

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, January 10, 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. Presentation of *The Order of the Long Leaf Pine*, Service Firearm, and Badge to former Police Captain Mike Carver
5. Gail Sonnesso, Executive Director, The GEM Center, Inc.
6. Introduction of new Management Assistant, Melody Clopton.
7. Public Comment
8. Consent Agenda
 - a. Approval of Minutes - December 6, 2010 Regular Meeting.
 - b. Revenues and Expenses Report for November 2010
 - c. Roadway Improvements Total Costs
9. Items Removed from the Consent Agenda
10. Public Hearing:
 - a. Text Amendment: Amend Section 42-276(c) of the Kitty Hawk Town Code to clarify the maximum size of businesses in the Village Commercial (VC-1) zoning district.
11. Return to Regular Session (Council Action for Public Hearings)
12. Planning:
 - a. Call for Public Hearing. 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. The public hearing is requested to be scheduled for the February 7, 2011 Town Council meeting.
 - b. Call for Public Hearing. 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. The public hearing is requested to be scheduled for the February 7, 2011 Town Council meeting.
 - c. Call for Public Hearing. 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. The public hearing is requested to be scheduled for the February 7, 2011 Town Council meeting.
13. 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.
14. New Business:
 - a. Service Firearm and Badge for Patrol Lieutenant Tony Garrett, Sr.

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- b. Revision to Position Classification - Patrol Lieutenant position reclassified to Patrol Sergeant
- c. Release of Budget Funds for Police Vehicle
- 15. Reports or General Comments from Town Manager
 - a. Report on status of Kitty Hawk Park Project
 - b. Report on status of Kitty Hawk Storm Drainage Project
 - c. Report on status of construction of sidewalk on E. Kitty Hawk Road
 - d. Report on status of Sandy Run Park Project Phase II
- 16. Reports or General Comments from Town Attorney
- 17. Reports or General Comments from Mayor and Council Members
- 18. Public Comment
- 19. Adjourn

COUNCIL MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Public Works Director Willie Midgett

STAFF MEMBERS ABSENT:

Fire Chief Lowell Spivey

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

Mayor Perry announced Ms. Sonnesso would be unable to attend the meeting and Councilwoman Klutz moved to approve the agenda as amended. Mayor Pro Tem Perry seconded. The motion carried unanimously, with a vote of 5-0.

4. PRESENTATION OF THE ORDER OF THE LONG LEAF PINE, SERVICE FIREARM, AND BADGE TO FORMER POLICE CAPTAIN MIKE CARVER

Police Chief David Ward said Captain Mike Carver retired from the police department on September 30, 2010 with over 18 years of service with the Town and with over 30 years of service in law enforcement. North Carolina General Statutes allow a retiring law enforcement officer to receive his gun and badge upon retirement. Tonight we are presenting his gun and badge along with other recognitions for his service. North Carolina Governor Beverly Perdue has signed and sent *The Order of the Long Leaf Pine* to Michael Glenn Carver. The Order of the Long Leaf Pine is the highest honor a governor can bestow to a North Carolina citizen. Mike also received a resolution from the North Carolina League of Municipalities for his faithful service and lasting contributions to municipal government. The resolution was adopted at their annual conference on October 25, 2010. Chief Ward thanked Mike for his service to Kitty Hawk and then he and Mayor Perry presented him with *The Order of the Long Leaf Pine* plaque, service firearm, badge, and resolution.

5. THE GEM CENTER, INC.

Item removed for this meeting.

6. INTRODUCTION OF NEW MANAGEMENT ASSISTANT

Manager Stockton introduced the Town's new Management Assistant Melody Clopton and said she has a very good background in human resources. She served seven years with the Outer Banks Hospital as human resources director and has nine years of experience in human resources prior to the hospital. Melody is a graduate of Virginia Commonwealth University and holds a Senior Professional in Human Resources certification from the Society of Human Resources Management.

7. Public Comment - *The General Public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the podium. Please limit comments to 3 minutes.*

1. Daphne Hauser, 3863 Herbert Perry Rd., Kitty Hawk. Ms. Hauser said she wants to take this opportunity to let council know how much her family appreciates the unique opportunity there is in Kitty Hawk to have horses. Her children are being raised on a little "farmette" and have participated in 4-H. They have traveled as far as State competitions with their horses and are learning to become good citizens in part through their horses. She knows council has had a lot on their plates and understands that rules are necessary. Ms Hauser thanked council.

Town Clerk Morris indicated no one else had signed up to speak and Mayor Perry gave a last call for comments. No one else came forward.

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8. CONSENT AGENDA - *Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.*

a.) Approval of Minutes. December 6, 2010 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

b.) Revenues and Expenses Report for November 2010. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

c.) Roadway Improvements Total Costs. The total cost for roadway improvements will be \$67,057.00. This is an increase of \$2,057.00 from what was previously authorized by Council, but still \$5,943.00 less than originally budgeted. *(An affirmative vote for the Consent Agenda will approve the expenditure for this project.)*

Mayor Pro Tem Perry made a motion to approve the Consent Agenda as promulgated. Councilwoman Klutz seconded and the motion passed unanimously, 5-0.

9. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed from the consent agenda.

10. PUBLIC HEARING

a.) Text Amendment - amend Section 42-276(c) of the Kitty Hawk Town Code to clarify the maximum size of businesses in the Village Commercial (VC-1) zoning district. Planner Heard said this text amendment is intended to clarify the existing requirement that all businesses located within the VC-1 District are limited to 800 square feet in size. There are several different subsections in Section 42-276 that would be amended. The Planning Board, at their meeting on November 4, 2010, voted unanimously to recommend approval of this amendment to the Town Council.

After thanking PD Heard, Mayor Perry asked for a motion to go into public hearing. Councilwoman Klutz offered "so move" and MPT Perry seconded. The vote was unanimous, 5-0.

Clerk Morris replied "no sir" when asked by Mayor Perry if anyone had signed up to speak. After no one came forward to speak when asked by the mayor he asked for the record to reflect such.

11. RETURN TO REGULAR SESSION (Council Action for Public Hearing)

Mayor Perry entertained a motion to go back into regular session and MPT Perry offered "so move." Seconded by Councilwoman Klutz, the vote was unanimous, 5-0.

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Councilman Reid said this is fairly routine; a “clean up” action as far as the Town Code goes and **moved to adopt the proposed text amendment to clarify the maximum size of a business in the VC-1 Zoning District. The Town Council finds this amendment to be consistent with the Town’s adopted CAMA Land Use Plan and in the public interest by clarifying an important development standard. MPT Perry seconded and the vote was unanimous, 5-0.**

12. PLANNING

a.) Call for Public Hearing. 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. The public hearing is requested to be scheduled for the February 7, 2011 Town Council meeting.

Stating there are two ordinances Mayor Perry asked which one council wish to send to public hearing.

MPT Perry moved to set a public hearing regarding proposed text amendment “A” alpha.

b.) Call for Public Hearing. 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. The public hearing is requested to be scheduled for the February 7, 2011 Town Council meeting.

Hearing no discussion, **Councilwoman Klutz offered a motion to call for a public hearing for the conditional use permit application for a conditional use permit to establish a commercial crabbing operation in a VR-1 zoning district on the property adjoining the applicant’s residence at 3860 Moore Shore Road for the February 7, 2011 Council meeting. The motion was seconded by MPT Perry and the vote was unanimous, 5-0.**

c.) Call for Public Hearing. 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. The public hearing is requested to be scheduled for the February 7, 2011 Town Council meeting.

Hearing no discussion, **MPT Perry moved to set a public hearing at the Town Council meeting on February 7, 2011 to consider a conditional use permit application to establish a variety of retail uses in the existing building and an open air farmer’s market at 4100 N. Croatan Highway. Councilman Bateman seconded. The vote was unanimous, 5-0.**

13. 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.

Stating he knows existing horse owners are grandfathered, Councilman Reid asked if it means the structure is grandfathered or the horse. There could be a situation where a horse dies, or the property changes hands, another person moves in. What is grandfathered? Will the new owner have to move a barn if it does not meet the requirements or move a fence? To his way of thinking it should be applied to the structure or the fence. Someone could have a horse die and it might take two or three years before they decide to replace it. Or someone could buy property with the idea of buying a horse in the future. Would they have to go out and move the fences or move a barn? It does not make any sense.

Mayor Perry said his recommendation is for it to be all the structures that exist on the property at the time and recommends the time be for two years and not six months.

Councilwoman Klutz said she would also like to make a recommendation and asked the attorney if it can be done. A concern is just what Councilman Reid said. People have had horses for years and perhaps they have had a pause in their horse ownership that has lasted for some years but they have everything on the property that is required. Their property has the acreage and it has the stable and it followed the setbacks of the previous ordinance. She suggests the grandfathering be applied to what are basically nonconformities on the property. The way she interprets it is if someone has a permit for a horse at the time this ordinance is passed then the nonconformities on that property are grandfathered. She would like to add the nonconforming properties that had horses when the original ordinance was adopted around 2001 be grandfathered also and asked if that can be done.

Mayor Perry said when this ordinance is passed they will be grandfathered and when the original ordinance was passed those people would also be grandfathered.

Attorney Michael asked if she meant if someone had a horse when the original ordinance was passed and has not had one in the last ten years, can they still have a horse again under the old standards.

Councilwoman Klutz said they might not have been in compliance with the ordinance when it was passed but they were grandfathered at that time.

Mayor Perry said those people were grandfathered and the ones that have come since when this ordinance is passed will be grandfathered. That will cover the long time residents who had horses a long time ago that may not have horses now.

Attorney Michael asked how those people would be identified.

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Councilwoman Klutz answered staff has a record of those people. It is either the properties that currently have horses on them based on the permit or there was a permit issued when the original ordinance was passed. It runs with the property.

Attorney Michael said staff understood council to mean if someone sold the property the new owner did not have a right to have a horse unless it was brought into compliance with the new ordinance.

Mayor Perry said he did not think that was the intent.

Attorney Michael clarified that council wants to transfer to the new owner the same right to have a horse that the prior owner had.

Mayor Perry stated as long as there has been a horse there. There have been no problems that he is aware of since the first ordinance was passed except the one problem being dealt with now. All of those properties, if they were out of compliance should still remain because there have been no complaints at all. Also, in that same paragraph, instead of six months it should be two years because if a horse passes away, it might take somebody a while to get another horse.

Councilwoman Klutz said she did not think that would be applicable now and Attorney Michael agreed it would not make any difference. Basically council is saying the properties that have horses can keep that right in perpetuity. Councilwoman Klutz agreed the right to own a horse runs with the property.

Attorney Michael said if someone had a horse when the first ordinance was adopted and they were under those standards, that right goes in perpetuity for that property to whoever owns it or leases it.

Mayor Perry said that is correct and the new owners will have to comply with the new ordinance. Attorney Michael said they have to comply with the new standards but once they have done that they acquired the right to have a horse on that property in perpetuity no matter who owns the property or whoever leases it.

PD Heard asked to bring up one other point. It is in response to Councilman Reid's initial question. There are aspects that have been discussed relating to structures and the property that it is tied with. Presently there are nonconformities regarding leasing arrangements. As an example, a property owner leases an acre of property to somebody who lives in Virginia but wants to keep a horse in Kitty Hawk. Under the ordinance as it is proposed that would no longer be a valid owner. There was talk of council's interest in keeping it to residents of Kitty Hawk and under that scenario that nonconformity would cease with a change in owners. As soon as that individual and that leasing arrangement ceased they could not lease it to another person from Virginia or anybody from out of town. That is how this is written and wanted to be clear on that one point.

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Councilwoman Klutz said there is a residency nonconformity as well as a nonconformity that applies to the property. PD Heard agreed. There are different types of nonconformities and that one is tied to the ownership.

Saying he has another question, Mayor Perry asked about somebody having a horse on a lot and the owners do not live there but they live in Kitty Hawk. There was concern about the property having to touch the property they live on. PD Heard said that was in an earlier version and that situation should be addressed in this version. If they are owners within the town and the property with the horse is within the town they are covered by this.

Mayor Perry added he thought the separation distance of a hundred feet being maintained between a horse enclosure should be taken out and the distance should be twenty feet from the boundaries of subject property. Councilwoman Klutz agreed and stated that may have been included because at the last council meeting she said something in general terms about another way to have the setback arrangement would be to have a distance from an occupied structure. Maybe that was an attempt to include it but it was a sort of an "either/or." Everyone else had agreed with the twenty foot setback.

Hearing no further discussion, Mayor Perry asked for a motion to send this to public hearing.

Councilman Reid made a motion that we set a public hearing on the commercial, noncommercial use of horses, keeping horses, section 4-5 for the February 7, 2011 council meeting. Councilman Bateman seconded.

Councilwoman Klutz asked if the ordinance will include what was just discussed and MPT Perry asked the attorney if he needed time to rewrite and vet the ordinance. Perhaps council is jumping the gun a little.

Attorney Michael answered he does not know what will be published at this time and he and PD Heard are going to have to take a shot at rewriting this and incorporating everything in the new version that council wants. We need to make sure we understand it before we have a public hearing.

Councilman Reid withdrew his motion.

Council and staff discussed whether there was enough time to rewrite the ordinance, review it, and advertise it for a public hearing for the next meeting. It was decided to call for a public hearing at the next meeting after the ordinance has been rewritten.

Mayor Perry asked if the motion and second was withdrawn and Councilman Reid and Councilman Bateman affirmed it had.

14. NEW BUSINESS

a.) **Service Firearm and Badge.** G.S. 20-187.2 allows a governing body the authority to award a retiring member of law enforcement his service firearm and badge. Patrol Lieutenant Tony Garrett, Sr. retired on January 1, 2011 and it is requested the council award his badge at no cost to him and his service firearm for \$1.00.

Hearing no discussion on the agenda item, **Councilwoman Klutz moved to approve. MPT Perry seconded and the vote was unanimous, 5-0.**

b.) **Revision to Position Classification.** Police Chief requests that the Patrol Lieutenant position be reclassified to Patrol Sergeant.

Following reading of the agenda item by the Mayor, **Councilwoman Klutz moved to approve the police chief's request that the patrol lieutenant position be reclassified to patrol sergeant. MPT Perry seconded the motion. Vote was unanimous, 5-0.**

c.) **Release of Budget Funds for Police Vehicle.** Police Chief requests that he be allowed to utilize Capital Outlay funds for the purchase of a new police vehicle.

Mayor Perry said he understands from the finance officer the funds are available and **Councilwoman Klutz moved to approve the police chief's request that he be allowed to utilize capital outlay funds for the purchase of a new police vehicle. MPT Perry seconded and the vote was unanimous, 5-0.**

15. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) **Report on Status of Kitty Hawk Park Project.** Manager Stockton stated the County has advised that the tree clearing should begin this week and the site work will probably begin next week. The future layout for the park has been staked in case anybody wants to go and look at it. They have red stakes for the skateboard park, yellow stakes for the picnic shelter and related facilities, and orange stakes for the parking area. Barnhill is the contractor for the site work. The skateboard park and other improvements will begin in about a month or so. Albemarle and Associates informed us they were getting bids on the structures and dog park last week and hope to have a contractor under contract at the beginning of February.

b.) **Report on Status of Kitty Hawk Storm Drainage Project.** On the storm drainage study Manager Stockton reported the town is in the process of negotiating contracts for the engineering services with Albemarle and Associates. When those are finalized a public meeting will hopefully be scheduled for the end of February or early March.

c.) **Report on Status of Construction of Sidewalk on E. Kitty Hawk Road.** Manager Stockton said the town is waiting for an easement agreement from Black Pelican before RPC can

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begin the work on the sidewalk between US 158 and NC 12 on East Kitty Hawk Road. There was word today that the attorneys had reworded the agreement and it should be ready fairly soon.

d.) Report on Status of Sandy Run Park Project Phase II. Staff will be interviewing for engineering services on this project on January 13th Manager Stockton said. He hoped a selection would be made soon thereafter. A contract may come before council at the next meeting.

16. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY.

Attorney Michael offered he has been working with the manager on the easements and talked with Dare County Manager Outten concerning the recombination of tracts for the Dare County Park in Kitty Hawk. By combining those tracts it will take care of the setback problems.

17. REPORTS OR GENERAL COMMENTS FROM MAYOR AND COUNCIL MEMEMBERS

Bullying and Cyber Bullying. Councilman Reid said it has come to his attention that Detective Brian Strickland has been doing a series of presentations in the Dare County schools on bullying and cyber bullying and complimented him on his good work.

Off Shore Energy. Mayor Pro Tem Perry said sometime in February there will be a public hearing in Manteo on all forms of potential off shore energy: alternative drilling, kinetic energy, wave energy. The hearing is to get input on how residents of Dare and surrounding counties feel about it and urged everyone to attend.

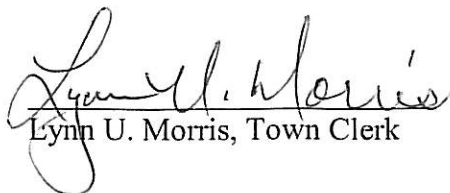
18. PUBLIC COMMENT

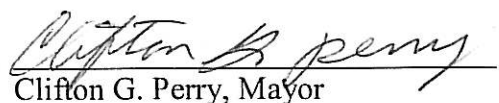
There was no further public comment.

19. ADJOURN

Councilwoman Klutz made a motion to adjourn. MPT Perry seconded the motion and the vote was unanimous. Time was 6:37 pm.

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


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor