

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, February 5, 2018
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation
 - Community Housing Initiative Committee
5. Public Comment
6. Consent Agenda
 - a.) Approval of January 12, 2018 Council Minutes
 - b.) FY 17-18 Budget Amendment #7 and Council Acceptance of Donation
 - c.) FY 17-18 Budget Amendment #8
 - d.) Approve Grant Application to Dare County CURRENTTV
7. Items Removed from Consent Agenda
8. Public Hearing
 - a.) Rezoning: 5117 & 5113 Putter Lane, from Low Density Beach Residential (BR-1) to Emergency and Government Services (MS-1).
9. Planning
 - a.) Schedule Public Hearing. Subdivision Variance: 4600 blocks of Lindbergh Avenue and N. Croatan Hwy. Requested subdivision variance would allow reconfiguration of six existing lots in a matter that would be inconsistent with ordinance requirements.
 - b.) Schedule Public Hearing. Text Amendment: 42-504(i). Staff is proposing a text amendment that would allow pool equipment to encroach into the side and rear yard setback.
 - c.) Schedule Public Hearing. Text Amendment: 42-250(c)34. Multifamily dwellings. Requested text amendment would allow multi-family dwellings as a conditional use in the Beach Commercial (BC-1) district.
10. Unfinished Business
 - a.) Text Amendment: Sec. 42-1, Definitions and proposed 42-528, Accessory Dwelling Units. The proposed text amendments would permit accessory dwelling units on residential lots provided certain requirements are met.
11. New Business
 - a.) Resolution Opposing any Change in the Definition of a Commercial Fishing Operation
 - b.) Large Item Pick-Up Pilot Program
 - c.) Approve Grant Application to N.C. Recreational Trails Program for Sandy Run Park/Kitty Hawk Park Trail Connections
12. Reports/General Comments from Town Manager
13. Reports/General Comments from Town Attorney
14. Reports/General Comments from Town Council
15. Public Comment
16. Adjourn

Kitty Hawk Town Council Minutes: February 5, 2018

Page 2

COUNCILMEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Management Assistant Melody Clopton, Planning Director Rob Testerman, Police Officer II Tyler Kouskouris, Fire Chief Mike Talley and Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 PM.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

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

4. PRESENTATION

- **Community Housing Initiative Committee**

Ms. Karen Brown, President & CEO, *Outer Banks Chamber of Commerce*, provided a PowerPoint presentation on the housing crisis on the Outer Banks. Affordable, workforce housing is needed and the committee is hoping to start a conversation at the Towns and County's level to address the issue.

Following the presentation, Mayor Perry said it was interesting that Currituck County has a higher median income than Dare County. Ms. Brown said she believes it is because the residents in Moyock and northern Currituck County travel into Virginia to work.

Mayor Perry said it could come across that the property owners have some moral obligation to bend over backwards to provide ADU's or multi-family residences and that would in turn make governing bodies have to allow them. He does not personally think property owners have that obligation. If they want to do it that is fine and if council sees the Town benefits from that kind of ADU then there is perhaps an obligation to allow it.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 3

Ms. Brown said she does not think that is the main purpose. It is to hopefully get everybody around the table talking about zoning and density. Allowing developers to develop multi-family housing. They are not suggesting that current property owners must take care of the situation.

Council thanked Ms. Brown for her presentation.

5. PUBLIC COMMENT

There were no public comments.

6. CONSENT AGENDA

a.) **Approval of January 12, 2018 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*

b.) **FY 17-18 Budget Amendment #7 and Council Acceptance of Donation.** The police department received a \$200 donation from William West. This budget amendment will recognize and appropriate the donation and be allocated for future purchases of AED's (automated external defibrillator). *(An approval of the consent agenda will accept the donation and approve this budget amendment.)*

c.) **FY 17-18 Budget Amendment #8.** This amendment will recognize the NC Dept. of Natural & Cultural Resources Grant in the amount of \$59,518 for the multi-use paths repairs accepted by council on January 8, 2018. *(An approval of the consent agenda will approve this budget amendment.)*

d.) **Approve Grant Application to Dare County CURRENTTV Government Education Access Channels Committee.** This grant is in the amount of \$10,000 and if awarded to the Town will be used for improvements to the audiovisual equipment in the Smith Room. *(An approval of the consent agenda will approve submitting for the grant.)*

Councilman Bateman made a motion, seconded by Councilwoman McClean, to approve the consent agenda. The vote was unanimous, 5-0.

7. ITEMS REMOVED FROM CONSENT AGENDA

No items were removed from the consent agenda.

8. PUBLIC HEARING

a.) **Rezoning: 5117 & 5113 Putter Lane, from Low Density Beach Residential (BR-1) to Emergency and Government Services (MS-1).**

Councilman Pruitt made a motion, seconded by Councilwoman McClean, to go into public hearing. The vote was unanimous, 5-0.

Planning Director Testerman reviewed the following report with council.

Property Owner: Town of Kitty Hawk
Property Address: 5117 & 5113 Putter Lane

Kitty Hawk Town Council Minutes: February 5, 2018

Page 4

Parcel ID Number: 987605192754 & 987605192696

Current Zoning: Low Density Beach Residential (BR-1)

Proposed Zoning: Emergency and Government Services (MS-1/EMS)

Proposal

The subject properties are proposed to be rezoned from Beach Residential (BR-1) to Emergency and Government Service (MS-1) to accommodate the location of a new medical office building.

Background Information

The two subject properties are currently owned by the Town of Kitty Hawk. At one point in time the lots had been set aside for a potential fire station. The applicant is acting as an authorized agent in the rezoning request. As a part of the request, the applicant has proposed a land swap with the town. If approved, the applicant will take ownership of these two lots, and the Town would then take ownership of four lots zoned BR-1, approximately 1,300 ft south of the subject properties. Those properties are 4907, 4911, 4915, and 4919 Putter Lane (pictured in attachment). Per state statute 160A-271. Exchange of property; a city may exchange any real or personal property belonging to the city for other real or personal property by private negotiation if the city receives a full and fair consideration in exchange for its property. Property shall be exchanged only pursuant to a resolution authorizing the exchange adopted at a regular meeting of the council upon 10 days' public notice. Should Council approve the rezoning request, a resolution will be prepared and advertised for the March 5, 2018 public meeting. The subject properties abut land that is currently zoned MS-1 and is the site of the ear, nose and throat office, the site has also been approved for two additional medical buildings.

According to the applicant, a community survey conducted for the 2016 Community Health Needs Assessment identified medical care access as a critical health issue to residents of the Outer Banks. Access to health care facilities will be further reduced as Sentara Albemarle Medical Center is now closed. Approval of the rezoning request would allow the applicant to partially mitigate the impacts of the loss of the regional medical center.

If approved, the applicant will be required to submit for a site plan review, and potential conditional use permit at a later date. It has been discussed that any new development will share a low-profile development, akin to the ENT office to the north. However, it is important to note, conditions on height, usage, etc. cannot be put in place as part of the rezoning approval (should the request be approved). The dimensional requirements, permitted uses, etc. will be dictated by what is allowed in the MS-1 district.

Staff Analysis

Current Zoning: BR-1. The Beach Residential (BR-1) district allows mainly single-family residential uses. A handful of limited institutional and commercial uses are also permitted as conditional uses. The intent of the BR-1 district is to encourage the development of low density residential neighborhoods in Kitty Hawk.

Proposed Zoning: MS-1. The Emergency and Governmental Services District allows hospitals and medical centers by-right, and a number of other medical uses as conditional use permits (physician offices, pharmacies, optometrist offices, etc.). The intent of the MS-1 district is to provide for the proper grouping and development of medical services, medical offices, emergency and governmental service facilities on the town.

Proposed Development: The applicant is seeking to locate a medical office building similar to the recent built structure to the north. The applicant proposes to maximize distance and minimize visual impacts to the surrounding residential properties. The site will be accessed via a single curb cut on N. Croatan Highway, the parking area could potentially adjoin the parking lot to the north but will have no new curb cuts on Putter Lane. Should the rezoning request be approved, the proposed development will be reviewed in more detail in the future via site plan/conditional use permit review.

Land Use Plan

It is important to note that approval of a rezoning request is not legally required to be consistent with the Town's adopted land use plan. However, the land use plan is an important document to consider as it is intended to help guide the pattern of development in the Town.

The Town of Kitty Hawk's adopted CAMA Land Use Plan appears to designate the subject as a **Lower Density Residential Area**. The plan provides the following description for a **Lower Density Residential Area**: "Residential areas should provide

Kitty Hawk Town Council Minutes: February 5, 2018
Page 5

for the low-density development of single-family detached dwellings in an environment which preserves natural features to the extent possible and promotes stable, permanent neighborhoods.”

The lots abutting the subject parcels to the north are shown as **Commercial, Shopping and Working Area** on the Future Land Use Map. The plan provides the following description for a **Commercial, Shopping, and Working Area**: “Commercial, shopping, and working areas include areas that primarily encourage the concentration of commercial facilities in clusters or group developments and to provide readily accessible shopping facilities and will provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents and the general public. Some of these areas are envisioned to provide limited mixed uses.”

Consistency with the Future Land Use Plan

There is no specific policy or goal listed in the land use plan relating to medical uses. However, Chapter X: Tools for Managing Development states:

The land use plan’s function with respect to zoning is of prime importance. Proper administration of the Kitty Hawk zoning ordinance requires any review of a proposed text or map amendment – whether by the staff, the Planning Board, and the Town Council – to be based on consideration of whether the proposed amendment is consistent with the Kitty Hawk Land Use Plan and otherwise advances the public health, safety, and general welfare.

Planning Board Recommendation

At its December 14, 2017 meeting, the Planning Board unanimously recommended approval of the zoning map amendment to change 5113 and 5117 from BR-1 to MS-1. Although the request is inconsistent with the Future Land Use Map, the board found that the request advances the public health, safety, and general welfare of Kitty Hawk residences.

Testerman added that the two lots the Town currently owns are assessed at \$106,500. The vacant lots just to the north of the Town owned lots, zoned MS-1, are assessed at \$163,800 each. The four lots that are being proposed as part of a land swap are each valued at \$106,500.

1. Spencer Oliver, 4932 Lunar Dr., Kitty Hawk, NC: This is my first time appearing before this council, but I have been living on the Outer Banks off and on for the last 60 years. I own 5109 Putter Lane. My son Bob and I own it. We bought it as an investment about 10 years ago before the bottom fell out and of course now it is not valued as much as it was. We have maintained it and improved it and we rent it out full time because I live in Sea Scape on Lunar Drive. Hoping to keep it until we can recover what we paid for it.

If this zoning request goes through it will diminish the value of that property substantially which is one of the reasons I am here tonight. I got the notice of this zoning and I was quite curious as to why this was necessary. First of all, I thought emergency medical services ... why would you want to put emergency medical services out into the busiest intersection on the Outer Banks? What kind of impact would that have on a traffic jam on a Saturday morning if you have an emergency vehicle going out that way?

I tried to get a copy of the Community Survey but I could not get a copy of it here, but I finally did get a copy on the internet today. I read all 38 pages of it including the annexes and there is absolutely nothing in there that supports this change of zoning. In fact, if you look at it, it is just the opposite because what it says is if you already have eight EMS stations in Dare County, more

Kitty Hawk Town Council Minutes: February 5, 2018

Page 6

than you really need, and they cannot find enough people to staff those eight that already exist ... so you also have with Sentara pulling out you have a whole complex, a huge parking lot, and buildings which are already zoned for this, so why do you need to do more and take away the value of my property? Across the street there are houses that are being built ... I mean the purpose of the land use is, according to the plan, is to try to enhance the neighborhoods of this community. This will diminish the value of their properties too.

Now Jim Geraghty, who proposed all this at the planning board meeting, is the one who developed all those properties in the first place and he would know that this would diminish the value of those properties. Of course, he no longer owns them but the people who are there, who are building houses, and have lots for sale, the value of their property is going to go down for a purpose that is unnecessary. We already have more property zoned for EMS and medical purposes there than we can possibly use and with Sentara pulling out you have huge vacant properties there. So I really wondered why this was happening.

I went down and looked at the four lots that they are going to trade for according to this. There are four lovely lots right on the golf course where somebody can build four beautiful and very expensive homes on the golf course. Now that is fine if the council is investing, if they want to invest property and make some money they can do that, but what does that do to me? That diminishes the value of my property for purposes that I think are wrong. I mean that is not what public purpose is. To take away people's value for no purpose at all or for one that is not justified. Even in here it says that although the request is inconsistent with the future Land Use Map the board found that the request advances the public health, safety and general welfare of Kitty Hawk residents. I find that ridiculous. I see no evidence of that. No evidence of that in any of these documents and I have read them all today.

I tried to even find out who the applicant was because it is not clear who it is. It just says the applicants. You know when I went today to find out who it was they said well it is Putter Lane OBX, LLC. But nobody knows who that is. Maybe you do but I don't.

I spent many, many years ... I am a lawyer and I spent many years as a public servant really investigating wrongdoing and the waste, fraud and abuse in the federal government and this just looks like a bad deal to me. Something is wrong here. This is unnecessary. It is an unnecessary taking of the value of my property for a purpose that is not needed. I do not understand why this is happening and I urge you very strongly to reject this request because it is unneeded and unnecessary. I will be happy to answer any questions.

Perry: You seem to be hanging up on an EMS ambulance or some sort of service like that but that could occur there right now because they are owned by the Town. If the Town wanted to give it over to the County and turn it into that we would have to rezone it in the manner that we are considering tonight but we could do that today and turn it over and they could build an EMS station there. That is not what is intended but I just want to make sure you understand that.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 7

Oliver: If I could just respond. Of course you can do that, but do you need to do that? You already have all the property you need for an EMS. I mean I am a citizen, I am a voter, I vote in this Town. Can you take away value of my property for an unnecessary purpose which is already served by other facilities and is not needed. I mean I think that is wrong.

They said in here there will be no more cuts on Putter Lane. Well we heard that when they zoned the building that is there now, a heart center or something. They said there will be no cuts in Putter Lane and the only cut is for emergency purposes. Well that is not true. You can go down there right now and see they use that like their own driveway. Mailboxes are there and their garbage cans are there. They are not supposed to be using that property and you all said they would not, but they are.

Perry: We have heard you and thank you.

Oliver: Thank you for listening.

2. Tom DeLucia, 5116 Putter Lane, Kitty Hawk, NC: My wife Diane and I live at 5116 Putter Lane, directly across from the two subject properties. About ten years ago we, after many, many years of savings and sacrifices to our family, purchased a home in Kill Devil Hills and unbeknownst to us that property on Baum Street was dual purpose zoning: residential/commercial. We did not know that. It was not disclosed to us. We did not know what questions to ask at the time and we bought that house on Baum Street.

We were very happy there for many years. 2015 rolls around and Captain George's decides he needs more seating in his restaurant and the only place to go is to expand his parking lot. He proceeded to purchase two houses on Baum Street directly adjacent to our property and those houses were removed and there is a lovely parking lot there now. We decided we did not see that as a value enhancing feature to that street, so we put our house up for sale and coincidentally Captain George's bought that house. It was not a rental property for us, it was a vacation home. We have many, many family memories there and reunions. It was not an income producing property for us. However, we decided we did not want to be near that commercial business any more and deal with the traffic and the people hanging out in the parking lot after hours and so on and so forth.

So, we took our money and spent the next year looking for a property that we could also use as our vacation home for our family and friends. After an extensive search of what was available we found the property on Putter Lane. We proceeded to purchase it in June of 2016.

A couple of weeks ago we get a letter in the mail about this exact issue. We purposefully did our homework to make sure that the surrounding neighborhood was residential, so we would not have the same situation happen to us again that happened to us in Kill Devil Hills. We feel like we have done our homework. We made sure this was a neighborhood zoned for residential use and we do not feel that we would like to have the potential business, medical, emergency, EMS whatever in front of us. Literally the end of my driveway looks at this property. So even if there is a parking

Kitty Hawk Town Council Minutes: February 5, 2018

Page 8

lot there, with no visual obstruction of the limited views that we have of the ocean, there will still be something there.

If a medical building gets put in there that is great for today but what about like Sentara who is pulling out for financial reasons. I know for a fact because I work for Sentara and five years from now what if they pull out whoever this person is that is making this new medical office. And then something else comes up and they want to rezone it to be something else. I would much rather have a rental property if someone decides to buy that lot from the Town and make a rental home there than to look at the back of a building. Whether they have cuts to Putter Lane or not you do not want some commercial type building in front of our property.

Not only that but we were not notified in December when this first discussion came around and we just got this letter literally like eight days ago or two weeks ago and we have only had a few days to try and talk to people. It is the winter time so there is no one there if we were to want to get some more of our neighbors behind us and try and get some people to petition it. We do not really know what the process is so for us to get others behind us like our neighbor who has appeared tonight. We would like to be able to canvass the neighborhood ... if there is a petition that is required something like that to get others to support us. I feel like there are more neighbors than what is there permanently right now that would also be in favor of opposition to this change in the zoning.

We are both retired. We have one daughter who is still in the nest in Virginia and this is planned to be our retirement home, so we are not just going to be looking at this on weekends and holidays. This is something that is going to be there every day so we are not in favor of it and we just wanted to make it known that we are opposed to the change in zoning.

Perry: Thank you.

3. Mike Dunn, 5112 Putter Lane, Kitty Hawk, NC: I am building a house at 5112 Putter Lane. I guess my concern is just the unknown of what will be built on the properties. I am building a pretty, by my means, a pretty expensive house and it is for sale. It is closing in and I am sure this is going to affect the sale of my property. What I am asking is for some type of request to maybe hire an attorney to delay this process until I can figure it out.

Perry: You want to delay the process?

Dunn: Well I would like to. Like he said I was just notified a week ago so that does not give you a lot of time to prepare. I am showing up basically just asking if we can extend this so I can hire an attorney.

Varnell: I am at 5106 Putter and for clarity there is no conflict here as far as I am concerned. There is no obligation to continue this. If the statute has been complied with, notice has been timely, this

Kitty Hawk Town Council Minutes: February 5, 2018
Page 9

is what our state allows. It would be up to your pleasure as to whether you want to postpone the matter but there is not an obligation to do so.

Perry: That would not bring on another hearing?

Dunn: I was never notified in December either. I kind of feel that was wrong. I mean I have owned the property for eight months now and I mean eight days ago was the first time I have heard about this.

Perry: We actually do not have an obligation when it goes to the planning board.

Varnell: That is correct.

Perry: We have taken it on ourselves to notify adjoining property owners rather than just post a sign.

Varnell: Correct. And run a publication.

Perry: We do that as a courtesy to make sure people like you get wind of what we are doing. Years ago they did not do that. All they did was post a little sign out and you probably would not have even seen it. We have increased the size of the sign and we made the planning director actually mail notices so we have done due diligence.

Varnell: You are correct. That is above and beyond what the statute requires.

Perry: Unless council decides to do something different I am not going to change anything right now as far as procedure. Your house has the big sand pile?

Dunn: Yes.

Perry: I thought that might be you. Is there anyone else out there that would like to speak? (No one came forward.) Let the record show no one else came forward.

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

Perry: Is what we have before us good for the Town as a whole as opposed to being bad for some people across the street believe it is bad for them. That is our question.

Bateman: We are talking about the same property that we were going to put a fire house on at one time.

Perry: That is why it was bought.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 10

Bateman: When you all purchased your property, it was zoned to have a fire house there. With sirens going off and interaction throughout the property all day long. A firehouse, EMS.

I understand the impact of property value when something happens to property that is beside you. We built this great house one time and all of a sudden they came and took all the trees down. I was so upset. I came home and my wife was crying and said look what they have done to our beautiful, beautiful place. They had a right to do that. It was zoned that way before I bought the property.

I am looking at this from the point of view of the Town. We are getting four lots valued at a total of \$426,000 and trading two lots valued at a total of \$213,000. The intensity level on the property is going to be a lot less than a fire house. I do not know what kind of medical facility but if it is open from nine o'clock in the morning until five in the afternoon that is better than waking up at three o'clock in the morning with a fire alarm going off.

Perry: I think I might have to correct one thing that you said. The property was bought by the volunteer fire department, but I do not think it was rezoned.

Varnell: No. It was not but the right to put a fire house there existed when these people purchased their home. It did not have anything to do with the zoning on it. It was BR-1.

Perry: And that is the way it would have shown up and the thing I want to clear up. We have a proposal to rezone this to add medical facilities and I understand your concern about the Regional Center sitting empty. I do not know what is going to happen with it. I do know they are fixing the roof.

I understand the concern about property values. On the other hand, we also have an obligation to provide medical services which right now we do not have simply because everything is shut down or went away and we do not know if it is coming back. Do we grab this opportunity or do we let it go by? Then at some point in the future, a future council perhaps, not this one, goes ahead and puts in a fire house that is two or three stories high and puts in all the accoutrements that goes into it. Or a police station.

Unless you have something else to add I need a motion one way or the other. We can table this and think about it for a month. We have the right to do that so that is an option.

Councilwoman McClean made a motion to grant approval of the application to rezone the properties at 5113 and 5117 Putter Lane from Beach Residential BR-1 to Emergency and Government Services, MS-1. Although inconsistent with the future Land Use Map in the Town's adopted Land Use Plan, Town Council has found that the request advances the public health, safety and general welfare of Kitty Hawk residents. Approval of the zoning map amendment is also deemed an amendment to the comprehensive plan. MPT provided a second and it passed unanimously, 5-0.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 11

Dunn: Why was I not notified in December?

Perry: We do not have an obligation to notify by mail. All we have is an obligation to post.

Dunn: I discovered the post and then the mail was followed up last week I guess.

Testerman: Both the posting, newspaper and mailing all happened after the January meeting. The mailings went out about two weeks ago.

9. PLANNING

a.) Schedule Public Hearing. Subdivision Variance: 4600 blocks of Lindbergh Avenue and N. Croatan Hwy. Requested subdivision variance would allow reconfiguration of six existing lots in a matter that would be inconsistent with ordinance requirements.

MPT Garriss made a motion to set a public hearing at the Town Council meeting on March 5, 2018 to consider the proposed subdivision variance from Kitty Hawk Beach Revised Section A, Block 36, Lots 33, 34, 35, 42, 43 and 44. Councilwoman McClean seconded and it passed unanimously, 5-0.

b.) Schedule Public Hearing. Text Amendment: 42-504(i). Staff is proposing a text amendment that would allow pool equipment to encroach into the side and rear yard setback.

Councilman Pruitt moved to set a public hearing at the Town Council meeting on March 5, 2018 to consider the proposed text amendment to amend section 42-504(i) regarding the encroachment of pool equipment into the side and rear yard setback. Councilwoman McClean seconded the motion and it passed unanimously, 5-0.

c.) Schedule Public Hearing. Text Amendment: 42-250(c)34. Multifamily dwellings. Requested text amendment would allow multi-family dwellings as a conditional use in the Beach Commercial (BC-1) district.

Councilman Bateman made a motion to set a public hearing at the Town Council meeting on March 5, 2018 to consider the proposed text amendment to add section 42-250(c)34 regarding the allowance of multifamily dwellings in the general beach commercial BC-1 district as a conditional use. Councilwoman McClean provided a second and it passed unanimously, 5-0.

10. UNFINISHED BUSINESS

a.) Text Amendment: Sec. 42-1, Definitions and proposed 42-528, Accessory Dwelling Units. The proposed text amendments would permit accessory dwelling units on residential lots provided certain requirements are met.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 12

Testerman reviewed the following updated staff report with council and said after a review and discussion of council's concerns from the December public hearing, the Planning Board did not propose to change much of the language. There are a few minor tweaks and they recommended denial. Council has before them the recommendation of the original language.

Proposal

The applicant has proposed a text amendment that would add the following language, allowing for an accessory dwelling unit on a residential lot.

42-1

Accessory dwelling means a secondary dwelling unit established in conjunction with and clearly subordinate to a principal single-family dwelling unit, whether part of the same structure as the principal dwelling unit, or as a detached structure on the same lot. The use of manufactured or mobile homes, travel trailers, motorhomes, campers or similar vehicles as an accessory dwelling unit is prohibited.

dwelling, two-family (duplex), means a detached building divided horizontally, or vertically, and designed for or occupied by two single-family housekeeping units contained entirely under one roof and having one dividing partition common to each unit, or having the ceiling structure of the lower unit the floor structure of the unit above. **A single-family home with an attached ADU meeting the size restrictions of 42-528(b) is not considered a two-family dwelling (duplex).**

Article VI. Supplemental Regulations

Sec. 42-528 Accessory dwelling units.

- (a) Accessory dwelling units may be attached (located within the principal residence) or in a detached structure on the lot, provided requirements for lot coverage and setbacks for the district are met.
- (b) Accessory dwelling units shall not be larger than 50 percent of the living area of the primary residence, or 800 square feet, whichever is lesser.
- (c) A detached accessory dwelling unit shall be located in the established rear or side yards, provided that the detached accessory dwelling does not extend beyond of the front of the primary residence.
- (d) Accessory dwelling units shall not be served by a driveway separate from that serving the principal dwelling.
- (e) One additional off-street parking space shall be provided for the accessory dwelling unit.
- (f) No more than one accessory dwelling unit shall be permitted on a single residential lot.
- (g) Detached accessory dwelling units shall not exceed 28 feet in height, measured from average original grade, or the height of the principal dwelling on the property, whichever is lower.
- (h) The owner must obtain a permit from the Dare County Environmental Health Department that indicates the septic system is sufficient for the increased occupancy.
- (i) Accessory dwelling units may be used for home occupation uses, in compliance with Sec. 42-522, but in no instance shall more than one home occupation be conducted or permitted on a single lot. Additionally, the accessory dwelling unit is not permitted to used entirely for commercial purposes.
- (j) Before obtaining a building permit for an accessory dwelling unit, the property owner shall file with the county register of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner stating that the accessory dwelling unit shall not be sold separately from the primary residence.

Background

The applicant has proposed the above language be added which would create a definition for and allow accessory dwelling units to be located on residential lots, in association with a primary single-family residence. As noted in the definition, manufactured or mobile homes, trailers, campers, motorhomes, etc. would not be permitted as an accessory dwelling unit.

Accessory dwelling units are a relatively simple idea, that has been around for years. The concept became less popular in the mid-20th century, but in recent years has begun to see an increase in usage across the country. Examples of an accessory dwelling unit would include an apartment over a garage, a separate smaller house located in the rear or side yard, or a lower level apartment.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 13

The popular reasons for building accessory dwelling units appear to mainly be for a rental income for the property owner, or to provide a place to live for aging parents or grown children who cannot afford a home of their own yet. Accessory dwelling units help increase housing supply, and allow for greater options for moderate-income earners, caregivers, etc. An additional benefit is while ADU's increase housing stock, there is no need for new infrastructure, as they can be connected to existing utilities.

According to the attached case study, "communities find that allowing accessory dwelling units is advantageous in many ways. In addition to providing practical housing options for the elderly, disabled, empty nesters, and young workers, ADUs can provide additional rental income for homeowners. ADUs are smaller in size, do not require the extra expense of purchasing land, can be developed by converting existing structures, and do not require additional infrastructure. They are an inexpensive way for municipalities to increase their housing supply, while also increasing their tax base." The case study goes on to state that providing this housing option also allows communities to retain population groups that might otherwise be priced out of the housing market.

As currently written, any accessory dwelling unit, if approved, would still be required to comply with minimum setback standards on the rear and side yards, and as noted in the proposed language would not be permitted to extend beyond the front of the primary residence. The lot owner wishing to develop an ADU would also have to work within current lot coverage requirements, 30%. Therefore, allowing an ADU might increase the amount of people living on a single lot, but it would not affect the allowed intensity of development on the lot. Potential issues that allowing ADUs could create would be a small increase in residential density and traffic in residential areas.

One additional concern with ADUs that could be built attached to the primary dwelling would be, by our ordinances definition, a duplex, which are only permitted in certain zoning districts. Sec 42-1 states "*dwelling, two-family (duplex)*, means a detached building divided horizontally, or vertically, and designed for or occupied by two single-family housekeeping units contained entirely under one roof and having one dividing partition common to each unit, or having the ceiling structure of the lower unit the floor structure of the unit above." This issue could be resolved by amending the definition of "dwelling, two-family" to include a statement that a single-family home with an attached ADU meeting the size restrictions of 42-528(b) is not considered a two-family dwelling (duplex).

dwelling, two-family (duplex), means a detached building divided horizontally, or vertically, and designed for or occupied by two single-family housekeeping units contained entirely under one roof and having one dividing partition common to each unit, or having the ceiling structure of the lower unit the floor structure of the unit above. **A single-family home with an attached ADU meeting the size restrictions of 42-528(b) is not considered a two-family dwelling (duplex).**

Additionally, it should be noted that our flood damage prevention ordinance dictates that accessory structures cannot have habitable space or be temperature-controlled. The definition of "accessory structure" in the flood damage prevention ordinance states that the structure's use "is incidental to the use of the principal structure." It is staff's interpretation that these accessory dwellings would not fall under the definition of "accessory structure", as the use is not incidental to the primary structure, rather it is a secondary residential structure. Staff has reached out to FEMA for confirmation on this interpretation, however at the time of writing, no confirmation has been received. Staff anticipates having more information before the meeting.

Currently, the town has been permitting a variation of "mother-in-law" suites in accessory buildings, typically done as living space over a detached garage. One stipulation currently in place is that the accessory living space cannot have any stoves, or connections for stoves. The Town's definition for "dwelling unit" is "one room, or rooms connected together, constituting a separate, independent housekeeping unit for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities for a single family." By prohibiting any stove or stove connections, the living space is not considered a dwelling unit because it has no independent cooking facilities.

Staff was requested to contact the Dare County Department of Environmental Health for their input regarding septic systems and whether the proposed language is compatible with their policies. According to Jack Flythe, Environmental Health Supervisor, accessory dwelling units are permissible, if the existing septic system has the capability to handle the increased usage, or if the existing system is not sufficient, they would be required by the health department to upgrade their system.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 14

In either case, the Town would require a permit from the Health Department stating that the system is sufficient, or that the owner is upgrading their system to handle the new usage. Mr. Flythe also noted that if someone requests to add an apartment or detached structure that has an additional dwelling unit it, based on current NC rules that govern on-site wastewater systems, the minimum daily flow rate will be at least 240 gallons per day for a one or two-bedroom apartment/unit. This is viewed as more than just an increase in bedrooms, as an accessory dwelling unit would typically have kitchen and laundry facilities included. To clarify, there are no rules or regulations from the health department that would prevent an accessory dwelling unit, but the system would need to be able to handle the increased demand or be upgraded.

At the December 4, 2017 Public Hearing, several concerns were brought up and staff was asked to take the proposal back to the Planning Board to address those concerns.

The first concern identified dealt with utility connections, and whether the Town can require a separate meter. After discussing this item with David Lewis, Building Inspector, it appears that setting a zoning requirement to require a separate meter would not create any conflicts with the building code, he added that it may make it easier for the property owner to rent out the ADU if there is a separate meter.

Another concern identified was that as currently written, the proposal would apply to all residential lots in the Town. Many properties between the highways, as well as ocean front lots are used primarily as vacation rentals. Accessory dwelling units, as intended by this ordinance may not be as appropriate in this area as they would be in more established long term residential neighborhoods. Although many of the lots between the highways would not be eligible to construct an ADU because of the lot coverage and flood zone constraints, the Planning Board was advised that ADUs could be limited to the village zoning districts in an effort to ease this particular concern. Another potential method to alleviate this concern would be to only allow ADUs on lots that meet a certain minimum square footage.

A third concern identified is the idea that many people who construct ADU's will be using them for short term rentals, and that this would open up the opportunity for rental income on every residential lot in town. While many property owners may indeed use an ADU for short term rental, every residential property owner in town already has the opportunity to have rental income on their property. This could come in the form of long or short-term rental of a full single-family home (or duplex or condo), renting out bedrooms within a residence (short or long-term), or by doing a mother-in-law suite (no stove) as currently permitted (short or long-term rental).

Finally, the concern was raised that property owners may abuse the system, and house many more people than permissible within the ADU for seasonal workers. To be clear, this same issue is a potential in a detached single-family dwelling. To police this, the Town relies on either witnessing the activity, or getting calls from neighbors, at which point, we would investigate and begin procedures to bring it into compliance. After discussions with the Town Attorney, staff suggested additional language to subsection (h) that clearly spell out that it would be a violation of Town Code, as well as a violation of the septic permit, to have more people living on the property than permitted by the septic permit. The staff proposed language would add the following sentence to the end of proposed subsection (h) above: **Total occupants residing on the property shall not exceed the number specified by the septic improvement permit.**

The concept of the Town offering tax incentives to those property owners who would restrict ADU usage to long term rentals has also been brought up. This could potentially be done through the zoning code or as a standalone Town policy approved by Council.

Consistency with Land Use Plan

The following policies and objectives relevant to this application are stated in the CAMA Land Use Plan:

Policy #17a: Kitty Hawk will continue to adapt, enforce, and amend as necessary ordinances and procedures to regulate residential development and redevelopment. The town supports applicable state and federal laws and regulations regarding building, land uses, and development.

Policy #17b: Detached residential structures are the preferred type of residential development.

Objective #17a: Ensure the continuance of established residential development patterns.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 15

Objective #17b: Ensure future development is consistent with adopted goals, objectives, and policies and regulations including building code requirements and is in character with existing development with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

Planning Board Recommendation

At the October 26 Planning Board meeting, the proposed text amendment was recommended for approval by a vote of 3-2 in favor. At the January 25, 2018 Planning Board meeting, the revised text amendment was recommended for denial by a vote of 3-2 (excerpt of minutes is attached).

As it currently stands, since Town Council is still acting on the December 4 public hearing, there is a standing recommendation of approval of the original language, and a recommendation of denial of the revised language. Should Council feel it appropriate to significantly change the language in a potential approval, a new public hearing will be required.

Testerman: It got a little confusing because there was initially a recommendation of approval. When it was sent back the revised text got a recommendation of denial. We are working from the original public hearing that had a recommendation of approval and a recommendation of denial of the amended language. If you want to make any other additional changes you need to amend the motion. If there are significant language changes, we may require a new public hearing and I will let the attorney decide what is significant.

Perry: I notice home occupation is new.

Testerman: We allow home occupations on any residential lot now. This language is to try and clarify there will only be one home occupation allowed on a property.

Perry: Could that be dropped off the ADU? In other words, I can see it encouraging people to build an ADU for that purpose and keep it out of their home. Is it possible to drop that out of our motion? I do not know if council agrees with that but ...

Varnell: If there is already an occupation going on within the primary they are not going to be able to do it in the secondary. We could drop that and still have the protection that our ordinance provides.

Pruitt: Rob if the business is in the ADU does it have to be the property owner that operates the business or can that be rented out? I live up front and I rent my building out back as a home occupation.

Testerman: I believe the way the home occupation ordinance is written is that the owner of the property must own the home occupation as well.

Pruitt: The homeowner would be the one asking for the home occupation permit to operate a business out of there?

Testerman: Yes.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 16

McClean: You have somebody that owns a house and they have a home occupation. They are a writer and they never leave their house. They sit with their computer, no clients, no customers, nothing basically. They put up an ADU and an artist comes to live there. Does that mean the artist cannot produce paintings or sculpture or something out of their residence because there is already one occupation on the property?

Testerman: The way it is currently drafted. Assuming both the writer and the artist come seeking a home occupation permit.

McClean: So now you are infringing on people's ability to generate income. I do not think we want to be involved in that.

Testerman: Perhaps it can be tweaked.

Perry: Here is the reality folks. There are contractors and other people using their home as a home occupation and it is not declared. It may be nothing more than using a telephone. That has been going on as long as people have had telephones. If we leave the language in will that be an encouragement for somebody to build an ADU specifically for a business? Even though they are not planning to do a business in their own home. That was the only reason I had a concern for that.

McClean: Putting a business building on their property.

Perry: That might be the reason they are doing it rather than a residence for a worker.

McClean: They are not really going to have someone living in it then. It is not an accessory dwelling unit it is an accessory business unit.

Perry: I think we are getting too far in the weeds on that. Let's move on and come back if we need to.

McClean: Okay.

Bateman: I am for this. My only concern, and I brought it up at the last meeting, is if there are ten people living in one. Can we limit the amount of people that live there and limit the time it would be rented? It would encourage affordable housing. We do not want the Airbnb's because that is taking away from the folks who need it.

Varnell: We get into the world of regulating the rental market and that is a question you must ask yourself. Do we want to do that? We know case law is very clear. We cannot limit bedrooms. The Supreme Court has said you cannot say a house can only have two bedrooms or a house can only have three bedrooms. My fear with limiting it to a number of people is if it is backdooring the whole bedroom issue. But that is where the septic and square footage are supposed to come in and limit without us saying two people, three people, two or three bedrooms.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 17

Bateman: If somebody wants to do this and they have three bedrooms they can add one without an additional line for sewage. If they have four bedrooms and they are going to five they must have a repair area and perhaps other criteria must be met. I guess we are getting what I wanted which is limiting the amount of people that are going to be in that accessory dwelling.

Varnell: Absolutely and I think lot coverage is always going to be a huge issue in my opinion in these types of things. I think that is what is going to stop many lots in our Town from being able to even accommodate such a unit. With all the other regulations in place I think we are already there and limiting the square footage is something that is going to assist.

Bateman: I think what we are doing is addressing what the folks from the affordable housing committee were trying to get us to do. Creating affordable housing for people and it can be controlled by a single homeowner.

Perry: If you have an acre of land you must subdivide it into two lots but with this ordinance you can have two full size houses. An owner needs to be very careful in putting in an ADU because it says "before obtaining a building permit for an ADU, the property owner shall file with the county register of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner stating that the ADU shall not be sold separately from the primary residence". You have just locked up an acre or however much land you have when you do that. Am I correct?

Varnell: Unless it was possible to subdivide and create two separate units and meet Town approval. It is locked up to a certain extent.

Perry: On the other hand, it would be awfully nice for somebody like myself who has enough land to put an ADU on and be able to accommodate relatives. Which has happened on that land before. An 80-year-old grandmother I had was living in St. Pete, did not want to be there and decided she wanted to come home to Momma. She stuck her thumb out in Florida and hitchhiked her way to North Carolina. When she got here we needed to do something with her, so we bought a trailer and put it next door to Momma's house. Plumbed it in and she was good to go. She was independent enough to be happy and still somebody was there to take care of her. So, an ADU serves a purpose. I am for this. And it allows you to do something like I just described without subdividing your property two or three times and all the expense that goes with that.

Garriss: My feelings have not changed since the last meeting. I think with the right restrictions and requirements in place this can be a good thing for Kitty Hawk and Dare County. I think it can be a good thing for a lot of people.

Pruitt: It seems to me we are going to increase the amount of activity in the Town. Like I said very few people are going to do it, but I think we are opening the door to a lot of people building rental incomes in their yard.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 18

I have talked to several people about this and they understand, we all do, everybody would like to have a place out back that they could use for company or a guest but in reality I think a lot of people ... instead of having one neighbor on each side now they have the potential of a neighbor on each side plus a rental income.

I have enough property and am sure I could put one on mine and I probably will if this is adopted. I am going to jump on board. My mother has one already at her house and it would be very easy to convert hers into a rental income and most likely that will probably happen too.

That is what I am afraid of. I am afraid that a lot of people are going to take this as an opportunity to Airbnb or VRBO. I worry about the added trash pickup, added police patrol, the added things that come with added dwellings. That is my concern. We have always tried to keep it low density. I understand we have a need for this, I just don't know if it should be in everybody's yards.

McClean: I do not like the wording of what we have. Conceptually we need more places for people to work and live. We do not need Airbnb traffic behind every house. And yes it is a whole lot more attractive to get \$100 or \$200 a night with your accessory unit than to rent it out to someone for \$600 to \$900 a month but then with the Airbnb traffic you also have all the services that people who have rentals on a daily basis get at hotels and different places. Who is going to make sure that the guests that come to the Outer Banks have the things the health department makes sure they have at hotels and motels and different places.

The other problem I have is with trying to regulate home occupations. If you are trying to attract people for long term living, then why are we getting involved with home occupations in two different homes. I cannot understand why the Town would want landlords to get involved in tenant's income. I think it is going to be an administrative nightmare and an enforcement disaster.

Garriss: Who knows how much we have of this going on right now that we don't even know about.

Bateman: There is a need for housing big time. I have people call me all the time and want to come to work but have no place to live. I lost a chef because the cheapest thing she could find in Manteo was \$1,700. She is a single mom with a child and did not come to work because she could not afford it.

I have a problem with the home occupation too. If you take that out I'm probably good with it.

Most likely none of these can be put anywhere from Sea Scape to the ocean. So we are talking about the village.

Perry: Pretty much. And very limited there.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 19

Stewart: The ordinance talks about not exceeding the 30% lot coverage so many of those houses on the beach I am sure are maxed out.

Pruitt: Most of this is going to take place back in the residential area of the village because that is the only place people have land and that is the people I talk to that have concerns about this.

Some have concerns with the problems of getting people that were renting out of their house and having trouble with bad tenants next door. Afraid to leave their place because windows were going to get shot out while they were gone and now they say they might have two of them next door to them.

Others have said that is the reason they came here because it is a single-family place instead of duplexes. One of them was the person that lived out on a piece of property that was wanting to be zoned for a duplex off Tateway. It sounded to him like this is duplexing in another way.

I think people have concerns of somebody renting it and now they have a bad bunch of renters out front and a really bad bunch of renters in the back. Instead of just one group of renters now you have possibly two on each side of you.

There are places up on Tateway that have lots big enough up there. Some pretty deep lots off of West Tateway that could house ADU's.

Perry: To summarize, several of you are concerned about Airbnb rentals, disrupting the density and home occupations within the ADU. Right now, it can be in either/or but not both.

McClean: If you rented a house and you wanted to have a home occupation you talk to the Town. You do not talk to your landlord.

Varnell: It is not going to be as simple as removing that portion from this ordinance because under our ordinance right now only one home occupation is allowed on any given parcel in Town.

Let's say there is a home occupation in the primary residence. By our ordinance right now there can be no home occupation in the ADU. The approach would be to add something that states we take exception to the portion of our ordinance that only allows one home occupation on one lot and ADU's are allowed. Do you see what I am driving at?

McClean: That would be fair to everyone.

Bateman: And let's face the facts. There are home occupations all over the Town of Kitty Hawk. People are doing it every day and they have not applied for it and they are not going to apply for it.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 20

Perry: Let's make sure we are clear. It says "accessory dwelling units may be used for home occupation uses in compliance with Section 42-522 but in no instance shall more than one home occupation be conducted or permitted on a single lot. Additionally, this accessory dwelling unit is not permitted to be used entirely for commercial purposes". In essence it is either/or and the only question I see that you had was if the renter of the ADU wanted to have a home occupation he has to go through the home owner and the home owner can come in and get it for him.

McClean: Exactly but if the homeowner already has ...

Perry: Then he cannot do it.

McClean: Then his tenant cannot.

Perry: You want them to both have it the ability? You want two home occupations?

McClean: If they can make it work within the ordinance they each should be allowed to.

Perry: I don't know if I agree with that.

Stewart: The existing ordinance only allows one home occupation so if we want to address that we would need to bring it back.

McClean: And what limits it is the amount of traffic going in and out, parking places and if both occupations have no traffic they are not impacting anything.

Perry: I am clear on what you want. I am not sure I agree with it. Anyone else? Are we ready to make some sort of motion?

MPT Garriss made a motion to approve the proposed text amendments to amend Section 42-1, Definitions and add the proposed 42-528 allowing accessory dwelling units as a permitted use on residential lots provided that the listed requirements are met. Town Council has found this proposal to be consistent with the Town's adopted CAMA Land Use Plan and finds these amendments to be in the public interest. (Added to this motion: "total occupants residing on the property shall not exceed the number specified by the septic improvement permit".)

Perry: I want to check with Rob. He recommended we add "a single-family home with an attached ADU meeting size restrictions of the code is not considered a two family dwelling". Is that included?

Testerman: Yes.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 21

Perry: The second thing was the “total occupants residing on the property shall not exceed the number specified by the septic improvement permit.” Is that also a part of this?

Testerman: No. That was what was taken to the planning board in January and was recommended for denial. If you want to add it, you must amend the motion to add the statement.

MPT Garriss amended the motion to add “total occupants residing on the property shall not exceed the number specified by the septic improvement permit.”

Councilman Bateman provided a second and added he understands Jeff’s concerns but thinks many of them have been addressed.

Councilwoman McClean said another problem is when the main residence is rented, and an absentee landlord builds an accessory dwelling unit and rents it also. There are now two people renting on one property and that is a potential for problems.

The vote was 3-2 with Councilmembers McClean and Pruitt voting no. (Ordinance No. 18-02)

11. NEW BUSINESS

a.) Resolution Opposing any Change in the Definition of a Commercial Fishing Operation

Councilman Bateman moved to approve the resolution. Councilman Pruitt provided a second.

Pruitt: Many of you know I am a commercial fisherman. Trying to come up with a number to say I am not really hurts my feelings as much as I have put into it. There are many things that they have come up with that really bothers me. You might have somebody that has stock or another income of some kind and now you must show that 50% of your earned income must be through commercial fishing. You could be in some other kind of business and have a bad year crabbing and suddenly you are not a commercial fisherman.

The 36 trip tickets per year ... a man is going to have to go every day for a little over a month. I do not think a commercial fisherman will have that hard of a problem with trip tickets. A trip ticket is basically when you sell your product to a dealer and he fills out what is called a trip ticket. It lets the government know what exactly has been caught, what body of water, how many, how much bait and on and on.

A lot of people had commercial licenses, but they never felt the need to have the license to sell. They used their commercial fishing license like a lot of people do just for their selves. To go pull a net and give what’s caught to their family and friends.

Kitty Hawk Town Council Minutes: February 5, 2018

Page 22

There came a time, maybe 15 years ago, when out of the blue, if you did not have this license to sell you could not get a commercial fishing license anymore. My father lost his which I did not think was fair at the time and I still don't.

It seems like what is really taking place is they are really trying to get rid of the commercial fishermen in North Carolina. I mean it is harder and harder for guys like me to make a living. I mean it. And the price of the licenses keeps getting higher and higher.

If we do away with all of us commercial fishermen and the dealers we are all going to be buying our seafood from overseas. There has got to come a time when everybody realizes what we are giving up. The whole seafood industry is taking a beating right now. It is very hard for a crabber now to compete with foreign crabmeat. As far as selling crabmeat like we did in the '80's compared to right now it is completely changed. The foreign meat and products that has gotten in the commercial fishing business ... it is making it tougher and tougher and by them putting all these restrictions ... once again, to me, it is just one way to try to get us out so that the bigwigs that sell to the big chain stores ... people ask me now where they can get something fresh and I tell them just like the rest of us go to Wal-Mart. It's in a bag up there. That is where we are all going to be getting it in the long run if we do not put an end to stuff like this now. This truly does affect me, and I am sure it affects Ervin who is in the restaurant business.

It is a part of our heritage here. Whether we get rich or we go broke it's in our blood and for them to try and tell us we are not commercial fishermen is a slap in the face.

Bateman: I agree with Jeff 100%. I am a licensed commercial fish dealer. I got my license 20 some years ago. I also had a commercial fishing license but when I sold one of my boats I sold the license along with it to a guy down the street. He and his son wanted to go fishing and wanted to preserve the Kitty Hawk way of doing things. He wanted his son to be able to have a license at some time. You can pass it on and he wanted it to be part of his family.

Ernie Foster, today at the commissioners meeting, said they are taking away a way of life that our families have done for years. They have had Albatross Fishing Business for 87 years and he said they are killing them every day.

In my restaurant we buy 45,000 pounds of one size of shrimp a year. We used to always buy Carolina shrimp, but we cannot get 45,000 pounds now. We used to buy 15,000 pounds of flounder every year and we bought all our stuff from Willie Etheridge in Wanchese. He takes care of his customers, has great quality stuff, good and fresh but they cannot supply the people with the fish. They have limits.

It is a trickledown effect. It is affecting Jeff, my paycheck at the Sugar Creek, everything on the Outer Banks. They are destroying slowly but surely everything that our families have lived for. I am for the resolution and I think everybody in Kitty Hawk and North Carolina ought to be for it too.

Kitty Hawk Town Council Minutes: February 5, 2018
Page 23

Perry: As a native I have worked the water in one form or a fashion all my life. When they first came out with the limited license I went and got one because I wanted, even though at the time I was not fishing commercially, I figured I would at some point retire and come back and continue what I had done most of my life. More important I wanted to be able to pass it on to the generations that came after me. I have held onto it even though the price has gone up to \$400 for the license.

The bottom line is this is a bald face attempt by commercial fishing activities to get a monopoly on the fisheries. They claim they are going to save the fisheries by doing this but ... take me as an example. They say there are 4,000 licenses out there that people are not reporting trip tickets on. Basically that is what they are basing it on. They say it is big, rich pleasure boat people that just want to exceed the limit.

A crabber today is averaging how many pots per individual?

Pruitt: Hard crab pots, a one-man boat is usually running about two hundred fifty. That is about the most he will be able to fish. Two hundred to two twenty-five. He will let twenty-five set and soak for the next day. We must be back at the dock at 2 o'clock. You start at dark, you cannot pull a pot before daylight. That's pretty much across the board here. I am not sure about inland, what time they have to be in.

That is for a single rig. Some of the big boats are fishing, if they have two or three men, will fish three-fifty to four hundred.

Perry: So, you take a person like me. I might go out and fish ten pots. There are many people that do not have that many pots in the water, so we are not raping the fisheries.

Pruitt: I actually have two commercial licenses and the reason is because I am afraid of what they are going to do. Let's say they tell me I cannot have but 100 pots per license. Well I can't make it on a hundred pots, so I hold two licenses. I do trip tickets on both of them to keep them active, but I am paying twice just to make sure I can get by.

Perry: We all agree this is a political ploy to try to keep the commercial people out of the fisheries? Guys that want to cast lines can have it all for themselves.

All in favor? **Vote was 5-0 to approve the resolution.**

b.) Large Item Pick-Up Pilot Program

The Town has scheduled a large item pick-up for the following dates during 2018: February 26th, May 21st, September 24th, November 19th. If the program is successful and continues the dates will be updated annually. It is requested residents notify the Town through email (preferred) info@kittyhawktown.net or telephone 252-261-3552.

c.) Approve Grant Application to N.C. Recreational Trails Program for Sandy Run Park/Kitty Hawk Park Trail Connections

This was discussed and recommended by the members of the NC Coastal Reserve Local Advisory Committee. The proposed trail connections provide connectivity between the two exiting parks and provides additional access to a two and one-half mile nature trail located in the Kitty Hawk Woods Reserve. The total cost of the project is \$125,000 and the Town is seeking \$100,000 in grant funds. The Town is required to provide a 25% cash or in-kind match.

Councilman Bateman made a motion, seconded by MPT Garriss, to approve the grant application to apply for \$100,000 grant for the Sandy Run/Kitty Hawk Park Trail Connection through the NC Recreational Trails Program. The vote was unanimous, 5-0.

12. TOWN MANAGER

Multi-Use Paths: RPC has begun working on repairing and repaving the paths.

Ditch/Canal Cleaning: Work has begun on cleaning out the ditches.

13. TOWN ATTORNEY

Attorney Varnell tipped his hat to the police department. His child recently set off their home security system and it caused the police to show up because they did not know it had been set off. He received a notice of violation from the police department telling him he had not registered the security system. That is part of our Town Code. He has since registered it wants everyone to know the police department is doing their job.

14. TOWN COUNCIL

Councilman Pruitt said council received nice compliments from people on how hard staff worked during the snow and ice storms.

MPT Garriss said it has been an interesting meeting and has the upmost respect for his fellow councilmembers.

15. PUBLIC COMMENT

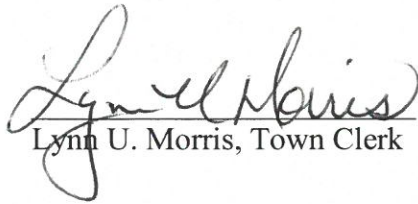
There were no public comments.

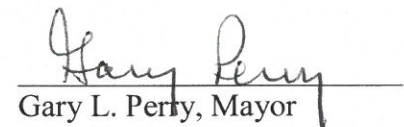
Kitty Hawk Town Council Minutes: February 5, 2018
Page 25

16. ADJOURN

MPT Garriss made a motion to adjourn the meeting. Councilwoman McClean seconded and it passed unanimously, 5-0. Time was 7:46 p.m.

These minutes were approved at the March 5, 2018 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor

