxes. Is that also something we want to offer? I just need to get clarification on that.*

**Mayor Perry:** *My thoughts are we pay his property taxes on the lot for an easement to cross and his heirs at the end could ask us to remove the walkway if they needed it for other purposes. And we pay for the survey or whatever it took for the expenses to do it.*

**Klutz:** *Aren't we at the place now where we are talking about whether we send the property owner a letter which says he has 45 days to respond to us regarding whether or not he is going to...I guess at this point now we are looking at whether he is willing to sell the property because we cannot get just his signature on the easement because the other person is parts unknown. Now the letter we are talking about writing is we want to purchase the property and we want to enter into negotiations with you to purchase the property. We are going to find the other owner. If we do not hear from you within a certain number of days then we will begin condemnation proceedings. At the point we begin condemnation proceedings council will get together and talk about those conditions. What the compensation will be, the survey costs, all that.*

**Michael:** *Right. What you will have to do when you get to that point, contemplating condemnation, the council will have a motion to proceed with the condemnation of the property and find that you are doing it for the public purpose of acquiring a beach access. It is specifically provided for in the condemnation statute. Kitty Hawk and all the beach communities specifically were granted that authority. The procedure then is, because we have to have a survey and some appraisals, we have to give the property owner 30 days notice by mail that we are going to go on the property to get a survey, to get the appraisals.*

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*Now we are not committed at that point in time to go through with it. You can back out at any time. If it comes back and the appraisal says the property is worth way too much money you can say you are not going to do it. The tax value on the property right now is \$4,000. Then at that point we have to send them a letter and say we are going to file condemnation 30 days from now. They have the right of course to negotiate with us if they want to. If they want to sell the property to us.*

*If that does not happen, then after 30 days we can file the actual condemnation and serve the property owner. We make our deposit of what our appraisers say the property is worth, whatever we determine is reasonable compensation for the property, and at that point in time once you have done that and filed your complaint and made your deposit with the court, the property belongs to the town.*

**Mayor Perry:** *Then you can go ahead and build. How about the person we cannot find?*

**Michael:** *If we cannot find her, the court will appoint an attorney to represent her in this proceeding. We will also notify the North Carolina Escheat Office that this attorney has been appointed to represent her, we cannot find her. We know her name but we cannot find her anywhere and we will proceed on. The issue will be what is "just compensation" for the property. That will be the only issue that will be determined by the court. They could raise the issue of whether or not taking was a public purpose but this purpose is specifically provided for in the statute. The resolution is going to say we are doing it for that reason and so it will not really be an issue. It will just be the issue of what is the value of the property. That will be the only issue for a trial and it would be a jury trial. If they file an answer.*

**Mayor Perry:** *If they do not accept the offer.*

**Klutz:** *What about attorney costs for all of this?*

**Michael:** *If everything goes perfectly how much are the attorney's fees to the town?*

**Klutz:** *Yes.*

**Michael:** *I am guessing around \$3,000.*

**Klutz:** *And that would include the attorney that gets hired to...*

**Michael:** *No. That is a separate cost and I do not know what the fees would be for that. That would be in the court's discretion and you would be responsible for all of the costs.*

**Klutz:** *We would be responsible for paying it.*

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**Michael:** *That is correct. The other thing is, the property owner, once they are served and Mr. Hall we can apparently find him to get him served, he has 120 days to file an answer. Folks have a long time to respond to these things and the interesting thing about condemnation is once you file it and make the deposit, the property is yours. You can use it at that point.*

**Mayor Perry:** *The question is how quickly can we get started on the process? Do we go back to him and give him a final...*

**Michael:** *That is a tool we have not used up to this point. We have not told him the town is talking about condemning this property and we would really rather reach some agreement with him. Of course the problem is finding his...*

**Mayor Perry:** *I think that is probably worth a try but we cannot find the other person.*

**Michael:** *Then we are going to have to condemn her interests in the property anyway.*

**Mayor Perry:** *So you would have to condemn her interests in it. You would have one agreement and her interests would be condemned?*

**Michael:** *It would be one half of whatever the property is worth at that point in time for interests in the property.*

**Klutz:** *And you cannot try to look for her until that condemnation.*

**Mayor Perry:** *He does not want to try to find her. Evidently he has not talked with her in 12 years.*

**Michael:** *We have done "people searches" and we have called people with similar names fitting in her age category.*

**Klutz:** *Is there any place in the courthouse where you could find out how the lady got the property?*

**Michael:** *I have a copy of the deed. Yes.*

**Klutz:** *It came from a will or a sale?*

**Michael:** *No, there was a deed to her for the property. She acquired it ...*

**Stockton:** *It was a relative I believe.*

**Klutz:** *My question is, is there any way to trace the relative that she got the property from or...*



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**Mayor Perry:** *I think she has deceased.*

**Stockton:** *I believe so. I believe the relative is deceased that she...*

**Mayor Perry:** *Because it was the lady who owned the property back when there was a house and I am pretty sure she is deceased.*

**Bateman:** *You know Ernest Pugh was involved in that.*

**Mayor Perry:** *I know.*

**Michael:** *She got it by deed on July 14, 1981 from Finisterra, Inc. That was the grantor at the time. That is who owned it and sold it to her. Then when she died it passed to Mary Hall and Shirley Baggett. Mary Hall was Mr. Hall's mother. He acquired his interest through his mother. Mrs. Baggett is the one we cannot find. They were sisters.*

**Bateman:** *I suggest we send one more letter, just one more letter to him stating exactly what we said. We want to pay the taxes on the property, we want an easement across there, and if we do not hear from you in 45 days we are going to proceed in condemnation. That is about as simple as you can get. Do you agree?*

**MPT Perry:** *Absolutely.*

**Klutz:** *Yes, but I guess my problem is, I am hearing that we cannot really get...even if he agrees to the easement we cannot get an easement from the lady.*

**Michael:** *If you can get him to sign some type of agreement you can live with, you can always proceed with condemning her interests in the property.*

**Mayor Perry:** *We still have to have a survey to do it.*

**Michael:** *Yes, you are still going to have...that is why I keep saying it is going to cost you the same to do it.*

**Mayor Perry:** *And we do not have any other avenues to find her?*

**Michael:** *Unless he knows where she is and...we do not have any other way to find her apparently.*

**Klutz:** *Do we have to make a motion?*

**Michael:** *I think John and I can send the letter to see if we get a response and if we get any interest. Tell him that condemnation may be coming. It is something the council is going to*

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*consider and as long as we...if we are going to do the condemnation, as long as we get started by no later than the beginning of February then you can have the property before the season starts.*

**Mayor Perry:** *Can we agree that if we do not hear back in 45 days you can commence the condemnation with a survey or whatever it takes.*

**Bateman:** *You have my vote.*

**Michael:** *You could but I would tell you to wait until January to do that so we can get you a properly drafted motion. One that will pass scrutiny.*

**Mayor Perry:** *All right. When are we going to start the 45 days?*

**Michael:** *We will get the letter out.*

**Mayor Perry:** *Does everybody agree that if he wants to give us...that we would pay the property taxes and pay for the costs of whatever it takes?*

**Michael:** *We will circulate that letter to you before we send it out to make sure you are in agreement.*

**b.) Appointment of Town Manager as Representative to the Transportation Advisory Committee for the Albemarle Regional Planning Organization**

Manager Stockton reported he recently discussed with Mayor Pro Tem Perry the town's representation on the TAC committee for the Albemarle Regional Planning Organization. MPT Perry thought that since the manager is presently serving on the TCC committee and both the TCC and the TAC meet on the same day it would only make sense if the town had one person attending both meetings. He contacted Mr. Lambert of the Albemarle Regional Planning Organization to see if he could represent the town on both committees and Mr. Lambert said yes. A motion from council appointing the manager to the TAC committee and a letter for the mayor's signature to that affect would be in order.

**MPT Perry stated he made that a motion (to appoint the manager to the TAC committee). Councilwoman Klutz seconded.** MPT Perry explained the way it is set up, the TCC is comprised of managers of the various municipalities and meet in the morning session. Then the TAC, which is the elected representatives, meets in the afternoon session. He saw Greg Loy of Kill Devil Hills was representing both sides for Kill Devil Hills and wondered why Kitty Hawk could not do that. He asked the question and this is where it is.

It does not really matter that an elected representative from the Town of Kitty Hawk is there because the town does not have any vote in what they vote on. They voted all the municipalities

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out of the by-laws. In fact Greg Loy should not be making motions and voting because he is representing a municipality, not the county, but that is there problem. In any event since the town cannot vote, what is needed is for the manager to keep council informed.

The reason the letter is requested is to protect Mr. Lambert. There was a county where the manager was representing the elected representatives but he was not informing his elected officials and they were concerned. This council would be too, but does not see that as being a problem. Two people do not need to be running back and forth to Hertford or wherever the meetings might be.

**The vote was 5-0.**

**c.) Status of Oak Trees at Windgrass Circle (NC Forestry is scheduled for a site visit before the council meeting. If they have to reschedule, please defer this item until 1-9-12.)**

PWD Midgett reported that the North Carolina Forestry and Susan Evans from Dare County Extension both seem to think the trees are salvageable. Sand will need to be put on them and the wave action taken off of them with either riprap or a breakwater of some sort. Vegetative plantings would also help. The issue with the plantings is it takes a while for them to grow and they will not do a whole lot of work until probably the tree is gone. What needs to be determined is how much money to spend on them. Sand is available. Basic figures for riprap is roughly \$5,000 to \$6,000 and if it is permitted through CAMA.

Mayor Perry asked about using concrete that somebody is trying to get rid of and Midgett answered that could be used but it would take quite a bit. It is about 24 square yards.

Mayor Perry asked if he thought about just going around the trees and leaving space to get to the water. Midgett answered that has previously been done and it did not work. They had used concrete people brought to the Recycling Center.

Mayor Perry said he would not like it if you could not walk down to the water. Many people enjoyed that. Midgett said if it were to be done it would only be from the southern corner of the deck around those two trees. Nothing would be put to the north of it. Fill in with sand the best they could up near the bulkhead. Also put in some plants, some organics on top of it, grass that would grow to help keep the soil rich for the roots. A formal report of this is due from NC Forestry sometime next week.

Mayor Perry asked if they had some money to help us with this. Midgett replied they do not. They recommended an arborist that the town could pay. In discussing the larger tree it was mentioned designing a brace for the large branch that is out over the sound. That would definitely help it. Midgett said he would trim some of the lower branches to pull some of the weight off and they said it is not a good idea to touch them with a saw, let them be

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natural. Without the soil around the roots it is living off of its leaves and branches. It could starve to death if anything was cut off.

Councilwoman Klutz said she is not advocating cutting it down but how much would it cost.

Midgett answered the only cost is gas for a chain saw. Staff could cut it down.

MPT Perry recommended leaving it to nature.

Mayor Perry said he tended to agree with that.

Midgett said if it is all right he would fill in with sand since it is free and try to cover up the roots.

Mayor Perry said that is good and Councilwoman Klutz agreed.

MPT Perry said it was fine but thought it would wash away.

Councilman Bateman asked about concrete riprap. If some could be used and wrap it with landscaping material and then back fill with sand. That would do the same thing at an economical level. He agreed with the other council members but if there is an inexpensive way to try and save the trees he would like to try.

Midgett answered he would look into it and see if it would be permitted by CAMA.

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

a.) **Transportation Coordinating Committee Meeting Update** – Manager Stockton reported he attended the TCC meeting on November 16<sup>th</sup>. Two projects for Kitty Hawk had been submitted to the Albemarle RPO to be considered for inclusion in the State Transportation Improvement Plan and the two projects were considered at the RPO's prioritization meeting that was held on November 2<sup>nd</sup>. After the meeting on the 2<sup>nd</sup>, the projects were considered for approval at the November 16<sup>th</sup> RPO meeting. The two projects will now be submitted to NCDOT in Raleigh for their review and consideration of being added to the State Transportation Improvement Plan. The two projects were widening of Kitty Hawk Road from Bob Perry Road to Ivy Lane and the construction of a multi-use path on Kitty Hawk Road from The Woods Road to Twiford Street.

b.) **Compliment for Officer James Helms** – Manager Stockton said he recently received a compliment from Mr. Albert of Southern Shores who was instructed by Officer Helms on a proper procedure for vehicle registration. Mr. Albert wanted us to know that Officer Helms was very professional, considerate, and fair in his demeanor in handling that particular situation.

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c.) **Sandy Run Park Phase II Update** – Manager Stockton reported the contractor continues to work on this project. They have almost completed the kayak/canoe tie up on the south side of the boardwalk and also the observation tower. They will soon be working on the extension of the boardwalk on the south side. The contractor has completed some 15% of contracted work to date and continues to move forward.

d.) **Storm Drainage Study Meeting Update** – As far as the storm drainage study for selected areas of the town, Manager Stockton said it has been completed. He reminded everybody there will be a public meeting Wednesday, December 7<sup>th</sup> at 6 o'clock pm, at the town hall. The consultant, Albemarle and Associates, will brief the public on the findings and recommendations to council.

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

Attorney Michael had nothing further to report.

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

**Town Christmas Party:** Councilman Reid said he hoped council could attend the Christmas Party on the 16<sup>th</sup>, but if not, and he did see them before the holidays, he wished everyone a Merry Christmas.

**Outer Banks Marathon:** Councilman Bateman thanked everybody in the town as well as in Dare County for the participation in the marathon. It was a complete success. He had the privilege of reading much of the feedback that OBSC has and one of the big things the runners said is nice is the welcoming of the people of Kitty Hawk. It makes you feel good as a participant but also when you put an event on and you have someone that compliments it the way they do it really makes you feel good. Also the police department, public works, fire department, and all of the volunteers did an outstanding job.

**Passing of Port Beacham:** Councilman Bateman said we lost Port Beacham (November 15, 2011) and he was on the planning board with him. He was a very nice, good person and has many fond memories of being on the board with him.

**17. PUBLIC COMMENT**

There was no further comment.

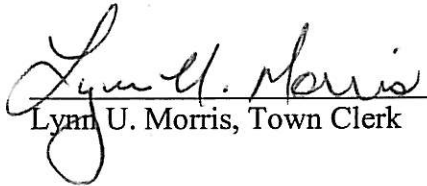
**18. ADJOURN**

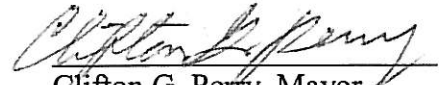
MPT Perry made a motion to adjourn the meeting. Councilwoman Klutz seconded and it passed unanimously, 5-0. Time was 8:46 PM.



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These minutes were approved at the *January 9, 2012* council meeting.

  
Lynn U. Morris, Town Clerk

  
Clifton G. Perry, Mayor