

Minutes
KITTY HAWK TOWN COUNCIL
Monday, March 4, 2013
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 February 4, 2013 Minutes
 - b.) Revenues and Expenses Report for January 2013
 - c.) Resolution Declaring March 18 – 22, 2013 as Flood Safety Awareness Week
 - d.) Agreement between the Town of Kitty Hawk and the Towns of Southern Shores and Duck
 - e.) Acceptance of Gift from Tanya T. Crow
 - f.) Proclamation Designating March 11-17, 2013 as Multiple Sclerosis Week
 - g.) Resolution Supporting H.R. 819 Preserving Access to the Cape Hatteras National Seashore Recreational Area Act
 - h.) Designation of Applicant's Agent Resolution
6. Items Removed from Consent Agenda
7. Reports or General Comments from Town Manager
 - a.) Fire Department has met State Requirements
 - b.) Town of Nags Head Thank You to Kitty Hawk Fire Department
 - c.) Town to Receive \$123,903 from State due to Hurricane Sandy
 - d.) Quote for Guardrails on W. Eckner St. and W. Tateway St. and Bay Drive
8. Reports or General Comments from Town Attorney
9. Reports or General Comments from Town Council
10. Public Comment
11. Recess to March 11, 2013, 9:00 AM, Kitty Hawk Town Hall for discussion of FY 13-14 Budget

COUNCIL MEMBERS PRESENT: Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman and Councilman Richard Reid

COUNCIL MEMBERS ABSENT: Councilwoman Emilie Klutz

STAFF MEMBERS PRESENT: Town Manager John Stockton, Town Clerk Lynn Morris, Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Charlene Allen, Police Chief Joel Johnson, Fire Chief Lowell Spivey and PW Director Midgett

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1. CALL TO ORDER

Mayor Perry called this meeting to order at 6:00 p.m. and welcomed everyone in attendance.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Councilman Bateman made a motion for approval of the agenda. MPT Perry provided a second and the motion was approved unanimously, 4-0.

4. 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. David Hunt, 4816 Lindbergh Ave., Kitty Hawk, NC: *My name is David Hunt and I am a business owner and a resident in the Town of Kitty Hawk. I thank the mayor and town council for allowing me this time to talk. I am here representing myself and some of the other business owners in Kitty Hawk. Many of us agree that the current code covering the "open" signs is not giving some businesses the exposure they need to properly inform the general public of their open or closed status. The current code allows for one neon "open" sign not larger than two square feet which is approximately this size. (Mr. Hunt held up an "open" sign)*

Regardless of the size of the business and how many exterior walls they have, according to current code, it is only allowed one "open" sign. Many businesses like Hurricane Mo's and others have exposure on more than one side so they have to decide if they want to have it inform the east bound traffic or the west bound traffic as far as their open status. Other businesses such as LaFogata and the shops at Pirates Walk are set back far from the road and a single two foot sign cannot adequately be seen by prospective customers. I am not asking the Town of Kitty Hawk to turn into Las Vegas or Times Square but businesses are having enough trouble getting customers.

I discussed this with Mr. Heard and Mr. Alexander and Mr. Heard explained to change the existing code it would require a text amendment. So I understand that not much can be done tonight but I did want to explain our position and perhaps make a suggestion for a new guideline. I feel that a code for a total of up to two signs or a total of up to four square feet would be a great help to the businesses in the Town of Kitty Hawk and not change the small town appeal that everyone in Kitty Hawk values so much. Thank you for your time and I would be happy to answer any questions.

Mayor Perry said this will need to go through the planning board first and Mr. Hunt said that was explained to him and was at this meeting to first give his opinion to council.

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2. Sandra Standley, 1707 Sand Dollar Circle, Kitty Hawk, NC: *Good evening town council. I am Sandra Standley and I live over on Sand Dollar Circle here in Kitty Hawk. I think you have some handouts and it is excerpts from the two meetings from a year ago concerning the garage that is now in Quail Run. They are to underscore my concern. The incident that precipitated my bringing this to your attention tonight is very quickly as follows. One afternoon last week I was taking my dog out for his afternoon walk and I heard the pneumatic tools going in the garage in front of me on Quail Run. I also heard some other kind of scraping and I don't know what it was. So I walked around and said to the person who was working in the bay door ... he was on the outside and whatever he was working on was stretched across the front of the bay. It was some kind of, all I could think of, was like a drilling metal on metal kind of sound. But also in the back of the garage, actually in the garage, were the pneumatic tools. So I said to the young fellow at the front of the garage doors they are supposed to be closed during this period of time because of the noise. He kind of did not know so he asked if I would like to speak to the owner which I did. Mr. Brown came out and I proceeded to tell him I am hearing this from the back and please close the doors.*

I was then told that he hears noise from our neighborhood occasionally and, yes, we are a community. We have grass mowing in the summer and we just had septic systems cleaned. These are normal residential noises. It is not like people are back there banging around. He also then proceeded to tell me if I am concerned about this Sandpiper Cay should have bought the parcel of land in front because why would I build my building or a home right behind a commercial building. This was all turned then on me. I did not have enough forethought for that and then he said to me he does not have to have the doors closed.

This is basically what these handouts are about, dating back to the November and December 2011 town meetings. So this then proceeded to ... I am on private property and that he had seen me. He has cameras mounted for surveillance which I think is very practical. He accused me of being back there with a man ... I am walking my dog and trying to get into his business and I said first of all I always walk my dog alone. And I am quite aware that there are surveillance cameras there. Then after that I believe is when he told me "you are on private property and I could call the police on you." So anyway that is why I am here tonight. I am not here representing the community, I am representing myself.

If you care to look at the printouts ... at the bottom of the first one, November 7th, Mr. Brown is speaking and says the air compressor generates the most amount of noise. On the next page he says that most of the repairs really do not generate any noise these days. Below that and highlighted he said a bit of customization in which case we will close the doors front and back. That is on page 8. That is it for the November 7th meeting.

The approval meeting of December 5, 2011, Mr. Brown talks about the noise levels and he can definitely appreciate that they will be concerned about that, meaning Sandpiper Cay. If there were very loud noise levels then yes it could reduce property values. Next page, 21, me saying, I am the person who initially heard the noises coming from there before they had approval to open

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the garage. Then again a little bit further down it says Mr. Brown you apologized the last time to me personally and you said that you were sorry to hear that I was hearing the noise. Down to me again I said they were not compressors. They were pneumatic tools and at the last meeting Mr. Brown apologized for that. There it is again apologies, apologies. Next page, this is where Mr. Reid moved to grant the approval of the conditional use permit. Next page, the item number five (5) says the hours will be limited to 8 AM to 5 PM.

This past summer I did have occasion ... one Saturday in particular there was a gentleman in there working. It must have been at least 8:30, 9 o'clock, because I walked my dog later that evening and he was very ... and the people I have dealt with have always been ... if I see them when I walk through, are very kind and say "hello." I have never been ... call the police on me or told me I was on private property.

Number six (6) is from Mr. Reid in the proposed amendment, "while the repairs are taking place the building shall be closed. And there is some language in the application in the applicant's presentation that was ... confirms that that would be acceptable."

Then we go over to the next page, 29, at the bottom Mr. Reid is explaining about the repairs taking place and shutting the doors and that apparently Mr. Brown in his initial application at the very bottom it says it is part of the application. So this is all referring to Mr. Brown ensuring that he was going to close doors, this was in his initial application, etcetera.

Next page, 30, at the very bottom is a discussion among Ms. Klutz, Mayor Perry and Brown concerning the sounds. Mayor Perry you talk about keeping the doors open in good weather and when they are not making a lot of noise the doors could be open. At the bottom, Mr. Brown said if he knows it is a particular noise maker then he will require mechanics to close the doors just to get that part of the job done and then it can be reopened.

Last page, 31, Mr. Reid said number six (6) says while the repairs are taking place the building shall be closed. Then you ask will we say the back door shall be closed and Mayor Perry said the back door and if you want to add the front doors during noisy operations. I am not sure what MPT Perry stands for but he said just go with the back door. I do not know why that was just the back door for noisy repairs. Then Ms. Klutz said you know I have to feel like the owner of the business has seen that he is upsetting neighbors with the potential for noise. It would be a good business decision to make sure when you are making a lot of noise you close the front door. Mr. Brown said he does not want to step on anyone's toes.

I think he spells out pretty well what he intends when he is here at a meeting but what he is actually doing ... I was just appalled when I ... I mean I was not being rude, I was not screaming at him and the thing about private property ... the last, I do not know, 10 days perhaps, on each of the dumpsters at either end of Quail Run there is the fencing around each dumpster and there is a ... just in the last 10 days or so a little sign that says "private property." When I saw that I thought that is like Gables Way and like Sandpiper Cay. We have a sign at the dumpster

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meaning people are not allowed to come and throw their trash. I assumed that is what that was but apparently that ... he also said no flow through traffic and I told him I am not traffic but the private property sign that has been hammered onto these wooden fences apparently that means I am no longer welcome or anybody can walk through there but when I first ... I mean if you would see that you would think this is for their private use, the dumpster, but anyway that is where he had admonished me with he could call the cops on me.

So I am just concerned. If he feels now that at the second round of expanding his business perhaps he feels that he does not need to abide by the initial conditions that were put in place and he just feels very confident and I do not ... I certainly do not feel threatened and I do not get intimidated very easily so I can come up with him on any level but I just think it is very ... he is not complying with things and this was my whole concern when I brought this up. I was the initial person who got Sandpiper Cay rolling because of the noise factor and then it broadened to include all the other issues which I think are vitally important as well for all of us.

Anyway thanks for all of your time. I appreciate it and I just would ... if you could offer any advice or look into this. I do not think he is meeting that condition. Perhaps that is just me. Thanks.

3. Linda Courson, 130 W. Kitty Hawk Rd., Kitty Hawk, NC: *My name is Linda Courson and I live in Kitty Hawk and I came tonight because I feel there is a safety issue here at the municipal property. My granddaughter and my dog like to come here and we park at the upper parking lot where the doggie station is and run down or walk one side or the other. It is very nice. Thank you for putting the doggie station there. But as cars are coming down there is a curve and a little hill and they cannot see us until they are around and we cannot see them to where we are almost on top of each other which is kind of scary at times. So what I propose that you would think about is either putting a stop sign or a road bump there so it slows the cars down that are coming around the bend and people that are a little bit further down on the road have time to know cars are coming.*

Mayor Perry: *Is that when you are coming into the property on your right?*

Courson: *Yes. As you come in because when you go out there is no problem. You are going up the other way but it is coming in and you cannot see the cars because you are a little bit further down in the middle. You cannot see them until they are almost on top of you because of the bend and then that kind of gives them some momentum too. They are coming down a hill and they are ... so it is a very nice area and I would hate to stop coming. All the other people use it too because I can see doggie bags and it is a nice area. It is very nice that you have that there and I would like to be able to use it safely. Thank you.*

Mayor Perry thanked Ms. Courson and asked if there was anybody else who wished to speak during public comment. No one came forward.

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5. 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. February 4, 2013 Regular Meeting Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

b.) Revenues and Expenses Report for January 2013. *(An affirmative vote for the consent agenda will acknowledge this report.)*

c.) Resolution Declaring March 18 – 22, 2013 as Flood Safety Awareness Week. *(An affirmative vote for the consent agenda will adopt this resolution.)*

d.) Agreement between the Town of Kitty Hawk and the Towns of Southern Shores and Duck. This agreement will allow residents of Southern Shores and Duck to use the C&D dumpster at the Dare County Recycling Center in Kitty Hawk. The towns will charge residents \$50 per ½ pickup load and the Town of Kitty Hawk will invoice the towns on a monthly basis for this service. *(An affirmative vote of the consent agenda will approve the agreement with each town.)*

e.) Acceptance of Gift from Tanya T. Crow. Mrs. Crow donated \$20 to the police department. *(An affirmative vote of the consent agenda will accept this donation to the police department.)*

f.) Proclamation Designating March 11-17, 2013 as Multiple Sclerosis Week. *(An affirmative vote for the consent agenda will approve this proclamation.)*

g.) Resolution Supporting H.R. 819 Preserving Access to the Cape Hatteras National Seashore Recreational Area Act. *(An affirmative vote for the consent agenda will adopt this resolution.)*

h.) Designation of Applicant's Agent Resolution. This North Carolina Division of Emergency Management resolution authorizes the Town Manager and Finance Officer to execute and file applications for federal and/or state assistance on behalf of the Town if and when needed. *(An affirmative vote of the consent agenda will approve this resolution.)*

MPT Perry made a motion to approve as promulgated. Councilman Bateman seconded and it passed unanimously, 4-0.

6. ITEMS REMOVED FROM THE CONSENT AGENDA

No items were removed.

7. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) Fire Department has met State Requirements – Manager Stockton mentioned the town was notified by the North Carolina Department of Insurance, Office of State Fire Marshall, that the Kitty Hawk Fire Department has met the State's minimum requirements for a rated and certified department. Notification indicated that by meeting the North Carolina Department of Insurance requirements for a rated and a certified department the town is upgrading total fire protection for citizens as well as creating a safer environment for personnel.

b.) Town of Nags Head Thank You to Kitty Hawk Fire Department – Manager Stockton said the town recently received a letter from Fire Chief Kevin Zorc of the Nags Head Fire Department thanking the fire department for assisting in a structural fire that occurred on February 2nd in Nags Head. During the incident the firefighters experienced LP gas tank explosions, mitigated adjacent structural involvement, extinguished a fire impinged boat and conducted precautionary evacuations of nearby residences. Fire Chief Zorc said the Kitty Hawk Fire Department provided the professionalism and efforts needed when the emergency fully challenged their resources.

c.) Town to Receive \$123,903 from State due to Hurricane Sandy – Manager Stockton reported he has been notified by the State of North Carolina the town will be receiving a check for \$123,903 due to claims from Hurricane Sandy. It is 75% of \$165,204 that was applied for.

d.) Quote for Guardrails on W. Eckner St. and W. Tateway St. and Bay Drive – Manager Stockton said this quote was just obtained by the public works director and asked for approval to install a guardrail on W. Eckner Street and Bay Drive and West Tateway Road. The cost is \$14,457 and the funds would come from the Powell Bill account.

Bateman: *Is the one on Tateway for the big sharp curve?*

Stockton: *Yes.*

Mayor Perry: *Is that the one we had a problem with regarding the bike path we wanted to put around there?*

Midgett: *Yes.*

Mayor Perry: *And that was not approved because we did not want to do it the way the State wanted us to do it. Is that correct?*

Midgett: *I am not sure about the bike path part of it.*

Mayor Perry: *Is this a metal ...*

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Midgett: *We will be replacing the wooden one that is there with an approved steel guardrail that NCDOT ...*

Mayor Perry: *Just like DOT puts up at other places?*

Midgett: *Yes sir.*

MPT Perry: *But the problem was when we were trying to do the bike path the State wanted a type of end on them with a square end ... crash type. I do not think there was room or something or some reason it could not be done.*

Mayor Perry: *It was an excuse because there was a conflict in what we were doing is what it was.*

Bateman: *I have to ask the question. What do you mean there was a conflict with what we were doing?*

Mayor Perry: *She came up with the idea that you could not straighten it out that much before you got to the end of it. If you look at the others DOT has they are just like a lot of places like she was saying we could not do.*

Bateman: *Can we engineer this and have it put there for the possibility of having a bike path? That is the only section ... Kill Devil Hills has gone clear down to ...*

Midgett: *We can engineer anything and what I can do is break this up. The worst area is the one on West Eckner. Those are the ones by the culvert that are right along the little creek the golf course uses to water the golf course. It is just wooden handrails there and they are starting to rot.*

Mayor Perry: *You are going to put one on each side where the wooden guardrails are across that bridge?*

Midgett: *Yes sir.*

Mayor Perry: *What condition is the bridge in?*

Midgett: *The culvert and the bulkhead itself are in good shape but the rail is in terrible shape.*

MPT Perry: *Is the rail required?*

Midgett: *Yes sir. I do not know how ... the rail that is there is not approved.*

MPT Perry: *That is why I am asking the question. These are town roads right?*

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Midgett: *It is.*

MPT Perry: *The question then is what function does the rail ... I mean it is not stopping cars from going into the ditch is it?*

Midgett: *What is there right now is not but it is supposed to be.*

MPT Perry: *I do not know what our requirements are for a town road and whether or not you just let them go on into the ditch or put up a guardrail.*

Midgett: *The one we use is DOT standards. We try to use it for all of our roads.*

MPT Perry: *I do not have a problem putting it there if it is needed. I share your concern with the one up on Bay Drive because future commitments ...*

Bateman: *I would love to have one there. Just engineer it so we can put a multi-use path there to join up with Kill Devil Hills.*

Mayor Perry: *There was a diagram that was done for the bike path and the guardrail and I think the guardrail was done right as far as I was concerned but ... they put it in a certain place so the bike path could go behind it.*

Midgett: *I will get with Joe and get the plan. I will hold off on it until we can get further engineering on it.*

Mayor Perry: *I think it has already been done. Is there a motion to allow him to do this work?*

MPT Perry said “so move” and **Councilman Bateman** made a second. It passed unanimously.

8. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

There were no comments from the town attorney.

9. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

Storm Damage Reduction:

Bateman: *I am sure all of you have received calls concerning possible beach nourishment or what is it called now?*

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MPT Perry: *Storm damage reduction. That keeps people west of us from thinking it is just nourishing beaches for rich folks.*

Bateman: *Are we fooling them by saying it this way?*

MPT Perry: *Supposedly. That is what the engineer said anyway.*

Bateman: *I am sure that you have received quite a few calls from businesses as well as citizens wanting to know what we are doing. Does anyone have any updated status on beach nourishment for the Town of Kitty Hawk and like to share it? I am not trying to put anybody on the spot.*

Stockton: *I have not heard anything more from the county. I know we definitely are going to have to have some assistance from the state and county to accomplish it if that is what we want to do.*

MPT Perry: *John and I attended a meeting in Kill Devil Hills some weeks ago with the engineer from Coastal Engineering. They went through a brief dissertation on what is required. How if the Town of Kitty Hawk was added to the existing program on-going at Kill Devil Hills what difference it would make dollar wise and how it would fit in and those sort of things. The next step now is to try to get information together such as what easements we have and we are doing that. Here is the bottom line. From the Kill Devil Hills line going north to the bath house there are no public accesses so a federal project would not have worked there. That section was a taper in the federal project. From Historic Street north, there are no known easements for beach nourishment and that makes sense because the Corps of Engineers was looking at where the cost benefit ratio would benefit enough to justify pumping sand on the beach and that did not happen.*

What you have in essence is the south half of Kitty Hawk, from the bath house south, has some data from the federal project. The north half has nothing. The north half would definitely have to be a local and/or state project. The south half might be able to be done with the Kill Devil Hills 206 program which is a federal reimbursement. You put the money in and ask for the government to give it back if all of the criteria are met. Kitty Hawk is kind of split into two pieces, neither one of them easy, and no money.

The county is getting ready to do the "S" curves and Buxton. The beach nourishment fund has an obligation to Nags Head right now for another four years. The county will be using most, if not all, of what is there right now for the "S" curves and if they do the project in Buxton. We are entitled to some of the money but in order to do it we would have to accomplish at our own cost the engineering, permitting and pay 25% of the cost to pump sand. We are talking multi-million dollars just to get that far and then we are talking probably twelve to thirteen million dollars to pump sand if ...

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Mayor Perry: *I thought it was more like eighteen or twenty million.*

MPT Perry: *If we tacked onto Kill Devil Hills. More discussion is needed and more research is needed and a source of dollars. It does not happen without dollars and Kitty Hawk is not rich enough to do it. That is the bottom line right now. If we do not get money from a beach nourishment fund from the county through the Occupancy tax or some other fund I do not know if I will see it in my lifetime. But we are pursuing avenues to see what we can do to make it happen.*

Mayor Perry: *They never did add the additional one cent tax on the Occupancy tax did they?*

MPT Perry: *Not to my knowledge and it was approved to be done. They are sensitive to the realtor market, sensitive to when to add it so the real estate folks have time to work it in to their reservation system because people book up to a year in advance. They want to be able to add it and not surprise people with another tax once they get here on top of what they are already paying.*

Bateman: *Thank you. You answered my question. It is on a lot of people's minds now. At one time it was taboo. Back when we had the vote to get rid of the one cent tax.*

MPT Perry: *What changed the dynamics is the Nags Head project and so far that is holding some. People now want it here but it took about 20 years there. And we have the split of Kitty Hawk. That is two separate things with data missing in one half and some data that might be useable in the other half.*

Thank You to Staff:

MPT Perry said the Tourist Bureau has begun to meet in different places and last month they met at the Kitty Hawk Town Hall. He thanked staff for setting up the room.

10. PUBLIC COMMENT

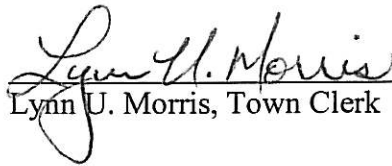
There were no further comments from the public.

11. RECESS to March 11, 2013, 9:00 AM, Kitty Hawk Town Hall for discussion of FY 13-14 budget.

Mayor Perry asked for a motion to recess and announced there will not be a DOT meeting after the recessed meeting on the 11th. **MPT Perry "so moved" to adjourn. Councilman Bateman seconded and it passed unanimously.** Time was 6:32 PM.

These minutes were approved at the April 2, 2013 council meeting.

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Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor