



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

NOTICE OF PUBLIC MEETING

NOTICE is hereby given that on Monday, June 13, 2016 at 5:30 o'clock p.m. the Kill Devil Hills Board of Commissioners will hold its first regular meeting of the month in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road. The public is cordially invited to attend.

Call to Order

Pledge of Allegiance and Moment of Silence

Agenda Approval

Public Hearing

1. Town Manager's Recommended Budget for the 2016/2017 Fiscal Year

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

Response to Public Comment

Introductions and Presentations

1. 2016 Ocean Rescue Guards

2. Presentation of Life Saving Awards to Police Lieutenant John Towler and Police Sergeant Rodney Rawls

3. Trash Attack! poster awards

Old Business

New Business

Commissioners Agenda

Mayor's Agenda

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

Public Comment

Response to Public Comment

Adjourn

Posted this 8th day of June 2016.

Mary E. Quidley

Town Clerk

Copies to: Mayor and Board of Commissioners, TM, TA in their packet materials; all department heads; all Town bulletin boards; KDH Sunshine List, including all local news media; KDH Electronic Distribution List; Facebook; website; file

Minutes of the Monday, June 13, 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 Murphy, Assistant Town Manager; Steven D. Michael, Town Attorney; Greg Loy, Planning Director; Mary E. Quidley, Town Clerk

Call to Order

At 5:30 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

During the *Moment of Silence* this evening, the Mayor asked the audience to keep the victims and families of the Orlando, Florida mass shooting in their thoughts and prayers.

Agenda Approval

Mayor Davies made a motion for the Board to approve the agenda for this meeting with removal of *Introductions and Presentations Item #2*. Commissioner Rheubottom seconded that motion and approval was unanimous, 5-0.

Public Hearing

Town Attorney Steve Michael read aloud the rules of procedure for the Public Hearing this evening. At the conclusion of those comments, Mr. Michael called the Public Hearing to order.

1. Town Manager's Recommended Budget for the 2016/2017 Fiscal Year (Attached PH-1)

This public hearing on the Town Manager's recommended budget for fiscal year 2016/2017 was scheduled at the Board's regular meeting on May 16th, and on which a general worksession was held on May 25th. The hearing was held in accordance with the provisions of NCGS 159-12, and will also afford the Board of Commissioners the opportunity to hear public comments that may be considered prior to budget adoption.

There were no speakers and the public hearing was closed. Mayor Davies announced that the 2016/2017 Fiscal Year Budget would be placed on the June 22, 2016 agenda for adoption.

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

Response to Public Comment

Introductions and Presentations

Mayor Davies recognized board/committee member Pris Shea who currently serves on the Town's Planning Board, Community Appearance Commission, and Street Improvement and Special Projects Committee. Ms. Shea will be leaving Kill Devil Hills to move to Pennsylvania near her family.

Mayor Davies added that applications for appointment are always being accepted, and at this time there are three specific openings available.

2. Presentation of Life Saving Awards to Police Lieutenant John Towler and Police Sergeant Rodney Rawls

This item was removed from the agenda at the request of the Police Department and will be rescheduled for a future meeting.

3. Trash Attack! poster awards

Community Appearance Commission Chair Sue Kelly, on behalf of the Trash Attack! subcommittee representatives, conducted this item

Trash Attack! was held on Saturday, March 12, 2016 at 1634 North Croatan Highway, by the KDH Fire Station. It is an all-volunteer event that gives people around Town an opportunity to pick up litter along Town rights-of-way and streets. One hundred-five participants received a volunteer t-shirt and refreshments, and the event was well-attended. A total of 21 cubic yards of roadside litter and debris was collected.

As last year, the Town will use poster artwork in a variety of ways to remind people to keep Kill Devil Hills litter free, including refuse collection truck vinyl panels, signs for our recreation areas and facilities, and on our social media. Ms. Kelly presented certificates of appreciation to students and children who submitted artwork for the event. Sign blades made out of the artwork were on view at the front of the room and photos were taken that will be shared through the Town's social media network. The "winning" poster, submitted by Ashley Quidley, was reproduced as a vinyl cling and placed on one of the Town's refuse collection trucks as a reminder of the event and the importance of keeping Kill Devil Hills litter free.

Old Business

New Business

Commissioners Agenda

- Commissioner Midgette

Coyotes. Asked Assistant Chief Dana Harris what people should do if they come across a coyote. Chief Harris explained that because coyotes are wild animals, our Animal Control Division could not respond. Protect yourself, he said, but do not engage these animals.

Mayor Davies added that Kill Devil Hills will have an official from the North Carolina Wildlife Resources Commission attend a future meeting to speak on the issue of coyotes. His/her attendance will be well-publicized in advance.

- Commissioner Hogan

Tattoos. With the popularity of tattoos, and widespread establishments that offer tattooing, he believes Kill Devil Hills should consider allowing tattoo parlors in Kill Devil Hills.

Curbside recycling. The Town of Nags Head has already saved quite a bit of money in tipping fees by implementing a mandatory curbside recycling program. He asked for Kill Devil Hills to give consideration to implementing a similar program.

Mayor Davies asked Finance Director Beverly Kissinger to provide the Board with costs information on this issue. Public Services Director Steve Albright also has a great deal of information on this matter that can be provided to the Board.

Mayor's Agenda

1. **Request from the Town of Emerald Isle to support legal fight against private claim of dry sand beach (Attached MA-1)**

In 2001 an oceanfront lot was purchased in the Town of Emerald Isle. The new owners' deed extended their land title to the mean high water mark, which meant that it included the "dry sand" beach located between the foot of the dunes or first line of vegetation and the mean high tide line. The owners filed a lawsuit against Emerald Isle contending that the public did not have a right to use the dry sand beach to which they held title; the plaintiffs claimed they have the right to exclude the public from the dry sand beach. The plaintiffs further contend that the public only has the right to use the area seaward of the mean high tide line known as the "wet sand" beach. The public's use of the dry sand beaches in North Carolina has been a long-standing, customary right.

This challenge has made its way through the legal system and is now before the North Carolina Supreme Court. The court's decision in this case will have vast implications in the state. Our public trust beaches are known world-wide for their quality and beauty; our beaches overflow with fishing, sunbathing, and other recreational activities; the protection public trust beaches provides to valuable investments in property and infrastructure, as well as wildlife

habitats, are all part of the foundation of our coastal tourism industry. Supporting Emerald Isle's position that North Carolina's beaches, including the dry sand portion, are a public resource open to all for public resource uses is critical.

Packet materials for this item included an e-mail from Emerald Isle Town Manager Frank Rush and a summary he prepared on this legal matter. Emerald Isle requests North Carolina's coastal communities and counties sign an amicus brief and contribute \$2,000 to show solidarity in this matter. Locally, Nags Head, Southern Shores, Kitty Hawk and Duck are going to have Hornthal, Riley, Ellis & Maland prepare an amicus brief; Dare County is also on board. Having the northern North Carolina beaches submit an amicus brief to reinforce that prepared and submitted by the southern beaches may carry some additional weight with the court.

Mayor Davies recommended the Board of Commissioners authorize the Mayor and Town Attorney to execute an amicus brief for the purposes stated above, and approve a contribution of \$2,000 to Emerald Isle's legal efforts.

Commissioner Appleman made the motion recommended by the Mayor and Commissioner Rheubottom seconded that motion. Approval was unanimous, 5-0.

- Dogs on the beach. Mayor Davies explained that she had been contacted several times recently by persons desiring Kill Devil Hills to allow dogs on the beach year-round, with no time restrictions. She also explained that in their mail envelopes the Board members had historical information on the Town's dogs-on-the-beach regulations, including how the existing regulations came to be adopted. There was general receptiveness from the other members of the Board of Commissioners on the possibility of allowing dogs on the beach all the time, subject to compliance with existing leash laws. Mayor Davies stated that since there were no objections this matter will be put on a future agenda for discussion and possible action.
- Greg Loy/Town Attorney retirement. Mayor Davies announced that there would be cake at the next meeting to celebrate the retirement of both gentlemen.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. **Minutes (Attached CA-1A and 1B)**
 - A. May 16, 2016
 - B. May 25, 2016
2. **Budget amendments (Attached CA-2A, 2B and 2C)**
 - A. #14 – to record sand fence grant from Dare County.
 - B. #16 – to record Government Access Channel grant funds.

- C. #17 – to appropriate disc golf project funding and expenditures. All contributions for this project will be restricted per contract. Outstanding and future contributions will reimburse the Undesignated Fund Balance up to the amount appropriated.

3. Settlement items (Attached CA-3A, 3B and 3C)

- A. Approval of Consent Judgment in Myra Neal Morrison and Morrison Farm Associates Limited Partnership vs. the Town of Kill Devil Hills;
- B. RMW Investments, LLC et al. vs. the Town of Kill Devil Hills;
- C. Budget amendment #15 – to appropriate funds for legal settlement.

Staff recommended approval of the Consent Agenda as submitted.

Commissioner Hogan made a motion to approve the Consent Agenda as submitted.

Commissioner Midgette seconded that motion and approval was unanimous, 5-0.

Introductions and Presentations

1. 2016 Ocean Rescue Guards

Fire Chief Troy Tilley and Ocean Rescue Supervisor Dave Elder presented this season's Ocean Rescue Guards at this meeting.

Mr. Elder explained that this year's group is the largest ever to come out of early season training; there has been no advertising for guards, word of mouth has helped in recruitment. This year's guard staff includes many returning people. About 85% of the team are local residents (including those from the Elizabeth City area).

Mayor Davies thanked all the guards for the work they will perform for the Town this summer and commended them for their dedication to lifesaving and safety.

Public Comment

Mayor Davies recognized "Patty" in the front row, who had asked about dogs on the beach, and explained that it will be coming up at a future meeting.

Pris Shea, 502 Holly Street, Kill Devil Hills: Ms. Shea explained that the CAC had discussed curbside recycling many times and is in support of the concept. She pointed out that Public Services Director Steve Albright has a great deal of information on curbside recycling, also.

Katie Appleman, 509 Copley Drive, Kill Devil Hills: Ms. Appleman spoke in support of eliminating existing ordinances that "make no sense," such as the tattoo parlor ordinance, and are antiquated in their (the ordinances') views. She also supported curbside recycling.

Response to Public Comment

Adjourn

There being no further business before the Board of Commissioners 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 6:26 p.m.



Submitted by:


Mary E. Quidley
Town Clerk

These minutes were approved at the June 22, 2016 meeting of the Kill Devil Hills Board of Commissioners meeting.



Sheila F. Davies
Mayor
Town of Kill Devil Hills



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

NOTICE OF PUBLIC HEARING ON THE TOWN MANAGER'S RECOMMENDED BUDGET For Fiscal Year 2016/2017

NOTICE IS HEREBY GIVEN, in accordance with NCGS 159-12, on Monday, June 13, 2016 at 5:30 p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road, the Kill Devil Hills Board of Commissioners will hold a public hearing to receive public comment, both written and oral, regarding the Town Manager's Recommended Budget for Fiscal Year 2016/2017. The Recommended Budget was presented to the Board of Commissioners on Monday, May 16, 2016. Significant elements of the Recommended Budget include, but are not limited to:

- The Recommended Budget reflects no change to the current ad valorem Town-wide tax rate of \$.3809; there is no tax increase proposed within the Kill Devil Hills' Beach Erosion Control and Flood and Hurricane Project Works Municipal Service District.
- Ad valorem revenues, and sales tax revenues realized because of the ad valorem rate and levy, must be used for, and are dedicated for use in, the Town's beach nourishment project, including the five-year debt service on the issuance of \$5,036,691 special obligation bonds that will finance the beach nourishment project.
- Retail water rates are recommended to increase 4 percent to address operating costs and waterline and system improvements that are associated with the Water System Master Plan. No increases in tap fees or impact fees are proposed.
- Street and stormwater management improvements funding is recommended for a total of \$718,000; \$50,000 in street improvement discretionary funding is included;
- A 2.2% cost of living adjustment increase is recommended;
- The Sidewalk Capital Reserve account is recommended for funding at \$100,000; the Shoreline Accesses and Recreation Facilities Capital Reserve accounts are not recommended for funding, however, continued funding of \$30,000 for capital maintenance at shorelines accesses is recommended;
- Tipping fees for an estimated 9,835 tons of garbage @ \$74.17 per ton, and 750 tons of construction and demolition (C&D) debris @ \$67.25 per ton;
- The Recommended Budget also includes investments in the Town's fleet with: replacement of a 2008 commercial refuse truck and the 2008 roll-off container truck in the Solid Waste Division; the replacement of five police vehicles in the Police Department; and, the replacement of several pick-up trucks in various departments.
- Heavy equipment replacements include: front end loader, tractor with boom, excavator, and conrail trailer.
- Debt service payments for the 2016/2017 Fiscal Year are recommended as follows:
 - Recommended Lease Payments = \$1,195,395
 - Debt Service – Public Works Complex = \$468,259
 - Debt Service – Beach Nourishment = \$1,166,232

- The following recommendations from the Water System Master Plan are included in the Recommended Budget: tank inspections and repairs; valve replacements at the pumping station and engineering for replacement of the elevated water tank both located at 1634 N. Croatan Highway. Engineering funds are also included for painting the elevated tank at 8th Street.

All citizens of the Town of Kill Devil Hills are invited and encouraged to attend the public hearing and make oral or written comments on the recommended use of funds. A copy of the budget and budget ordinance, in their entirety, are available for public inspection in the Kill Devil Hills Administration Department, 102 Town Hall Drive, and the Kill Devil Hills branch of the Dare County Library, 400 Mustian Street. The recommended budget may be viewed on Kill Devil Hills' website, www.kdhnc.com. Copies of the budget may be purchased for \$25.00 in the Kill Devil Hills Tax and Finance Department, 102 Town Hall Drive.

Posted this 18th day of May 2016.

Mary E. Quidley Town Clerk

Copies to: Mayor and Board of Commissioners, TM, TA, in their packet materials; all town bulletin boards; all department heads; KDH Sunshine List, including all local news media; KDH Electronic Distribution List; Facebook; file



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

June 13, 2016

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager

REF: Consent Agenda

The following item has been added to the Consent Agenda. Approval of the Consent Agenda will record the Board's approval of the Consent Judgments, and approve the budget amendment for the settlement.

3. Settlement items (Attached CA-3A, 3B and 3C)

- A. Approval of Consent Judgment in Myra Neal Morrison and Morrison Farm Associates Limited Partnership vs. the Town of Kill Devil Hills
- B. RMW Investments, LLC et al. vs. the Town of Kill Devil Hills
- C. Budget amendment #15 – to appropriate funds for legal settlement

Staff recommends approval of the Consent Agenda as submitted and a motion will be in order.

NORTH CAROLINA

DARE COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 15-CVS-305

2016 JUN -3 A 8:41

MYRA NEAL MORRISON and MORRISON
FARM ASSOCIATES LIMITED PARTNERSHIP,

DARE CO., C.S.C.

BY W

Plaintiffs,

v.

TOWN OF KILL DEVIL HILLS, a Body Politic and
Municipal Corporation,

Defendant.

CONSENT JUDGMENT

THIS CAUSE coming on to be heard by consent of the parties before the undersigned Superior Court Judge for entry of judgment by consent. It appearing to the Court that the Plaintiffs, Myra Neal Morrison ("Morrison") and Morrison Farm Associates Limited Partnership ("Farm Associates") through their counsel of record, Norman W. Shearin, and the Defendant, Town of Kill Devil Hills ("Town") through its counsel of record, Ronald G. Baker, consent to the entry of this Consent Judgment as evidenced by their signatures below; and with the consent of the parties, the Court makes the following:

FINDINGS OF FACT

1. This action was duly instituted on the 6th day of June, 2015, by the issuance of Summons and filing of a Complaint; that Summons was duly served on the Defendants together with a copy of the Complaint which was later amended; on or about the 17th day of August, 2015 the Town duly filed an Answer to the Plaintiffs' Amended Complaint; that all parties who are necessary to the determination of this action are properly before the Court; and that the Defendants are under no legal disability.

2. Morrison and Farm Associates are owners of the following oceanfront parcels of property within the Town (the "Morrison Properties"):

a. Dare County Parcel ID #004055000 which is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1579, Page 325 of the Dare County Public Registry;

b. Dare County Parcel ID #004054001 which is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1608, Page 253 of the Dare County Public Registry correcting a prior easement recorded at Book 1592, Page 492 of the Dare County Public Registry;

c. Dare County Parcel ID #004050000 which is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1608, Page 254 of the Dare County Public Registry correcting a prior easement recorded at Book 1592, Page 493 of the Dare County Public Registry;

d. Dare County Parcel ID #004054000 which is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1608, Page 252 of the Dare County Public Registry correcting a prior easement recorded at Book 1592, Page 491 of the Dare County Public Registry;

3. The Town is a municipal corporation, duly incorporated under the Constitution and General Statutes of North Carolina, including Chapter 160A of said General Statutes.

4. The Court has jurisdiction over all of the parties hereto and the subject matter hereof.

5. These proceedings are in all respects proper, and it is appropriate that this Consent Judgment now be entered herein.

6. On April 13, 2015, the Town's Board of Commissioners duly established a municipal service district (the "MSD") for the purpose of financing beach erosion control and flood hurricane protection works via a beach nourishment project associated with Coastal Area Management Permit #134-15 and U.S. Army Corps of Engineers Permit #SAW-2014-02203 (hereinafter the or this "Project"). The Project entails dredging and placement of approximately 911,600 cubic yards of beach quality sand along 2.6 miles of the Town's northern beaches. The total linear coverage of the Project along the beach is planned to be approximately 13,600 feet with a tapering of the amount of sand to occur in the southern most approximately 1,000 feet ending at just north of Prospect Avenue (the "Taper").

7. On June 24, 2015, the Town's Board established the tax rate for the MSD.

8. All of the Morrison Properties are located near the Taper. Morrison and Farm Associates lawsuit disputed the need and the benefit associated with the sand to be placed upon the Morrison Properties. Morrison and Farm Associates further disputed that the MSD was validly created or properly included the Morrison Properties. However, the parties agree that removing the Morrison Properties from the Town's beach nourishment MSD for the Project as no longer necessary is an appropriate resolution of this litigation.

9 The Town's beach nourishment MSD was duly adopted with no procedural, statutory or constitutional irregularities is valid in all respects. Morrison and Farm Associates acknowledge that upon the removal of the Morrison Properties from the MSD the reconfigured MSD will remain valid in all respects.

10. No claim was alleged in the Complaint as to the validity of the beach nourishment easements granted to Dare County (the "County Easements"). Morrison and Farm Associates agree that such claim as might have been alleged by them is settled and compromised hereby and may be dismissed with prejudice. Morrison and Farm Associates agree that the perpetual beach nourishment easements granted to Dare County along the oceanfront of the Morrison Properties are valid and lawful encumbrances upon the Morrison Properties in favor of Dare County (the "County") and its assigns including the Town of Kill Devil Hills.

11 The Morrison Properties are no longer necessary for inclusion in the Town's beach nourishment MSD and should be removed from the Town's beach nourishment MSD effective at the end of the Town's fiscal year occurring on June 30, 2016 (the "Fiscal Year End"). Any and all taxes already assessed and/or collected from Morrison and Morrison Farm Associates prior to the Fiscal Year End, associated with the MSD, were validly assessed and/or collected and are not being refunded, released or compromised by this Consent Judgment, and the Plaintiffs expressly waive any claims to the contrary. By the removal of the Morrison Properties from the MSD, Plaintiffs or future owners of the Morrison Properties shall not be liable for future taxes assessed for the MSD. The Town should not include any Morrison Properties in any future MSD associated with the Project.

12. The parties agree that all procedural rights should be waived.

13. The parties have reached a compromise settlement of the claims alleged or which might have been alleged in the pleadings and issues in dispute in this action. The terms of said compromise settlement are fully expressed in this Consent Judgment. Such compromise acts as consideration for each party to enter this Consent Judgment.

14. This Consent Judgment is a compromise settlement of the disputed claims herein and acceptance of any benefits pursuant to this Consent Judgment or the offer of such benefits is intended merely to completely settle any and all claims alleged or which might have been alleged in this action.

15. The parties agree that this Consent Judgment may be submitted to a superior court judge resident of or presiding within the First Judicial District to be executed in chambers and out of session.

CONCLUSIONS OF LAW

(1) The Court has jurisdiction over all of the parties hereto and the subject matter of this action.

(2) These proceedings are in all respects proper, and it is appropriate that this judgment now be entered herein with the consent of the parties.

(3) The Town's beach nourishment MSD was duly adopted with no procedural, statutory or constitutional irregularities and the MSD as reconfigured herein remains valid in all respects.

(4) Any claim which may have been alleged as to the validity of the County Easements have been settled and compromised hereby and may be dismissed with prejudice. The County Easements are valid and lawful encumbrances upon the Morrison Properties in favor of Dare County and its assigns including the Town of Kill Devil Hills.

(5) The Morrison Properties are no longer necessary for inclusion in the Town's beach nourishment MSD and should be removed from the Town's beach nourishment MSD effective at the Fiscal Year End. Any and all taxes already assessed and/or collected from Morrison and Morrison Farm Associates prior to the Fiscal Year End, associated with the MSD, were validly assessed and/or collected and are not being refunded, released or compromised by this Consent Judgment and the Plaintiffs have

waived any claims to the contrary. By the removal of the Morrison Properties from the MSD, Plaintiffs or future owners of the Morrison Properties shall not be liable for future taxes assessed for the MSD. The Town may not include any of the Morrison Properties in any future MSD associated with this Project.

(6) All procedural rights should be waived.

(7) The parties have entered into this judgment by consent.

NOW, THEREFORE BY CONSENT IT IS ORDERED, ADJUDGED AND DECREED:

A) The Court accepts and adopts this Consent Judgment as a judgment of the Court;

B) The Town's beach nourishment MSD was duly adopted with no procedural, statutory or constitutional irregularities and the MSD as reconfigured herein remains valid in all respects.

C) Any claim which may have been alleged as to the validity of the County Easements is DISMISSED WITH PREJUDICE. The County Easements are valid and lawful encumbrances upon the Morrison Properties in favor of Dare County and its assigns including the Town of Kill Devil Hills.

D) The Morrison Properties are hereby removed from the Town of Kill Devil Hills' beach nourishment MSD effective at the Fiscal Year End;

E) Any and all taxes already assessed and/or collected from Morrison and Morrison Farm Associates prior to the Fiscal Year End, associated with the MSD, were validly assessed and/or collected and are not being refunded, released or compromised by this Consent Judgment, and Morrison and Farm Associates have waived any claims to the contrary;

F) Morrison, Farm Associates, or future owners of the Morrison Properties shall not be liable for future taxes assessed for the MSD;

G) The Town shall not include the Morrison Properties in any future municipal service district associated with this Project;

H) The Town shall pay to Morrison and Farm Associates the sum of \$25,000.00 as consideration for this Consent Judgment and in recognition of the their costs and attorneys' fees;

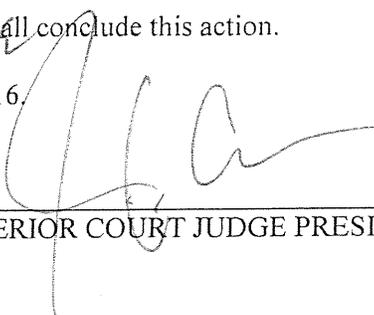
I) All procedural rights are hereby waived; and

J) All claims alleged or which may have been alleged in the pleadings are hereby DISMISSED

WITH PREJUDICE.

K) Entry of this Consent Judgment shall conclude this action.

This the 2 day of May, 2016.



SUPERIOR COURT JUDGE PRESIDING

APPROVED AND CONSENTED TO BY THE
PARTIES THROUGH THE DULY AUTHORIZED
UNDERSIGNED PERSONS:

FOR DEFENDANT, TOWN OF KILL DEVIL HILLS

SHARP, MICHAEL, GRAHAM & BAKER, L.L.P.

By: 

Ronald G. Baker

N.C. State Bar No. 6490

Email: baker@ncobxlaw.com

P.O. Box 1027

Kitty Hawk, NC 27949-1027

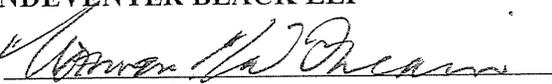
Telephone: (252) 261-2126

Fax: (252) 261-1640

Attorneys for Defendants

FOR ALL NAMED PLAINTIFFS

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N.C. State Bar No. 3956

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Raleigh, NC 27602-2599

Telephone: (919) 754-1171

Fax: (919) 754-1317

Attorneys for Plaintiffs

NORTH CAROLINA

DARE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16-CVS-119

RMW INVESTMENTS, LLC, ALBERT W. GARD, and wife, CAROLYN W. GARD, SEAGARD PROPERTIES, LLC, GEORGE S. JACKSON, and wife, BLAIR F. JACKSON, RICHARD A. BUOTEMPO, and wife, MARGARET M. BUONTEMPO, LAMBODERA HOLDINGS, LLC, 6/5 DEFENSE, LLC, EURE FAMILY, LLC, OH WELL, LLC, GASTON INVESTMENTS, INC., FOUR ROSES, LLC, MARY LOU KIMBALL TEMPLE TRUSTEE, LINDA A. HOBBS, - TRUSTEE-OF LINDA A. HOBBS TRUST U/A DATED 9/17/04, WILLIAM R. BOHON, SR., and wife, DONNA BOHON, THOMAS L. WOODSON, and wife PATRICIA M. WOODSON, CHARLES J. MOST, JR. and TINA MARIE MOST, CO-TRUSTEES of the MOST FAMILY JOINT REVOCABLE TRUST, RAYMOND EUGENE BERTULLA, CYNTHIA B. SCHADE, RANDOLPH CHEESMAN, DEREK R. SARSFIELD, and wife, AUDREY C. SARSFIELD, JENIFER A. HAMILTON, FAYE E. STEPHENSON, IRENE N. KOTCHEY, and husband, KENNETH C. KOTCHEY, CO-TRUSTEES OF THE IRENE N. KOTCHLEY QUALIFIED PERSONAL RESIDENCE TRUST, and TIME OUT 25, LLC,

Plaintiffs,

v.

TOWN OF KILL DEVIL HILLS, a Body Politic and Municipal Corporation and COUNTY OF DARE, a Body Politic and Municipal Corporation,

Defendants.

FILED
2016 JUN -3 A 8 41
DARE CO., C.S.C.
BY *RM*

CONSENT JUDGMENT

THIS CAUSE coming on to be heard by consent of the parties before the undersigned Superior Court Judge for entry of judgment by consent. It appearing to the Court that the Plaintiffs through their counsel of record, Norman W. Shearin, and the Defendants through their counsel of record, Ronald G. Baker, consent to the entry of this Judgment as evidenced by their signatures below; and with the consent of the parties through their counsel the Court makes the following:

FINDINGS OF FACT

1. This action was duly instituted on the 9th day of March, 2016, by the issuance of Summons and filing of a Complaint; that Summons was duly served on the Defendants together with a copy of the Complaint on or about the 9th day of March, 2016; that all parties who are necessary to the determination of this action are properly before the Court; and that the Defendants are under no legal disability.

2. The Plaintiffs in this action are as follows:

a. RMW Investments, LLC (“RMW”) owns the parcel of property having Dare County Parcel ID #003708000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1585, Page 59 of the Dare County Public Registry.

b. Albert W. Gard, III and wife Carolyn W. Gard (the “Gards”) are part owners of the parcel of property having Dare County Parcel ID #004057000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1771, Page 130 of the Dare County Public Registry.

c. SeaGard Properties, LLC (“SeaGard”) is a part owner of the parcel of property having Dare County Parcel ID #004057000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1771, Page 130 of the Dare County Public Registry.

d. George S. Jackson, and wife Blair F. Jackson (“Jackson”) are the owners of the parcel of property having Dare County Parcel ID #008077000.

e. Richard A. Buontempo and wife, Margaret M. Buontempo (“Buontempo”) are owners of the parcel of property having Dare County Parcel ID #004057001. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1576, Page 62 of the Dare County Public Registry.

f. Lambodera, LLC (“Lambodera”) owns the parcel of property having Dare

County Parcel ID #003711000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1579, Page 323 of the Dare County Public Registry.

g. 6/5 Defense, LLC is a part owner of the parcel of property having Dare County Parcel ID #003710000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1733, Page 1950 of the Dare County Public Registry.

h. Eure Family, LLC is a part owner of the parcel of property having Dare County Parcel ID #003710000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1733, Page 1950 of the Dare County Public Registry.

i. OH Well, LLC ("OH Well") owns the parcel of property having Dare County Parcel ID #009156000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1574, Page 282 of the Dare County Public Registry.

j. Gaston Investments, Inc. ("Gaston") owns the parcel of property having Dare County Parcel ID #003709000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1585, Page 60 of the Dare County Public Registry.

k. Four Roses, LLC ("Four Roses") owns the parcel of property having Dare County Parcel ID #008078000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1585, Page 66 of the Dare County Public Registry.

l. Mary Lou Kimball Temple Trustee ("Temple") is a citizen and resident of Roanoke County, Virginia and owns the parcel of property having Dare County Parcel ID #008076000.

m. Linda A. Hobbs, Trustee for the Linda A. Hobbs Trust U/A dated 09/17/04 ("Hobbs") owns the condominium unit having Dare County Parcel ID #003707100.

n. William R. Bohon, Sr. and wife, Donna Bohon ("Bohon") own the condominium

unit having Dare County Parcel ID #003707101.

o. Thomas L. Woodson, and wife, Patricia M. Woodson (“Woodson”) own the condominium unit having Dare County Parcel ID #003707301.

p. Charles J. Most, Jr., and wife, Tine Marie Most (“Most”) own the condominium unit having Dare County Parcel ID #003707102.

q. Raymond Eugene Berttula (“Berttula”) is a part owner of the condominium unit having Dare County Parcel ID #003707103.

r. Cynthia B. Schade (“Schade”) is a part owner of the condominium unit having Dare County Parcel ID #003707103.

s. Ralph Cheesman and wife Betsey Cheesman (“Cheesman”) are part owners of the condominium unit having Dare County Parcel ID #003707201.

t. Derek R. Sarsfeild and wife, Audrey C. Sarsfield (“Sarsfield”) are part owners of the condominium unit having Dare County Parcel ID #003707201.

u. Jenifer A. Hamilton (“Hamilton”) owns the condominium unit having Dare County Parcel ID #003707300.

v. Faye E. Stephenson (“Stephenson”) owns the parcel of property having Dare County Parcel ID #004076000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1573, Page 450 of the Dare County Public Registry.

w. Irene N. Kotchey and husband Kenneth C. Kotchey, Co-Trustees of the Irene N. Kotchey Qualified Personal Trust (“Kotchey”) own the parcel of property having Dare County Parcel ID #004078000.

x. Time Out, LLC (“Time Out”) owns the parcel of property having Dare County Parcel ID #004077000. The parcel is subject to a perpetual beach nourishment easement granted to Dare County which is recorded at Book 1578, Page 339 of the Dare County Public Registry.

3. The parcels of property owned by the Plaintiffs are hereinafter collectively known as the

“Plaintiffs’ Properties.” The properties owned by Plaintiffs RMW, Gard, SeaGard, Buontempo, Lambodera, Eure Family, 6/5 Defense, OH Well, Gaston, Four Roses, Stephenson, and Time Out are all encumbered by perpetual beach nourishment easements across the oceanfront of their properties that were granted to Dare County (the “Encumbered Properties”). The condominium units owned by Bohon, Most, Berttula, Schade, Cheesman, Sarsfield and Hamilton (the “Condo Plaintiffs”) are part of the Gulf Stream Homeowners Association, Inc. which has granted a perpetual beach nourishment easement across the oceanfront common areas of the condominium recorded at Book 1574, Page 281 of the Dare County Public Registry (the “Condo Easement”). (Collectively the “County Easements”).

4. The Defendant Town of Kill Devil Hills (the “Town”) is a municipal corporation, duly incorporated under the Constitution and General Statutes of North Carolina, including Chapter 160A of said General Statutes.

5. The Defendant County of Dare (the “County”) is a North Carolina county, duly created under the Constitution and General Statutes of North Carolina, including Chapter 153A of said General Statutes.

6. The Court has jurisdiction over all of the parties hereto and the subject matter of this action.

7. These proceedings are in all respects proper, and it is appropriate that this judgment now be entered herein with the consent of the parties.

8. On April 13, 2015, the Town’s Board of Commissioners duly voted to establish a municipal service district (the “MSD”) for the purpose of financing beach erosion control and flood hurricane protection works via a beach nourishment project associated with Coastal Area Management Permit #134-15 and U.S. Army Corps of Engineers Permit #SAW-2014-02203 (hereinafter the or this “Project”). The Project entails dredging and placement of approximately 911,600 cubic yards of beach quality sand along 2.6 miles of the Town’s northern beaches. The total linear coverage of the Project along the beach is planned to be approximately 13,600 feet with a tapering of the amount of sand to occur in the southern most approximately 1,000 feet ending at just north of Prospect Avenue (the “Taper

Area”). On June 24, 2015, the Town’s Board established the tax rate for the MSD.

9. All of the Plaintiffs’ Properties are located within or adjacent to the Taper Area. The Plaintiffs dispute in their Complaint the need and the benefit associated with the sand to be placed upon the Plaintiffs’ Properties within the Taper Area. The Plaintiffs further dispute in their Complaint that the MSD was validly created or properly included the Plaintiffs’ Properties. The Plaintiffs’ Complaint further disputed that the Town may rely upon the County Easements to construct the Project. However, the parties agree that an appropriate resolution of this litigation would be findings that the Plaintiffs’ Properties are no longer necessary for inclusion in the MSD, that the MSD was validly created and remains valid in all respects, and that the County Easements are valid encumbrances upon the Encumbered Properties.

10. The MSD was duly adopted with no procedural, statutory or constitutional irregularities and it remains valid in all respects. The Plaintiffs’ acknowledge that the MSD as reconfigured by the omission of the Plaintiffs’ Properties will remain valid in all respects.

11. Plaintiffs consent to the dismissal of their claims as to the invalidity of the County Easements with prejudice. Plaintiffs acknowledge that the County Easements are valid and lawful perpetual encumbrances in favor of Dare County and its assignees including the Town of Kill Devil Hills. The Condo Plaintiffs further acknowledge that the Condo Easement is a valid and lawful perpetual encumbrance upon the common area oceanfront of the Gulf Stream Homeowners Association, Inc.

12. The Plaintiffs’ Properties are no longer necessary for inclusion in the Town’s beach nourishment MSD and should be removed from the Town’s beach nourishment MSD effective at the end of the Town’s fiscal year occurring on June 30, 2016 (the “Fiscal Year End”). Any and all taxes already assessed and/or collected from Plaintiffs associated with the MSD prior to the Fiscal Year End were validly assessed and collected and are not being refunded, released or compromised by this Consent Judgment, and the Plaintiffs expressly waive any claims to the contrary. By the removal of the Plaintiffs’ Properties from the MSD, Plaintiffs or future owners of the Plaintiffs’ Properties shall not be liable for future taxes assessed for the MSD from and after the Fiscal Year End. The Town should not include any

of the Plaintiffs' Properties in any future MSD associated with this Project.

13. The parties agree that all procedural rights should be waived.

14. The parties have reached a compromise settlement of the claims and issues in dispute in this action and the terms of said compromise settlement are fully expressed within this Consent Judgment and that such compromise acts as consideration for each party to enter this Consent Judgment.

15. This Consent Judgment is a compromise settlement of the disputed claims in this action and acceptance of any benefits pursuant to this Consent Judgment or the offer of such benefits is intended merely to completely settle any and all claims arising out of this action.

16. The parties agree that this Consent Judgment may be submitted to a superior court judge resident of or presiding within the First Judicial District to be executed in chambers and out of session.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over all of the parties hereto and the subject matter of this action.

2. These proceedings are in all respects proper, and it is appropriate that this judgment now be entered herein with the consent of the parties.

3. The MSD was duly adopted with no procedural, statutory or constitutional irregularities and it remains valid in all respects. The MSD as reconfigured by the omission of the Plaintiffs' Properties remains valid in all respects.

4. Plaintiffs consent to the dismissal with prejudice of their claim as to the invalidity of the County Easements. The County Easements are valid and lawful perpetual encumbrances upon the Encumbered Properties in favor of Dare County and its assignees including the Town of Kill Devil Hills. The Condo Easement is a valid and lawful perpetual encumbrance upon the common area oceanfront of the Gulf Stream Homeowners Association, Inc.

5. The Plaintiffs' Properties are no longer necessary for inclusion in the Town's beach nourishment MSD and should be removed from the Town's beach nourishment MSD effective at the Fiscal Year End. Any and all taxes already assessed and/or collected from Plaintiffs associated with the

MSD were validly assessed and collected and are not being refunded, released or compromised by this Consent Judgment, and the Plaintiffs expressly waive any claims to the contrary. By the removal of the Plaintiffs' Properties from the MSD, Plaintiffs or future owners of the Plaintiffs' Properties shall not be liable for future taxes assessed for the MSD on and after the Fiscal Year End. The Town should not include any of the Plaintiffs' Properties in any future MSD associated with this Project.

- 6. All procedural rights should be waived.
- 7. The parties have entered into this judgment by consent.

NOW, THEREFORE BY CONSENT IT IS ORDERED, ADJUDGED AND DECREED:

A) The Court accepts and adopts this Consent Judgment as a judgment of the Court;

B) The MSD was duly adopted with no procedural, statutory or constitutional irregularities and it remains valid in all respects. The MSD as reconfigured by the omission of the Plaintiffs' Properties remains valid in all respects;

C) Plaintiffs claims as to the invalidity of the County Easements are DISMISSED WITH PREJUDICE. The County Easements are valid and lawful perpetual encumbrances upon the Encumbered Properties in favor of Dare County and its assignees including the Town of Kill Devil Hills. The Condo Easement is a valid and lawful perpetual encumbrance upon the common area oceanfront of the Gulf Stream Homeowners Association, Inc.

D) The Plaintiffs' Properties are no longer necessary for inclusion in the Town's beach nourishment MSD and are hereby removed from the Town's beach nourishment MSD effective at the Fiscal Year End;

E) Any and all taxes already assessed and/or collected from Plaintiffs prior to the Fiscal Year End associated with the MSD were validly assessed and collected and are not being refunded, released or compromised by this Consent Judgment, and the Plaintiffs have waived any claims to the contrary;

F) By the removal of the Plaintiffs' Properties from the MSD, Plaintiffs or future owners of the Plaintiffs' Properties shall not be liable for future taxes assessed for the MSD from and after Fiscal

Year End;

G) The Town should not include any of the Plaintiffs' Properties in any future MSD associated with this Project;

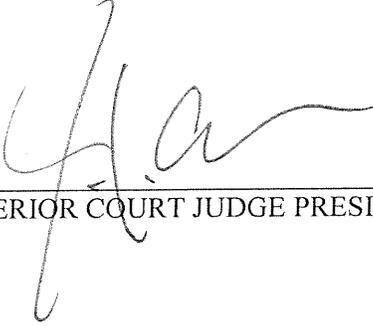
H) The Town shall pay to Plaintiffs a lump sum of \$55,000.00 as consideration for this Consent Judgment and in recognition of the Plaintiffs' costs and attorneys' fees;

I) All procedural rights are hereby waived;

J) All claims alleged or which may have been alleged in the pleadings are hereby DISMISSED WITH PREJUDICE; and

K) Entry of this Consent Judgment shall conclude this action.

This the 2nd day of May, 2016.

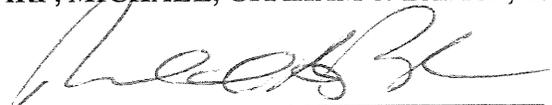


SUPERIOR COURT JUDGE PRESIDING

APPROVED AND CONSENTED TO BY THE
PARTIES THROUGH THE DULY AUTHORIZED
UNDERSIGNED PERSONS:

FOR DEFENDANTS, TOWN OF KILL DEVIL HILLS AND COUNTY OF DARE

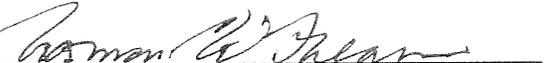
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Attorneys for Plaintiffs

TOWN OF KILL DEVIL HILLS

BUDGET AMENDMENT REQUEST



<i>Finance Department Use Only</i>
Budget Amendment Number: 15
Finance Officer: <i>Cheryl Allen</i>

INCREASE (DECREASE)			INCREASE (DECREASE)		
CODE	ACCOUNT DESCRIPTION	AMOUNT	CODE	ACCOUNT DESCRIPTION	AMOUNT
4200 504000	Legal	80,000.00	10 499100	Fund Balance - Undesignated	80,000.00
TOTAL		80,000.00	TOTAL		80,000.00

JUSTIFICATION: To appropriate funds for legal settlement.

RECOMMENDED:

[Signature]



[Signature]

DATE:

June 13, 2016