

MINUTES
KITTY HAWK TOWN COUNCIL
November 4, 2013
Kitty Hawk Town Hall, 6:00 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Fiscal Year 2012-13 Audit Report
5. Public Comment
6. Consent Agenda:
 - a.) Approval of October 1, 2013 and October 7, 2013 Council Minutes
 - b.) Revenues and Expenses Report for September 2013
 - c.) Resolution Supporting Adoption of the Albemarle Regional Bicycle Plan
 - d.) Acceptance of Checks for Beach Nourishment in Memory of David R. Twiddy
 - e.) Request to Fill Vacancy in Police Department
 - f.) Permit Fee Waiver
 - g.) Interlocal Agreement for Beach Nourishment Funding
 - h.) Ordinance Amending Sections 18-7, 24-53, 24-54 and 24-55 of the Town Code
7. Items Removed from the Consent Agenda: 6(g&h)
8. Planning:
 - a.) Call for Public Hearing - Text Amendment: Application to amend Sections 42-250, 42-251, 42-252, 42-277, and 42-278 of the Town Code by permitting call centers in the BC-1, BC-2, BC-3, VC-2, and VC-3 zoning districts and establishing minimum parking standards for call centers.
9. New Business:
 - a.) Nomination of Three Names to Dare County for Tourism Board Appointment in December
 - b.) Amendment to Section 8-1 of the Town Code – Referencing the Adoption of all Applicable Building Codes and Appendices
10. Reports or General Comments from Town Manager
 - a.) Free Flu Shots November 7, 2013, 2:00 PM – 4:00 PM, Kitty Hawk Town Hall
11. Reports/General Comments from Town Attorney
12. Reports or General Comments from Town Council
13. Public Comment
14. 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, Finance Officer Charlene Allen, Planning Director Joe Heard, Police Chief Joel Johnson, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

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1. CALL TO ORDER

Mayor Perry called the meeting to order at 6 p.m. and welcomed everyone.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Mayor Perry noted a change for items 6(g) and 6(h). They would be moved to number 7 of the agenda.

MPT Perry made a motion to approve the agenda. It was seconded by Councilman Bateman and approved unanimously, 5-0.

4. FISCAL YEAR 2012-13 AUDIT REPORT/Teresa Osborne, Dowdy & Osborne, CPA's

Teresa Osborne: Good evening. I am here tonight to present the results of your June 30, 2013 audit. The town received an unqualified opinion on its financial statements and no negative findings related to the audit. This is the best opinion you can receive.

I want to start by giving Finance Officer Charlene Allen credit for drafting the financial statements. This is a little different process than what we have done in the past. I usually draft the financial statements but she is perfectly competent and capable of doing it.

Instead of reviewing the entire report with you tonight I am going to review selected information with you. Pages one and two is the audit opinion which states the unqualified opinion, pages three to ten is what we call the management discussion and analysis which is a narrative summary of the different parts of the audit. Pages eleven to thirteen are the government financial statements. They are the basic governmental statements which have been adjusted to include all capital assets and debt of the town. Pages fourteen to nineteen are the summarized fund financial statements and the notes to the financial statements can be found on pages twenty through forty.

I would like to spend a little time with you going over the detailed fund financial statements which begin on page forty one. This report shows your final budget, the actual amounts for the Fiscal Year '13 and the actual amounts for 2012 for a comparison. If you look under the ad valorem tax section you will see an increase in taxes of \$268,000 which is a result of the 2 cent tax increase you had last year. Actual tax revenues are about \$15,000 less than budget and that is primarily as a result of a \$10,000 reduction in taxes from Dominion Power based on a reduced value. Utility companies pay based on their asset values and their asset value actually decreased from 2012. That is why you did not quite meet the budget because the utility pick up comes to the town after you have already adopted your budget.

Under other taxes and licenses, which is the next section, you experienced a \$154,000 decrease in Occupancy, Land Transfer and Sales taxes as a result of the municipal service district tax in

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Nags Head that was implemented in the prior year. The reason you do not see a decrease in Sales tax is because there is a ten month lag by the state implementing the new pro rata share and allocation percentages. This category was also under budget by \$126,000. There was little difference in unrestricted intergovernmental revenues which is the next section that follows and your restricted intergovernmental revenues are in line with your budget.

On page forty two you had a decrease in permits and fees primarily as a result of the Wal-Mart addition in the prior year. Investment earnings were less due to declining interest rates and other revenues were less due to insurance reimbursements related to Hurricane Irene in the prior fiscal year. Overall revenues were \$136,271 less than budgeted and management planned for these revenue shortfalls during the year with savings in all department categories. Those savings helped to offset that revenue under budget number.

Functional category, starting on page forty four, is the total general government which basically is administration, finance, public buildings, planning, etcetera and that was \$158,560 under budget. On page forty five, public safety was \$90,891 under budget. Transportation, on page forty six, was \$9,878 under budget and sanitation was \$21,115 under budget. Transfers to the capital reserve fund were a total of \$183,655 and you can see that towards the bottom of page forty six. That includes \$123,000 for the fire truck and \$60,655 for IT improvements. The amount for IT improvements actually was an amount for 2012 and 2013. You transferred the 2012 amount in August of 2012 and then the '13 amount was done as a part of your fiscal year budget. Overall expenses exceeded revenues by \$254,342 which was less than the budgeted use of fund balance in the amount of \$400,187 and you actually came in better than what you were projecting. Are there any questions on the general fund?

On page forty seven is the Capital Reserve Fund and the middle column has the actual numbers and you can see where the \$183,655 came in from your general fund. When you add that to the \$621,000 you started with you ended the year with \$805,485 in the Capital Reserve Fund.

Page forty eight shows the closeout of the Sandy Run Capital Project Fund. In the right hand column where it says current year this fund was closed out last year and the \$15,273 remaining in that fund was transferred back to the General Fund.

Page forty nine shows the balance in the town's Fireman's Relief Fund. It is restricted money and is \$106,332 as of June 30th. Page fifty is a summary of taxes receivable and page fifty one is an analysis of your tax levy and property valuation. The tax collection rate is right on target with the prior year. You had an overall tax collection rate of 99.05% and on your property, excluding registered motor vehicles, the rate was 99.3%. Again both of those were right on target with where they were the prior year.

Klutz: *I have a question about the Sandy Run balance. Didn't we set up a Recreation Park/Path Fund or something for that money?*

Mayor Perry: *All of the extra money from bike paths and such were in one fund so we would have money for crossovers or whatever we needed to do.*

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Osborne: *You do not have a separate fund now unless it is a part of your restricted Capital Reserve Fund. The only funds you have are your General Fund, Capital Reserve Fund and there was the Sandy Run Capital Project Fund. As I recall in your adopted 2013 budget there was a line item showing the excess coming in from Sandy Run and I will be happy to take a look at that with Charlene.*

I would like to take you back to your governmental funds balance sheet on page fourteen. I apologize for skipping around but it is always better to look at the revenues over expenditures. On page fourteen, exhibit three includes, even though it says General Fund, by accounting standards you have to include your Capital Reserve Fund in there for reporting so it is reported as a major fund and it does include your Capital Reserve Fund. If you look towards the bottom you can see you ended the year with a total fund balance of \$6,087,917. There are several amounts that are required to be shown as restricted or assigned and we have to break that amount down. Some of the pieces we break out first is the stabilization by state statute of \$593,699 which is basically the amount of revenues recognized in the statements at June 30th but were not actually received until after June 30th. They do not let you say that is available because a lot of that money does not come in until July, August and September.

Also restricted is \$352,643 in Powell Bill for streets. Drug enforcement funds of \$14,325 are restricted for the police department and \$805,485 is restricted for the Capital Reserve Fund.

Lastly the portion of fund balance at June 30, 2013 you have allocated to balance your fiscal year '14 budget of \$332,341 is shown separate as well. What that does is it leaves you with an unassigned fund balance of \$3,965,957. This is a reduction over the prior year of \$130,569. Your \$3.5 million dollar emergency reserve is included in this amount. Accounting standards do not allow us to show that segregation on this statement however that amount is broken out in a separate schedule in the notes to your financial statements on page thirty five.

Mayor Perry: *That is the \$3.5 million that does not show but it is ...*

Osborne: *It is included in that \$3.9 and so when you subtract the \$3.5 it basically leaves you an unassigned fund balance of \$465,957.*

Page eighteen is the statement of fund position for your fiduciary funds. It shows the amount of funds set aside for your law enforcement separation allowance at June 30th is \$34,841. You have a relatively small pension obligation at June 30, 2013 of \$83,936 as a result of not fully funding the annual required contributions in the early years of this program. The annual required contribution for Fiscal Year '14 is \$48,807. However the town has funded \$77,429 in its fiscal Year '14 budget which will make up for some of that shortfall.

I received some questions today about what we call the net OPED obligation which is the other post employment benefit obligation. That shows on page thirty two of the notes to your financial statements. It shows the town's obligation for this is \$859,726 at June 30, 2013. This is the fourth year this information has been required to be reported and is a financial reporting mechanism for recognizing this benefit over the life of an employee's employment instead of after retirement. Accounting standards require the amount to be recorded however the funding of this

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by local governments is optional. The town has thus far decided to continue funding on a pay as you go basis for these benefits. Across the country I would guess it is split on governments that are funding the liability or continuing on the pay as you go basis. Each year the annual required contribution consists of a current expense portion and an amortized amount over 30 years for the prior liability incurred. There is a new accounting standard which will be implemented in Fiscal Year '15 just to keep this interesting and will require the full prior liability to be recognized immediately which will be significant for your financial statements. However it will still only be a reporting requirement not a funding requirement. The town is going to be required to have another valuation performed as of 12/31/13. This actuarially valuation is required every three years and you made some changes to your retiree health benefits in July of 2012 if I'm not mistaken and those changes are not reflected in the study because the most recent study is 12/31/11. Again, you will have another study and that is going to reduce your annual required contribution in all likelihood.

Mayor Perry: *Is there any indication that eventually we are going to have to give this money to the state or will we be able to hold it.*

Osborne: *Right now there is no requirement for you to fund it. However if you choose to fund it the only place you can invest it is with the State Treasurer's Office. You cannot have your own separate fund like you are allowed to do with the separation allowance.*

Mayor Perry: *And there is no way you can ever get it back.*

Osborne: *You can only get it back if you are going to use it for retiree health insurance benefits.*

All in all I would say the town ended the year in strong financial shape. Your tax increase helped to protect your \$3.5 million dollar reserve fund and you should see some growth in this current fiscal year in shared revenues as a result of this increase last year because there is a one year delay for Land Transfer tax and Occupancy tax and then there is a one year plus ten month delay on Sales tax. You implemented some proactive measures to minimize spending and limiting the use of the undesignated fund balance.

That should do it for me tonight unless you have any questions. I would like to thank Charlene and Marlene who helped me significantly with this report along with the rest of the staff.

Mayor Perry: *Thank you very much.*

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.

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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.

a.) Approval of October 1, 2013 and October 7, 2013 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

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

c.) Resolution Supporting Adoption of the Albemarle Regional Bicycle Plan – At the October 7, 2013 meeting the town council adopted the Albemarle Regional Bicycle Plan. The Albemarle Commission also needs this resolution adopted. *(An affirmative vote for the consent agenda will adopt this resolution.)*

d.) Acceptance of Checks for Beach Nourishment in Memory of David R. Twiddy of Elizabeth City who passed away on September 15, 2013 – The town has received additional memorials in Mr. Twiddy's name. Last month council accepted \$600 and the additional amount received as of October 31, 2013 is \$360 for a grand total of \$960. *(An affirmative vote of the consent agenda will accept these donations.)*

e.) Request to Fill Vacancy in Police Department – Due to a resignation there is a vacancy in the police department. This request is to hire an officer with a starting salary of \$36,239.62. *(An affirmative vote of the consent agenda will allow this position to be filled.)*

f.) Permit Fee Waiver – Request to reimburse building permit fees for repair of a residence at 4221 Lindbergh Avenue that suffered flood damage during Hurricane Sandy.

Councilwoman Klutz moved to approve the consent agenda as modified. Councilman Bateman seconded the motion and it passed unanimously, 5-0.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

6(g.) Interlocal Agreement for Beach Nourishment Funding – At the October 7, 2013 meeting the town council approved this agreement. The county adopted the agreement on October 21, 2013 with the addition of 2(e) allowing for a reduction in money paid to the town if actual total cost of the project based on 75 cubic yards of sand per linear foot of nourished beach is less than the estimated total cost.

MPT Perry: *I pulled these items to give a little more explanation. The Interlocal Agreement for Beach Nourishment Funding has one change that came about as a result of Kill Devil Hills and Duck asking some questions at the last Shoreline Management meeting. If there is a savings with the beach nourishment project who gets the savings? The answer is the county puts it back in the beach nourishment fund. It does not change the obligation that the town or any of the towns*

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would have as far as what we borrow, how we pay it back and how that procedure takes place. It is just if there is a savings it goes back into the beach nourishment fund for future use. It makes sense but that may or may not be clear because the public does not have some of this paperwork and I wanted them to know. With that in mind, unless someone has a question, I will **make a motion to approve the revised Interlocal Agreement for Beach Nourishment Funding as presented by Dare County. I further authorize the mayor to sign said agreement and the town clerk to attest. Councilwoman Klutz seconded the motion and it passed unanimously, 5-0.**

6(h.) Ordinance Amending Sections 18-7, 24-53, 24-54 and 24-55 of the Town Code – The state has made changes to State Statute 14-415.23 to prescribe a uniform system for the regulation of legally carrying a concealed handgun. This amendment will align the town code with state regulations.

MPT Perry: *This is an ordinance that was proposed to amend the Kitty Hawk Town Code and it is because the state legislature has made some changes to the concealed gun ordinance and the concealed carry permit only applies to handguns. Knives, spears, or whatever else could be considered a weapon it does not apply to them. As I read this and after discussion occurred it looks to me like what was proposed cannot be done. Is that correct? In our parks and playgrounds ...*

Mayor Perry: *It is for buildings. Is that correct?*

Michael: *That is correct. You can prohibit it in your buildings and around your buildings but you cannot prohibit it in your parks and playgrounds.*

MPT Perry: *But we can other weapons.*

Michael: *Right.*

MPT Perry: *What we have to do is make a change to the sign but the way this has been altered ... it says for example in the Windgrass Circle Park under firearms "the town shall post signs prohibiting the possession of firearms, air guns, sling shots, bows and arrows or concealed handguns in the recreational facility in accordance with G.S. ... and the word "recreational" is struck through.*

Michael: *There is a word left out of all of these. It should be "except" in accordance with because that is the statute that authorized the concealed weapon permit. What we were trying to do is write an ordinance you do not have to amend every year because surely next year the general assembly will amend it again in some way, shape or form.*

MPT Perry: *They will probably add playgrounds. I am sure they will do that.*

Michael: *We are hoping they will add it back in and if they do that you will not have to amend your ordinance because it will encompass that in the definition.*

MPT Perry: *I recommend we table this until the next meeting and give you a chance to look at it again. And even though we are subject to criticism by folks who want to carry concealed weapons our police chief has to understand the sign right now is technically incorrect for handguns. Other weapons I think you can take them out. The motion is to table this until the December 2nd meeting for further review. Councilman Bateman seconded the motion and it passed unanimously, 5-0.*

8. PLANNING:

a.) Call for Public Hearing - Text Amendment: Application to amend Sections 42-250, 42-251, 42-252, 42-277, and 42-278 of the Town Code by permitting call centers in the BC-1, BC-2, BC-3, VC-2, and VC-3 zoning districts and establishing minimum parking standards for call centers.

Councilman Reid made a motion to for the town council to call for a public hearing for a text amendment application to amend sections 42-250, 42-251, 42-252, 42-277 and 42-278 of the town code by permitting call centers in the BC-1, BC-2, BC-3, VC-2 and VC-3 zoning districts and establishing minimum parking standards for call centers. The motion was seconded by Councilman Bateman and passed unanimously, 5-0.

9. NEW BUSINESS

a.) Nomination of Three Names to Dare County for Tourism Board Appointment in December

MPT Perry: *I want to explain to the public something that is an anomaly for us this year. I have served two terms and cannot serve anymore and we have two council members who are leaving the council. The county requires three nominations and they must have those from this meeting because they will make the decision at their December 2nd meeting. What that leaves us with is the unusual condition of nominating a candidate who is yet to be elected until hopefully tomorrow. Please understand this is crazy but there it is so I nominate for the Tourism Board for the benefit of the Board of Commissioners Ervin Bateman, Emilie Klutz and Craig Garriss. Councilman Reid seconded and the motion passed unanimously, 5-0.*

b.) Amendment to Section 8-1 of the Town Code – Referencing the Adoption of all Applicable Building Codes and Appendices

Klutz: *The only part I sort of had a concern with was the note that the "... electrical code refers to its appendices as annexes and specifically states that the annexes are to be used for reference only and are not intended to be enforced." There is no ambiguity to that is there Joe in the electrical code?*

Heard: *It is actually in the code itself. For whatever reason we do not have a separate North Carolina Building Code for electrical right now so it defaults back to that National Electrical Code and that statement is very specific in there.*

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Klutz: *As long as there is no ambiguity then I will make a motion if nobody else has anything thing to say. I move to adopt the proposed text amendment to Section 8-1 of the Kitty Hawk Town Code referencing the adoption of all applicable building codes and appendices. Councilman Reid seconded the motion. (Ordinance No. 13-08)*

MPT Perry: *Having worked with federal rules if it is on a national level and the states are adopting something they would never stick their neck out and say this annex applies to you specifically so that is the reason ...*

Mayor Perry: *But if they keep on making more rules we soon will not be able to put our clothes on without some kind of rule in order to do it.*

MPT Perry: *We might already have one and we just don't know it.*

The vote was 5-0.

10. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) Free Flu Shots on Thursday, November 7, 2013, 2:00 PM – 4:00 PM, Kitty Hawk Town Hall – Manager Stockton announced to council and the general public that on Thursday, November 7th from 2 p.m. to 4 p.m. The Outer Banks Hospital will give a free flu shot to anyone 18 years and older. He invited everyone to come out and take advantage of the free shot.

11. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

Michael: *I believe some questions are starting to come up about easements for beach nourishment. I talked with the county manager and he is going to send me the easements the county already has. In talking with Starkey about how to respond what we would like to do is get the questions people are asking and we will provide a written response. We can post on the town's website and give it to each of you so when people ask you will have something to refer to. I think we can address them pretty easily and that is probably a more efficient way to do it. They are going to try to break the easements out for Kill Devil Hills and Kitty Hawk but he told me I may have to do it myself.*

Mayor Perry: *Then we will have to get more easements.*

Michael: *The ones we do not have we will have to go out and get ourselves.*

12. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

Councilman Bateman reminded everybody about the marathon on Sunday and if they are not doing anything at 7:30 to come out and cheer everybody on. He also thanked the police department, public works and fire department for all the work they were going to do to help put this on. It is for a good cause.

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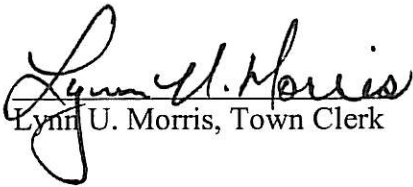
13. PUBLIC COMMENT

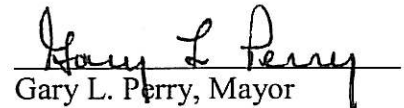
There were no public comments.

14. ADJOURN

MPT Perry made a motion to adjourn. It was seconded by Councilman Bateman and passed unanimously, 5-0. Time was 6:33 p.m.

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


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor