

MINUTES
KITTY HAWK TOWN COUNCIL
Tuesday, September 2, 2014
Kitty Hawk Town Hall, 6:00 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentations/Recognitions:
 - Carol Ferry, Fire Department Office Assistant/Receptionist /10 years
 - Gail Sonnesso/World Alzheimer's Month and Proclamation
5. Public Comment
6. Consent Agenda
 - a.) Approval of August 4, 2014 Council Minutes
 - b.) Revenues and Expenses Report for July 2014
 - c.) Resolution Establishing the Town Council Regular Monthly Meeting Dates for Calendar Year 2015
 - d.) Acceptance of Donation from OBX Frozen Yogurt LLC
 - e.) Request to Fill Vacancy in Police Department
7. Items Removed from the Consent Agenda
8. Planning
 - a.) Call for Public Hearing/Text Amendment: Application to amend Subsections 42-6(c) and 42-514(c)(2) of the Kitty Hawk Town Code to clarify that off-site septic systems are allowed subject to approval by the Dare County Environmental Health Department. A public hearing is requested to be scheduled for the October 6, 2014 Town Council meeting.
9. Unfinished Business
 - a.) Text Amendment: Application to amend the Kitty Hawk Town Code with the addition of Section 42-528 establishing standards for the development of solar energy systems. A decision on this item was tabled at the last council meeting.
10. New Business
 - a.) North Carolina Governor's Highway Safety Program
11. Reports or General Comments from Town Manager
 - a.) Storm Damage Reduction Update
 - b.) Shred and Protect Program
 - c.) Farewell to Planning Director Joe Heard
12. Reports or General Comments from Town Attorney
 - a.) Winks Update
13. Reports or General Comments from Town Council
 - a.) Surfing for Autism
14. Public Comment
15. Adjourn

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COUNCIL MEMBERS PRESENT:

Mayor Gary Perry, Councilman Craig Garriss, Councilwoman Emilie Klutz and Councilman Jeff Pruitt

COUNCIL MEMBER ABSENT:

Mayor Pro Tem Ervin Bateman

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Finance Officer Charlene Allen, Management Assistant Melody Clopton, Town Planner Joe Heard, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

1. Call to Order

Mayor Perry called the meeting to order at 6:01 p.m. and welcomed everyone in attendance.

2. Moment of Silence/Pledge of Allegiance

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

3. Approval of Agenda

Mayor Perry noted that Mayor Pro Tem Bateman is not in attendance and excused him. He then added a police grant for new business.

Councilman Pruitt made a motion to approve the agenda as amended. Councilman Garriss seconded the motion and it passed unanimously, 4-0.

4. Presentations/Recognitions

- **Carol Ferry, Fire Department Office Assistant/Receptionist /10 years**

Fire Chief Lowell Spivey said he is delighted to recognize Carol Ferry for 10 years of service with the town. He then read aloud a certificate of appreciation to her for loyal and dedicated service.

- **Gail Sonnesso/World Alzheimer's Month and Proclamation**

Ms. Sonnesso, Executive Director of GEM Adult Day Services, thanked council for allowing her to speak on Alzheimer's and asked for their approval of the World Alzheimer's Month Proclamation.

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Councilwoman Klutz made a motion, seconded by Councilman Garriss to approve the proclamation for World Alzheimer's Disease Awareness Month. The motion passed unanimously, 4-0.

5. Public Comment

There were no public comments.

6. Consent Agenda

a.) Approval of August 4, 2014 Council Minutes. *(An affirmative vote for the consent agenda will approve these minutes.)*

b.) Revenues and Expenses Report for July 2014. *(An affirmative vote for the consent agenda will acknowledge this report.)*

c.) Resolution Establishing the Town Council Regular Monthly Meeting Dates for Calendar Year 2015 - The Town Council meets on the first Monday of each month unless it is observed as a town holiday. In 2015 three holidays are observed on a council meeting date: Easter, July 4th and Labor Day. Due to other town meetings and the calendar staff is recommending council meet on the Tuesday following each Monday holiday: Tuesday, April 7, Tuesday, July 7 and Tuesday, September 8, 2015. *(An affirmative vote for the consent agenda will approve the 2015 calendar year meeting dates.)*

d.) Acceptance of Donation from OBX Frozen Yogurt LLC – OBX Frozen Yogurt donated \$391.00 to the police department. Chief Johnson is requesting this donation be accepted and allocated for purchasing an automated external defibrillator (AED). *(An affirmative vote for the consent agenda will accept this donation.)*

e.) Request to Fill Vacancy in Police Department – Due to a resignation there is a vacancy in the police department. This request is to hire an officer with a starting salary of \$36,239.62. *(An affirmative vote of the consent agenda will allow this position to be filled.)*

Councilman Pruitt made a motion to approve the consent agenda. Councilwoman Klutz seconded the motion and it passed unanimously, 4-0.

7. Items Removed from the Consent Agenda

There were no items removed from the consent agenda.

8. Planning

a.) Call for Public Hearing/Text Amendment: Application to amend Subsections 42-6(c) and 42-514(c)(2) of the Kitty Hawk Town Code to clarify that off-site septic systems are allowed subject to approval by the Dare County Environmental Health Department. A public hearing is requested to be scheduled for the October 6, 2014 Town Council meeting.

Councilman Garriss made a motion to set a public hearing for the town council meeting on October 6, 2014 regarding the proposed text amendment to clarify that off-site septic systems are allowed subject to approval by the Dare County Environmental Health Department. Councilman Pruitt seconded.

Klutz: In the section that is going to be updated it reads that a septic system may be located on a parcel other than the parcel containing the residence served by the septic system. I would like the word residence to be changed to facility which is used in the detailed section regarding the septic systems. The use of the word residence would imply that only residential properties are affected by this change and that is not the case.

Michael: Facility is the word that is used in the rules adopted by the state so changing the word residence to facility would make it consistent.

Councilman Garriss amended his motion and Councilman Pruitt seconded the amended motion. The vote was 4-0 to set the public hearing.

9. Unfinished Business

a.) Text Amendment: Application to amend the Kitty Hawk Town Code with the addition of Section 42-528 establishing standards for the development of solar energy systems. A decision on this item was tabled at the last council meeting.

Perry: We are dealing with a new ordinance and it is something we have not dealt with before. In fact it is new to the whole county. My first reaction to any new ordinance like this is oh no not another regulation on the people. That is my gut reaction and it is a kind of rejection to it. But as we got into it we saw that solar panels are already here and they are being regulated in a different kind of a fashion.

There are hot water tanks and pools and roof installations so I guess we are already regulating them and now we are putting it on paper. But we are also dealing in a new entity where there is a lot of room for unintended consequence. I think that is the thing that bothers me most about going into something new like this.

Because of this I went out to Dominion's Microgrid and looked specifically at their solar panels. I was lucky enough to be there when the two people who installed the turbines, which do not work, were there. I was able to get some information that we did not really have before and I want to bring it to the council. For example, look under (f), Height Limitations, in the proposed

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ordinance. When we talk about ground mounted solar equipment systems the equipment shall have a maximum height of 20 feet. Now 20 feet is pretty high in a residential area. We do not allow a fence more than 6 feet high and in a commercial area it is 10 feet.

Heard: *That is correct.*

Perry: *So in theory a person could put this above that 6 foot or 10 foot fence and a neighbor has to look at it. Did you think about that when you wrote the rule?*

Heard: *That standard came directly from the model ordinance and in the staff report it has all the different groups, associations and business interests who were involved in the process. That is where it came from. I have also observed some of the larger facilities. In looking at those, and while they may not be 20 feet in height, they are certainly over 10. Some might be raised as high as I am off the ground before it even begins to taper upward so ... I would suspect they are somewhere in the low to mid-teens as far as height goes.*

Perry: *When I talked with those folks I said it is kind of high off of the ground and asked what the purpose is. In that particular case it is off the ground because Dominion put their electric panel equipment underneath of them. Then he stated if you bought this particular grid system the materials in the kit are going to be that high. I guess that is done so you can work or mow or whatever you have to do underneath. That bothers me. I want to maintain property rights but I also want to make sure we guard a neighbor's rights too. It looks to me like some limitation consistent with whatever height fence we allow might be in order. That is something to think about.*

Klutz: *That was one of the problems I had with it last time. It was a 20 foot height with a side setback in all zoning districts of 15 feet. Basically 15 feet from your property line although they had a setback from a residence of 100 feet. A 100 foot setback for a residence but 15 feet away from your property line could be a 10 or 20 foot structure. I just cannot imagine that being in a residential district.*

Perry: *Which is the problem I am having. So that is problem number one. I give you credit Joe and I especially give credit to the planning board because they looked at this and they took out some things like fluorescent ... I mean the flood lights along driveways and they said that is just not right so they took those out already.*

Under Level 2 and 3 Energy Requirements item #4, Glare. It says the location and orientation of the SES shall direct glare away from occupied structures on adjoining properties. Should we say any glare? Should we add the word any? Just to be specific. If it is glaring we want it to stay away from a neighbor.

Then under #5, Signage. Signage such as advertising or educational is permitted per the standards of the town's sign ordinance. Necessary or required security and safety signage shall not count toward the maximum size of signs on the property. Necessary required security required by whom? The owner? The town?

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Heard: *It would not be the town. Presumably the thought there was simply that it would be the owners as far as telling people no trespassing or beware of high voltage if there is an electrical panel box or something of that nature. That is the thought behind it but if there is some clarification that is needed we can certainly take a look at it.*

Perry: *It seems to me like it is open ended. It does not state by whom or what is actually necessary or required. Under #6, Lighting. The last sentence says lighting with motion sensor control is preferred. I had a motion sensor on my back porch one time and every time the wind blew a bush it came on. It would go off and on all the time and I don't know if that is a good idea or not. Lighting maybe but whether we prefer a motion sensor? We might want to think about that too.*

The next one is a big one for me. Lot coverage. Those panels on the Dominion Microgrid are close together and they are caulked because they have equipment under them. They do not want it to rain on them. If a deck is built isn't it counted in lot coverage?

Heard: *Yes.*

Perry: *And yet here we are putting in an array panel with a great deal of coverage and not counting it. I have a problem with it and not only that but under Stormwater Management, #8. It says ground mounted solar panel arrays shall not be included in stormwater management calculations if the ground underneath remains pervious. It may remain pervious but if it is a deck or it is not counted in lot coverage and it is doing the same thing then you need to add something like runoff is not directed away from the panel array. In other words it needs to stay underneath that array or it needs to be counted in stormwater management to my mind. I have a few problems with this and want to make sure we do not have unintended consequences.*

I also have a question on Decommissioning, Item #2. It states it is the responsibility of the SES owner to notify in writing the Kitty Hawk Planning and Inspections Department once the use of a solar energy system has ceased. My question is how is it enforced in the code if the town is not notified?

Heard: *We run across this sometimes with businesses when they leave and a permit might expire. A good example would be Beach Ready Auto that we are looking into now. We have to do the best we can to determine a date the use ceased. We are fortunate that Beach Ready Auto owner wanted it ceased as soon as possible and submitted a letter to us saying as of this date we are gone. But if that did not occur we would have to back track and use records which could involve looking at an electric bill. Whatever we can do to help document that or ...*

Perry: *Is there any penalty for failure of notification?*

Heard: *There is not a requirement for that. In that scenario there is not a requirement but it could be considered or we could take a look at adding something more specific.*

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Perry: *Then the final question is under (c) in the same area where the last sentence says the Town of Kitty Hawk can review the adequacy of the bond amount on an annual basis. And do what? We review and do what? Do we make them do something, undo it? Where do we go from there?*

Klutz: *One of the things I have been noticing in news articles recently is the heat that gets generated by these solar panels and basically it affects birds in flight. My question is if there is heat emanating from these solar panels, and there is no lot coverage requirement, what is the impact?*

Perry: *You are talking apples and oranges. Those are solar mirrors not collectors.*

Klutz: *So it is not going to radiate upward?*

Perry: *No. The solar panel is absorbing the heat. I don't see a problem do you see one?*

Heard: *I have not come across that issue in the research we have done.*

Perry: *It is like asphalt absorbing the heat. It is not necessarily reflect it although you certainly feel it when you walk on it.*

Klutz: *What I was concerned about was if somebody had an acre of land and they filled it up with solar panels would that have an impact in terms of the temperature on the surrounding area. If the answer is no then it is not a problem.*

The lot coverage. I do not understand why these do not count on lot coverage. The other thing I read was if it is in wetlands the Army Corps of Engineers does not really take into account the posts that are put down in the wetland. Is that the case?

Heard: *If you were mounting it in an area where there were corps wetlands you would have to get a permit from the Army Corps and they would evaluate any potential damage or anything like that to the wetlands as a result of the project. They are not exempt from any of that.*

Klutz: *And the Army Corps of Engineers, when they are doing this, take into account the posts that go into the ground to support the panels?*

Perry: *They do. The building we are sitting in right now is built over wetlands, sitting on posts, and there are other garages, net sheds that are also built over wetlands. They take that into account but they are more concerned, if I understand it correctly, with whether it would shade out the existing wetlands. If it does not then you can probably build it, although I think that is getting stricter than it used to be.*

Klutz: *When I finished reading this I felt like we really did not have a handle on what the SES Level's 2 and 3 would actually mean if it were built in town. And it is allowed in both residential and commercial in every district. I just do not feel comfortable with it.*

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Pruitt: *When Dominion submitted their site plan one of my concerns was the glare and we had residents show up with that same concern. The solar panels are a considerable distance from any residence and they were still concerned. The way it sounds to me, if I have a vacant lot, I can completely cover the whole lot with panels. I think it would be offensive to a residential property owner to have somebody build this little solar plant next to him. I think he would have a hard time selling his house and I think it would decrease somebody's property value. The glare and height of them concerns me as I was concerned with Dominion. I think we need to do more fine tuning and see what we can come up with.*

Garriss: *We had a lot of questions and concerns the first time this came up and it is obvious we still have a lot of work that needs to be done before we can even consider going further. I am not comfortable with this at all.*

Perry: *I get that we are going to have some sort of regulation because we are already dealing with the issue but we want to make sure we do not have unintended consequences. Steve do we need to make a motion not to approve this or just send it back?*

Michael: *It would probably be cleaner to deny it and send it back and start over based on where you are. Plus there is a state statute that deals with solar collectors on residences that you are going to need to consider. I was not aware of it earlier and it places some limitations on what the town can and cannot do. It may change your thinking and Joe's thinking to some extent. I don't know why the people that drew the model ordinance up didn't deal with this but they should have or at least mentioned it as options. There are other things out there that you are probably going to want to consider.*

Perry: *So this is something you just came up with?*

Michael: *I found it today. I decided to take a look to see if the state has done anything. There is actually a statute, 160A-201, that alters a little of what you can and cannot do. It tells you what you can regulate and tells you that you cannot regulate not allowing it.*

Klutz: *Doesn't the building code already allow what is going on right now?*

Michael: *The building code does but this says towns cannot prohibit residential solar collectors. It gives you the ability to place some limits. The legislature helps you out and uses the word reasonable.*

Perry: *I think we are all in agreement. I am going to call for a motion to deny.*

Councilman Pruitt made a motion to deny the text amendment to establish development of standards for solar energy systems in Section 42-528. Councilman Garriss seconded the motion and it passed unanimously, 4-0.

Perry: *Joe take it back and do some tweaking and follow up with what Steve has come up with. I think we all recognize we need to have something but I don't know if we need a Level 3. Go back*

and have the planning board take another look at it. We are not dismissing it we are just concerned.

10. New Business

a.) North Carolina Governor's Highway Safety Program

Mayor Perry stated this is for a no-match grant from the Governor's Highway Safety Program to assist the governor's highway safety program liaison Sgt. Brain Strickland with travel for meetings and seminars. Any remainder of monies will be used to purchase approved traffic safety equipment. The grant amount is \$20,000.

Councilman Garriss made a motion, seconded by Councilwoman Klutz, to approve the North Carolina Governor's Highway Safety Program Local Governmental Resolution. The vote was unanimous, 4-0.

11. Reports or General Comments from Town Manager

a.) **Storm Damage Reduction Update** – Manager Stockton reported Coastal Planning & Engineering said they have completed 45.7% of the scope of work as of August 12th. This work involved coordination with town staff, development of environmental documentation, design analysis, data analysis associated with the off shore sand search and the planning and execution of the vibracore surveys. The preliminary results of the vibracore analysis indicates a sufficient amount of high quality sediment is available for the Kitty Hawk project from the area off shore of Kill Devil Hills. The planning group for the project will be meeting on September 9th and hopefully there will be a better handle on the cost of the project. Preliminarily staff was told by the consultant that because of the location of the sand there should be a cost savings even though they are proposing to add additional sand in Kitty Hawk.

b.) **Shred and Protect Program** – Manager Stockton announced the upcoming Shred and Protect program on Saturday, September 20th from 9 a.m. to 12 p.m. It will be held at the Kitty Hawk Post Office and allows anyone in Dare County to bring personal documents to the post office and have them shredded. It is free of charge.

c.) **Planning Director to Leave** – Manager Stockton announced the departure of Director of Planning and Inspections Joe Heard. He has accepted a position as Director of Community Development with the Town of Duck and his last day will be September 25th. He thanked Joe for all his accomplishments and hard work while a part of the staff in Kitty Hawk.

11. Reports or General Comments from Town Attorney

a.) **Winks** - Attorney Michael reported the Winks case was scheduled for this past Friday but unfortunately the judge and a number of the attorneys were under the weather and it was not heard. It has been continued to the next court date that the judge has available which is sometime in October.

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**RESOLUTION SUPPORTING THE
REQUESTED CHANGES TO THE SPOT 4.0 PROCESS**

WHEREAS, the Town of Kitty Hawk, North Carolina is severely impacted by the exponential growth of traffic and gridlock during the peak season for tourism; and

WHEREAS, The Albemarle RPO and Dare County have expressed their concerns about the overwhelming impact of the volumes of traffic in Kitty Hawk; and

WHEREAS, the traffic volumes in Kitty Hawk cause unacceptable delays of up to 5 hours on US 158; and

WHEREAS, the Town of Kitty Hawk believes that these traffic conditions can be addressed through the SPOT 4.0 process and that this is the only means to resolve this issue; and

WHEREAS, the Town of Kitty Hawk requests that seasonal traffic volumes be used in the scoring of the SPOT 4.0; and

WHEREAS, the Town of Kitty Hawk requests that evacuation be considered as a criteria for the scoring of the SPOT 4.0; and

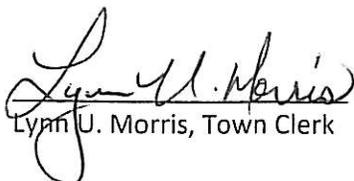
WHEREAS, the Town of Kitty Hawk requests that economic competitiveness criteria be considered in the scoring of SPOT 4.0; and

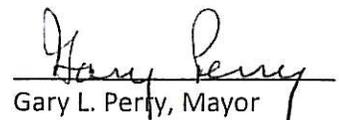
WHEREAS, the Town of Kitty Hawk requests that the geographic size, number of road miles and seasonal population in each MPO and RPO be considered when allocating local input points for the SPOT 4.0; and

WHEREAS, the Town of Kitty Hawk requests that the SPOT workgroup consider adding a representative from the Albemarle RPO to ensure the needs and concerns of the RPO members are expressed to the SPOT workgroup.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Kitty Hawk hereby requests that the Strategic Prioritization Office of Transportation seriously consider the requests to modify the SPOT 4.0 process as requested.

This the 6th day of October 2014.


Lynn U. Morris, Town Clerk


Gary L. Perly, Mayor

12. Reports or General Comments from Town Council

a.) **Farewell to Planning Director Joe Heard** - The mayor and councilmembers expressed their appreciation for Joe's dedicated work over the last eight and a half years and best wishes in his new job.

b.) **Surfing for Autism** – Councilman Pruitt gave a shout out to the Outer Banks community for hosting the Surfing for Autism event at Jennette's Pier in Nags Head on Saturday, August 23rd. Many businesses donated merchandise as well as held fund raisers for people locally and in eastern North Carolina. He thanked all of the volunteers who helped with the event.

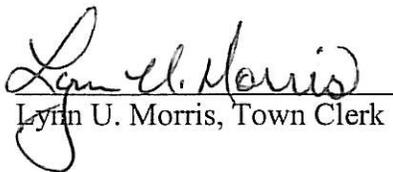
13. Public Comment

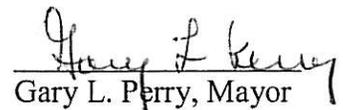
There were no public comments.

14. Adjourn

Councilman Garriss made a motion to adjourn. Councilwoman Klutz seconded the motion and the vote was unanimous. Time was 6:44 p.m.

These minutes were approved at the October 6, 2014 council meeting.


Lynn U. Morris, Town Clerk


Gary L. Perry, Mayor