

**KITTY HAWK TOWN COUNCIL
MINUTES
Monday, February 7, 2011
Kitty Hawk Town Hall, 6:00 PM**

AGENDA

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. The GEM Center, Inc. Presentation
5. Public Comment
6. Consent Agenda:
 - a. Approval of Minutes. January 10, 2011 Regular Meeting
 - b. Revenues and Expenses Report for December 2010
 - c. Tax Pick Ups and Releases
 - d. Acceptance of Donation
 - e. Report of Deposits and Investments
 - f. FY 10-11 Budget Amendment
7. Items Removed from the Consent Agenda
8. Public Hearing:
 - a. Text Amendment - proposal to add Section 42-527, *Small Wind Energy Facilities*, to the Kitty Hawk Town Code outlining standards for the establishment of wind energy facilities up to 35 feet in height and 20kW capacity as a conditional use in any zoning district.
 - b. Conditional Use Permit: Application for a conditional use permit to establish a commercial crabbing operation in a Village Residential (VR-1) zoning district on the property adjoining the applicants' residence at 3860 Moore Shore Road.
 - c. Conditional Use Permit: Application for a conditional use permit to establish an open air farmer's market and a variety of retail uses within the existing building in a Beach Commercial (BC-2) zoning district on the former Foreman's Lumber property at 4100 N. Croatan Highway.
9. Return to Regular Session (Council Action for Public Hearings)
10. Planning:
 - a. Call for Public Hearing. Zoning Amendment: Proposal to rezone four (4) parcels at 4907, 4911, 4915, and 4919 Putter Lane (located in the 4900 block of N. Croatan Highway) from Beach Residential (BR-1) to Beach Commercial (BC-1). The public hearing is requested to be scheduled for the March 7, 2011 Town Council meeting.
11. Unfinished Business:
 - a. Amend Section 4-5, *Commercial and noncommercial uses of horses; keeping horses*, with minimum standards for the size of and setbacks for horse shelters and enclosures.
12. New Business:
 - a. Recreation Master Plan Update.
 - b. Storm Drainage Study Agreement for Professional Services.
 - c. Fire Department Capital Outlay Request.
 - d. Police Department Capital Outlay Request.
13. Reports or General Comments from Town Manager
 - a. Report on expenditures to date on E. Kitty Hawk Road Sidewalk Project

Kitty Hawk Town Council Minutes: February 7, 2011

Page 2

- b. Compliment from Southern Shores on assistance from Officer Becky Terry
 - c. Compliment from Debbie Turko about the Town's Ocean Rescue
 - d. Report on the transition of the Fire Department radios to the 800 mhz system
 - e. Compliment from Adrienne Palma, Principal, Nags Head Elementary
14. Reports or General Comments from Town Attorney
15. Reports or General Comments from Mayor and Council Members
- Recreation Committee Update. *Councilwoman Klutz*
16. Public Comment
17. Recess

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, Finance Officer Mike Eubank, 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 approximately 6:00 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

After a brief welcome a moment of silence was held followed with the recitation of the Pledge of Allegiance.

3. APPROVAL OF AGENDA

MPT Perry moved to approve the agenda as promulgated. Councilwoman Klutz seconded and the motion carried unanimously with a vote of 5-0.

4. THE GEM CENTER, INC.

Ms. Gail Sonnesso, Executive Director, thanked council for allowing her to speak on dementia and the care for people with dementia. Right now there are 5.3 million people with dementia in the United States. With one hundred and seventy two billion dollars in actual costs, it is the 6th leading cause of death, and of the top 10 it is the only one that is increasing. They are doing better at preventing and prolonging life than the other ones and there are 10.9 million unpaid caregivers in the United States. Alzheimer's disease has a lot of advocates for research but there is very little funding for families who choose to keep their loved ones in the home and in the

Kitty Hawk Town Council Minutes: February 7, 2011

Page 3

community. Very little translates to none because it is considered custodial care. Our health care system is based on a medical model and custodial care does not qualify for any kind of assistance in dollars.

That is where The GEM Center comes in. They provide 24 hours of direct care for people with dementia every week and that gives 24 hours of relief to their caregiver. But sad to say GEM has been homeless for two years and they have been searching actively for a home and have not at this point in time found one. They will be closing. Our last day of service will be Saturday, March 26th. Hopefully something will come up but at that point in time they are going to have to stop our direct respite care. They are opening a new program in September called the Supper Club and are hoping this new model will address caregivers and families.

Mrs. Sonneso reviewed a survey that was sent out on the subject of Alzheimer's and the results. She announced a "Caring Effectively" class to be held at Holy Redeemer by the Sea. The class will begin on February 22nd.

Kelsey Griggs said she began volunteering at GEM when she was 13 and has worked there since she turned 14 years old in June 2010. She loves working there, all of the participants and staff. You have to know how to exercise, to play games, and how to talk with them. GEM is a very fun place to be.

Concluding, Ms. Sonneso said Alzheimer's is a terminal disease. They do not know what causes it or how to cure it but if you are diagnosed early there are medications that improve the quality of your life.

5. PUBLIC COMMENT

1. Kip Tabb, 3872 Elijah Baum Road, Kitty Hawk. Mr. Tabb said limiting the number of wind turbines to one per residential property as described in text amendment section 42-527 Small Wind Energy Facilities ignores the trends of history, the evolution of technology, and in my opinion common sense. If you approve this amendment as written you will insure future town councils must revisit this issue with the same debate and the same rhetoric all over again. We do not know what the future of residential wind energy holds. Simply because at this point in time you do not feel that multiple residential turbines can be placed on a property does not mean that it will be the same in the future. What happens if new technology and new materials make turbines smaller and quieter? What happens if someone overcomes the problem with vibration which is the main impediment of mounting a turbine on a roof and it becomes practical to mount two or three turbines on a roof? What is perhaps most puzzling is limiting the language in this. Both council and the planning board agree that residential wind turbines shall be a conditional use. If you do not wish an applicant to have multiple turbines you do not have to approve the permit application. But to relegate future town councils, regardless of changes in technology, to the standards of 2011 is to relegate a future town council to walk this path a second time. As I was going through this I had an idea and may I suggest that you include

Kitty Hawk Town Council Minutes: February 7, 2011

Page 4

language requiring a review in one or two years of this process. If you do not wish to change the actual language perhaps you could include something that would require future town councils to review this again because this technology is clearly changing and changing radically. Thank you very much for your attention.

6. 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.** January 10, 2011 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*
- b.) **Revenues and Expenses Report for December 2010.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- c.) **Tax Pick Ups and Releases.** *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- d.) **Acceptance of Donation.** Beverly Trotman made a \$100.00 donation to the Kitty Hawk Police Department. *(Approval of the Consent Agenda will accept this donation.)*
- e.) **Report of Deposits and Investments.** This semi-annual report to the Local Government Commission, as required by G.S. 159-33 and 115C-446, shows where and how the Town's finances are deposited and invested. It is Town policy for the Finance Office to report this to the Town Council after the report has been filed. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*
- f.) **FY 10-11 Budget Amendment.** This budget amendment to the Capital Reserves Fund will recognize and allocate accrued interest earnings proportionately in the amount of \$6,900.00 to funds restricted for purchase of VIPR Communications Equipment with a total ending balance of \$246,900.00. Remaining accrued interest in the amount of \$9,600.00 will be added to the Fire Truck reserves providing a total outstanding balance of \$328,906.00. Approval of this action further authorizes the complete transfer of outstanding VIPR funds in the amount of \$246,900.00 into the General Fund for the purchase of the VIPR Communications Equipment. The remaining restricted funds in the amount of \$328,906.00 will remain in the Capital Reserves Fund for the future purchase of a fire truck. *(Approval of the Consent Agenda will approve this Budget Amendment.)*

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

7. ITEMS REMOVED FROM THE CONSENT AGENDA

No items removed.

8. PUBLIC HEARINGS

MPT Perry made a motion to go into public hearing. Councilman Bateman seconded. The motion passed unanimously, 5-0.

a.) Text Amendment - proposal to add Section 42-527, Small Wind Energy Facilities, to the Kitty Hawk Town Code outlining standards for the establishment of small wind energy facilities up to 35 feet in height and 20kW capacity as a conditional use in any zoning district.

Michael: *At this time we will begin the session for public hearings. The first public hearing is on the text amendment proposal to add Section 42-547, Small Wind Energy Facilities, to the Kitty Hawk Town Code outlining standards for the establishment of small wind energy facilities up to 35 feet in height and 20kW capacity as a conditional use in any zoning district. The public hearing is open and anyone who wants to speak or present evidence at this public hearing needs to come forward and be sworn at this time.*

At this time Town Clerk Morris administered the oath to Planning Director Joe Heard.

Heard: *Thank you Mayor Perry and members of council, members of the public in attendance. Just want to summarize the request that the council has before you this evening. The proposal... the amendment is substantially similar to an amendment that an applicant proposed to the council that was last considered several months ago. At the time the council considered that proposal the council noted a couple of key items where you felt differently than the applicant's proposal and instructed the staff to go back and tweak that proposal a little bit and come back with some wording and we have done that.*

At some previous meetings where the council has had opportunity to review that and those particular concerns expressed were: 1) that small wind turbines be permitted only as a conditional use in all zoning districts. 2) that no more than one wind turbine be permitted on any property, and 3) a concern expressed at that meeting had to do with noise. Staff, working with the town attorney and getting input from the council, has drafted a proposal that meets all of those concerns. This was presented to the planning board at its meeting on December 9th. The board did vote unanimously to recommend approval to the council of an alternative text amendment that would require a conditional use permit for all wind energy facilities but would permit multiple wind turbines on a single property. That is not what is being proposed tonight but I am... just for the record to explain the planning board's recommendation. I would certainly be glad to answer any questions as part of the hearing if the council has any about the proposal. Thank you.

Kitty Hawk Town Council Minutes: February 7, 2011

Page 6

Michael: *Is there anyone else who wants to speak at the public hearing? There appears to be no one else. You are free to discuss it at this point among yourselves if you want to or do you want to wait and do all three of them at the end?*

MPT Perry: *The only thing I would add to the gentleman who spoke about limiting it to one, we recognize that future councils may well come back and visit this. What we are trying to do is in addition to giving something that can start and be put in place also protect neighbors and see how they like it and whether or not it is accepted in the general community. If that is the case and as circumstances and technology increase the venue then every council that comes after us can certainly revisit. They do not have to rehash the whole thing. They can simply go back and modify what we have done. But right now we are really trying to make sure we protect neighbors and neighborhoods and we are certainly open to progression. At least I am.*

Mayor Perry: *Do you want to go ahead and take it up now?*

MPT Perry: *I am ready. (Other council members said they were ready also.)*

Michael: *I would suggest you make a motion to close the public hearing on this item, go into deliberations, and then make your motion.*

Councilwoman Klutz made a motion to close the public hearing on the text amendment to add Section 42-527 Small Wind Energy Facilities to the Kitty Hawk Town Code. Councilman Bateman seconded. (There was no vote.)

MPT Perry moved to add Section 42-527 Small Wind Energy Facilities to the Kitty Hawk Town Code outlining standards for the establishment of smaller wind energy facilities. Town Council finds this amendment to be consistent with the Town's adopted CAMA Land Use Plan and in the public interest by providing appropriate safety standards and safe guards for the use of wind energy in the Town of Kitty Hawk. Councilwoman Klutz seconded the motion.

Hearing no further discussion, Mayor Perry called for the vote.

Vote was 5 in favor and 0 opposed. (Ord. No. 11-02, Att. #1)

:

b.) Conditional Use Permit - application for a conditional use permit to establish a commercial crabbing operation in a Village Residential (VR-1) zoning district on the property adjoining the applicants' residence at 3860 Moore Shore Road.

Michael: *Mr. Mayor the next item is a conditional use permit. An application for a conditional use permit to establish a commercial crabbing operation in a Village Residential (VR-1) zoning district on the property adjoining the applicants' residence at 3860 Moore Shore Road. Anyone*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 7

who wishes to address the council or present evidence in that matter, please come forward and be sworn.

At this time Town Clerk Morris administered the Oath to Planning Director Joe Heard.

Heard: *Thank you again mayor and council. Tonight there is a conditional use permit application for your consideration for a commercial crabbing operation at 3860 Moore Shore Road. The proposed use would consist of 36 shedders, 2 pumps, and a cooler box. In looking at the ordinance requirements for this type of use in a residential district I want to highlight a few of the key aspects of this proposal for you. The planning board and staff have found that the proposal does comply with all of the standards of the ordinance. But just for the record note that the crabs raised here would not be sold, processed, or otherwise distributed on this premise. There was a question brought up at the planning board regarding the lighting of this. Like many similar operations the plan is to light this with a single string of bulbs going over the shedders at a fairly low level so there is not a lot of glare or dispersion of light onto other properties. The planning board was comfortable with that once they learned how that was going to work. The proposed use would be limited under the proposal to 3 members of the applicants' family who would be involved in this operation. They do have their own boat which is not docked on this particular property. The applicants are not proposing any additional screening or buffering as part of this proposal. Most of the neighboring properties where the residences are on those properties are already screened by trees or buildings or such so that is not part of the proposal. I did also want to note since the last staff report the applicant has successfully obtained his CAMA minor permit for the proposed use. Staff does have a copy of that permit that has been issued. For the record the planning board at their meeting on December 9th voted unanimously to recommend approval of this application.*

Michael: *Any questions of Mr. Heard? Is there anyone else who wishes to speak at this public hearing? There appears to be no one else. I would suggest that you make a motion to close the public hearing and then go to a deliberation and vote.*

Councilwoman Klutz moved to close the public hearing for the conditional use permit for Ambrose commercial crabbing operation on Moore Shore Road and MPT Perry seconded. The vote was unanimous, 5-0.

Councilman Bateman made a motion to grant approval of the conditional use permit application to establish a commercial crabbing operation on the property adjoining the applicants' residence at 3860 Moore Shore Road. Town Council finds the approval of this conditional use permit consistent with the Town's adopted CAMA Land Use Plan and in the public interest by permitting a local family to engage in a traditional business with a suitable setting. Councilwoman Klutz seconded and the vote was 5 in favor and 0 opposed.

c.) Conditional Use Permit - application for a conditional use permit to establish an open air farmers market and a variety of retail uses within the existing building in a Beach Commercial (BC-2) zoning district on the former Foreman's Lumber property at 4100 N. Croatan Highway.

Michael: *Mr. Mayor the third item is a conditional use permit and is an application for a conditional use permit to establish an open air farmers market and a variety of retail uses within the existing building in a Beach Commercial (BC-2) zoning district on the former Foreman's Lumber property at 4100 N. Croatan highway.*

Before beginning that public hearing there is a matter council needs to address. Councilman Bateman needs to recuse himself from participation in this public hearing on this particular project. He and Mr. Cahoon have had some conversations and based on those he would need to recuse himself. This is a conditional use hearing, a quasi-judicial hearing. We all forget sometimes the difference between legislative hearings and quasi-judicial hearings. We are so used to talking to people but because that has occurred he would need to excuse himself. That requires a motion, a second, and a vote to allow him to be excused from participation in this hearing.

Councilwoman Klutz moved to allow Ervin Bateman to recuse himself from the public hearing on the Foreman property. MPT Perry offered a second. Vote was 4 in favor and 0 opposed.

Michael: *Mr. Bateman is excused from participating in this hearing. Now, anyone who wishes to address the council, present evidence, or speak at this public hearing on this conditional use permit, please come forward and be sworn at this time.*

Morris: *Excuse me. Attorney Michael should we open the public hearing back up first?*

Michael: *No, we have already opened the public hearings.*

Mayor Perry: *We only closed the section at a time.*

Klutz: *Can everyone be sworn in at once or do they have to be sworn in....*

Heard: *You will need that big Bible, the family one. (Laughter)*

Clerk Morris provided the oath for the following: Planning Director Joe Heard, Ben Cahoon, Brynn Waite, Henry Barker, and Robbie Busby.

Michael: *All right Mr. Heard.*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 9

Heard: Mayor and members of council we have a conditional use permit. Technically we have a request for approval of seven different conditional use permits related to a proposal to establish a variety of retail uses and a concession stand in the existing building as well as an accommodate up to 33 vendors in approximately 12,200 square feet of retail space. building, which is shown in blue on the site plan, it would accommodate the concession which is now proposed in this back sort of northwest corner of the building as well as 9 vendors in that area that would potentially sell a variety of retail products. Within this building, vendors under the proposal would be limited to leases of at least a month at a time and capacity. The two sheds, which are shown as green, highlighted there as green on this site plan, the two former shed buildings that are closest, there is a third one located to the back that would not be used as part of this proposal just the ones in green. Together those areas would cover a little over 3,600 square feet of space and these would be vendors related solely to farm or produce types of products. This would be the farmer's market in the more of an open environment back there. There would be a total of up to 24 vendor spaces located in both of those two areas and in this area under the applicant's proposal these spaces could potentially be leased for shorter periods of time, daily or weekly, or such. Just for the record, a list of conditional uses that are being requested include a seafood market, on-site retail and production of bakery goods, craft production and retail sale of crafts, retail sales of Christmas tree wreaths, outdoor storage associated with a furniture store, farm and produce market, and parking, the use of grass parking as part of the site plan proposal. We will touch on that a little more in a minute. In total the property is just a little under 2 1/2 acres in size. Presently the property is nonconforming according to the town's lot coverage standards where there is a maximum of 60% impervious surface on a property. The lot coverage has been estimated at 68.9% as of this. Again, that is nonconforming which means the applicant cannot increase the amount of impervious coverage on the property. However the proposal would not do that. All of the work proposed by the applicant, all the improvements are within areas that are already considered to be impervious surface.

Highlighting a few of the other items on the plan, the property is accessed from a driveway and is shaded in yellow. I guess it is just off the edge there but comes in from a driveway off of North Croatan Highway, runs in front of the building from north to south, then bends to the right, or west, and goes into the property where it goes around. It does not complete a full loop in that going down this area it would be blocked off at this point right here. So again, access comes like this. The internal drive is a two-way drive as it comes around the building, 22 feet in width. The fire department has reviewed this and said that that drive will suffice in meeting the requirements for a fire lane as well. The only concern the fire department has at this point has to do with the turn around area at the end for the emergency vehicles. They would be glad to work with the applicant to come up with a solution for that. It is certainly workable.

The other item shaded in pink on the plan is a walkway. One of the main purposes of this would be a concrete or otherwise paved surface providing access to meet the ADA standards for handicapped persons. There are handicapped parking spaces located here and would allow persons to have a handicapped accessible walkway to the sheds as well as continuing on into the building. There are additional handicapped spaces located up here near the front, near the building entrance.

Looking at parking, based on the amount of square footage for this use as well as the number of potential vendors, the minimum parking requirement for this project is 75 spaces. The applicants have shown 75 spaces going back to this point. There are additional spaces that continue on another... there are another 30 that actually are located in this... are back here, above and beyond the town's minimum requirement. However those are not specifically listed on here but could be used for overflow parking, vendor parking, other things like that as necessary. The applicant has proposed to pave a total of 28 parking spaces that occur parallel to the building in front and then there is some parking in this area that would be paved. That is the amount of parking necessary for it to meet the minimum amount related to the building. In other words, if this was a proposal just for use of the building that is the minimum amount that would be required to serve that. However in the applicant's proposal, as I touched on briefly before, the applicant is proposing to use some grass parking which is potentially a conditionally permitted use by the council. For the remainder of the parking in the back, it is required to be served by a paved access drive but the applicant has proposed that the parking spaces themselves remain in gravel or grass. There is a total of 47 spaces within that area that would be grass. The applicant, based on the total number of spaces on the site, the 105 I have pointed out... the ADA accessible spaces that are provided... there would need to be one additional space if the applicant maintains the total of 105 on site.

One of the other items back here at the rear of the property with a dash line going along there, everything to the west of that abutting the adjoining residential properties at the rear, the applicant has proposed what is known as a Type A buffer. That is a visual landscaped buffer to help buffer some of the noise and visual impact that this type of use might have. There was a recommendation of the planning board at their meeting and the applicant has provided it on the site plan you have before you tonight.

There is waste management in this area, the southern end of the first shed. The applicant has proposed two dumpsters that would be screened as well with a fence in that area.

And finally, looking at some of the stormwater management which is one of the other items that staff and the town engineer took a look at on this project. You can see on the site plan the applicant has proposed the addition... right now there is basically no stormwater improvements on this site. It is fairly flat, it does not appear that there was ever much of anything done to this site regarding stormwater because at the time that was not... this was developed long before... I think the date that county records have was 1960. So it was certainly before the town was incorporated and standards such as that were adopted. What the applicant is required to do is

not bring the entire site up to the current standards but the applicant is required to bring the site up to snuff to accommodate for the proposed improvements. In other words, all of this... the additional paved areas, other areas where there might be grading or something that changes the drainage pattern on that property, the applicant would have to provide stormwater management to accommodate that type of impact the project would have. They have proposed the swale that begins all the way down here on the southeast corner, runs up here and gets a little bit wider in this area. Then there is another area back here, a smaller retention area back in the northwest corner of the property as well. They are showing these items on the site plan, however the applicant at this point in time has not submitted any calculations or other verification that these stormwater management ponds and swales will do what they are intended to do. At this point in time staff and the town engineer cannot say that what is being proposed for stormwater management complies with the town's ordinance as we are lacking information on that... such as calculations or topographic information to know that the water that is running off of this drive aisle is heading into this ditch. We do not know whether it is of... not at this point so we did want to point that out for the record. The town engineer has requested that information before making a final determination on that matter.*

That covers a lot of the highlights that I have just in our staff and planning board review of the project. I did want to note for the record, on December 9th the planning board voted unanimously to recommend approval of this project subject to a good variety of conditions. Since then the council has been given some revised site plans that the applicant has put together to address many of those conditions. However we have some remaining and based on the planning board recommendations and our review of the revised plan, if council is seeking to grant approval of this project, staff is recommending that you give some consideration to the following conditions:

- 1.) That the stormwater calculations and topographic information be provided to document the stormwater management improvements.*
- 2.) That all parking spaces must be paved or otherwise complies with parking standards of the town.*
- 3.) That an additional handicapped parking space be provided.*
- 4.) That the orientation of the dumpsters be set up as necessary to provide maneuvering area for the type of truck that may be picking up there.*
- 5.) That plantings consistent with a Type A buffer be provided within that buffer area as shown on the plan.*
- 6.) That the existing Dare County Environmental Health permit, septic permit be reauthorized or updated to accommodate the current development proposal.*

Kitty Hawk Town Council Minutes: February 7, 2011
Page 12

- 7.) *A land disturbance permit be obtained from the town prior to the commencement of any site work.*
- 8.) *All signage must be approved under a separate sign permit.*
- 9.) *Any exterior lighting improvements must be reviewed for compliance with town standards.*
- 10.) *That compliance be achieved with all building and fire code requirements before issuance of a Certificate of Occupancy for the proposed uses.*

That is all I have for you this evening.

Mayor Perry: *Are all of the uses being put inside the building except the farmers market?*

Heard: *That is my understanding of the proposal.*

Mayor Perry: *Which proposal was advertised, the first we got or the...*

Heard: *The one that was advertised would have included 11 conditional uses. The applicant has subsequently removed 4 of those. So all of the uses proposed under the original are still being proposed but the applicant has removed 4 of the originally proposed conditional uses.*

Mayor Perry: *Questions?*

Klutz: *I am not sure if I should save these for the end or if these are questions for Joe. I have questions about all of the conditional uses having conditions associated with an addition to the conditions that you just mentioned. I have some questions about how some of those conditions that are associated with those uses can actually be satisfied when you are dealing with... like itinerant uses. As an example, there were some conditions associated with crafting in a location that had to do with containing odors and vapors and such within the space where the craft production was taking place. Also some fire prevention considerations and hazardous materials and that type of thing. I guess my question is if you have someone coming in to do some crafts during a 30 day period then does that mean that if they... if their lease is up after 30 days that some whole new inspection process has to take place? Or is it the plan to have an area inside that is basically for crafts and that is where all of those conditions would be met and people that wanted to do crafts would be in that particular space. How would those kinds of conditions be handled?*

Heard: *I think the applicant may be better to discuss what their specific plan might be for this project. From the staff's standpoint in looking at the process and how we would work with that type of permit we would look at the ones... the longer term uses that would be there and again that would be everything except for the farm market uses. They would have to come in just as any business locating in Kitty Hawk. If someone was going to locate in a shopping center or*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 13

something of that nature... would have to come in and fill out a new business application which triggers contact from the fire department to set up a fire inspection with that particular applicant. That is a process that we use right now in looking at new businesses that come in. It would trigger that process as far as the review in looking at those types of safety issues.

Klutz: *So that is what the applicant for this whole project would have to do or the person who was coming to do this business?*

Heard: *Typically the person who fills out the application is the person coming in to do the business. Ultimately the responsibility falls on the general applicant who would be the owner or lessee of the property.*

Klutz: *And the applicant, as part of this, once they have had an opportunity to speak, they in effect agree to all of these conditions as part of an acceptance of the approval of the conditional use permit. That is part of what the process requires. Is that correct?*

Heard: *That is correct and this may be a good time to touch on this. The proposal as mentioned before is unique in that manner. At least since I have been here this is certainly the first proposal we have had where someone has been seeking approval of a conditional use in a, I guess you would call it, a more general manner. In other words, they do not necessarily have a specific business that is going to be doing this or that. What they are seeking is the right to more of a blanket approval for it without necessarily having all of those specific items spelled out as to whether a specific use would meet those conditions. So it is a little bit different way of looking at it than what the planning board and the council would usually see but that is how the applicant has opted to propose this.*

While I was talking about that I did have one other point I wanted to make. There was a question raised earlier in the week about some of the storage on site associated with a furniture store. This is another one of those conditions you were referring to Councilwoman Klutz. I want to point out that there is a... one of the conditions with that particular use is that it is limited. The outdoor storage is limited to a maximum of 4% of the site. If we look at this site as a whole that would end up being about 4,300 square feet of outdoor area that could potentially be used for that use. Now the other thing to remember with this is that the applicant has proposed a specific site plan with this proposal. In this site plan there is no area designated for that use. So even though, or even if the council chooses to grant approval of that conditional use in a general manner, since it is not located on the site plan, the applicant would have to come back through this process in order to have that approved specifically should that use arise or an applicant for that use arise in the future.

Klutz: *I guess that is my basic question. There are conditional uses, all of which have their own conditions. I cannot figure out how that process is going to work with the type of use changing potentially every 30 days for four different uses and the requirements that are attached to those uses. Unless there is something on the site plan that says this particular use is going to*

be in this area and will have storage for hazmat or whatever the conditions are for that particular use. What kind of turmoil is that going to be in terms of the concept that they are trying to implement here? I mean unless there is some sort of method for dealing with what is really itinerant vendors, I just wonder about the feasibility of these individual conditional uses.

Mayor Perry: That is what we typically see. And itinerant merchants, we have not dealt with that anywhere that I am aware of, allowing that to be done. Are you aware of anywhere we have done it or does the code address that we can do that?

Heard: Well, again I think the only part of the project where we would really be looking at what you would call something at least similar to an itinerant merchant would be in the farm market area. The other parts of the building are limited to, under the proposal, leases of 30 days or greater. They would be in there for at least that period of time. The farmers market area is the area where vendors could come and go much more... again it could be daily, for a weekend, or for a week or something like that. They would have that space so that would be the only area where you would see that in there. The outdoor market in the rear of the property is limited to farm and produce. You are correct and I cannot think of another example in town, at least at this point, where we have a similar type of use going on.

Mayor Perry: I could not find it in the code anywhere that allowed that. I was just wondering.

Klutz: You mentioned the lot coverage and the additional parking. If the grass parking is approved, or if grass parking is not a conditional use that is approved, does that affect the lot coverage? Or is all of the surface where you are looking at grass parking part of what you referred to as what is already considered impervious?

Heard: That is my understanding from the information provided to us by the applicant. We already consider those areas to be impervious. They are graveled areas and they were used for that purpose, most of those, for quite a period of time so it would not be extending....

Klutz: ...the grass parking one way or the other does not affect that.

Heard: Correct.

Klutz: I have a couple of other questions I think mainly for the applicant.

Michael: Anyone else have any questions for Mr. Heard at this time?

Kitty Hawk Town Council Minutes: February 7, 2011

Page 15

MPT Perry: *We can call him back, right?*

Michael: *You can call him back, yes.*

MPT Perry: *Okay. I want to hear what some of these good folks have to say and then I have some questions as well.*

Michael: *Mr. Cahoon you probably ought to go next.*

Cahoon: *Thank you. My name is Ben Cahoon. I am with Cahoon & Kasten Architects and I represent the applicants this evening. I want to make a couple of general statements and then if I may, I will respond to some of the questions that have already been raised and then other questions that you may have. And of course remain available should it be necessary later in the hearing. I would like to first thank, in front of all of you, your Town Attorney and your Planning Director for all the effort that they have put in to this plan. It has been a difficult site dealing with a nonconformity and the kind of concept that is proposed here. We found that the best way to do this was, rather than try to create what we envisioned would be a very cumbersome new piece of ordinance that would somehow find a way to put all of these pieces together in one bag with one set of conditions, was in fact going to be harder than to do it the way it was done. That to acknowledge that difficulty and try to bring all of those uses together and with Joe's help resolve the various kinds of conflicting conditions was the better approach. They have helped us very much in working through that process and also the planning board examined this fairly thoroughly and asked us a lot of questions and that led to an additional set of revisions that I think Joe spoke to.*

I would like to address first, generally if I may, the issue that what I think is going to be sort of the core issue. The grass parking versus paved parking. Most of the other issues in one form or another are dealt with in the ordinance. Various conditions for all of these uses, the calculation of parking, what is impervious and what is pervious, and that sort of thing but the issue that is left entirely to the discretion of council is whether you permit grass parking in lieu of pavement or some other kind of surface. That has left us in a little bit of a limbo in terms of the stormwater in particular. What we would like to do is make an argument to you for the grass parking in lieu of paved parking. The applicant believes that the grass parking would be a better solution than paved for the following reasons. One, it would be more attractive to the neighbors and the patrons. For those neighbors who can see into the site from the upper floors of their buildings I have to believe it would be much more desirable to look down on a grass surface rather than the asphalt or concrete. For patrons in conjunction with the proposed landscaping, a grass surface would be much more inviting and a welcome relief from the sea of pavement that we have all become accustomed to. A grass surface will make the site cooler for patrons. As we have all observed, paved parking lots are extremely hot in the summer and this as an outdoor market makes it even more important that the environment be comfortable than for a conventional store or shopping center. A grass surface will produce less stormwater runoff in a community where runoff contribution to flooding is acknowledged and certainly historically it has been

problematic. The use of grass parking we believe is mitigated in part by the use of paved parking around the building which is the highest traffic area and also by the paved driveway for the balance of the ordinance required spaces. It is also worth noting that there are 30 excess spaces above the required 75 being provided which should reduce wear and tear on all of the spaces. Maintenance is a legitimate concern but it is a concern for all parking lots. Resurfacing, restriping, replacement of broken wheel stops, maintenance of stormwater control structures are all necessary for all parking lots. So it is incumbent upon the owners, as it is in all cases, to maintain a safe and useable parking area. I would ask that if you ultimately resolve that paved parking is required that there is language in the motion that will allow us to incorporate the necessary stormwater structures working with town staff and with the town engineer to meet the requirements of the ordinance.

I would like to speak to some of the questions that have been raised already with regard to how this process works. I think the process is made unconventional by the sheer number of potential vendors on the site and by the turnover. In fact it is not terribly different from when there, and we deal with this fairly often, when there is a shopping center, a strip center into which a restaurant is proposed that was not there originally. That restaurant typically requires more parking than the same size retail space did. It requires more wastewater than the store did. And it requires health department review to make sure that the proper hoods and other measures are in place, refrigeration, sanitation, all those issues have to be reviewed by the health department to make sure that that restaurant complies. It does not turn over as often as the kind of vendors that we are talking about but it does happen because restaurants are what the code calls assembly space. It also often opens up questions about whether there are enough exit doors and exit lights and that kind of thing. But we deal with those and we revise plans and submit them to staff and staff reviews them and the process works. I think it is very significant that there is a note on the plan that requires that we meet the building code requirements before occupancy can be granted for the building itself. That is a little different than the conceptual site plan issues but it is in a way more significant. There will be certain requirements for certain types of occupants in the building. I think what, as a practical matter, while we have not really discussed it, what will happen is that if there is a particular need for ventilation, odor control, fire protection, that is different from the rest of the spaces in the building, those improvements will be made in that part of the building. Those spaces will be available for tenants that need them and they will be restricted to that space. Otherwise they would not be lawfully occupying the building and neither the applicant nor the town wants that to happen. So while I think in terms of the timeframes it is different, I think it is not... there is a process for it and I think it can be dealt with.

Michael: *All right any questions for Mr. Cahoon at this time?*

MPT Perry: *My understanding of the conditional use, just to make sure I am clear in my mind, once the applicant is given permission for these various conditional uses, the applicant then... whatever happens from thereon has to make right these conditions. The individual vendors, be*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 17

they a day or 30 days or whatever are not the ones that come to town and asks for the ventilation inspection or whatever. Am I correct?

Cahoon: *Yes sir. Let me clarify that as best I can. The vendor as a business will have to come to the town. They will have to apply for a license and verify that they are permitted to conduct that business in that space and I think there is an application for that. Generally, yes, the applicant is responsible for conforming to all of the conditions that are on the site that have been set forth by the town staff and the planning board... have all been discussed with the applicant, they understand that they are all on the site plan and if the site plan is approved that all of the conditions that come out of this hearing, they have to comply with. What I would expect to happen and there was a little bit of discussion about this at planning board is that only the applicant knows what these conditions were that were agreed to in this meeting. A vendor who comes in next summer was not party to this process is not going to know that. It is incumbent on the applicant, the owner, the operator in their lease agreement for any of the spaces if there are relevant conditions that apply to that vendor that needs to be part of their agreement with that vendor going there. In other words they cannot accept and lease a space to a vendor who wants to sell or do something that was not a part of this site plan process and that was not approved and that is not one of these accepted conditional uses.*

MPT Perry: *I probably have some other questions that deal with the site plan but we have other folks that want to speak and I would like to hear them before I ask them.*

Michael: *Would anyone else like to ask Mr. Cahoon any questions right now?*

Mayor Perry: *The owner would be responsible instead of the vendor coming in. Normally we have the vendor come in who is operating the business and getting the conditional use permit, then is responsible to the town. But what you are saying, he would be responsible; the owner would be responsible instead of the town responsible. Is that...*

Cahoon: *Well I am going to ask Joe to clarify that but I think there are two levels of control. I mean the town regulates all vendors and so those vendors have to have permission to operate. But before that vendor can even come in, there is already going to be a level of control between the owner/operator of the facility and that vendor in their lease agreement, so that nothing, no form of business is permitted and leased on that site that is not already permitted and part of that... that has not been one of the permitted conditional uses.*

Heard: *And maybe there is sort of two levels...there is a functional level and a legal level. I mean if I am sending out a... if somebody does something improperly and I am sending out a notice of violation that is going to go to the property owner for the main.....in this case you have someone leasing it from the owner and then subleasing it to other parties. That would go to those, that is who is ultimately responsible for things on that property. However we usually have... when we are working on a typical project we are usually working with the business owner coming in and doing that directly because they know better than the person leasing them*

the property what specifically they are going to do, how they plan to operate their business. So typically we work with the one but ultimately the property owner or the person leasing them this property is the one responsible. Does that help?

Klutz: *When you say whose leasing you are talking about the leaser or the lessee? Who is accountable? I mean if something goes wrong who is accountable?*

Heard: *In this situation we have three levels. We have a property owner who is leasing the property to Mr. Giese the applicant for this and then Mr. Giese is subleasing property to various tenants to conduct business on the property. The people that we would send a legal notice to would be the property owner and Mr. Giese and we would be attempting to work with the business as well but they are the ones who are ultimately responsible for assuring compliance which is why Mr. Cahoon mentioned the importance for them or writing some of those safeguards into their leases so that they have the power to take action against a tenant who is not compliant.*

Mayor Perry: *So normally if it is a minor thing, the person running the business... you would contact that person to see if he could correct that business. If it was something about the building or the shopping center area that had to be changed or dealt with, then you would have to go to the owner. Is that right?*

Heard: *We would generally contact the business first in all scenarios but if the business just refused to comply or was very slow in complying then... and we got to the point where we had to get into legal action that would be with the property owner in that case.*

MPT Perry: *But a vendor comes in, rents a space for 30 days, does the vendor have to come to the town to meet the conditions of whatever that particular business is each and every time that changes vendors?*

Heard: *Yes.*

MPT Perry: *Thank you.*

Cahoon: *If I can, back to the analogy of restaurants and shopping centers. It is typically when we are doing that and it requires modification to the building, a site plan approval process and that kind of thing as Joe said, although it does not happen as often. The restaurant operator is the applicant because they understand how many bar seats they are going to have, how many regular seats they are going to have, the way that their business operates, when their peak hours are and that kind of thing. But always the property owner has to sign off on that application because if that applicant does something wrong and violates a parking standard or something that always goes back against the owner. So it is a little bit of a similar circumstance here.*

Michael: *If you would come up and state your name.*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 19

Waite: *Good evening. My name is Brynn Waite. I am a resident of Southern Shores and I wanted to speak in favor of the application from the point of view of a potential vendor. Up until a couple of years ago I was making a pretty good living as a house designer and a web designer. But as you can imagine with the economic downturn my income went from pretty good to pretty nothing. My partner and best friend, Amie Crawford, decided that we needed to start up a business doing something we love. She is a cook. I am a potter, which used to be my hobby.*

We started up a company called "Brynn & Amie Artisan Food & Gifts." Last May we spent the entire summer schlepping our stuff and I mean not only our artisan foods but all of my pottery down to the Manteo Farmers' Market. Crack of dawn every Saturday and at noon we had to pack it all back up. We did the craft shows all fall schlepping our stuff as far as Richmond. But we did rather well. I cannot say we made millions but it was a breakeven year which is pretty good for a new business. This opportunity for us to have a store without the commitment to a full year's lease or more not knowing for sure how we are going to do is possibly the only way that we can see ourselves growing into the business that we want to become. We intend, as a long term goal, to be an Outer Banks company that hires Outer Banks people to make our food, help in the pottery studio, and help in a store. That is our dream. But it is very difficult, as you know, in this economy for new vendors, new businesses, to get started with a whole big rent thing over your head. We are working with SCORE; we have a business plan going, we are trying to do it all right, and this opportunity that would be provided here is exactly what we need. I mean we have already done all the planning, we have done all the research, we have fabric swatches for our canopy, I mean... and we will not be itinerant. We intend to be there until we are so big that we need our own space. We have picked out the little space in the building that we really want and we are dreaming about it.

So I guess I just urge you to consider that the applicant has a genuine desire to enable micro businesses to get a start. They have been... they have bent over backwards to get us involved. We have been working with them and they listen to our suggestions. We will be heartbroken if it does not open I can tell you that. But I guess I wanted to just give the perspective that goes beyond all the nitty-gritty legal things. And I was a lawyer once so I know that those are important. But to understand that there are people like Amie and me who are really relying on this opportunity to grow our business and in our minds, as they say, "If you imagine it, it will happen." I have been in that store for weeks now so I just kind of wanted to give you the personal perspective. I know a lot of other crafts people who also are interested and you know ours will be a beautifully decorated store within this space and we intend to be there for a good long time. So thank you for hearing me out. I just thought it was important for you to hear it from the personal point of view. Thank you.

Michael: *Any questions for her? There were no questions for Ms. Waite.*

(Audience clapping)

Michael: *All right, if you would come forward and identify yourself please.*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 20

Barker: *I am Henry Barker from Kitty Hawk. I live on Welch Street right above the lumber yard and Hooter's. I used to be an employee of Foreman's Lumber Yard. The building sits in a hole. Water runs in the doors when it rains a lot like Niagara Falls. We could not put anything in the warehouse on the floor because it went underwater. It ran in the back door, it ran in the front door, ran in the big door on the end. And that building is in a well... has a well for a water system, unless it has been upgraded and I do not think so. You got a fire suppression system in there if you are going to cook inside this building? It is full of fleas and rats and cats, you name it. Is it... you have got to tear it down and do it all over again. It is... the part out in the back you know as a farmers market is fine. The building... I really have my doubts about that building. I mean I lived in it for two years when I worked there and I am an engineer for forty years and it is... was not much I could do with it. I rebuilt the roads. Had Barnhill come in and put asphalt down. Built the roads up and put them up and the truck driving traffic in that place would drive it right into the ground. The back corner like here (pointing to site plan) is like a drainage system and this whole area from here would go under water. This right here would fill up with water and run right in the door and it was... it was not very well planned and they kept bringing dirt in to try and stop it and they put the building in a hole. And I appreciate you listening, I think it is wrong to put people in that building the way it is without bringing the floors up or doing something and... but then the part in the back for a farmers market, outdoor market, have no problem with that. Thank you.*

Michael: *Any questions for Mr. Barker? (There were no questions for Mr. Barker) Thank you. Come forward and identify yourself please.*

Busby: *My name is Robbie Busby. I am a local. I graduated from Manteo High School in 1979. My father probably built, I think approximately... I was trying to do some research yesterday, 56 homes here on the Outer Banks, over a dozen on the oceanfront. My dad did a lot of business with Foreman's for a lot of years and I understand the gentleman's concern about water inside the building. But I think that they are going to take into consideration what needs to be done on the parking lot when the time comes if you all are kind enough to let them achieve their dream here.*

I am a landscaper. I have been so for 23 years. I worked for Stan White, Gray's Department Store, and I have 147 residential, commercial accounts, some businesses, mostly private homeowners. This is a dream for these people. The reason I am... and I appreciate the opportunity to speak today. I know change is difficult in a lot of ways. In the time that I grew up I have seen the beach change. But I am also seeing people hungry out here. There are some people having to move away from this Outer Banks because they cannot feed their families. I am getting 15 calls a week from people that need to feed their kids and really the... the lady that just spoke, she was pretty eloquent, she pretty much took the words out of my mouth. I can see where she's coming from. The Giese family, they have been real good to me. There have been times when the only paycheck that was written to me was from them in the last couple of years when business was slow for me. They were kind enough to see that I am credible in business and I am good at my job and allowed me to help them in some ways.

Kitty Hawk Town Council Minutes: February 7, 2011

Page 21

You know I just hope that when the bottom line on this thing is final that you take into consideration what the woman just said about her and her partner. There are lives at stake here. This could be really good for Kitty Hawk in the fact that people can start this as a stepping stone. It is one step on the ladder to achieve something and some hope in business. And I know there is a lot of small business owners out there especially in the time that we live in now. It is difficult out there. There is not the money, you cannot go to a bank... if you have good credit, even if you think you are going to walk on water you can go to a bank now and not really get anywhere even with good credit to borrow ten, fifteen thousand dollars to start your own business with good credit or maybe you have equity in your home. I just hope that when it is all said and done that you all realize that.

Being a landscaper I can see Foreman's, the parking lot being maneuvered in a way that water will run off in some ways. Maybe that has to be done and it can be done. The building does not have to be torn down. It stood the test of time for all these years. I went in that building and got lumber for 15 years for my father, I never saw water come in the building one time. I am not disagreeing with the gentleman. If he worked there two years I understand, but I was there through all that torrential downpour recently. I did not see water coming in the building. That is my opinion, he has his opinion.

I think you should look at the fine line. There are people out there, credible business people and there might be some good income for Kitty Hawk for people that have to go get privilege permits to run their own business. Of course, we know that the day and time we live in, it is tough times out here. I know Nags Head needs funding, Kill Devil Hills, Kitty Hawk, Southern Shores. Maybe this is a good opportunity for the way that you maneuver this thing. As the Council Lady said that yea they need to be accountable for permits or the things that they need to apply by or you know run the business in the way that you all see fit. And I understand it needs to be a legal thing and as far as the chemicals are concerned I am sure that they will work that out. There are things to consider but you know that is something that can be worked out pretty easy.

I have been in business a long time and I see a lot of people asking me about this farmers market. When is it going to happen, when is it going to happen. Well you all have the opportunity to make this thing happen. And it is a dream, but dreams come true for people that are willing... they are willing to put up a lot of money, their own money and I know that you know business is tough for them as well but they are willing to... to break their back on this whole procedure to get this thing done and whether or not it will ever benefit me I want to help them see their dream happen.

I would like to be a part of helping them with buffer zones for the visibility on the neighbors behind them. With a beautiful façade, with landscaping, whatever, that has to be done. I would like to be a part of it and I do not know if that will happen but I am willing to help.

So I thank you all very much, mayor and the council for your time. I really do appreciate it. It is an honor to be able to speak in front of you and in behalf of the Giese's and for the farmers

market. I am speaking for myself as well as them. I think this could be a really good thing for a lot of people that are... that want to achieve a dream. Some people cannot afford to go anywhere and rent a space for a thousand, two thousand, three thousand dollars a month. If they just had a chance... if they just had one chance that they could get in a spot like that and people could see what they can do. You know fishermen, crabbers that can sell their wares. I mean the market is so tough out there now only the big guys in the seafood market are really making it. It is tough out there for them. I see a lot of guys from Colington Island who really would like to be able to get up there and set up. And people, farmers that I am associated with over in Currituck come over and sell their strawberries for a two or three, four week period that strawberries are coming out. So it is... this is a big decision and I know it is a tough decision for you all but I hope when at the end of this thing you really think about it and allow them to achieve this dream because you are going to make a lot of dreams come true for a lot of people, just not the Giese family. I mean they are good people, they have two sons and a granddaughter and you know they are looking... they want some feasible way to provide for their families as well. I thank you for the opportunity to speak and if there are any questions I will be glad to answer them.

Michael: Did anyone have additional questions?

Mayor Perry: Did you have additional questions?

Reid: I guess my questions kind of go along with what Emilie was... because I was trying to figure out how this will work as to what goes where and who is involved and that is sort of the general question that I had. I guess I would clarify... basically you are... the proposal is for a seafood market, retail sales and production of baking goods, craft products and retail sales. That is going to be in the building. Is that pretty much... what is the plan?

Michael: Mr. Cahoon do you want to come back up and address that?

Reid: I just want to make sure I completely understand what you are saying here because....

Cahoon: Sure, if I may. Andy, may I borrow your site plan for a second? The uses that are proposed and that are listed under all of the conditional uses are proposed for the site. The uses that fall under farm market are those that are proposed to be outside. The only other item that I remember that was specifically outside and Joe addressed that briefly was storage related to a furniture store. Joe made the point that we had not indicated a designated space for that... that was included primarily to accommodate things like outdoor furniture that you would... that you see displayed up and down the road at various places that we would see a market here for. The balance of those that are listed on the plan are proposed to be indoor.

Reid: Well, the outdoor storage says associated with a furniture store. Are you going to propose a furniture store in the building?

Kitty Hawk Town Council Minutes: February 7, 2011

Page 23

Cahoon: *I go back to a general statement that I made at the planning board. What we have done is to include essentially most of the uses that are permitted under the ordinance here because with this kind of facility it is hard to know exactly the... what kind of folks are going to come out. If someone proposed to sell the kind of outdoor Adirondack type furniture, then yes, they would go inside. Essentially their store would go inside. The ordinance permits that there be some outdoor storage associated with that kind of use.*

Reid: *As Joe said you do not show anything on the site plan for outdoor storage so you are asking us to say now that we should grant that permitted use even though we do not know that you are going to put in a furniture store. Is that correct?*

Cahoon: *You know, unfortunately, in all of the going back and forth and all of the staff comments over the past few months I do not recall being advised that it was necessary to show the storage area on the site plan. That is an omission on our part. So unfortunately... yes, if there is to be outdoor storage for furniture then we would have to come back... come back to you.*

Reid: *Okay. I am correct that you are proposing to have a seafood market, bakery goods sales, and production. I presume that you are going to have baking facilities, perhaps in the building?*

Cahoon: *Yes sir.*

Reid: *And you could also have craft production so you can have potters wheels and whatever kinds of things go along with that.*

Cahoon: *Yes sir.*

Reid: *Okay, I cannot think of anything right... I am just... I am trying to put in my head what all this means because it does not really fit the standard way we have operated so I am trying to... struggle with that.*

Klutz: *I have some more and... first of all, I know I already said this in my original remarks, but I am assuming... accepting that all of the conditions that are associated with each of these uses as well as the conditions that the planning board put forward that required acceptance by the applicants, that the applicants accept those conditions. Is that correct?*

Cahoon: *That is correct.*

Klutz: *All right. I went away from our last discussion and what your... with your comments that things like Richard was just addressing would have to in effect come to the council in terms of... for instance outdoor storage for a furniture store. If you have a furniture application within the building and there is a question about where the outdoor furniture would be stored in*

Kitty Hawk Town Council Minutes: February 7, 2011
Page 24

relationship to that use that it would be like a separate conditional use, correct? And we would have to look at the modification... the site plan to see where the storage would be?

Cahoon: *That would be the one but that... as I understand it is only in the case where a furniture store would need and want outdoor storage that we would need to do that.*

Klutz: *Right.*

Cahoon: *And that is the one case where we would have to draw an additional box on the site plan to say this is where that outdoor storage is going to occur.*

Klutz: *Okay. I think I have an understanding now of where the accountability is for various levels of use here. I had a couple of questions regarding some of what I looked at on your website... and on the websites that are out there associated with this market and what is being presented here.*

Cahoon: *Okay. I may have a difficult time addressing things that are outside what I was specifically asked to do. Because I am really only... I can really only speak to the site....*

Klutz: *This rules right?*

Cahoon: *Yes ma'am. That is... whatever is here in this room rules. No, nothing that is outside of the room rules. It is only what is in the room here that rules.*

Klutz: *Okay, because there are differences in the operating hours and things of that nature. But what is being presented here rather than what is being advertised in terms of the vendors. The vendors who are producing applications I would assume to actually operate within the building they are aware... or will be made aware...*

Cahoon: *They will have to conform to this approved plan. Yes ma'am.*

Klutz: *Right. I have a question regarding the operating hours that are in the material that we have and it has to do with the set up and the break down. The operating hours for the market it says are between 8:00 am and 8:00 pm, if I recall, and that the setup was from seven to eight*

Cahoon: *Right.*

Klutz: *Well the setup was no earlier than seven with the breakdown no later than eight. Does that mean that setup and breakdown, within particularly the outdoor area, could occur at any time during the day as long as it... the setup does not start before seven and does not go after...*

Cahoon: *End past the last hour, yes ma'am, I think that is correct. I think...*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 25

Klutz: *So has that been looked at in terms of the vehicles in there? The vendors and their vehicles and the pedestrians that are actually in the market shopping and any kind of safety issues with vehicles and people and setting up and breaking down during the operation... operating hours for the market.*

Cahoon: *There was an earlier iteration of the site plan that had drives and parking between the shed areas where there would be stalls between those and the _____. And it was brought to our attention I think through the process of working with staff that there were concerns about that. That we should not have vehicular traffic crossing that pedestrian drive and that there should be a walkway that clearly designated the pedestrian walkway from those areas to the building. So we along the way eliminated those driveways between the sheds and the building and also added barricades at the ends of the parking areas to prevent casual vehicle traffic between those at other times of day. There is the possibility certainly that somebody could decide to break down early for one reason or another and they will have to get their products out of there in a safe way. Whether they use a cart, a gator, however they get it out of there but I do not know that that is terribly different than markets of a similar configuration.*

Klutz: *So I guess what I am getting at is that the vehicles will not be driving into that market as part of that set up or break down. They have hand carts or whatever they would do.*

Cahoon: *They would be able to do that in the hours before the market was open to the public and after the hours that the market was closed to the public but not at other times.*

Klutz: *Okay. I think that is it.*

Reid: *I have another question if I could. I draw a distinction between outside storage and outside display and we have had in the Town of Kitty Hawk a lot of trouble with merchants that continually want to put things out in the front lawn and in my opinion make kind of a junky look of the bypass. Are you going to have any outdoor display from the vendors in the building?*

Cahoon: *I would have to say at this point since we have been through this fairly elaborate process and that kind of display has never been a topic of discussion at any of those meetings, that it would be excluded at this point.*

Reid: *Okay, now as far as the farmers market section. These two canvas covered strips, you are going to keep all of the vendors within that boundary. In other words you are not going to expand out and have... I see a lot of I guess it would be counted as open space and I could envision people starting to expand out into that.*

Cahoon: *The only way that that is really formally addressed on the plan and I think it probably could be subject to another reasonable condition... the only way that that is formally addressed on the plan is that when we did our calculation of parking that the spaces for vendors were within the rectangles of the sheds and the covered areas. So if there were vending outside of*

those areas it would be in violation of the site plan because you would be exceeding your parking requirements as they have been defined by adding vendors and spaces that they were not already accommodated. I think if the applicant wanted to do that they would have to modify the site plan. As it has been described to me the desire of the applicants is to restrict the vendors to the areas that have been indicated inside the building and to the sheds. The existing configuration of the buildings out there on the property has a lot of open space between those. At one point there were drives that have been eliminated so what you are going to have is a fair amount of green space between these areas that really do not have a designated use where I could see... you know I have been in circumstances like these where people put down a blanket and let their kids play maybe attended by an older child while they were shopping or doing whatever that they were doing. So I think the open space is just open space.

Reid: *The parking spaces. You have numbered the ones that you have designated are to accommodate requirements for the use that you are proposing.*

Cahoon: *Yes sir.*

Reid: *I take it the dotted lines... the parking spaces that are implied are those all grass parking?*

Cahoon: *Yes.*

Reid: *Okay. And they are not counted in your lot coverage. Is that correct?*

Cahoon: *Actually the lot coverage that is there includes all of that existing gravel area. We have not reduced the lot coverage, we have not reduced the impervious coverage by the amount of grass parking because... in other words, theoretically if spaces 29 through 74... if we took up the gravel and put down grass then that would go from pervious to impervious. But to go in and make that kind of modification and get... remove the gravel to the extent that everybody would agree that it was completely pervious... there will be some of that in order to get grass established in these areas but... and it would technically reduce the amount of the pervious cover but we have not done that by the calculations.*

Reid: *My question deals with the parking spaces you have not numbered. They are shown as dotted lines and I am assuming that you are saying that is overflow parking but it is on a grassed area and that is not included in your lot coverage requirement. I mean that is not included in your lot coverage calculations. Is that correct?*

Cahoon: *It is included.*

Reid: *It is included?*

Cahoon: *Yes sir.*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 27

Reid: *Okay, I think that is all I have right now.*

Mayor Perry: *I did not understand your answer to outdoor display.*

Cahoon: *For a furniture store?*

Mayor Perry: *No, just... he asked about outdoor display not outdoor storage and I did not understand your answer to that.*

Cahoon: *That since that has not been a part of the discussion and we have not asked for approval to do that, then I think that it would be precluded.*

Mayor Perry: *Okay, the cloth canopies. Now, whatever the wind standards are they would have to meet those standards?*

Cahoon: *Yes sir, that is right.*

Reid: *Oh, I do have another question. Can you tell me a little bit more about what this concession stand is? I noticed you have marked off an 18 by 15 space I assume?*

Cahoon: *Yes sir.*

Reid: *Okay, what exactly are you envisioning in that because I....*

Cahoon: *Things like... no sit down provided. This would be things like breakfast biscuits, juice, coffee, hot dogs, popcorn, ice cream cones.*

Reid: *But no seating.*

Cahoon: *That is correct.*

Reid: *And you currently have no plans for the second floor?*

Cahoon: *That is correct. And I will speak to the whole issue. I mean the North Carolina Building Code is a whole other set of issues to deal with. This building and its adaptation and its use for these as it has been described. Those, in a sort of blanket statement, those issues have to be dealt with before the building occupancy can be gained. And to some degree that is sort of out... that clearly we acknowledge that to some degree that is sort of outside the issues of uses in that kind of thing, that kind of discussion and... been accommodated fully in terms of the parking but you know the extent of renovation and adaptation that is going to be necessary in there is sort of yet to be seen.*

Michael: *Any other questions?*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 28

MPT Perry: *Yes I have been waiting my chance here. Parking. I am a little confused on the legal part of that. I just want to clear it up in my mind. On that schematic, parking spaces 29 through 74 are proposed to be grass parking?*

Cahoon: *Yes sir.*

MPT Perry: *And the... under Farm/Produce market it states under the code "one paved off-street parking shall be required for each 300 square feet of occupied retail space. For purposes of this section, retail space shall be that area occupied for the display, sale or storage of goods." Did I understand from the information we have been given that a minimum of 75 parking spaces are required for this?*

Cahoon: *For the total of all the uses as they have been summarized here there are 75 spaces required.*

MPT Perry: *So now maybe I need to ask the legal question. How, if we are following the code in the one instance, how can we ignore it in the other and say grass parking. Please help me with that.*

Michael: *I will let Joe answer that.*

Cahoon: *Well and I do want to say that there are 28 paved spaces...*

MPT Perry: *Yes.*

Cahoon: *...on the site.*

MPT Perry: *Yes, I see those.*

Cahoon: *Okay.*

MPT Perry: *But that is not what the code is saying for minimum required for all the uses that you have asked for here. And I do not personally care whether it is grass or not, I am just asking a legal question. How can council ignore that if it says "shall?" Parking stalls "shall be required." That is not an "if" or "or."*

Heard: *Councilman Perry, further on in the section of our town code that goes into parking requirements, specifically Section 42-544, subsection e(1), it states that "Required commercial parking spaces, loading areas and driveways shall be graded and improved with surfaces approved by the town. Such parking surfaces are concrete, asphalt, or Turfstone." And then it goes on to say "Grass, however may be used as a parking surface in commercial districts, if the town council approves it as a conditional use." So in other words in this circumstance as a*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 29

commercial district the town council has the authority as a conditional use to approve grass parking as... they can make it an approved surface if you wish.

MPT Perry: *Kind of a contradiction is it not? For the Type A buffer that is proposed on the back fence. The fencing around that site at present is chain link?*

Cahoon: *Yes sir.*

MPT Perry: *What was being proposed? Type A can include several different things. What is being proposed and the reason I ask that is because under Section 42-648 for purposes of the buffers and landscaping division, a fence does not include chain link fences with opaque inserts.*

Cahoon: *The intent is that there be an opaque buffer between this property and the adjoining properties and the planning board was specific in asking that that be a planted buffer. In other words that we are not relying on the fence as part of the buffer. That we will have to establish a Type A planted landscaped buffer with a sufficient density of plants to meet the Type A requirement.*

MPT Perry: *And you are only planning to do that on the back piece of property and not the side fence by Southern Insurance or Hooter's?*

Cahoon: *That is correct, yes sir. And that was the location that planning board specifically asked us to use the Type A buffer.*

MPT Perry: *Under seafood markets we state, or this plan states, no conditions. But that technically is not quite correct because the health department has many conditions.*

Cahoon: *Yes sir, they do.*

MPT Perry: *And it seems to my mind that that is misdirecting. What really needs to be put there... something to the fact that seafood markets are subject to Dare County Health rules. Is that correct?*

Cahoon: *Yes sir, also the concession stand would be. I think a better condition would be to say that any food service operations or food sales subject to regulations... subject to regulation by the Dare County Health Department... will comply with those regulations.*

MPT Perry: *Does this site have potable water or will that have to be tapped into... to the county water system?*

Cahoon: *The site does currently, well historically has been served by a well. There is not a water line extension to the property. And it was the intention of the applicant to continue to rely on the well I believe.*

Kitty Hawk Town Council Minutes: February 7, 2011
Page 30

MPT Perry: *Will that pass health department muster for...*

Mayor Perry: *A restaurant or cooking facility...*

MPT Perry: *I guess, I do not know. Let's see, did I have any others.*

Cahoon: *I am sorry, I need to come back to that and say that the site plan in fact shows a new water meter.*

MPT Perry: *I do not think there is water to it yet.*

Heard: *It is at the front of the property if you... to the northern side of the building. There is a line that...*

MPT Perry: *Is it there?*

Heard: *Yes.*

MPT Perry: *All right I do not have any further questions.*

Michael: *Any other questions for Mr. Cahoon?*

Hearing no further questions, Mr. Cahoon thanked council for their time and consideration.

Michael: *What is the pleasure of the council at this time?*

Mayor Perry: *Do you want to close the public hearing?*

MPT Perry: *Do we have discussion among ourselves otherwise? If not, then close the public hearing.*

Michael: *Are you satisfied that you have heard all the evidence you want to hear and asked all the questions?*

Morris: *May I ask a question please? I have a letter that was sent. Is this the proper time to read it into the record?*

Michael: *Yes.*

Morris: *This is from Lee Partridge. He writes "Good morning mayor and town council members. My wife and I reside at 3923 S. Parker Street. We are strongly in favor of the referenced redevelopment project. Our only concern is retail activity in the Rt. 158 right-of-way. I know such activity is not allowed but for some reason Guy C. Lee is allowed to encroach on the*

Kitty Hawk Town Council Minutes: February 7, 2011

Page 31

right-of-way daily. Some mornings the site triangle is completely blocked with large trucks being loaded and off-loaded. The "no parking" sign has been knocked down many times. There is also a plumbing supply store in the area that routinely allows their customers to dump old water heaters and plumbing items on the right-of-way to be picked up later. I don't know if these activities are truly grandfathered or are just ignored. Our request is that the market project be prohibited from conducting business to include parking within the right-of-way of 158. Once again we are in favor of this project. We are unable to attend the meeting but would appreciate if our letter could be read into the minutes. Thank you for your consideration and service to our town. Lee and Pat Partridge."

Michael: *Thank you. Last chance. Anyone else want to address the council on this matter? Seeing no one come forward, Michael said it would be appropriate to have a motion to close the public hearings.*

Councilwoman Klutz made a motion to close the public hearing and MPT Perry seconded. Vote was unanimous, 4-0.

Mayor Perry noted there is too much to consider and information to go through before he can make a decision.

Councilwoman Klutz asked about the recusal. Is it just for the public hearing or the whole project? Attorney Michael replied it is for the entire process.

MPT Perry offered he could vote on it but if it is approved he is not sure how to make a motion with all of the items that need to be put to it. Time is probably needed for that but as far as understanding what council is doing and where to go with it he is prepared.

Councilman Reid said he would like to defer it until the next meeting. It will allow time to really digest the information and there was new information presented tonight. He would like to read the minutes of the meeting before making a final decision. Other council members concurred with the recommendation.

Councilman Reid moved that council defer the decision on this application until our next meeting, March 7, 2011. MPT Perry seconded the motion and it passed unanimously, 4-0.

9. RETURN TO REGULAR SESSION (Council action on above public hearings)

a.) Council action for 8 (a, b, c) may include approval, denial, approval with modifications, or tabling action.

Council took action on these items after each public hearing.

10. PLANNING

a.) Call for Public Hearing - Zoning Amendment. Proposal to rezone four (4) parcels at 4907, 4911, 4915, and 4919 Putter Lane (located in the 4900 block of N. Croatan Highway) from Beach Residential (BR-1) to Beach Commercial (BC-1). The public hearing is requested to be scheduled for the March 7, 2011 Town Council meeting.

Councilwoman Klutz made a motion to call for a public hearing for a zoning amendment to rezone four parcels at 4907, 4911, 4915 and 4919 Putter Lane (located in the 4900 block of N. Croatan highway) from Beach Residential (BC-1) to Beach Commercial (BC-1). Public hearing is requested to be scheduled for March 7, 2011. MPT Perry seconded the motion and it passed unanimously, 5-0.

11. UNFINISHED BUSINESS

a.) Text Amendment - Proposal to amend Sections 42-1 and 4-5, Commercial and noncommercial uses of horses; stabling, with standards for keeping horses, setbacks for horse shelters and enclosures, and allowances for nonconforming situations to continue in the future. If Town Council agrees on an acceptable version of the ordinance, a public hearing could be scheduled for the March 7, 2011 Town Council meeting.

Mayor Perry asked if council received the change on the last page concerning riding horses on the beach. Everyone said they had.

Councilman Reid asked when this ordinance comes up for vote, will it be the entire ordinance or will riding on the beach be separate. Councilwoman Klutz and Mayor Perry said the entire ordinance.

Councilwoman Klutz moved to incorporate the revision of Section 4-6 Horseback riding into the text amendment for Section 42-1 definitions and Section 4-5 commercial and noncommercial uses of horses and keeping horses into the draft proposal for public hearing on March 7, 2011. Councilman Bateman seconded.

Mayor Perry asked if there is any discussion and MPT Perry said he has a question for the attorney. Shortly after he was elected, he asked this question of Bobby Outten, former town attorney. It was on a different subject but has the same gist. If this council initiates this particular change or any change, short of some financial obligation that a previous council has bound you to, does that bind in the event of unforeseen consequence future council's from changing it?

Attorney Michael replied no.

We are in the process of locking in some things, MPT Perry said, that have been permitted through interpretation that were not necessarily the intent of what the original ordinance said. He

Kitty Hawk Town Council Minutes: February 7, 2011
Page 33

wants to make sure and it is in the record that council understands if something comes up in the future that was not foreseen, future council's can take care of it. They are not bound by something council is doing now and believes this needs to be done.

Councilwoman Klutz said now that the question has been brought up she thinks what council does in terms of this ordinance would be permanent as it applies to grandfathering.

Attorney Michael said that is correct. Council has grandfathered certain things, has preserved the status of those, but if future council's want to change the current standards they could do that. Right now council is saying you can have four horses as a maximum. If a future council decides from this day forward you can only have two horses those that are grandfathered get to keep working under the old ordinance.

MPT Perry said essentially some elements of this are saying they cannot lose that right.

Attorney Michael said that is essentially what council is saying. If you had that right to have those horses there you get to keep that right.

Forever and ever amen MPT Perry said. Nobody can change it.

Attorney Michael said pretty much that is what you are saying.

Councilwoman Klutz added the only thing she thinks would apply in the future is no increase in the non-conformity. The way everything else reads is basically people that have horses under the conditions they have them right now will forever not be affected by what we do with this.

Attorney Michael said you pretty much have said that. Anybody else coming in is going to have to comply with the new ordinance.

MPT Perry said a different council can never change that.

Attorney Michael answered not that part of it.

Councilwoman Klutz said not the grandfathering.

Attorney Michael said it is much like the nonconformities council has allowed to exist in town.

Councilman Reid asked PD Heard if this version of the ordinance solves a previous concern of grandfathering a commercial operation.

PD Heard answered the way it was written originally might have been a concern, but Attorney Michael suggested a clause in the nonconformity part that caps the number of horses on a

Kitty Hawk Town Council Minutes: February 7, 2011
Page 34

property to four and that is how it was dealt with. Nobody can go back and put twelve horses on that property again.

Vote was unanimous, 5-0.

12. NEW BUSINESS

a.) Recreation Master Plan Update - the Recreation Committee has updated the plan and unanimously recommends council accept the revised plan.

Councilwoman Klutz reported the Recreation Committee met and updated the Recreation Master Plan. It updates references to actually depict reality in terms of where the town is on various projects. Council has a summary of the changes that were made and they voted unanimously to ask town council to accept the revisions. The plan contains all kinds of caveats and language that says what is in it is all subject to council review and approval in terms of projects that will actually be done. This is the Recreation Committee's master plan and their goals **and Councilwoman Klutz made a motion that the town council accepts the Recreation Master Plan that has been recommended by the Recreation Committee. Councilman Bateman seconded. Vote was unanimous 5-0.**

b.) Storm Drainage Study Agreement for Professional Services - NCDOT has given the Town approval to enter into a contract with Albemarle & Associates for the Storm Drainage Study.

Manager Stockton said this is the storm drainage study agreement for professional services and there will be a public meeting held to assimilate information pertaining to the areas in which there are drainage problems. Based upon information received from the public will determine a scope of work. The problems will be evaluated and solutions determined for those particular areas that council is interested in.

Mayor Perry asked if there will be another contract for that.

Manager Stockton replied yes or it can be an extension of the existing contract.

Councilwoman Klutz asked if this one, unlike the last time this was done, will have a solution phase.

Manager Stockton replied yes.

MPT Perry moved for the approval of the agreement for professional services in the amount of \$14, 988.77 for the Kitty Hawk Storm Drainage Study Phase I. I further

authorize the town manager to sign and the town clerk to attest said agreement. Councilwoman Klutz seconded and the vote was unanimous, 5-0.

c.) Fire Department Capital Outlay Request - the Fire Chief requests approval for the purchase of the Scott Breathing Apparatus and Amkus Rescue Equipment for an amount not to exceed \$46,900.00.

Manager Stockton said there is a request from the Fire Chief to purchase the Scott Breathing Apparatus at a cost of \$22,400 plus shipping and Amkus Rescue Equipment at a cost of \$20,364.57 plus shipping. The chief estimates the shipping will cost approximately \$250 per item. This is brought before council as a result of the decision to bring any capital outlay items before council for approval during the fiscal year.

Councilwoman Klutz made a motion to approve the purchase of the Scott Breathing Apparatus and Amkus Rescue Equipment as requested by the Fire Chief for an amount not to exceed \$46,900.00. Councilman Bateman provided a second and the motion passed unanimously, 5-0.

d.) Police Department Capital Outlay Request - the Police Chief requests approval to purchase three in car cameras for an amount not to exceed \$12,800.00.

Manager Stockton said there is a similar request from Chief Ward for purchase of in car cameras. This is a request to replace two DVR models and one VHS model. The police department has budgeted \$12,800.00 for the replacement of these cameras and this is based upon the previous reason mentioned about coming before council for approval of capital outlay.

Councilman Bateman made a motion to recommend approval of the purchase of three in car cameras by the police department for the amount not to exceed \$12,800.00. MPT Perry seconded. MPT Perry asked if any videos were ever sent to the dumbest criminals shows. (Laughter) Chief Ward said no they are only for court purposes. Councilman Bateman asked if they recycle the old cameras and Chief Ward replied they do most of the time. The actual cameras themselves do not wear out. It is the technology that changes. **Vote was 5-0.**

13. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a. Report on expenditures to date on E. Kitty Hawk Road Sidewalk Project. Manager Stockton offered comments about the East Kitty Hawk Road Sidewalk Project in terms of expenditures. During the course of the design of the sidewalk additional cost in engineering was incurred due to such things as obtaining an easement from the Black Pelican, obtaining an easement for beach access from the State of North Carolina, bidding of the project, and pursuit of an easement from the US Postal Service. The engineering to date is \$18,353.79 and the construction contract is for \$33,434.00 for a total of \$51,787.79. The account being utilized for

Kitty Hawk Town Council Minutes: February 7, 2011

Page 36

funds presently has a balance of \$177,500.00 and that is in the CPO Village Paths fund. The engineering increased somewhat from what was originally estimated for the project.

b. Compliment from Southern Shores on assistance from Officer Becky Terry. Manager Stockton said the town recently received a letter from David Kole, Chief of Police for Southern Shores, complimenting Police Officer Becky Terry. On December 13, 2010, Officer Terry responded to a request for mutual aid in Southern Shores for breaking and entering. Officer Terry assisted in searching for a suspect and none were found but Officer Terry did note a vacant vehicle in the area. Later on Officer Terry saw the same vehicle in the area of NC 12 and US 158 and stopped the vehicle to ID the occupants. Later Southern Shores received additional calls about breaking and entering of vehicles. Based on the information provided by Officer Terry and other information, Southern Shores was able to arrest two subjects. Chief Kole reported that Officer Terry's information was very instrumental in arresting the subjects and was very appreciative of her assistance.

c. Compliment from Debbie Turko about the Town's Ocean Rescue. Manager Stockton said the town also received a compliment from Debbie Turko about how professional the Ocean Rescue is during the summer months. Ms. Turko pointed out that the guards who work for Ocean Rescue make them feel appreciated and safe. She was especially appreciative of the work of Cole Yeatts who has been an inspiration to her children. Ms. Turko is of the opinion that Cole hires only the most qualified and considerate individuals for the Ocean Rescue.

d.) Report on the transition of the Fire Department radios to the 800 mhz system. With regards to the transition to the 800 mhz system, Manager Stockton said the radio heads and antennas are installed in all the fire department vehicles and apparatus. The county template has been approved so as soon as they program the power packs and install the radios in the fire department vehicles the radios will be ready to go. The fire department should receive the portables this month which will complete their order and they have training scheduled for March 2, 2011 and will be ready to use the new radios on March 29th.

f.) Compliment from Adrienne Palma, Principal, Nags Head Elementary. Manager Stockton said the town has also received a compliment from Adrienne Palma, Principal of Nags Head Elementary School about the recent presentation made by Sgt. Brian Strickland. His presentation to the 5th grade class was on internet safety and cyber bullying.

14. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

Attorney Michael said he did not have anything for this topic tonight.

15. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

Police Department Compliment. Councilman Reid said he wanted to compliment the police department on what some might have already seen in the media. A bank robber, he believed

Kitty Hawk Town Council Minutes: February 7, 2011
Page 37

from Maryland, came to the area to apparently go on a fishing trip. As soon as he came back from his fishing trip our police and other policemen in the region grabbed him. One of the things that impressed him was the town's police officers knew he was in the area and went around to all the banks and distributed photographs of the man. It may be routine but the fact that everybody was notified to be on the lookout for him, he thought the police department should be congratulated.

Councilman Bateman asked the Chief Ward if the man caught any fish and Councilwoman Klutz asked if he got to keep them. (Laughter)

Chief Ward said as a fisherman he was glad that at least the man got to go fishing before he was put in jail. Now that trip is going to have to last him for a little while. He was from New Jersey and his cell phone was what got him. It let the police know where he was.

Recreation Committee Update. Councilwoman Klutz reported the Recreation Committee met on the last Tuesday of January and there are a few things she would like to bring up with the council as a result of that meeting.

1) The committee voted unanimously for council to try and pursue grant money for the expansion of the Lillian Street Beach Access parking. Public Works Director Midgett was very helpful in looking at the area not currently improved and coming up with a dozen or more potential parking places there. She offered to propose at the budget workshop a CAMA grant with perhaps matching funds from the Tourist Bureau. She also mentioned to the committee that there really is not money for that kind of project in the Town of Kitty Hawk but if grants can be obtained she thinks council should go ahead and try to pursue those for 2012.

2) Also, in relation to the lack of parking on the south side of town the Recreation Committee voted unanimously to ask the council to bring up a topic of beach driving from Starfish Lane to the Kill Devil Hills line. The distance is about a mile and a half. This would be during the off season using the same dates as Kill Devil Hills currently uses for their beach driving. She has walked that stretch of beach and there are about 15 houses including Pelican Perch which is pretty much in the water. Apart from getting around that house that area of beach does have some open area. If that area were open in the off season it would provide an opportunity for some of our local people to come out to the beach, surf, fish, whatever they would like to do. They would like for the agenda topic to include an opportunity for the public to comment on that. If council agrees she recommended the notice go out in the town newsletter. The committee also recommended that the town use the same rules that Kill Devil Hills uses. Nags Head also has off season beach driving but they require permits.

The committee does not recommend going anywhere north of Starfish because there are many houses on the oceanfront, not much beach, and lots of pilings sticking out of the ground. They

Kitty Hawk Town Council Minutes: February 7, 2011
Page 38

thought it would be more feasible to recommend that short stretch. Also there is more parking available on the north side of town.

If council agrees to have this on the March agenda she suggests council get analysis by the town departments. The police might check with Kill Devil Hills and see what their experience with it has been. Try and get all of the information from the staff including the planning department. There might be environmental aspects of this that council may want to look at. She asked for council to give a concurrence or not on bringing this up at the March meeting in response to this request from the Recreation Committee.

3) The Faircloth family would like to donate a tree to plant in Sandy Run Park in memory of Alice Faircloth. She was a member of the Recreation Committee during the planning of Sandy Run Park, particularly in planning Phase II. This would be at no expense to the town and the Recreation Committee unanimously concurred that they would like council to allow the family to do that.

Councilwoman Klutz asked if council would agree to listen to what people have to say about beach driving in the southern part of town from Starfish Lane to the Kill Devil Hills line. Is that something council is willing to take up at the next meeting?

Councilman Reid said he will listen.

Councilman Bateman said he thinks the tree is a great idea for Alice.

Councilman Reid, Mayor Perry and MPT Perry all agreed the tree is a good idea.

MPT Perry said he is willing to listen to the people, does not have any objection to that. He has a question on the grant request but thought settling the beach driving should come first.

Mayor Perry said it can be brought up as far as he is concerned but does not know how he feels about it at this point.

MPT Perry said CAMA and the Tourist Bureau were mentioned. The question is the town already has a grant from them outstanding for Sandy Run Park Phase II and wondered when or how soon another grant from the Tourist Bureau can occur.

PD Heard said he would be glad to check into it. He does not know if you can have concurrent projects.

Councilwoman Klutz said this would not be looked at until next year's budget but there would be one in progress at that point. There are other grants and maybe they could be looked into.

Kitty Hawk Town Council Minutes: February 7, 2011
Page 37

It was noted Sandy Run Park has a "PARTF" grant and a matching funds grant from the Tourist Bureau.

Mayor Perry suggested CAMA grants be looked into for beach parking.

Councilwoman Klutz agreed and mentioned they were looking to the Tourist Bureau for the matching funds.

Mayor Perry said they would need CAMA before going to the Tourist Bureau. He is not sure what the timeframe is on the CAMA parking grant but thought the town cannot go to the Tourist Bureau any time soon.

MPT Perry said he wants to make sure the Recreation Committee understands.

Councilwoman Klutz said she mentioned the council does not want to do anything to jeopardize any grant that we currently have for finishing Sandy Run Park. They understand.

Mayor Perry said he thinks Sandy Run Park should be finished before the town gets a CAMA grant. The manager's going to have it finished before the snakes start crawling.

16. PUBLIC COMMENT

None.

17. RECESS

Mayor Perry (reading from the proposed recessed agenda) announced the council needs to recess until Wednesday, February 23, 2010, 9:00 am at the Kitty Hawk Town Hall. (The clerk inadvertently printed 2010 instead of 2011)

Councilman Reid said he thought it should be 2011.

Mayor Perry said what in the world? Somebody put one over on me.

(Laughter)

MPT Perry said we did not "Emilize" that.

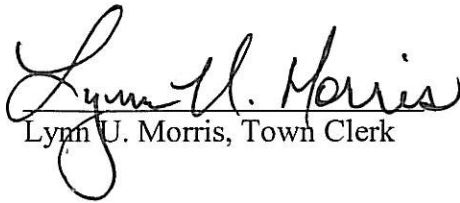
Jokingly, Councilwoman Klutz made a motion that the staff live in the present.

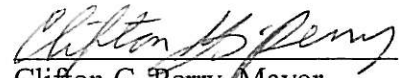
MPT Perry made a motion to recess until Wednesday February 23, 2011, until 9:00am at Kitty Hawk Town Hall. Agenda items to include FY 11-12 budget, Sandy Run Park Phase II engineering contract, additional parking spaces at Lillian Street Beach Access,

Kitty Hawk Town Council Minutes: February 7, 2011
Page 40

consideration of Personnel Policy amendments. He asked if council wants to leave the parking spaces at Lillian Street in. Councilwoman Klutz said it is part of the 11-12 budget and can be left in. **Councilwoman Klutz seconded the motion and the vote was unanimous, 5-0.** Time was 8:35 pm.

These minutes were approved at the *March 7, 2011* Council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor