

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, May 7, 2012
Kitty Hawk Town Hall, 6:00 PM

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations/Requests:
 - a.) Room in the Inn
 - b.) Beach Access at 4408 Virginia Dare Trail/Gerry and Shelley Gallagher
5. Public Comment
6. Consent Agenda:
 - a.) Approval of Minutes. April 2, 2012 Regular Meeting.
 - b.) Revenues and Expenses Report for March 2012.
 - c.) Tax Pick Ups and Releases
 - d.) FY 12-13 Budget for the Government and Education Channels
 - e.) Hurricane/Disaster Debris Removal Inter-local Agreement
 - f.) Roadway/Pathway Improvements Change Order Authorization
 - g.) Changes to the Meeting Room Policy
 - h.) Request from NC Department of Transportation
 - i.) Budget Development Calendar
7. Items Removed from the Consent Agenda
8. Public Hearing:
 - a.) Conditional Use Permit: Application for a conditional use permit to establish a temporary lawn and garden center within the existing parking area at Home Depot. The proposed lawn and garden center would be located near the front entrance toward the eastern side of the parking lot and take up 20 existing parking spaces and the drive aisle between these parking spaces. The temporary lawn and garden center is proposed to operate from the date of approval (potentially May 7th) through July 8, 2012.
 - b.) Text Amendment: Proposal to amend subsection 42-577(l) by adding a ten (10) day time limit for removal of temporary construction signs in residential zones after completion of a project, consistent with the standard for commercial zones.
 - c.) Text Amendment: Proposal to amend the *Required Parking Spaces* chart in subsection 42-546(a) to clarify that only storage areas can be excluded from gross floor area when calculating parking requirements for retail uses.
9. Return to Regular Session
10. Planning
 - a.) Call for Public Hearing. Text Amendment: Proposal to add Section 42-250(c)(35) allowing "bungee trampolines" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions. A public hearing is requested to be scheduled for the June 4, 2012 Town Council meeting.
 - b.) Call for Public Hearing. Conditional Use Permit: Application for a conditional use permit application to establish a bungee trampoline business on the property containing

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Jimmy's Seafood Buffet at 4117 N. Croatan Highway. The proposal includes one bungee trampoline that would be located near the southeast corner of the property behind the existing parking lot. The proposed bungee trampoline business would be seasonal in nature, operating seven days a week from Memorial Day through Labor Day and on weekends during the "shoulder seasons" beginning in April and ending in October. A public hearing is requested to be scheduled for the June 4, 2012 Town Council meeting.

11. Reports or General Comments from Town Manager
 - a.) 3907 N. Virginia Dare Trail Property Acquisition
 - b.) Thank You for Cleaning the Beach
 - c.) Stormwater Management Project Grants
 - d.) Internet Gambling
 - e.) Sandy Run Park Phase II Project
 - f.) Controlled Burn of Foreman's Property
12. Reports or General Comments From Town Attorney
 - a.) Charter Internet/Cable Service
13. Reports or General Comments from Town Council
 - a.) Recreation Committee Meeting Update
14. Public Comment
15. Adjourn

COUNCIL MEMBERS PRESENT:

Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, Councilwoman Emilie Klutz, and Councilman Richard Reid

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Planning Director Joe Heard, Finance Officer Mike Eubank, Police Chief David Ward, Fire Chief Lowell Spivey, Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called the meeting to order at 6:00 PM.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Councilwoman Klutz moved to approve the agenda. Councilman Bateman seconded. MPT Perry said he wanted to remove item 6(i) from the Consent Agenda. Councilwoman Klutz

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moved, seconded by Councilman Bateman, to approve the agenda as amended. The motion passed unanimously, 5-0.

4. PRESENTATIONS/REQUESTS:

a.) **Room in the Inn** – Ms. Gail Leonard: *I do not know how many of you are familiar with Room in the Inn but it is a church based shelter program started four years ago. The first year we had seventeen guests and ran the program for ten weeks. The next year we ran it for thirteen weeks and had twenty-one guests. Last year we ran it for twenty weeks and had forty-two guests come through the program. This year we ran it twenty weeks and we had forty-seven guests come through the program. The need is certainly out there.*

There are twelve churches that host either one or two weeks. The guests go through an in-take process between 5:00 and 6:00 o'clock at the old CDC Building in Kill Devil Hills. The guests must take a breathalyzer and have to blow a zero to get into the program. Dare County Parks and Recreation has given us a van to use to transport the guests to the hosting church. They get a hospitality dinner, overnight lodging, breakfast, and a bag lunch. The van then picks them up in the morning between 7:30 and 8:00 and brings them back to the CDC building.

There are no showers in the churches and the Kill Devil Hills Department of Recreation has allowed them to use those showers. The high school, I am not sure if it is the occupational group, but they do the laundry for our guests which is really nice. The OBX Relief Foundation gives us \$250 a month and with that we have been able to take care of some of their emergency dental needs, surgeries, prescriptions, or for over the counter medications. It has been wonderful.

We also received a grant from the Community Foundation which allowed us to purchase mattresses. We have 20 vinyl covered mattresses and bought pillows, blankets, some warm clothing, cell phones and some minutes. Also, Doug Meekins with AT&T has been putting some minutes on their phones because if they do not have a phone and minutes they cannot look for jobs. White Cap Linens provides all the clean linens and towels.

Our income also comes from churches and individuals and this year we spent \$17,000. A good portion of it went for our one employee that we have. He does all the driving, all of the case management, and is the in-take person. We have been under St. Andrews Church for the last three years and are now applying for our own 501(c)(3) because we heard there are homeless people grants out there that we have not been able to access.

Next year we would like to go an additional week. We are going to start around November 11th and if we go 20 weeks we end March 30th. Jobs are really not opening up quite that early so we would like to take in for an extra week. That is why I am asking the Town for \$600. It would allow us to go another week.

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We have partnered with the Community Care Clinic, New Horizons, DSS, Wellness Recovery Center, ICO, The Outer Banks Hospital, CDC, Kill Devil Hills Police Department, the Relief Foundation, and many others to help our guests move to becoming self-sufficient. When the program ended I guess we had about three that still were not housed.

Bateman: I had a gentleman that applied for a job that was helped through this program. It is far reaching what you do and he was very appreciative. He was just down on his luck and he is coming back. It takes folks like you and what you do to help this community.

Jan Martin: Many people get stuck here after businesses close down and they have nowhere to go. They cannot pay the rent and they are in the woods. This is one of the things we do to help them. Not just with housing but we reach out to the congregations and communities to try to get them some kind of work.

Mayor Perry thanked Mrs. Leonard and Mrs. Martin.

b.) Beach Access at 4408 Virginia Dare Trail - Mr. Gallagher: *Good evening. I appreciate the opportunity to speak with you tonight. I am here to request access to improve and reopen a beach access across from our house at 4408 Virginia Dare Trail. We have had our house for 25 plus years and for a number of years there was a trail through the dune. It was closed with sand fences after Hurricane Isabel. The beach access is now a 250' walk north or south along NC 12.*

We have noticed over the years that we have lost some of our repeat renters to houses that are near us and that have direct access to the beach. We have a 5 bedroom house that sleeps 12 and it is generally filled with lots of children and having them walk on an increasingly busy beach road is a challenge. There have been a number of times I have heard brakes squeal and horns honking. It makes it a little dicey for pedestrians, even pedestrians of my size. So the convenience is certainly a factor and the improved safety for renters, youngsters, and anyone using these houses. An access to the beach would improve the rental season for our house and for the houses around us. We used to rent close to 30 weeks a year and now we are renting approximately 15 weeks a year. We suspect that is leading to a couple thousand dollars loss of income to the Town of Kitty Hawk. And if that is happening with our house it is probably happening in other cottages right in that area.

We are proposing to construct and maintain a set of stairs over the dune, only a crossover. We will maintain it at our cost so it would be no cost to the Town of Kitty Hawk. We propose that the access be open to any other people. So while it is not an official public access it is not a private access. It would not be restricted to us or our cottage users.

I have walked up and down the road and measured and as shown on the chart before you the house closest to the center is 4408. There is an access designated north of us and it is approximately 250' north. And to the south of us there is an access at Hawks Street and from the center of our driveway to that access it is 252'.

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We are proposing to place this set of stairs and walkway over the dune at the place marked "A" on the sheet before you. If we do that, then two of the houses will be the same distance and they will have their choice of access points but the houses located at 4406, 4408, and 4412 will have a significantly shorter walk to get to the beach. Those houses generally have lots of families and children in them.

We understand there are CAMA permits, engineering, and other factors involved and we would construct them in accordance with all of the appropriate regulations. The simplest thing would be to reopen the trail over the dune but we know how fragile and sensitive the dunes are. We often caution people to stay off the dunes and pick up trash that comes from motorists or things blowing off the beach. We sort of feel it is our part of the beach and would like to help keep it in its natural state. We have kept our lot in a natural state. We have not put grass over it or anything like that and we also view the ocean as our pool. We have not invested in a pool.

We are willing to do whatever creative approach would benefit the town and benefit us. We think it is an improvement that would benefit the town, help with the town's tax base at no cost to the town, and provide an improvement to the safety of the children and beach goers. I would be happy to answer questions and have any discussion that is appropriate.

Councilwoman Klutz expressed concern about private development on town land and wondered about others in the area wanting to do the same thing. Would the town have to allow it? Also, what if the stairs were damaged in a storm and became a nuisance.

Attorney Michael said the answer about having to allow others to build is no. It is the town's property and council can pretty much do with it what it wants. Council can sell it, lease it, or leave it like it is. And council can dictate the terms on whether it stays there or not. If it needs to be removed because of road work or if it becomes damaged it can be taken out.

Mr. Gallagher added he would be willing to put up an amount of money in escrow to make sure they could be repaired or if beyond repair removed and the dune restored and re-sprigged back to its natural state. They are also willing to have a discussion about whether this would be a five-year arrangement and at that time everyone could rethink the arrangement. They would love to do it on a permanent basis but would be happy to do it on a less than permanent basis.

Mayor Perry wondered about having the stairs built to ADA standards.

Councilwoman Klutz said there is no room on the west side of the highway for any parking for that particular crossover and asked if once the crossover is built on town land is it then considered a public access which the town would have to have some sort of a maintenance agreement.

Attorney Michael said there are a number of ways to handle this and whatever is done it has to be available to other people to use unless the town decides they want a private access. But when

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it was talked about earlier it seemed nobody wanted to allow a private access on public land. The second thing is there should be some way to make sure there are funds available to maintain it and to remove it if it needs to be removed. A homeowners association of some sort could be formed and there would be covenants and an obligation to put money aside.

Mr. Gallagher said he did not want to complicate it by requiring other people to become part of a homeowners association. Currently their thought is for it to be between the Gallagher's and the Town of Kitty Hawk, but would do whatever is in the best interest of the town.

Councilman Bateman said he does not have a problem with this as long as it meets some of the things the attorney laid out. Council has spent years trying to gain access for a crossover at the end of Kitty Hawk Road and now someone says they want to build one for the town. Council needs to put their selves in the position to do everything possible to enable this to happen.

Councilwoman Klutz said she does not like the idea of a homeowners association and all of the legalities that go with it. If it is just between the town and a private party and the private party understands there are risks involved in putting it on public land it will probably be all right.

Manager Stockton suggested looking into the CAMA permitting process to find out the requirements before getting further involved.

Mayor Perry agreed with letting the manager look into CAMA regulations and the attorney look into other requirements and have it brought back for discussion.

Mr. Gallagher said he would look into their insurance needs as well and thought insurance generally follows the property owner unless there was some kind of a lease or rental arrangement.

MPT Perry agreed and said he is not opposed to building something for public use on public land as long as the public is protected.

Mr. Gallagher thanked council.

5. PUBLIC COMMENT. The General Public is invited to address the Town Council on any topic. Please sign up with the Town Clerk before the meeting and when your name is called, come forward and speak into the microphone at the podium. Please limit comments to 3 minutes.

There were no public comments.

6. CONSENT AGENDA. Items on the Consent Agenda are considered to be non-controversial, routine in nature or items not requiring a presentation to or discussion by the Town Council in order to consider the item(s). Any item may be removed for discussion by council or by any member of the audience who wants to hear the item presented and discussed.

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a.) Approval of Minutes. April 2, 2012 Regular Meeting. *(An affirmative vote for the Consent Agenda will approve these minutes.)*

b.) Revenues and Expenses Report for March 2012. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

c.) Tax Pick Ups and Releases. *(An affirmative vote for the Consent Agenda will acknowledge this report.)*

d.) FY 12-13 Budget for the Government and Education Channels. The Government Education Access Channels Committee requests approval by the council of the proposed FY 12-13 budget in the amount of \$385,551.47. *(An affirmative vote for the Consent Agenda will approve this budget.)*

e.) Hurricane/Disaster Debris Removal Inter-local Agreement – This agreement with Dare County will allow the county, in the event of a natural disaster, to coordinate the collection of disaster related debris. *(An affirmative vote of the Consent Agenda will approve this agreement.)*

f.) Roadway/Pathway Improvements Change Order Authorization - Due to extensive tree root growth an additional section of the Paul Pruitt Multi-Use Path needs to be excavated and repaired. Additional cost is \$890.00 which would bring the total for the project to \$90,760.00. *(An affirmative vote of the Consent Agenda will approve this change order.)*

g.) Changes to the Meeting Room Policy – The town has a policy for renting the council meeting room and fire department meeting room. Main changes to the policy will prohibit the use of the equipment in the meeting rooms, allow the rooms to be rented as of 5:00 PM instead of 7:00 PM, and provides a “Hold Harmless” clause. *(An affirmative vote of the Consent Agenda will approve this meeting room policy.)*

h.) Request from NC Department of Transportation – DOT has six ordinances controlling the speed limit on US 158 in Kitty Hawk and would like council to repeal those and enact two others. The speed limit on US 158 is correctly posted and this does not change the speed limit. This will help them clean up their records. The town also has written an ordinance (Sec. 20-24(1) that combines the two enacted ordinances for our record keeping. *(An affirmative vote of the Consent Agenda will repeal the six ordinances, enact the two DOT ordinances, and adopt the town ordinances. Ordinance No. 12-03.)*

Removed to #7: i.) Budget Development Calendar – This calendar changes dates to later in June for the budget. *(An affirmative vote of the Consent Agenda will acknowledge this calendar.)*

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

7. ITEMS REMOVED FROM THE CONSENT AGENDA

6(i) Budget Development Calendar – This calendar changes dates to later in June for the budget.

MPT Perry: *I am going to try to address some of the things the citizens of Kitty Hawk need to understand. I hope those that might watch on television or those that are here will network enough to get this word out. We are about to amend our budget development calendar such that we are not going to know whether we are going to raise the tax rate up, down, or keep what we have until June and it is somewhat late in June. On Monday, June 11th we are going to have a recessed meeting and we are going to set a public hearing and we are also going to talk about setting a tax rate. Then for Monday, June 25th we are going to actually hold a public hearing in the evening so those that work can attend.*

I want to talk directly to the citizens and tell you that, I, as your elected representative, need very much your input onto this issue of taxes. We need to know how you feel. The town is reaching a point of service cuts versus paying for services.

The shared revenues are abundant in Dare County and most of you know what I am talking about but if you do not, it is shared revenues from occupancy and other taxes that are not ad valorem. They impact whether or not we are going to be able to meet budget under current levels. Because of some other municipal governments and the county raising taxes, which we have not done in eight years, we are reaching a point where the economic downturn, combined with those other towns raising their taxes, has cut into our ability to continue services without further cuts. We have made many cuts and have even laid people off.

We need your input. It is very important that you know about this coming up. You need to network and get people out to hear what we have to say. We will have a better feeling come that time.

Some of the specifics I need to know and I know the rest of the council needs to know it as well is can you stand a tax increase? I understand the economy is bad, I understand people are hurting. We are still rebuilding after Hurricane Irene and not all of the people I have talked to have been made whole by their insurance companies so it is important to us to know what you can stand and what you cannot. And what you want in the way of services. Or do you think we need to cut more services and what kind would you accept.

I am appealing to you tonight by removing this particular consent agenda item to get it out there. Come out here, or give us a hint through the internet, or by calling town hall. There are people that can take your message and give it to us and then it will help us decide what we can do best for you.

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Mayor Perry thanked MPT Perry for bringing that up and making it clear at this time. He announced the June 11th meeting would be at 9:00 AM and the June 25th meeting would be at 6:00 PM so people could attend.

Councilman Bateman made a motion to approve (i). Councilwoman Klutz seconded the motion. Mayor Perry added it is with the times he mentioned. **Vote was unanimous to approve, 5-0.**

8. PUBLIC HEARING

Councilwoman Klutz moved to go into public hearing and Councilman Perry seconded. The motion was carried unanimously, 5-0.

a.) Conditional Use Permit: Application for a conditional use permit to establish a temporary lawn and garden center within the existing parking area at Home Depot. The proposed lawn and garden center would be located near the front entrance toward the eastern side of the parking lot and take up 20 existing parking spaces and the drive aisle between these parking spaces. The temporary lawn and garden center is proposed to operate from the date of approval (potentially May 7th) through July 8, 2012.

Planning Director Heard said this proposal is for a conditional use permit for Home Depot to establish a revised conditional use permit for a temporary lawn and garden center at 5300 North Croatan Highway. In 2009 the council approved a conditional use permit for this same type of use on this property and the council also approved, around that time, a provision in the ordinance to allow a property owner who has that type of approval for a seasonal, temporary garden center to gain approval on an annual basis on an administrative level if their proposal is identical to what was approved by the council initially.

For the last two years Home Depot has done that and they were issued an administrative permit this year. However they have expressed an interest in a small expansion of the area and that is what is being reviewed tonight. If the council decides to approve this application, Home Depot would like to apply it to the remaining couple of months they have this year.

Presently Home Depot has back to back spaces on the far east side of the parking lot directly in front of where the permanent outdoor garden center is on the site. What is being proposed is to encompass the drive isle that adjoins the eastern side and the two other parking spaces on the other side of that drive isle. Just a small pocket there and that is the difference in what they are proposing as to what was previously approved.

The planning board evaluated this application on March 15th. They noted this particular drive isle does not get a lot of use and if it was closed off it would not change in a significant manner the traffic circulation on the property. It may be hard to see because of the darker line around the

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building, but traffic would still loop around the area and there would be no loss of ability for vehicles to turn around or loop on the site as a result of this proposal.

With its recommendation the planning board noted it should comply with the conditions of the previous approval which included the area should have a defined barrier separating it from adjoining parking spaces, the use is limited to the approved dates, and it must be broken down at other times. On July 8th all of that enclosure and everything must be removed so it can be used for parking purposes at that point.

In evaluating the proposal, staff notes in the report that with the 22 parking spaces that would be lost temporarily while this is in place, it still leaves them with more than the minimum amount of parking required for their use. Also noted in the staff report are the conditional use findings that were addressed. It is there for council's consideration during the motion. There is a representative from Home Depot in attendance if you have any questions.

Mayor Perry asked if anyone had signed up to speak and Clerk Morris replied no. No one came forward after asking if anyone in the audience wished to speak and Mayor Perry asked for the record to reflect such.

Councilman Reid asked if the changes reduce the traffic to a single lane from a double lane.

PD Heard replied it does not affect the flow around it. It would completely block the 20' drive isle that runs north and south between the two rows of parking. It would block that but it would not impact the general loop that goes around where the fire lane is in front of the building. They would not be able to do that.

Mayor Perry commented that the only real purpose in the drive isle is to get to the parking spaces where they are.

b.) Text Amendment: Proposal to amend subsection 42-577(l) by adding a ten (10) day time limit for removal of temporary construction signs in residential zones after completion of a project, consistent with the standard for commercial zones.

PD Heard said this text amendment proposal is to amend subsection 42-577(l). The proposal involves adding a 10 day time limit for removal of temporary construction signs following the completion of a project in residential zones. This is an issue that came up when staff was asked to follow up on a particular situation in town and after looking into it to draft a letter of violation it was noticed that although there is a specific standard cited for removal of signs in a commercial zone, there is no corresponding statement for when signs have to be removed in a residential zone. It seemed reasonable to have a similar limit in residential zones. Staff talked about this with the planning board and at their meeting on March 15th the board voted unanimously to recommend approval of such a text amendment.

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Councilman Bateman asked if the town was going to have someone riding around looking for the signs.

PD Heard replied that generally staff would talk with them as the building process is closed out. Remind them at that point to take them down.

Councilwoman Klutz added nothing would occur unless someone complained and PD Heard replied correct. That is how this originally was brought to staff's attention.

Mayor Perry asked if anyone wished to speak during this portion of the public hearing. No one came forward.

c.) Text Amendment: Proposal to amend the *Required Parking Spaces* chart in subsection 42-546(a) to clarify that only storage areas can be excluded from gross floor area when calculating parking requirements for retail uses.

PD Heard said this text amendment proposal would amend the required parking spaces chart found in subsection 42-546(a) of the town code. The section lists the parking requirements for retail uses. The staff report outlines the entire clause that is found under the section that outlines the parking standards and what is intended by this amendment. For over 20 years the town has consistently interpreted this section as retail businesses can exclude storage space from their overall gross floor area for the purpose of calculating the amount of parking that the use would require. If the business has a large amount of storage and not display area, presumably they would have fewer customers, there would be fewer customer service areas, and it reduces the amount of parking that is required. Again it came up in a recent situation when staff and a shopping center owner were discussing how this should be applied. There were different interpretations and after reviewing this particular section it was understood why the property owner in that case had a different interpretation. This section is not the clearest in the ordinance as it stands. What has been recommended is a change that would help clarify the intent and be consistent with the way it has been enforced over the past 20 years. It appears the wording of that section has been in place since the original adoption of the zoning ordinance. There was no edition of the zoning ordinance that did not contain that wording. It has been in there a long time in that manner.

Basically the proposal would eliminate removing the word "either" and the statement "or other uses supportive of the primary business use" from that section. The intent of that is to clarify that only storage space can be removed from the overall gross floor area when calculating the parking standards for retail uses.

Mayor Perry asked if anyone wished to speak during this portion of the public hearing. No one came forward.

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Knowing this has been on the books for a long time Councilwoman Klutz asked if removing the language reflects the way the town has enforced it. It appears there was some intent to allow areas that were not accessed by the public regardless of what that use was because it had to be related to the primary use of the space. As long as the public did not access it then it would not be counted.

Councilman Reid said Planning Director Heard's interpretation is in line with his interpretation when he worked for the town. Someone came in and asked for something and it was not in accordance with what we wanted because it was putting people and commercial activities in an area and saying it was equal to storage. And it is not. You are putting people in there and if they are doing something related to the commercial activity it should be counted towards parking.

Councilwoman Klutz asked if the public was accessing that space and Councilman Reid said it was either the public or employees and did not remember which.

MPT Perry made a motion to go back into regular session. Councilman Reid seconded the motion and it passed unanimously, 5-0.

9. RETURN TO REGULAR SESSION

Council action may include approval, denial, approval with modifications, or tabling action of 8 (a), (b) and (c).

a.) Conditional Use Permit: Application for a conditional use permit to establish a temporary lawn and garden center within the existing parking area at Home Depot.

MPT Perry made a motion to grant approval of this conditional use permit application for Home Depot. To grant approval of this conditional use permit application to establish a temporary lawn and garden center within the existing parking area of Home Depot from May 7 through July 8, 2012. The town council concurs with the conditional use findings in the staff report and finds that approval of this conditional use permit is consistent with the town's adopted CAMA Land Use Plan and granting approval is in the public interest by allowing a compatible commercial use to operate from this location. Councilwoman Klutz provided a second and the motion passed unanimously, 5-0.

b. Text Amendment: Proposal to amend subsection 42-577(l) by adding a ten (10) day time limit for removal of temporary construction signs in residential zones after completion of a project, consistent with the standard for commercial zones.

Councilwoman Klutz made a motion to adopt the proposed text amendment to subsection 42-577(1) adding a 10 day time limit for removal of temporary construction signs following completion of a project in residential zones. Town council finds this amendment to be consistent with the town's adopted CAMA Land Use Plan and in the public interest by

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providing a reasonable standard for the use of construction signs. It was seconded by Councilman Reid and passed unanimously, 5-0.

c.) **Text Amendment:** Proposal to amend the *Required Parking Spaces* chart in subsection 42-546(a) to clarify that only storage areas can be excluded from gross floor area when calculating parking requirements for retail uses.

Councilman Bateman asked if this is going to adversely affect anyone with a project in the future. He has no problem doing what has been done for the last 20 years and does not want to have anyone in the future judged differently by the terminology.

PD Heard said this would make it more clearly consistent with what has been done for the past 20 years. Those businesses would have an identical standard as to what has been approved in the past.

Councilman Bateman moved to adopt the proposed text amendment to the parking standards for retail uses in the required parking spaces chart in subsection 42-516(a) to clarify that only storage areas can be excluded from gross floor area when calculating parking requirements for retail uses. Town council finds this amendment to be consistent with the Town's adopted CAMA Land Use Plan and in the public interest by clarifying the minimum parking standards for retail uses. Councilman Reid seconded and it passed unanimously, 5-0.

10. PLANNING

a.) **Call for Public Hearing. Text Amendment:** Proposal to add Section 42-250(c)(35) allowing "bungee trampolines" as a conditionally permitted use in the Beach Commercial (BC-1) district, subject to certain conditions. A public hearing is requested to be scheduled for the June 4, 2012 Town Council meeting.

b.) **Call for Public Hearing. Conditional Use Permit:** Application for a conditional use permit application to establish a bungee trampoline business on the property containing Jimmy's Seafood Buffet at 4117 N. Croatan Highway. The proposal includes one bungee trampoline that would be located near the southeast corner of the property behind the existing parking lot. The proposed bungee trampoline business would be seasonal in nature, operating seven days a week from Memorial Day through Labor Day and on weekends during the "shoulder seasons" beginning in April and ending in October. A public hearing is requested to be scheduled for the June 4, 2012 Town Council meeting.

Councilman Reid made a motion to call for a public hearing on the text amendment proposal to add section 42-250(c)(35) allowing bungee trampolines as a conditionally permitted use in the Beach Commercial One District subject to certain conditions. The public hearing is requested to be scheduled for the June 4, 2012 town council meeting.

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Secondly, a motion to call for a public hearing for a conditional use permit for an application for a conditional use permit to establish a bungee trampoline business on the property containing Jimmy's Seafood Buffet at 4117 North Croatan Highway. The public hearing is requested to be scheduled for the June 4, 2012 town council meeting. Councilman Bateman seconded and it passed unanimously, 5-0.

11. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) **3907 N. Virginia Dare Trail Property Acquisition** - Manager Stockton mentioned the town has clear title to the property on the Beach Road across from East Kitty Hawk Road and public works is in the process of installing the temporary walkover at this location.

b.) **Thank You for Cleaning the Beach** – Manager Stockton said he received an email from Denis Stadther, a town resident, and he thanked the public works department for cleaning up some debris on the beach.

c.) **Stormwater Management Project Grants** – Manager Stockton noted that PD Heard has researched the availability of stormwater grants and found the town could apply for a Clean Water Management Trust Fund Grant to pay for permitting and construction. The application process begins in December and the deadline for applications is February 1, 2013. The grants would be considered in September of 2013. It is a very competitive grant process and it is his understanding they keep cutting back on their available funds.

Councilwoman Klutz commented she had read about the cutbacks.

MPT Perry asked if that is the only source being looked at and hoped it is not because both he and the mayor have stood before that group of people. They understand what is required to get the money from them and recognizing how much has been cut he is not sure how well they would view what the town is asking for.

Manager Stockton replied that is the only grant that was identified the town could possibly qualify for.

PD Heard said he contacted between eight and ten different agencies that have grants available. Many State and some Federal and there are a number of grants available for stormwater management projects but many of them are geared toward more of the environmental type such as stream or marsh restoration. The type of project the town has with pumps would not qualify under those types of grants. There is another clean water grant but it is a loan program. If you meet certain criteria up to 50% of that loan can be forgiven for a project. Those were the two that have been identified so far.

MPT Perry remarked that those who did the study seemed pretty confident there was possibly federal money available.

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PD Heard said the report specifically cited probably half a dozen different types of grants and all except one were not things that would be applicable to the project as far as permitting for the project.

MPT Perry said that is not good news.

Mayor Perry offered this would be more specific as long as the application is spelled out exactly what is going to be done. It would be simpler than the project itself. Once we have the project itself then that would be harder. They wanted more specifics especially data for the project.

MPT Perry said he understood. The project was presented by an engineer and that is not what they want. They want to know how this is going to clean up this particular stretch of water. It is a matter of approach and a non-engineer could do a better job of presenting that to them.

Councilwoman Klutz said the only water the town is cleaning up is the water that is flooding the town. If anything it will be temporarily dirtying up ocean water. She then asked about the flood program. One thing the project does could help to mitigate some problems from flooding that causes damage. Is there any kind of FEMA program that could help with mold and water standing around?

PD Heard said two planning and inspections staff have been tasked with looking at that very issue. They are at a conference and they will be coming back with information. Hopefully something might be available. There are mitigation grants but does not know whether this type of project will qualify and they were asked to look into it. There are repetitive loss properties in Kitty Hawk and FEMA has paid out some money for flood damages. There may be a possibility of getting a grant if it can be shown it would prevent flooding from occurring again. Staff will continue to work on this. .

d.) Internet Gambling – Manager Stockton informed council the property owner where the internet gambling exists has submitted an application for a text amendment. PD Heard estimates the application will be ready for the planning board in June. Then it would come to council in July for setting a date for a public hearing and then the public hearing would be held in August. Based on historical policy the town has allowed people to continue to operate in violation if they have applied for a text amendment. Until the text amendment is approved or disapproved staff is proceeding that way but council may decide to handle it differently.

Mayor Perry asked if it is allowed even if they start a business without permission?

MPT Perry said historically council lets people continue to operate if they are working on it. If they are not working on it that is a different issue.

Councilwoman Klutz asked the attorney if this is still involved in the courts.

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Attorney Michael said there have been several cases and the most recent decision that has come out concerns privilege licenses. How much the towns can tax the businesses and whether or not they are entitled to a trial as to how much the towns can tax. They are not banned right now.

Councilwoman Klutz said if it was going through the courts it seems fruitless to go through this process if then a court is going to decide they want to ban this kind of business in the whole state.

Attorney Michael said based on the Court of Appeals decision an appeal to the Supreme Court may not be successful.

Councilwoman Klutz remarked it must have been a strong argument.

Attorney Michael said it was pretty much down the line of first amendment rights and all of the towns are moving forward with deciding how they are going to regulate these businesses.

e.) **Sandy Run Park Phase II Project** – Manager Stockton announced the occupancy permit has been issued for the Sandy Run Park Phase II project and reminded everyone there will be a dedication ceremony on Wednesday, May 16, 2012 at 2:00 o'clock at the new fishing pier.

f.) **Controlled Burn of the Foreman's Building** – Manager Stockton said fire chief informed him the date for burning the Foreman's building is set for May 20th and asked council if they should proceed even if there was a property owner that did not want it done.

Mayor Perry said within reason to go ahead. People need to understand that it could burn without the town trying to control it. It could start to burn in the middle of the night without anybody being there.

Chief Spivey agreed and said they are going to contact the surrounding property owners and let them know about it and try and address any concerns they have.

There was a question of if there is a particular business or entity that is definitely against it should the department continue. Weather permitting, westerly wind or no wind, it will be on May 20th. If not, it will be in the fall before there is another opportunity.

MPT Perry offered that unless there is a reasonable safety objection to burn it down.

Other councilmembers agreed.

12. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

a.) **Charter Internet/Cable Service** – Attorney Michael said the town has had complaints about service and staff and residents have had difficulty getting complaints resolved. It has taken a

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while to find somebody to tell them to read the agreement because they thought they did not have an agreement with the town anymore. Most of the Charter franchises now have gone into the state system. Dare County has some of the few Charter franchises still left with the local grantors of the local towns.

A way to figure out whether you are a local franchise or you are with the state is to look on the back of the bill to see who you send complaints to. On the back of the bills in Kitty Hawk it says the Town of Kitty Hawk because it is the grantor franchise. Everybody else around the state for the most part sends their complaints to the attorney general's office.

The franchise does give some power but the options that are presented to council that really have some teeth in it are going to cost a lot of money. One thing they are supposed to be doing is sending the town all reports of regulatory communications with the FCC. The reports are about their testing of the system. It is supposed to be coming to the town and the town has the right to request those and we can do that.

They are also supposed to keep a log of complaints and the town can ask them to produce that log for the current year and two years before that. Staff can look at it and find out how they are handling the complaints. That does not really resolve all of the issues for people but those are some of the simple things that can be done.

There is even a provision that the town can initiate a state of the art discussion with Charter. Council can hold a hearing and make them come in and see if the equipment they are providing to the town is state of the art. If it is determined that it is not then council can order them to bring in state of the art equipment. That has to be between the seventh year and the twelfth year of the fifteen year franchise. The town is currently in the eleventh year. The town would have to hire consultants to make that happen. It also says if Charter does not want to do it they can appeal by whatever means available to them. It would be tied up in the courts for the next three or four years until the franchise runs out.

We are trying to get somebody we can talk to and make them understand we have problems and we need somebody to address those problems. The only way we can talk to anybody at Charter is if we go down to their business office. There is not a local person to call, no local number, which seems to be crazy. When the town granted the franchise it used to be anyone could pick up the phone and call and talk to somebody.

It is suggested staff send them requests for all the information and see if somebody will help. It can be requested they go test their system in a particular part of town where people are saying the system does not work, the service is terrible and they have to provide the results of that test.

What the town can do is outlined in the franchise ordinance and most of what is in the franchise agreement probably cannot be done simply because it is expensive. They do have a nonexclusive franchise and right now they are the only game in town.

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Councilwoman Klutz suggested doing everything that is free and asked for the cable contact phone numbers to be published.

Attorney Michael said in defense of Charter, they are very nice at the local office. They will do anything in the world to help someone. The problem is you have to go down there to talk to them.

Mayor Perry asked about service in other towns and Attorney Michael replied he has not heard anybody complain about it at this point. That does not mean there are not folks out there having problems.

13. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

a.) **Recreation Committee Meeting Update** – Councilwoman Klutz noted she did not attend the meeting but understands that PD Heard provided an update on Sandy Run Park signage and thanked him for the presentation. She then thanked him and staff for all of the grants received in making this project happen.

Mayor Perry asked what the distance around the park is and PD Heard replied it is .49 miles according to the “as built” survey.

Half Marathon Thank You – Councilman Bateman thanked everybody who came out for the half marathon weekend: the public works, the police department, and the fire department. It is really appreciated by the Relief Foundation, Outer Banks Sporting Events, and the Dare Education Foundation. There were approximately 2500 runners,

Also, he was happy and proud to be a part of the *Couch to 5k Team Kitty Hawk* during the *First Flight 5k* run. Everyone had a wonderful time and the participation from town employees was great.

Mayor Perry said he understood Councilwoman Klutz won first place.

Councilwoman Klutz said when you get really, really old you can go really, really slow and get a medal. (Laughter)

Crossover at the end of East Kitty Hawk Road – Councilman Bateman thanked staff for not giving up on getting this project done. The tourists and people of Kitty Hawk are going to benefit.

Wal-Mart - Answering a question posed by Councilman Bateman about the Wal-Mart expansion, PD Heard said he received an email from the owner of the shopping center and Wal-Mart has selected their general contractor. The town is simply waiting for them to apply for the building permit and provide a list of all their subcontractors.

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d.) **Vote in the Primary** – Mayor Perry reminded everyone to vote tomorrow.

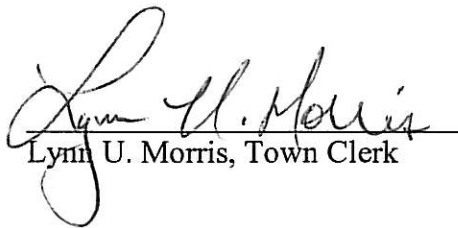
14. PUBLIC COMMENT

There was no public comment.

15. ADJOURN

Councilwoman Klutz move to adjourn and seconded by Councilman Bateman. Vote was unanimous, 5-0. Time was 7:29 PM.

These minutes were approved at the *June 4, 2012* council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor