

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, March 6, 2017
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations/Recognitions
 - Firefighter Mike Basilone/5 Years of Service
 - Jenny Ash, Race Director, Outer Banks Sporting Events
5. Public Comment
6. Consent Agenda
 - a.) Approval of February 6, 2017 Council Minutes
 - b.) Approval of FY 2017-18 Government Education Access Channels Committee Budget
 - c.) FY 16-17 Budget Amendment #7
 - d.) A Resolution Requesting Changes to the Strategic Transportation Investments (STI) Law
 - e.) Resolution Supporting the Naming of the Pea Island Bridge in Honor of Captain Richard Etheridge
7. Items Removed from Consent Agenda
8. Public Hearings

(Note: The public hearings scheduled last month for the ENT and OBXscape Rooms Conditional Use Permits will not be held. The applicants have withdrawn their applications.)

 - a.) Conditional Use Permit: Turf's Up, Game Room, 3712 N. Croatan Hwy. The applicant has requested approval of a CUP to establish and indoor golf simulator under the game room classification in the BC-1 district.
 - b.) Text Amendment: Sec. 42-98(i) Expiration of Site Plan Approval. Staff proposed text amendment as suggested by the Planning Board, shifting authority of granting a site plan approval extension from the Planning Board to the Planning Director.
9. Planning
 - a.) Subdivision: Final Plat, 1206 W. Kitty Hawk Road: The applicant proposes to subdivide the approximately 2.75 acre parent parcel into three parcels, with no new roads.
10. Unfinished Business
 - a.) Town Code Amendment: Proposed additions of subsections 6-26 and 6-27, regulating beach bulldozing and sand fencing.
11. Reports/General Comments from Town Manager
12. Reports/General Comments from Town Attorney
13. Reports/General Comments from Town Council
14. Public Comment
15. Adjourn

COUNCILMEMBERS PRESENT:

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

Kitty Hawk Town Council Minutes: March 6, 2017
Page 2

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Town Planner Rob Testerman, 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 at 6 PM.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

After the moment of silence the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

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

4. PRESENTATIONS/RECOGNITIONS

- **Firefighter Mike Basilone/5 Years of Service.** Fire Chief Spivey presented Fire Fighter Mike Basilone with a plaque for his five years of service to the Town of Kitty Hawk.
- **Jenny Ash, Race Director, Outer Banks Sporting Events.** Ms. Ash and Interim Executive Director Patty McKenna presented a PowerPoint on the economic benefits to the Town from the events held by Outer Banks Sporting Events. They also thanked the council for their support of these events.

5. PUBLIC COMMENT

There were no public comments.

6. CONSENT AGENDA

- a.) **Approval of February 6, 2017 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*
- b.) **Approval of FY 2017-18 Government Education Access Channels Committee Budget.** The proposed FY 2017-18 budget is in the amount of \$378,037.00. *(An approval of the consent agenda will approve this budget.)*
- c.) **FY 16-17 Budget Amendment #7.** This amendment will recognize and appropriate additional funding for the grant from the Department of Environmental Quality for the Kitty Hawk Landing Association Jetty and Breakwater Repair and Maintenance Dredging Project. The additional funding from the State is \$59,102 and the Association's match is \$29,773. The total project is now \$318,875. *(An approval of the consent agenda will approve this budget amendment.)*

Kitty Hawk Town Council Minutes: March 6, 2017

Page 3

d.) **A Resolution Requesting Changes to the Strategic Transportation Investments (STI) Law.** This resolution requests that the STI law be revised to require the Statewide tier of funding include a geographic distribution factor so rural regions can effectively compete against metropolitan regions for transportation funds. *(An approval of the consent agenda will approve this resolution.)*

e.) **Resolution Supporting the Naming of the Pea Island Bridge in Honor of Captain Richard Etheridge.** This resolution recognizes Captain Etheridge's many contributions while he lived and naming the bridge after him is a fitting tribute to a man who overcame slavery, war and racism to lead one of the finest Life-Saving Stations in the nation. *(An approval of the consent agenda will approve this resolution.)*

MPT Garriss made a motion, seconded by Councilwoman McClean, to approve the consent agenda. The motion passed unanimously, 5-0.

7. ITEMS REMOVED FROM CONSENT AGENDA

There were no items removed from the consent agenda.

8. PUBLIC HEARINGS

(Note: The public hearings scheduled last month for the ENT and OBXscape Rooms Conditional Use Permits will not be held because the applicants have withdrawn their applications.)

8(a.) Conditional Use Permit: Turf's Up, Game Room, 3712 N. Croatan Hwy. The applicant has requested approval of a CUP to establish and indoor golf simulator under the game room classification in the BC-1 district.

Councilwoman McClean made a motion, seconded by Councilman Bateman, to enter into public hearing. The motion was unanimously approved, 5-0.

The Town Clerk swore in Planning Director Rob Testerman. He then proceeded to review the following staff report with council.

Proposal

The applicant is requesting approval of a conditional use permit to establish an indoor golf and sport simulator, under the game room classification, which is permitted in the BC-1 with a conditional use permit.

As described by the applicant, Turf's Up will provide a family friendly atmosphere to utilize sports simulators for entertainment, practice and improvement at the individual sports. As shown in the concept plan in the attached report, Turf's Up will include four golf/sport simulators, additionally, the applicant has expressed the desire to include a small retail and refreshment section to the business

Proposed Conditional Use

42-250(c)18 Game Room, subject to the following conditions:

a. A game room conditional use can coexist with another authorized district use within a freestanding detached building or within the area owned or leased by a person or entity within a multiuse building where the game room utilizes no more than 49 percent of the gross (interior) square footage of the floor area excluding designated storage area and areas to which customer access is prohibited.

The game room use is less than 49% of the gross square footage of the floor area of the multiuse building, thus this requirement is satisfied.

Kitty Hawk Town Council Minutes: March 6, 2017

Page 4

b. Supervision in the game room area shall be provided during all operating hours. If the owner or lessee of the game room allows the consumption of alcoholic beverages within the game room, then the supervising attendant must be at least 18 years of age.

The applicant has indicated that there will be staff present during all operating hours, should the establishment serve alcoholic beverages, the supervising attendant will be at least 18 years of age, additionally, an ABC permit will be required.

c. The game room area shall be constructed in such a manner and with such materials as to prevent any noise originating within the facility from being heard beyond the approved site boundary. If the game room is located in a structure which houses other nonrelated businesses, the noise within the game room must not be audible beyond the boundaries of the area leased or owned by the game room operator. An architect, engineer or other qualified professional must certify on the site plan that the proposed design and materials will comply with these standards.

Although staff has not received certification that the noise from the game room will not be audible beyond its boundaries, both the tenant and the property owner have indicated that no noise is audible from the adjacent gym and that that use produces more noise than the sports simulators would.

d. The maximum number of occupants shall be determined by the building inspector according to the standards of the state fire code. The maximum number of occupants allowed in the game room shall be posted in a conspicuous place therein and its limits shall not be exceeded.

This requirement will be conducted prior to the business opening, should the CUP be approved.

e. No alcoholic beverages shall be sold in the game room and no alcoholic beverages shall be consumed therein unless permitted by state law and in compliance with state law and the laws of the town.

As stated previously, should alcoholic beverages be sold on site, the owner will be required to go through the ABC permitting process.

f. It shall not be permissible to stimulate play by gambling incentives such as, but not limited to, free plays or games, monetary rewards or the exchange of coupons redeemable for play or gifts.

The applicant has indicated that this requirement will be met.

g. The parking requirement shall be calculated on the basis of one space for each 200 square feet of floor area devoted to game room use.

The floor area devoted to the game room use totals 1,200 sq. ft. thus resulting in a requirement of 6 parking spaces, in calculating the existing uses and parking requirements, 53 of the 59 parking spaces on site are accounted for (excluding the use that Turf's Up would be replacing). The six required parking spaces would bring the utilized parking spaces to 59 of 59, thus meeting the parking requirements of the zoning ordinance.

Background Information

The subject property is presently zoned General Beach Commercial (BC-1). In total, the lot is approximately 68,845 square feet (1.58 acre).

The abutting property to the north are is also zoned General Beach Commercial (BC-1) and contains Miss Lizzie's, retail shop. Abutting the property to the south is Harbour Bay Drive, and the Harbour Bay South shopping center, also zoned BC-1. Across N. Croatan Highway, to the east, is the Mile Post 4.5 shopping center, zoned BC-1. To the west of the property, is a private swimming pool, owned by the Harbour Bay HOA, zoned BR-1 and open space owned by the adjacent shopping center, zoned BC-1.

Staff Analysis

Proposed Uses: Game Room. This use is permitted as a Conditional Use in the BC-1, per conditions listed above.

Lot Area: The subject parcel is approximately 68,845 square feet (1.58 acre).

Kitty Hawk Town Council Minutes: March 6, 2017

Page 5

Lot Coverage: The maximum lot coverage in the BC-1 district is 60%. Existing lot coverage is 59.95%, which is compliant. No lot coverage changes are proposed with the application.

Building Height: The maximum height in the BC-1 district is height of 35 total feet from existing grade exclusive of chimneys, flagpoles, communication masts and aerals. It appears that the existing buildings are compliant with height requirements. No building height changes are proposed and the current building is compliant.

Building Setbacks: Per the table below, it appears that the building does comply with the Town's current minimum building setback standards for the BC-1 district. No changes are proposed to the footprint of the building.

Setback	Existing	Required
Front	87 feet	15 feet
Rear	22 feet	20 feet
Sides	23 feet (north)	10 feet
	15 feet (south)	10 feet

Access: The subject property currently contains two ingress/egress points onto Harbour Bay Drive, the parking lot also connects with the parking of Miss Lizzie's, which has an additional access point onto N. Croatan Hwy. No changes to the access are proposed.

Parking: As noted above in the staff report, the parking on site for this use, along with the existing uses, will comply with the ordinance.

Buffers: The Zoning Ordinance requires buffers between commercial zones and abutting residential zones. The subject property is abutted by other BC-1 properties to the north, south east, and west. No buffer is required in those areas. In the area to the west of the subject property that abuts a BR-1 zone, there is a fence between the subject parcel and the BR-1 zoning district. No improvements to the buffer are required.

Waste Management: The property is served by two dumpster, accessed from Harbour Bay Dr.

Lighting: If any changes to the current exterior lighting occur, a lighting plan for the site must be submitted and approved by the Planning & Inspections Department. Such plan must comply with the standards of Section 42-515 of the Zoning Ordinance. At this time no lighting changes have been proposed.

Signs: All signs to go on site will need to be submitted to the Planning & Inspections Department and a sign permit will be required.

Stormwater Management: No land disturbance is occurring, as the site is using all existing features.

Flood Zone: The entire subject building is Shaded X, no flood requirements apply to this building.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the property as a "Commercial, Shopping, and Working Area" on the future land use map.

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

POLICY 4a: Kitty Hawk, through its zoning ordinance, will continue to direct the placement of commercial development in areas zoned for such activities.

POLICY 4e: Kitty Hawk will review and analyze development and redevelopment proposals for consistency with the future land use map included in this land use plan.

OBJECTIVE 16a: Monitor and consider redevelopment proposals for consistency with stated Town land use and development goals.

Conditional Use Findings

Per the standards of Section 42-99(b)(7), in order to approve this application, the Town Council must make findings that the proposed conditional uses:

Kitty Hawk Town Council Minutes: March 6, 2017

Page 6

a. does not materially endanger the public health or safety,

There is no evidence to suggest that allowing the use of this unit as a game room would endanger the public health or safety.

b. does meet all required conditions and specifications,

As noted in the staff report, the proposal will meet all specific requirements of a game room.

c. will not substantially injure the value of adjoining property or be a public nuisance, and

There is no evidence that permitting a game room of this nature, as a part of the multi-tenant commercial building, would substantially injure the value of adjoining properties or be a public nuisance.

d. will be in harmony with the area in which it is located and be in general conformity with the comprehensive plan.

The proposed use is in harmony with the area which it is located, and is in general conformity with the comprehensive plan. It should also be noted that a CUP was recently granted for a game room as part of a multi-tenant commercial building approximately 1,300 feet north of the proposal.

Suggested Conditions

Submit to the Town certification that the proposed use will satisfy the requirement of 250(c)18.c

Planning Board Recommendation

At its January 19, 2017 meeting, the Planning Board unanimously recommended approval of the proposed conditional use permit for the establishment of a game room to be located at 3712 N. Croatan Hwy, with the condition that the requirement of 250(c)18.c be met.

Seeing no one from the audience wishing to speak, nor hearing any questions or comments from council, Mayor Perry asked for a motion to return to regular session.

Councilman Bateman made a motion to return to regular session. The motion was seconded by Councilwoman McClean and passed unanimously, 5-0.

Councilwoman McClean made a motion to grant approval of the proposed Conditional Use Permit subject to the conditions outlined by the Planning Board to allow the establishment of a golf simulator game room at 3712 North Croatan Highway. The Town Council finds that the proposed use is consistent with the Town's adopted CAMA Land Use Plan and finds this to be in the public interest. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

8(b.) Text Amendment: Sec. 42-98(i) Expiration of Site Plan Approval. Staff proposed text amendment as suggested by the Planning Board, shifting authority of granting a site plan approval extension from the Planning Board to the Planning Director.

Proposal

Currently, the zoning ordinance dictates that if a building permit has not been secured within 180 days of site plan approval it will expire and be required to go back to the Planning Board and Town Council for review. If requested by the applicant the Planning Board can grant one extension of 180 days. This proposed text amendment would give the authority to grant the extension to the Planning Director rather than the Planning Board.

42-98(i) *Expiration of site plan approval.* Upon final approval of the site plan, the building inspector may issue a building permit within 180 days from the date of such approval; provided that all other requirements of this chapter and other applicable town ordinances are met. If a building permit is not secured within 180 days of the final approval of the site plan, the applicant must resubmit the site plan for review by the planning board and the town council. Prior to the expiration of an approved site plan, the ~~town~~ planning board director can grant one extension of the site plan approval for 180 days, provided the planning board director finds that:

- (1) The site plan conforms with all current site plan standards and requirements, and there have not been any changes in this chapter which would make the site plan nonconforming on the date of the extension, and
- (2) There have been no changes in the site plan.

Kitty Hawk Town Council Minutes: March 6, 2017

Page 7

Background

Currently, the decision to grant the extension falls to the Planning Board provided it meets the two requirements in the ordinance, it does not get forwarded on to Town Council. Prior to going to the Planning Board, the planning director must review the site plan, and the relevant ordinances to determine whether it meets the two requirements of an extension. If it meets the two requirements, an extension is granted, if not, the extension is denied.

At a recent Planning Board meeting, an extension request was the only item on the meeting's agenda. The two requirements of the extension had been determined to be met, therefore the decision was a matter of procedure dictated by the ordinance. Because this was the only item on the agenda, this meant the Board had to meet and the applicant, and in this case is attorney, came to the meeting, in case of any questions.

Shifting the authority of this decision from the Planning Board to the planning director will save time and money not only to the town (planning board member compensation, paper for printing packets, time compiling packets, fuel and time delivering packets) but also to the applicant. The applicant could get a faster decision from the planning director versus waiting for the next Planning Board meeting. Typically the applicant attends the meeting, and often times they have an attorney and/or engineer with them to answer any questions, which costs the applicant additional time and money.

Planning Board Recommendation

At its January 19, 2017 meeting, the Planning Board unanimously recommended approval of the proposed text amendment.

Perry: *Basically what we are doing is giving the planner an administrative go ahead for the extension of site plans. What do you want to do council?*

MPT Garriss made a motion to adopt the proposed text amendment amending subsection 42-98(i) expiration of site plan approval allowing the Planning Director to approve site plan approval extensions if the two existing criteria for extension are met. Town Council finds that the proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments to be in the public interest. A second was provided by Councilwoman McClean.

Perry: *If there have been no changes to a site plan and they just run out of time, we are saving the applicant money and time. It is in the best interest of the applicant and it does not hurt the town any.*

Bateman: *Will this have an effect on the issue we have going on with the house on Lindbergh now? Could he literally extend the permit?*

Perry: *No. That's a different issue entirely.*

Stewart: *And he has already started.*

The motion passed unanimously, 5-0.

Attorney Varnell brought to everyone's attention that council had not gone into public hearing for this text amendment.

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

Kitty Hawk Town Council Minutes: March 6, 2017

Page 8

There were no comments or questions during the public hearing.

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

MPT Garriss made a motion to adopt the proposed text amendment amending subsection 42-98(i) expiration of site plan approval allowing the Planning Director to approve site plan approval extensions if the two existing criteria for extension are met. Town Council finds that the proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments to be in the public interest. A second was provided by Councilwoman McClean. The vote was unanimous, 5-0. (Ordinance No. 17-01)

9. PLANNING

a.) Subdivision: Final Plat, 1206 W. Kitty Hawk Road: The applicant proposes to subdivide the approximately 2.75 acre parent parcel into three parcels, with no new roads. Final Plat: EasternNCRemodel LLC

Planner Testerman reviewed the following staff report with council and added that typically a subdivision like this would be done administratively. If the parent parcel is under two acres and is for three lots or less this can be signed off in the office but this parcel is 2.75 acres.

Proposal

The applicant has submitted an application and final plat for the subdivision of the parcel at 1206 W. Kitty Hawk Rd. The plat outlines a proposal to subdivide one existing parcel totaling 2.75 acres on the western side of W. Kitty Hawk Rd into three lots. No new road, or road expansions or other site improvements are proposed as part of this subdivision. The three lots would be 15,005 sq ft (lot 1), 45,672 sq ft (lot 2) and 58,910 sq ft (lot 3).

Staff Analysis

Zoning: The subject property currently has a single family home and associated accessory structures, and is zoned Village Residential (VR-1). The VR-1 district appears to allow the density of single-family residential development proposed for these properties.

Lot Size: The minimum lot size in the VR-1 district is 15,000 square feet. Lot sizes for the six new Phase I home sites in the proposed Hickory Ridge subdivision range from 15,005 square feet (0.34 acre) to 58,910 square feet (1.35 acre).

NOTE: Section 38-1 of the Town Subdivision Regulations states that marsh and wetland areas, as determined by CAMA and/or CRC regulation, should not be used when calculating lot size. "Section 404" wetlands can be counted towards lot sizes. Wetlands are shown on the lot, and do affect the minimum lot sizes. Lot 1 is the only lot that had any question, but as the wetlands are 404 and not CAMA/CRC wetlands the size shown is compliant with the ordinance.

Density: The maximum permitted density in the VR-1 district is two single family dwellings per acre. The proposed subdivision has 1.09 dwellings per acre and is compliant with the requirement.

Lot Width: The minimum lot width in the VR-1 district is seventy-five feet (75'), measured at the front building setback line on each parcel. It appears that all three lots comply with this requirements, with the smallest width of the three measuring 80' in width.

Building Setbacks: Minimum building setbacks in the VR-1 district are 10 feet along the sides and 25 feet at the front and rear. The minimum building setbacks are shown on the final plat.

Kitty Hawk Town Council Minutes: March 6, 2017

Page 9

Road Frontage: Lots must have a minimum road frontage fifty feet. It appears that all three lots will comply with this standard.

Road Rights-of-Way: There are no new roads proposed as part of this subdivision. The lots all front on W. Kitty Hawk Road, and will be accessed by separate driveways. W. Kitty Hawk Rd. is a 60 foot right-of-way.

Road Width: The existing W. Kitty Hawk Road is approximately 21.5' in width at this portion.

Road Name: No new roads are being proposed as a part of the subdivision.

Fire Hydrants: No new fire hydrants would be required.

Conditions set on Preliminary Plat:

- Wetlands need to be shown on the preliminary plat, and need to be identified as either Sec. 404 wetlands or CAMA/CRC wetlands.
 - **Wetlands have been delineated on the plat. Staff has also received a jurisdictional determination from the U.S. Army Corps of Engineers verifying the wetlands shown.**
- There are a number of nonconforming structures on the site. The four sheds on lot 2 are legal nonconformities, however the shed that is located on the proposed lot 1 built without a permit, is not anchored, and sits within the setback. The shed on lot one will be required to be brought into compliance.
 - **The shed in question has been removed from the site.**
- Addresses must be assigned to all properties.
 - Addresses have been tentatively assigned, but will not be finalized until the plat is recorded.

All conditions appear to have been met by the applicant.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject parcels as a "Low Density Residential Area" on the future land use map. A "Low Density Residential Area" is defined as a density averaging two (2) units per acre with lots of 15,000 square feet or greater.

The Land Use Plan also contains the following goals, policies, and objectives relating to this request:

POLICY #11c: Kitty Hawk will review and analyze development and redevelopment proposals for consistency with the future land use map included in this land use plan.

POLICY 4b: Kitty Hawk will maintain the pattern of current development specifically low density residential (no more than 4 dwelling units per acre) and small scale commercial development with provisions for discretionary review of large scale commercial development.

OBJECTIVE #11d: Evaluate development and redevelopment proposals according to goals, objectives, and policies and the land suitability analysis and the future land use map developed as a part of this land use plan.

Planning Board Recommendation

At its February 16, 2017 meeting, the Planning Board unanimously recommended approval of the proposed final plat for 1206 W. Kitty Hawk Rd.

Hearing no comments or questions, **Councilman Pruitt made a motion to approve the final plat for the three lot subdivision off of West Kitty Hawk Road. Councilwoman McClean seconded the motion and it passed unanimously, 5-0.**

10. UNFINISHED BUSINESS

a.) Town Code Amendment: Proposed additions of subsections 6-26 and 6-27, regulating beach bulldozing and sand fencing.

Planner Testerman reviewed the following staff report.

Proposal

The proposal would insert the following language into the Town Code:

Sec. 6-26. - Beach bulldozing prohibited.

(a) On the ocean beaches, bulldozing sand, pushing sand by mechanical means or other mechanical change to the topography is prohibited except in the following situations:

(1) When such work is performed as a part of a hurricane or erosion protection project or beach nourishment project sponsored by the town or any local, state or federal government agency;

(2) When such work is performed at the direction of, and with authorization by, the town for the purpose of beach maintenance;

(3) When such work is authorized by issuance of a general waiver of this section by the Town Council following a natural disaster.

Sand that is moved off of the beaches by natural forces may be moved back to the beach by the property owner, **with no permits required from the Town. The Town is not responsible for removing such sand from private property.**

(b) When work is performed upon the ocean beaches in compliance with subsection (a) above the equipment operator must have a copy of the CAMA permit/exemption letter from the town on his/her person when conducting this activity and be familiar with all of the conditions associated with the permit.

(c) Each day that the unauthorized bulldozed property is not restored to its pre-bulldozed condition shall be a separate violation. Collection and enforcement of this civil penalty shall be in accordance with subsection 1-5 of this Code.

6-27. – Beach erosion control.

(a) It shall be unlawful to remove, move, or otherwise tamper with sand fencing.

Background Information

It has been recommended to staff that an ordinance be adopted by the town that would prohibit beach bulldozing, or “beach pushes”, once the beach nourishment project has commenced. The reasoning behind this suggestion is that once beach nourishment has been completed, should the town continue to allow beach bulldozing, individual property owners could then push the newly deposited sand towards their properties, which could be detrimental as a whole to the beach nourishment project. Additionally, without an ordinance prohibiting such action, CAMA would have no choice but to permit the bulldozing for individual property owners. At the last Council meeting, staff was requested to clarify situations in which beach sand blows, or is washed, onto private property. The bolded language above was added to address those concerns.

The proposed language brought forward has had the language regarding sandbags omitted. Since the last Council meeting, staff has had discussions with other localities and CAMA regarding this issue. Staff has been advised that rather than adopting language into the Town Code, that a better approach would be to include a policy opposing the use of sandbags in the CAMA Land Use Plan. CAMA has stated that they will not issue permits for sandbags if it is inconsistent with the CAMA Land Use Plan. At the March Planning Board meeting, staff will present a proposed CAMA Land Use Plan amendment stating the Town’s opposition to the use of sandbags for temporary erosion control. It will be brought to Town Council after the Planning Board reviews, and makes a recommendation on the matter.

Land Use Plan

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

POLICY 1b: Kitty Hawk will adopt, enforce, and amend as necessary and appropriate ordinances to protect the Atlantic Ocean Shoreline.

OBJECTIVE 1c: Adopt and apply development policies that balance protection of natural resources and fragile areas with residential and economic development.

Kitty Hawk Town Council Minutes: March 6, 2017

Page 11

OBJECTIVE 16a: Monitor and consider redevelopment proposals for consistency with stated Town land use and development goals.

Testerman: *This was first brought forth last month and a couple of revisions were suggested. One revision is the bolded area where it is mentioned that sand moved off of the beaches by natural forces may be moved back to the beach by the property owner. It is also clarified that no permits will be required from the Town and a CAMA officer confirmed that the private property owners who want to push sand back towards the ocean do not need a CAMA permit. They are free to do what they need to do to get the sand off their property.*

Also, there was language in the proposal about prohibiting sandbags. Since that meeting I spoke with some of the other Towns and CAMA and it was advised that a better way to handle it than through an ordinance is to revise the CAMA Land Use Plan. To take the position that the Town opposes using sandbags as a temporary erosion control. With that language in the Land Use Plan CAMA will not issue permits. We have been advised by CAMA directly that is the better route to handle it and that language was taken out of the draft ordinance.

Perry: *How would that effect the state trying to save the road? We do not want to deny them the right. The only reason that road is there today is because of those sandbags.*

Testerman: *We could put in the Land Use Plan that we are against private properties from using the sandbags as temporary measures and state agencies are exempt.*

Councilwoman McClean moved to adopt the proposed text amendment to add subsections 6-26 and 6-27 to the Kitty Hawk Town Code prohibiting beach bull dozing and tampering with sand fencing. Town Council finds that the proposed text amendment is consistent with Town's adopted CAMA Land Use Plan and finds this amendment to be in the public interest. The ordinance is to become effective upon commencement of the beach nourishment project or June 1, 2017 whichever occurs first. The motion was seconded by MPT Garriss and approved unanimously, 5-0. (Ordinance No. 17-02)

11. REPORTS/GENERAL COMMENTS FROM TOWN MANANER

Debris Removal in Town Ditches: Manager Stewart provided information on a grant received in the amount of \$117,000 from USDA as part of the disaster recovery program associated with Hurricane Matthew. He said Ann Daisey with Dare County Soil and Water is helping staff with this project.

New Roof: The police department has a new roof.

Stormwater Improvements: Bids will be opened later this month and council will be able to take action during the April meeting.

Beach Nourishment Hold Harmless Agreements: The agreements were mailed out to the ocean front homeowners. This is a voluntary agreement between the contractor and property owner and

if signed will allow the contractor to place sand under pilings of a structure. A copy of the agreement is on the Town website and on the *More Beach to Love* website.

Mayor Perry added if the agreement is not signed the contractor will not come within 10' of a structure, deck or steps.

12. REPORTS/GENERAL COMMENTS FROM TOWN ATTORNEY

Mayor Perry asked the attorney about the two outstanding easements.

Attorney Varnell said the Town has service on all the owners. Typically in a lawsuit there is a 30 day clock. If somebody is served with a lawsuit they have 30 days to answer. In condemnations they have 120 day time period. One should be expiring this month and the next shortly thereafter. Regardless, the time to answer will be well before the project starts and the Town's rights will be fixed which is really what is wanted.

Mayor Perry said he thought everyone was under the impression it was 30 days. The 120 days is a new concept.

13. REPORTS/GENERAL COMMENTS FROM TOWN COUNCIL

Making Partner in Law Firm: Council congratulated Attorney Varnell on becoming a partner with his law firm.

Captain Richard Etheridge: Councilman Pruitt said a resolution in support of naming the Pea Island Bridge in honor of Captain Etheridge was on the consent agenda. He hopes the people of Dare County also get behind this effort.

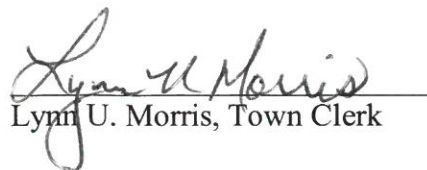
14. PUBLIC COMMENT

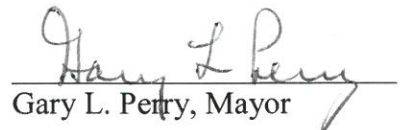
There were no public comments.

15. ADJOURN

MPT Garriss made a motion to adjourn. Councilwoman McClean seconded the motion and it passed unanimously, 5-0. Time was 6.36.

These minutes were approved at the April 3, 2017 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor