

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, March 2, 2020**  
**Kitty Hawk Town Hall, 5 PM**

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Introduction and Presentations:
  - Introduction: Police Officer I William J. Cruden
  - Police Officer III Brent Vucinovic/20 Years of Service Award
  - Dare County Complete Count Committee Report for the 2020 Census/Dare Co. Public Information Officer Dorothy Hester
5. Public Comment
6. Consent Agenda
  - a.) Approval of February 3, 2020 Council Minutes
  - b.) FY 19-20 Budget Amendment # 7
  - c.) Resolution in Support of Alligator River Bridge Improvements
  - d.) Approval of FY 20-21 Dare County Government Education Access Channels Committee Budget
  - e.) Request for Qualifications for Professional Services/Coastal Engineering and Design Services *(Moved to #7 a. during the meeting)*
7. Items Removed from the Consent Agenda
8. Public Hearing:
  - a.) Chapter 14, Flood Damage Prevention Ordinance - The Town must adopt the new model flood damage prevention ordinance, as well as the new Flood Insurance Study and maps, by June 19, 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, Town Attorney Casey Varnell, Planning Director Rob Testerman, Finance Director Liliana Noble, Management Assistant Melody Clopton, Police Chief Joel Johnson and Public Works Director Willie Midgett

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**1. CALL TO ORDER**

Mayor Perry called this meeting to order at 5 p.m. and announced this meeting is starting early because tomorrow is election day. He welcomed and encouraged everyone to get out and vote.

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

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

**3. APPROVAL OF AGENDA**

Mayor Perry said he would like to move item 6 (e) from the consent agenda for discussion. It has to do with the qualifications for professional services for coastal engineering and design services. He asked for a motion to approve the amended agenda and Councilwoman McClean said, “so move.” It was seconded by MPT Garriss and the vote was unanimous, 5-0.

**4. INTRODUCTION AND PRESENTATIONS:**

- **Introduction: Police Officer I William J. Cruden.** Police Chief Johnson introduced newly hired Police Officer I Cruden.
- **Police Officer III Brent Vucinovic/20 Years of Service Award.** Police Chief Johnson presented PO III Vucinovic with his 20 years of service plaque.
- **Dare County Complete Count Committee Report for the 2020 Census/Dare Co. Public Information Officer Dorothy Hester.**

*Hester: I am co-chair of this committee along with county Planning Director Donna Creef. Kitty Hawk’s representative is MPT Garriss. The committee has a plan that is executing a “spread the word” about the 2020 Census. The importance to have everyone complete the information once they receive their invitation in the next couple of weeks.*

*There are many impacts for political representation. It is constitutionally mandated for reapportionment of congress and North Carolina is expected to gain a seat with this census. The results are also used for redistricting at all levels of government. The economic impact is significant. \$675 billion is distributed throughout the country based on the numbers. The data affects so many of the services in our community including social services and emergency response.*

*This is the first time people can respond online. In the past it had to be mailed in or you had to use a telephone. They are not mailed to post office boxes and there are many of those here. Those will be hand delivered to the addresses.*

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*There is an ID number on the invitation, and it is used to identify an address when completing it. It should take less than 15 minutes to complete the 9 questions and a few more for other individuals in the home. A full social security number will never be asked for or money or a donation. They will never ask for pin codes, pass codes or credit card numbers.*

*It takes all of us to encourage others to participate. Kitty Hawk staff is going to help with delivering posters to businesses in Town.*

**Perry:** *We know it is important and there are job opportunities. People can do it in kind of a flex method.*

**Hester:** *It pays \$17 an hour in Dare County plus travel.*

**Perry:** *We appreciate your bringing this about and hopefully people will respond.*

**5. PUBLIC COMMENT**

No one came forward to comment.

**6. CONSENT AGENDA**

**a.) Approval of February 3, 2020 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*

**b.) FY 19-20 Budget Amendment # 7.** This amendment, in the amount of \$19,972.00, is to recognize and appropriate the FEMA Category G reimbursement accrued in FY 2018-19 for Hurricane Florence damages. It is from fund balance to the sand fence account. *(An approval of the consent agenda will approve this amendment.)*

**c.) Resolution in Support of Alligator River Bridge Improvements.** This resolution requests a new or replacement bridge for the Alligator River be included in the 2023-2032 State Transportation Improvement Plan in recognition of the vital role this bridge plays in the transportation and commerce needs of Dare County and Eastern North Carolina. It also requests other funding sources for such improvements to be identified by the State of North Carolina if STIP methodology used for funding is not suitable and practicable for this project. *(An approval of the consent agenda will approve this resolution.)*

**d.) Approval of FY 20-21 Dare County Government Education Access Channels Committee Budget.** The proposed budget is in the amount of \$306,583.25 and requires no additional Town funding other than the current \$1,000 annual membership fee. *(An approval of the consent agenda will approve this budget.)*

**e.) Request for Qualifications for Professional Services/Coastal Engineering and Design Services.** (Removed to #7a)

**MPT Garriss moved to approve the consent agenda removing item 6 (e) for discussion. Councilman Hines seconded and it passed unanimously, 5-0.**

## 7. ITEMS REMOVED FROM THE CONSENT AGENDA

**a.) Request for Qualifications for Professional Services/Coastal Engineering and Design Services.** The Towns of Duck, Southern Shores, Kitty Hawk and Kill Devil Hills are requesting qualifications from a qualified coastal engineering/environmental firm(s) or team(s) for the provision of professional engineering consulting services for future beach nourishment and related shoreline management efforts. Each Town reserves the right to reject any and all submissions, negotiate with the best qualified firm regarding fees and/or scope of services, or postpone the decision for an indefinite period of time. Although participating in the RFQ process as a group, each Town will enter into an independent contract with the selected consultant(s). Additionally, each Town reserves the right to negotiate with a different consultant or contract for partial or a different scope of work than outlined in this request.

**Perry:** *I realize that the Towns of Duck, Southern Shores, Kitty Hawk and Kill Devil Hills are trying to do this so we can be in line to get FEMA reimbursements by having a properly designated and contracted professional company. The problem I have with what is in front of us is it does not reflect the Town of Kitty Hawk. In particular it does not reflect the fact that Kitty Hawk has a different approach for why we wanted to get beach nourishment. We had 3 different missions and none of those are stated here. We need to protect our infrastructure and we need protection to allow our first responders, police and fire, to be able to get to places and beach nourishment would help us do that. The last thing was our tax base.*

*So, I ask Andy to go back and give us something different and be more specific to the Town of Kitty Hawk. Include what we do because whichever firm we deal with they will be basing on what they see in front of them and if we do not put in the reason that Kitty Hawk did it then we kind of lose. That does not seem right to me.*

**With that in mind I make a motion to direct the manager to go back and redraft this, be more specific, put information in it that we can live with. Bring it back to us in March. Councilwoman McClean seconded and the vote was unanimous, 5-0.**

## 8. PUBLIC HEARING:

**a.) Chapter 14, Flood Damage Prevention Ordinance - The Town must adopt the new model flood damage prevention ordinance, as well as the new Flood Insurance Study and maps, by June 19, 2020.**

**MPT Garriss made a motion to go into public hearing. Councilwoman McClean seconded and it passed unanimously, 5-0.**

**Perry:** *The legislature some time back passed the word that when we go into a public hearing, we listen to all the people that want to speak, and we ask questions during the hearing. Once we go*

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*back into our regular session we discuss it among ourselves and take whatever action. We are not open to asking further questions of the audience so to speak.*

(Clerk's Note: For the first staff report on this subject please see the February 3, 2020 council minutes. Also, please view the February 3, 2020 and March 2, 2020 council meeting videos at [www.kittyhawknc.gov](http://www.kittyhawknc.gov) for more information.)

Planner Testerman reviewed the following memo with council.

Recently, two questions were posed to me regarding aspects of the proposed ordinance. First, as "attendant utilities" are referenced throughout the ordinance, but no definition exists, it was asked if the ordinance could provide a definition in order to eliminate confusion as to what "attendant utilities" may refer to.

Secondly, if the Town adopts the non-conversion agreement language that gives the town the right to inspect enclosures, it was asked, out of respect for property owners if language could be added that would require the town to give advanced notice for an inspection.

In the attached ordinance excerpts, language that could potentially solve these concerns has been added, and is depicted in red. In addition to, or instead of, ordinance language, a template non-conversion could be provided which includes language that would require notice be given prior to an inspection. A copy of a template agreement is also attached.

**NOTE: If the included changes are desired, please reference them in the motion to approve. The following revised motion can be used:**

**"I move to adopt the proposed text amendments to replace the existing Chapter 14, Flood Damage Prevention Ordinance with the proposed revised Chapter 14, with changes to include the draft "attendant utility" definition and notice requirement for inspections. This ordinance is effective upon adoption. Additionally, I move to adopt the Flood Insurance Study Number 37055CV000, and associated Flood Insurance Rate Maps, effective date June 19, 2020."**

**Language added in ordinance from this memo:**

***Attendant utility means any utility that accompany a residential or non-residential structure, including, but not limited to ductwork, electrical, mechanical, plumbing, and heating & cooling.***

14-19(d)6: (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. The Town of Kitty Hawk will have the right to inspect the enclosed area. **The floodplain administrator will provide at least 72-hour notice of such visit.**

**Language from Mr. Jay Overton's comments:**

Sec. 14-19(d)4(b)

The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding **or a minimum of one engineered square inch for each square foot of enclosed area for an engineered opening.**

Sec. 14-19(e)10

**The substantial damage/substantial improvement definitions as established in Article II, Definitions, shall not apply to Shaded X and X zones.**

**Testerman:** *This is a text amendment to replace our Chapter 14 Flood Damage Prevention Ordinance with a new updated version of it along with the adoption of the flood insurance study*

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*and the new flood insurance FEMA maps. There are small changes throughout the ordinance that will not impact anything much and there are a lot of changes from the state model that are required changes and we do not have any say whether we implement them.*

*The municipal planners, county planner and I have been meeting for a couple of years and discussing the maps. We came up with what we are calling a local elevation standard. This is going to allow us to put a higher standard on the AE zones. We are also proposing to regulate some of the X zone properties and the shaded X. This is not done currently anywhere that I am aware of. We have seen those properties flood in the past 5 years since I have been here. We thought it would be irresponsible to say anyone in X zones does not have any minimum flood requirements.*

*The state puts out a model ordinance at the time of updates and it gives you the bare minimum of what you must do. It also includes some optional language you can put in for higher standards and in some cases, we get more points from CRS (Community Rating System). The version that you have in your packets includes the optional language staff is recommending.*

*We used to use the top of the bottom floor as the reference level. It must be at or above the base flood elevation plus your freeboard requirement. The way we are proposing this ordinance is that structures within the AE, AO, AH, shaded X and X zones the reference level is at the bottom of the lowest floor or the bottom of the lowest utility, whichever is lower. This will be the bottom of the floor joists. Anything below that by law can only be used for parking, storage or dry access. It must be constructed of flood damage resistant materials. For structures within the VE zone the reference level is the bottom of the lowest horizontal structural member. That is mandated, not optional.*

*I mentioned we currently use the top of the lowest floor. Using the bottom of the lowest floor essentially raises the top of the floor by one foot. This mandates that floor joists and the subfloor and duct work will be above the regulatory flood protection elevation as well. Using the bottom of the lowest floor as a reference level also gives an additional foot of freeboard when they are calculating our CRS points.*

*We have added in a requirement for a post-construction V zone certificate. Currently it states construction will be done to meet the requirements. If we adopt this it would require them to also do a post construction certificate saying everything was constructed as stated.*

*The non-conversion agreement is a document that states the owner will not convert or alter what has been approved and constructed if it is a below base flood elevation enclosure. It is only permitted to be parking, storage or dry access. This document will be filed with the register of deeds so presumably the next purchaser would see it and realize they cannot convert it to living space. We can get 30 CRS points for requiring this agreement and an additional 30 points for saying the Town has the right to inspect any enclosures to make sure they have not been converted.*

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*I have provided a revised memo to put in the agreement that the Administrator will provide a 48-hour notice prior to any inspection. The time frame can be changed.*

**Garriss:** *I think it is important to know that if we adopt this tonight, we can always address any issues in the future.*

**Testerman:** *There is nothing preventing us from revising this at any time. We just have to send revisions to the state to make sure it meets their minimum requirements before we adopt anything.*

**Perry:** *With the 2006 ordinance we did have to go back and readjust some wording. As a council we have a good understanding of what is before us and that is the difference between '06 and today.*

**McClellan:** *The CRS credits that get us a better community rating on our flood insurance. How do the points relate to the rate?*

**Testerman:** *The CRS is a voluntary program that encourages implementing higher standards than the minimum NFIP requirements. Right now, Kitty Hawk has a Class 6 rating which means every resident that has a flood insurance policy gets a 15% discount on their premiums. Every 5 years, the Town is reviewed. The bulk of our points are from the ordinance and other points are from our different daily activities such as record keeping and informational brochures. Every 500 points you can move up a class. Even if an additional 30 points might not be enough to push us into a better class it may help us stay where we are.*

**Perry:** *We actually qualify for a 20% discount and have for a long time but because the state building code is not up to an International Code that reduces us.*

**Testerman:** *Adding to that having the additional freeboard will help with the CRS and also helps the individual property owners. If your first floor is 4 feet above freeboard your premiums are going to be looking a lot better.*

**Perry:** *Every member of this council has seen 7 feet in Kitty Hawk Landing more than once. We know 4 feet is bogus. The map is wrong but, in a way, it is turning turtle and going to benefit people if we adopt this as proposed. Any speakers?*

**1.) Jay Overton, Albemarle & Associates:** *Good evening. Tonight, I am representing the Outer Banks Homebuilders Association and we have probably half a dozen members here tonight. We want to thank Rob and the other planners for the work they have put into this over the last couple of years. This is something we are going to be dealing with for the next 10 or so years and I think we all feel much more comfortable with what is going on now than we did 2 or 3 years ago when we first got the maps.*

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*One of the two items I sent to Rob earlier, the Town Attorney will be familiar with the substantial improvement. That language is in some of the other ones and it just kind of restates so when all of us are no longer involved in this 5, 6, or 10 years from now it will be very clear what we meant.*

*The second item had to do with engineered openings. Right now, on the elevation certificate, it requires you to have one square inch of vent for every square foot of floor area that is subject to flooding. That is a very, very conservative approach. There is a technical bulletin that FEMA puts out where it gives the opportunity to evaluate the site-specific building. The whole purpose between the one inch per square foot is looking at the hydro static pressure. What you have on your walls and how your walls are going to react, keeping them from collapsing and losing your structure. When you go through this calculation it gives you some alternatives. Most of the time you end up and find that you have less required vents. Now vents are cheap. Most of the time everybody just puts in the one inch per square foot and they move ahead but there are occasions in which it is beneficial to the property owner to be able to use the engineered opening. It is something that is on the elevation certificate and something that is standard practice. It just was not in the ordinance and that same language has been added into the other ordinances within the county. We are not asking for something different than what we are already doing just putting it in there.*

*One of another two things I have is we need to have further consideration on the building height. Now that we have changed where we are measuring our base flood and how we are moving that reference level up I am not quite sure how that is going to affect where we are measuring our building height. I apologize to Rob for not bringing this up earlier, but I was just reminded of it a few minutes ago. I do not recall exactly how we are doing it in Kitty Hawk so you will have to forgive me on that.*

**Testerman:** *Right now, we allow 35 feet from the average original grade. When a site plan comes in the surveyor will give us an existing elevation and shots of the 4 corners of the house. We will take the average of that. We have 35 feet to the peak of the roof from there. But changing the reference level from top of the bottom floor to the bottom of the bottom floor could shave a foot off the actual building height itself. That is something, that if we need to, we can look at in the zoning ordinance. That is where it is dictated.*

**Overton:** *Right. As we change one thing it is hard to keep up with all the other things that may fall in behind it and we are changing it by a foot. Top of the floor joist to the bottom. So that at least is going to probably have a one-foot effect on many of these structures that fall under this new ordinance.*

*And then the last thing. I know adopting this tonight and changing it later if needed was talked about. Most people have been assuming the June 19<sup>th</sup> date would be the date because that is the date of the maps. I applaud Kitty Hawk for First in Flight and first to get to the flood prevention ordinance. If you decide to move forward with this tonight maybe make it effective a little later. There may be some individuals out there that were planning to do something and adopting this tonight might not be in their best interest. I am not accustomed to local governments acting quickly.*

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*If you have any questions of me, I will be glad to try and answer them.*

**Perry:** *David?*

**Hines:** *I have always found the average 4 corner elevations to be difficult and challenging. If we are going to lose further, it definitely needs to be looked at in detail.*

**Perry:** *Before I ask for any other speakers there is something everyone needs to understand. Our Bath House was built in '04 and they changed the rules in '06. We need to desperately fix the Bath House, it is rotted out, needs to be repaired. Interesting enough when they changed the rule in '06 they required it to be 2 feet higher than it is currently. So, if we adopt this rule, we can flood proof what we have without changing the footprint. If we tried to raise it 2 feet, we cannot fit it because of the parking and all the things that go with it. In order for our visitors to have a place to use and our ocean rescue to have a place to headquarter out of we need this new ordinance.*

**Overton:** *I understand.*

**Perry:** *We are moving ahead because we think we have a good product in front of us that we must adopt anyway. We know that if we have problems, we can come back and do something about it. In the interim we have a pressing problem. I do not know how council is going to vote tonight but I suspect we will move ahead because we need to. Does that make sense?*

**Overton:** *It makes sense. I do not know who may be out there and was anticipating the June 19<sup>th</sup> adoption date. Nobody has made me aware. It is just something I have been thinking about. If we adopted it with a date that was not tonight but maybe if it was 2 weeks from now it may help someone. I know the Town needs to get going on the Bath House. I am familiar with that and I am trying to thread the needle with thoughts on that as well.*

**Perry:** *Also, when we called for the hearing, we went the extra mile. We did not just do a rote call and let it go. We let it be known that we were looking seriously at what we were doing tonight. Everyone has had a whole month and you have obviously looked at it. We appreciate it.*

**Garriss:** *Rob, do you feel the 48-hour advance notice is appropriate?*

**Testerman:** *That is what was given in the sample from CRS when I inquired. It seems reasonable enough to me but if you think it should be further out, I do not have a problem with it.*

**Perry:** *You did not say what you are referring to.*

**Testerman:** *The non-conversion inspection. I guess in a typical place where most of the homes are resided in by the homeowners it might be reasonable but many out of state homeowners might need more notice.*

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**Garriss:** *David do you think 48 hours is enough?*

**Hines:** *I personally do not think it is.*

**McClellan:** *Somebody gets it in the mail, and they have a 13-hour drive ...*

**Perry:** *When we get into discussion, we can change that. That is an option. Right now, we are blessed with a council that is really in tune with property rights and we try very hard to recognize that. We are blessed even more with a staff that is in tune and is sensitive to property rights and really goes above and beyond trying to get it right and be courteous and professional to whomever they are dealing with. That has not always been the case in this Town, and it may not be the case in the future with a council pushing staff to do something or even a staff that is overzealous. I have seen that in the workplace. I have been where somebody just took the words as they are written literally and say I have the right to be here and I am here. We are trying to prevent that. If you want to increase the time limit that is fine. We are trying to say to a property owner we are not going to come over without announcement and in an overzealous fashion.*

Seeing no further speakers and hearing no further questions or comments, **MPT Garriss made a motion to leave public hearing and go back into regular session. It was seconded by Councilwoman McClellan and passed unanimously 5-0.**

**Perry:** *What do we want to do with this?*

**Hines:** *There is a lot going on here and I agree with Mr. Overton. I feel like a little more time should be given. I realize it can be changed. The average 4 corners is very concerning to me even before the flood maps came out and more now.*

**Perry:** *How would you change it?*

**Hines:** *I have ideas of how we can change it and I think the people in the Homebuilders can get involved and chime in.*

**Perry:** *Are you recommending not passing it and looking at it further?*

**Hines:** *I want to make sure we can come back to it.*

**Testerman:** *That is not going to be addressed in the flood damage prevention ordinance. I would be happy to look at it, but it will have to go to the planning board. It would be in April and then June before it comes back to council.*

**Hines:** *I just feel like we are inadvertently encouraging someone to build in a hole on certain lots.*

**Garriss:** *I think we need to address this tonight.*

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**McClellan:** *I think we need to address the flood ordinance tonight. The building height and how the original grade is determined is part of zoning and can be done later. I think 48 hours is too short of a notice considering the number of homeowners who do not live in their homes.*

**Testerman:** *I will add if you adopt this the inspection that would be occurring would just be that the enclosure is still being used as parking, storage or dry access. Presumably somebody would know if they converted it or not.*

**Perry:** *Do I hear a motion?*

**MPT Garriss made a motion to adopt the proposed text amendments to replace the existing Chapter 14 Flood Damage Prevention Ordinance with the proposed revised Chapter 14 with changes to include the draft attendant utility definition and a 72-hour notice requirement for inspections. This ordinance is effective upon adoption. Additionally, I move to adopt the Flood Insurance Study No. 37055CV000 in associated flood insurance rate maps effective date June 19, 2020. Also added to the motion in the conversation below: “or a minimum of one engineered square inch for each square foot of enclosed area for an engineered opening” and “the substantial damage/substantial improvement definitions as established in Article II, Definitions, shall not apply to Shaded X and X zones”. (Ordinance No. 20-01)**

**Perry:** *Did you want to add engineered openings to the motion?*

**Garriss:** *Amend the motion to add “or a minimum of one engineered square inch for each square foot of enclosed area for an engineered opening”.*

**Testerman:** *Do you want to add the shaded X and X zone language that Mr. Overton suggested?*

**Varnell:** *It is just for clarity.*

**Garriss:** *Amend and add “the substantial damage/substantial improvement definitions as established in Article II, Definitions, shall not apply to Shaded X and X zones”.*

**Councilman Pruitt seconded the amended motion and it passed unanimously, 5-0.**

## **9. TOWN MANAGER**

**Stewart:** *The Town received a \$90,000 grant to clean some of our ditches and canals as a result of Hurricane Florence. We are working with Dare County Soil and Water. Several years ago, we received a grant of \$210,000 for the same thing. We are looking to get more of the debris out of our canals and ditches to help with the flooding situation.*

**Perry:** *For public consumption. Cleaning the ditches does not include underwater debris. The last time people were asking that question.*

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**Stewart:** *No dredging.*

**Perry:** *No dredging and no dragging.*

**10. TOWN ATTORNEY**

There were no comments from Attorney Varnell.

**11. TOWN COUNCIL**

**McClellan:** *Very happy that spring is arriving.*

**Garriss:** *Thank you to staff for all the hard work and thank you to Ms. Hester. She gave a fine presentation. I am on the Complete Count Committee for the 2020 census and it is very important to be counted. When you get that invitation in the mail do as she said if you do not want somebody knocking on your door. Do not throw it away or forget about it. Fill it out. Thank you.*

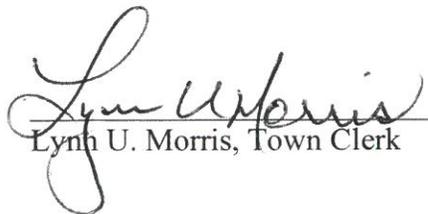
**12. PUBLIC COMMENT**

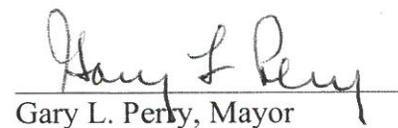
There were no public comments.

**13. ADJOURN**

**Mayor Perry made a motion to adjourn. It was seconded by Councilman Pruitt and passed unanimously, 5-0. Time was 6:07 p.m.**

These minutes were approved at the April 6, 2020 council meeting.

  
Lynn U. Morris, Town Clerk

  
Gary L. Perry, Mayor