

MINUTES
KITTY HAWK TOWN COUNCIL
June 2, 2014
Kitty Hawk Town Hall, 6:00 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of May 5, 2014 Council Minutes
 - b.) Revenues and Expenses Report for March 2014
 - c.) Capital Improvements Plan
 - d.) FY 13-14 Budget Amendment #8
 - e.) Fiscal Year 2014-15 Audit Contract
6. Items Removed from the Consent Agenda
7. Public Hearing
 - a.) Fiscal Year 2014-15 Proposed Budget
8. Return to Regular Session
9. Planning
 - a.) Call for Public Hearing/Zoning Amendment: Application to rezone the property at 223 W. Tateway Road from Low Density Beach Residential (BR-1) to Medium Density Beach Residential (BR-2).
 - b.) Preliminary Subdivision Plat (Revised): Application to re-subdivide four (4) existing parcels totaling 22.31 acres into twenty-nine (29) lots to be known as the West Village Subdivision. A new road connecting to W. Kitty Hawk Road, water lines, and underground electrical lines would be constructed as part of the proposed subdivision.
10. New Business
 - a.) Appointments to Town Boards and Committees
 - b.) Post-Storm Debris Clean Up and Street Repair/Reconstruction
 - c.) Post-Storm Facility Repair
11. Reports or General Comments from Town Manager
 - a.) Winks Update
 - b.) Update on the Emergency Floodwater Management System at Goosander & Poseidon Streets
 - c.) Update on the Beach Nourishment Storm Damage Reduction Project
12. Reports or General Comments from Town Attorney
13. Reports or General Comments from Town Council
14. Public Comment
15. Adjourn

COUNCIL MEMBERS PRESENT:

Mayor Gary Perry, Mayor Pro Tem Ervin Bateman, Councilman Craig Garriss, Councilwoman Emilie Klutz and Councilman Jeff Pruitt

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STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Finance Officer Charlene Allen, Management Assistant Melody Clopton, Town Planner Joe Heard, Police Chief Joel Johnson, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

1. Call to Order

Mayor Perry called this meeting to order and welcomed everyone for attending.

2. Moment of Silence/Pledge of Allegiance

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

3. Approval of Agenda

Councilman Garriss made a motion, seconded by Councilwoman Klutz to approve the agenda. It passed unanimously, 5-0.

4. Public Comment

1.) Joy White, P.O. Box 707, Ellicott City, MD and 3945 N. Croatan Highway, Kitty Hawk, NC – *I have a complaint against Charter Cable. We had a brand new RV delivered from the factory custom inspected before it arrived at the Kitty Hawk RV Park, the end of March 2013. Mr. John gave us free cable ... it was inspected here ... a certified licensed ... before it left the RV place and here it was gone over. Mr. John gave us free cable for three days and it worked perfect. They hooked up our cable, our computer, on Friday and on Monday came back. The gentleman that came in had a Charter uniform, Charter clipboard, Charter truck. He said he had to drill a hole through the wall in our RV entertainment and hook it into a wire. He had taken the plate off. Unbeknownst to us he was not licensed. He was not authorized. He was temp labor and to make a long story short, Brian Tate, the supervisor, and he worked for Prince, he wasn't even a Charter employee. Brian Tate came out. It never worked. When they come to your house, RV, whatever, they hook your stuff into their auto in their computer and when they leave it goes off. And your cable does not work. You pay \$45 for another visit. They come out, they hook it through their truck computer, it doesn't work. Brian Tate the supervisor came out. It was a problem the line outside _____ problem in our RV. He had his hands in our wall playing with our electric for almost two and a half hours. He is not an electrician and he is not a media specialist. He shorted out our PlayStation 3, the computer went, the media ... all the media. Numerous people were sent in through the end of May beginning of June last year. Nobody fixed it.*

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I left and went home with my son who is very ill to Maryland and then came back. My husband drove here to talk to Charter and to try to work it out over the summer. Came back in September and stood in their office day after day until Brian came in and talked to me. He asked if it is fixed and I said no.

They sent in ACI. I have pictures of ACI with all the wires out of the wall with their jackets working on our electric. To make a long story short I asked them who is the electrician and they all said not me. Who is the media specialist? Not me. I wrote it down. And I had them sign the paper before they left with their names and date it that they did not fix it. I listed everything that was broken the HTMI cable, the computer, the this, the that. Dell gave us a new computer. Charter will do nothing.

The attorney general's office said they have more complaints against Charter than all the businesses combined in the State of North Carolina. The Department of Justice said they have never seen a well documented case like ours. I took pictures of these people with their hands on our electric hanging out of the wall.

To make a long story short the second air conditioner went and all the lights on the outside. We have a debt to the bank for something we have paid on for over a year that we are giving back and which we are taking a hit to our credit on. We are going to be sued. Charter will do nothing, Prince will do nothing, ACI will do nothing. Nobody is making them do anything.

On New Year's Eve day at 5 AM my son woke up and he could not breathe. I went for the breathing machine. I plugged it in. It was here at the RV and we went home to Maryland for the winter and it didn't work. Thank God I had a backup or he wouldn't be alive right now. I spent New Year's Eve morning buying a new breathing machine at the pediatrician's office.

Perry: *Ma'am. I certainly appreciate all of the issues that you have and I think all of us at one time or another has had some issues with Charter but I am not sure any of us sitting here know how we can assist you. You can vent your frustrations but that is about all I think we can help you with. Am I wrong on that?*

Michael: *No. I think this is beyond anything we could do with it.*

White: *Unless you put pressure on them because we are not the only people that they have shorted out houses ... that they have messed up places. If you were to put pressure on them like Representative Tine is and we have some of the senators trying to do legislation because our case is so documented. They said they have never seen such a documented case with pictures and everything. The Department of Justice ... if you can ...*

Perry: *I am going to ask the manager to call Charter and document what you have been telling us. Then I am going to ask the manager to see if, through the Attorney General or our*

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representatives, if there is anything the town itself can do by stating your case to them. I think that is about all we can do. He can get back to you with whatever he is able to find.

White: *Okay. I brought a folder of our documents.*

Perry: *All right. Just leave that with the clerk and we'll go from there.*

White: *We came here for my son to heal. We have been coming here for almost eight years. We have property in Duck, we own a lot, and this is where we wanted to retire. My husband is retiring June 30th after 36 years in the school system in Maryland. We cannot afford to have this on our credit. We cannot go get another retire ... you know we can't do anything.*

Perry: *Thank you ma'am.*

White: *Can you arrest them? Just out of curiosity. For fraud and misrepresentation because they were wearing Charter uniforms, Charter clipboard, they do not work for Charter. Why can they wear a company emblem?*

Perry: *The manager will look into it and see what we can find out.*

White: *Thank you.*

No one else came forward to speak during public comment.

5. Consent Agenda

a.) Approval of May 5, 2014 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

b.) Revenues and Expenses Report for March 2014. *(An affirmative vote for the consent agenda will acknowledge this report.)*

c.) Capital Improvement Plan – Council reviewed the CIP at their workshop on May 12, 2014. *(An affirmative vote for the consent agenda will approve this plan.)*

d.) FY 13-14 Budget Amendment #8 – This amendment will recognize and appropriate Powell Bill reserve funding in the amount of \$68,926 for the Poseidon and Goosander Streets Area Emergency Pumping Facility. The bid was awarded at the April 7, 2014 council meeting. *(An affirmative vote for the consent agenda will approve this budget amendment.)*

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e.) Fiscal Year 2014-15 Audit Contract – At the May 6, 2013 meeting council unanimously voted to extend the town's agreement to maintain audit services with Dowdy and Osborne CPA's for the fiscal years ending 2014, 2015 and 2016 at a cost of \$16,250 for each year. *(An affirmative vote for the consent agenda will acknowledge this contract.)*

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

6. Items Removed from the Consent Agenda

No items were removed from the consent agenda.

7. Public Hearing

a.) Fiscal Year 2014-15 Proposed Budget – The proposed budget of \$6,985,633 is based on \$.32 cents per \$100 valuation. Two cents is dedicated to storm damage reduction.

Councilwoman Klutz made a motion to go into public hearing and MPT Bateman seconded it. The vote was unanimous, 5-0.

Hearing no one had signed up to speak, and no one came forward, Mayor Perry asked for a motion to go back into regular session.

8. Return to Regular Session – Council may adopt, deny, adopt with modifications or table action on the proposed budget.

MPT Bateman "so moved" to go back into regular session. The second was provided by Councilwoman Klutz and unanimously passed, 5-0.

Mayor Perry asked for any further comments on the budget and hearing none asked for a motion for approval.

Councilman Garriss made a motion for approval of the Fiscal Year 2014-2015 budget document and all its contents as presented by the town manager. He further moved that the tax rate for the Fiscal Year 2014-2015 be 32 cents per \$100 valuation. MPT Bateman made a second and it passed unanimously, 5-0. (Fiscal Year 14-15 Budget Ordinance 14-07 and Fiscal Year Capital Reserve Ordinance 14-08.)

9. Planning

a.) Call for Public Hearing/Zoning Amendment: Application to rezone the property at 223 W. Tateway Road from Low Density Beach Residential (BR-1) to Medium Density Beach Residential (BR-2). A public hearing is requested to be scheduled for the July 7, 2014 Town Council meeting.

Councilman Pruitt made a motion to call for a public hearing for an application to rezone the property at 223 West Tateway Road from Low Density Beach Residential to Medium Density Beach Residential. A public hearing is requested to be scheduled for the July 7, 2014 town council meeting. Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.

b.) Preliminary Subdivision Plat (Revised): Application to re-subdivide four (4) existing parcels totaling 22.31 acres into twenty-nine (29) lots to be known as the West Village Subdivision. A new road connecting to W. Kitty Hawk Road, water lines, and underground electrical lines would be constructed as part of the proposed subdivision.

Heard: This project is the West Village subdivision and the preliminary plat was approved in December 2013 by the town council. At that time the proposed subdivision had 30 lots and the applicants have submitted a revised subdivision proposal that would divide the 22.31 acres into 29 lots.

The council has looked over and approved the bulk of this project. A majority of the design, layout and specifications of the subdivision have not changed from the original but the item that caused the need for this to come back is on the third page of the subdivision materials. The back page, on Lot 19 at the rear of this subdivision, you will note the applicant has specifically designated and located a 30' wide easement that goes across Lot 19.

With the original approval there was an unspecified, undetermined location for a 20' wide easement and there was very specific discussion about it. The rationale for the 20' was that the lots behind this could not be further subdivided but it would provide access to the lot owned by Jimmy Ray and Deborah Scarborough. It would not allow for further subdivision and increase the number of lots off of West Village Road above 30.

The applicants have shared with me what has occurred in the interim. As part of their negotiations to purchase the four properties from the Scarborough family one of the requirements the family has is that there be an ability to subdivide the property to the south. I had an opportunity to talk with the Scarborougs and what they wanted out of this as well as the applicant. The applicant has provided an easement to create an opportunity at some point in the future, if and when they desire, for the Scarborougs to improve within this 30' easement a 20' wide road leading back to the property. Then their property could be subdivided into as many as

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3 lots. The changes that have been made are all as a result of that decision to provide the easement so the first change is we are looking at a 30' wide easement instead of a 20' wide undetermined easement.

One of the things that had to occur to accommodate the additional subdivision was the developer had to reduce the number of lots overall from 30 to 29 and that is occurring within the stretch of Lots 19 to 24. That is where they lost the lot. Those lots have all been reconfigured. The lot lines from 19 through the southern end of Lot 25 have all been shifted to some degree. What that has done, in addition to making them a little larger, is they have also been able to reconfigure some of those lots. If you will recall some of those lots were narrower at the front and then widened toward the back. They have been able to take those lots and make them a little more of a typical rectangular shape. They meet the width requirements at the front of the property as well as the rear.

The other main change takes place at the front on Lots 1 and 2. Originally Lot 2 and Lot 1 connected all the way over to West Village Road. It was more of an "L" shaped lot and what has been done is the part of what was originally Lot 1 has been given to Lot 2 and both lots are going to be accessed by Kitty Hawk Road. There is a note on the plat that states how the lots will be accessed and how they are going to tie into the waterline. All of that is going to occur toward Kitty Hawk Road as opposed to West Village Road. There would be additional requirements that kick in that are costly and a little more problematic for the developer with 30 lots coming off of West Village Road.

With the additional potential of 3 lots on the Scarborough property the developers were seeking to limit theirs to 27 lots that would have come in off of West Village Road. If and when the Scarborougs create 3 additional lots it still would not exceed 30 and that is why they are choosing to orient those lots toward Kitty Hawk Road. They are no longer counted toward that 30 in the fire code standards and what would be applicable to this project. That is the rationale for why they chose to make the change. Whereas all the other lots the front setbacks are located off of West Village you will see here the 25' front is off of Kitty Hawk Road and it is only a 10' setback on the sides so you will see a few other differences there.

The one change that staff and the planning board discussed regarding this is if you look closely at Lot 2 there is designated on it an area of wetlands. You can see where that line kind of comes in and then another little pocket of wetlands is near the corner. One of the concerns we had is that with this easement being shown as an easement area for the septic system for Lot 1 it would actually be located over here. It only left a narrow, about 20' wide, area where a driveway could go and that area is pretty close, around 40 to 45', from the intersection. That is pretty tight. You want to try to eliminate turning maneuvers occurring that close because it ends up in confusion and possible accidents.

With that in mind we had discussion and the applicant's engineer, who is here tonight, noted that a driveway could be located at the area for a repair area for the septic system. Not a physical

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location of the septic system and therefore it can be driven across and you could locate a driveway across there. One condition the planning board added in their recommendations to council was that there is a 100' separation from the intersection to where that driveway is located to eliminate any concerns about conflicting turning motions between that driveway and the intersection. That summarizes the changes I found.

Perry: *This says wastewater easement area for Lot 1 but if I'm reading this correctly it is actually in Lot 2?*

Heard: *That is correct.*

Perry: *I thought the town had a prohibition about placing a septic system on a different lot.*

Heard: *I have the town code with me and can look into it. I can also let the applicant explain how this would be laid out.*

Perry: *The second part to that question is the driveway. If you are going to use this area, which is a repair area and it is going to be dedicated as a drive, how then can it be two things? A repair area and a drive?*

Heard: *I will let the applicant explain. That is up to the health department who approved this and the applicant can explain the intent.*

Perry: *We need to check on that because I am pretty sure this has come up on the beach before. People on the east side wanted to put a septic system on the west side and they were not allowed to do it. I don't understand how we are allowing it here. Before I turn you folks loose, because I know you have questions, I have a question that has come up a couple of times. I am going to show my age here because back when all the environmental things started coming up, at one point you could dig a hole but you couldn't fill it. Then you couldn't dig a hole or fill anything and now we seem to be filling some parts of different lots. If I understand it correctly, you are allowed to fill one tenth of 404 lands, and I don't know if it is on a lot, or so many square feet, or what it is, but if you are allowed to fill one tenth of, let's say of a lot, is that figured before all of this is subdivided or would that be one tenth of the lots that are being subdivided. In other words each one of those lots, one tenth of that, and no more. Also it shows in several different places we are allowed fill in 404 or five tenths of an acre of fill. Is that five tenths of all the subdivision or is that five tenths of each of the individual lots where that is shown?*

Heard: *To answer your question it depends on when the permit is applied for. In this case it is actually four separate lots presently, but if it is all on one lot when the subdivision is done, it doesn't mean you cannot fill more than a tenth of an acre. But there is a more stringent permitting process involved with the Corps of Engineers if you are seeking to fill more than that. It doesn't mean you cannot fill more than one tenth but it does mean that it kicks it into a ... it is a lot more complicated process in order to gain approval for something more than that.*

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What the applicants are proposing to do is get the permit prior to the final subdivision of this. In other words they would have to obtain the fill permit from the Corps of Engineers in order to build the road. They would have to have it in hand before these lots were individually subdivided. They will be applying for the permit before all these lots are subdivided. Then every individual lot would have a right to apply for fill. If a fill permit has already been issued on that parcel then the Corps doesn't automatically approve that. It is something they have to review and they may deny additional fill on the property. That is something that could occur on an individual basis but it depends on if the Corps has tracked how much fill was done on this as a large parcel. The engineer Mr. Eadus from Quible can also speak in a little more detail as to their intentions and his understanding of what the Corps might do in that regard as well. They are looking at half an acre of fill total related to the development of the infrastructure for this subdivision.

Perry: *As we look at all the shaded areas that are indicating fill that total right now only comes up to five tenths of an acre?*

Heard: *That is correct.*

Perry: *It looks like more than that doesn't it?*

Bateman: *Joe if I heard you right a person who buys a lot has to go and apply again to the Army Corps of Engineers for a fill permit and he might not get that fill permit.*

Heard: *If there has already been a fill permit issued for it there are instances where the Corps of Engineers would deny them a second permit.*

Klutz: *Who keeps track of the total?*

Heard: *The Corps of Engineers.*

Klutz: *So if you are the last guy to build and everybody else has taken their pieces of fill the Corps of Engineers could say too bad.*

Heard: *What they are doing now is issuing a permit based on this as one large parcel and there is a certain amount of fill allowed. Each individual parcel would have a right to request a fill permit for each individual lot.*

Klutz: *The infrastructure uses up so much. What is the total? Do they work against a total and at some point all of the fill that would be allowed for the whole parcel is used up?*

Heard: *The Corps would look at a specific design ... they don't give them an overall blanket number. They are looking at the specific areas proposed for fill and they are evaluating how that*

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would affect the wetlands system in issuing that permit. That is what they are approving. Mr. Eadus can probably better answer if there is an overall number.

Perry: My question is what is the total? A tenth of an acre for individual lots or the whole project and we have just been told it is the whole thing. There are a lot of shadows there.

Warren Eadus: I am Warren Eadus, one of the owners of Quible and Associates. I am a professional geologist and understanding the Corps regulations is one of my main duties at Quible. There is not a bank for each property. There is what is called a general regional permit. Every five years the Corps says we have forty or forty-one different permits as it is this five year period and each one is for a specific activity. If you are a municipality and you want to fill wetlands for a utility line you get a Nationwide 12 permit. If you are a single lot owner and you want to fill, for whatever reason, you get a Nationwide 18 permit which allows up to a tenth of an acre. It is already authorized but you have to prove you are meeting the criteria and often that includes mitigation.

Roadways are covered under what is called a Nationwide 14 permit. One of the conditions is that you can only fill half an acre or less for the Nationwide 14 permit. We are seeking a Nationwide 14 permit to construct the roadway. It also helps us with the setbacks for any septic systems. We laid the road out in a way that when we fill for the road we were also changing those wetlands lines so we could permit septic systems for the lots. We kind of minimized our impact by doing it that way.

You can request to fill the whole ... you can say I want those six acres and you can go to the Corps and you can apply for what is called an individual permit. There is no cap on what an individual or entity can request to have filled. If you fit within their box of allowable preset conditions then it is an expedited process. If you meet all ten or fifty conditions you get a permit.

The developer goes in and they want to see the whole project. How will the project work with fill? We have to prove to them we have minimized our fill and that is what this plan does. If the property changes hands and it gets subdivided it is a new property owners right to go back to the Corps and try to have additional fill. The Currituck Club is one of several examples on the Outer Banks where enough time has passed and things have changed. You can go back and try to fill additional wetlands is what they try to do. The law sometimes helps them and sometimes it doesn't. The laws change and can make it easier or harder for individuals to fill. The Corps wants to see that this project can be built with the amount of fill you say upfront. If that can happen then they are generally okay with it but that is not to say that somebody could purchase a lot and come back and they couldn't. They could request the fill and they may or may not have that ability.

The Corps is the entity that tracks it as well as the Division of Water Quality. When you make a request there are two laws that you have to follow: Section 404 and Section 401 of the Clean Water Act. The state administers the 401 and the Corps administers the federal side, the 404.

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You have to adhere to both laws and they change every five years. You get new permits every five years so it is a constant upkeep and that is why plats expire. I personally delineated the wetlands and when that line expires the Corps and DWQ have the right to come back and re-evaluate them. That is part of the environmental process.

We are talking about the shaded areas and one thing to keep in mind is this is a one to eighty scale map and it has been tricking me too. Especially when I was looking at the driveway distances. It looks like a tiny area but it is a longer area. I think it is a little deceiving but half an acre is half an acre and we are using that for the roadway. We are also double dipping and using it for septic setbacks. That is calculated by AutoCAD which is automated and we are comfortable it is only half an acre of fill we are requesting. We are comfortable we can get that permit. It is a permit that fits within their general regional permits. We meet all of the criteria. We will have to provide mitigation. That will be a payment into a mitigation bank for some preservation of wetlands. Typically we pay into a mitigation bank and they use that money to restore wetlands throughout the state. That is kind of the wetlands debrief.

Perry: *That was good. I have had a lot of questions over a long period of time and it is very confusing to the general public. You see somebody fill someplace and you ask how can they do that and then somebody else gets denied and you wonder why. It still leaves the question I asked about the wastewater area for Lot 1 crossing a boundary.*

Eadus: *We have this wastewater easement area and these lots would have advanced treatment systems. They are not conventional wastewater systems. They will be small and they will have different configurations. What we would propose to do is actually drive over the line that distributes to the field. We will not ever drive on the field, whether active or repair. They would never be allowed to put a driveway over a wastewater field. You can however drive over a pipe leading to a wastewater field and you can do that within an easement.*

That does not answer the question about having easements on other properties. We were under the assumption we could do that but we would not propose to drive over a wastewater field or put any improvements on the field itself. You design the pipe to be driven over and you write it into the easement and you keep on going. It is something we have done in the past and are comfortable with. I was not aware there was an ordinance in Kitty Hawk that said it was not allowed.

Perry: *I think Joe is going to have to fill us in. In the meantime I think other councilmembers have some questions.*

Pruitt: *Joe has kept us up to date with all of the codes and requirements and then there is one other place I have to go look and that is our CAMA Land Use Plan we have to go by. I did some research and in Chapter 2, page 17, under the Kitty Hawk Vision Statement the last paragraph starts out with "Kitty Hawk is a cottage community" and then it goes on to list about ten things. The very last one reads "Kitty Hawk is a cottage community and intends upon remaining a low*

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density family oriented community, a year-round community, a retirement community, a traditional coastal village community and a resort-tourist community in harmony with the natural environment." That is the vision statement.

Then in Chapter 8, page 21, under Issue 25 it states "types, densities, location and units per acre of anticipated residential development and services necessary to support such development." It goes on to say "the town supports the use of adopted zoning regulations, subdivisions and development requirements and land use planning concepts that will ensure that the types, density and locations of anticipated residential development and necessary support services are consistent with the existing low density, low rise, residential character of the town." My question to our attorney is how will we determine, with the amount of 404 wetlands on this piece of property, even though we allow 404 to be calculated in the size, when you look at this piece of property I can't help but see high density for the amount of buildable land in conjunction with the natural terrain of this piece of property. My question is how are we determining this goes along with our Land Use Plan? That this is considered a low density family oriented community?

Michael: *You have set your minimum lot sizes to 15,000 square feet and that is how you calculate your density. How many 15,000 square foot lots can you get in this subdivision? My recollection of looking at this is all of the lots meet or exceed 15,000 square feet so they have met the density requirement the town has set for what you have determined to be low density. I know in Currituck you have to have 3 acres now if you are not hooked up to a septic system or something like that. That is how you determine what low density is and if you have a 15,000 square foot lot you can build on it. Assuming you can meet all of the septic requirements.*

Pruitt: *Even if 3/4's of this is 404 and we are using a quarter of it ... and we are completely filling it. That is still low density?*

Michael: *By your definition of what a suitable lot size is.*

Pruitt: *I understand a suitable size but I'm talking about ...*

Michael: *Well low density does not have a definition in it.*

Pruitt: *So if it doesn't have a definition is it up to my determination or ... is that the only determination we have?*

Heard: *The Land Use Plan has a definition for low density. It is referenced on the page with the future Land Use Map and in that section it mentions 2 units an acre. As Mr. Michael has said that is not completely consistent with any zoning district in the town except Kitty Hawk Woods.*

This total property is a little over 22 acres, a little over 9 of that is in wetlands, so there are 13 acres if you want to refer to it as high ground and in this case it is a proposal for 29 units on that which is just a tad over 2 units an acre. While it is not 2 units an acre it is close as far as if you

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want to pull out all of the wetlands and just look at the high ground. That is the density we are talking about which would be greater than almost any subdivision that has been approved in most of the things that have 15,000 square foot lots. First Flight Ridge, Harbor Bay, Hickory Ridge most of those are 15,000 ...

Pruitt: Most of those are 15,000 square feet and is regular buildable land where this is so much 404 wetlands and other wetlands. To me it seems if this was all a flat field then I could understand but it seems with the way this is set up it seems to be intense for the area. It is just the way I see it. I see it different than if I was riding down the bypass and there was a great big section with lots. That's all I have.

Perry: Joe if I recall correctly at one point I think 12,000 square feet was sufficient then it was raised to 15,000. There was also another change that went into effect. If somebody had a piece of property, and we have this in certain areas because that is the reason for the change, and a house was built on enough high land but then another hummock or piece of that land was used to put the septic system, all on one lot, I thought there was a change that said it had to have 15,000 square feet of buildable land for a property and you couldn't put a house on one hummock and a septic system on another hummock and have marsh everywhere else. Is that correct or not?

Heard: That is not correct. The only thing I have found in the code is we do exclude the wetlands that would be designated. What we commonly refer to as CAMA wetlands. That area is excluded and this subdivision does have small portions of lots that are excluded for that reason. There are small areas along one side that are excluded because they are classified as CAMA wetlands.

Perry: But that doesn't include 404.

Heard: The Corps stuff is all included and I am not aware of any statement in the subdivision ordinance about needing to have that much high ground.

Klutz: With the exception of the question about the wastewater easement area being on a different lot from the house lot it is going to service, is there anything about what we are looking at that is contrary to the subdivision standards as they are currently written?

Heard: No. There is nothing that is contrary to those.

Bateman: When we talked about this the first time I said I was not for this project because of the fact that it was intense. It is the most intense project I can think of in my time since I've been on the planning board and all through my council years and here it is 2014. I have not seen a project that takes and utilizes as much property as this one. Now that is credit to you. You are doing an outstanding job but still this is just jam packed. My concern is when I asked the question a while ago about Billy Bob who buys a lot, and you have your half an acre of fill, and Billy Bob goes to get his permit ... the project being as intense as this is I think that jeopardizes ... that is not what Kitty Hawk is about.

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I would be all for this if it had 24 lots or something and make them so it is a big great residential community. I don't have a problem with that. I don't have a problem with it being there but as intense as this is I really have a problem with it. I have stated since it first came to us I didn't feel comfortable with it then and I don't feel comfortable with it now.

I called our attorney this morning and said I have a problem with this. Does it meet the criteria of the subdivision ordinance? The answer I got back was yes. So you have done what you are supposed to do. You have crossed your "t's" put the two lots out front and fronted them on West Kitty Hawk Road so you can get as many lots back there as possible. You did a great job but you are jamming a whole bunch of stuff onto 22 acres of property. And if you were around here during Hurricane Irene the man across the street had 3 feet of water and the whole area was under water. The whole area that you are going to build on was under water.

When I was in Elizabeth City and built my first house I didn't have a person on either side of me and had a big old thing called Thunder Road behind me. Deer and rabbits running and all that. A guy built a house beside me and another guy built a house on the other side of me. My wife was crying and saying they have changed our neighborhood. But the guys had a right to do it and that is what Steve and I talked about this morning. You have rights but understand this is really intense and I don't want to vote for this because of that reason.

Klutz: *Based on what I have heard if we want to change the potential for this kind of project coming before council because we feel the density is too high then it would mean changing the standards. If we feel the standards are not supporting what we believe is the vision of the town then fingers would be pointed and they would be coming in this direction. I would say it is up to us if we want to decrease the potential for high density projects like this. The only way to go about it is to make some changes to the standards.*

Perry: *But that won't affect this.*

Klutz: *No it won't affect this at all. We cannot turn down something that is in accordance with the standards we have now.*

Pruitt: *But how about if you don't feel like it fits in with the Kitty Hawk vision even though it fits the standards? You don't actually think it is in harmony with the natural environment. Is that grounds? I mean can the Land Use Plan be used if an individual interpretation doesn't think it is in harmony?*

Michael: *The Land Use Plan and the statements you have made about how you want the town to develop ... the standards that you actually adopt in your ordinances are the standards that are going to be applied and they are not always exactly in symmetry as Joe pointed out. Your Land Use Plan says 2 per acre and 15,000 square feet is not 2 per acre but that is what you have set as your standard for the minimum lot sizes.*

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Klutz: *And Kitty Hawk's Land Use Plan is specifically not regulatory.*

Perry: *It is a guide.*

Garriss: *I have been listening and there are a lot of people in this room who have lived here a lot longer than I have. I have lived here since 1995 and I know how many times we have had stormwater issues back in this area. I have a concern about this development. It is beautiful and like Ervin said you have done your job and have met the requirements. I just have a big concern about this development being built in that location.*

Perry: *Joe have we answered the question about off-site septic or do we need time for you to research? We might need to table this for the next meeting.*

Heard: *I have looked at the area in the town's zoning ordinance that relates to septic systems and do not see a specific reference to that other than it requires the health department approval. I don't know if that requirement is coming from them or not. If that is an issue the council needs a more definitive answer I would certainly be glad to research it further but that is the best I can give you this evening.*

Perry: *All right there are two things I would like to have researched and because of them I am going to recommend we table this until the next meeting. That is one of them because I was certainly of the understanding that other people had been denied the right to cross NC 12 and go to the other side.*

Klutz: *I happen to know on the oceanfront side there are separate adjacent lots with the septic on one and the house on the other so it might be just about crossing the road. We need to get that settled.*

Perry: *Let's get it researched. The other thing is I also thought, in fact I have been told, that when they changed to the 15,000 square feet they also changed it so you could not split up a lot the way I described it. Using swamp in between parts of it and I would like to make sure we have a handle on that before we go forward. If those two things are not at issue then the rest of it is going to fall in place and we don't have any choice but to accept this. **I am going to recommend we table this until the next meeting which is July 7th. We will get the researched answers. Do I hear a second?***

Pruitt: *I'll second.*

Bateman: *Warren wants to say something.*

Eadus: *The only reason we came back was because the sale of the property has not happened. This is a condition of the sale and if we cannot meet these conditions then the sale does not happen. There are a lot of folks that are anxious and you don't need to know the whole back*

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story but there is a partnership that is splitting, that needs to split for a lot of reasons, and if there is a way there could be a conditional approval until we can provide you with the assurances you need rather than wait a whole month it would help. We may be able to get those assurances in a much shorter period of time. It may not be something you would want to consider but we would ask you to help expedite this because ... it is not for me necessarily and it's not necessarily for Gordon. There are a lot of other people involved and I think it is a matter that if it goes out another month ... I know it was an issue that we had to come back.

Perry: *I want to hear some answers to the questions we have before we go any further. I personally am not willing to go for it conditionally. I want to know the facts and we have a lot of questions and I would like to get the answers. Unless the attorney tells me that the motion and the second we have is not appropriate ...*

Michael: *It is appropriate.*

Perry: *Then I am going to call for a vote. All in favor? Vote was 5-0.*

10. New Business

a.) Appointments to Town Boards and Committees

Councilwoman Klutz made a motion to reappoint Oscar Northen and Bryan Parker as regular members of the planning board with a term to expire June 2016. MPT Bateman seconded the motion and it passed unanimously, 5-0.

Councilwoman Klutz made a motion to reappoint Dylan Tillett as an alternate member on the planning board with a term to expire in June 2016. MPT Bateman seconded the motion and it passed unanimously, 5-0.

Councilwoman Klutz moved to reappoint Oscar Northen as Chairman and reappoint Lynne McClean as Vice-Chairman with terms to expire in June 2015. Councilman Garriss seconded the motion and it passed unanimously, 5-0.

Mayor Perry said the applicant for the Board of Adjustment is also serving on the Recreation Committee and she wants to continue serving on that committee. He does not see a problem with serving on both and asked the attorney if there is any conflict.

Attorney Michael said there is no conflict with serving on that particular board and committee.

Councilwoman Klutz made a motion to appoint Chris Jenkins as a regular member to the unexpired term of Barb Connery on the Board of Adjustment with a term to expire in June 2016. Councilman Garriss seconded and the motion passed unanimously, 5-0.

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Councilwoman Klutz moved to appoint Jim Geraghty as Vice-Chairman on the Board of Adjustment. This appointment is until a successor is voted upon by the town council. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

Councilwoman Klutz made a motion to appoint Christine Buckner to the unexpired term of Chris Jenkins as an alternate on the Board of Adjustment. Term to expire 2015. MPT Bateman seconded and it passed unanimously, 5-0.

Councilwoman Klutz made a motion to reappoint Ricky Brake and Tom Heffner to the Recreation Committee with terms to expire in 2018. MPT Bateman seconded the motion and it passed unanimously, 5-0.

b.) Post-Storm Debris Clean Up and Street Repair/Reconstruction – The town entered into a Hurricane/Disaster Debris Removal Interlocal Agreement with Dare County last year and will be a part of the agreement if the county activates its contract. If the county does not activate their contract the town needs to have its own contract in place for the service and in order to be reimbursed by FEMA. Four bids were received for the three year service (ending 6/30/17) of debris clean up and street repair. The Public Works Director has recommended continuing with CrowderGulf, LLC and awarding them the bid.

Manager Stockton said if Kitty Hawk should have an event that does not affect the rest of the county then the town is required to have its own contract for debris clean up and removal in order to obtain FEMA funding. In the event there is a county wide event then the town will use the same contractor the county uses.

Mayor Perry added the town is going with a different contractor than the county and it does not put the town at odds with the county or with FEMA for possible reimbursement

Councilwoman Klutz made a motion to award the contract for debris removal and street repairs to CrowderGulf LLC for disaster recovery assistance. MPT Bateman seconded the motion and it passed unanimously.

c.) Post-Storm Facility Repair – No bids were received on time. This will be re-advertised and if bids are received it will be placed on a future agenda.

Councilwoman Klutz asked about getting this in place before there is an event.

PWD Midgett replied if something should happen prior to it being in place the town will be all right because it has gone through the procedure to get a bid. Staff can negotiate with local contractors and still be eligible for reimbursement.

11. Reports or General Comments from Town Manager

a.) **Winks Update** – Manager Stockton reported to council that Attorney Michael had recently received the defendant's response to discovery for the Winks situation. Code Enforcement Officer Alexander has calculated the amount of fines that are due based on the days the owners say they were closed. Attorney Michael is now in a position to put this on for a Motion of Summary Judgment. The owner's attorney asked again about a possible settlement and was told to make a proposal. It would be forwarded to council for consideration.

Attorney Michael said he has not received a proposal and will draft the Motion for Summary Judgment and an affidavit for Ben Alexander to sign about the fines.

b.) **Update on the Emergency Floodwater Management System at Goosander & - Poseidon Streets Stockton** – Manager Stockton announced the Poseidon and Goosander Area Street Emergency Pumping Facility Project has been completed and the final cost of the project was \$68,926 which was the original contract sum.

c.) **Update on the Beach Nourishment Storm Damage Reduction Project** – Manager Stockton noted the status of Coastal Planning and Engineering and the beach nourishment project. They have completed approximately 6.8% of the scope of work as of May 1st. The work includes environmental documentation, beach profile surveys, calibration of the SBEACH model in preparation of the vulnerability analysis, the preliminary overtopping analysis, collection of native beach samples and the coordination of off-shore sand search. The highest priority at this time is to complete the preliminary geophysical survey.

12. Reports or General Comments from Town Attorney

There were no further comments from Attorney Michael.

13. Reports or General Comments from Town Council

Bateman: *I think we need to, once we get some answers back from Joe, maybe look at some things. When I was on the planning board we looked at the buildable lot size and the calculations on septic systems ... I mean maybe I was dreaming but if we didn't ... this is very intrusive, this development, and maybe we need to look into changing some things. Emilie made a good point. Either you live with it or you change it. You don't want to go too far the other way where at one time you couldn't cut a tree down in the town. You could plant a tree though. They didn't mind you planting one. But everything else you couldn't do.*

Perry: *I had to drive my daughter to Duke and we stopped just this side of Williamston. While we were there I noticed there was a place that had video games in operation in a little mall.*

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Michael: *Yes some of the counties are letting them do it. Halifax County has the Dolly Parton development and they put in video games to help generate revenue since the county is holding the debt on it I guess. Some of the places have made a decision they are going to let them operate under the theory that the software they have put in doesn't meet the definitions of what the legislature has designated as being illegal.*

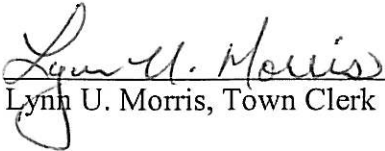
14. Public Comment

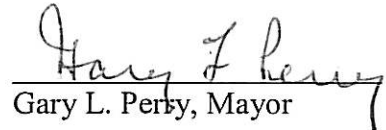
There were no public comments.

15. Adjourn

MPT Bateman made a motion to adjourn. Councilman Garriss seconded and the motion passed unanimously, 5-0. Time was 7:15 p.m.

These minutes were approved at the July 7, 2014 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor