Minutes of the Monday, July 11, 2016 regular meeting of the Kill Devil Hills Board of Commissioners held at 5:30 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Present: Mayor Sheila F. Davies; Commissioners Travis Appleman, Mike Hogan, Michael Midgette, and Brandi Rheubottom

Members Absent: None

Others Present: Shawn R. Murphy, Assistant Town Manager; Casey C. Varnell, Town Attorney; Meredith Guns, Planning Director; Mary E. Quidley, Town Clerk

Call to Order

At 5:31 p.m. Mayor Davies called this meeting of the Kill Devil Hills Board of Commissioners to order and welcomed all present.

Pledge of Allegiance and Moment of Silence

Agenda Approval

Commissioner Rheubottom made a motion for the Board of Commissioners to approve the agenda for this meeting as presented. Commissioner Appleman seconded that motion and approval was unanimous, 5-0.

Public Comment (Time limit of 3 minutes per person; 5 minutes per group)

Mayor Davies addressed the audience and explained the issue of dogs on the beach was being considered at this meeting because several dog owners had spoken to members of the Board of Commissioners requesting favorable consideration of relaxing the Town's regulations.

The Board was very interested in receiving citizens' input on the matter prior to addressing the matter. Advertisements of the meeting, electronic distribution of the meeting notices, media articles and word-of-mouth all succeeded in spreading the word about the meeting and more than 50 e-mail comments have been received at the Town Hall in response. This, Mayor Davies commented, is what governing is all about – governing bodies asking for and receiving public input on issues under consideration. The Board of Commissioners, she concluded, is pleased with the level of response and appreciates the efforts of all who are in attendance at this meeting, and those who made sure their opinions have been communicated.

Howard Kimble, 803 West Sportsman Drive, Kill Devil Hills: Mr. Kimble asked the Board to keep the beach dog-free for several hours per day and to make no change to the ordinance.

Bruce Hilpert, 501 East Radburn Street, Phoenix, Arizona; and 1621 Princess Ann Drive, Kill Devil Hills: Mr. Hilpert explained that while he is tolerant of dogs, he is not a dog lover, and he asked the Board to not change the Town Code. The beach, he explained, is thin in width and is often packed with beachgoers during the summer months. Regularly, he said, there are violators to existing dog regulations, but, even so, he has not witnessed that many problems. However, Mr. Hilpert explained that he is very concerned that when people are allowed to bring their dogs to the beach all the time, keeping in mind all those who obey existing regulations, that there could be more problems.

Mr. Hilpert was particularly concerned about the potential for safety problems due to increased dog numbers. Toddlers and dogs often do not mix well and there could well be related issues.

He urged a compromise and suggested that designating an access as "dog friendly" might be something to consider.

Mr. Hilpert also submitted a petition to the Town Clerk, with 38 signatures on it, of whom 30 were dog owners, in opposition to changes in the Kill Devil Hills dogs on the beach regulations. (Town Clerk's Note: The petition, entitled *We Oppose Changes to the KDH Dog Ordinance*, is hereby attached to and made a part of the minutes of this meeting.)

Everett McCoy Harbeson, 304 St. Louis Street, Kill Devil Hills: Mr. Harbeson spoke in opposition to dogs on the Town's beaches. His concerns included:

- There is no limit to the number of dogs people can take to the beach;
- Dogs defecate on the beach and that causes problems for beachgoers;
- Dogs should be muzzled in the interest of safety;
- Dogs often jump on people and sometimes knock them down;
- Liability in the event a dog causes a problem, who will be liable – the Town, the owner of the dog, etc.;
- It would be a great deal of work for ocean rescue personnel, the Animal Control Division, and the Police Department to deal with increased dog situations;
- Some people are just not responsible for their pets;
- Stray dogs could also be an issue as people could bring them to drop off at the beach;
- Food is an issue as dogs could get into people's food.

Richard Probst, 1806 Upper Dune, Kill Devil Hills: Mr. Probst explained it wasn't dogs on the beach but dog control that is more of his issue. Dogs should not be unleashed he stated. His dog has been attacked four separate times and her demeanor has changed from friendly and outgoing to very cautious. If dogs are allowed on the beach, they need to be leashed and leash laws need to be enforced.

John Arndt, 2023 Wrightsville Avenue, Kill Devil Hills: Mr. Arndt extended his appreciation to the Public Services Department, the Board of Commissioners, and everyone else that had anything to do with having a portion of Wrightsville Avenue, which adjoins his home, improved and paved. It's a very nice street he said, and he also appreciated the new improvements to 8th Street.

Robert Reese, 2807 Virginia Dare Trail, Kill Devil Hills: Since the 4th of July Mr. Reese stated, he has found a great deal of trash on the beach in front of his home and it has been quite a concern. He asked for a Town-wide policy of "leaving nothing but your footprints." Mr. Reese's comments included opposition to dogs consistently on the beach without being leashed and under control; dog defecation is a health hazard, he added. Kill Devil Hills needs to figure out a way to help people respect the beach, and that includes owners watching out for their dogs. He asked the Board to not change the ordinance.

Ann Wickstrom, 314 Gunas Drive, Kill Devil Hills: Ms. Wickstrom's comments were in support of changing the ordinance to allow dogs on the beach more often. She felt that the existing leash law should be better enforced. Ms. Wickstrom felt laws could be developed that would encourage respect of the beach and respect of those that enjoy going there and she encouraged the Board of Commissioners to do so.

Nancy Turney, 2020 N. Croatan Highway, Kill Devil Hills: Ms. Turney has a dog and feels that the laws should not be changed. Too often, she explained, she sees dogs on the beach that have no water; sometimes owners don't think rationally about the needs of their dogs.

Joanne Frazier, 515 West Landing Drive, Kill Devil Hills: She explained that one of the reasons she bought property on the Outer Banks is because her dog loves the beach. Ms. Frazier feels penalized during the high visitation season when the dog regulations change to prohibit dogs from being on the beach more often. Ms. Frazier wished she could take her dog to the beach whenever she chooses. She stressed that she cleans up after her dogs and is respectful of others.

Jeff Fabrikant, John Yancey Hotel, Kill Devil Hills: Mr. Fabrikant explained that his company owns and operates the John Yancey Hotel, but that he does not live in Kill Devil Hills. He stated that he felt there could be some confusion among beachgoers as the regulations in Nags Head and Kill Devil Hills differ; his hotel is very near the corporate limits of the two towns. He felt that making the times dogs are permitted on the beach could be made similar to reduce confusion.

"Fido Stations" (pet waste stations) could be erected at various places on the beaches to help alleviate issues related to dogs on the beach. They have such a station at the John Yancey.

Mr. Fabrikant also explained that the hotel's eastern-most property line is to the mean high water mark and he felt that until a dog passes that line it is on private property and therefore not regulated by the Town. There have been issues with the Police Department when guests are told they can take their pets on the beach to the mean high water mark. He suggested this issue be explored by the Town, as well.

The John Yancey Hotel is pet friendly and recognizes that pets are a large part of family dynamics.

Claire Showell, 1201 West Sportsman Kill Devil Hills: She spoke in opposition to dogs being on the beach and explained that while she's not afraid of dogs she wants to be able to relax at the beach without worry of whether or not a dog will get off its leash, come over to her, etc. Also, Ms. Showell stated that the sand and streets get extremely hot and could be dangerous for a dog.

Ms. Showell asked who patrols the beach, who enforces the dog regulations?

She indicated that she agreed with most of the comments made this evening.

Sherry Dewberry, 2000 New Bern Street, Kill Devil Hills: Ms. Dewberry explained that she has two dogs and is respectful of the needs of others. She was in favor of not changing the regulation as during the hottest time of the day dogs are not allowed on the beach and should not be on the beach. She also supported leash regulations.

Skip Jones, Kill Devil Hills: Mr. Jones explained that he has had dogs all of his life. Most of the issues raised during this meeting have been due to bad dog owners. There doesn't seem to be major problems coming from either Nags Head or Kitty Hawk. Perhaps better communication with dog owners would help remind people that their dogs have needs, that other people have rights, etc. He was in support of dogs on the beach and an ordinance change.

James Almoney, 900 Ninth Avenue, Kill Devil Hills: Mr. Almoney is a dog owner and he enjoys taking his dogs to the beach. He reviewed some of the regulations in effect in other local jurisdictions.

Mr. Almoney explained that he worked in the public domain for more than twenty years and has great respect for those who serve the public. He spoke to the importance of public employees being able to "multi-task," which would include the ability of an ocean rescue guard being able to communicate with code violators, with the Police Department as necessary, and/or with whatever other backup is necessary for the issue at hand, while attending to their primary responsibility of being an ocean rescue guard. On the beach, he has seen ocean rescue guards leave their stands for more than water-related emergencies, and to do so requires notification by nothing more than a radio transmission. Often, he explained, speaking with persons who have their dogs on the beach, something an ocean rescue guard should be able to do, is all that is required to achieve compliance with the law. The next steps are to call the Police or Animal Control; the guard can then go back to the fixed stand.

The dog on the beach ordinance is, as other Town ordinances, complaint-driven.

Mr. Almoney asked the Board of Commissioners to not amend the Town Code.

Police Chief Gary Britt, Town of Kill Devil Hills: Chief Britt explained that he had read all of the emails contained in the Board's meeting packets and added that he appreciated the passion exhibited by both those that want longer hours for dogs on the beach, and those that don't.

Regarding ocean rescue guards, Chief Britt explained that the Ocean Rescue Division has been asked to monitor and educate people if they have time either through fixed stand guards or roving guards. With only two Animal Control Officers they can't be on the beach all day and often it's necessary to ask for assistance; the guards provide this education and assistance as a courtesy – it's not something the Police Department can expect. If a problem crops up then Animal Control is dispatched; the ocean rescue guards are not expected to deal with problems.

At the beginning of the 2016 season Animal Control patrolled the beaches nearly every day to talk with people and educate them on dog regulations.

Chief Britt also explained that it was the department's responsibility to enforce the Town's ordinances as written, not to interpret these ordinances. He added that enforcement can sometimes be a sticky situation of its own – enthusiastic enforcement and people complain; less enforcement and people complain.

Guidance from the Board of Commissioners will be very much appreciated, Chief Britt concluded.

Response to Public Comment

Mayor Davies thanked everyone for their comments and explained that instead of responding to the Public Comment at this time, the Board would address the issue when *Dogs on the Beach Discussion* comes up under New Business.

Introductions and Presentations

Old Business

New Business

1. Site plan review

A. Golasa Holdings, LLC – 5,300 square foot retail/restaurant development – 1900 South Croatan Highway in the Commercial Zone (Attached NB-1A)

Planner Bryan Brightbill addressed this site plan. It is for construction of a three-unit, 5,300 square foot commercial building, was reviewed by the Planning Board at its June 21, 2016 meeting, at which time a vote was taken to forward it to the Board of Commissioners with a

favorable recommendation. Two conditions were identified by the Planning Board and both have been satisfied.

Staff also recommended approval of the site plan.

John DeLucia of Albemarle & Associates was present on behalf of the developer.

Commissioner Appleman made a motion for the Board of Commissioners to approve the site plan for Golasa Holdings, LLC – 5,300 square foot retail/restaurant development – 1900 South Croatan Highway in the Commercial Zone, as presented. Commissioner Midgette seconded that motion and approval was unanimous, 5-0.

2. Dogs on the beach discussion (Attached NB-2)

Recently, members of the Board of Commissioners have received multiple requests to consider amending the Town Code to allow dogs on the beach year-round, 24-hours per day. At the June 22nd meeting the Board agreed to schedule this item for discussion at the July 11th meeting and Staff proceeded to publicize the pending dialog.

Numerous e-mails have been received through the Town's social media sources.

Commissioner Midgette asked to hear Ocean Rescue Division Supervisor Dave Elder address the issue of enforcement and whether or not changing the regulations would make it easier for Ocean Rescue, as opposed to Ocean Rescue personnel having to tell people they have to leave the beach. Mr. Elder explained that it is sometimes difficult to expect people to comply with Ocean Rescue's direction on dogs since the division has no enforcement ability.

Commissioner Appleman asked if there were a number of complaints received yet, during this season, where Animal Control has actually had to be dispatched because of dogs on the beach. Senior Animal Control Officer Louie Reber explained that there had been perhaps 40-50 violations/complaints.

Commissioner Hogan explained that he felt it to be logical that whatever problems are occurring on the beach now would only multiply if the hours dogs are allowed on the beach are extended. The top priority for Ocean Rescue staff should be lifesaving and anything that takes their attention away from that should not be expected of them, he added.

Commissioner Appleman asked about liability to the Town and Attorney Varnell confirmed that there would be no additional liability should a dog bite occur on the beach as opposed to any municipal street.

Mayor Davies explained that when she had been approached by a couple of Town citizens to extend the hours for dogs on the beach, she originally felt like it should probably be an easy decision. But, after reading all the e-mails and hearing more comments, which did not include blog comments, Mayor Davies said that she realized there are more than twice as many people who desire no change to the ordinance than those who want to have the hours extended; that is a significant majority, she concluded. At this time, the Mayor stated, she is not leaning toward changing the Town Code. Mayor Davies also commented that she felt the Town should work on its message that ocean guards are not in place to enforce dog regulations.

Mr. Dave Elder added to his earlier comments that enforcement by ocean rescue can seem "quite fickle" since enforcement is not their primary purpose and they are responsible for doing other things. However, he also stated, the division staff would do the best it could in all circumstances, including dogs on the beach.

Commissioner Rheubottom stated that, based on sheer numbers, she would not support allowing dogs on the beach all hours of the day during the summer time; however, she could be in support of extending the hours to, perhaps, 10:00 a.m. until 5:30 or something similar. She added that changing or not changing the regulations is not as simple as Kill Devil Hills doing what Kitty Hawk or Nags Head does. Our Town's regulations have to be right for our situations.

Commissioner Appleman stated that he could support changing the Code to allow dogs on the beach after Labor Day and prior to Memorial Day, all day, which would be an extension of the days; the current ordinance doesn't extend the time period until after September 30th and it runs through April 30th. He would not be in favor at this time to extend the hours. Commissioner Midgette agreed and added that he would also be willing to designate a specific access for dogs. Mayor Davies countered that having a designated access could actually create more problems for enforcement personnel; how far would one access extend? Commissioner Hogan also did not agree with a specific access. How big an area would be needed; it could get quite crowded with dogs. Also, he said, he would not be in favor of the schedule for dogs coinciding with when ocean rescue guards take the beach on Memorial Day and come off after Labor Day as it could give the impression that guards could have some enforcement responsibility.

Mr. Elder voiced concern that having one designated dog beach area could cause persons who may use that area that do not have dogs to feel "victimized," thus causing other problems.

Mayor Davies reviewed the Town's regulation on owners' responsibilities to make sure they have in their possession a means to collect defecation materials. Commissioner Hogan added information on the 43 dog pot stations Kill Devil Hills provides throughout Town.

The Board agreed to have this item return for consideration at the October 10th meeting at which time they would review potential amendments to add additional hour(s) to the times during the day when dogs could be on the Town beaches in the summertime. Any change in the Town Code would not be in effect until the 2017 visitation season. There was no interest from any member of the Board of Commissioners to allow dogs on the beach all day long during the summer season.

3. Boards and Commissions

A. Proposed amendment to Chapter 31. Boards and Commissions, Section 31.02 [Planning Board] Membership; Terms, Vacancy, Attendance – to place responsibility for removal of members for lack of attendance on the Board of Commissioners (Attached NB-3A)

This amendment places the responsibility to take action for removal of members of the Planning Board for lack of attendance at their meetings on the Board of Commissioners.

Commissioner Midgette made a motion for the Board of Commissioners to adopt this amendment to the Town Code as presented. Commissioner Rheubottom seconded that motion and approval was unanimous, 5-0.

Potential action to remove a member of the Planning Board with excessive absences will be placed on the August 8th agenda. (Town Clerk's Note: This item was not placed on the 8.8.2016 agenda as the issue appeared to be resolved.)

B. Appointment – Planning Board regular term, to fill vacancy (Attached NB-3B)

With former member Pris Shea's resignation due to her moving out of Kill Devil Hills, there is a vacant seat on the Planning Board. Applications on file from persons interested in serving in a planning capacity were previously copied to the Board of Commissioners.

Commissioner Hogan made a motion for the Board of Commissioners to appoint John Windley to the Planning Board to fill the vacancy that will expire in September 2017. Commissioner Rheubottom seconded that motion and approval was unanimous, 5-0.

Commissioners Agenda

Commissioner Midgette

- *Fireworks.* They were great this year and the Police Department and Fire Department did an outstanding job on traffic control and response.

Commissioner Hogan

- *Lack of Crosswalk from satellite parking at Ocean Bay Boulevard.* He suggested that NC-DOT should consider installation of a crosswalk on the north side of Ocean Bay Boulevard, across Virginia Dare Trail, to provide safe crossing to the bathhouse for people using the Town's satellite parking lot.

  Planning Director Meredith Guns suggested Public Services Director Steve Albright could provide insight on this, and, if appropriate, contact NC-DOT on this matter. She stated she would speak with Mr. Albright as soon as possible. This issue could possibly be worked into the new Crosswalk Study NC-DOT is developing for Kitty Hawk, Kill Devil Hills and Nags Head.

Mayor's Agenda

- PARTF Funding. Mayor Davies and Ms. Guns explained that the Town has made application through the appropriate State offices for grant funding to complete the

Town's 5-stage multi-use trail that goes along Bay Drive and connects with existing trails along Colington Road and Veterans Drive.

Ms. Guns encouraged written comments be submitted to the appropriate officials supporting the Town's request for funding this project. The decision will be made on August 25th and Mayor Davies spoke of the importance that Kill Devil Hills be heard and be present for this hearing. Ms. Guns will provide contact information for distribution to the Town's social media and placement on the Town's website and Facebook page.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes

A. June 22, 2016

2. Report on disposition of surplus personal property (Attached CA-2)

Between May 6, 2015 and June 30, 2016 the Town realized $180,011.83 in revenue from sale of surplus personal property on GovDeals. Another $1 was paid when Police K-9 Inka had to be retired due to injury and she was sold to her handler, Officer Charlie Craddock. Approval of the Consent Agenda will record this information in the minutes of this meeting.

3. Agreement for legal services and appointment of the Town Attorney (Attached CA-3)

Approval of the Consent Agenda will record the Board's approval of the attached agreement for legal services and appointment of Casey C. Varnell as the Town Attorney.

Staff recommended approval of the Consent Agenda as submitted.

Commissioner Hogan made a motion for the Board of Commissioners to approve the Consent Agenda and Commissioner Rheubottom seconded that motion. Approval was unanimous, 5-0.

Response to Public Comment

Adjourn

There being no further business before the Board at this time, Commissioner Rheubottom made a motion to adjourn this meeting. Commissioner Appleman seconded that motion and approval was unanimous, 5-0.

It was 6:58 p.m.

Submitted by:

Mary E. Quidley
Town Clerk

These minutes were approved at the August 8, 2016 meeting of the Kill Devil Hills Board of Commissioners meeting.

Sheila F. Davies
Mayor
Town of Kill Devil Hills