

**MINUTES**  
**KITTY HAWK TOWN COUNCIL**  
**Monday, April 9, 2018**  
**Kitty Hawk Town Hall, 6 PM**

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Public Comment
5. Consent Agenda
  - a.) Approval of March 5, 2018 Council Minutes
  - b.) Quarterly Financial Statements as of March 31, 2018
  - c.) April 2018 Child Abuse Prevention Month Proclamation
  - d.) One Year Post-Construction Beach Profile Monitoring
  - e.) FY 2017-18 Budget Amendment #10
6. Items Removed from Consent Agenda
7. Planning
  - a.) Beach Bulldozing Waiver Request
  - b.) Schedule Public Hearing for a Conditional Use Permit: 5113 & 5117 Putter Lane. Requested CUP and site plan would be for development of a 7,131 sq. ft. licensed physician office. It is suggested the hearing be held on May 7, 2018.
  - c.) Schedule Public Hearing for a Conditional Use Permit: 4622 N. Virginia Dare Trail. Requested CUP would allow craft production and retail sales in an existing commercial building. It is suggested the hearing be held on May 7, 2018.
8. Unfinished Business
  - a.) Text Amendment: 42-504(i). Staff is proposing a text amendment that would allow pool equipment to encroach into the side and rear yard setback.
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. Recess to Monday, April 23, 2018, 9 AM, Kitty Hawk Town Hall—Budget Workshop

**COUNCILMEMBERS PRESENT:**

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

**STAFF MEMBERS PRESENT:**

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Police Chief Joel Johnson, Fire Chief Mike Talley, Public Works Director Willie Midgett and Code Enforcement/CAMA Officer Ben Alexander

**Kitty Hawk Town Council Minutes: April 9, 2018**  
**Page 2**

**1. CALL TO ORDER**

Mayor Perry called this meeting to order at 6 PM.

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

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

**3. APPROVAL OF AGENDA**

**Councilman Bateman made a motion, seconded by Councilwoman McClean, to approve the agenda. It passed unanimously, 5-0.**

**4. PUBLIC COMMENT**

**1. Spencer Oliver, 4932 Lunar Dr., Kitty Hawk, NC:** *Thank you very much Mr. Mayor and members of the council. I will try not to repeat what I said before. I am sure you are aware of my concern about this rezoning of the lots on Putter Lane. I have continued to look into the matter for reasons that I think need to be examined. Just to remember that in December there was a planning meeting where they recommended to Town Council that they rezone these two lots in some kind of a land swap without notifying the neighbors, asking for their comment, or asking for opinion. Then they went to the meeting in January and again did not notify the neighbors or the adjacent property owners or ask for their opinion or for their consent or for their comments. Then in February they come forward, and I was here in February, and I was told that they decided not to abide by the future Land Use Map. They said because they found the request advances the public health, safety and general welfare of Kitty Hawk residents. I fail to see how that happens. But of course the Land Use Map does not say that. It says that you have to be consistent was the Kitty Hawk Land Use Plan "and otherwise advances" not "or otherwise advances." It is one sentence. It is not "or" it is "and" but you ignore that and you went right ahead anyway.*

*I think that probably the worst thing that is going to happen here is that you are going to create a traffic monstrosity right there on that road. If you come around the curve when you get to 50 m.p.h. and there are two cuts there now and now you want to put another one there. I could not figure out how in the heck anybody ever approved those cuts. So, I went to the North Carolina DOT and I read all the rules and it says that if there is going to be a certain amount of traffic there is a threshold that you meet and you have to do a traffic impact survey. Now they did not do a traffic impact survey and it also says that to get one of these permits it takes at least four weeks and maybe several months. But this particular permit took less than one day. The application was in the morning and it was issued in the afternoon and there was no survey whatsoever. Nothing.*

*I drove up there today and you try to get out even now at this time of year. You try to get out of either one of those cuts with the traffic coming from three rows. When those lights release and a whole bunch of traffic is coming from the direction of the bridge and then when the light changes*

**Kitty Hawk Town Council Minutes: April 9, 2018**

**Page 3**

*and the traffic comes from Duck Road and then the light changes again and the traffic comes from the beach road. It is coming up into that intersection and if people try to get into these cuts, if they are coming from the south they cannot turn left there. I mean they can try but it is awfully dangerous and awfully difficult.*

*Then you try to get out into a right turn lane and when you are here in the summertime you know what the traffic is like out there. The mayor knows. He wanted to get extra help from the Tourism Board because of the congestion. Well this is going to multiply that congestion. So, I do not see how doing this has anything to do with promoting the safety and general welfare of Kitty Hawk. So now you have another application where you are going to go forward to the next meeting in May, but I would just urge you get a traffic impact survey in the interest of the people of the Town. Interest of the Town. This is dangerous. This is not safety. This is dangerous so at least do that. I think probably if you are going to put another cut there and connect those lots you probably go over the threshold that requires you to do a traffic impact survey. So, I think you should at least do that if you are going to go ahead and do this anyway regardless of the fact of ignoring the Town Land Use Plan and all these other things and whatever the neighbors say and whatever damage is done.*

*And you have the survey which they presented to the planning board that they interpreted as saying this is going to bring you more medical care which is what we need. Well that is not what the survey said. The survey did not say that you had a need for medical care. In fact, 83% of the citizens of Dare County are very happy with their medical care. What they need is more doctors and more specialists. It has nothing to do with having more land zoned medical. These are the facts.*

*You have these public servants you have a public trust. So, you need to think about the citizens not just me or other neighbors who got hurt.*

*Some guy, this engineer, also presented some kind of a survey that somebody had done somewhere saying that if you live next to a hospital it enhances the value of your property. Well I can tell you that is not true. There are four houses for sale right in the blocks now. One of the ladies who testified before, the first time that you did the zoning for what is there now, has already moved. The fellow who is selling like the house across the street has his house for sale and he is very worried that he is not going to be able to get what his investment is. The tenant in my house, I rent the house there, he has already given notice and moved out and withdrawn his offer to buy the house. So, damage has been done. Nobody seems to care.*

*They do not care about the Land Use Plan, they do not care about the rules, they do not care about safety, they do not care about anything except just rolling this on down the railroad. The railroad is going right down the track. And I think it is bad government. I think it is wrong.*

*I think it will be a terrible disaster for the traffic pattern up there at that intersection. It is going to be once they build that thing. When you see what happens there in the summertime. Somebody*

**Kitty Hawk Town Council Minutes: April 9, 2018**  
**Page 4**

*is going to say who in the heck approved that. And if some car load of kids, some family going down camping in the Outer Banks, comes around that curve and you have a bad accident, and somebody gets killed, some very smart attorney from New York or Philadelphia or wherever is going to come and say how did this happen. Well it happened because of what is happening here. I ask that you reconsider it in the interest of the people of Kitty Hawk and the safety of the people who drive through this Town. Thank you.*

Mayor and Council thanked Mr. Oliver. There were no other speakers.

## **5. CONSENT AGENDA**

- a.) **Approval of March 5, 2018 Council Minutes.** *(An approval of the consent agenda will approve these minutes.)*
- b.) **Quarterly Financial Statements as of March 31, 2018.** These reports include revenues, expenditures and Beach Nourishment Capital Project Fund revenues and expenditures. *(An approval of the consent agenda will acknowledge these statements.)*
- c.) **April 2018 Child Abuse Prevention Month Proclamation.** This proclamation calls upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to increase their participation in our efforts to support families thereby preventing child abuse and strengthening the communities in which we live. *(An approval of the consent agenda will approve this proclamation.)*
- d.) **One Year Post-Construction Beach Profile Monitoring.** To be eligible for Disaster Assistance through FEMA the Town must annually survey the beach to document conditions of the project prior to the impact of a storm. This contract with APTIM Coastal Planning and Engineering in the amount of \$41,058 will provide this service. *(An approval of the consent agenda will approve this contract.)*
- e.) **FY 2017-18 Budget Amendment #10.** This amendment will recognize the grant received from Dare County GEAC Committee for improvements to the audiovisual equipment in the Smith Room. *(An approval of the consent agenda will adopt this amendment.)*

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

## **6. ITEMS REMOVED FROM CONSENT AGENDA**

There were no items removed from the consent agenda

## **7. PLANNING**

**a.) Beach Bulldozing Waiver Request. Hilton Garden Inn is requesting a waiver from Section 6-26(a) which prohibits bulldozing sand, pushing sand by mechanical means or other mechanical change to the topography of the beach. A waiver may be granted by Town Council if deemed appropriate per Section 6-26(a)3.**

**Kitty Hawk Town Council Minutes: April 9, 2018**  
**Page 5**

**Varnell:** *Rob asked me to fill in while he is at training. I do not have any issues. I reviewed the ordinance and gave my opinion on what will be required from the applicant if he wants to move forward.*

**Perry:** *I have some questions for Ben. We cannot have anything pushed from the east?*

**Alexander:** *No sir.*

**Perry:** *It must come from the west but how is it going to be put on the beach and moved on the beach.*

**Alexander:** *In discussions with Frank Jennings from CAMA if the waiver is granted the proposal is to bring comparable sand in from a sand pit and dump it onto the beach. In the area between the Hilton and Mr. Raper's house to the south, in that big open area, they will put down mats to back a dump truck up to the dune and dump the sand. Then they want to use a bulldozer to take and spread the sand and make the contour of the dune have a little bit less slope than it is right now. I have checked that the moratorium is against beach pushing. A bulldozer can be used to spread the sand as long as it does not push sand up and they watch out for piping plovers and sea turtles this time of year which the moratorium covers. Also, part of their proposal is they remove all the damaged sand fencing that is there and replace it when they have finished putting the sand on the beach.*

**Perry:** *They are not supposed to have equipment, lumber or stuff like that whenever sand is put on the beach, right?*

**Alexander:** *Right. They would have to remove all the old sand fencing that is there and then replace it when they are finished with new.*

**Perry:** *The plan is to dump the sand and push it from west to east and then slope it parallel to the beach without having to put their dozer on the unimpacted beach. A beach that is not being dumped sand onto.*

**Alexander:** *That is the way I understand it.*

**Perry:** *All right. And will you be present?*

**Alexander:** *I can be. I do not know how long it will take them, but I can be present and keep a check on them to make sure they are following what rules and regulations need to be followed or conditions of the Town if the waiver is granted.*

**Pruitt:** *Who is in charge of monitoring the turtles and the birds?*

**Kitty Hawk Town Council Minutes: April 9, 2018**

**Page 6**

**Alexander:** *According to what I heard from Frank, before they start work each day, they need to walk the beach and see if there are any signs of turtle nests or birds.*

**Pruitt:** *And "they" meaning?*

**Alexander:** *The equipment operator or somebody with the Hilton has to verify there are no turtles or birds on the beach.*

**Pruitt:** *Whose responsibility is it if they overlook something and the bulldozer does accidentally get a nest or something?*

**Alexander:** *It would probably be a joint responsibility. From what Frank says it is a federal moratorium that would go back to the Federal Fish and Wildlife Department to determine.*

**Pruitt:** *And that would satisfy ...*

**Alexander:** *It will satisfy CAMA.*

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**Bateman:** *I want to say NEST is already patrolling. I know they are doing it in South Nags Head. They were out there on the point on Park Service property, so I think they are probably doing it up here.*

**Midgett:** *They are out there.*

**Bateman:** *They are going to take care of whether we have a nest there or not.*

**Pruitt:** *If we ask them to make sure they are there.*

**Perry:** *It is not that I do not want them to dump the sand, the key is to keep the equipment off the unimpacted beach and make sure we control the event enough that we do not get in trouble with Fish and Wildlife and the sorts of things that would impact any future nourishment. The only way I see us doing that is for Ben to be on site at least to confirm they are complying with the rules. It all has to be done from west slope north and south. Does that make sense?*

**Alexander:** *It makes sense to me.*

**Varnell:** *I do not think there are any issues with requesting an indemnity or some form of hold harmless to be in the waiver where the Hilton is releasing Kitty Hawk from any liability associated with this.*

**Pruitt:** *Is there any way we could have a qualified person monitor for signs of activity like when we did the nourishment, so we do not do something accidentally that might hurt us with future nourishment projects?*

**Kitty Hawk Town Council Minutes: April 9, 2018**

**Page 7**

**McClea**n: *The sand they are bringing in, do we know where it is coming from? Who has said the sand is compatible?*

**Alexander**: *I think it is from a pit in Currituck. They have been using it in Nags Head and it has been ruled compatible.*

**Garriss**: *Ben do you know of an approximate start date and length of time for completion?*

**Alexander**: *I do not know of a start date but in talking with the person hired for the project, with good weather conditions, he believes it will take about two days using a dozer. If he had to use a small bobcat or a something like that it would take up to a week.*

**Garriss**: *Hopefully before Memorial Day?*

**Alexander**: *Yes.*

**McClea**n: *The letter says they want to bring in 375 square yards of sand. How many truck loads is that? What are we talking about in volume of cubic yards.*

**Stewart**: *It is about 37 loads.*

**Mayor Perry** made a motion to allow the waiver, contingent upon code enforcement being present and no equipment on the unimpacted beach. It has to be moved from west to east, whatever is moved, and the Town is indemnified. Councilwoman McClea seconded and it passed unanimously, 5-0.

**7(b.) Schedule Public Hearing for a Conditional Use Permit: 5113 & 5117 Putter Lane. Requested CUP and site plan would for development of a 7,131 sq. ft. licensed physician office. It is suggested the hearing be held on May 7, 2018.**

Councilwoman McClea made a motion to set a public hearing at the Town Council meeting on May 7, 2018 to consider a conditional use permit application to allow a licensed physician office to be located at 5113 and 5117 North Croatan Highway. It was seconded by Councilman Bateman and passed unanimously, 5-0.

**7(c.) Schedule Public Hearing for a Conditional Use Permit: 4622 N. Virginia Dare Trail. Requested CUP would allow craft production and retail sales in an existing commercial building. It is suggested the hearing be held on May 7, 2018.**

MPT Garriss made a motion to set a public hearing at the Town Council meeting on May 7, 2018 to consider a conditional use permit application to allow craft production and retail sales to be located at 4622 North Virginia Dare Trail. Councilwoman McClea seconded the motion.

**Kitty Hawk Town Council Minutes: April 9, 2018**  
**Page 8**

**Perry:** *I have a question. Does anybody know what is actually happening in that building? They have tried many different things in there.*

**McClellan:** *I think the last thing in there was a Day Spa. Then they were going to put in some kind of carry out from Art's which never materialized. Now they are going to try for glass blowing.*

**Perry:** *Was that a fire house at one time?*

**McClellan and Pruitt:** *Yes.*

**Pruitt:** *And David Stick's bookstore.*

**Alexander:** *Right now, the front part of the building is being used as a souvenir, trinket shop. It opened two weeks ago. The proposal is for a conditional use and she wants to be able to blow glass there. The rear part of the building is being used as a prep kitchen for Art's.*

**The vote was unanimous, 5-0, to schedule the public hearing.**

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## **8. UNFINISHED BUSINESS**

### **a.) Text Amendment: 42-504(i). Staff is proposing a text amendment that would allow pool equipment to encroach into the side and rear yard setback.**

In the absence of Planning Director Testerman, Attorney Varnell reviewed the following staff report with council.

#### **Proposal**

42-504(b) HVAC units **and pool equipment** shall be permitted to encroach up to five feet into the required side yard setbacks.

42-504(i) Swimming pools, associated aprons, and decking no greater than 30 inches in height must meet required front yard building setbacks, but can encroach as close as five feet to side and rear property lines. Any pool structures greater than 30 inches in height (such as an aboveground pool, decking, ~~or pool house, or pool equipment~~) must comply with the required setback standards for the district in which they are located.

#### **Background**

Kitty Hawk's zoning ordinance currently allows swimming pools, aprons, and decking no greater than 30 inches in height to encroach as close as five feet to side and rear property lines. All pool equipment must meet all required setbacks.

Sec. 42-504(b) allows HVAC units, and their associated stands to encroach up to five feet into the required side yard setback. We have had several instances in which the contractor constructs the HVAC stand encroaching in the side yard setback, as permitted, then sets the pool equipment on the same stand. When this occurs, although there is no increased encroachment, and no additional structure, it creates a zoning violation with Sec. 42-405(i). The property owner is then forced to construct an additional stand, which creates additional lot coverage, in order to place the pool equipment outside of the required setback.

It is staff's opinion that if an encroachment is permitted for HVAC units and their unenclosed stands (mechanical equipment and stand), that it seems logical to extend the same encroachment allowance to a pool pump on a stand (mechanical equipment and stand).

**Kitty Hawk Town Council Minutes: April 9, 2018**  
**Page 9**

Staff originally proposed to allow for an unenclosed, uncovered stand for pool equipment. At the March 5 public hearing, council voted 3-2 to send the proposal back to the Planning Board to allow covered and enclosed pool equipment to encroach into the setback as well. The revised text amendment would allow pool equipment, covered or uncovered, to encroach into the side yard setback, up to five feet, as is allowed for HVAC equipment.

**Consistency with Land Use Plan**

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

**POLICY #17A:** Kitty Hawk will continue to 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 #17B:** Ensure future development is consistent with adopted goals, objectives, and policies and regulations including building code requirements and is in character with existing development with respect to features such as building size, lot coverage, architectural design standards, and construction materials and methods.

**Planning Board Recommendation**

At its March 15, 2018 meeting, the Planning Board unanimously recommended approval of the revised proposed text amendment.

**Varnell:** *In Rob's report, last paragraph, staff originally proposed to allow for an unenclosed, uncovered stand for pool equipment. At the March 5<sup>th</sup> public hearing council voted 3-2 to send this proposal back to the planning board to allow covered and enclosed pool equipment to encroach into the setback. The revised text will allow for pool equipment covered or uncovered to encroach into the side yard setback up to 5' as is allowed for HVAC equipment. Essentially all language regarding it being uncovered or unenclosed has been removed.*

**Pruitt:** *Is there a height limit?*

**Varnell:** *The code says any pool structure greater than 30" must comply with the required setback standards for the district in which they are located.*

**Perry:** *We were looking at a pump which does not take up much room but the way this is worded now it also includes fan filters, which are quite big, and valving. It includes chlorinating equipment, the normal stuff that a pool house would enclose. If we pass this, it is enclosed within the five-foot setback. Think about this. If we start, we may be going down a path of row housing.*

**Pruitt:** *That is why I was wondering if there is a height limit. Give it a max just for the actual pump. I agree with you. It is my fear that everybody is going to leave their deck around their pool wide open and they are going to stick this building right next to the neighbor's house.*

**Perry:** *And you are further encroaching. You are taking away from your side setback. This is wrong.*

**McClellan:** *This was presented to us as being an electrical device on a stand with the HVAC equipment.*

**Perry:** *That is what is pictured.*

**Kitty Hawk Town Council Minutes: April 9, 2018**  
**Page 10**

**McClellan:** *So now we are going to be putting all the pool mechanics up on a stand.*

**Perry:** *By this you could.*

**Pruitt:** *In the proposal it talks about 30" high and 5' and it talks about enough room to cover a pump ... just allowing this in the setback. Like you said we must really think about what we are doing on this one. I agree to cover them up for noise and all that and keep them out of the weather. I can see what the reason of this is, but I also definitely see what Gary is saying.*

**Perry:** *Keep it out of the setback.*

**Pruitt:** *Either keep it out of the setback or leave it uncovered.*

**Bateman:** *Like I said before if you put it in they are going to cover it up. If it was at my house I would cover it up.*

**Pruitt:** *But they would not build it as big as what they can if we just let them go. Right now, it can be 5'. It can be 5' by the whole length of your house with a whole bunch of doors on the side. You could put your rafts and ...*

**McClellan:** *You could have it look like the house and have it sided the same with the same roof on it.*

**Bateman:** *I cannot go along with this either.*

**McClellan:** *Having heard all this I agree. It is not what we want to see happen.*

**Mayor Perry** said since he upset the apple cart he will **make a motion to deny the proposed text amendment to Subsection 42-504(b) and 42-504(i) continuing to require pool equipment to meet all required minimum setbacks. Councilman Bateman seconded the motion and it passed unanimously, 5-0.**

## **9. TOWN MANAGER**

**Budget Workshop:** April 23<sup>rd</sup>, 9 AM, Town Hall. Budgets will be delivered to Town Council by the end of this week.

**Outer Banks Sporting Events Weekend, April 13th and 14th:** First Flight 5k and Fun Run on Saturday and the Flying Pirate Half Marathon on Sunday, 7 AM beginning at 5300 The Woods Road, Kitty Hawk.

## **10. TOWN ATTORNEY**

There were no comments from the Attorney Varnell.

## **11. TOWN COUNCIL**

MPT Garriss thanked staff for their hard work.

**Flying Pirate Half Marathon:** Councilman Bateman said hopefully the race will be cleaned up and everybody will be gone by about 8 o'clock in the morning. There is a pretty fast field this year and more have signed up to run than last year.

Answering Councilman Pruitt's question, Councilman Bateman said they start on The Woods Road at the Dominion Power building. He added he is very appreciative of all in the Town that help: the police, public works and everyone who supports all the races throughout the year. The money raised helps people with debilitating diseases and people in crisis as well as helping the Dare Education Foundation. It is a great community event.

**Ditch Cleaning:** Councilwoman McClean said she is looking forward to a report about all the ditches that have been cleaned out. She and her husband have been watching them clean them out and thanked them for their hard work. It is nice to ride through Town and look at some of the waterways and see that they are open and the water is flowing. She thanked everyone who worked on getting the grant.

Mayor Perry asked where the grant money came from for the ditch cleaning and Manager Stewart replied the state Soil and Water Conservation.

**Land Use Plan:** Mayor Perry reported he had a meeting this afternoon with Braxton Davis who is now in charge of the Division of Coastal Management. During the meeting the Land Use Plan came up and he learned something he was not aware of. Periodically the Land Use Plan is updated, and he always had the impression it had to be updated every five years but that is not true. It was never true. It needs to be updated periodically but there is no particular schedule. It is advisory, so it is voluntary if a Town wants one. It does not have to be done but it helps with the Flood Prevention Rating. The Land Use Plan has a purpose and staff is looking to update it in the not too distant future. The DCM has revised their guidelines and now Kitty Hawk can begin after being advised to hold off.

## **12. PUBLIC COMMENT**

**1. Spencer Oliver, 4932 Lunar Dr., Kitty Hawk, NC:** *I just want to say that if you are going to go ahead with this thing anyway and you are going to ignore the Town Land Use Plan the traffic survey and all that sort of stuff ... this was originally proposed as part of a land swap and Ervin did some figuring there saying somehow the Town was going to get \$100,000 in value by the land*

**Kitty Hawk Town Council Minutes: April 9, 2018**  
**Page 12**

*swap but if you look at those four lots they are assessed at \$106,000 and the last time they were sold, which was not very long ago, was for \$70,000 apiece. They have been put on the market and they have not sold. So, you do not really need this land. You probably have power of condemnation or something if you ever needed any other land for anything but if you are going to go ahead and do all the stuff that I am against anyway the best thing to do is just ... you have rezoned the lots just sell them to the guy for the value of them and the Town will make about \$40,000 more than they would lose if they took these other lots which they do not need. So, I just wanted to make that suggestion in the interest of the fiscal responsibility of council.*

*Also, I just want to say that this is not really new health care you know. You are moving a drug store a couple hundred feet and an urgent care center from the Marketplace to another so you are really getting less health care not more.*

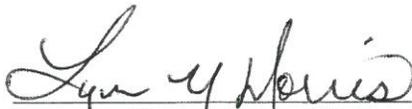
*And I really think that you should take a look at this traffic problem. If you go out there and just try and go in or out of those cuts that are there right now you will see how dangerous it is. I hope you will take that into consideration. Do a traffic impact survey before you go any further on this. Thank you very much.*

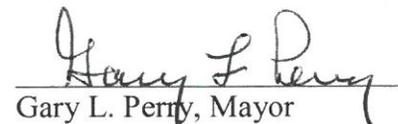
Council thanked Mr. Oliver. No one else came forward to speak.

**13. RECESS**

**Mayor Perry made a motion to recess until April 23, 2018, 9 AM, Kitty Hawk Town Hall for a budget workshop. MPT Garriss seconded the motion and it passed unanimously, 5-0. Time was 6:37 p.m.**

These minutes were approved at the May 7, 2018 council meeting.

  
Lynn U. Morris, Town Clerk

  
Gary L. Perry, Mayor