

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, May 7, 2018**  
**Kitty Hawk Town Hall, 6 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 the April 9, 2018 Council Minutes
  - b.) National Hurricane Preparedness Week
6. Items Removed from Consent Agenda
7. Public Hearings:
  - a.) Conditional Use Permit: 5113 & 5117 Putter Lane. Requested CUP and site plan would be for a development of a 7,131 sq. ft. licensed physician office.
  - b.) Conditional Use Permit: 4622 N. Virginia Dare Trail. Requested CUP would allow craft production and retail sales in an existing commercial building
8. Planning
  - a.) Call for Public Hearing: Text Amendment: 42-70(a), Board of Adjustment – Established. Proposed text amendment would restrict eligibility to serve on the Board of Adjustment to residents of Kitty Hawk. It is requested the public hearing be held on June 4, 2018.
  - b.) Call for Public Hearing: Text Amendment: Multiple sub-sections. The applicant has requested a text amendment that would allow a lot coverage bonus for the use of permeable pavement. It is requested the public hearing be held on June 4, 2018.
9. New Business
  - a.) Resolution Authorizing Exchange of Property
  - b.) Motion to Schedule Fiscal Year 2018-19 Budget Public Hearing for the June 4, 2018 Council Meeting, Kitty Hawk Town Hall, 6 PM.
10. Reports/General Comments from Town Manager
11. Reports/General Comments from Town Attorney
12. Reports/General Comments from Town Council
13. Public Comment
14. Adjourn

**COUNCILMEMBERS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Police Sergeant Jimmy Helms, Fire Chief Mike Talley and Public Works Director Willie Midgett

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**1. CALL TO ORGER**

Mayor Perry called this meeting to order at 6 p.m.

**2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE**

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

**3. APPROVE OF AGENDA**

**Councilman Bateman made a motion, seconded by Councilwoman McClean, to approve the agenda. It passed unanimously, 5-0.**

**4. PUBLIC COMMENT**

**1. Tom DeLucia, 5116 Putter Lane, Kitty Hawk, NC:** Mr. DeLucia said he has made every attempt to attend the council meetings to make his opinion known about the land swap for an urgent care center. He is still opposed to the plan and concerned about the devaluation of his property. He saw the revised site plans and is happy with some of the revisions.

**2.) Spencer Oliver, 4932 Lunar Dr., Kitty Hawk, NC:** Mr. Oliver said he does not feel the council and planning board have acted properly with regards to the rezoning and swap of land. He has been here before protesting the rezoning and the land swap between the town and a person that is called applicant. The applicant does not own the four lots. He thinks this is a bad deal and believes the town will lose money if this goes through. The planning board has said this does not conform to the Town Land Use Plan, but nobody seems to care. No discussion, no nothing, just whizzed on through. He also thinks it will devalue his property, Tom DeLucia's property and Mike Dunn's property across the street. He believes somebody should look at the merits and look at the facts and act accordingly.

There were no other speakers.

**5. CONSENT AGENDA**

**a.) Approval of the April 9, 2018 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*

**b.) National Hurricane Preparedness Week:** Resolution declaring the week of May 6-12, 2018 as Hurricane Preparedness Week. *(An approval of the consent agenda will approve this resolution.)*

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

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**6. ITEMS REMOVED FROM THE CONSENT AGENDA**

No items were removed from the consent agenda.

**7. PUBLIC HEARINGS**

**a.) Conditional Use Permit: 5113 & 5117 Putter Lane. Requested CUP and site plan would be for a development of a 7,131 sq. ft. licensed physician office.**

**Mayor Perry made a motion, seconded by Councilman Pruitt, to go into public hearing for a conditional use permit for 513 and 5117 a requesting cup site plan. It passed unanimously, 5-0.**

Clerk Morris swore in Planning Director Testerman, Tom DeLucia, Spencer Oliver and David Ryan, Engineer.

Planning Director Testerman noted the following changes to the site plan from what the planning board reviewed: 1.) the building size has been reduced and Dare County will allow three roll out cans instead of a dumpster; 2.) the south wall of the building was offset 11 feet from the southern property line and now it is at a distance of 33 feet so there is an increased setback buffer area; 3.) the number of doctors employed in the building has changed from 3 to 4 and the number of employees increased from 8 to 12 which has increased the required parking from 23 spaces to 32.

**Proposal**

The applicants are requesting approval of a conditional use permit to construct a single medical office building, 6,003 sq. ft. in size. The development plan consists of vehicular access, parking, and drainage improvements.

**Proposed Conditional Uses**

Specifically, approval for the following types of conditional uses is being sought as part of this application:

1. Licensed Physician Offices

**Background Information**

The two subject properties are presently zoned Emergency & Government Services (MS-1) and are presently undeveloped. Each of the properties has 100 feet of frontage on N. Croatan Highway and is 200 feet in depth (20,000 square feet each). In total, the two adjoining properties cover 40,000 square feet.

Directly abutting the subject properties to the north is zoned MS-1 that was previously approved for a medical office building in 2015. Further to the north is the ear nose and throat office that was also a part of the 2015 conditional use permit approval. To the south are three single-family residences. To the west across Putter Lane are several single-family residential properties zoned BR-1. To the east across N. Croatan Highway are several commercially zoned properties (BC-2). The uses on these properties include two single-family residences, and Surf Pediatric.

Since the Planning Board review, the applicant has submitted a revised site plan, that reduces the footprint of the building, and reduces overall lot coverage. The revision reduces the building size from over 7,000 square feet to 6,003 square feet. This reduction allows the southernmost wall of the building to be setback 33 feet from the southern property boundary, as opposed to 11 feet that was originally proposed. The reduction in square footage has also allowed the elimination of the dumpsters and dumpster pad. Dare County Sanitation will now allow the use of roll



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out trash cans for this use. One additional change in that should be noted is that the number of doctors changed from 3 to 4, and number of employees increased from 8 to 12, which increased the required parking from 23 to 32.

#### Staff Analysis

Proposed Uses: Licensed Physician Office. Licensed physician offices are presently permitted as conditional uses in the Emergency & Government Services (MS-1) district.

Lot Area: The subject parcels are each 20,000 square feet in size and total 40,000 square feet (0.92 acre) in size. The size of each individual lot and the combined property have sufficient acreage to accommodate the proposed structures, parking, septic systems, and other development standards. There is no specific minimum lot size requirement in the MS-1 district.

Lot Coverage: Including the proposed buildings, sidewalks, parking, access drives, and drive aisles, the proposed lot coverage for the development is 22,116 square feet (55.25%). A portion of the proposed parking area falls onto Lot 5 (5116 N. Croatan). In the 2015 CUP approval, the proposed lot coverage on Lot 5 was 10,193 square feet (51.0%). The additional parking area would bring the total proposed lot coverage on lot 5 to 57.425%. The maximum permitted lot coverage in the MS-1 district is 60%

Building Height: The maximum height in the MS-1 district is thirty-five feet (35') from the existing grade to the peak of the roof. The applicant has noted the maximum building height standard in the submittal materials and plans to comply with this limitation.

Building Setbacks: Per the table below, it appears that building will comply with the Town's current minimum building setback standards for the MS-1 district.

<u>Setback</u>	<u>Proposed</u>	<u>Required</u>
Front	111 feet	15 feet
Rear	36 feet	20 feet
Sides	49 feet (north)	10 feet
	33 feet (south)	10 feet

Access: The subject properties will be served by one new 22 foot wide ingress/egress drives off of N. Croatan Highway at the southern end of Lot 7. An NCDOT encroachment permit will be necessary to install the proposed driveway onto N. Croatan Highway. In addition, a 22 foot wide parking lot connection is proposed to connect the proposed development to the existing parking lot on lots 3, 4 and 5. The Town's adopted Land Use Plan specifically highlights the importance of providing such interconnectivity and states a specific objective to "encourage inter-parcel connections between commercial lots adjoining Highway 158." While it is an objective to reduce curb cuts on Highway 158, the proposed curb cut is necessary to meet Fire Code requirements.

The drive aisle also serves as a fire lane for the property and complies with the N.C. Fire Code. Access easements will need to be recorded to ensure that this shared drive aisle is maintained in the future.

#### Parking:

<u>Parking Calculations</u>	<u>Ratio</u>	<u># Required Spaces</u>
Medical Office/Clinic		
4 doctors, 12 employees	5 per doctor, 1 per employee	32 spaces
<b>TOTAL (Minimum Parking Required)</b>		<b>32 spaces required</b>

The applicants' proposed site plan shows a total of 39 paved parking spaces accessed by the drive aisle, which exceeds the minimum required. Seven (7) additional parking spaces are proposed on the adjacent Lot 5, which is owned by the applicant. All parking spaces must be striped as outlined on the site plan. ADA standards require a minimum of two (2) handicapped accessible parking space, including one van accessible space. A total of three (3) ADA spaces are proposed, the proposed parking plan meets ADA standards.



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Loading Zone: The applicant has not designed any type of loading zone for the property as a whole or the individual buildings. Section 42-547 of the Zoning Ordinance states that a typical loading space should be a minimum of 12' x 25' in size, but goes on to state, "a loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the property served thereby."

The Planning Board determined that no specific loading zone was needed for the proposal.

Buffers: Buffers shall be required between all uses in commercial zones and abutting residential zones. It is staff's interpretation that although the MS-1 district, and an urgent care use are not a typical "commercial" use that first comes to mind, such as a retail use, it is a commercial office, and shall be subject to the requirements of Division 5, Buffers and Landscaping. Further detail is provided in staff comments below.

Waste Management: The applicant has replaced the originally proposed dumpster pad with three roll out carts instead.

Lighting: A lighting plan for the site must be submitted and approved by the Planning & Inspections Department prior to the issuance of a building permit. Such plan must comply with the standards of Section 42-515 of the Zoning Ordinance.

Signs: The lot will be permitted to have its own freestanding sign up to 48 square feet in size. The applicant has shown a single, freestanding sign location on the development. All signs will be permitted separately by the Planning & Inspections Department.

Wastewater Disposal: Septic improvement permits from The Dare County Environmental Health Department will be required prior to the issuance of any building permits.

Flood Zone: The subject properties are located entirely within an X flood zone, which means that the buildings are not required to meet any particular flood elevations.

**Land Use Plan**

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 4b: Kitty Hawk encourages the continued existence and development of locally owned businesses and encourages commercial building designs, color designs, and construction materials and methods that reflect Kitty Hawk's coastal village character.

OBJECTIVE 13e: Seek ways to provide and ensure a safe environment for pedestrians in commercial areas; to minimize pedestrian-vehicular conflicts in commercial areas; and, to improve circulation patterns in commercial areas

OBJECTIVE 23m: Encourage inter-parcel connections between commercial lots adjoining US 158.

As part of its review, the Town Council is asked to determine if the proposed development is consistent with the policies and objectives outlined in the land use plan.

**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:

- a. does not materially endanger the public health or safety,
  - If all of the required State and other permits are obtained, then the authorized agencies will have reviewed and permitted the driveway designs and locations, septic systems, water lines, stormwater management,

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- and erosion and sediment control plan. Therefore, it can be presumed that these improvements will be made in a safe manner.
- Allowance of a new curb cut on N. Croatan Highway is not ideal but is necessary to meet Fire Code access requirements.
- b. does meet all required conditions and specifications,
- with compliance with the suggested condition in the staff report, the proposed use will comply with all applicable standards of the Town Code.
- c. will not substantially injure the value of adjoining property or be a public nuisance, and
- Effects on property values of properties adjacent to a non-residential use is widely debated. According to Hosea Wilson, Assistant Assessor, Dare County, what you will find for facilities of this type is that in most cases, property values are positively affected. Many buyers feel that being in close proximity to a medical facility is a positive external factor. As an example, Nags Head Cove, which is in very close proximity to the Outer Banks Hospital has had no negative effects on the real estate market since. The hospital, being open 24/7, and having ambulance and occasional helicopter traffic, is also a much more intense use than the proposed urgent care center.
  - The proposed use of an urgent care is not the type of use that should become 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.
- With the approval of the previous rezoning request, and subsequent automatic amendment to the Land Use Plan, the proposed use is in general conformity with the comprehensive plan.
  - Staff recommended conditions, would allow the development to be more harmonious with the adjacent residential zone and uses.

#### Staff Comments

Staff asks Town Council to consider the following condition:

In order to mitigate potential visual impacts to adjacent residential uses, staff recommends requiring a Type A vegetative buffer along the western and southern property boundaries. Per Sec. 42-654(a), a type A buffer is an opaque vegetative buffer of a minimum width of ten feet that will reach a height of six feet in three years. The buffer may include a stabilized soil berm as part or all of the required height. In this particular instance, a stabilized berm with vegetation would be more desirable. Maintenance of buffers would be a continuing condition of the site plan approval. Failure to maintain the buffers would constitute grounds for revocation of any occupancy permit, per Sec. 42-655.

Additionally, it is staff's recommendation that the two lots be recombined into one singular lot prior to any building permits being issued.

In addition to the two staff recommended conditions, the Planning Board recommended that a.) the vegetative screen and berm be extended through the southern portion of Lot 5, to the Putter Lane curb cut; b.) the dumpster pad be relocated to mitigate impact to adjacent residences; and c.) a lockable arm gate be placed on the existing Putter Lane curb cut.

The Board also discussed a potential condition limiting the development to a one-story building as shown on the proposed elevation, but it was unintentionally left out of the motion.

It should also be noted that should the Conditional Use Permit and Site Plan be approved, the properties will be assigned N. Croatan Highway addresses.

#### Planning Board Recommendation

At its March 15, 2018 meeting, the Planning Board unanimously recommended approval of the proposed conditional use permit for the establishment of a licensed physician at 5113 and 5117 Putter Lane, with the conditions noted above.

**Garriss:** *Do you know how far the new curb cut is from the edge of the boundary line?*



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**Testerman:** *I would estimate 12' from the property line.*

**Member of the Audience:** *Too close.*

**McClean:** *Who will have a key to the lock on the access to Putter Lane?*

**Testerman:** *That was not discussed much by the planning board. I guess the fire and police departments would be the logical ones to have it. If that is a condition the Town Council places.*

**McClean:** *Did they discuss whether it would be an actual gate or the same situation we have on some of the streets in Kitty Hawk. Blocked access from one subdivision to another but could be opened.*

**Perry:** *I see that as a different issue. Let's address that when we get to that point.*

**Testerman:** *The main point why the planning board recommended it was to prevent through traffic, everyday users. If there is a gate, even if it is not locked, just an arm gate that goes up and down, everyday users are not going to drive up, stop their car, get out, open the gate, drive through and then carry on. The lockable part might be a bit more than necessary.*

**Perry:** *Before I call for speakers there are a couple of things I want to make clear. We are dealing not with a land swap here at this point. We are dealing with a conditional use and whether we accept that as positive or not.*

*The other thing I want to make very clear is regardless of what council does here tonight the governmental use should have been done as a zoning long ago. It just got overlooked. If we were to keep this property tonight that governmental use zoning stays. It does not go away. Whether or not this goes beyond the CUP we will see how that goes.*

**1. Tom DeLucia, 5116 Putter Lane, Kitty Hawk, NC:** *I was glad to hear a lot of the information that Rob shared. Some of those were my concerns at the last planning board meeting, particularly the dumpster. It was my primary concern so to hear that it has been removed is a huge relief to me.*

*One thing that I still would request you to consider for this conditional use permit is the parking. Based on the increase in staffing there are 39 spaces and my preference would be to have the parking end with the back of the building where that line is which is consistent with the other building next door that is already built. So, you lose 2 parking spots because it is in the middle of half of one of the parking spots back there. The least possible encroachment towards Putter Lane the better in my opinion. That would be my request of the council. Go ahead and eliminate 2 more parking spots on the end so it is closer to the end of the back of the building since you are already exceeding the required number of parking spots.*

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*Although the dumpster is gone, which is a huge relief ... like I said with the vegetative barrier that they are planning on putting in the back I think it would be just more aesthetically appropriate for the parking to end with the back of the building. That is my formal request at this point for the council to consider making that a condition of the permit.*

*The other issue we talked about is who decides, or is that decided tonight, that the building will be capped at one story as a conditional use. Is that something that comes out of tonight's meeting?*

**Perry:** *Yes.*

**DeLucia:** *And the gate. We already talked about the other thing is just the safety of people driving on the main highway. People are coming at 55 m.p.h. regardless of the speed limit. When they get to the opening off the highway there are going to be people turning in there. Rob was talking about the general safety of the public and so on and so forth and I do not know how long it is going to be before somebody gets T-boned, but I guarantee I will have a front row seat. I will be able to see it from my deck when it happens. Someone is going to get T-boned with another cut going in there. The ENT, they are not very busy, they have patients come and go but an urgent care is a different story. You are going to have people going in there constantly, flowing in, so you are going to increase the traffic. There is going to be an increase in issues with people coming from Home Depot's direction. They are already up to 50, 55 m.p.h. I do not know who does traffic studies or who has deemed this a safety or non-safety issue, but it is something I think is a safety issue. And I do not know how long it is going to be before, like I said, somebody is going to get hurt right in front of the urgent care.*

*As far as the property values go, a hospital is an apple, and an urgent care is an orange in my opinion. So, to say that the property values are going to increase because of \_\_\_\_\_ I disagree with that. It is not the same thing. A hospital ... they have different capabilities than an urgent care center, so I still do not see this as a property enhancing venture for me having one at the end of my driveway.*

*That is pretty much it. This looks like it is going to happen. Everybody has been in favor since day one so if there is an option to limit the impact on my property I am formally requesting 2 additional parking spots be removed so it does not come any closer to my house than it needs to. Thank you.*

**2. Spencer Oliver 4932 Lunar Dr., Kitty Hawk, NC:** *I was quite intrigued by Rob's interpretation of the Town Code. It says that somehow our property values are going to be enhanced and not devalued. I think the three of us who came here on the first night three months ago, four months ago, made the case that it devalues our property. I have told you that my tenants have already given me notice to move out. I mean, Mike Dunn who built this spec house across the street, has already told you that it has devalued the house. He is going to have a hard time even selling it. Tom DeLucia tells you that it devalues his house obviously it devalues our houses. So, I do not see how the Town Council can say that they have met the criteria to approve the application.*



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*I am reading from the law: must make findings that the proposed conditional use does not materially endanger the public health or safety. Well, public safety, I can tell you those three cuts ... there are people coming around that curve and they get up to 55 m.p.h. and that is very dangerous. Now I talked to the DOT too. They did not even do a traffic impact survey. The district engineer said he looked at it on Google Earth. I do not think that that really is enough to ensure that you have somehow not endangered the public safety by putting those three cuts into that highway. It is pretty obvious for anybody that goes up there to try to turn left if you are coming north or wait till that traffic releases from the bank of lights just 1,500 feet above there. That is dangerous. The mayor has even asked the Tourism Board to give additional police because of the congestion there. Now the congestion is going to be worse and the safety is going to be terrible.*

*And it says it will not substantially devalue the adjoining property. Well we are the adjoining property owners and we can tell you it does. What somebody said about some survey in Nags Head has no bearing on this whatsoever.*

*And it says that in order to do this it must be in harmony with the general conformity of the comprehensive plan. Well the planning board told you initially that it was not in conformity with the comprehensive plan. So, I mean you already know it is not. You cannot meet that. You know you cannot meet that criteria. You just ignore it.*

*The first time that this was put before the planning board the representative of the applicant said in effect this is going to provide additional health care for the community and that is what the survey said we needed. Well that is not what it said, and I told you that. It does not provide additional health care. This provides additional property which does not in any way enhance the health care needs of this community. Eighty-three percent of the people are satisfied with health care. What that survey said was we need more doctors down here. Well this does not help get more doctors. You close an urgent care, the urgent care center in the Marketplace, and you just move it down the street. So, you do not have more health care you have less.*

*So, I think this is a bad deal. I think people should think about what they are doing here. I really think that you should worry about whether or not you actually conform to the rules and regulations and laws. This is wrong. You should vote no on this. You should not approve this conditional use permit. It is not even in conformity with your own rules and I think ... I hope that you will give that some consideration. After four months I have been making these points. Nobody has even commented, nobody has even asked a question.*

*So, I guess maybe the fix is in. I think that is a bad thing to do. And I think it is the wrong thing for this Town Council to do and I hope you will consider that. Thank you.*

**3. David Ryan, Creative Engineering Solutions, Representing the Applicant Putter Lane OBX, LLC:** *Before you for your consideration is a conditional use permit for an urgent care which will be operated by the Outer Banks Hospital. This site development plan has been in evolution over time representing many iterations some specifically to address the concerns of the*



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*neighboring property owners. As Mr. Testerman has gone ahead and noted some of those changes include an enhanced buffering along the south and west property lines which the applicant has agreed to go above and beyond what is required by the code.*

*Additionally, we have included enhanced separation from the building with a reduced building footprint. Going from 11 feet as noted on the original plan to 33 feet to lessen the impact of the adjoining neighbor to the south. In addition, there was a solid waste dumpster pad which was noted here on the west side of the property which we have now removed based upon further communications with the Dare County Sanitation Department in order to get roll off carts and minimize the impact there. We have also increased some of the radius there for the inner parcel connection so the sanitation vehicles have access to pick up for those sanitation cans. We have also reduced the overall lot coverage along with the building footprint as well as pared down from multiple use, with a pharmacy and urgent care, to a single use for an urgent care facility.*

*The parking which is shown represents an excess of parking spaces. That is to promote flexibility in the future. The Town Code for the parking standard is 5 spaces per 1 doctor plus 1 space per employee so if there is an opportunity for an additional doctor to perform at this facility we wanted to ensure that we were compliant. That is why we provided the additional parking and infrastructure up front to allow future flexibility for that to occur.*

*So, we have tried to address some of the concerns of the adjoining property owners as well as the site layout itself. With the prior plans for lots 3-5 to the north there was an inner parcel connection that was provided. It was a recommendation at that time for that conditional use permit. It has now permitted this transition from the lots to the north to this subject property as well as an additional drive aisle in order to meet the fire code requirement in accordance with appendix D. The other option was to go ahead and have another connection to Putter Lane as an option but knowing that that would create additional adverse impacts to the adjoining property owners we had to forgo that in order to make that connection to 158.*

*The location of this drive has been done in order to meet some of the requirements of the NCDOT policy to access to highways. Typically, when you have multiple curb cuts you want to provide the greatest separation distance from the existing curb cut that we have to lot 5. That has been sited as far to the south as possible to conform and comply with their standards. So again, everything that has been shown and depicted on this site plan has been planned carefully in order to meet either state requirements or local requirements for this application.*

*And during this process we have obtained state permits for an extension of the waterline along 158 in order to provide additional fire flow capabilities for this facility. We have acquired a state stormwater management permit to address stormwater management and runoff from this application in addition to applying for a right-of-way encroachment and driveway access permit from DOT. DOT is currently the expert and they review each and every application for conformance to their policies and procedures and based upon the number of parking spaces proposed for this application they have determined that it did not meet the warrant for a higher-*



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*level traffic impact study for this application. What we had done specifically for this is we had followed up to look at some of the criteria that they typically use for an analysis of traffic impact for applications. There are two sources of information that are typically used. One is the Institute of Traffic Engineers and a parking generation calculation as well as the Highway Capacity Manual. We looked at both of those references for this specific application and this type of use. So, we have tried to do our due diligence to ensure that it met general health, safety and welfare and good engineering practices for this application with siting and location of this driveway access.*

*It should be noted that in the planning board approval there were some additional conditions that were applied for and I just wanted to make note of that. What is under consideration for a conditional use permit is for these two subject properties which are lot 6 and 7 here. There is a separate conditional use permit that was issued in January of 2015 for Lots 3 to 5 which are to the north. As part of that conditional use permit approval there were conditions on signage being placed at the egress onto Putter Lane. To the best of my knowledge those signs are still intact and that the other conditions for that conditional use permit still apply in that this applicant is compliant as it stands today. We ask that any of those conditions that were noted by the planning board be exempted from this application. Again, looking at this as a separate conditional use permit.*

**Perry:** *Thank you. I agree with that.*

**Garriss:** *Mr. Ryan. Addressing Mr. DeLucia's concerns. The two and a half, three parking spaces. Eliminating those. From what you just said it is really not an option because you want to be able to accommodate any future doctors that may come correct?*

**Ryan:** *That is correct. To go ahead and meet Town Code requirements.*

**Garriss:** *Which Mr. Oliver has related that we need more doctors.*

**Oliver:** *Having more land does not give you more doctors.*

**Garriss:** *That's all I have to say Mr. Ryan. Thank you.*

**Perry:** *That was one of my questions. Since we are on that subject and this might go to Casey. The parking spaces that are on the other lot.*

**Varnell:** *On Lot 5?*

**Perry:** *Yes. Since we are looking at this how does that fit in legally.*

**Varnell:** *I had the exact same question and Rob did a really good job of explaining it at the planning board meeting. Our code is not affected because the development of those 7 parking*

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*spaces is not intense enough to require ... because there is joint ownership, which is key as well, it does not ... we can approve it as part of this plan is a better way of saying it without affecting the conditional use permit that was previously ...*

**Perry:** *What happens though if the property is sold off, split up in some fashion.*

**Varnell:** *We are requiring the recombination of the two lots where the building will be on to prevent that exact issue. Rob provided a form of exception that I was comfortable with.*

**Perry:** *Let's get that on the public record.*

**Testerman:** *Our Town Code that relates to site plan approvals for minor site plan modifications can be done administratively. I was looking at the 7 parking spaces on lot 5 as something that can be done as an administrative site plan modification. Where it is suggested to record an easement for the drive aisle between the two lots I guess Casey we could require recordation to keep these 7 parking spaces tied in with lots 6 and 7 as well.*

**Varnell:** *We could, by agreement, even if ownership ends up splitting down the road as long as there is a dedicated easement for parking. It could be a simple parking easement then any future sale of lot 5 or anything north of the two lots that we are looking at tonight would be sold subject to that and it would also be restricted.*

**Perry:** *Or the owner of the two lots we are dealing with now would have to cut back on some employees or something.*

**Varnell:** *Correct.*

**Perry:** *So we recognize something would have to happen. That is really what I was after.*

**Ryan:** *And the applicant would be amenable to going ahead and providing a shared parking easement agreement which would hold these in perpetuity along with this shared access right. That could be done under a single agreement.*

**Perry:** *I want Chief Talley to come up for some questions that I think are germane to what we are doing here tonight.*

Clerk Morris swore in Fire Chief Mike Talley.

**Perry:** *The town owns the two lots. They were bought for the purpose of a fire station some time in the future. Whether or not that ever happens, whether it becomes mandated or not, I don't know. If the town keeps the property and builds a fire station you must have a back door and a front door. Is that a correct statement?*



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**Talley:** *Correct. That is how they are designed.*

**Perry:** *In this case the back door would obviously be Putter Lane.*

**Talley:** *Correct.*

**Perry:** *When you build a fire station today does it have to have an engine company to be compatible with what the state requirements are?*

**Talley:** *Yes. That is your main platform.*

**Perry:** *And your engine company consist of how many apparatuses?*

**Talley:** *It is one apparatus. One fire truck.*

**Perry:** *One fire truck. Not three?*

**Talley:** *Based on calculations and depending on the size of your jurisdiction and your needed fire flow an entire jurisdiction may only require three total. But depending on the growth and again that needed fire flow which is gallons per minute it could be an additional three fire trucks yes.*

**Perry:** *So, we could have three fire trucks in a fire house and depending upon the mandate it could say we have a wide apron back door, front door and we have to build for people to man the station 24/7. Meaning full time manning and because of the size of the lots to fit it all in there that would be a two-story structure would it not.*

**Talley:** *Potentially yes.*

**Perry:** *When you are testing fire equipment, and I know this because I hear you most every day, what is involved just in the daily testing.*

**Talley:** *Mainly operating equipment to make sure it is going to be running properly, functioning properly on the scene. It is testing sirens to testing the equipment, running the equipment like chain saws, generators and pretty much anything we carry that we are going to be operating daily.*

**Perry:** *So daily it is pretty noisy.*

**Talley:** *It can be and I apologize for that.*

**Perry:** *No that is the way it is. If we look at this from the point of view that we keep it and a fire station eventually has to be built it is going to impact people. I know when we built the fire station in the village there were people that were very upset and some of them left because of it. A fire*

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*station there, while it might benefit the community, would not benefit necessarily adjacent homeowners in a quiet fashion.*

**DeLucia:** *Mayor before you discuss it any further can I just check my math with the parking situation. Something is not adding up to me. The proposition was that there are 39 parking spaces currently and 32 are required based on the number of employees that you identified. Doctors and staff with the potential of additional doctors somewhere down the road you would need 5 more parking spots that brings it to 37. We have 39 so we could still reduce it by 2 without any impact. Is my math correct?*

**Perry:** *Mr. Ryan would you come back up please.*

**Testerman:** *I will note our parking requirements for a medical office or a clinic is 5 parking spaces per doctor plus 1 per employee so they are saying if they brought in an additional doctor there is 5. If that doctor has additional employees there is 1 additional space per employee which counts for that.*

**DeLucia:** *So how do you get 32 based on the number of current doctors and employees.*

**Testerman:** *Right now they are proposing 4 doctors and 12 employees, 20 for the doctors, 12 for the employees.*

**DeLucia:** *By adding an additional doctor you would need 6 spaces?*

**Testerman:** *It will depend on the number of employees. It would be 5 for the additional doctor and that is 37 so there would be 2 additional for employees that could potentially be hired.*

**DeLucia:** *We are basing a parking plan, as the mayor said earlier, we do not know what in perpetuity can mean. We do not know if there will ever be an additional doctor, so we are going to put parking in just because ... my concern is where are the three roll out cans going to go? Right where the dumpster was. That little dip in the curb there so ...*

**Perry:** *We are not dictating that.*

**DeLucia:** *Well where are they going to go? I do not know if the engineer has an idea where those roll outs are going to go but to me that seems like ...*

**Perry:** *Mr. Ryan answer his question if you can.*

**Ryan:** *The roll out cans are being proposed to be placed right here. The truck for the Dare County Sanitation Department is a right hand pickup so they will pull in here, pick up the carts and then be able to back out and go out there.*



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**DeLucia:** *I have absolutely no problem with that. That would be awesome because the current building that is there, and I know we are not talking about the current building, but they put their cans out on Putter Lane and there is always trash blowing out of them. They are there 7 days a week and it is an eyesore. So, leave it as is I have no problem with that. That is fine.*

**Oliver:** *Since you raised the question of a fire station I was quite curious as to whether or not there was any prospect of building it in this area. I mean you already decided a long time ago this was not going to be the site for a fire station. There are two in Southern Shores. There are three fire stations within two miles.*

**Perry:** *It does not count. We have been through this. Due to hydrant flow and the number of hydrants interestingly enough and other factors the state is still recommending, or strongly suggesting, for the town to have a fire station in the north end of town.*

**Oliver:** *So why are you having a medical office if you \_\_\_\_\_ (inaudible)*

**Perry:** *That is a different issue entirely. All I did was bring up if we kept the lots what could happen. Now if a land swap should occur then something moves further south.*

*I have one more question of Rob. As far as I know there have not been any accidents caused by the Regional curb cut and it is right in the corner. As far as I know there have not been any accidents caused by the curb cut on what is now an ENT. On the east side of 158 individual property owners are beginning to curb cut. Do they go through a study to do that?*

**Testerman:** *Being a state highway they must get a DOT access agreement. As Mr. Ryan said parking lots of a certain size and a certain amount of traffic is what generates a traffic study. Smaller businesses and homes along 158 are not generating any traffic study or analysis.*

**Bateman:** *Just for clarity do you feel the applicant has done whatever he needs to do here to cross his t's and dot his i's to make this the safest possible it could be?*

**Testerman:** *Yes. It is not my area of expertise, but they have DOT's blessing and that is their expertise. In my opinion if DOT is satisfied then that is good.*

**Perry:** *They are the engineers we are not. Bottom line. Anybody else have a question? All right, then I make a motion to go back into regular session. MPT Garriss seconded and it passed unanimously, 5-0.*

**Bateman:** *I have a problem with the gate.*

**Perry:** *Yes. I do not want that and I do not feel like we should impose a buffer beyond what is on this lot. As Mr. Ryan said this is we are looking at these lots.*

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**Bateman:** *I agree.*

**McClean:** *It said the board also discussed a potential condition eliminating the development to a one-story building as shown on the proposed elevation, but it was unintentionally left out of the motion.*

**Perry:** *I do not agree with that. People can build to 35'. Why would we limit them to anything less than that?*

*Regional Medical Center has been there for a long time and I am not aware that it diminished any property values. I was gone for while when they built it. Can anybody tell me if they know of that happening?*

Hearing no answer to his question, **Mayor Perry made a motion to grant approval of the conditional use permit to establish a licensed physician office at 5113 and 5117 Putter Lane subject to the conditions listed in the staff report with the exception of the planning board's recommendation. That is, the extension of the vegetative screen and berm past lot 5 to Putter Lane and a lockable arm gate be placed on existing Putter Lane is not required and the building is not limited to one story. Councilman Bateman seconded and it passed unanimously 5-0.**

**7(b.) Conditional Use Permit: 4622 N. Virginia Dare Trail. Requested CUP would allow craft production and retail sales in an existing commercial building.**

**Mayor Perry made a motion to go into public hearing for a CUP to allow craft production. MPT Garriss provided a second and it passed unanimously 5-0.**

Clerk Morris swore in Planning Director Testerman and he reviewed the following staff report:

**Proposal**

The applicant is requesting approval of a conditional use permit to a glassblower operation in her retail store at an existing commercial building.

As described by the applicant, the glass blower will set up to blow glass live for customers to see. Some pieces that are blown will need to be fired in a small kiln.

**Proposed Conditional Use**

42-250(c)14. Craft production and retail sales, subject to any reasonable conditions imposed by the town council and the following conditions:

a. The production of crafts must be incidental to and for the purpose of retail sales and not for distribution to wholesale vendors.

**The glassblowing operation will be incidental to a primary retail store, items crafted will not be for distribution to wholesale vendors.**



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b. The maximum square footage of the area devoted to craft production shall not exceed 800 square feet.

**The applicant has confirmed that the area dedicated to the glassblowing operation will be less than 800 square feet.**

c. The building in which crafts are produced 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 line if the same is a freestanding building and to prevent any noise emanating from within the building, or portion thereof used for craft production, if the same is located within a multiunit structure. An architect, engineer or qualified professional must certify on the site plan that the proposed design and materials will allow no noise from the craft production activity within the building to be heard at any point on the approved site boundary or outside of the building, or that portion of the building used for craft production if the same is located within a multiunit structure.

**It is staff's understanding that noises produced during glass blowing are minimal, and should not be an issue to contain within the boundary line of the property.**

d. All odors and vapors, including chemical vapors, associated with or generated by the production of crafts shall be contained within the boundaries of the site or within the building, or that portion of the building used for the production of crafts in a multiunit structure. When requested by the planning board, an engineer's certification shall be furnished to the planning board that the design, construction, and proposed methods of odor and vapor control are sufficient to contain all odors and vapors generated by or emanating from the production of crafts within the site boundary, if a freestanding building, or within the interior of that portion of the building used for the production of crafts in a multiunit structure.

**The applicant has indicated that any odors or vapors produced will be contained within the boundaries of the site.**

e. The property owner must provide a waste container of sufficient size to accommodate all of the waste generated by the craft production activity.

**The applicant has verified that a sufficient waste container will be provided.**

f. If flammable materials are used in the craft production activity, the owner shall obtain and maintain firefighting apparatus or fire extinguishing apparatus in accordance with the requirements of the planning board or the volunteer fire department.

**The applicant has discussed this proposal with the Fire Inspector and the Building Inspector. If approved, the glassblowing operation will meet the requirements of both.**

**Background Information**

The subject property is presently zoned General Beach Commercial (BC-1). In total, the lot is approximately 10,000 square feet (0.23 acre).

The abutting property to the north are is also zoned General Beach Commercial (BC-1) and contains Art's Place. Abutting the property to the south is the Saltaire Motel, also zoned BC-1. Abutting the property to the rear are several single-family residences, also zoned BC-1. Across N. Virginia Dare Trl to the east are vacant lots, and single-family residences, zoned BR-1.

**Staff Analysis**

**Proposed Uses:** Craft production and retail sales. This use is permitted as a Conditional Use in the BC-1, per conditions listed above.

**Lot Area:** The subject parcel is approximately 10,000 square feet (0.23 acre).

**Lot Coverage:** The maximum lot coverage in the BC-1 district is 60%. Staff does not have a recent site plan or survey indicating existing lot coverage, the proposed use will not increase lot coverage.

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**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 not comply with the Town's current minimum building setback standards for the BC-1 district. Exact existing setbacks are unknown, however, being built in 1965, this is a legal nonconformity. No changes are proposed to the footprint of the building.

<u>Setback</u>	<u>Required</u>
Front	15 feet
Rear	20 feet
Sides	10 feet
	10 feet

**Access:** The subject property parking area opens onto N. Virginia Dare Trl.

**Parking:** There is a legal nonconforming deficiency of parking on this site. The property owner has provided staff with lease documents to indicate that a commercial use has continually operated in this location, thus is still "grandfathered".

**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:

- a. does not materially endanger the public health or safety,
  - There is no evidence to suggest that allowing the proposed use room would endanger the public health or safety, as long as the safety measures recommended by the building and fire inspectors are met.
- b. does meet all required conditions and specifications,
  - As noted in the staff report, the proposal will meet all specific requirements of craft production and retail sales. Items that are noncompliant with zoning requirements are legal nonconformities.
- c. will not substantially injure the value of adjoining property or be a public nuisance, and
  - There is no evidence that permitting a glassblowing operation as an accessory to a retail business 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.

**Planning Board Recommendation**

At its March 15, 2018 meeting, the Planning Board unanimously recommended approval of the proposed conditional use permit for the establishment of craft production and retail sales at 4622 N. Virginia Dare Trail, subject to the conditions listed in Sec. 42-250(c)14.



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Seeing no one come forward to speak and hearing no comments or questions from council, **Mayor Perry made a motion to go back into regular session. MPT Garriss seconded and it passed unanimously, 5-0.**

**MPT Garriss made a motion to grant approval of the proposed conditional use permit to allow the establishment a craft production and retail sales at 4622 North Virginia Dare Trail. 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 provided a second and it passed unanimously, 5-0.**

**8. PLANNING**

**a.) Call for Public Hearing: Text Amendment: 42-70(a), Board of Adjustment – Established. Proposed text amendment would restrict eligibility to serve on the Board of Adjustment to residents of Kitty Hawk.**

**Councilman Pruitt made a motion, seconded by Councilwoman McClean, to set a public hearing at the Town Council meeting on June 4, 2018 to consider the proposed text amendment to amend subsection 42-70(a) regarding the residents of potential board of adjustment members. The vote was unanimous, 5-0.**

**b.) Call for Public Hearing: Text Amendment: Multiple sub-sections. The applicant has requested a text amendment that would allow a lot coverage bonus for the use of permeable pavement.**

**Councilwoman McClean made a motion to set a public hearing at the Town Council meeting on June 4, 2018 to consider the proposed text amendment to 42-1, 42-247, 42-248, 42-249, 42-250, 42-251, 42-253, 42-273, 42-274, 42-275, 42-276, 42-277, and 42-278 regarding permeable pavement and the lot coverage. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.**

**9. NEW BUSINESS**

**a.) Resolution Authorizing Exchange of Property**

**Mayor Perry read aloud the following resolution:**

**WHEREAS, the Town of Kitty Hawk (hereinafter "Town") owns Lot 6 and Lot 7 of Section C, Kitty Hawk Beach Subdivision and respectively known as 5117 and 5113 Putter Lane, Kitty Hawk, North Carolina, each valued at \$106,500.00; and**

**WHEREAS, Putter Lane OBX, LLC (hereinafter "LLC") owns or will own Lot 212, Lot 211, Lot 210, and Lot 209 of Section C, Kitty Hawk Beach Subdivision and respectively known as 4907, 4911, 4915, and 4919 Putter Lane, Kitty Hawk, North Carolina, each valued at \$106,500.00; and**

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WHEREAS, the Town and the LLC wish to make an exchange of the properties described above, wherein the Town would acquire 4907, 4911, 4915, and 4919 Putter Lane, Kitty Hawk, North Carolina and the LLC would acquire 5117 and 5113 Putter Lane, Kitty Hawk, North Carolina, with no other consideration being tendered by either party to the exchange; and

WHEREAS, the Town finds that it would receive full and fair consideration in exchange for its property;

WHEREAS, North Carolina General Statute §160A-271 authorizes the Town to make such an exchange if authorized by the Kitty Hawk Town Council by a resolution adopted at a regular meeting of the Council upon at least 10 days public notice; and

WHEREAS, the Town has given the required public notice, and the Council is convened in a regular meeting.

NOW THEREFORE, THE TOWN COUNCIL OF KITTY HAWK RESOLVES THAT:

1. The exchange of properties described above is authorized.
2. The appropriate Town officials are directed to prepare and execute the appropriate instruments necessary to carry out the exchange.

Adopted May 7th, 2018.

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**MPT Garriss made a motion to approve the resolution as read. Councilwoman McClean seconded and the motion was approved unanimously, 5-0.**

**9. (b.) Motion to Schedule Fiscal Year 2018-19 Budget Public Hearing for the June 4, 2018 Council Meeting, Kitty Hawk Town Hall, 6 PM.**

**Mayor Perry made a motion to schedule the Fiscal Year 2018-19 Budget Public Hearing for the June 4, 2018 council meeting, Kitty Hawk Town Hall at 6 p.m. MPT Garriss seconded the motion and it passed unanimously, 5-0.**

**10. TOWN MANAGER**

Manager Stewart reminded everyone about the **large item pickup** scheduled for May 21, 2018. It is not for vegetative debris.

**11. TOWN ATTORNEY**

There were no comments from the attorney.

**12. TOWN COUNCIL**

MPT Garriss thanked staff for everything they do.



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Councilman Bateman thanked staff for all their help with the Flying Pirate Half Marathon that was held in April. He told the mayor he thought he did a great job of presenting what a fire station being built on Putter Lane would be like. He also thinks it would be much more intrusive than a medical center. Governing body members try and be good stewards of the taxpayer's dollars. Mr. DeLucia did a fantastic job of working with the planner and he thinks the applicant did the best he could to help address his concerns.

Councilwoman McClean said a lot of thought goes into a decision such as the urgent care center. She noted the Board of Elections personnel are in the audience and reminded everybody to vote.

Councilman Pruitt said council has to deal with tough decisions from time to time and thinks the applicant did the best he could to try and work with the neighbors. He thinks this is good for the town and for the future of Kitty Hawk.

Mayor Perry said he hopes this decision is in the best interest of the citizens and will provide a bigger space for a police station or fire station or whatever is needed down the road.

### **13. PUBLIC COMMENT**

**1. Spencer Oliver, 4932 Lunar Dr., Kitty Hawk, NC:** Mr. Oliver said he has learned many lessons from this experience. He agrees the town needs medical care, but this is not the way to get it. This is not going to provide for more, it will provide less. He thinks what is bigger than the town is whether people live by the rules. Whether or not the laws and regulations are followed. The planning board did not follow the Town Land Use Plan and they said so. You are not supposed to grant a permit unless you follow that plan. The laws and rules and regulations mean something. In this case they did not. Somebody said the land value went up by the Outer Banks Hospital and his land value is not going up. They have done everything they can to avoid having a traffic impact study. He thinks if they had a traffic impact study they would not have been able to get those cuts because it is a dangerous intersection.

**2. Tom DeLucia, 5116 Putter Lane, Kitty Hawk, NC:** Mr. DeLucia said he is glad the council is pleased with the outcome. Everyone is all in favor of increased medical care. He told council at the first meeting that his family purchased that house specifically because those two lots were beach residential. They did their homework because of their experience in Kill Devil Hills when a big business put in a parking lot beside their house. He does not appreciate the innuendos regarding the fire house and told one could be put there and how noisy it could be. The town made a mistake 10 years ago and did not rezone the lots like they were supposed to be. This is being bulldozed through and his entire retirement savings went into that house and now there is going to be an urgent care there. They cannot get a gate but thanked the engineer for getting rid of the dumpster. He appreciates that immensely because he won't have to look at it. He asked who he is to call on Saturdays because vehicles cannot get out onto the highway because of the traffic. He is all in favor for getting more health care but do it on a lot that is already zoned for that purpose not one

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that was zoned for residential use. The town may make two hundred grand but he does not know what is going to happen to his property value. He feels he has no options. He urged council to reconsider the gate and it does not have to lock. People will see it and not go through there. Or put a cone in the road.

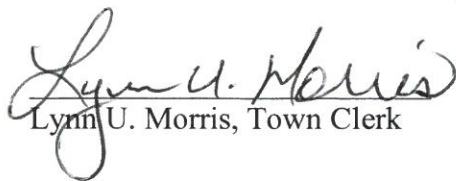
**3. Brian Morgan, 4900 Lunar Dr., Kitty Hawk, NC:** Mr. Morgan said he thought some of Mr. Oliver's and Mr. DeLucia's issues were quite valid. He lives in the area and knows of several accidents in that vicinity with signs and fences being hit. He has had his cable and electricity cut by two accidents. He will be impacted if a fire station is built but they must have them. He appreciates being able to walk to get care and also walks to Home Depot. There is no walkway and thinks if one is put in it would help that area tremendously. He believes council is doing the best they can and if they wind up with a fire or police station can they get some mitigation on that end of town with a walkway.

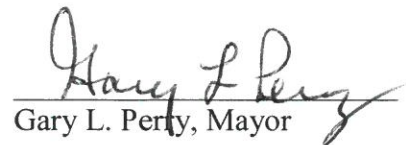
There were no other speakers.

**14. ADJOURN**

**Councilman Pruitt made a motion to adjourn. It was seconded by Councilwoman McClean and it passed unanimously, 5-0. Time was 7:33 p.m.**

These minutes were approved at the June 4, 2018 council meeting.

  
Lynn U. Morris, Town Clerk

  
Gary L. Perry, Mayor