

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, May 4, 2015
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
 - Planning Board Chairman Oscar Northen
 - Outer Banks Sporting Events/Jenny Ash, Race Director and Lynda Wood, Executive Director
 - Tourism and its Impact to the County/Tim Cafferty, Chairman of the Dare County Tourism Board and Lee Nettles, Executive Director of the Outer Banks Visitors Bureau
5. Public Comment
6. Consent Agenda
 - a.) Approval of March 16, 2015 and April 7, 2015 Council Minutes
 - b.) Revenues and Expenses Report for March 2015
 - c.) Request to Fill Police Officer Vacancy
 - d.) Fiscal Year 2014-15 Audit Contract
 - e.) Dare County Emergency Operations Plan (*Moved to #7*)
 - f.) Parker Poe Engagement Letter (*Moved to #7*)
 - g.) Capital Project Ordinance for Beach Nourishment
7. Items Removed from the Consent Agenda
 - (6e.) Dare County Emergency Operations Plan
 - (6f.) Parker Poe Engagement Letter
8. Public Hearing
 - a.) Text Amendment: Proposal to amend Chapter 42, Division 3 of the Town Code to update standards for temporary signs and banners.
9. Planning
 - a.) Call for Public Hearing: Text Amendment: Amend the Kitty Hawk Town Code by adding Subsection 42-250(c)(34) allowing “vehicle rentals” as a conditionally permitted use in the Beach Commercial (BC-1) zoning district, subject to certain conditions.
 - b.) Call for Public Hearing: Conditional Use Permit: Application for a Conditional Use Permit to allow vehicle rentals at 4011 N. Croatan Highway.
10. Unfinished Business
 - a.) Text Amendment: Amendments to Chapter 40, Article III of the Town Code Updating Standards for Wireless Communications Facilities Consistent with Recent Changes in State and Federal Laws.
11. Reports or General Comments from Town Manager
 - a.) Status of Easements for Beach Nourishment Project
 - b.) Seasonal Traffic Problem at US 158 and NC 12
 - c.) Status of Lillian Street Parking Lot Expansion Project
 - d.) Washed out Section of NC 12

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12. Reports or General Comments from Town Attorney
13. Reports or General Comments from Town Council
 - a.) Thank You to Planning Board Chairman Oscar Northen
 - b.) Removal of Items in the FY 15-16 Budget
14. Public Comment
15. Closed Session: § 143-318.11(a)(3) To consult with the town attorney in regards to Winks
16. Return to Regular Session
17. Adjourn

COUNCIL MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Town Planner Rob Testerman, Finance Officer Charlene Allen, Police Chief Joel Johnson, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

1. Call to Order

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. Approval of Agenda

Mayor Perry provided several changes to the agenda. Item 10(a) concerning the wireless communications has not been advertised for a public hearing yet and will need to be pulled from the agenda and consent agenda items 6(e) and (f) need to be placed under number 7.

Councilwoman Klutz made a motion to approve the agenda as amendment. Councilman Garriss seconded the motion and it passed unanimously, 5-0.

4. Presentations/Recognitions:

- **Planning Board Chairman Oscar Northen** – Mayor Perry announced Mr. Northen is resigning soon from the planning board after 13 years of service. He then read aloud the Certificate of Appreciation for his loyal and devoted service.

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Mr. Northen thanked the mayor and council and said it has been a privilege and an honor to help. It was a very humbling experience and a beautiful culmination of 60 years of working in the planning field as a professional planner and he will miss serving.

- **Outer Banks Sporting Events/Jenny Ash, Race Director and Lynda Wood, Executive Director** - Ms. Wood introduced new race director Ms. Ash. They reported on the Outer Banks Sporting Events mission, economic impacts, featured events, visitor demographics and trends and challenges for 2015. OBSE is a non-profit organization and 100% of the net proceeds is split 50/50 between the Outer Banks Relief Foundation and the Dare Education Foundation. Ms. Wood then presented council with a framed poster of the 9th year of the marathon.
- **Tourism and its Impact to the County/Tim Cafferty, Chairman of the Dare County Tourism Board and Lee Nettles, Executive Director of the Outer Banks Visitors Bureau** - Mr. Cafferty provided a stewardship report of tourism and its impact to the county and towns.

Mr. Nettles informed council of several items the bureau is undertaking which includes mailing printed travel guides as well as the use of social media to promote the Outer Banks. He talked about the event site in Nags Head and the new "Stir the Soul" campaign.

Mayor Perry thanked them for the report and updates and added he did not realize, until he was on the tourism board, how much of an impact visitors make on reducing taxes.

5. Public Comment

There were no comments from the public.

6. Consent Agenda

- a.) **Approval of March 16, 2015 and April 7, 2015 Council Minutes.** *(An affirmative vote for the consent agenda will approve these minutes.)*
- b.) **Revenues and Expenses Report for March 2015.** *(An affirmative vote for the consent agenda will acknowledge this report.)*
- c.) **Request to Fill Police Officer Vacancy.** Recently a POIII resigned and the police chief would like to fill the vacancy with a POI, Grade 59, starting salary \$36,240. *(An affirmative vote for the consent agenda will approve this request.)*
- d.) **Fiscal Year 2014-15 Audit Contract.** This contract is with Dowdy & Osborne, LLP to audit the town's FY 14-15 accounts and is in the amount of \$16,250. *(An affirmative vote for the consent agenda will approve this contract.)*

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g.) Capital Project Ordinance for Beach Nourishment. This capital project ordinance should be adopted to cover all expenditures expected to be needed to complete the project. It will help to determine how much the project costs and the amount spent to date. This ordinance may be amended as needed. It is necessary to adopt this now to ensure outstanding encumbrances related to the Beach Nourishment project as of June 30, 2015 will be reflected in the Capital Project financial statements. *(An affirmative vote for the consent agenda will adopt this ordinance.)*

Councilwoman Klutz made a motion, seconded by MPT Bateman, to approve the consent agenda items (a) through (d) and (g). The motion was unanimously approved, 5-0.

7. Items Removed from the Consent Agenda

(6e.) Dare County Emergency Operations Plan - Adopting this memorandum of agreement between municipalities in Dare County and the County of Dare will in effect adopt the County Emergency Operations Plan. Doing so will benefit the Town of Kitty Hawk and Dare County during emergency situations in addition to having a positive influence on the Town CRS rating.

Perry: The reason I pulled this is because I want to make council aware of something the plan says that is not going to be done quite the way it says. On page 1 it states "The mayor or his designee will serve as a member of the Dare County Control Group and maintain a presence in the EOC as long as the chairman deems necessary." I have been at odds with them on that particular wording for as long as I've been here. We will do the rest of the items that lead up to evacuations or whatever is required but when it comes time for the event we have professional people in the emergency operations center to deal with it. The mayor or his designee needs to be at home. Elected officials need to be in town dealing with the town and his own personal activities. I am going to sign this because if I do not it affects the community rating system for flood insurance. When the event occurs I will be here where I should be. Does everyone understand? (Members of council answered yes.) Do I hear a motion to approve?

MPT Bateman "so moved" to approve the Dare County Emergency Operations Plan. Councilman Garriss seconded the motion and it was unanimously approved, 5-0.

(6f.) Parker Poe Engagement Letter - This is an agreement for Parker Adams & Bernstein LLP to serve as bond counsel for financing beach nourishment. The firm currently serves Dare County and will serve as bond counsel to the Towns of Duck and Kill Devil Hills. Parker Poe will perform the customary legal services as bond counsel, including, but not limited to, drafting the financing documents, tax certificate and other customary closing documentation and delivering customary legal opinions at closing. They will also draft the Interlocal Agreement.

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Perry: *Mr. Michael, if you look on Page 2, 3rd paragraph, it reads "Similarly, we note that our firm represents most, if not all, of the financial institutions that will be asked to participate in the RFP process for the purchase of the Bonds. It is therefore likely that, in connection with matters unrelated to this engagement, we have represented, may currently represent and expect to represent in the future the financial institution that is selected through that process. Because the town is separately represented by the town attorney with respect to negotiating with such financial institution the material terms of the financing, we do not believe our engagement as bond counsel creates a conflict of interest." Do you believe this agreement adequately protects the town from any potential conflict of interest?*

Michael: *It does not protect you from a potential conflict of interest but if you read the entire engagement letter they have addressed how they would deal with any potential conflicts of interest that might come up. They will advise the town about any potential conflicts and we will handle it. Either by me becoming directly engaged in the portions where they may have that potential conflict of interest or we will get separate representation or they will withdraw. There is a system in place to prevent that but ...*

Perry: *And you feel that you will have adequate warning before this becomes a problem?*

Michael: *Yes. I am thoroughly familiar with these attorneys and have no doubt they will do exactly that.*

Perry: *When I read that I was not sure.*

Michael: *You will also have a financial consultant who is going to be involved in all of this and trying to get the best terms for the sale of the bond.*

Perry: *That is good. I just wanted it on the record.*

Councilman Garriss made a motion, seconded by Councilman Pruitt, to approve the Parker Poe Engagement Letter. The vote was unanimous, 5-0.

8. Public Hearing

a.) Text Amendment: Proposal to amend Chapter 42, Division 3 of the Town Code to update standards for temporary signs and banners.

MPT Bateman "so moved" to go into public hearing. The motion was seconded by Councilman Garriss and unanimously approved, 5-0.

Testerman: *This came up at the December 1st, 2014 meeting. My first day on the job and I was*

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asked to take on the signs. The two main issues I heard were some felt the size that we allow for temporary signs is too big and the other was the length of time.

The way it is currently written a person can get two temporary sign permits per calendar year, each one valid for 50 days. If someone timed it right they could get 100 days at the end of the year and then another 100 days starting January 1st. In looking at the regulations, and talking with Code Enforcement Officer Ben Alexander who handles the permitting for the temporary signs, he brought some other items up that he thought might need to be addressed.

First, for the time frame. We changed it to two temporary signs or banner permits can be issued for each business on the same property during a 12 month period rather than during the calendar year. That way if they do get the two back to back they have to wait for 12 months before they can get another two. It eliminates the 200 continuous days.

As for the size I wrote it in as 36 square feet. In looking at some of the other localities it was anywhere from 32 to 48 square feet. For the planning board I put it in as 36 square feet as a starting place to see if anyone felt that was too small or too big and everyone on the board was all right with it. If council feels that is an inappropriate size we can change it.

The other recommendations were mostly for clarity and consistency. In Table 1, under Building, a banner is only listed as permitted in the BH-1, BH-2 and the PCD. A little further down in the table, in Miscellaneous, a banner is permitted in the BC-1, MS-1, BC-2, BC-3, BH-1, BH-2 and PCD. There was a suggestion, under Building, to allow the banners in the BC-1, MS-1, BC-2 and BC-3 districts just so it is consistent with the rest of the table.

Also in discussing this with Ben, he believes that in prior reviews of the ordinance the intent was not necessarily to allow temporary free standing signs such as 4 x 4 posts in the ground with a sheet of plywood as the sign. He recommended we add temporary free standing in the table and to show it is not permitted. If you want a temporary sign, like a structure sign, it is attached to a building.

The other inconsistency in issuing the temporary banner permits is the town has not been requiring the banner and temporary signs to adhere to the building setbacks which I think in the BC-1 is 10 or 15 feet but as long as they are outside of the public rights-of-way. To try and clarify that under the notes for Table 3 we added (h.) banners are exempt from setback requirements. It is also mentioned further in the ordinance that they cannot be placed in the public rights-of-way but this makes it clear to anyone trying to get a temporary sign permit.

Another clarity issue came up with Table 4. In the column for vertical clearance from public streets under Banner it is listed as a 12 foot vertical clearance. However in 42-587(d) it states that a temporary sign or banner must be located on the same lot as the business advertised and cannot be located within the public rights-of-way. We referenced the section in that column for two conflicting pieces of information.

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As I mentioned before about temporary signs versus temporary banners we have added to the end of 42-587(d) that temporary signs may only be attached to a building. A banner may be attached to a building or free standing. In talking with Ben and others it sounds like even though they are defined differently in the ordinance sometimes the temporary banner and the temporary sign are used interchangeably so we are trying to clarify that it is two different things and are allowed in different places.

At the March 12th planning board meeting it was voted unanimously to recommend approval of the proposed amendments to Chapter 42, Division 3.

Klutz: *Free standing temporary signs are banned in all locations.*

Testerman: *Yes.*

Klutz: *I wonder why the Kitty Hawk Woods area is not in any of the tables? There are a few residential properties in the Woods and there are rules for residential. All the residential districts are in the tables and it is not just the one that you are working on it is all of them and I just wondered why that is the case.*

Testerman: *I had not caught that. I guess when these tables were first put together maybe the Kitty Hawk Woods district was not in existence.*

Klutz: *If you added that in it would just take on the BR kinds of rules. All you would have to do is add Kitty Hawk Woods under all BR in the table. A question about the marathon banner. The marathon banner is covered under a public event. The way it reads though in the rest of the ordinance is it has to be a Kitty Hawk event. It is not our event.*

Testerman: *This came up during the planning board review and I talked with Ben. He said we have always done it under an exemption that permits town sponsored events ...*

Klutz: *This is not a town sponsored event but it is an event that is supported by the town. I don't know if that banner is actually located in the Kitty Hawk Woods zoning area or if it is in one of the village areas but it looked like a problem. I think that's all the questions I have.*

There were no other questions or comments from council.

(1) David Hunt: *I am David Hunt and a business owner and a resident in town. I am a little confused on the temporary sign versus temporary banner in the definitions. I guess it is spelled out in the ordinance.*

Testerman: *Yes. A temporary sign is any sign that is used only temporarily and is not approved for permanent installation. A banner is defined as any piece of cloth, light weight fabric or other*

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similar material bearing a design, motto, slogan or message, whether commercial or non-commercial.

Hunt: *My personal opinion is I think a temporary sign is more attractive than a temporary banner because the wind over the course of time ... within the 50 days banners tend to get more frayed and look less attractive. A temporary sign is going to have a nice piece of signage out. It doesn't really matter to me either way. Just my personal opinion is I think if someone is going to take the time to have a nice sign made and have it mounted on boards that is going to look better than a banner that's going to be out in the wind for 50 days.*

Perry: *Thank you. Anyone else? Let the record show no one else came forward.*

MPT Bateman **"so moved"** to go back into regular session. The motion was seconded by Councilman Garriss and unanimously approved, 5-0.

Perry: *What does council want to do? I am going to answer one thing that was brought up at the public hearing and that is a nice free standing temporary sign is one thing. Slapping something together, which is what we normally see, is something else. A piece of plywood dabbled with something on it, and you don't have any control, you either have signs and they can do whatever they want with them or you don't. We are looking at it from that point of view also. The gentleman who just told us how much tourists bring to the town and all that they contribute to us, we have to bring them back. That is part of our thinking.*

Klutz: *Was it really council's intent to do away with free standing temporary signs when we asked the planner to take a look at this? I believe what he said was that council was concerned about the duration of temporary signs in a calendar year and the other was the size. I agree with the 36 square feet. That seems to be what the other towns are doing. I do not have a feel for whether or not businesses are currently using temporary signs and if they are, are they ugly or are they ...*

Perry: *The answer is yes and yes. That is what brought the whole thing to a head.*

Klutz: *Now the temporary signs would have to be on a building.*

Perry: *Correct.*

Klutz: *Is anything going to prevent them from being ugly?*

Perry: *Probably not but at least they are not stuck out in the road like we've had at least two instances of.*

Testerman: *I think part of the intent of having them on the building is in a case where there is a new business coming in and they need to get something up while their more professional sign is getting made. That way we don't run into a sign that may not look very good sitting out there for*

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100 days every year. It is just going to be up there one time while they are getting their sign built and once their sign is built the temporary one comes down.

Klutz: *The other concern I have is in an earlier revision to the sign ordinance we had somebody come in from a non-profit who was previously able to advertise and without the ability to cover the whole tourist season they were losing a lot of contributors because people did not see the sign. It was an unintended consequence of the way the language was written in the revision. Do you anticipate changing from a calendar year to a 12 month period, and eliminating the free standing signs, there will be some harm done to people that we have not anticipated?*

Bateman: *When we revised the sign ordinance before it never occurred to me we were approving free standing signs all over town in the middle of the rights-of-way. And in essence every business could put a free standing sign in front of their business and there could be 10 free standing signs in a complex. When I approved the ordinance it was not worded like that to me and it was not explained that is what I was approving. My hope with this is we will be cleaning up something and have more continuity to what they can do with a sign on a building. I do not want to have 10 signs in front of a place.*

Perry: *And for a long period of time.*

Bateman: *There was also no specifications on what went on the sign. As you said it could be painted with a paint brush, could say whatever and it was very unattractive.*

Klutz: *In the case of the non-profit the lady had 50 days. It is still 50 days correct?*

Perry: *Yes.*

Klutz: *It is still 50 days and you could have an extension. That's pretty much what we were looking at is 100 days being the tourist season. Somebody would be able to post a sign for the extent of the tourist season and it would have to be on a building or a banner but they would still have that coverage during the high season.*

Perry: *During the 12 month period it is up to them to decide when their best window is. That's the way I see it. This whole thing started because people were basically abusing what we had and we are trying to clean up an unintended consequence now. Will there be other unintended consequences? Nobody came here to tell us what they might be and until they do I don't know how to handle that.*

Klutz: *Now it is two permits in a 12 month period and no one has come forward to say that is going to be a problem. Okay. I'm all right with it.*

Perry: *Do I hear a motion to approve it?*

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Councilman Garriss made a motion to adopt the proposed text amendments to update Chapter 42, Division 3 of the town code with revised standards for temporary signs and banners. The town council finds that the proposed text amendment is consistent with the town's adopted CAMA Land Use Plan. MPT Bateman seconded the motion and it passed unanimously, 5-0. (Ordinance No. 15-04)

9. Planning

a.) Call for Public Hearing: Text Amendment: Amend the Kitty Hawk Town Code by adding Subsection 42-250(c)(34) allowing "vehicle rentals" as a conditionally permitted use in the Beach Commercial (BC-1) zoning district, subject to certain conditions.

Councilman Pruitt made a motion, seconded by Councilman Garriss, to set a public hearing for the town council meeting on June 1, 2015 regarding the proposed text amendment to add subsection 42-250(c)(34) to the Kitty Hawk Town Code creating vehicle rentals as a conditional permitted use in the Beach Commercial (BC-1) zoning district. The vote was unanimous, 5-0.

b.) Call for Public Hearing: Conditional Use Permit: Application for a Conditional Use Permit to allow vehicle rentals at 4011 N. Croatan Highway.

Councilman Garriss made a motion, seconded by Councilwoman Klutz, to set a public hearing for the town council meeting on June 1, 2015 regarding the proposed conditional use permit to allow a vehicle rental business at 4011 North Croatan Highway. The vote was unanimous, 5-0.

10. Unfinished Business

a.) Text Amendment: Amendments to Chapter 40, Article III of the Town Code Updating Standards for Wireless Communications Facilities Consistent with Recent Changes in State and Federal Laws.

(This was removed during the approval of the agenda.)

11. Reports or General Comments from Town Manager

a.) Status of Easements for Beach Nourishment Project – Manager Stockton reported that he and Attorney Starkey Sharp of Sharp, Michael, Graham and Baker discussed the status of the easement work on April 24th. Mr. Sharp has completed the title work on the ocean front properties and will revisit the list to update any transfers of properties. They will then draft a letter that will be

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transmitted to each property owner that explains instructions for signing and returning the easement agreement. Should individuals not sign the agreement then the town could condemn for an easement. Any filing for condemnation will not hold up the project. Mr. Sharp says they should have a preliminary set of letters and easements ready to send out in two weeks.

b.) Seasonal Traffic Problem at US 158 and NC 12 – Manager Stockton said he attended a meeting on April 30th to discuss the traffic problems at the intersection of US 158 and NC 12. The meeting was attended by Malcolm Fearing, Board of Transportation Member, Jerry Jennings, DOT Division Engineer, mayors and managers from Southern Shores and Kitty Hawk. Several items were discussed such as installing message boards on US 158 and signage for alternate routes for visitors. The message boards will tell people going to the northern beaches to get in the left lanes. Also, NCDOT will install signs that say Do Not Block Intersection and No Right Turn on Red for vehicles going north. Police Chief Johnson has established a schedule during the season with Currituck and Dare County, the Highway Patrol and Southern Shores to have police presence at the intersection on Saturdays and Sundays. DOT will also provide message boards in Currituck with what they call Real Time Travel informing people how long it takes to get to the Outer Banks. Hopefully these items will have a positive effect on the traffic situation.

c.) Status of Lillian Street Parking Lot Expansion Project – Manager Stockton mentioned the Lillian Street expansion project is almost complete. Barnhill Contracting says they will be paving the lot Wednesday and the striping, signs, wheel stops and seeding is supposed to be completed by Friday.

d.) Washed out Section of NC 12 – Manger Stockton said he recently talked with Jerry Jennings, Division Engineer with DOT about the work being done on NC 12 where a section washed out over the weekend. The plan is to go ahead and restore the pavement and shoulders this week and they are in the process of applying for permits to rebuild the dunes. He asked Mr. Jennings to let him know when they have a long term plan for the road.

Mayor Perry asked the manager to keep council apprised of anything they can do to assist DOT during the permitting process or with anything else.

12. Reports or General Comments from Town Attorney

There were no reports or comments.

13. Reports or General Comments from Town Council

a.) Thank you to Oscar Northen – Councilman Pruitt thanked Mr. Northen for his leadership on the planning board. He served with him for seven years and there were some difficult meetings and long nights but he always seemed to pull it together for the board members and they all left happy and still friends.

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b.) Removal of Items in the FY 15-16 Recommended Budget – Mayor Perry suggested the painting of the fire department be removed from the upcoming budget and said perhaps it could be done in house at a later time. Councilmembers agreed.

Mayor Perry also suggested postponing the replacement of the fence at the Byrd Street beach access until the beach nourishment is finished. The access will be used for staging equipment and thinks it is a good idea to hold off putting in a \$9,000 fence until that is completed.

14. Public Comment

(1) Donny King: *I came here tonight to see how the discussion is going with regards to maintaining our beaches. We have known about the menacing aspects of the ocean for at least a couple of decades and now it is kind of encroaching more on a regular basis. I walked in and I saw a lot of chairs and was not sure if you were preparing for a lot of people to show up tonight. There are not many people here and I'm trying to figure out what's going on with that and how you're proceeding with it. Is the public kind of resting and assured that you are doing your job? I think you are and I think you are taking the steps necessary and everything to try and protect us and I really appreciate it. It's good to hear we are in contact with DOT and doing what can be done hopefully before this weekend. Thank you very much.*

No one else came forward to speak.

15. Closed Session: § 143-318.11(a)(3) To consult with the town attorney in regards to Winks.

Mayor Perry made a motion to go into closed session to consult with our attorney under North Carolina General Statute 143-318.11(a)(3) to protect the attorney client privilege and to consider and give instruction concerning a potential or actual claim administrative procedure or judicial action if known title or action is Town of Kitty Hawk versus Ann Greeson doing business as Winks, Dare County District Court. Councilman Garriss provided a second and the motion passed unanimously, 5-0. Time was 7:13 p.m.

16. Return to Regular Session

MPT Bateman made a motion to go back into regular session. It was seconded by Councilman Pruitt and the vote was unanimous, 5-0. Time was 7:32 p.m.

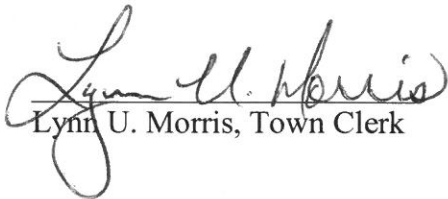
Attorney Michael announced that during closed session the council gave him instructions on negotiating the lawsuit filed by the Town against Ann Greeson doing business as Winks Grocery and Deli. No action was taken that required a vote of the council and with those instructions he will proceed and report back to the council at a future date.

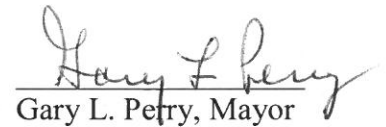
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17. Adjourn

MPT Bateman "so moved" to adjourn. The motion was seconded by Councilman Garriss and the vote was unanimous, 5-0. Time was 7:34 p.m.

These minutes were approved at the June 1, 2015 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Petry, Mayor