

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, June 4, 2018
Kitty Hawk Town Hall, 6 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation
 - Jenny Ash, Race Director/Outer Banks Sporting Events
5. Public Comment
6. Consent Agenda
 - a.) Approval of the April 23, 2018 and May 7, 2018 Council Minutes
 - b.) FY 17-18 Budget Amendment #11
 - c.) FY 17-18 Budget Amendment #12
 - d.) FY 17-18 Budget Amendment #13
 - e.) FY 17-18 Budget Amendment #14
 - f.) Electronic Payment Resolution
 - g.) Conflict of Interest Policy
 - h.) Amended Purchasing Policy
 - i.) North Carolina Beach, Inlet & Waterway Association Membership
 - j.) Resolution Asking to Fund the Coastal Storm Damage Mitigation Fund
 - k.) Phasing the Proposed Birch Lane Trail Connection Project
 - l.) Emergency Preparedness Response and Recovery Plan
 - m.) Proclamation Declaring Positivity Day in the Town of Kitty Hawk
6. Items Removed from Consent Agenda
7. Public Hearings:
 - a.) Fiscal Year 2018-19 Budget and CIP (Ord. No. 18-04)
 - b.) Text Amendment: 42-70(a), Board of Adjustment (Ord. No. 18-05)
 - c.) Text Amendment: Multiple sub-sections. The applicant has requested a text amendment that would allow a lot coverage bonus for the use of permeable pavement in various zoning districts. (Ord. No. 18-06)
8. Planning
 - a.) Encroachment Agreement for 4113 Tarkle Ridge Road
 - b.) Encroachment Agreement for 4028 Tarkle Ridge Road
9. New Business
 - a.) Boards and Committee Appointments
 - b.) Donation of a Dune Walkover on Town Owned Property at 4019 N. Virginia Dare Trail
10. Reports/General Comments from Town Manager
11. Reports/General Comments from Town Attorney
12. Reports/General Comments from Town Council
13. Public Comment
14. Adjourn

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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, Planning Director Rob Testerman, Finance Officer Liliana Noble, Management Assistant Melody Clopton, Police Chief Joel Johnson, Fire Chief Mike Talley and Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called this meeting to order at 6 PM.

2. MOMENET OF SILENCE/PLEDGE OF ALLEGIANCE

3. APPROVAL OF AGENDA

4. PRESENTATION

Jenny Ash, Race Director/Outer Banks Sporting Events: Ms. Ash and Executive Director Ray Robinson presented a PowerPoint on the economic benefits to the Town from the events held by Outer Banks Sporting Events. They also thanked the council for their support of these events.

5. PUBLIC COMMENT

There were no public comments.

6. CONSENT AGENDA

a.) Approval of the April 23, 2018 and May 7, 2018 Council Minutes. *(An approval of the consent agenda will approve these minutes.)*

b.) FY 17-18 Budget Amendment #11. This amendment recognizes and appropriates a donation of \$300 to the police department from Dorothy Antonucci. It is designated for the future purchase of an AED (automated external defibrillator). *(An approval of the consent agenda will approve this amendment.)*

c.) FY 17-18 Budget Amendment #12. This amendment recognizes additional funds, \$26,330, from the NC Dept. of Agriculture and Consumer Services Division of Soil and Water allocated to the town for the stream/canal debris removal project. *(An approval of the consent agenda will approve this amendment.)*

d.) FY 17-18 Budget Amendment #13. This amendment recognizes \$24,000 from Dare County for the town's sand fence project. *(An approval of the consent agenda will approve this amendment.)*

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e.) **FY 17-18 Budget Amendment #14.** This amendment recognizes and appropriates a \$14,322 grant from the Governor's Highway Safety Program. *(An approval of the consent agenda will approve this amendment.)*

f.) **Electronic Payment Resolution.** This resolution authorizes the town to engage in electronic payments as defined by NCGS 159-28 or NCGS 115C-441. *(An approval of the consent agenda will adopt this resolution.)*

g.) **Conflict of Interest Policy.** The purpose of this policy is to establish conflicts of interest guidelines that meet or exceed the requirements under state law and local policy when procuring goods, services and construction or repair projects paid for in part or whole by federal funds and required under 2 C.F.R. § 200.318(c)(1). *(An approval of the consent agenda will approve this policy.)*

h.) **Amended Purchasing Policy.** The State Office of Budget and Management officially implemented its Uniform Administrative Requirements, Cost Principles and Audit Requirements commonly referred to as Uniform Guidance (UG). Local governments that expend federal financial assistance, such as FEMA public assistance disaster relief grants and other programs, must comply with the new requirements. As part of the UG the Town must amend its Purchasing Policy. *(An approval of the consent agenda will approve the amendments to the town's Purchasing Policy.)*

i.) **North Carolina Beach, Inlet & Waterway Association Membership.** This association is dedicated to preserving, protecting and enhancing the N.C. coast by merging science and public policy in order to create a sustainable and resilient coast. Staff is suggesting becoming a member of this association with an annual dues amount of \$250.00. *(An approval of the consent agenda will approve joining this association.)*

j.) **Resolution Asking the North Carolina General Assembly to Fund the Coastal Storm Damage Mitigation Fund.** This fund will help safeguard and protect the shoreline infrastructure that fuels the engine of North Carolina's tourism economy. *(An approval of the consent agenda will adopt this resolution.)*

k.) **Phasing the Proposed Birch Lane Trail Connection Project.** In February 2018 council approved submitting a grant for two connection trails to Birch Lane. Staff is recommending phasing this project into: Phase I (Kitty Hawk Park to Birch Lane); and, Phase II (Sandy Run Park to Birch Lane). It is believed that Phase I can be accomplished within the maximum grant funding of \$125,000 from NC Recreational Trails Program. *(An approval of the consent agenda will approve this recommendation.)*

l.) **Emergency Preparedness Response and Recovery Plan.** This plan has had a few minor updates. *(An approval of the consent agenda will adopt this plan.)*

m.) **Proclamation Declaring Positivity Day in the Town of Kitty Hawk.** Girl Scout Troop 2139 brought forth the idea of promoting positivity by displaying positive messages at the Dare County Family Recreation Park in Kill Devil Hills on June 3, 2018. On May 25, 2018 Mayor Perry proclaimed June 3rd as Positivity Day in Kitty Hawk.

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

6. ITEMS REMOVED FROM CONSENT AGENDA

No items were removed from the consent agenda.

7. PUBLIC HEARINGS:

a.) Fiscal Year 2018-19 Budget and CIP

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Mayor Perry made a motion to go into public hearing. Councilman Pruitt seconded and it passed unanimously, 5-0.

Seeing no one wishing to speak during the public hearing, **Mayor Perry made a motion to return to regular session. Councilman Bateman seconded and it passed unanimously, 5-0.**

MPT Garriss made a motion to adopt the Fiscal Year 2018-19 Budget Ordinance and related documents as presented. Councilwoman McClean seconded. Mayor Perry noted there was a small change to the budget and asked council if they received the information about it. Councilmembers said they had. **The vote was unanimous to adopt the budget, 5-0. (Ordinance No. 18-04)**

7(b.) Text Amendment: 42-70(a), Board of Adjustment – Established. Proposed text amendment would restrict eligibility to serve on the Board of Adjustment to residents of Kitty Hawk.

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

Planning Director Testerman reviewed the following staff report.

Proposal

42-70(a) The board of adjustment is established and shall consist of five (5) members, including the chairperson, who shall be residents of the town. Members shall be appointed by the town council.

Background

Section 42-70 allows the establishment of the Board of Adjustment and dictates their terms. While it seems logical that the town council would only appoint a resident of the town to the Board, currently it is not a requirement. This text amendment would require that any appointee to the Board of adjustment be a resident of Kitty Hawk.

Subsection 42-70(c) states that “in addition to the five (5) regular members of the board of adjustment, the town council may appoint two (2) alternate members for terms of three (3) years. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members...” It is staffs opinion that “in the same manner as regular members”, would dictate that alternate appointees would also be required to be residents of Kitty Hawk.

Consistency with Land Use Plan

While board of adjustment membership is not specifically addressed in the CAMA Land Use Plan, it is logical that any person sitting as an elected or appointed official that has influence in the way Kitty Hawk moves forward with regards to development should be a resident of the Town.

Planning Board Recommendation

At its April 19, 2018 meeting, the Planning Board unanimously recommended approval of the proposed text amendment.

Perry: This is the only board we have that did not already have the language about residency. A question came up on a different board and that is what prompted us to look at this.

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McClellan: *Where is the definition for a resident or what is the definition of a resident?*

Testerman: *I do not believe we have a specific definition.*

McClellan: *Is there a customary definition that is used, or do we need to put one in? That is my question. There are people who feel that since they have owned property for 30 years they can be considered a resident, but it is not where they vote, it is not where they pay their taxes, it is not their home zip code, but they consider themselves residents and I wonder if we need to clarify that.*

Garriss: *Motor vehicle law states more than six months out the year.*

McClellan: *Yes, and does the town follow that kind of rule?*

Perry: *People that own from out of town and do not vote here we do not consider them residents. If there is a problem with residents do we need to address it and bring it back? As it stands now I would like to move on with this.*

McClellan: *As it stands now I am happy. I would like resident to be clearly defined somehow.*

Seeing no one wishing to speak during the public hearing, **Mayor Perry made a motion to go back into regular session. Councilman Pruitt seconded and it passed unanimously, 5-0.**

Councilwoman McClellan moved to adopt the proposed text amendment amending subsections 42-70(a) regarding board of adjustment members be residents of Kitty Hawk. The Town Council finds that the proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments to be in the public interest. MPT Garriss seconded and it passed unanimously, 5-0. (Ordinance No. 18-05)

7(c.) Text Amendment: Multiple sub-sections. The applicant has requested a text amendment that would allow a lot coverage bonus for the use of permeable pavement in various zoning districts.

Mayor Perry made a motion to go into public hearing and it was seconded by MPT Garriss. The vote was unanimous, 5-0.

Planning Director Testerman reviewed the following staff report:

Proposal

The applicant has proposed text amendments that would amend the zoning ordinance as shown below:

42-1. Definitions

Gravel means clean, washed natural or crushed stone, with less than 50% passing a ¼-inch screen, with 100% passing a ¾-inch screen, and with less than 2% fines passing an ASTM #200 sieve. The term “gravel” includes open-graded crushed rock, pea gravel or river rock meeting the size criteria. The term “gravel” excludes crushed aggregate generally described or designated as “crusher run” or “ABC”.

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Lot Coverage means a measure of the developed intensity of land use. The term "lot coverage" includes, but is not limited to, all areas covered by buildings, parking areas, accessory structures, driveways, roads, sidewalks, decks and any area of concrete or asphalt. Permeable pavement (see *Permeable Pavement* definition) lot coverage shall be reduced, upon site plan approval by the town, by the Built-Up Area (BUA) Credit established in Section C-5, Permeable Pavement, of the NC DEQ Stormwater Design Manual, latest edition, or if a proposed permeable pavement BUA Credit has not been assigned by the NCDEQ Stormwater Design Manual, the BUA Credit will be as confirmed by NC DEQ Stormwater Section upon evaluation.

Lot Coverage Physical Area means the total area of all areas physically covered by buildings, parking areas, accessory structures, driveways, roads, sidewalks, any area of concrete or asphalt including impervious areas and permeable lot coverage without reduction for Built-Up Area Credits. Lot coverage physical area shall not exceed the limits set out in the Dimensional Requirements of each zoning district.

Permeable Pavement means pedestrian or vehicular pavement materials installed, operated, maintained, tested and repaired to permit passage of water through the pavement, including porous concrete, porous asphalt, permeable interlocking concrete pavers, concrete grid pavers (e.g. Turfstone), reinforced turf, pavement edge restraints, and other similar proven technologies. Permeable pavement shall be not less than 100% pervious or Built-Up Area Credit (lot coverage credit) as established in Section C-5, Permeable Pavement, of the NC DEQ Stormwater Design Manual, latest edition, or for permeable pavement not evaluated by the NC DEQ Stormwater Design Manual, as confirmed by NC DEQ Stormwater Section upon evaluation. *Editorial note: Prior proposed text referred to installation in compliance with the NC DEQ stormwater standards, but did not explicitly call out operation, maintenance, testing and repair.*

Permeable pavement confinement means concrete, timber, corrosion resistant metal, or other pavement perimeter confinement means approved by the Town to retain permeable pavement (other than permeable concrete or permeable asphalt) within approved site plan limits.

Permeable pavement failure means a permeable pavement condition at any time after installation that cannot be, or is not, promptly corrected and restored to the condition and performance represented for the permeable pavement at the time of Town of Kitty Hawk approval and initial installation.

Permeable pavement operation, ~~and~~ maintenance, testing and repair means operation, ~~and~~ maintenance, testing in accordance with North Carolina State University Simplified Infiltration Test, and repair as appropriate of a permeable pavement installation in accordance with recommendations and requirements of the permeable pavement manufacturer, supplier, or trade association; the NC DEQ Stormwater Design Manual; and/or the Town of Kitty Hawk approval; ~~as appropriate~~. Testing shall be required for all permeable pavement installations unless such requirement is waived by the Town of Kitty Hawk. Testing shall be executed at least annually commencing with the date of the Certificate of Occupancy for the facility being served by the permeable pavement, and test results shall be provided to the Town of Kitty Hawk within 30 days of execution. Permeable pavement repairs, as appropriate, shall be completed promptly. *Editorial note: Prior proposed text referred to installation in compliance with the NC DEQ stormwater standards, but did not explicitly call out operation, maintenance, testing and repair.*

42-247(d)4. Dimensional Requirements; BR-1

The maximum allowable lot coverage by principal use and all accessory structures is 30 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 36%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

42-248(d)4. Dimensional Requirements; BR-2

The maximum allowable lot coverage by principal use and all accessory structures is 30 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 36%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

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42-249(d)4. Dimensional Requirements; BR-3

The maximum allowable lot coverage by principal use and all accessory structures is 30 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 36%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

42-250(d). Dimensional Requirements; BC-1

(5) The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

(8) A minimum of ~~35~~ 25 percent of the site shall remain in natural or manmade landscaped open space.

42-251(d). Dimensional Requirements; BC-2

(5) The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

(8) ~~The~~ A minimum of ~~35~~ 25 percent of the site shall remain in natural or manmade landscaped open space.

42-253(d)5. Dimensional Requirements; BH-1

The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

42-273(d)4. Dimensional Requirements; VR-1

The maximum allowable lot coverage by principal use and all accessory structures is 30 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 36%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

42-274(d)4. Dimensional Requirements; VR-2

The maximum allowable lot coverage by principal use and all accessory structures is 30 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 36%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

42-275(d)4. Dimensional Requirements; VR-3

The maximum allowable lot coverage by principal use and all accessory structures is 30 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 36%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

42-276(d). Dimensional Requirements; VC-1

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(8) The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

(11) ~~The~~ A minimum of ~~35~~ 25 percent of the site shall remain in natural or manmade landscaped open space.

42-277(d) Dimensional Requirements; VC-2

(5) The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

(7) ~~The~~ A minimum of ~~35~~ 25 percent of the site shall remain in natural or manmade landscaped open space.

42-278(d)2.d. Dimensional Requirements; VC-3

The maximum allowable lot coverage by principal use and all accessory structures is 60 percent. Use of permeable pavement shall allow a maximum lot coverage physical area of 72%. Permeable pavement failure shall require that the failed permeable pavement is removed and replaced by a pavement meeting the definition of permeable pavement herein with design pavement performance equal to, or better than, the represented performance of the approved pavement.

Background

The applicant has proposed the above language be added which would allow for additional physical lot coverage for property owners who wish to use permeable paving materials which meet the requirements listed in the proposed language. These permeable paving methods allow stormwater to infiltrate through the paving system. Currently, Kitty Hawk offers no bonus for using these materials, gravel, pavers, porous pavement, and even unimproved driveways, by definition are all counted as 100% lot coverage.

The concept of this text amendment is that in no case would any property owner be able to exceed the current level of lot coverage (30% for residential and 60% for commercial) regarding the standard lot coverage considerations (structures, decks, pools, impervious concrete). Should a property owner use permeable pavement, as defined in the proposed definition, they would then be able to use this material to exceed the current lot coverage by 6% in residential uses, and 12% in commercial zones.

Examples: A property owner developing a single-family home site in the BR-1 could develop a site plan that utilizes 30% standard lot coverage, and up to 6% permeable pavement coverage. Or, they could potentially have 25% standard lot coverage, and up to 11% permeable pavement coverage, or any other combination that totals 36% or less lot coverage physical area and does not exceed 30% standard lot coverage.

Similarly, in a commercial zone, a property owner submitting a commercial site plan could potentially show 60% standard lot coverage and up to 12% permeable pavement coverage. Or the site plan could indicate 50% standard lot coverage and up to 22% permeable pavement coverage, or any other combination that totals 72% or less lot coverage physical area and does not exceed 60% standard lot coverage.

Clogging of pervious pavement occurs when foreign materials restrict the ability of the water to flow through the pervious pavement. This could come in the form of soil or sand that is blown by wind onto the surface or brought to the surface by stormwater runoff. If this clogging is to occur, and it blocks the water from flowing through the material, it is effectively, no longer pervious. As written, should any permeable pavement become clogged, it would be considered a permeable pavement failure, and by ordinance, the town could require the issue to be remedied.

Currently the other towns of Dare County do allow lot coverage bonuses in various forms. Duck allows permeable materials to be counted as 60% lot coverage; Kill Devil Hills allows for a reduction of 40-60% of the lot coverage

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calculation, dependent on the installation method used; Nags Head allows these materials to be counted as 67% lot coverage; and Manteo does not count permeable paving materials towards lot coverage calculations at all.

The proposed use of permeable pavement, as defined in the proposed language, is consistent with the regulations and guidelines for permeable pavement installations per the NC DEQ Stormwater Design Manual. NC DEQ recognizes the use of permeable pavement as a best stormwater management practice consistent with Low Intensity Development (LID), which encourages on-site retention, infiltration and treatment of stormwater. Allowing property owners additional physical coverage area may prove to be an incentive to use this material on their properties, thus indirectly encouraging the implementation of this BMP. Having the permeable pavement rated at 100% pervious, in the most intensely developed scenario (30% standard coverage and 6% permeable pavement for residential; 60% standard coverage and 12% permeable pavement for commercial), there would be no additional runoff to account for. It would be logical to assume that in most cases, if a property owner is developing a site plan utilizing permeable pavement, it would be used for as much of the pavement as feasible, which would likely mean reduced standard lot coverage, and a decrease in runoff versus maximum standard lot coverage utilization.

It should be noted that the language presented differs slightly from that which the Planning Board reviewed. The language added since the Planning Board review is shown in red above, with a note from the applicant stating the reasoning for the addition. Additionally, staff has included the word "decks" under the definition of lot coverage. Kitty Hawk has always considered open decks as lot coverage, but it has never been clearly articulated in the ordinance.

In discussions with the applicant, it is apparent that his main interest in the proposed text amendment deals with the commercial zoning districts. In an effort to ease some concerns presented by the Planning Board, he has communicated a willingness to remove the residential zones from the proposed text amendment, if Council desires.

Consistency with Land Use Plan

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

POLICY #4F: Kitty Hawk will continue to regulate building intensity and oversized structures by enforcing, amending as necessary, the zoning ordinance. The zoning ordinance regulates building intensity factors such as building height, lot coverage and building setbacks for commercial and residential building development. The ordinance also specifies maximum and minimum building sizes for commercial buildings.

POLICY #5A: Kitty Hawk will continue to adopt, enforce and amend as necessary ordinances and procedures (including the sign ordinance) to regulate and improve community appearance.

POLICY #21A: Kitty Hawk is committed to minimizing and mitigating the effects of stormwater drainage and to implementing a comprehensive approach to stormwater management. The Town supports the concept of ocean outfall as a means to remove stormwater from low lying areas.

Planning Board Recommendation

At its April 19, 2018 meeting, the Planning Board recommended denial of the proposed text amendment by a vote of 3-2, with the major concern being the usage of the permeable pavement in residential areas where the majority of homes are second homes and the material may not be maintained.

Perry: *The Walmart was limited in the amount of property it could build on and its expansion was limited. Say they come back and want to put permeable in and increase their building size. Could they do it?*

Testerman: *If they replaced some of their pavement with the permeable pavement the way this proposal is put forward they could get up to 72%.*

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Bateman: *It increases density.*

McClellan: *And every building would be eligible for an upgrade above their existing lot coverage.*

Pruitt: *When you say it would be the responsibility of the person that puts this in would that mean there is some way of going and checking to see if this is working? Or would it be when water is standing, and somebody rides by and says this is not draining. Is that the way this works?*

Testerman: *The main telltale if it is not performing is if you see water standing. The applicant pointed out to me as we were working on this a lot of materials are actually rated within 200% so it is actually accounting for more stormwater than if it were just left in a natural state. For it to get to that failure point it would have a lot of clogging to take place.*

McClellan: *Is there a performance evaluation after a period of time? Other than watching for standing water.*

Pruitt: *Do they pour water to see if it is draining or is this going to be a judgement call? I say it is working and somebody says it is not. I was just wondering if there is a method of testing other than evaluating it by vision.*

Testerman: *The applicant may be able to better answer.*

1.) Ralph Calfee, Engineer and Applicant: *The Walmart is in the BC-3 district and BC-3 is not proposed to be affected by this text amendment. Other commercial areas we can talk about what that does in terms of a site, but it does not include BC-3. It also excludes Kitty Hawk Woods.*

The other question under discussion was who is responsible? The question highlights the difference between residential and commercial development. In the commercial development most of your stormwater work is engineered, not all, but most, and nevertheless the requirement is that the work will be installed in compliance with the North Carolina stormwater regulations and standards. Their regulations and standards require that the work is observed, is documented and certified by either an engineer or a certified installation inspector. Then you have comfort. You do not have to be out there watching if it is being put in right.

Once it gets built, the change that was added to the language after the planning board review was to require an annual test of the permeable pavement. Those test results will be provided to the Town of Kitty Hawk. That means you do not have to proactively go out there and check and see what it is doing. You automatically get the information every year and if they do not do it they are in violation of their site plan approval and you can take whatever action is necessary.

When I approached this I was looking at commercial development and potential lot coverage allowances. Then I thought to look at something more comprehensive and include a variety of districts for consideration.

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In the process I changed from the way that most of these ordinances have been written in the past. Typically, it just said if you use permeable pavement you get a certain allowance. It did not talk a lot about the districts. It talked more about the pavement performance. What I did here was set out the definitions of what happens with permeable pavement and then identified the specific districts that are affected and how they are affected. What that has done is make it very easy to consider some or all of the ordinance as you are doing your consideration.

In terms of lot coverage allowances back in the day with permeable pavement they looked at replacement ratios. For example, you could put in 3 square feet of turfstone that counted as 2 square feet of coverage and did not look at what is the true impact on the development potential. That is why in one spreadsheet I gave you it identified that Kill Devil Hills now has a specific cap at 75% lot coverage. They also have replacement ratios. Southern Shores, Duck and Nags Head all have replacement ratios, but they do not have a cap. I have indicated that their cap and lot coverage is probably somewhere around 75% to 78% based on what and how you can do your designs.

For Kitty Hawk I have proposed 72% which is conservative compared to them. And in Kitty Hawk it requires that anything over the base amount of 60% would be with what is a minimum of 100% permeable pavement. In fact, the pavements that are approved by the Division of Water Quality all have what they characterize as 200% permeability in that they will take their rainfall as well as the rainfall runoff from an adjacent area that is of equal size. The standards that we now use have a much higher permeability on paper than they used to.

Residential we are looking at current allowances of anywhere from 30% to 40%. Southern Shores allows 30% with no increase. Kill Devil Hills does not allow an increase, but they also start at 40%. Duck and Nags Head allow higher than what I have proposed in Kitty Hawk and they also do not have a limit. Whatever way you can make the site work you may be able to jack up your coverage significantly in the residential zones in those communities.

To wrap this up when all is said and done what I am proposing is that the permeable pavement that is used has a minimum of 100% permeability. All the DEQ standards are what they call 200%. They recognize and allow that some of us may come up with designs that do not fit the book, but they will consider them and review them and determine whether in fact you are complying with the regulations. The intent of the regs.

One of the things they do require is that the pavement permeability is 50 inches of water an hour at a 4-inch hit. If you put 4 inches of water on this permeable pavement then it must be able to absorb 50 inches per hour of that water. If you maintain it at 4 inches, then you will have to put in the equivalent of 50 inches which is a lot of water. A typical very, very, very heavy rainfall is about 8 or 9 inches per hour and they usually only last 5 or 10 minutes when they occur, so the standard is really quite high.

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I think the fixed coverage limit, the maximum that is stated, is much clearer and is much more well defined than the replacement ratios where it is just a matter of what anybody could work out and figure out how they work.

Perry: *Permeable pavement is only as good as what is under it being able to absorb.*

Calfee: *That is correct.*

Perry: *This engineering considers the kind of dirt that is underneath the permeable pavement?*

Calfee: *Yes sir. Most permeable pavements have an underlying of open rock or gravel and that stuff is all specified in the normal DEQ standards. I have had many discussions with them over the fact that a lot of our beach sands have a permeability that is amazingly high. While they do not specifically say you can use beach sand upon application they will consider the fact that you are on beach sand. In which case you would put your permeable pavement over a receiving layer of rock or gravel that might be 4, 6 or 8 inches thick which then lets the water go into the underlying sand, but all of this has to be evaluated before we can get approval on our proposed systems. We must do soil sampling and a permeability test on the underlying soil.*

Perry: *When we built the fire house that was one of the big issues. The size of the building on the size of the lot required gravel and webbing ...*

Calfee: *There are a lot of issues about where that station is built.*

Perry: *That is the reason I raised the question.*

Calfee: *Including the fact that a lot of the soils back there, you know I used to live right around the corner from it, are not really sweet for stormwater infiltration.*

Perry: *I know, and we must consider that especially when you are talking residential back in the village. It would not work everywhere.*

Calfee: *Again, that highlights the difference in commercial and residential. You get a much better look at a commercial project.*

Pruitt: *Is there a kind shelf life to one of these permeable pavements? I have seen one that was replaced in Kitty Hawk. They took the pavers out and put back regular concrete. It seemed like it failed but it had been there a while.*

Calfee: *The lifetime of permeable pavement is a function of a variety of issues and that is the reason for the annual testing. It will tell you if you are not adequately maintaining. It is going to show you do not have to wait until you get 10 years down the line and say well this whole system*

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has failed. The Marketplace had some permeable pavement and then a year or two later they seal coated it to restripe and so much for permeable pavement at least in the areas where they did that.

Perry: *Is there anyone else that wants to speak?*

No one came forward to speak.

Perry: *I asked Rob to give us two proposals. One dealing with your original proposal which included residential and another which takes out the residential. If we were to do that would you have an objection?*

Calfee: *I will not object to it. If you want to pull residential for potential further consideration or resolution of issues.*

Perry: *I just want to make sure the record shows that.*

Mayor Perry made a motion to go back into regular session. Councilman Bateman seconded the motion and it carried unanimously, 5-0.

MPT Garriss said this is a motion that this will apply to commercial zones only and moved to adopt the proposed text amendment amending subsection 42-1, 42-250 (BC-1), 42-251 (BC-2), 42-253 (BH-1), 42-276 (VC-1), 42-277 (VC-2) and 42-278 (VC-3), allowing lot coverage bonuses as described in the test amendment for the use of permeable pavement that meets the requirements listed in the proposal. The Town Council finds that the proposed text amendment is consistent with the adopted CAMA Land Use Plan and finds these amendments to be in the public interest. Councilman Bateman seconded. (Clerk's Note: This motion is amended further in the minutes deleting the village commercial districts from the ordinance.)

Bateman: *I was not for this in residential areas. We are a low-density beach community and the water tables are high in residential areas. I think we need to be as user friendly to our commercial community as possible. I think this is a good compromise.*

McClellan: *And it will be monitored consistently. With a residence many times a new owner will not learn about it. When a commercial development gets a new owner, there are a lot of things they will learn about it and there are expectations that they must live up to.*

Perry: *I have a question about the village commercial districts, because like residential, we are thinking water tables and things of that nature.*

McClellan: *Take it out.*

Pruitt: *I would not like to see this back in the village. I do not think it is going to work. I do not think the soil with our water table right now and still rising ...*

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Bateman: *Thank you for bringing that up. I agree.*

MPT Garriss amended his motion taking out the village commercial districts. Councilman Bateman seconded.

Pruitt: *I am also opposed to any of this going on in the village, but I do feel like this can work out in the areas of the beach where the sand is more permeable. I like the way Ralph presented this to where the applicants are going to have to maintain it and provide us with data on how it is working. We do not have to go out and do it ourselves. That is the reason I do not have a problem with the commercial.*

Perry: *The only other thing I want to add for the record is when we are taking it out of the village, both commercial and residential, we are doing it also for other places that are residential like Sea Scope. Also, it requires enforcement and we do not have the resources. I am not planning to tax people to get the resources necessary to enforce residential or private property. Commercial is a different story altogether.*

The vote was unanimous, 5-0. (Ordinance No. 18-06)

8. PLANNING

a.) Encroachment Agreement. 4113 Tarkle Ridge Road. The property owner has requested an encroachment agreement for a basketball goal with the town right-of-way.

Planning Director Testerman reviewed the following staff report for 4113 Tarkle Ridge Road. The staff report for 4028 Tarkle Ridge Road is identical.

Proposal

Staff has received an encroachment agreement request from the property owner at 4113 Tarkle Ridge Road. Specifically, the owner has requested the agreement in order to continue to have a basketball goal placed within the town right-of-way. Town Code allows encroachments on rights of way with an agreement with the town per Sec. 36-3.

Sec. 36-3.- Encroachments on rights-of-way

No encroachment shall exist in the right-of-way of any street located in the town until such a time as the encroaching party has entered into an encroachment agreement with the town. Said encroachment agreement shall be entered consistent with the policies set by the town from time to time.

Staff was able to locate the following policy on encroachment agreements:

BE IT ORDAINED by the Town Council of Kitty Hawk that the Kitty Hawk Town Code Enforcement Officer shall follow the following policy considerations in determining whether and to what extent to recommend an encroachment agreement:

A. The encroachment should not create a danger to the general public by virtue of its size or density.

B. An encroachment allowed should not be higher than what would impede a driver of a standard motor vehicle from seeing throughout the right-of-way beyond the encroachment.

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- C. An encroachment should be constructed of a material that will break upon impact with a vehicle moving at minimal speed (eg. 10 m.p.h. or greater).
- D. The encroachment should not impede the Town's ability to maintain the right-of-way.
- E. The encroachment should not impede the various utility suppliers' abilities to maintain their easements.
- F. In no case should an encroachment be located closer than 36 inches from a fire hydrant.

Per the above stated policy, the Code Enforcement Officer has reviewed the encroachment agreement request, his findings are as follows:

- A. The encroachment should not create a danger to the general public by virtue of its size or density. **The basketball goals would not create a danger to the general public by virtue of their size or density**
- B. An encroachment allowed should not be higher than what would impede a driver of a standard motor vehicle from seeing throughout the right-of-way beyond the encroachment. **The basketball goals would not impede a driver from seeing through the right-of-way**
- C. An encroachment should be constructed of a material that will break upon impact with a vehicle moving at minimal speed (eg. 10 m.p.h. or greater). **The basketball goals are made of metal tubing and would not break away when hit by a vehicle at minimal speed.**
- D. The encroachment should not impede the Town's ability to maintain the right-of-way. **The basketball goals would impede the Town in maintaining the right-of-way in they would limit the mowing in the area of the goals.**
- E. The encroachment should not impede the various utility suppliers' abilities to maintain their easements. **The basketball goals would not limit utility supplier's ability to maintain their easements.**
- F. In no case should an encroachment be located closer than 36 inches from a fire hydrant. **The basketball goals are not closer than 36 inches from a fire hydrant**

It is the recommendation of the code enforcement officer that the encroachment agreement be denied as conditions C. and D. are not satisfied.

Perry: *The only thing I want to bring up for the future is (B). We either need to add something or change it to include that whatever is encroaching on the right-of-way should not extend over the road so a high rise vehicle, such as a trash truck or a box truck, would hit it. In one of these requests the goal itself extends across the road and a high vehicle would have to swerve across the main center. We have been dealing with that for a long time on the road I live on and would like for you to look at changing it and bringing it back to us.*

Testerman: *Yes.*

Garriss: *The requests do not comply with (C) and (D). We are not against anybody playing basketball, but I am looking at a safety factor involved here.*

McClellan: *If the homeowner assumed responsibility for the maintenance of the right-of-way would that then eliminate that particular point from consideration?*

Perry: *If that was the only point it might.*

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At this time Mayor Perry recognized the applicant.

1.) Art Metcalf, 4113 Tarkle Ridge Road, Kitty Hawk, NC: *We have had a basketball goal before and it was the cheap one that has plastic on the bottom. Every time the wind blows hard it blows over. Because the way the lines come in on our property it is not something I can put on my own property. I know it sort of does not meet your safety concepts, but this is a thousand-dollar basketball goal. It is made out of a steel six by six tube that is in the ground. I am not saying if somebody hits it, I mean it is off the road, I do not know if you have a picture ...*

Garriss: *It is a great looking basketball goal.*

Metcalf: *Initially it was overhanging the road. My measurement was off when I first put it up and so I moved it back off the road. We have a gentleman that goes down the street with his riding mower every week and cuts the grass and now there is maintenance done with the trees once in a while. We moved it out of the way of anything. It sits up 10' high and really the only thing is the post which is actually all the way back now in the tree line. The trees are sort of overhanging the goal so the maintenance of that section of the road is actually ... you could drive a truck under it if you wanted to.*

From a safety standpoint I feel like if a car hits one of those cheap goals it is going to fall onto the car. This is not going to fall if somebody hits it at 10 mph. It is going to be dented but it is not going to fall onto somebody or onto something which has always been the risk with these el cheapo goals. The wind blows and they fall over onto a neighboring car, blow down, blow around. They also were made out of cheap metal and with our weather in a year they are half rusty. We chose something that looks good in the community and is not an eyesore. We have gotten it to where it is off the road enough we believe.

It is really the homeowners association that started this whole thing hence why we moved out of Southern Shores. Now we are in another association that seems to be giving us headaches.

I do not want my kids inside playing video games and watching movies. We are trying to raise kids as active as possible and be a part of our community. It is really a challenge as a parent as you know. This is one of those things you can say come on let's go outside and shoot some ball. We try to make them as fit and active as possible.

Of course we will follow along with whatever you tell us to do but hope that you see it is not a safety risk. I truly do not believe ... in fact I believe it is safer than any other thing that you could put up there. It does not really encroach on anybody's ability to go and prune or do any kind of cutting or anything in the area the way I have it set back.

Bateman: *It seems to me that (C) is the only one that I have a problem with. (D), I mean the guy maintains it ...*

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Perry: *They were submitted as two different ones, so we can do a motion on each one.*

Pruitt: *Are they constructed different? According to our code enforcement officer neither of these is going to break away?*

Garriss: *Right*

Bateman: *Is it possible to put a break away on the bottom of the pole? It comes in sections. Could you possibly ...*

Metcalf: *It is one steel tube. It is anchored to the ground with ... I do think it would break. I mean it is not going to break at 10 mph because somebody already hit it at 10 mph and it has a dent in it. Somebody backed into it because I put it across from our driveway and somebody backed out of my driveway into it. It has 4 anchor bolts and is all one assembly.*

Bateman: *I am trying to find a way to make this work.*

Pruitt: *What we have is a set of rules we need to go by. If an accident was to happen and I wake up and hear somebody was seriously hurt by a basketball goal and we did not have it break away I would feel terrible.*

Metcalf: *Don't you think break away would be more risk? Something big and heavy falling on somebody would be worse than something ...*

Garriss: *Break away absorbs energy. Just like a break away utility poles. That is the reason they are there.*

Pruitt: *We would love for you to have a basketball goal, but we have a set of rules here.*

McClellan: *Is there any kind of crash barrier or crash absorbing outer layer that could be added to it?*

Pruitt: *But it would not stop the impact.*

Perry: *We must follow the rules. If he wants to modify it, he can and take it to the Code Enforcement Officer to see if it meets the code. At the moment it does not and just like you said if you do not follow the rules and somebody gets hurt then we do become liable. We did not bring this up. We did not want to get involved.*

MPT Garriss made a motion to deny the requested encroachment agreement for the basketball goal within the town right-of-way at 4113 and 4186 Tackle Ridge Road as condition (C) and (D) of the policy are not met as noted by the code enforcement Officer. Councilman Pruitt seconded and the vote was unanimous, 5-0.

8(b.) Encroachment Agreement. 4028 Tarkle Ridge Road. The property owner has requested an encroachment agreement for a basketball goal with the town right-of-way.

The staff report for this item is identical to 8(a) above.

MPT Garriss made a motion to deny the requested encroachment agreement for the basketball goal within the town right-of-way at 4028 Tarkle Ridge Road as condition (C) and (D) of the policy are not met as noted by the Code Enforcement Officer. Councilman Pruitt seconded and the vote was unanimous, 5-0.

9. NEW BUSINESS

a.) Boards and Committee Appointments

Planning Board:

Councilman Pruitt made a motion to reappoint Bryan Parker and Dusty Rhoads as regular member of the planning board with a term of office to expire June 30, 2020. MPT Garriss seconded and it passed unanimously, 5-0.

MPT Garriss made a motion, seconded by, Councilman Pruitt, to reappoint Gary Muir as an alternate on the planning board with a term of office to expire June 30, 2020. The vote was unanimous, 5-0.

Councilman Bateman made a motion to appoint Matt Spencer to the unexpired term of Jan Collins as an alternate on the planning Board with a term of office to expire June 30, 2019. MPT Garriss seconded and it passed unanimously, 5-0.

Councilman Pruitt made a motion seconded by, Councilman Bateman, to reappoint John Richeson as chairman and Bryan Parker as Vice-chairman of the planning board for a one-year term.

Board of Adjustment:

MPT Garriss made a motion to reappoint Chris Jenkins and Christine Buckner as a regular member of the board of adjustment with a term of office to expire June 30, 2021. The motion was seconded by Councilman Bateman and the vote was unanimous, 5-0.

Councilman Pruitt made a motion to appoint David Hines as a regular member on the board of adjustment with a term of office to expire June 30, 2021. Councilwoman McClean seconded and it passed unanimously, 5-0.

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Councilwoman McClean made a motion, seconded by Councilman Pruitt to reappoint Timothy Fish as an alternate on the board of adjustment with a term of office to expire June 30, 2021. The vote was unanimous, 5-0.

MPT Garriss made a motion to appoint David Morton as chairman and Charlotte Walker as vice-chairman on the board of adjustment for one year or until a successor is named. The motion was seconded by Councilman Bateman and passed unanimously, 5-0.

Recreation Committee:

Councilman Pruitt made a motion to reappoint Paul Henriques and Tom Heffner as a regular member of the Recreation Committee with a term of office to expire June 30, 2022.

9(b.) Donation of a Dune Walkover on Town Owned Property at 4109 N. Virginia Dare Trail

Manager Stewart reviewed the following staff report:

Proposal: Approval of a public dune walkover at 4019 N. Virginia Dare Trail.

Background Information: Town Staff was approached by Mr. James Williams who resides at 4020 N. Virginia Dare Trail. The property owner has offered to donate his time and materials to construct a public dune crossover on Town owned property located at 4019 N. Virginia Dare Trail.

Staff Analysis: The construction of the dune crossover would be constructed in accordance with building codes and upon all environmental agencies approval. The Town's Building Department would review the plans and permit the construction of the dune walkover.

The dune walkover would be donated to the Town of Kitty Hawk upon completion for public use. Future maintenance of the dune walkover would be the ultimate responsibility of the Town of Kitty Hawk.

McClean: *Is public works alright with all this?*

Stewart: *Yes, and I would make sure we have something in writing saying we appreciate the donation and if there is any damage and we choose not to replace it we are not obligated to. It is obviously more maintenance for the town.*

Pruitt: *Do you know what kind of walkover we are talking about?*

Stewart: *A wooden deck structure.*

Perry: *We have done this before. You know that right?*

Pruitt: *I did not.*

Perry: *Yes, further north.*

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Bateman: *There is also one in front of Sea Dunes.*

Pruitt: *I hope not because it has a no trespassing sign on it.*

Midgett: *They rebuilt and posted it.*

Pruitt: *Wait a minute. If we agree with this and it becomes the town's, then it washes away, they cannot go and put a private one there and post it can they? Is that what happened at there?*

Perry: *I do not know about that one. I am talking about the one that is north of where this is.*

Midgett: *Between Hawks and Wilkins.*

Perry: *It was put on town property and built by a homeowner. We took it over for public use.*

Pruitt: *Years down the road I do not want to see it somehow end up the homeowner's.*

Garriss: *What are your thoughts on this Willie?*

Midgett: *We have not done anything to the one we took over a couple of years ago other than empty the trash and things like that. Maintenance wise, unless a storm hits it, it is not a lot right now. If we do get a storm and it is torn out, then we could choose not to put it back because it is our property. It is close to a couple of other accesses, so I don't know that it is necessary. That is my opinion, but as far as maintenance goes it is not that big a task.*

Perry: *One of the problems we have had along this stretch is we have a fence and that fence does not have any access across it.*

Midgett: *It is open right now. My only issue will be height and keeping it clear of sand because we do struggle keeping Lillian cleared.*

Perry: *Building something gets you across and you can keep the dune intact.*

Pruitt: *We are not talking about a great big elaborate structure, are we? Are we talking about a bunch of steps going down the other side?*

Stewart: *It is not really a big steep slope, probably a couple of steps and then a four or six foot ...*

McClean: *We are not talking handicapped ramp and observation platform?*

Stewart: *No. We are just talking about a hard surface to get over. He must get a permit and we will make sure it is nice and meets our criteria with handrails and things of that nature.*

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Pruitt: *We do not want something like we have across from the Black Pelican that is what I am getting at. I do not have a problem with getting to the top of the dune and then ...*

Perry: *There are going to be steps up, the dune is fairly wide now, and then back down.*

Pruitt: *Some of them, like Bleriot, go up, you are on the beach and you just take off walking. There is not really another side.*

Bateman: *I have no problem with the walkover. We need to check in front of the townhomes because I think right after Hurricane Isabel, or during that time, we had something to do with the walkover. I thought it was ours, but I might be wrong.*

Mayor Perry made a motion to approve the donation request for a dune walkover at 4019 North Virginia Dare Trail and add that it follows all town codes, CAMA and whatever else regulatory requirements are required. Councilwoman McClean seconded and it passed unanimously, 5-0.

10. TOWN MANAGER

Manager Stewart announced **Hazardous Waste Day** on June 23rd from 9 AM to 1 PM, 1018 Driftwood Drive, Manteo.

Pruitt: *Will they take gasoline?*

Stewart: *I believe it is gasoline, paints, batteries.*

Midgett: *Pesticides is the big one.*

Perry: *Gasoline can be taken to the recycling center right now.*

Stewart: *The **Little Red Mailbox** was dedicated several weeks ago for the child who drowned near the Lillian Street access. The mayor made a moving speech at the ceremony and hopefully there will be closure.*

Manager Stewart expressed to Councilwoman McClean, and husband Tom, he is glad everything is better and they were not hurt any worse than they were.

11. TOWN ATTORNEY

No comments.

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12. TOWN COUNCIL

Pruitt: *As we know there was a fire at Lynne and Tom's home and I want to thank our fire department and all the other fire departments in the area, police and everybody that came together to put it out. I wish you the best to getting back in your home.*

McClellan: *I have made many comments about how wonderful our staff is and I have always been very proud to live in Kitty Hawk. I feel comfortable and safe. After what happened on May 11th I know what it is like to be visited by all these public servants. My hand was charbroiled and Tom's leg was French fried. He got hit with oil and I got hit with flames, but we did get out and we still have our house. I am so grateful to all of the people that helped us and I just cannot say anything more than thank you for being professionals, knowing your job and doing it well. I know now from first hand experience that everybody in Kitty Hawk is in very good hands and I also want to extend my thanks to all the other towns who sent their people to help.*

Bateman: *I was there the morning after the fire and want you to accept help when people offer it.*

McClellan: *We do not know what we need yet.*

Garriss: *Glad you and Tom are okay. On another note I have been to the beach twice in the last two weeks and every time we went the lifeguards said good morning, how are you sir and how are you ma'am. When we left it was have a good day. I was leaving one time and there were two ladies coming along with coolers and chairs and the lifeguard jumped to help them. I think this is a great reflection on the Town and I want to thank them publicly.*

Perry: *I am glad you and Tom are well and healing.*

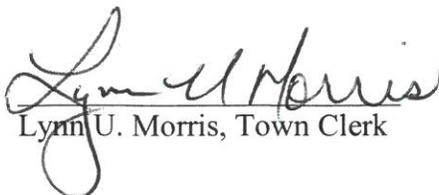
13. PUBLIC COMMENT

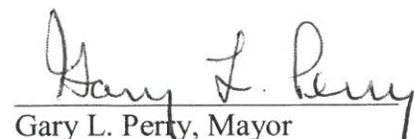
There were no public comments.

14. ADJOURN

MPT Garriss made a motion, seconded by Councilwoman McClellan, to adjourn. It passed unanimously 5-0. Time was 7:32 p.m.

These minutes were approved at the July 9, 2018 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor