

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, September 4, 2018
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
 - a.) Approval of August 6, 2018 Council Minutes
6. Public Hearings:
 - a.) Text Amendment: 42-251(c)34. Multi-family dwelling developments. 42-419(1) PCD minimum size of site. The applicant has requested a text amendment that would allow multi-family dwelling developments in the BC-2 district. The amendment would also reduce the minimum site size for a PCD from 10 acres to 5 acres. (*Ordinance No. 18-07*)
 - b.) Rezoning: 4907, 4911, 4915, 4919 Putter Lane from BR-1 to MS-1. The four town owned properties are being requested to be rezoned to MS-1 to be more appropriately zoned for governmental services.
7. New Business:
 - a.) Grant Submittal to North Carolina Division of Soil and Water Conservation for Sandy Run Park, West Eckner St. and Kitty Hawk Estates Debris Removal
 - b.) Culvert Cleaning Proposal for Kitty Hawk Estates and Pine Hill Lane
 - c.) Engineering Proposal for Tateway Road Pumping Station Expansion
 - d.) Additional Beach Nourishment Surveying – APTIM Engineering
8. Reports/General Comments from Town Manager
9. Reports/General Comments from Town Attorney
10. Reports/General Comments from Town Council
11. Public Comment
12. Closed Session:
 - a.) N.C.G.S. 143-318.11(a)(1) Approval of Closed Session Minutes/April 4, 2016, October 3, 2016 and January 9, 2017
 - b.) N.C.G.S. 143-318.11(a)(6) Town Manager Review
13. Return to Regular Session
14. Adjourn

COUNCILMEMBERS PRESENT:

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

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STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Planning Director Rob Testerman, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Police Chief Joel Johnson, Fire Chief Mike Talley and 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

Councilwoman McClean made a motion, seconded by Councilman Bateman, to approve the agenda. The vote was unanimous, 5-0.

4. PUBLIC COMMENT

1.) Bob Peele, Chairman, Outer Banks Chamber of Commerce: *Thank you for the time tonight. As all of us have heard over the last several years that the housing crises on the Outer Banks is real. Help wanted signs are seen everywhere and we hear from businesses daily of an inability to find workers. This is not just a seasonal challenge, it has become a year-round one. Professional jobs go unfilled at our hospital and in our healthcare system. People are hired but cannot find reasonably priced housing options, so they leave. The community college is trying to offer technical classes but cannot find instructors for the same reasons.*

The Outer Banks Chamber of Commerce formed a committee in the spring of 2017 to look into the challenge of housing for our community. This includes not only seasonal workforce housing but year-round rentals and reasonable priced single-family homes. The committee includes stakeholders from around the OBX region.

We learned early on that zoning is one of the core issues when it comes to addressing the housing crisis. A number of current zoning ordinances in the county and towns make addressing this critical issue difficult. With this in mind the chamber and its committee have been reviewing current ordinances to determine where changes can allow for less restrictive lot sizes and higher densities for development in appropriate areas thus creating opportunities for private developers to address the housing crisis. Together we can ensure that our community has the services it needs backed by skilled, competent, and caring people.

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Following are several items that have been identified. We would like to ask the Town Council to direct the Planning Director and/or Planning Board to review these requests and report back to you with any suggested revisions.

Definitions: *We are suggesting adding a definition for long term rentals (occupancy) as a residential dwelling that is occupied and used for residency and housekeeping purposes for a period of 31 days or more. Add a definition for short term occupancy as a residential dwelling that is used and/or advertised through online media or any means of advertising for occupancy for a period of 30 days or less.*

Accessory Dwelling Units: *Restrict use of accessory dwelling units approved under these new guidelines to be used for long-term rentals as defined.*

Multi-family: *Amend ordinance for BR-2 medium-density beach residential to allow for 6 units per acre following the county ordinances for similar zoning districts. Amend ordinance for BR-3 high-density beach residential to allow for 10 units per acre following the county ordinances for similar zoning districts.*

Thank you for taking the time to consider this request. This could be a first step in helping to ease the housing crisis and workforce shortage in Dare County.

Perry: *When you are talking about amending the ordinances is it your belief that allowing more will create more affordability or just simply more available housing?*

2. Karen Brown, President, Outer Banks Chamber of Commerce: *We feel it is both. I think the issue is we need more inventory and we need a better priced product. More inventory drives the price down and increases more opportunity for people to find something here.*

Perry: *It sounds like the county is looking to make the first recommendation a year-long not 31 days. Is that what you heard?*

Brown: *No. That is actually lifted from the definitions that their planning board has put together.*

Peele: *There are conversations going on at the county level that we are not privy too. We are just trying to get the conversation going.*

3. Carl Classen, 5204 Winsor Place, Kitty Hawk, NC: *I just wanted to come up and say thank you to the Town Manager and Public Works Director for looking into the drainage issue in Kitty Hawk Estates. I gave you all a kind of laundry list in a letter with ideas of how to deal with drainage. It is a long-term process as built out as we are. It is going to be a bigger and bigger process depending on climate change and many other issues. Thank you for what you have done so far, and I hope you will continue to work on this. Thank you very much.*

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There were no other comments.

5. CONSENT AGENDA

a.) **Approval of August 6, 2018 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*

MPT Garriss made a motion to approve the consent agenda. It was seconded by Councilwoman McClean and approved unanimously, 5-0.

6. PUBLIC HEARINGS

a.) **Text Amendment: 42-251(c)34. Multi-family dwelling developments. 42-419(1) PCD minimum size of site. The applicant has requested a text amendment that would allow multi-family dwelling developments in the BC-2 district. The amendment would also reduce the minimum site size for a PCD from 10 acres to 5 acres.**

Mayor Perry made a motion, seconded by Councilwoman McClean, to go into public hearing for the text amendments. The vote was unanimous, 5-0.

Testerman reviewed the following staff report.

Proposal

The applicant has proposed a text amendment that would add multifamily dwellings as a conditional use in the BC-2 (Beach Commercial) district.

42-251(c)34. Multi-family dwelling development.

- a.) Maximum allowable lot coverage by principal use and all accessory structures is 60%.
- b.) The minimum front yard setback is 15 feet.
- c.) The minimum side yard setback is 10 feet, an additional five-foot side yard adjacent to the street is required for a corner lot.
- d.) The minimum rear yard setback is 20 feet.
- e.) The maximum permitted density shall be ten residential dwelling units per acre.
- f.) Type A. vegetative buffer, per Sec. 42-654 shall be required between any multifamily dwelling and abutting residential zones or uses.

Additionally, the applicant has proposed the following amendment to the Planned Commercial Development requirements:

42-419(1). *Minimum size of site.* A planned commercial development site shall not be less than ~~ten~~ five contiguous acres in size, with not less than 500 feet of total road frontage on US Highway 158 or NC Highway 12. except that portions of the site may be separated by public or private rights-of-way not more than 60 feet in width. A planned commercial development shall not be divided or traversed by US Highway 158 or NC Highway 12.

Background

Several months ago, Town Council adopted the proposed language in the BC-1, General Beach Commercial District. The current proposal would expand that particular Conditional Use Permit to the BC-2, Beach

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Commercial District (highlighted in attached zoning map). As a conditional use permit, each proposal would come before the Planning Board, and Town Council for review. The BC-2 District, by nature is a more intensely developed district than the BC-1. The scope and intent of the BC-2 is to provide for the development of commercial facilities in Kitty Hawk Beach to furnish a broad range of services and commodities to serve the entire community. The BC-2 district was established to provide for the commercial needs of the town and the immediate surrounding geographical area. The commercial development within the BC-2 district is characterized by medium to large size land parcels with commercial development of medium intensity. Commercial centers may be authorized in this district, but large shopping centers or shopping malls, and "big box" retail/wholesale businesses exceed the scale of development planned for this district.

Currently the zoning ordinance allows detached single-family homes and apartments on the second story of compatible commercial uses as conditional uses in the BC-2 District. The BC-2 district also allows all permitted uses in the BC-1, with the addition of a handful of other more intense commercial uses.

Below is a list of what other localities allow regarding multi-family dwellings in commercial districts:

Duck – Does not allow.

Southern Shores – Multi-family dwellings are permitted in the C, general commercial district, according to the dimensional requirements of their RS-8, multi-family residential district. They do allow an extra 10% lot coverage for multi-family dwellings in the commercial district (40%) versus those in the RS-8 (30%).

Kill Devil Hills – Multi-family dwellings of three or more units per dwelling are permitted in the C, commercial district at a density of 18 dwellings per acre. The RH, high density residential district, setbacks are applied.

Nags Head – Multi-family dwellings are permitted as a conditional use, provided a number of conditions are met.

Manteo- Multi-family dwellings are permitted at a density of six dwellings per buildable acre.

Regarding the proposed amendment to the Planned Commercial Development ordinance, approval would reduce the minimum site size from ten acres to five acres and would also require a minimum of 500 feet of road frontage on either N. Croatan Highway, or N. Virginia Dare Trail. PCD's are currently allowed as a conditional use permit in the BC-1, BC-2, BC-3 and BH-1 districts. Approval of the proposed amendment would open the possibility of a PCD on one currently undeveloped lot, in the area of the intersection of The Woods Road and N. Croatan Highway. Other parcels that would meet the new size requirement for a PCD include Kitty Hawk RV Park and the U.S. Post Office. Several other lots meet the minimum size requirement but would not meet the proposed minimum road frontage requirement. These sites include Sea Scape Beach & Golf Villas, Harris Teeter, Wal-Mart and OBX Chevy.

Consistency with Land Use Plan

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

Policy #17a: Kitty Hawk will continue to adapt, enforce, and amend as necessary ordinances and procedures to regulate residential development and redevelopment. The town supports applicable state and federal laws and regulations regarding building, land uses, and development.

Policy #17b: Detached residential structures are the preferred type of residential development.

Objective #17a: Ensure the continuance of established residential development patterns.

Objective #17b: Ensure future development is consistent with adopted goals, objectives, and policies and regulations including building code requirements and is in character with existing development with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

Objective #17d: Enforce, and amend as necessary, the Town zoning ordinance including designation(s) of permitted and conditional use intensity and density criteria.

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Planning Board Recommendation

At its July 19, 2018 meeting, the Planning Board recommended approval, by a vote of 4-1, of the requested text amendment to allow multi-family dwelling developments in the General Beach Commercial (BC-2) district and reduce the minimum site size of a PCD from 10 acres to 5 acres, with the added language requiring 500 feet of road frontage on NC-12 or US -158.

Town Council Recommended Action

Action by the Town Council may include approval, denial, approval with modifications, or tabling of the proposed text amendment.

Perry: *I guess the ten acres was done for the timeshare development behind Wal-Mart or something like that and now we are looking at reducing it to five. Is there a suggested minimum that a PCD should be?*

Testerman: *I do not think you want to reduce it to less than five acres. One purpose of a PCD allows for a contiguous site plan to review.*

Perry: *Given what he just said, if we approve this and somebody else comes in and wants to reduce the acreage, can we hold it to five?*

Varnell: *Yes, I think we can, but it may not stop them from asking.*

Perry: *This acreage we are talking about includes the old filling station across from Kitty Hawk School and the five hundred feet of road footage fronts US 158. Would that be screened?*

Testerman: *That would be something to talk about during the site plan review for the conditional use permit.*

Hearing no further questions, comments, and seeing no one come forward to speak, **Councilman Bateman made a motion to return to regular session. It was seconded by Councilwoman McClean and passed unanimously, 5-0.**

Councilman Bateman made a motion to adopt the proposed text amendment adding Section 42-251(c)34 and amending Section 42-419(1) allowing multi-family dwelling developments as a conditional use in the Beach Commercial, BC-2, District and reducing the minimum site size for a PCD from 10 acres to 5. The Town Council finds that the proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments to be in the public interest. Councilwoman McClean seconded and it passed unanimously, 5-0.

6(b.) Rezoning: 4907, 4911, 4915, 4919 Putter Lane from BR-1 to MS-1. The four town owned properties are being requested to be rezoned to MS-1 to be more appropriately zoned for governmental services.

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Mayor Perry made a motion to go into a hearing for the rezoning of 4907, 4911, 4915 and 4919 Putter Lane from BR-1 to MS-1. Councilwoman McClean seconded and it passed unanimously, 5-0.

Mayor Perry explained that council would like to rezone this property so anyone purchasing property adjacent or near it will know that something other than a house can be there. Since scheduling the hearing, it has been determined by the Planning Director and the Town Attorney to be illegal spot zoning and this hearing is being held to help provide a paper trail. He asked the planner and attorney to get together and create a government district of some type for the property.

There were no further questions, comments, or anyone wishing to speak, and **Mayor Perry made a motion to go back into regular session. Councilwoman McClean seconded and it passed unanimously, 5-0.**

Mayor Perry made a motion to kill this rezoning effort. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

7. NEW BUSINESS

a.) Grant Submittal to North Carolina Division of Soil and Water Conservation for Sandy Run Park, West Eckner St. and Kitty Hawk Estates Debris Removal

Stewart: The Town recently completed removing vegetative debris in the ditches and canals caused by Hurricane Matthew and Tropical Storm Hermine under the Disaster Recovery Act of 2016. The Town was informed by the NC Division of Soil and Water that additional funding may be available. Staff is recommending the following sections be done to aid in the flow of stormwater: Sandy Run Park 1,000 linear feet; West Eckner Street 3,800 linear feet; and, Kitty Hawk Estates 1,000 linear feet. If awarded to the Town it is anticipated that 100% of the project costs would be funded through the grant.

Councilman Pruitt made a motion, seconded by Councilman Bateman, to submit the grant application. The vote was unanimous, 5-0.

(b.) Culvert Cleaning Proposal for Kitty Hawk Estates and Pine Hill Lane

Stewart: The Public Works Director is suggesting approval of a quote for culvert cleaning in the amount of \$3,500. The Town is responsible for the maintenance and repair of stormwater drainage systems in Kitty Hawk Estates and Pine Hill Lane. Over time culverts become clogged with sediment and must be cleaned to keep the stormwater systems operating effectively. The Town has received a quote from Enviro-Tech for this work. They will utilize high pressure water jetting to unclog the culverts in both areas.

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Perry: *The reason I wanted this on the agenda is because I want people to understand this is being paid for by Powell Bill money and Powell Bill money comes from the state to incorporated municipalities. It is to be used for paving streets, help with drainage and things of that nature. The counties do not get that money because the state helps them out. A benefit for municipalities is the governing bodies get to decide how and when to spend the money and the county must deal with the state.*

Councilman Bateman made a motion to approve. Councilwoman McClean seconded and it passed unanimously, 5-0.

Councilman Bateman asked if Public Works Director Midgett had found out if there is a pipe underneath US 158 to help with drainage in the Kitty Hawk Estates area.

Public Works Director Midgett replied he was told by the former Mayor Perry that the state told him there was a pipe at one time but when they widened the road to five lanes it was covered up. The pipe was there mainly for moving ditch water not for draining anything else.

7(c.) Engineering Proposal for Tateway Road Pumping Station Expansion

Stewart: *This is an agreement for professional services for the design, engineering, surveying, and project management of an additional drop inlet at the corner of East Tateway Road and US 158. The agreement also provides for surveying and design of a culvert/swales on West Tateway Road to enhance the utilization of the existing emergency pumping station.*

The Town of Kitty Hawk currently has a stormwater pumping station along East and West Tateway Road. Town Staff has determined that additional improvements could greatly improve the existing system and the effectiveness during pumping operations.

Town Staff is requesting the design and engineering of an additional drop inlet along the Tateway pumping station that will relieve road flooding at the corner of U.S. 158 and East Tateway Road. In addition, it is being recommended to do additional survey and design for a potential culvert under West Tateway Road. The proposed improvements would enhance the utilization of the Tateway Pumping Stations. The agreement for professional services with Albemarle & Associates is in the amount of \$9,700. Funds from the Powell Bill fund will be used.

Perry: *The culvert across Tateway, just before you go up the incline, would be a Town responsibility. The culvert on the 158 right-of-way is the one they are trying to get the state to do. I am not sure if we will have to do it or if they will even let us do it. The reason for it is over at the eye care center are swales. They do not have a culvert underneath the driveways. Like Kitty Hawk Estates and the rest of the Town. This is an on-going project and we are improving upon what we have.*

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MPT Garriss made a motion to approve the agreement for professional services with Albemarle and Associates Limited in the amount of \$9,700 for the Tateway Road Pumping Station Expansion. Councilman Bateman seconded and it passed unanimously, 5-0.

d.) Additional Beach Nourishment Surveying – APTIM Engineering

Stewart: *After the beach nourishment project was completed the Town had a survey done and we must have one done annually. The survey allows us to be reimbursed by FEMA, hopefully, if we were ever to have a storm. It also allows us to see what has happened with the sand that was pumped on the beach, where it has gone, how much is there, how much is left.*

We had a call from the engineers after they accomplished the initial survey and their recommendation, based on the shifting sand and some of the large troughs that are right off the beach, is to go from a 1,000-foot survey to a survey every 200 feet. This will give us a more realistic picture of what is happening offshore. The cost is \$17,413.00.

Perry: *Kitty Hawk has unique issues. The calculations they are currently coming up with exceed a sustainable beach nourishment project. Just that simple. We need to find out, so we can tell folks what they need to know for future projects. They want to do 200 feet every year. I think we need to see what they come back with before we give them permission for this every year.*

Mayor Perry made a motion to approve this survey. MPT Garriss seconded and it passed unanimously, 5-0.

8. TOWN MANAGER

Manager Stewart reminded everyone of the **large item pickup on September 24, 2018.**

9. TOWN ATTORNEY

No comments.

10. TOWN COUNCIL

Thank you

MPT Garriss thanked staff for everything they did to help make this another safe and successful summer.

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Flyover at US 158 and NC 12

Perry: *We need to give staff some direction on the flyover since it has come up again. It was basically turned down once before by council in 2012. There was a consensus of council they would not like a flyover if the mid-Currituck Bridge is going to be built.*

Pruitt: *I am opposed to the flyover. I do not think it is going to solve the problem. People will just be stuck in traffic on it.*

Stewart: *The plan for this intersection was put into the ten-year STIP (Strategic Transportation Improvement Program) and it is in the last five years of the plan. It is way down on the list and some projects will be reprioritized. It may fall off depending on the bridge, so this is not anything set in stone. Councilmember McClean and I sit on an ARPO board that scores these projects and we want council feedback on it for a meeting on September 28th.*

The council consensus is not in favor of the flyover. Mayor Perry added unless people tell him differently. He suggested putting information about it in the newsletter and ask for feedback.

11. PUBLIC COMMENT

a.) Carl Classen, 5204 Winsor Place, Kitty Hawk, NC: *I spoke with Jerry Jennings earlier this year because I saw the surveying along 158 and became nervous about the flyover again. He said it was part of the mid-Currituck Bridge project as stated earlier. At the present time they plan to extend the third lane on the north side farther down to allow for easier entrance into north bound 158. It is one of the processes for the mid-Currituck Bridge. I do not know if that has changed but that is what I was told at the time.*

No one else came forward to comment.

12. CLOSED SESSION

Mayor Perry made a motion to enter into closed session and cited the explanation below (a) and (b). He also stated he does not anticipate anything after council returns to regular session except adjournment. **The motion was seconded by MPT Garriss and approved unanimously, 5-0.** Time was 6:45 p.m.

a.) NCGS 143-318.11(a)(1) Approval of Closed Session Minutes/April 4, 2016, October 3, 2016 and January 9, 2017

b.) NCGS 143-318.11(a)(6) Town Manager Review

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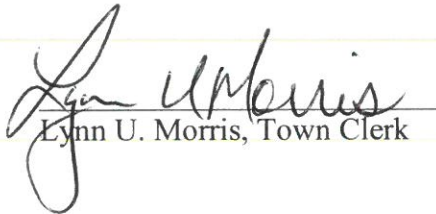
13. RETURN TO REGULAR SESSION

MPT Garriss made a motion, seconded by Councilwoman McClean, to return to regular session. The vote was unanimous, 5-0. Time was 7:05 p.m.

14. ADJOURN

Mayor Perry made a motion to adjourn. It was seconded by Councilman Pruitt and the vote was unanimous, 5-0. Time was 7:06 p.m.

These minutes were approved at the October 1, 2018 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor