

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, February 3, 2020**  
**Kitty Hawk Town Hall, 6 PM**

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation:
  - Public Works Supervisor Jamie Ewers/5 Years of Service Recognition
  - Mary Bonsall, Northern Beaches Library Exploratory Committee Member (added during the meeting)
5. Public Comment
6. Consent Agenda
  - a.) Approval of January 6, 2020 Council Minutes
  - b.) FY 19-20 Quarterly Financial Statements as of December 31, 2019
7. Items Removed from the Consent Agenda
8. Planning:
  - a.) Schedule Public Hearing: Chapter 14, Flood Damage Prevention Ordinance - The Town must adopt the new model flood damage prevention ordinance, which in effect adopts the new Flood Insurance Study and maps, by June 19, 2020. It is requested the public hearing be held March 2, 2020.
9. Reports/General Comments from Town Manager
10. Reports/General Comments from Town Attorney
11. Reports/General Comments from Town Council
12. Public Comment
13. Adjourn

**COUNCILMEMBERS PRESENT:**

Mayor Gary Perry, Mayor Pro Tem Craig Garriss, Councilman David Hines, Councilwoman Lynne McClean, Councilman Jeff Pruitt

**STAFF MEMBERS PRESENT:**

Town Manager Andy Stewart, Town Clerk Lynn Morris, Planning Director Rob Testerman, Management Assistant Melody Clopton, Public Works Director Willie Midgett, Sgt. Jeff Wiggins

**1. CALL TO ORDER**

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

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

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

### 3. APPROVAL OF AGENDA

Mayor Perry explained a member of the Northern Beaches Library Exploratory Committee would like to address council and **MPT Garriss made a motion to approve the amended agenda. It was seconded by Councilwoman McClean and approved unanimously, 5-0.**

### 4. PRESENTATIONS:

- **Public Works Supervisor Jamie Ewers/5 Years of Service Recognition.** Public Works Director Willie Midgett presented Mr. Ewers with a plaque for 5 years of service with the Town.
- **Mary Bonsall, Town of Southern Shores Northern Beaches Library Exploratory Committee Member.** Mayor Perry introduced Ms. Bonsall and said she is the Kitty Hawk representative on this committee.

Ms. Bonsall presented the following:

In response to strong community interest, the Town of Southern Shores convened a committee to examine the feasibility of a modestly sized branch of the Dare County Library to increase the availability of library services in northern Dare County. The committee includes appointed representatives from the Towns of Kitty Hawk and Duck.

#### NEEDS:

- Survey was developed and opened to all residents of Southern Shores, Duck, Kitty Hawk and Martin's Point
- Response indicated 80% support in favor on a northern branch
- 91% were in favor of northern branch to browse, check out, return books, read news and periodicals
- 75% would use library more if there was a northern branch
- Adult and children's programs were specifically requested

#### FEASIBILITY:

- Suitable space at a reasonable cost in a central, commercial area
- 4 properties researched – led to one opportunity
- 6 Juniper Trail (located behind and owned by Towne Bank)
- Offer to lease 2570 sq. feet (part of building) for 10 years for \$1 a year
- Site adaptation capital costs are estimated at \$150,000 to \$175,000
- Estimated operating costs are available

#### NEXT STEPS

- Brief county commissioners next week
- Welcome opportunity to work with towns and county to further reviews these details
- Ways and means of engaging community support through volunteers and donations can be explored for a path to make this happen
- Clear benefit to Kitty Hawk residents, students and community for a northern Dare County Library branch
- With this generous offer from Town Bank, this is viewed as win-win for the Town of Kitty Hawk

In the handout was a picture of the building and a proposed floor plan.

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Ms. Bonsall said no decision from council is requested at this time and she and the committee members appreciate being allowed to present further information.

**Perry:** *Has there been any further communication with the East Albemarle Library System?*

**Bonsall:** *We have a meeting with them scheduled this week. There is an interest in touring the facility to see the layout and what the site adaptation would look like.*

**Perry:** *And you will keep us informed of what the county commissioners, as well as the Library System ... whether they are for this or not?*

**Bonsall:** *Yes.*

**Garriss:** *The 10-year lease for a dollar a year is a great bargain. What happens to the lease after that?*

**Bonsall:** *All indications are it would continue. It appears to be a marketing opportunity for one stop shopping: library, bank, shopping at The Marketplace. I will mention that the third site we looked at was in The Marketplace in Southern Shores and the rental cost was \$50,000 a year. So, it is a significant savings. Also, the Dare County library director mentioned the library in Kill Devil Hills has reached some capacity issues in some areas. This almost gets in front of their plans to deal with the demand exceeding the capacity.*

**Hines:** *Do you know how many folks currently are using the Kill Devil Hills library now? Has there been a study?*

**Audience Member:** *I believe approximately 300-325 per day during the off season and 500 in the summer.*

**Bonsall:** *We have numbers for the annual use, but I did not bring them.*

**Hines:** *And Dare County has cut funding for the Kill Devil Hills Library?*

**Audience Member:** *Yes.*

**Perry:** *You deserve credit for working on this and we will see where it goes.*

**McClellan:** *Your handout does not show how many people from the different Towns use the library. It just said there is 80% in support.*

**Bonsall:** *We did see a 12% response rate and I think that was the Kitty Hawk number which is not bad considering it was a passive survey. It was only on the website. We may have had a better response if we did a mailing but there was no budget.*

**Perry:** *I just got a nice pie chart on this subject by email. If you could give that to each of the councilmembers it would be helpful. Breaks it down.*

**Bonsall:** *I will get that to the manager.*

## 5. PUBLIC COMMENT

**1. Duke Geraghty:** *Good evening. I am a member of the Outer Banks Homebuilders Association and I am here to speak on the flood ordinance. I know there is not a public hearing tonight, but I want to give you a little background of some of the things that have been happening for the last few years.*

*The Homebuilders Association has been tracking this for about 4 years. We knew there were going to be some flaws in the new flood maps, and we wanted to address some of them. A lot of people were saying because of the new maps I can close in under my house and we try to explain it is not a good idea. We were hearing from other people they want to drop flood insurance and that is not a good idea.*

*About 2 years ago we put together a small group of surveyors, builders, engineers, architects and we met to put together a plan. It is a little selfish. I said you know this is what we go through all the time. People do not realize we are dealing with 2 counties and 6 municipalities that all have different rules. People price a house in Kill Devil Hills and it is a different price from a house in Kitty Hawk. We worked very hard on it for a long time and mapped out every plat in Dare County and said why can't we come up with a flood prevention ordinance for the whole county and we can all be on the same page. It would not make a difference which Town you were building in.*

*So, we sat back, and we put something together and then we invited Donna Creef the Planning Director for Dare County to our group. We told her what we have been working on and she was very excited. I said we need your voice and we need you to go to all the Towns and put this group together with all the planning directors in Dare County and let's come up with an ordinance that we can all work with. We know there will be little quirks, but it should be kind of uniform.*

*All the planning directors have been working hard on it too but now we are coming down to the nitty gritty. It seems like every Town wants their own. We have different rules, different freeboard requirements, different things in every Town and I said this is kind of defeating the purpose.*

*This afternoon I got a copy of an email from our committee member, Jay Overton, and it was 42 pages. Yesterday I got one from Duck and it was 46 pages. We have not had time to look at it. Why are these all different and why not wait until the Towns could come together and let them work it out by themselves. We agree there might be some little differences in each Town, but it seems like the basis could all be the same and it would make it a lot easier for anybody.*

*We think this scheduled public hearing is a bit premature until all the Towns come together and they decide what they want to do. Do they want to do this in unison and come up with one ordinance*

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*or do they just want to go on their own again. That is a little background. We are willing to keep working on this. To schedule a public hearing now before this is finished, I think is just a little bit premature. Thank you.*

**2. Paul Wright:** *I am one of the elected Soil and Water Conservation District Supervisors of Dare County for the State of North Carolina. I am also a candidate for the District 3 race for the Dare County Board of Commissioners.*

*I would like to congratulate you with the partnership we had with you recently in getting the shoreline project done for Kitty Hawk. That is very important and valuable. We are up for an award on it, so I urge you to let the community know more about it. Out of all the Townships here in Dare County, Kitty Hawk has stood out and worked with my board and we thank you.*

*I know you have a lot going on with flood mitigation and everything else and I was speaking to Mr. Pruitt before the meeting. We have been working for the past year on trying to better understand the service districts. It falls under North Carolina Statute 153, Article 16, service districts and zoning for flood mitigation here in the State of North Carolina.*

*Currituck County has these service districts in Carova and Corolla and other areas in flood zones. It is a shame, with the funding, the resources and the stretch of water that we have in this area, that we do not have these systems set up in Dare County. One of the things that I am going to be pushing for in my election is that we adopt these service districts to bring in better protections for homes and communities. The cost of this is at a half cent per \$100. So, it is raising the taxes just a little but only in the areas that it is needed. That is something for you to look into and discuss.*

*Also, I would appreciate it if you would join us on February 11<sup>th</sup> between 9 and 12 for our next board meeting. It will help you to better understand these programs and what they can offer the Town of Kitty Hawk. Thank you.*

**Perry:** *Andy I think we are all a little behind on this subject. It sounds like MSD's for beach nourishment. If you could get us some information that enlightens us so we can at least ask questions it would be helpful.*

**Wright:** *I do not know how to answer everything, and we have been studying it for over a year. I have taken 2 or 3 classes with the Department of Agriculture and there is so much to it. It is so complex, but it is working. Greenville and New Bern have successfully set up these service districts and it is helping with the flood water in a tremendous way.*

**Perry:** *We will educate ourselves and see where we go from there. Thank you.*

## 6. CONSENT AGENDA

- a.) **Approval of January 6, 2020 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*

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b.) **FY 19-20 Quarterly Financial Statements as of December 31, 2019.** *(An approval of the consent agenda will acknowledge these statements.)*

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

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

No items were removed.

**8. PLANNING:**

**a.) Schedule Public Hearing: Chapter 14, Flood Damage Prevention Ordinance - The Town must adopt the new model flood damage prevention ordinance, which in effect adopts the new Flood Insurance Study and maps, by June 19, 2020. It is requested the public hearing be held March 2, 2020.**

*Perry: Normally a call for a public hearing is just rote but, in this case, because this ordinance is so complex, and it is more than just raising a structures height ... there is a lot more to it. We are talking inspections by certified people, twice in some places. We have never had that before so what we are trying to do is to help our public understand. It is not just about making sure the freeboard is at the right level so you do not flood.*

*If someone wants to speak at our public hearing next month, they will have a better education to do so. That is the reason Rob is going to give a presentation tonight. We can broadcast what the people need to know and then they can come tell us if they do not like something.*

*I heard all the planners have been working on this.*

*Testerman: We have been and as Mr. Geraghty mentioned each place has different tweaks here and there. While we are trying to get it fairly uniform between all the Towns and Dare County, we understand that we have to make it work for Kitty Hawk. Some of the language that is proposed for Dare County does not necessarily work for Kitty Hawk.*

*Perry: Also, this is a FEMA type ordinance so there is only so much latitude any of us can maneuver.*

*Testerman: Right. The bulk of the ordinance is from the model ordinance and some sections are optional. You may choose to add different local elevation standards.*

*Perry: I want the people that will watch this later to understand some of the changes can be costly and affect you in a way that you may or may not like. We are trying to get ahead of the game and give you time to give us a proper hearing. We must make a decision one way or the other at some point.*

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Planning Director Testerman reviewed the following staff report:

**Proposal**

The Town of Kitty Hawk is required to update its Flood Damage Prevention Ordinance before June 19, 2020. The State has provided a model ordinance that addresses compliance with the NFIP and the wording required to use the newly revised flood maps.

The proposed text amendment would remove the existing Chapter 14 in its entirety and replace it with new flood damage prevention measures that comply with the minimum criteria of the National Flood Insurance Program (NFIP).

**Staff Analysis**

The State shares responsibility with local officials to protect the lives and property of its citizens from the effects of natural disasters, including flooding. Ultimately, the responsibility for managing floodplain development lies with local officials. Therefore, communities adopt flood damage prevention ordinances that contain the minimum standards for obtaining required permits for all proposed construction or other development. The model ordinance also provides for a number of optional higher standards that may be implemented. Higher standards will further protect property owners in Kitty Hawk, additionally, they will typically earn the town more CRS points. In addition to the optional language provided by the state model ordinance, Kitty Hawk, Dare County and the other localities have developed some local additions to further protect residents and property owners from flood damage. The local additions, indicated by purple text is language that was discussed and agreed upon in principal by the planners, but is ultimately up to Council as to what language, and what specific standards, such as freeboard, to adopt. The localities also worked with the Homebuilders Association to come to a general consensus on language that protects homeowners as well as attempts to get the localities ordinances similar.

In the attached draft ordinance, the staff recommended optional language and recommended local additions are shown in green. It should be noted that in many of the subsections, the words “Shaded X or X Zone” or something similar have been added to the model ordinance in order to implement our proposed local elevation standard. They are shown in attached draft ordinance, but will not be individually addressed in the report. The attached draft differs from the draft that was distributed in January in that only the recommended options are shown, in an effort to provide a cleaner, more readable draft. Council is welcome to add in additional optional language that was not included in this version of the draft. Optional and local languages are as follows:

**Article 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.**

**Section 14-4. Objectives**

**(11) Mitigate flood risks in all areas of Kitty Hawk by implementing local elevation standards for all Special Flood Hazards Areas and Shaded X and X zones**

This locally added objective references the proposed local elevation standard to regulate Shaded X and X zones.

**Article 2. Definitions**

*Accessory Structure (Appurtenant Structure)* means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building. **For floodplain management purposes, accessory structures are considered structures used for parking and storage only. The definition used for floodplain management purposes may vary from similar definitions found in the Kitty Hawk Zoning Ordinance.**

The locally added language to the definition differentiates between accessory structures as defined in this ordinance, versus structures that are considered “accessory structures” by the zoning ordinance, but would not fit the definition here, i.e., accessory dwelling units.

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**Local Elevation Standard** means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) in Shaded X and X zones or used in conjunction with the BFE and freeboard standard to mitigate flood hazards in the AE, AO, VE, as depicted on the FIRMs for Dare County.

This is the language used to define the elevation requirement proposed to regulate the X and Shaded X zones as well as the SHFA

**Non-Conversion Agreement** means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

As noted in the definition, this agreement creates a recorded document in which the owner acknowledges that below RFPE enclosures shall not be converted into living space.

**"Tiny Homes/Houses" and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.**

This statement is a clarification added to the definition of "Recreational Vehicle". Staff has been getting an increased number of questions about tiny homes in recent years, it is staff's opinion that this language would be useful to make the distinction. Park model homes, as referenced above, are a relatively new option that are starting to gain popularity. They are built according to the RV industry code, but usually in the same factories that produce manufactured homes. They are defined by the Recreation Vehicle Association as a "unique trailer-type RV that is designed to provide temporary accommodation for recreation, camping or seasonal use." They are typically used for long-term or permanent placement at a destination where an RV or mobile homes are allowed.

**Reference Level** means:

- (a) For structures within the Special Hazard Flood Areas designated as Zones AE, AH, and AO, the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower, with only flood resistant materials located below the reference level
- (b) For structures within the Special Flood Hazard Areas designated as Zone VE, the bottom of the lowest horizontal structural member of the lowest floor or the bottom of the lowest attendant utility, including ductwork, whichever is lower.
- (c) For structures within Zones Shaded X and X, the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower, with only flood resistant materials located below the reference level.

The locally amended definition for reference level gives clear indication as to what the reference level is for elevation. As noted, the proposed reference level is bottom of the lowest floor, or bottom of the lowest attendant utility, whichever is lower. Currently Kitty Hawk uses the top of the bottom floor as the reference level, which is also used in the model ordinance, with only flood resistant material being permitted below RFPE. Setting the reference level at the bottom of the lowest floor, that allows for space to include duct work below the top of the floor, yet still be above RFPE.

**Regulatory Flood Protection Elevation** means, in a Special Flood Hazard Area, the "Base Flood Elevation" plus the "Freeboard" for those areas where base flood elevations have been determined on the FIRM; the base flood depth above the highest adjacent grade or local elevation standards for those areas identified as AO zones on the FIRM, or the local elevation standard for those areas identified as Shaded X or X zones on the FIRM.

The RFPE is as follows:

- (a) In VE and AH Zones, the RFPE is the Base Flood Elevation as designated on the effective FIRM plus one (1) foot of freeboard.

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- (b) In AE Zones, the RFPE is the Base Flood Elevation as designated on the effective FIRM plus 3 feet of freeboard OR an elevation to 8' NAVD 1988, whichever is greater

#### OR [OPTIONS TO DISCUSS WITH COUNCIL]

In AE Zones, the RFPE is the Base Flood Elevation as designated on the effective FIRM plus four (4) feet of freeboard.

- (c) In AO Zones, when the highest adjacent grade is below an elevation of 8 feet NAVD 1988, the RFPE is the designated base flood depth on the effective FIRM above the highest natural adjacent grade, plus 3 feet of freeboard OR an elevation to or above 8 feet NAVD 1988, whichever is greatest. When the highest adjacent grade is at an elevation of 8 feet NAVD or higher, the RFPE is the designated base flood depth on the effective FIRM above the highest natural grade

#### OR [OPTIONS TO DISCUSS WITH COUNCIL]

In AO zones, the RFPE is the designated base flood depth on the effective FIRM above the highest natural adjacent grade OR an elevation to or above 10 feet NAVD 1988, whichever is greatest.

- (d) In Shaded X and X zones, the RFPE is 8 feet NAVD 1988 OR the natural grade elevation if the natural grade is greater than 8 feet NAVD 1988.

This language essentially sets what the RFPE will be in each flood zone, including X zones. During the Planning Board review, the question was posed for the AE zone RFPE, "would it be more simple to do away with the math, and just set a freeboard of four feet, since most of the AE zone Base Flood Elevation is being reduced to four feet?" Staff has included that language in the draft as a discussion point.

- Proposed draft language would set the minimum reference level at 8', so the majority of AE properties would essentially have a four foot freeboard, however, there is a small area at the end of Herbert Perry and Poor Ridge Rd that is AE(5'), the 8' reference level would essentially be creating a 3' freeboard requirement for those properties.
- If Council opts to require a simple four foot freeboard requirement, the majority of properties would not be affected versus the 8' minimum reference level, however, those properties in the AE(5') would have their reference level at 9' (which is still lower than the existing RFPE).

Along that line of thinking, staff provided language for Council discussion on the reference level for AO zones, to attempt to simplify that as well. As can be seen in the attached elevation map, the AO zones in Kitty Hawk range in ground elevation from 8' – 12'.

- The initially proposed language for AO basically sets that if the ground elevation is below 8', then the reference level is the depth from the FIRM (2') plus three feet of freeboard, which would set reference level at 5' above grade. If ground elevation is higher than 8' the reference level is simply the depth from the FIRM (2' above grade), for example if your ground elevation was at 8' NAVD, your reference level would then be 10' NAVD, or two feet above grade.
- The second option sets the reference level as a minimum of 10' NAVD for any areas where grade might be at or below 8' NAVD (for ground elevation of 8', a two foot depth indicated on the FIRM would bring you to 10' NAVD, if the ground elevation was 7', the reference level would then be three feet above grade to meet the 10' NAVD minimum). In areas where the ground elevation was 8.01 or greater, the two foot depth (two feet above grade) indicated on the firm would be used (i.e., ground elevation of 9' NAVD would have a reference level at 11' NAVD)

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**Secondary Structure** means a structure that features habitable conditioned space above the RFPE located on the same parcel as a primary use structure. A secondary structure is not an accessory structure as defined in this section.

This locally added language references structures such as ADU's or conditioned space above a detached garage.

**Shaded X Zone** means areas of moderate flood hazard shown on the FIRM and are the areas between the limits of the base flood and the 0.2% annual chance for flood. Also commonly referred to as the 500-year flood.

As the town is seeking to regulate the Shaded X zone, a definition has been proposed for addition.

“**Substantial Damage**” means damage of any origin sustained by a structure during any **one**-year period whereby the cost of restoring the structure to it's before damaged condition would equal or exceed **50** percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”. *[CRS communities are eligible for up to 20 CRS points for adopting OPTIONAL Text for Substantial Damage that could include one or more of the following higher standards:*

- 1.) By choosing a timeframe that includes cumulative damages sustained over a period of time exceeding a one year period. (5 or 10-year period recommended)
- 2.) By choosing a percent damaged that is less than 50% of the marker value of the structure (CRS recommends 30%)
- 3.) By adding the following text for eligibility for Increased Cost of Compliance (ICC) benefits for repetitive losses: Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. (Strongly Recommended)

Council could choose to add higher standards to what is current considered “substantial damage”. Currently Kitty Hawk enforces the model definition of damage exceeding 50% of the structure value in a one-year period to be considered a substantial damage. If a structure is substantially damaged, when repaired, it must be compliant with the adopted Flood Damage Prevention Ordinance. Council could elect to making the timeframe 5 or 10 years, and/or lowering the damage percentage to reach the SD threshold, as noted above, CRS recommends 30%.

“**Substantial Improvement**” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any **one**-year period for which the cost equals or exceeds **50** percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Article 4 Section E of this ordinance.

[CRS communities are eligible for up to 20 CRS points for adopting OPTIONAL Text for Substantial Damage that could include one or more of the following higher standards:

- 1.) By choosing a timeframe that includes cumulative damages sustained over a period of time exceeding one-year period. (5 or 10-year period recommended)
- 2.) By choosing a percent improved that is less than 50% of the market value of the structure (CRS recommends 30 %.)

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Similar to Substantial Damage, Council could choose to add higher standards to what is current considered "substantial improvement". Currently Kitty Hawk enforces the model definition of improvements exceeding 50% of the structure value in a one-year period to be considered a substantial damage. If a structure is substantially improved, it must be compliant with the adopted Flood Damage Prevention Ordinance. Council could elect to making the timeframe 5 or 10 years, and/or lowering the improvement cost percentage to reach the SI threshold, as noted above, CRS recommends 30%.

**Technical Bulletin and Technical Fact Sheet means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.**

**It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.**

This definition provides reference to the FEMA technical bulletins that are noted throughout the ordinance in different areas.

**Unshaded X Zone means the areas of minimal flood hazard shown on the FIRM which are areas outside of the Special Flood Hazards Areas and higher than the elevation of the 0.2% annual flood chance.**

As with the definition for *Shaded X Zone* as the town is seeking to regulate the unshaded X zone, a definition has been proposed.

#### **Article 4. Administration**

##### **Sec. 14-14 Floodplain Development Application, Permit and Certification Requirements**

###### *(a). Application Requirements*

**(1)(h) The certification of the plot plan by a registered land surveyor or professional engineer.**

This language is listed as an optional requirement for obtaining a floodplain development permit. Floodplain development permits are required for any development activities. For new construction, a site plan is required and is prepared by a surveyor or engineer. The above language would require a surveyor or engineer to prepare a similar type site plan for placement of a shed, or a new deck, etc. If the above language is desired to codify the requirement for new construction but felt to be too stringent for a shed or deck addition or something of that nature, staff could revise the language to reflect that.

**(a)(4)(c)(1)V-Zone Certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs; In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.**

This language is listed as optional on the state model. Currently, prior to issuance of a floodplain development permit for a property located in a V-Zone requires a V-Zone Certificate which is prepared by an engineer to state that the proposed project will be constructed to meet all V-Zone requirements. The optional language would require a second V-Zone Certificate prior to issuance of a CO to certify that the project actually was constructed to meet all requirements. Staff recommends inclusion of this language.

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**(a)(4)(i) In Shaded X and X zones, a survey prepared by a licensed North Carolina surveyor may be used to demonstrate the natural grades of the parcel relative to the RFPE of 8 feet.**

This proposed language would aid in enforcing the local elevation standard, verifying that the elevation is above the LES of 8' in the X or Shaded X zones.

Sec. 14-14(c) *Certification requirements*

(1) Elevation Certificates for AE, AO, AH, VE, Shaded X and X Zones.

**(a) An under-construction Elevation Certificate (FEMA Form 086-0-33) is required prior to completion of the framing inspection by the town. It shall be the duty of the permit holder to submit to the Floodplain Administrator, or their designee, a certification of the under-construction elevation of the reference level in relation to NAVD 1988. The under-construction certificate shall be submitted at the time a framing inspection is scheduled with the Town of Kitty Hawk Building Inspector. The Floodplain Administrator, or designee, shall review the certificate and report any deficiencies to the permit holder immediately and such deficiencies shall be corrected immediately prior to further work being permitted to proceed. Failure to submit the under-construction elevation certificate or failure to make required corrections shall be cause to issue a stop work order for the project.**

This language requires the "under construction" elevation certificate. Requiring an EC at this stage of construction can alert staff and the contractor if any error was made in determining building elevation levels, or other deficiencies at a point in construction that would be easier and cheaper to correct than if not identified until the finished construction EC. This is Kitty Hawk's current practice. There is optional language in the model ordinance that would require a pre-construction elevation certificate which verifies the existing grade and provides proposed elevations. It is staff's opinion that the preconstruction EC could potentially become burdensome for the property owner.

**(c) In Shaded X and X zones, the under-construction elevation is not needed if a current survey of the parcel is submitted that demonstrates the natural grade of the structure footprint is above the RFPE of 8 feet.**

Currently Kitty Hawk requires a finished construction elevation certificate in the X-Zone, but not an under-construction EC. This language would allow Kitty Hawk to continue requiring the finished construction EC but could waive the requirement for an under-construction EC for X or Shaded X construction if a survey verifies that the natural grade is above the 8' elevation requirement.

**(6) A V-Zone Certification with accompanying design plans and specifications is required prior to issuance of a Floodplain Development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this ordinance are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this ordinance. This certification is not a substitute for an Elevation Certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.**

As noted above in a previous subsection, this optional language would require a finished construction V-Zone Certificate and is recommended for inclusion by staff to certify that the proposed engineered construction methods were carried out.

**(7) A signed, completed non-conversion agreement is required prior to the issuance of a Certificate of Compliance/Occupancy. This agreement shall be completed by the property owner of record (if different than the permit holder) and shall be recorded in the Dare County Register of Deeds. A copy of the recorded agreement shall be provided to the Kitty Hawk Building Inspector prior to the issuance of the Certificate of Compliance/Occupancy. This non-conversion agreement shall be required for all new construction and substantial improvements which feature an enclosure area below the RFPE and with walls greater than 4 feet in height that may be converted after occupancy of the structure.**

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**(8) If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below RFPE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.**

As previously referenced, staff recommends including optional language that would require a non-conversion agreement for structures with below RFPE enclosures. Having this document recorded with the deed could help prevent situations in which a person buys a house with a below RFPE enclosure, and unaware of flood elevation requirements, illegally converts it into habitable living space.

#### **Sec. 14-19. Specific Standards**

(d) Elevated buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor in **AE, AO, AH, Shaded X or X zones** or below the lowest horizontal structural member in VE zones:

**(2) Shall not be temperature-controlled or conditioned. Non-temperature-controlled dehumidifiers may be used in enclosed areas and shall not be result in the enclosed area being determined to be conditioned space.**

This language would prevent below base flood elevation enclosures from being temperature controlled, aka conditioned space. Below BFE enclosures are limited in use to parking, storage, and dry entry. Prohibiting that area from being conditioned space may deter a property owner from converting that space into illegal living area.

**(6) Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space (30 CRS points); The Town of Kitty Hawk will have the right to inspect the enclosed area (30 CRS points).**

As noted above, staff recommends including of language requiring a non-conversion agreement to further protect from having illegal below BFE living space. The Town could gain additional CRS points by adding more optional higher standards by stating that the Town has the right to inspect those enclosed areas, and even going beyond that stating the town will conduct annual inspections. Staff recommends against annual inspections, as we simply do not have the resources to dedicate to that. However, it should be noted that in Section 14-15, Duties and responsibilities of the floodplain administrator, subsection (n) states that the "Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action." It appears as though the Town already has the right to inspect, the ordinance could gain an additional 30 CRS points by simply repeating the language in this section.

**(7) Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.**

Should Council opt to require the non-conversion agreement, this optional language should be included to release the owner of the agreement if the areas below BFE are removed.

#### **(e) Additions/Improvements/Conversions**

(1) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and **must not be any more non-conforming than the existing structure.**

The optional portion of this language means that if there is an addition to a pre-FIRM structure that is below BFE, so long as it is not a substantial improvement (less than 50% of the value of the structure), the addition

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cannot be located any lower than the existing structure. This non-conforming language is recommended by staff and is the current practice.

(4) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a **one (1)** year period, the cumulative cost of which equals or exceeds **50** percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the **one (1)** year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. *Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.* (The repetitive loss portion is OPTIONAL but will be required for flood insurance policy holders to be eligible for Increased Cost of Compliance (ICC) benefits for repetitive losses.) If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- a. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
- b. Any alteration of a historic structure provided that the alteration will not preclude structure's continued designation as a historic structure.

Again, Council has the option of changing the standard for a substantial damage with regards to the timeframe and percentage. The optional language expands the definition of Substantial Damage to include repetitive loss properties. This language would require any structure that is damaged twice in a 10-year time period, on average 25% of the structure value, to be brought into compliance with current flood damage prevention requirements. With the language, repetitive loss property owners would be eligible for ICC benefits.

**(5) Areas in existing structures shall not be converted for use as conditioned, temperature-controlled space unless the reference level is located to or above the RFPE.**

The proposed language would further codify that areas within additions that are below RFPE could not be conditioned space.

**In Shaded X and X zones**

**(6) Laterals additions (increase in the footprint of the conditioned, temperature-controlled space) to existing structures shall have the reference level elevated to or above the RFPE that was applicable at the time of construction.**

**(7) Remodeling or renovations of existing structures with the reference level located below the current applicable RFPE that do not increase the footprint of the structure may be authorized at the existing reference level or higher.**

**(8) Reconstruction of damaged portions of a structure may be authorized at the existing reference level or higher. However, if a structure is entirely demolished for whatever reason, the replacement structure shall be constructed to or above the RFPE. Structures that are relocated on the same site or to another site shall be elevated to or above the RFPE.**

**(9) Areas in existing structures shall not be converted for use as conditioned, temperature-controlled space unless the reference level is located to or above the RFPE.**

This language sets standards for additions within an X and Shaded X zone as it relates to the proposed local elevation standards.

(h) *Accessory Structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

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**(8) Exemptions**

(a) Accessory structures 150 square feet or less are exempt from the certification requirements of Section 14-14(c)(1) and the flood opening provisions of Section 14-19(d)(4).

(b) Accessory use structures 151 square feet up to 500 square feet are exempt from the certification requirements of Section 14-14(c)(1).

The optional language above allows for accessory structures 150 sq. ft. or less to be exempt from flood vent and elevation certificate requirements; and accessory structures 151-500 sq. ft. to be exempt from the elevation certificate requirement but must comply with flood vent requirements.

**(9) Other structures located on the same parcel in addition to a principal use structure which feature conditioned, temperature-controlled areas elevated above the regulatory flood protection elevation shall be constructed consistent with Article 5, Section A and Section B.**

The proposed language above refers to ADU's or living space above a detached garage, stating that the living space must meet RFPE requirements.

**Sec. 14-21. Standards for areas of shallow flooding (Zone AO)**

**(a) In AO Zones, when the highest adjacent grade is below an elevation of 8 feet NAVD 1988, the RFPE is the designated base flood depth on the effective FIRM above the highest natural adjacent grade, plus 3 feet of freeboard OR an elevation to or above 8 feet NAVD 1988, whichever is greatest. When the highest adjacent grade is at an elevation of 8 feet NAVD or higher, the RFPE is the designated base flood depth on the effective FIRM above the highest natural grade**

**OR**

**In AO zones, the RFPE is the designated base flood depth on the effective FIRM above the highest natural adjacent grade OR an elevation to or above 10 feet NAVD 1988, whichever is greatest**

This is the same language provided in the definition of RFPE. Whichever option Council opts to use will be added here.

In addition to the optional and locally added language above, there are some sections of the model ordinance that have been removed. The model ordinance provides standards for development in "Floodplains without established base flood elevations", "Riverine floodplains with BFE's but without established floodways or non-encroachment areas", "floodways and non-encroachment areas", and "Coastal A Zones (Zone CAZ)(LiMWA)", the preliminary FIRMs (effective June 19, 2020), do not have any of those areas mapped for Kitty Hawk, so those areas have been omitted from the draft ordinance.

**Planning Board Recommendation**

At its January 16, 2020 meeting, The Planning Board unanimously recommended approval of the draft Flood Damage Prevention Ordinance, and adoption of the revised Flood Insurance Study, Number 37055CV000, effective date, 6/19/2020.

**Consistency w/ Land Use Plan**

The proposed amendment is consistent with numerous goals, policies, and objectives of the adopted Land Use Plan, including the following:

**GOAL #1: Preserve, protect, and enhance the Atlantic Ocean Shoreline and ensure future generations are able to enjoy its beauty and bounty and can continue to use the beach and water for active and passive recreation and leisure activities.**

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**POLICY#1a:** Kitty Hawk will continue to regulate and support the management of oceanfront shoreline development to protect and preserve the natural and recreational resources along the oceanfront and will continue to acquire oceanfront properties as appropriate.

**POLICY #1c:** Kitty Hawk supports applicable State and Federal laws and regulations regarding building, land uses, and development in areas of environmental concern.

OBJECTIVE #1e: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

OBJECTIVE #1f: Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.

**GOAL #6:** Preserve, protect, and enhance the Currituck Sound, Kitty Hawk Bay, and Albemarle Sound shorelines and ensure future generations are able to enjoy their beauty and bounty and can continue to use them for passive and active recreation and leisure activities.

**POLICY #6a:** Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to regulate land use, development, and redevelopment along and adjacent to the Currituck Sound, Kitty Hawk Bay, and Albemarle Sound. The Town supports applicable State and Federal laws and regulations regarding building, land uses, and development in areas of environmental concern.

OBJECTIVE #6a: Adopt and apply development policies that balance protection of natural resources and fragile areas with residential and economic development.

OBJECTIVE #6c: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

OBJECTIVE #6d: Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.

**GOAL #11:** Ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare and is consistent with the capability of the land based on considerations of interactions of natural and manmade features.

**POLICY #11a:** Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to regulate land use, development, redevelopment, and to protect the unique character of the Town and supports applicable State and Federal laws and regulations regarding land uses and development in areas of environmental concern.

**GOAL #12:** Conserve and maintain maritime forests, barrier dunes, beaches, wetlands, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

**POLICY #12a:** Kitty Hawk will continue to adopt, enforce, and amend as necessary ordinances and procedures to regulate land use, development, and redevelopment in and adjacent to natural hazard areas. The Town supports applicable State and Federal laws and regulations regarding land uses and development in areas of environmental concern.

**POLICY #12e:** Kitty Hawk supports State and Federal policies that regulate the location and intensity of development in State designated areas of environmental concern.

**POLICY #12g:** Kitty Hawk will allow development and redevelopment within special flood hazard areas subject to the provisions and requirements of the National Flood Insurance Program, CAMA regulations, and the Town's zoning ordinance.

**POLICY #12i:** Kitty Hawk supports efforts and programs to maintain or improve the Community Rating System (CRS) score to make the Town safer from flood risks and reduce premiums for Federal Flood Insurance.

OBJECTIVE #12a: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

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OBJECTIVE #12b: Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.

OBJECTIVE #12d: Consider developing regulations for responsible development in flood plains and amend as necessary.

OBJECTIVE #15d: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

OBJECTIVE #15e: Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.

**POLICY #17a: Kitty Hawk will continue to adopt, 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.**

OBJECTIVE #21d: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

Following the presentation Mayor Perry asked for a motion and **MPT Garriss moved to set a public hearing at the Town Council meeting of March 2, 2020 to consider the proposed text amendments to replace the existing Chapter 14 Flood Damage Prevention with the proposed updated Chapter 14 Flood Damage Prevention as well as to consider adoption of the Revised Flood Insurance Study Number 37055CV000 effective date 6.19.2020. Councilman Pruitt seconded.**

Councilman Hines noted for the 50% rule either the tax value or a figure by a certified appraiser may be used.

PD Testerman agreed and said the certified appraisal figure is typically higher.

Councilman Pruitt pointed out council could decide not to vote on the ordinance in March after the public hearing and Mayor Perry agreed a decision could be tabled to a later time and date.

Hearing no further comments Mayor Perry called for the vote. **It was unanimous, 5-0.**

## 9. TOWN MANAGER

Manager Stewart reminded everyone the March 2<sup>nd</sup> Town Council meeting will begin at 5 o'clock because of the primary election held the next day in the Smith Room.

Large item pickup is scheduled for February 10<sup>th</sup>.

The Moore Shore Road Living Shoreline project has been nominated for a NC Department of Transportation award and he asked everyone to vote for it. There is more information and a link on the Town's website at [www.townofkittyhawknc.gov](http://www.townofkittyhawknc.gov).

## 10. TOWN ATTORNEY

No comments.

## 11. TOWN COUNCIL

**McClellan:** *If you do not find the Moore Shore Road Mobi Award information on the website The Outer Banks Voice published an article about it. Or telephone someone at the Town Hall to provide you with the information.*

**Pruitt:** *The Skimmunity House and Chicho's Pizza, both in Virginia Beach, partnered and collected Christmas trees for placement on the Outer Banks. The skim boarders and other volunteers used their own trucks and equipment to haul them here and with the help of Better Beaches OBX and Donny King they were placed on the beach a couple of weeks ago. I want to thank all those folks for their hard work and the time they put into this effort.*

Mayor Perry asked about the pile of trees at the Bath House and PW Director Midgett replied the Boy Scouts will put them on the beach soon. There are also some trees at Byrd Street.

**Perry:** *I have a report on the Recreation Committee. I noted on the committee work list a multi-use path to connect The Woods Road at West Kitty Hawk Road to Twiford Street. I suggested they pull that off because the state is going to have a hard time fitting in what they are going to do there because it is so narrow. It is just not possible to put a path. There is a path along Twiford Street to The Woods Road so there is an alternative and it is not that far.*

*One of the committee members said they noticed yellow bricks and white stones around a memorial tree planted for community volunteer and former Town resident Alice Faircloth. No one seems to know who did it. More than likely it was a family member. I did some checking and made the command decision to leave it alone.*

*The last thing is flashing speed display signs. It started out with putting one on each end of Moore Shore Road and then it morphed into something for NC 12. I learned the state has done all they are going to do as far as any signage at Moore Shore Road and for pedestrian traffic on NC 12. Anything that would be done would have the Town paying and asking the state permission. It might be possible to get their permission but two of those signs, solar powered, would run about \$6,000. That can get to be expensive. At the next committee meeting I will bring it up again, and having learned more, I can better address the issue.*

**McClellan:** *I have had conversations about additional signs because of speeding trucks loaded with rock.*

Mayor Perry asked the manager to look into that and report back to council.

## 12. PUBLIC COMMENT

### 1. Jay Overton, Albemarle and Associations:

*I know Duke talked to you earlier about the new flood maps. I chair the legislative committee and we have been working with engineers, builders and surveyors for the past 2 or 3 years trying to look at how we are going to implement this. We all started off not wanting to use these maps. Then I think we all thought let's take advantage of the insurance savings that we will get but we also want to be make sure we are constructing for public safety which is paramount in what we do.*

*The other thing we were looking at is Kitty Hawk, as well as all the other municipalities, have their own way of doing things and then we must deal with the state building code which has some inconsistencies at times. The FEMA maps are federal and is affecting our whole community. Engineers, surveyors, builders, homeowners, insurance people, mortgage bankers and others want to try to bring a consistency in writing up ordinances this time. It was a major focus we had. We just got the final determination letter in December so now we must get it all together and get it approved before June. In setting your public hearing we need to get the public's comments.*

*Rob has told you some things tonight. We looked at changing from where we are measuring from the finished floor to the lowest structural member. Right now, if you are at an 8-foot elevation you are at the finished floor but with this new way of measuring we are going to be at the bottom. So automatically you are at 9 feet. If we are not careful, we could inadvertently add 2 or 3 feet of freeboard to somebody's house that we may not have to.*

*We are trying to go through right now and get the ordinances. We have about half of them. I have a diagram where I am looking at the old ordinance and asking what that means and then I am looking at the new ordinance and asking what that means. Trying to understand what we are doing to help our residents, make sure they are protected and at the same time not have a hardship.*

*I say all this to say it would be greatly appreciated if we could hear some more from the public as to how they are seeing this. I hope we get a bunch of people that have comments and then have the time to digest it. Take another 30 days to go through and consider exactly how we are going to adopt this and how we are going to be able to implement it because we are going to be living with this for at least another 10 years. Again, I just wanted to ask your consideration for that as we go through this process.*

*Rob knows I am here to help in any way I can, and I will extend that to all of you. If there is anything I can do to try to help you understand from the implementation side of it in the private sector please give me a call. Thank you very much.*

Council thanked Mr. Overton.

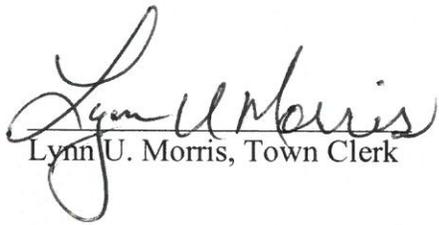
There were no other speakers.

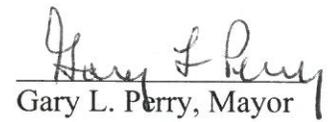
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**13. ADJOURN**

**Mayor Perry moved to adjourn. It was seconded by Councilman Hines and the vote was unanimous, 5-0. Time was 7:12 p.m.**

These minutes were approved at the March 2, 2020 council meeting.

  
Lynn U. Morris, Town Clerk

  
Gary L. Perry, Mayor