

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, February 6, 2017
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations/Recognitions
 - Firefighter Jesse McNeil/5 Years of Service
 - Dare County League of Women Voters Presentation/Council Discussion of the Resolution in Support of the Equal Rights Amendment Provided by the League
5. Public Comment
6. Consent Agenda
 - a.) Approval of January 9, 2017 Council Minutes
 - b.) Budget Calendar for FY 17-18
 - c.) Fire Department Self Contained Breathing Apparatus
7. Items Removed from Consent Agenda
8. Planning
 - a.) Town Code Amendment: Proposed additions of subsections 6-26 and 6-27, regulating beach bulldozing and sand fencing.
 - b.) Flood Insurance Rate Maps
 - c.) Call for Public Hearing. Conditional Use Permit: Blue Water ENT, Medical Center, 4009 N. Croatan Hwy. The applicant has requested approval of a CUP to establish an ENT doctor's office under the medical center classification in the BC-1 district. It is requested the hearing be scheduled for the March 6, 2017 council meeting.
 - d.) Call for Public Hearing. Conditional Use Permit: OBXscape Rooms, Game Room, 4009 N. Croatan Hwy. The applicant has requested approval of a CUP to establish an escape room business under the game room classification in the BC-1 district. It is requested the hearing be scheduled for the March 6, 2017 council meeting.
 - e.) Call for Public Hearing. Conditional Use Permit: Turf's Up, Game Room, 3712 N. Croatan Hwy. The applicant has requested approval of a CUP to establish and indoor golf simulator under the game room classification in the BC-1 district. It is requested the hearing be scheduled for the March 6, 2017 council meeting.
 - f.) Call for Public Hearing. Text Amendment: Sec. 42-98(i) Expiration of Site Plan Approval. Staff proposed text amendment as suggested by the Planning Board, shifting authority of granting a site plan approval extension from the Planning Board to the Planning Director. It is requested the hearing be scheduled for the March 6, 2017 council meeting.
9. New Business
 - a.) Resolution Opposing the Designation of Special Secondary Nursery Areas
10. Reports/General Comments from Town Manager

Kitty Hawk Town Council Minutes: February 6, 2017

Page 2

11. Reports/General Comments from Town Attorney
12. Reports/General Comments from Town Council
13. Public Comment
14. Adjourn

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, Town Planner Rob Testerman, Police Chief Joel Johnson, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

1. CALL TO ORDER

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

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

After the moment of silence the Pledge of Allegiance was recited.

3. APPROVAL OF AGENDA

Councilman Bateman “so moved” approval of the agenda. MPT Garriss seconded the motion and it passed unanimously, 5-0.

4. PRESENTATION/RECOGNITIONS

Firefighter Jesse McNeil/5 Years of Service:

Fire Chief Lowell Spivey presented Firefighter II Jesse McNeil with a Certificate of Appreciation for his years of service to the Town.

Dare County League of Women Voters Presentation/Council Discussion of the Resolution in Support of the Equal Rights Amendment Provided by the League:

Kitty Hawk Town Council Minutes: February 6, 2017
Page 3

Ms. Geri Sullivan presented a PowerPoint on the Equal Rights Amendment.

Perry: *After seeing the movie I did quite a bit of research. I am going to open our discussion with a bit of history because the viewers need to understand where we are coming from. I thought it might even help various councilmembers so I shared it with them. This will aid our viewers in understanding what their locally elected representatives are being asked to approve.*

The first ERA amendment introduced to congress in 1923 spoke to equality of rights based upon sex and that was assumed to mean male and female. Another version of the basic ERA amendment was introduced in 1943. This version was modeled after the language of the 19th amendment giving women a right to vote under constitutional law. Yet another version of the ERA amendment was introduced in 1972. This version was passed by congress and sent to the 50 states with a 7 year deadline for at least 38 to ratify. Because that deadline expired without ratification it was extended to June 30, 1982.

To date only 35 states have ratified the 1972 amendment even though it continues to be introduced into almost every congressional session since original introduction. Additionally, 5 of the ratifying states have rescinded their ratification.

Another version of the original ERA amendment was introduced into the House of Representatives in 2015-16. I could not find any reference to determine how the rewording is actually made part of the original or 1972 amendment.

Researching this very complex and highly emotional issue revealed pros and cons that have held up complete ratification since 1923. The information is easily available on the internet and I recommend interested citizens review it but also caution that there is bias for both pro and con in published material.

Two basic questions emerged during my research. One: since the original version of the amendment has been changed numerous times, the latest in 2015-16 without any version ever being fully ratified and 5 ratifying states having rescinded their ratification, can a 3 state strategy pass a legal test?

Two: Based on the number of revisions over the years, what ERA language would actually wind up being ratified if 3 additional states acted to bring the total to 38? That would mean of course continuing to include the 5 rescinded and questionable states.

Having asked a number of women for advice and opinion, former Councilmember Emilie Klutz provided me with a revised resolution that I find appropriate for the question before us. It shows council support for what the League of Women Voters is attempting to accomplish. The magnitude of intended or unintended consequence from eventual passage of some form of ERA requires debate from grassroots citizens on a national level. Continuing to pursue the same course of action for 90 years without success may be considered a proper definition of insanity.

Kitty Hawk Town Council Minutes: February 6, 2017

Page 4

Council, I gave you this so you would have a chance to look at it. What do you want to do?

Garriss: *Mr. Mayor, being the father daughters, I am very much in favor of this resolution. I think it is long past due and I think it would be appropriate, if council decides to pass this resolution, for Councilwoman McClean to make the motion and read the resolution. I hate to put you on the spot but I think it would be an honor.*

McClean: *I would like to do it.*

Perry: *Are we talking about the one Emilie prepared?*

McClean: *Of course.*

Perry: *Are there any other comments before you read it?*

Hearing no further comments **Councilwoman McClean made a motion that the following resolution be approved by the Kitty Hawk Town Council supporting Equal Rights for Women.** She then read the following:

RESOLUTION IN SUPPORT OF EQUAL RIGHTS FOR WOMEN

WHEREAS, the Town of Kitty Hawk forthrightly supports equal rights for the citizens of Kitty Hawk and all people; and

WHEREAS, women in the United States, since the founding of our country, have been subject to laws denying their ability to participate fully in the blessings of liberty enshrined in the Constitution of the United States for “we the people”; and

WHEREAS, the US Constitution does not explicitly guarantee that all rights that it protects are held equally by all citizens without regard to sex; and

WHEREAS, the Equal Rights Amendment (ERA) was a proposed amendment to the Constitution intended to guarantee equal rights to women; and

WHEREAS, Congress passed ERA in 1972, and submitted it to state legislatures for ratification, with a ratification deadline of March 22, 1979; and

WHEREAS, the amendment did not become a part of the Constitution because only 35 of the necessary 38 states ratified the amendment, 5 of those states rescinded the ratification and **no more states ratified** before the extended deadline of June 30, 1982; and

WHEREAS, the United States has made great strides supporting women’s rights in the past fifty years, such as the nomination of a woman for President of the United States and women now outnumbering men in enrollment for higher education; and

WHEREAS, the 14th Amendment's equal protection has been interpreted by the Supreme Court recently to guarantee gender rights for males and females, invoking strict judicial scrutiny, in the decision banning discrimination against same sex marriages; and

Kitty Hawk Town Council Minutes: February 6, 2017
Page 5

WHEREAS, ERA is highly controversial and the failure of state ratification was mainly due to widespread opposition from women; and

WHEREAS, regardless of progress, women in the United States continue to confront political obstacles, workplace and health care inequities, high rates of poverty and domestic violence; and

WHEREAS, legislative branches in both federal and state governments have the constitutional power to pass laws removing societal inequities and punishing crimes perpetrated against women.

THEREFORE, BE IT RESOLVED that the Town Council of Kitty Hawk, North Carolina, consistent with our commitment to equality for all people and the Constitutional power and duty of legislative branches of the United States and the State of North Carolina call for:

- 1) Open, vigorous debate in the United States Congress and the North Carolina Legislature to remedy inequities facing women in federal and state statutes, in order to continue progress in the advances in equal rights that women achieved in in the 20th century.
- 2) If a Constitutional Amendment is deemed necessary to advance women's equal rights, take up the ERA in The United States Congress, giving all voices of the 21st century the opportunity to engage with elected officials to produce an amendment likely to achieve ratification.

This the 6th day of February 2017.

MPT Garriss provided a second. Following the unanimous vote, 5-0, Mayor Perry said council is very much with the League on the subject of equality.

5. PUBLIC COMMENT

1. Andrea Schollaert, 8 Red Bay Lane, Southern Shores, NC:

Ms. Schollaert, representing the League of Women Voters of Dare County, presented council the 2017 *Citizen's Guide* and thanked the Town for contributing to its publication expenses. She also acknowledged the support of the many employees who provided updated information.

Mayor Perry thanked her and said the booklet is very handy.

6. CONSENT AGENDA

a.) Approval of January 9, 2017 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) Budget Calendar for FY 17-18. Staff has submitted a draft budget calendar to the Town Council for approval. It includes a proposed date of April 24, 2017, 9 a.m. for a budget work session with council and a proposed date of June 5, 2017, 6 p.m. for a public hearing and adoption of the budget. *(An affirmative vote for the consent agenda will approve this calendar.)*

c.) Fire Department Self Contained Breathing Apparatus. The Fire Chief is requesting permission to purchase three breathing apparatuses and bottles. The amount is \$17,802.66 and this capital outlay request is in this year's budget. *(An affirmative vote for the consent agenda will approve this request.)*

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

7. ITEMS REMOVED FROM CONSENT AGENDA

No items were removed from the consent agenda.

8. PLANNING

a.) Town Code Amendment: Proposed additions of subsections 6-26 and 6-27, regulating beach bulldozing and sand fencing.

Testerman: *Following the beach nourishment project it has been suggested to town staff that we put some language in our ordinance to protect the sand once it gets put in place. There are three items included in this and the first deals with beach bulldozing or beach pushes. If this is approved, as of June 1st or when the beach nourishment commences, whichever comes first, beach bulldozing would be prohibited unless a couple of certain circumstances happen.*

***One** of those being when such work is performed as part of a hurricane or erosion protection project or beach nourishment project sponsored by the town, or any local, state or federal government agency; **Two:** when such work is performed at the direction of, and with the authorization by, the town for the purpose of beach maintenance; and, **Three:** when such work is authorized by the issuance of a general waiver of this section by the town council following a natural disaster.*

Basically meaning if it is required for beach maintenance or recovery from a storm then the town can authorize that work and direct it but we will not be issuing permits for individual property owners to go and push sand up by their house. Once we get that sand put in place if we continue to allow the homeowners to push sand we are going to be degrading the beach that we just created with the beach nourishment project.

We did add in a sentence that sand which has moved off the beaches by natural forces may be moved back onto the beach through bulldozing. It was passed along to me that Nags Head had a storm and it pushed a lot of sand onto the road and by their ordinance they were not allowed to push it back to the beach so it was getting piled up on people's property. We are trying to avoid that.

The second one would be dealing with sand fencing. Once put in place this ordinance would make it unlawful to remove, move or otherwise tamper with the sand fencing. This is to try and keep the dunes in place.

Kitty Hawk Town Council Minutes: February 6, 2017

Page 4

As far as sandbags go we put in the same conditions that would allow it for town, state and federal related purposes. Again, the reasoning being that sandbags have the intention of being a temporary erosion control method but as we have seen in the past they act as a hardened structure and tend to create further damage on the neighboring properties as the erosion starts to eat out behind it and kind of flank on the adjacent properties. This was actually suggested by CAMA. That we include some reference to the sandbags in the ordinance as we put this into place.

Bateman: *In Nags Head they had a big issue of the fine sand blowing over. They were having to go scoop the sand up and put it back. Does this completely take that out of the equation?*

Testerman: *I believe this would allow us to get the sand off the street and put it back to ...*

Bateman: *A lot of times it is not on the street, it's on the property, driveways and sidewalks.*

Testerman: *I think the line that covers it says sand that is moved off the beaches by natural forces may be moved back. I'll let the attorney weigh in on.*

Varnell: *I agree with that. I think it is general enough. Not always a good thing but in this case I believe that covers it.*

Bateman: *Would you have to get a permit to move the sand back? If we have a major storm and a section of the beach, or two or three houses are destroyed, will council make a decision to open up the whole beach to pushes or will it be individual ...*

Testerman: *No. Subsection (b) under 6-26, when work is performed upon the ocean beaches in compliance with subsection (a) above, the equipment operator must have a copy of the CAMA permit or exemption letter from the town on his or her person when conducting this activity. It is still not just going to be free reign to go out and start moving sand back. They still have to go through the right channels with CAMA and the town.*

Perry: *Once this goes into force a town or some government entity is the one that would be allowing pushes but not necessarily the way it's been done in the past.*

Bateman: *And I agree with that. What I am trying to make sure is that it is not so un-user friendly to the property owner because in Nags Head it has been a big issue. I know a lot of folks down there that have had swimming pools, which we don't have that issue here, but their swimming pools were filled with sand and there was hundreds of thousands of dollars' worth of damage done because of that. We need a way to address it. It looks to me like this does not allow them to push the sand back onto the leeward side.*

Testerman: *I suppose we could work in some kind of language to allow the property owner to push it back off. You are right in the way it is worded now. It still has to be town, state or federal directed.*

Kitty Hawk Town Council Minutes: February 6, 2017

Page 8

Pruitt: *Would it be something that they would need to come here and staff would go look and see is it like a conditional use permit? Is that what we are considering?*

Testerman: *It is typically run more through the CAMA channels.*

Bateman: *I agree with what you are trying to do. There is a need for this but there is also a need for the other side too. I hope we do not have the same issues they have had in Nags Head.*

Perry: *A part of the nourishment project is installing sand fencing right away which is what they did not do. It created a real mess for them I agree. If there is a question we need to send this back. We can ask Rob to go back and have another look at this.*

Bateman: *Do you think you could reword it so it would address those issues?*

Perry: *But they have to come to the town.*

Bateman: *Of course.*

Stewart: *I think the intent, other than the sand fence which you do not have in the code now, is we are trying to prevent those from bull dozing the existing sand onto their property. We can clarify it relatively easily if they want to take sand out of there driveway. They would still have to get town permission but I think this was more dozing up to the house and that is what we are trying to avoid.*

Varnell: *The sentence, even though it's general, is still permissive in nature so we are not cutting off their right to do what you are saying Ervin. I suppose it could be tweaked.*

Perry: *Let's send this one back. It's not like June is upon us. We have a little time.*

b.) Flood Insurance Rate Maps: Staff will give Town Council an update regarding the preliminary Flood Insurance Rate Maps

Planning Director Testerman reviewed the following memorandum with council.

On June 30, 2016 FEMA released the preliminary FIRMs to localities in our area. The maps are currently going through the adoption process, but are not expected to go into effect for another 12 to 18 months. In the meantime FEMA will have a comment and appeal period, and localities must adopt the revised flood damage prevention ordinance and maps, which Town staff will be bringing forward in the near future.

Upon staff review of the preliminary maps, it appears as though many properties in town will be affected by the changes. Many properties that are currently listed in the AE flood zones are being redesignated as "Shaded X" (lowest flood risk). Additionally, the base flood elevations of many properties in town are being reduced, for example areas in the village are dropping from an AE 8.3' to an AE 4. Kitty Hawk currently has a 1 foot freeboard requirement, meaning a home listed in the AE 8.3' flood area must have their lowest level at 1 foot above base flood elevation, or an elevation of 9.3' in this example. Some areas of Lindbergh Avenue and N. Virginia Dare Trail are also being classified as an AO, in this zone, they will be able to build as low as 2 feet above existing grade, plus freeboard.

Kitty Hawk Town Council Minutes: February 6, 2017
Page 9

In the short term, this may be good news for property owners, as it is likely to reduce flood insurance premiums, or in cases of a home moving into the X zone, although inadvisable, the homeowner could potentially drop flood insurance.

However, the Town has concerns about the new base flood elevations, and certain areas moving into the X zone. In recent years, we have had storms that have flooded above the proposed base flood elevations. For example, during Hurricane Irene many homes in Kitty Hawk Landing, built to 9.3' were inches from having flood water come into their first floor. If built to the proposed standards (4' plus the current requirement of 1' freeboard), the homes would have had nearly 4 ½ feet of water in the first floor of the home. Additionally, under the 1993 maps, Kitty Hawk had AO zones, and many houses in those areas were built low, as described above. Many of those homes have had multiple flooding events, and it is staffs opinion that this result will be repeated if new homes are built at such a low elevation in the Lindbergh and N. Virginia Dare Trail areas.

The new standards, once more homes are built to these levels, will result in more flooding events for homes in Kitty Hawk, possibly resulting in more Repetitive Loss Properties (Kitty Hawk already has over 300 Repetitive Loss Properties). This change will also affect the FEMA Hazard Mitigation Grants, which allow homeowners to receive a grant to elevate their home to the base flood elevation, plus freeboard. Once the new base flood elevations go into effect, if a homeowner receives a grant, they will still be able to elevate the home, but only to the BFE plus freeboard, which in many cases, will still be lower than flood levels that we have seen in recent history. Meaning although they elevate the home, they are still in danger of being flooded.

It is possible to appeal the data in the preliminary maps, however, in order to review an appeal FEMA requires specific scientific data, much more than evidence of recent storms. The general consensus that staff has received, is that although we are concerned about, and do not necessarily agree with the data in the preliminary maps, we will not be appealing the data. Instead, when a property owner comes to the Town to build in an area known to flood higher than what the preliminary maps account for, staff will be committed to educating the contractor and property owner of the real, and known risks of building to a lower elevation in their location.

It should also be noted that the Town will have the option of changing the freeboard requirement when the new ordinance is adopted. During the review of the model ordinance, Council may wish to increase the freeboard requirement to 2 or 3 feet, which may help to alleviate some of the issues.

Perry: *It is way too early for me to be worrying about this because it is changing. I know there is a lot of challenging going on and they really have you when they say the only way you can challenge them is to provide the scientific proof. I don't see us going there. Thank you and keep us up to date if you will please.*

c.) Call for Public Hearing. Conditional Use Permit: Blue Water ENT, Medical Center, 4009 N. Croatan Hwy. The applicant has requested approval of a CUP to establish an ENT doctor's office under the medical center classification in the BC-1 district. It is requested the hearing be scheduled for the March 6, 2017 council meeting.

Councilman Pruitt made a motion, seconded by Councilwoman McClean, to set a public hearing at the Town Council meeting on March 6, 2017 to consider a conditional use permit application to allow an ENT office to be located at 3712 North Croatan Highway. The motion passed unanimously, 5-0.

d.) Call for Public Hearing. Conditional Use Permit: OBXscape Rooms, Game Room, 4009 N. Croatan Hwy. The applicant has requested approval of a CUP to establish an escape room business under the game room classification in the BC-1 district. It is requested the hearing be scheduled for the March 6, 2017 council meeting.

Councilman Bateman made a motion to set a public hearing at the Town Council meeting on March 6, 2017 to consider a conditional use permit application to allow a game room to be located on 4009 North Croatan Highway. It was seconded by Councilwoman McClean and passed unanimously, 5-0.

e.) Call for Public Hearing. Conditional Use Permit: Turf's Up, Game Room, 3712 N. Croatan Hwy. The applicant has requested approval of a CUP to establish and indoor golf simulator under the game room classification in the BC-1 district. It is requested the hearing be scheduled for the March 6, 2017 council meeting.

MPT Garriss made a motion to set a public hearing at the Town Council meeting on March 6, 2017 to consider a conditional use permit application to allow a game room to be located at 3712 North Croatan Highway. Councilman Pruitt seconded the motion and it passed unanimously, 5-0.

f.) Call for Public Hearing. Text Amendment: Sec. 42-98(i) Expiration of Site Plan Approval. Staff proposed text amendment as suggested by the Planning Board, shifting authority of granting a site plan approval extension from the Planning Board to the Planning Director. It is requested the hearing be scheduled for the March 6, 2017 council meeting.

Councilwoman McClean made a motion, seconded by Councilman Bateman, to set a public hearing at the Town Council meeting on March 6, 2017 to consider the proposed text amendment to subsection 42-98(i) allowing administrative approval of site plan extension approvals. The motion passed unanimously, 5-0.

9. NEW BUSINESS

a.) Resolution Opposing the Designation of Special Secondary Nursery Areas

MPT Garriss made a motion to approve the Resolution Opposing the Designation of Special Secondary Nursery Areas. Councilman Bateman seconded.

Perry: This resolution is basically following along with the other towns. They are essentially trying to do away with the petition where they are cutting out shrimping in the Pamlico Sound and three miles out in the ocean. All in favor?

The resolution was adopted unanimously, 5-0.

10. REPORTS/GENERAL COMMENTS FROM TOWN MANAGER

There were no reports or comments from Manager Stewart.

11. REPORTS/GENERAL COMMENTS FROM TOWN ATTORNEY

Attorney Varnell reported there are still two outstanding easements.

12. REPORTS/GENERAL COMMENTS FROM TOWN COUNCIL

Albemarle Rural Planning Organization Update:

McClean: We had an ARPO meeting and we are going to be seeing a request for some action on our part whether it be a letter or a resolution. Less than 10% of the funding comes to rural areas and one of the problems is the major criteria for transportation is congestion and rural areas like us do not have congestion. Our summer time congestion does not qualify because it is brief and intermittent to the state standards. We will request to the state that there be some kind of evaluation criteria to allow the rural areas to get more funding. It is difficult to encourage economic growth if we have to tell people you cannot move around on the weekends because we are bogged down.

Perry: I thought that was already in the works. That's been going on for a long time.

McClean: It has actually come to a head now. Our list is getting shorter and shorter because the money is not coming through.

Beach Nourishment Meeting:

Perry: Wednesday, February 15th here in the Town Hall there is a beach nourishment informational meeting. This will be information from project contractors and engineers. It is an open meeting and is not a council meeting. Councilmembers you can certainly come and but we will not be in session for anything.

13. PUBLIC COMMENT

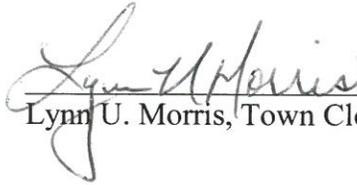
There were no comments.

Kitty Hawk Town Council Minutes: February 6, 2017
Page 12

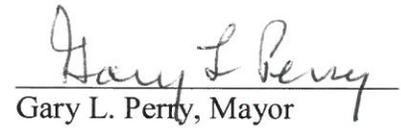
14. ADJOURN

MPT Garriss made a motion to adjourn. Councilwoman McClean seconded the motion and it passed unanimously, 5-0. Time was 6:46 p.m.

These minutes were approved at the March 6, 2017 council meeting.



Lynn U. Morris, Town Clerk



Gary L. Perry, Mayor