

Proposed Agenda
KITTY HAWK TOWN COUNCIL
Monday, October 1, 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:
 - Police Sgt. Jeff Wiggins/15 Years of Service
5. Public Comment
6. Consent Agenda
 - a.) Approval of September 4, 2018 Council Minutes
 - b.) FY 18-19 Budget Amendment #2
 - c.) FY 18-19 Budget Amendment #3
 - d.) Resolution Establishing the Town Council Meeting Dates for 2019
7. Planning
 - a.) Schedule Public Hearing/Rezoning: 5101 Hornbeam Rd from KHW to BR-1. The applicant has requested a portion of their property to be rezoned from Kitty Hawk Woods, to Low Density Beach Residential. *(Deleted)*
8. New Business
 - a.) Government Use Zoning District
9. Reports/General Comments from Town Manager
10. Reports/General Comments from Town Attorney
11. Reports/General Comments from Town Council
12. Public Comment
13. Adjourn

COUNCILMEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Town Manager Andy Stewart, Town Clerk Lynn Morris, Town Attorney Casey Varnell, 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

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1. CALL TO ORDER

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

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

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

3. APPROVAL OF AGENDA

Mayor Perry said the agenda needs to be amended. He deleted 7(a) because it was tabled by the planning board. **MPT Garriss made a motion to approve the amended agenda. It was seconded by Councilwoman McClean and passed unanimously, 5-0.**

4. PRESENTATION

- **Police Sgt. Jeff Wiggins/15 Years of Service**

Police Chief Johnson presented Sgt. Wiggins with his 15-year service plaque. Mayor Perry and council thanked him for his years of service.

5. PUBLIC COMMENT

There were no public comments.

6. CONSENT AGENDA

a.) Approval of September 4, 2018 Council Minutes. (An approval of the consent agenda will approve these minutes.)

b.) FY 18-19 Budget Amendment #2. This amendment, in the amount of \$4,500, will increase the original budget allocated for the audit and actuaries account and recognize the cost of the GASB 75 actuarial report required this year. (An approval of the consent agenda will approve this amendment.)

c.) FY 18-19 Budget Amendment #3. This amendment, in the amount of \$17,500, is to recognize the cost of the additional Nearshore Bathymetric Survey approved by council at the September 4, 2018 meeting. (An approval of the consent agenda will approve this amendment.)

d.) Resolution Establishing the Town Council Meeting Dates for 2019. The Town Council will meet on the first Monday of each month except for the following month: Monday, September 9, 2019. (An affirmative vote for the consent agenda will approve this resolution.)

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

7. PLANNING

a.) Schedule Public Hearing/Rezoning: 5101 Hornbeam Rd from KHW to BR-1. The applicant has requested a portion of their property to be rezoned from Kitty Hawk Woods, to Low Density Beach Residential. *(Deleted because it was tabled by the Planning Board.)*

8. NEW BUSINESS

a.) Government Use Zoning District

Mayor Perry said it is staff's recommendation not to create a new district as described in the memorandum below. A statement will be written on the zoning map that states, "Town owned, or leased facilities, are a permitted use by right in all zoning districts." This will hopefully alert potential buyers of property adjacent to or near Town owned property that a police or fire station may be built even in a residential district.

Background Information:

At Council's request, to determine if creating a new zoning district strictly for governmental use would classify as an illegal spot zoning, staff reached out to David Owens, Professor of Public Law and Government, School of Government, UNC Chapel Hill for clarification on the matter. It is Mr. Owens opinion that it still may be considered spot zoning in that the action would zone a relatively small area owned by a single entity differently from the surrounding property.

However, it may be a legal spot zoning. In North Carolina, spot zoning is legal if the Town shows that it is "reasonable." A key factor in determining reasonableness is how similar the new uses are as compared to the prior zoning. If the uses in the new zone would also have been allowed in the old zone, that is a strong indicator that the decision is reasonable. As "town owned or leased facilities" are permitted by-right in all zoning districts, it is likely that a new "governmental use district" would be considered reasonable. According to Owens, the community benefits are also an important factor, as are the uses allowed on the immediately adjacent areas to the south. It is his opinion, that those factors in this scenario point to this perhaps being an example of legal spot zoning. Attached is an article written by Mr. Owens pertaining to legal spot zoning.

While the concept might be legal, the localities that do utilize a "governmental use" zoning district typically have a large block of land that is used for a governmental complex, that could include many parcels and town facilities, it is not typically seen applied to small tracts of land throughout the locality. As the goal of this is to make adjacent property owners (and future purchasers) aware that Town facilities could potentially be built adjacent to them in the future, a potentially more efficient option would be to update the official zoning map, and include a statement on the map that "Town owned or leased facilities are a permitted use by-right in all zoning districts." If a potential buyer is in fact researching their zoning district, by having that kind of statement on the map, it would make them aware. The Town has also developed a map that indicates all Town owned parcels and the statement could make reference to this map as well. It is staff's recommendation that rather than creating a new district, the official zoning map be updated as described above.

Mayor Perry made a motion to approve the recommendation. Councilman Bateman seconded and it passed unanimously, 5-0.

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9. TOWN MANAGER

Manager Stewart invited department heads to come forward and update council on their departments.

Police Chief Johnson:

- no issues this summer at the US 158 and NC 12 intersection with traffic control. There was a decrease in accidents in that area. Usually 60% of accidents in the Town throughout the year occur from Ocean Boulevard to the foot of the bridge.
- still seeing a steady increase in the opioid issue and heroin addiction. Trying to tackle it with education and assisting people get the help they need.

Fire Chief Talley:

- busy season over the summer compared to last year. Up around 25% in call volume, especially in the month of June. Looking at the numbers to see what is causing it.
- volunteer member numbers are increasing each month.
- Captain Mike Basilone was accepted into the National Fire Academy program. It is a 4-year graduate level program and is very competitive. They only accept about 224 applications a year and there are usually around 600 applicants.
- open house is next week. There will be tours and fire prevention activities for children.
- safety was the theme and trying to accomplish that with more and better training. There is fire officer leadership training this month. A retired fire chief from Chapel Hill is coming to share his knowledge and experiences. Also coordinating training efforts with Currituck County. A vehicle extraction course is later this month. It is a two-day course for a certification. Co-ordinating efforts and sharing resources.

Answering the mayor's question about what types of calls increased Chief Talley replied they were across the board.

Mayor Perry asked if Captain Basilone will be away for four years and Chief Talley replied no, he will go to the Emmitsburg, Maryland campus for two weeks a year and then complete assignments during the rest of the year.

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Finance Officer Nobel:

- the Fiscal Year 2017-18 audit process started three weeks ago. It seems to have been another successful fiscal year for the Town.
- staff is currently gathering expenditures for Hurricane Florence and the information will be submitted to Dare County. If a county-wide threshold of \$124,000 is met, then the Town will qualify for FEMA reimbursement. The Town had mostly Category B, prevention costs, incurred.

Public Works Director Midgett:

- staff is working on getting additional grant funds for more ditch and canal cleaning.
- the contractor is slated to begin culvert cleaning tomorrow.
- large item pick up was last week and the next one is scheduled for November 26th.
- the contractor will begin chipping on October 15th.
- the Bath House will close for the season on October 29th. The water will stay on for the surfers to wash their surfboards.

Perry: *I am going to take this opportunity to bring something up about the pumps. When we have needed pumps in the past we have been able to get them without a problem. That is beginning to be a problem because everybody else needs them and there are only so many. I was trying to get enough pumps to do everything but found out the contractor we normally go to in Virginia Beach did not have any. I think the contractor helped us find a source of 6" pumps versus the 8" pumps.*

We have avoided buying a pump because of the cost which is around \$70,000 and then you must maintain it. I think we need to start thinking about whether we want to buy one now and maybe another one later on. The way things are going we may not get pumps if we are not really Johnny-on-the-spot and see it coming in a timely fashion. I want you to think about it for budget time.

I am sitting here listening to what Willie is telling us about the things public works is doing. You came to the Town in 2005?

Midgett: *2006.*

Perry: *When you came to the Town I know you were mowing grass and had just moved into the old fire station. There was one path? The Woods Road path?*

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Midgett: *The Woods Road. Twiford was under construction and Sandy Run Park was under construction.*

Perry: *We have added four times a year pickup. Since you came on board the job description that you came to us with has expanded, what double?*

Midgett: *Mileage wise yes.*

Perry: *You see where I am going with this? That job has expanded exponentially. The requirements and what he needs to do and get going has expanded. Do you see where I am going with this question?*

Stewart: *Yes.*

Bateman: *Willie is there a chance to get a contract on demand that says in an event you are guaranteed to get your 10 pumps?*

Midgett: *There is a company that will do that. I have looked at it. I have not really gone there because it is a very small company and it may take a little time to get them, but they will guarantee them.*

Bateman: *I am just asking a question. I am not trying to get into what you do because you do a great job. I was just ...*

Perry: *There is something to that and I need to add that the Park Service could not get pumps because the vendor they were going to did not want them in anything other than fresh water. There are some companies that will not let you have them if you are going to pump salt is that correct?*

Midgett: *That is correct. The one company I mentioned has something with Nags Head. It is something we can look into.*

Manager Stewart:

- flu shots on Thursday, November 1st, 3-6 p.m., at the Town Hall. They are free for anyone 18 years and older.
- Management Assistant Clopton is now a designated Senior Certified Professional with the International Public Management Association for Human Resources.

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10. TOWN ATTORNEY

Attorney Varnell reported the Town did not get sued and the Town did not have to sue anybody.

11. TOWN COUNCIL

Councilwoman McClean:

- thanked everybody for doing a good job and working hard for the Town.

MPT Garriss:

- thought it was a great idea to have the department heads report. They all did a great job and he appreciates it.

Mayor Perry:

- a request has been made asking the Town to supply \$2,000 for wreaths for veteran's graves during Christmas. His issue is Austin Cemetery is not open to the public. He does not believe the Town should pay to do that for a cemetery that is not open. He asked how others see it and they agreed with him.
- received a letter from the Town of Kill Devil Hills to the Dare County Board of Commissioners recommending a working group be put together to include the county and all the municipalities concerning flooding. He has reservations about it but wanted to let council know. If they start putting something together and want Kitty Hawk to join he will bring it back up. Kitty Hawk's drainage problems are so unique compared to other places.

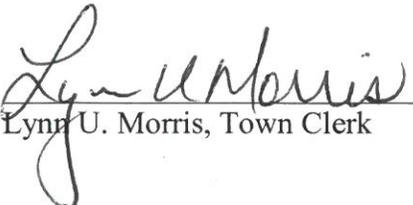
12. PUBLIC COMMENT

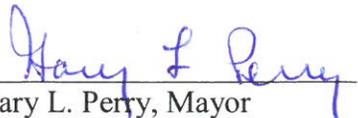
No one came forward.

13. ADJOURN

Mayor Perry made a motion to adjourn. Councilwoman McClean seconded and it passed unanimously, 5-0. Time was 6:26 p.m.

These minutes were approved at the November 5, 2018 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor