



## TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

### NOTICE OF PUBLIC MEETING

NOTICE is hereby given that on Monday, May 16, 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 Hearings

1. Requested amendments to Chapter 153, Zoning
  - A. IG Holding LLC – §153.177(A) Commercial Zone Conditional Use and §153.076 Table of Parking Requirements – add small amusement rides with maximum capacity of 24 persons to *Outdoor Recreational Activities in the Commercial Zone* and *Parking Requirements*
  - B. Ratnam Patel – §153.180(C)(2) Commercial Zone – establish Floor Area Ratio (FAR) for *Hotel/Motel in the Commercial Zone*

Introductions and Presentations

1. Trash Attack! poster awards
2. Annual partnership reports
  - A. Aaron McCall – Nature Conservancy/Nags Head Woods Preserve
  - B. Rick Gray – Community Care Clinic of Dare
  - C. Jenniffer Albanese – Interfaith Community Outreach
3. Fire Chief Troy Tilley – National Hurricane Awareness Week

Old Business

New Business

1. Beach nourishment
  - A. Bond Order Authorizing the Issuance of Special Obligation Bonds
  - B. A Resolution Providing for the Issuance of \$5,036,691 Special Obligation Bond, Series 2016
  - C. A Resolution Authorizing Acquisition by Condemnation of Beach Nourishment Easements on Certain Properties Located in the Town of Kill Devil Hills
2. Possible amendment to the Town Code - Chapter 94, § 94.28 [Chicken Hens] Limitations – 20-permit limitation has been reached; possible amendment to increase number of permits, or, to eliminate the requirement for only a fixed number of chicken hen registration permits to be issued town-wide
3. Request to transfer unused right of way – Hillside Drive (adjacent to Goddard Ave)
4. Presentation of Town Manager's recommended budget for FY 2016/2017

Commissioners Agenda

Mayor's Agenda

Town Manager's Agenda

Town Attorney's Agenda  
Consent Agenda  
Public Comment  
Response to Public Comment  
Adjourn

Posted this 11<sup>th</sup> day of May 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; KDH website; file

**Minutes of the Monday, May 16, 2016 Town of Kill Devil Hills Board of Commissioners regular meeting held at 5:30 p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.**

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

**Members Absent:** Commissioner Travis Appleman

**Others Present:** Debora P. Diaz, 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**

Mayor Davies advised that former Town employee Sam Apperson, and Fire Support Group member Lois Nelms' mother, have both passed away since the last meeting and everyone was asked to keep their families in their thoughts this evening.

**Agenda Approval**

Mayor Davies explained that the Board had a need to enter *Closed Session* this evening and she made a motion to amend this meeting's agenda to include *Closed Session* immediately following the *Public Hearing* items, and prior to *Public Comment*. Commissioner Hogan seconded that motion and approval was unanimous, 4-0.

**Public Hearings**

**1. Requested amendments to Chapter 153, Zoning (Attached PH-1A and 1B)**

These items were approved for favorable recommendation by the Planning Board at its March 15, 2016 meeting. On April 11, 2016, the Board of Commissioners scheduled both items for public hearing at this meeting.

Town Attorney Steve Michael read aloud the rules of procedure that would apply to each hearing and when that was concluded he called the first public hearing to order.

**A. IG Holding LLC – §153.177(A) Commercial Zone Conditional Use and §153.076 Table of Parking Requirements – add small amusement rides with maximum capacity of 24 persons to *Outdoor Recreational Activities in the Commercial Zone and Parking Requirements***

The ordinance under consideration this evening is a compromise between the original request to add “swing boat ride,” and Staff’s suggestion to revise the language to “small amusement ride.” As presented, this amendment will add *Small Amusement Rides with Maximum Capacity of 24 Persons* to §153.177(A) in Chapter 153, Zoning. *The Table of Parking Requirements for Recreational Uses* in §153.176 is also recommended to be amended to accommodate the use.

There was no public comment on this item. John DeLucia of Albemarle Engineering addressed the Board and explained that the owners of Paradise Golf (putt-putt) desire to put in a ride specifically for small children, probably not this year but for the 2017 season.

Commissioner Midgette made a motion for the Board of Commissioners to approve this amendment and that the Board of Commissioners finds that this proposed amendment to *Chapter 153, Zoning - §153.177(A) Commercial Zone Conditional Use and §153.076 Table of Parking Requirements – add small amusement rides with maximum capacity of 24 persons to Outdoor Recreational Activities in the Commercial Zone and Parking Requirements* - is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it’s consistent with Town plans. Commissioner Rheubottom seconded that motion and approval was unanimous, 4-0.

**B. Ratnam Patel – §153.180(C)(2) Commercial Zone – establish Floor Area Ratio (FAR) for *Hotel/Motel in the Commercial Zone***

Planning Director Greg Loy addressed this item and explained that this request to amend Chapter 153, Zoning, Commercial Zone regulations would convert hotel/motel density to Floor Area Ratio (FAR) calculations on a graduated scale. The agreed upon recommendation is a compromise from the original request and is in line with the FAR established in the Ocean Impact Residential Zone (OIR).

Commissioner Hogan made a motion for the Board of Commissioners to approve this amendment and that the Board of Commissioners finds that this proposed amendment to *Chapter 153, Zoning - §153.180(C)(2) Commercial Zone – establish Floor Area Ratio (FAR) for Hotel/Motel in the Commercial Zone* is consistent with all comprehensive plans or other officially adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it will encourage development on the west side of NC 12. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

## Closed Session

In accordance with the provisions of NCGS 143-311(a)(3), Mayor Davies made a motion for the Board of Commissioners to enter closed session in order to preserve the attorney-client privilege between the attorney and the Board, and for the purpose of consulting with the Town Attorney and attorney Ben Gallop on handling a claim, judicial action, mediation, arbitration, administrative procedure, or resolution in the matters of *Morrison vs. the Town of Kill Devil Hills*, and *RMW Investments, LLC, et al. vs. the Town of Kill Devil Hills*. Commissioner Hogan seconded that motion and approval was unanimous, 4-0.

It was 5:45 p.m.

At 6:36 p.m. the regular meeting reconvened and the Town Attorney announced that during Closed Session the Board of Commissioners discussed with the attorneys handling the lawsuits mentioned above and provided direction in accordance with the statute listed above.

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

**Gary Tarpley, 2301 Virginia Dare Trail, Kill Devil Hills:** Mr. Tarpley explained that he is also representing three of his neighbors. His comments were focused on the easement condemnation procedures, which he felt to be heavy-handed, and disappointed that there is no remuneration. The tax increase has applied most heavily to the oceanfront properties within the MSD, which are in greater proportion owned by out-of-town property owners, and he doesn't believe that to be fair.

Mr. Tarpley asked the Board of Commissioners to reconsider the breadth of the project, with wide open language. He asked for reconsideration of the entire project and MSD.

**Sandy Markland, 2301 Hampton Street, Kill Devil Hills:** Ms. Markland represented the Avalon Beach Property Owners Association. She came forward to request reconsideration of the language of the condemnations letter. The Association received no notice of perpetual easement until mid-April; a second notice arrived several weeks later. The oceanfront property for which the easement is needed is adjacent to the Avalon Pier. The Property Owners Association officers have met with an attorney and are now prepared to execute a slightly modified easement; the existing language is very broad and applies to more than just beach nourishment. They feel they have been treated shabbily by the Town and asked that they be removed from the condemnation proceedings.

## Response to Public Comment

The Town Attorney explained that the attorney handling the easements, Casey Varnell, will be glad to speak with Ms. Markland about the Avalon Property Owners Association easement.

He also reviewed the statutory time-lines, the procedures outlined in the statutes, and explained that is what has been adhered to, and the language used in the letter is prescribed by statute.

Mayor Davies addressed Mr. Tarpley, explaining that the language used is legalese and it may be interpreted as being unfriendly but it's not certainly not how anyone would discuss the matter one on one.

## **Introductions and Presentations**

### **1. Fire Chief Troy Tilley – National Hurricane Awareness Week (Attached IP-1)**

Chief Tilley conducted a brief PowerPoint presentation on National Hurricane Awareness Week, which has been printed with the materials for this packet. He also explained that there are local opportunities for our citizens to attend the *Hurricane Preparedness and Safety Open House* organized by Dare County Emergency Management Director Drew Pearson. This event will be held on Friday, May 20<sup>th</sup> at the Nags Head Fire Department's Station 16 from 3 – 8 p.m.

Chief Tilley also showed everyone a reproduction of the National Oceanic Atmospheric Administration's website for Hurricane Preparedness, which provides additional information on the many informational links they have to teach about hurricane preparedness and safety. He provided Internet links to valuable information about hurricane preparedness and response. A copy of the PowerPoint presentation is included with the packet materials for this meeting.

The Town Manager announced that the Planning Department will have a booth at the open house event.

## **Old Business**

## **New Business**

### **1. Beach nourishment (Attached NB-1A, 1B and 1C)**

#### **A. Bond Order Authorizing the Issuance of Special Obligation Bonds**

This order establishes the Town's intent to construct the beach erosion control and flood and hurricane protection works project (beach nourishment), now and in the future, and authorizes special obligation bonds in to be issued in accordance with the provisions of North Carolina General Statutes.

Staff recommended the Board of Commissioners adopt this order as presented.

Commissioner Hogan made a motion for the Board of Commissioners to adopt this order as presented. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

#### **B. A Resolution Providing for the Issuance of \$5,036,691 Special Obligation Bond, Series 2016**

The resolution follows the bond order, above, and establishes the terms and conditions of the bond issuance. It is a result of collaboration between our Town Attorney and our financial consultants, Parker Poe, and Finance Director Beverly Kissinger.

Staff recommended the Board of Commissioners adopt this resolution as presented.

Commissioner Midgette made a motion for the Board of Commissioners to adopt this resolution as presented and Commissioner Hogan seconded that motion. Approval was unanimous, 4-0.

**C. A Resolution Authorizing Acquisition by Condemnation of Beach Nourishment Easements on Certain Properties Located in the Town of Kill Devil Hills**

This is the resolution approving condemnation of easements on the properties on Exhibit A (which is current as of May 11, 2016 @ 2:00 p.m.). The text of the resolution will not change but the list of properties may should more easements be received before Monday night's meeting. If the list does change, the Town Attorney will provide a revised list for attachment to the resolution as Exhibit A.

Staff recommended the Board of Commissioners adopt this resolution as presented.

Mayor Davies asked that the list of properties be updated on the website to keep people informed. She also explained that the Town is committed to keeping a strong public outreach plan moving forward, and that we would do that for everyone. The Board of Commissioners agreed.

Commissioner Hogan made a motion for the Board of Commissioners to adopt this resolution as presented. Commissioner Rheubottom seconded that motion and approval was unanimous, 4-0.

**2. Possible amendment to the Town Code – Chapter 94, § 94.28 [chicken hens] Limitations – 20-permit limitation has been reached; possible amendment to increase number of permits, or, to eliminate the requirement for only a fixed number of chicken hen registration permits to be issued town-wide (Attached NB-2)**

There were four attachments to this memorandum:

- A. Assistant Chief Dana Harris's memorandum on the status of chicken hens' registration permits;
- B. The current *Chapter 94. Animals, Article on Chicken Hens*, with § 94-28 highlighted in red;
- C. A DRAFT amendment to § 94-28, highlighted in red, which if selected with a specific number in the blank, would establish a new number of chicken hens registration permits, town-wide; and
- D. A DRAFT amendment to *Chapter 94, Animals*, highlighted in red, which if selected will delete § 94-28, thus removing the requirement for only a fixed number of chicken hens registration permits to be issued town-wide.

On April 13, 2016 the Police Department issued the last of the authorized 20 chicken hens' permits, and they have two people on a waiting list for permits in the event there is a cancellation or the Board of Commissioners amends the Town Code.

Assistant Police Chief Dana Harris's attached memorandum outlined the permits issued in each year since adoption of the chicken hens' ordinance in 2013; he recommended the Board consider increasing the number of permits to at least 40; if the Board desired, a different number could be used. There have been no complaints against permit holders since the permit process began in 2013.

Staff suggested the Board consider two alternatives: Items C and D, above.

At the conclusion of discussion, Staff recommended, either:

1. Adoption of NB-3C to amend § 94-28, to increase the number of chicken hen registration permits with a fixed number inserted in the blank; or
2. Adoption of NB-3D to delete § 94-28, thus eliminating the requirement for only a fixed number of chicken hen registration permits to be issued town-wide.

As there been no complaints or negative issues associated with the chicken hen policy, or chicken hens, generally, Commissioner Rheubottom made a motion for the Board of Commissioners to amend the Town Code by eliminating § 94-28 and Commissioner Midgette seconded that motion. Approval was unanimous, 4-0.

### **3. Request to transfer unused right of way – Hillside Drive (adjacent to Goddard Ave) (Attached NB-3)**

The Town Manager explained that on behalf of Pitco 1, LLC, John DeLucia, of Albemarle Engineering, submitted a request for abandonment of an unused portion of Hillside Drive located in the northeast corner of the block occupied by Captain George's Restaurant. An engineered diagram of the site proposed for abandonment was included in the packet materials, as well as an illustration from the Town's Street Improvement Master Plan Update, which depicted an assessment of the unimproved rights-of-way in Town.

In 2002, Albemarle Engineering submitted, on behalf of the then-current owner, a similar request to abandon this 2,465.8 square foot site, which was taken to the Planning Board for review and recommendation. On January 23, 2002 the Board of Commissioners reviewed the Planning Board's recommendation to deny the request for abandonment as they agreed with the guidance of the Master Plan, which prohibits the "abandonment of existing, unimproved rights of way." At that time, Staff suggested that this portion of Hillside Drive had potential value as "pedestrian bicycle access, stormwater retention and conveyance, utility extensions, open space and future uses not presently recognized."

On April 26, 2016 the Street Improvement and Special Projects Committee (SISPC) reviewed the current request to abandon this portion of Hillside Drive, and concurred with Staff's recommendation to deny the request. Public Services Director Steve Albright inspected the site and found it to be litter-free, with thick vegetation that creates a buffer for some adjacent

residential property owners. Staff recommended maintaining the Town's interest in the property because of its position and value to the Town's drainage system, its central location for open space, and future utility needs not yet identified. Further, Staff recommended that to be consistent with the Street Improvement Master Plan, any request for abandonment or transfer of rights of the requested portion of Hillside Drive, be denied.

Mr. DeLucia was available for comments and questions. He presented the owner's request to the Board, explaining that the restaurant has no intention of developing the small parcel, nor is it needed for lot coverage percentages, but the manager/owners would like to have the site cleaned up to be more presentable.

Commissioner Hogan explained that he agreed with the Public Services Director's comments recommending the site not be abandoned; Commissioner Midgette and Commissioner Rheubottom also agreed, and Commissioner Rheubottom added that she felt if the parcel were cleared that it could actually create more of a problem for nearby property owners.

Commissioner Hogan pointed out that the Town has a fairly strict policy to maintain public rights-of-way, without abandoning them.

Mr. DeLucia asked if the Town could work with the restaurant owners to clean the area up somewhat to make it more presentable for those looking out from the new dining room area addition (which was approved at the last meeting.)

Commissioner Midgette made a motion for the Board of Commissioners to deny the request for abandonment and Commissioner Rheubottom seconded that motion. Approval was unanimous, 5-0.

Mayor Davies added that Mr. DeLucia and the restaurant owners/manager and the Town could work together to get the area cleaned up and made more presentable.

- National Scenic Byway Designation: On a different matter, Mr. DeLucia announced that the National Scenic Byway signs have been erected. It's possible that this will be the last National Scenic Byway to be designated since public funds for such designations have dried up. The details of this new Byway include:

Length:	142.5 driving miles
Driving Time:	6.5 hours, including 3.5 hours on two ferries
Regions:	Outer Banks, Crystal Coast

From Whalebone Junction in Dare County to Beaufort in Carteret County, the Outer Banks National Scenic Byway traces the easternmost parts of North Carolina along the state's barrier islands. The unique maritime culture shared by the 21 coastal villages along this route led to its designation as a National Scenic Byway.

More information on this designation can be found at <https://www.visitnc.com/trip-idea/outer-banks-national-scenic-byway-1>.

#### 4. Presentation of Town Manager's recommended budget for FY 2016/2017

The Town Manager explained, the proposed budget for the Town of Kill Devil Hills for fiscal year 2016/2017 will be presented to the Board of Commissioners during this meeting.

In accordance with the provisions of NCGS 159-13, the governing board shall adopt a budget ordinance not earlier than ten (10) days after the budget is presented to the Board, and not later than July 1. Before adopting the budget ordinance, the Board of Commissioners will need to hold a public hearing at which time any person(s) who wish to be heard on the recommended budget may appear. This hearing may be held at any time after presentation of the budget, either prior to, or subsequent to, the Board's budget worksession.

Historically, the Board of Commissioners has conducted budget worksessions prior to the budget public hearings and if that is the desire of the Board, Staff recommends the Board consider holding a worksession on Wednesday, May 25, 2016 at 5:30 p.m., which will be the date and time of our second regular meeting of the month. The public hearing could be scheduled for Monday, June 13, 2016 at 5:30 p.m.

The Town Manager reviewed several major highlights of the budget, including a recommendation for contracting installation of the new residential meters and a 10% decrease in health care coverage costs for employees and retirees.

Commissioner Rheubottom made a motion for the Board of Commissioners to schedule the budget worksession on Wednesday, May 25, 2016 at 5:30 p.m. and the required public hearing on Monday, June 13, 2015 at 5:30 p.m. Commissioner Hogan seconded that motion and approval was unanimous, 4-0.

#### Commissioners Agenda

##### Commissioner Midgette

- Banner requirements. Asked Staff to investigate if a number limit could be placed on banners since businesses have begun using them without obtaining signs through the permitting process.
- Board/committee attendance. Regarding two members of the Planning Board who are not attending meetings on a regular/consistent basis, the Board of Commissioners agreed to have letters sent inquiring about a change in life status that prevents them from attending meetings; and also mentioning the responsibilities of meeting attendance.

##### Commissioner Rheubottom

- National Peace Officers Memorial Day. Just wanted to mention it as an item for people to think about.

##### Commissioner Hogan

- Christmas decorations at the Frog Pond. Commissioner Hogan asked the Board of Commissioners to, in the future, authorize Mosca Designs to come up with a

plan for adding decorations around the Frog Pond, and possibly the Butterfly Garden at the Baum Center; with possibly, a presentation at a future meeting.

- Dare County Tourism Board. Commissioner Hogan represents Kill Devil Hills on this board. There was recently a meeting of this group that included grant application considerations, National Tourism Week speakers, etc. He extended an offer for anyone with questions about the Tourism Board to please just let him know and he would be glad to speak with them.

## Mayor's Agenda

### 1. Proclamations (Attached MA-1A and MA-1B)

These proclamations recognize two critically important groups in our society – our law enforcement agencies and personnel, and our older Americans

#### A. Proclamation Designating May 15, 2016 as Peace Officers Memorial Day and May 15-21, 2016 as Police Week

Mayor Davies made a motion for the Board of Commissioners to adopt this proclamation and Commissioner Rheubottom seconded that motion. Approval was unanimous, 4-0.

#### B. Proclamation Designating the Month of May as Older Americans Month

Mayor Davies made a motion for the Board of Commissioners to adopt this proclamation. Commissioner Hogan seconded that motion and approval was unanimous, 4-0.

- Staff commendations. Ron Seidman let Mayor Davies know about the extended effort of Sgt. Julie Haner and some other officers, who helped a neighbor who had a strange vehicle in their driveway. Sgt. Haner was able to find out who owned the vehicle, which had run out of gas and coasted into the driveway, and help them get gas for the vehicle, which was removed. Mr. Seidman was very complimentary of the responding officers. Mayor Davies asked Chief Britt to let Sgt. Haner and any others who were involved to know about Mr. Seidman's comments.

Also, Mayor Davies explained that Kirsten Lucy of 306 Wallace Street, had called about the service she received in response to a slow water leak at her property. Public Services Department Staff member Mike Gray had called her about the matter and she felt him to be very professional and personable. Ms. Lucy was very appreciative of the call and asked that her comments be passed along to his supervisor.

- Water Services brochure/pamphlet. This is a great and informative sheet, available on the Town's website and Facebook page.
- Coffee with a Cop. Well-attended and a great way for the public to engage with our officers, talking about what may be going on in Kill Devil Hills and around Town.

Mayor Davies thanked Community Officer Jody Lewis for putting this event on. There will be another Coffee with a Cop event coming up soon and more information will be available through the Town's Internet and social media sites.

- Police Lt. John Towler and Sgt. Rodney Rawls assistance to unconscious motorist. On May 4, 2016 Lt. Towler and Sgt. Rawls responded to a report that a male had been found unconscious in his vehicle on Wrightsville Avenue behind CVS Pharmacy. Using an AED and a Narcan nasal spray (used for drug overdoses) they were able to assist a visitor to the area, who was a paramedic in Pennsylvania and had seen the male and was trying to raise a pulse. Lt. Towler recognized the symptoms of drug overdose and administered the Narcan spray, to which there was an immediate reactive response. The AED unit was not needed. The male was transported by Dare County EMS to the Outer Banks Hospital. (Narcan is the first FDA-approved nasal spray version of naloxone hydrochloride. Narcan is a narcotic antagonist. It works by blocking opiate receptor sites, which reverses or prevents toxic effects of narcotic [opioid] analgesics, which includes certain prescription medications and the illegal drug, heroin. Lt. Towler had just finished a training course in Narcan administration earlier on the day of the incident.)
- Donation Drive for KDH Animal Shelter and Dare County SPCA. Rachel Herрман and the Town's Administration Department recently coordinated a donation drive for the Town's Animal Shelter and the Dare County SPCA facility. It was very successful and Mayor Davies thanked all Staff members and citizens who were involved and contributed.

### **Town Manager's Agenda**

#### **1. Request for authorization to locate Fire Department training tower at 1634 N. Croatan Highway (Attached TM-1)**

The Fire Auxiliary is requesting authorization to locate a training tower in the vicinity of the southwest end of the building that houses the Public Services Department's water pumps and equipment and the Fire Department's apparatus bays/exercise facility. The exact area was depicted in the packet materials. Also, the packet included plan drawings for the tower.

Retired Assistant Fire Chief and current Fire Auxiliary officer Rick Heppert, and Fire Chief Troy Tilley, were both present at the meeting to answer any questions. The Fire Auxiliary has diligently worked to secure funding for the training tower and is not requesting funding. The Town Manager explained that the Auxiliary is excited about the possibility of constructing this training tower, which will provide on-site opportunities our Fire Department does not currently have for staging and carrying out rescue and fire suppression training. Locating the training tower at the site of our fire station will also give our Fire Department points towards the Town's overall insurance rating, which could potentially mean costs reductions for our property owners.

Upon approval, the Fire Auxiliary will administer construction of this project.

Staff supported this concept and recommended the Board of Commissioners approve the request from the Fire Auxiliary to locate a training tower at the 1634 N. Croatan Highway complex, as presented.

The Board of Commissioners was very pleased with this project and thanked the Fire Auxiliary for making this project a reality. Commissioner Hogan added his thanks to the Auxiliary. Mr. Heppert explained that the thanks also should go to all who have donated and purchased Fire Department t-shirts. This tower will be a great addition to our Fire Department's drilling, exercise and training routines.

Commissioner Midgette made a motion for the Board of Commissioners to authorize location of the training tower as presented on the packet materials for this item. Commissioner Rheubottom seconded that motion and approval was unanimous, 4-0.

## **Town Attorney's Agenda**

### **Consent Agenda**

#### **1. Minutes (Attached CA-1A)**

A. April 11, 2016

#### **2. Adoption of updated Kill Devil Hills Official Traffic Map (Attached CA-2)**

At the last meeting, action was taken to amend the Town's Official Traffic Map to provide on-street parking on East Chowan Street in the vicinity of Chili Pepper's restaurant.

Staff recommended the Board of Commissioners adopt the entire Traffic Map, which includes this change and those made to the map in November 2013. The entire map was last completely adopted in 2012.

The Traffic Map, as proposed for adoption by approval of this Consent Agenda, was placed in the Administration Department on Thursday and Friday, May 12<sup>th</sup> and 13<sup>th</sup>, and in the Meeting Room on Monday, May 16<sup>th</sup> for public inspection.

#### **3. Adoption of updated NC Division of Archives and History Municipal Records Retention and Disposition Schedule**

The Municipal Records Retention and Disposition Schedule was developed by the Archives and Records Section of the Department of Cultural Resources in accordance with the provisions of Chapter 121 and 132 of the State's General Statutes. This schedule sets out retention and disposition periods for the series of records contained therein as they pertain to North Carolina's municipal governments. By adoption of the schedule, Kill Devil Hills is authorized to dispose of records in a manner that does not exceed the provisions of the schedule.

Procedures for disposition include participation by records managers from each Town department. Those records identified for disposition according to the adopted schedule are examined and confirmed for destruction, with a draft list going to the Town Attorney for

approval. A final form is prepared, which cites the records, dates of origination, authorization for destruction, and then executed by the records manager, the department head, the Town Clerk and the Town Attorney. The Town has historically taken a cautious view of records disposition: records are examined for historical value and future reference by each department and the Town Attorney to determine any anticipated need based on current events.

This large guide was previously provided to the Board of Commissioners by e-mail and a link on the website was established from the meeting agenda and packet section to the Retention and Disposition Schedule to make it available for public inspection.

Staff recommended approval of the Consent Agenda as presented.

Commissioner Hogan made a motion for the Board of Commissioners to approve the Consent Agenda as presented. Commissioner Rheubottom seconded that motion and approval was unanimous, 4-0.

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

**Sue Kelly, Chair, Community Appearance Commission:** Greg is a wonderful person to work with and he will be missed. Good luck to him in all future endeavors. The CAC will be taking its annual summer hiatus and forego meeting until September 2016.

Ms. Kelly also commented on how important it is for Trash Attack! posters to be presented at a Board meeting so that participants can see how they are used by the Town.

### **Response to Public Comment**

Presentation of the posters will be scheduled for the June 13<sup>th</sup> meeting.

### **Adjourn**

There being no further business before the Board of Commissioners at this time, Commissioner Rheubottom made a motion to adjourn this meeting. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

It was 7:43 p.m.



Submitted by:

Mary E. Quidley  
Town Clerk



# TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

MEMORANDUM

May 16, 2016

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager

REF: New Business

**1. Beach nourishment (Attached NB-1A, 1B and 1C)**

**A. Bond Order Authorizing the Issuance of Special Obligation Bonds**

This order establishes the Town's intent to construct the beach erosion control and flood and hurricane protection works project (beach nourishment), now and in the future, and authorizes special obligation bonds in to be issued in accordance with the provisions of North Carolina General Statutes.

Staff recommends the Board of Commissioners adopt this order as presented and a motion will be in order.

**B. A Resolution Providing for the Issuance of \$5,036,691 Special Obligation Bond, Series 2016**

The resolution follows the bond order, above, and establishes the terms and conditions of the bond issuance. It is a result of collaboration between our Town Attorney and our financial consultants, Parker Poe, and Finance Director Beverly Kissinger.

Staff recommends the Board of Commissioners adopt this resolution as presented and a motion will be in order.

**C. A Resolution Authorizing Acquisition by Condemnation of Beach Nourishment Easements on Certain Properties Located in the Town of Kill Devil Hills**

This is the resolution approving condemnation of easements on the properties on Exhibit A (which is current as of May 11, 2016 @ 2:00 p.m.). The text of resolution will not change but list of properties may should more easement be received before Monday night's meeting. If the list does change, the Town Attorney will provide a revised list for attachment to the resolution as Exhibit A.

Staff recommends the Board of Commissioners adopt this resolution as presented and a motion will be in order.

**BOND ORDER AUTHORIZING THE ISSUANCE OF SPECIAL OBLIGATION BONDS OF THE  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA**

*WHEREAS*, the Board of Commissioners (the “*Board*”) of the Town of Kill Devil Hills, North Carolina (the “*Town*”) has determined to construct certain beach erosion control and flood and hurricane protection works now and from time to time in the future, and may also finance in the future any other project permitted to be financed under Section 159I-30 of the General Statutes of North Carolina (collectively, the “*Projects*”);

*WHEREAS*, the Board has determined there is a present need to issue its Special Obligation Bonds pursuant to Section 159I-30 of the General Statutes of North Carolina for a Project to be constructed in a municipal service district in the Town (the “*Current Project*”);

*WHEREAS*, an application has been filed with the Secretary (the “*Secretary*”) of the Local Government Commission of North Carolina (the “*Commission*”) requesting Commission approval of an initial series of special obligation bonds in an amount not to exceed \$5,036,691 to be used for the Current Project as required by Section 159I-30(i) of the General Statutes of North Carolina, and the Secretary has notified the Board that the application has been accepted for submission to the Commission; and

*WHEREAS*, notwithstanding the current need to issue not to exceed \$5,036,691 special obligation bonds for the Current Project, the Board has determined that the aggregate principal amount of special obligation bonds for future projects is not known at this time and therefore wishes to provide for the issuance of special obligation bonds from time to time in amounts to be determined at the time of issuance and subject to Commission approval at such time.

*NOW, THEREFORE, BE IT ORDERED* by the Board of the Town of Kill Devil Hills, North Carolina (the “*Town*”) as follows:

*Section 1.* The Board has determined to construct the Current Project and from time to time in the future may also finance other Projects.

*Section 2.* To raise the money required to pay the costs of the Projects as set forth above, Special Obligation Bonds of the Town are hereby authorized and shall be issued pursuant to Section 159I-30 of the General Statutes of North Carolina. The maximum aggregate principal amount of such Special Obligation Bonds authorized by this bond order shall be unlimited.

*Section 3.* The Special Obligation Bonds shall be special obligations of the Town and the principal of, and interest and premium on, all such Special Obligation Bonds shall be on parity and shall be secured solely by the following sources:

(a) that portion of the 1% local option sales and use tax levied by the County of Dare, North Carolina (the “*County*”) pursuant to Article 39 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town;

(b) that portion of the 1/2% local option sales and use tax levied by the County pursuant to Article 40 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town;

(c) that portion of the two 1/2% local option sales and use tax levied by the County pursuant to Article 42 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town; and

(d) one or more additional sources of funds identified by the Board in future proceedings of the Board, so long as (i) the pledge of such sources does not constitute a pledge of the taxing power of the Town and (ii) the pledge of such sources is first approved by the Local Government Commission of North Carolina as set forth in Section 159I-30(i) of the General Statutes of North Carolina.

**Section 4.** The sources of payment identified in Section 3 so pledged and then held or hereafter received by the Town or any fiduciary thereof shall immediately be subject to the lien of the pledge without any physical delivery of the sources or further act.

**Section 5.** NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST OR ANY PREMIUM ON, ANY SPECIAL OBLIGATION BONDS, AND NO OWNER OF SUCH SPECIAL OBLIGATION BONDS HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE TOWN IN CONNECTION WITH ANY DEFAULT THEREON. The uses of the sources set forth in Section 3 do not constitute a pledge of the Town's taxing power and the Town is not obligated to pay the principal of, or interest or any premium on, any Special Obligation Bonds except from the sources set forth in Section 3.

**Section 6.** The issuance and details of any such Special Obligation Bonds shall be set forth in one or more separate proceedings of the Board. The initial series of Special Obligation Bonds shall not exceed \$5,036,691 and is being issued pursuant to a separate resolution. Future issues or series of Special Obligation Bonds shall be issued only by separate proceedings of the Board and with approval from the Local Government Commission of North Carolina as may be required by law.

**Section 7.** This bond order shall take effect on its adoption.

STATE OF NORTH CAROLINA            )  
  )  
COUNTY OF DARE                        )            SS:

I, *Mary E. Quidley*, Town Clerk of the Town of Kill Devil Hills, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a bond order entitled “**BOND ORDER AUTHORIZING THE ISSUANCE OF SPECIAL OBLIGATION BONDS OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA**” adopted by the Board of Commissioners of the Town of Kill Devil Hills, North Carolina, at a meeting held on the 16<sup>th</sup> day of May, 2016.

*WITNESS* my hand and the corporate seal of the Town of Kill Devil Hills, North Carolina, this the 16<sup>t</sup> day of May, 2016.

[Seal]



*Mary E. Quidley*  
\_\_\_\_\_  
Mary E. Quidley  
Town Clerk  
Town of Kill Devil Hills, North Carolina



## TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

### A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF \$5,036,691 SPECIAL OBLIGATION BOND, SERIES 2016

*WHEREAS*, the Town of Kill Devil Hills, North Carolina (the “Town”) is authorized by Section 159I-30 of the General Statutes of North Carolina (the “Applicable Statute”) to issue its special obligation bonds for beach erosion control and flood and hurricane works provided in a municipal service district; and

*WHEREAS*, the Board of Commissioners of the Town (the “Board”) has created a Municipal Service District (the “District”), in accordance with Article 23 of Chapter 160A of the North Carolina General Statutes, in which the Town has determined to construct certain beach erosion control and flood and hurricane protection works (the “Current Project”); and

*WHEREAS*, the Board on May 16, 2016 adopted a Bond Order (the “Bond Order”) providing for the issuance of Special Obligations Bonds to be secured by the sources set forth in the Bond Order; and

*WHEREAS*, the Board has determined that it is necessary and advisable at this time to issue the Town’s Special Obligation Bond, Series 2016 (the “Bond”) in the aggregate principal amount of \$5,036,691 to (1) pay the costs of the Current Project and (2) pay the costs of issuing the Bond; and

*WHEREAS*, PNC Bank, National Association (referred to herein as the “Purchaser”), has agreed to purchase the Bond as set forth in its Term Sheet, dated April 25, 2016 (the “Term Sheet”); and

*WHEREAS*, the Town has applied to the Local Government Commission of North Carolina (the “Commission”) for approval of its application relating to the Bond as required by Section 159I-30(i) of the Applicable Statute and of the issuance and private sale of the Bond, which approvals are expected to be granted at the Commission’s meeting on June 7, 2016 (the “Commission Approval”); and

*WHEREAS*, the Board now desires to provide for the terms, form and issuance of the Bond in the amount of \$5,036,691; and

*WHEREAS*, the Board desires to incorporate in this Resolution, to the extent applicable and unless manifestly inappropriate, the provisions of the Bond Order, including definitions;

*NOW, THEREFORE, BE IT RESOLVED* by the Board of the Town, in accordance with the final Commission Approval as set forth above and any conditions, terms and other contingencies that may be set forth therein, as follows:

**Section 1. Acceptance of Term Sheet, Issuance of Bond.** The Town hereby accepts and approves the Term Sheet offered by the Purchaser; provided, however, such Term Sheet shall not represent the final terms of the transaction, which shall be only this Resolution, the Bond and any closing documents. The Term Sheet is not incorporated herein. The Town shall issue in accordance with and pursuant to the Applicable Statute, the Bond Order, and this Resolution, its Bond in the aggregate principal amount of \$5,036,691 for the purpose of providing funds, together with other available funds, to (1) pay the costs of the Current Project and (2) pay the costs of issuing the Bond. The period of usefulness of the capital projects to be financed by the issuance of the Bond is not less than seven years, computed from the date of the issuance of the Bond.

**Section 2. Form of Bond.** The Bond shall be issued in fully registered form. The Bond shall be issued as a single bond, shall be substantially in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution. The Town's Finance Officer is hereby appointed to be the registrar of the Bond (the "Registrar") and is hereby directed to maintain the appropriate registration records with respect thereto.

**Section 3. Details of Bond.** (a) The Bond shall be dated the date of its issuance, shall bear interest at a fixed rate of 1.64% per annum until its payment and shall be stated to mature (subject to the right of prior redemption) on or about December 15, 2021.

If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Purchaser (the "Alternative Rate of Interest"), and shall be payable from the Date of Taxability to such time as the Bond is paid in full. In such event, the Town also shall be required to pay to the Purchaser all amounts, if any, which may be necessary to reimburse the Purchaser for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Purchaser by reason of the Purchaser's failure to include the interest on the Bond in its gross income for income tax purposes. The Town shall pay to the Purchaser the above mentioned Alternative Rate of Interest notwithstanding any transfer by the Purchaser or payment or prepayment by the Town prior to the date such Determination of Taxability was made.

"Event of Taxability" shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest on the Bond to be includible in the gross income of the Purchaser for federal income tax purposes. A Determination of Taxability shall mean a determination that the interest on the Bond is included in gross income of the Purchaser for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Purchaser is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an Event of Taxability, the interest on the Bond is included in the gross income of the Purchaser for federal income tax purposes; (b) the date on which the Town receives notice from the Purchaser that the Purchaser has been advised in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Purchaser which asserts, in effect, that interest on the Bond received by the Purchaser is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the interest on the Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability; or (d) the day on which the Town is advised in writing by counsel to the Purchaser that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that interest on the Bond is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability.

"Date of Taxability" shall mean the first date upon which interest on the Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

If at any time there is a Change in Deductibility (hereinafter defined), the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield

which it would have received if there had not been a Change in Deductibility, taking into account any interest expense deductions lost by the Purchaser as a direct or indirect result of the Town’s actions, such rate to be determined by the Purchaser. “*Change in Deductibility*” means any determination by the Internal Revenue service or any court of competent jurisdiction that the Bond is not a “qualified tax exempt obligation” within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the “*Code*”), as a result or as a consequence of (i) an action, or failure to act, by the Town or (ii) a breach of any representation or warranty made by the Town to the Purchaser relating to the status of the Bond as a qualified tax exempt obligation as described above.

(b) The Bond is subject to mandatory redemption before maturity in part at the redemption price of 100% of the principal amount to be redeemed, without premium, on each December 15 in the years and in the amounts as follows:

PAYMENT DATE (DECEMBER 15)	PRINCIPAL PAYMENT
2017	\$1,007,338
2018	1,007,338
2019	1,007,338
2020	1,007,338
2021	1,007,339

\*Maturity

(c) The Bond shall also be subject to optional redemption prior to its stated maturity at the option of the Town in whole (but not in part) on any date upon giving the Purchaser not less than 30 Business Days prior written notice thereof. The redemption price of such Bond shall be equal to 100% of the principal amount of the Bond, plus interest accrued to the redemption date, plus, if so required by the Purchaser as compensation for the costs of the Bond being prepaid, an amount equal to the Cost of Prepayment. “*Cost of Prepayment*” means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) “*Selected Interest Rates*.” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. A “*Business Day*” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial lenders are authorized or required to be closed for business in Raleigh, North Carolina.

The Purchaser shall provide the Town with a written statement explaining the calculation of the Cost of Prepayment due, if any, which statement shall, in absence of manifest error, be conclusive and binding on the Town.

(d) Interest on the outstanding principal amount Bond shall be payable on December 15, 2016 and on each June 15 and December 15 thereafter until maturity. Interest on the Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In the event of a late payment, interest shall continue to accrue on the principal balance outstanding at the interest rate

applicable to the Bond; provided that, if such payment is more than five days late, then interest shall accrue at the Default Rate as described in subsection (f) below.

(e) Principal of, premium, if any, and interest on the Bond shall be payable to the registered owner appearing on the registration records of the Registrar by wire transfer or by check, mailed to such registered owner at its address as it appears on such registration books and shall be received by the registered owner on the date such payment is due.

(f) If the Town defaults on its obligation to pay principal of and interest on the Bond, all amounts due on the Bond will bear interest at the Default Rate. The “*Default Rate*” shall be the greater of (i) 12% per annum or (ii) the Base Rate plus 3.00%; provided that in no event shall the Default Rate exceed 20% per annum. “Base Rate” means the greater of (A) the interest rate per annum announced from time to time by the Purchaser as its then prime rate, which rate may not be the lowest rate then being charged commercial Towns by the Purchaser, or, (ii) the Federal Funds Open Rate plus 0.5% per annum. “Federal Funds Open Rate” means, for any day, the rate per annum determined by the Purchaser in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the “Open Rate” for federal funds transactions as of the opening of business for federal funds transactions among members of the Federal Reserve System arranged by federal funds brokers on such day; provided, however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the Open Rate on the immediately preceding Business Day, or if no such rate shall be quoted by a federal funds broker at such time, such other rate as selected by the Purchaser in accordance with its usual procedures. Any rate of interest based on the Federal Funds Open Rate shall be adjusted as of each Business Day based on changes in the Federal Funds Open Rate without notice to the Town.

**Section 4. Security for the Bond.** The Bond shall be a special obligation of the Town and the principal of, prepayment premium and interest on the Bond shall be payable solely from the sources identified in the Bond Order and as set forth in the Bond. The uses of the sources set forth in the Bond Order and the Bond do not constitute a pledge of the Town’s taxing power and the Town is not obligated to pay the principal of, or interest or any premium on, the Bond except from the sources in the Bond Order and the Bond.

**NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST OR ANY PREMIUM ON, THE BOND, AND NO OWNER OF THE BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE TOWN IN CONNECTION WITH ANY DEFAULT THEREON.**

**Section 5. Application of the Bond Proceeds.** On the date of the initial issuance of the Bond, the Purchaser shall deliver the Bond proceeds to any account identified by the Town and the Town shall invest, or cause to be invested, such proceeds until used only in investments authorized by Section 159-30 of the General Statutes of North Carolina. Such Bond proceeds shall be applied solely as follows: (1) as soon as practicable, for the costs of the Current Project, and (2) within 60 days of the date of initial issuance, for payment of the issuance costs.

**Section 6. Execution of the Bond.** The Bond, issued as a single bond, shall be executed in the name of the Town by facsimile or manual signatures of the Town’s Mayor and Town Clerk and there shall be affixed thereto or imprinted thereon the seal of the Town, and the Certificate of Approval of the Commission shall bear a facsimile or manual signature of the Secretary of the Commission or his designated assistant. The Finance Officer shall manually authenticate the Bond.

**Section 7. Private Sale of Bond.** The Bond shall be sold to the Purchaser at private sale without advertisement in the form of a single registered bond bearing interest at 1.64% per annum and containing such provisions as set forth above and in the Bond Purchase Agreement, to be dated the

delivery of the Bond (the “BPA”), between the Commission and the Purchaser and approved the Town. The Town hereby approves the draft of the BPA presented at this meeting and hereby authorizes and directs the Mayor, Town Manager and the Town Clerk, individually or collectively, as appropriate, to execute and delivery such BPA in such final form that they, with the advice of counsel, deem appropriate.

**Section 8. Authorization for Delivery of Bond.** The Mayor, the Town Clerk, the Town Manager and the Finance Officer, individually or collectively, are hereby authorized and directed to cause the Bond to be prepared and, when it shall have been duly sold by the Commission, to execute and authenticate the Bond and deliver the same to the Purchaser.

**Section 9. Arbitrage and Tax Covenants.** The Town covenants that it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income of the recipient thereof for federal income tax purposes of interest on the Bond and, if it should take or permit, or omit to take or cause to be taken, any such action, the Town will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof. The Town acknowledges that the continued exclusion of the Bond from the owner’s gross income for federal income tax purposes depends, in part, on compliance with the arbitrage limitations imposed by Section 148 of the Code.

The Town covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements, and that it will not permit at any time any of the proceeds of the Bond or other funds under its control to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the Bond to be “arbitrage bonds” for purposes of Section 148 of the Code. The Town covenants that it will comply with the investment instructions in the Arbitrage and Tax Regulatory Certificate executed and delivered on the date hereof with respect to the Bond.

The Town hereby designates the Bond as a qualified tax-exempt obligation for purposes of Section 265(b)(3) of the Code. The Town covenants that the amount of tax-exempt obligations expected to be issued in 2016 is not more than the \$10 million limitation described within Section 265(b)(3) of the Code. The Town will not breach the covenants included herein or take any action which adversely affects the deductibility of any interest payments made by the Town under Section 265(b)(3) of the Code, such actions include, but are not limited to, the issuance of more than \$10 million of obligations during the current calendar year 2016.

**Section 10. Financial Covenant.** The Town shall maintain on its books a “Beach Nourishment Fund.” As of December 1 of each fiscal year, the Town will maintain an amount in a Beach Nourishment Fund equal to or greater than the amount of taxes collected from the special tax assessed only in the District in the immediately preceding fiscal year.

**Section 11. Authorization for Other Acts.** The Mayor, Town Clerk, Town Manager, the Finance Officer and the Town Attorney, individually or collectively, are further authorized and directed to take such action and to execute and deliver any such documents, deeds, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary and appropriate to effect the transactions contemplated by the Bond Order and this Resolution. Such officers are hereby directed to take all actions necessary to effectuate the transaction set forth above, including taking any such actions or making any such changes as may be required by the Commission Approval.

**Section 12. Transfer Restrictions.** Notwithstanding any other provisions of the Bond Order or this Resolution to the contrary, the Bond shall not be transferred to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Commission.

The Purchaser or its assignees may assign or reassign all or any part of the Bond, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in the Bond, or making the Bond part of a pool of obligations without the consent of the Commission, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the Commission; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the Bond, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the Commission.

The provisions of this paragraph may not be amended without the prior written consent of the Commission.

**Section 13. Reporting Requirements for the Town.** The Town hereby covenants to provide to the Purchaser at the same time the Town provides its annual audited financial statements to the Commission, but in no event later than 210 days after the end of the Town's fiscal year, (i) the Town's annual audited financial statements and (ii) a certification from the Finance Officer evidencing compliance with the covenant in Section 10 hereof. The Town shall also provide such other financial information and operating reports as may be reasonably requested by the Purchaser.

**Section 14. Supplemental Resolutions; Additional Parity Indebtedness.** The Town may adopt resolutions supplemental hereto; provided, however, the Purchaser's prior written consent shall be required for any supplemental resolution that affects the terms or tax treatment of the Bond. The Town may issue indebtedness that is on parity with the Bond with the Purchaser's prior written consent.

**Section 15. Repealer.** All orders and resolutions and parts of orders and resolutions in conflict with this Resolution, if any, excluding the Bond Order, shall be and the same are hereby repealed to the extent the conflict exists.

**Section 16. Effectiveness of Resolution.** This resolution shall be effective immediately upon its adoption by the Board.

STATE OF NORTH CAROLINA            )  
  )  
COUNTY OF DARE                    )        SS:

I, *Mary E. Quidley*, Town Clerk of the Town of Kill Devil Hills, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF \$5,036,691 SPECIAL OBLIGATION BOND, SERIES 2016**” adopted by the Board of Commissioners of the Town of Kill Devil Hills, North Carolina, at a meeting held on the 16<sup>th</sup> day of May, 2016.

*WITNESS* my hand and the corporate seal of the Town of Kill Devil Hills, North Carolina, this the 16<sup>th</sup> day of May, 2016.



*Mary E. Quidley*  
\_\_\_\_\_  
Mary E. Quidley  
Town Clerk  
Town of Kill Devil Hills, North Carolina

APPENDIX A

FORM OF BOND

This Bond is subject to certain transfer restrictions as described herein.

No. R-1

\$5,036,691

UNITED STATES OF AMERICA  
STATE OF NORTH CAROLINA  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA

SPECIAL OBLIGATION BOND, SERIES 2016

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED DATE</u>
1.64%	December 15, 2021	June 10, 2016

REGISTERED OWNER: PNC BANK, NATIONAL ASSOCIATION

PRINCIPAL SUM: FIVE MILLION THIRTY SIX THOUSAND SIX HUNDRED NINETY-ONE DOLLARS

SPECIAL OBLIGATION BOND, SERIES 2016

*THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA* (the "Town") acknowledges itself indebted and for value received hereby promises to pay to the Registered Owner named above, on the Maturity Date specified above, on surrender hereof, the Principal Sum shown above and to pay to the Registered Owner hereof interest thereon from the date of this Bond until it shall mature at the Interest Rate per annum specified above, payable on December 15, 2016 and on each June 15 and December 15 thereafter until the Maturity Date. Interest on this Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In the event of a late payment, interest shall continue to accrue on the principal balance outstanding at the interest rate per annum set forth above; provided that, if such payment is more than five days late, then interest shall accrue at the Default Rate described below.. Principal of and interest on this Bond are payable in immediately available funds to the Registered Owner.

The Default Rate shall be the greater of (i) 12% per annum or (ii) the Base Rate plus 3.00%; provided that in no event shall the Default Rate exceed 20% per annum. "Base Rate" means the greater of (A) the interest rate per annum announced from time to time by the Purchaser as its then prime rate, which rate may not be the lowest rate then being charged commercial Towns by the Purchaser, or, (ii) the Federal Funds Open Rate plus 0.5% per annum. "Federal Funds Open Rate" means, for any day, the rate per annum determined by the Purchaser in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the "Open Rate" for federal funds transactions as of the opening of business for federal funds transactions among members of the Federal Reserve System arranged by federal funds brokers on such day; provided, however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the Open Rate on the immediately preceding Business Day, or if no such rate shall be quoted by a federal funds broker at such time, such other rate as selected by the Purchaser in accordance with its usual procedures. Any rate of interest based on the Federal Funds

Open Rate shall be adjusted as of each Business Day based on changes in the Federal Funds Open Rate without notice to the Town.

This Bond is issued in accordance with the Registered Public Obligations Act, Chapter 159E of the General Statutes of North Carolina, and pursuant to the Chapter 159I of the General Statutes of North Carolina, a bond order (the “*Bond Order*”) adopted by the Board of Commissioners on May 16, 2016 and effective on the date of its adoption and an issuance resolution (the “*Issuance Resolution*”) adopted by the Board of Commissioners on May 16, 2016 and effective on the date of its adoption. This Bond is being issued to provide funds to construct certain beach erosion control and flood and hurricane protection works in the District (as defined in the Issuance Resolution) and to pay issuance costs relating to this Bond.

If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Purchaser (the “*Alternative Rate of Interest*”), and shall be payable from the Date of Taxability to such time as this Bond is paid in full. In such event, the Town also shall be required to pay to the Purchaser all amounts, if any, which may be necessary to reimburse the Purchaser for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Purchaser by reason of the Purchaser’s failure to include the interest on this Bond in its gross income for income tax purposes. The Town shall pay to the Purchaser the above mentioned Alternative Rate of Interest notwithstanding any transfer by the Purchaser or payment or prepayment by the Town prior to the date such Determination of Taxability was made.

“*Event of Taxability*” shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest on this Bond to be includible in the gross income of the Purchaser for federal income tax purposes. A Determination of Taxability shall mean a determination that the interest on this Bond is included in gross income of the Purchaser for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Purchaser is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an Event of Taxability, the interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes; (b) the date on which the Town receives notice from the Purchaser that the Purchaser has been advised in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Purchaser which asserts, in effect, that interest on this Bond received by the Purchaser is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability; or (d) the day on which the Town is advised in writing by counsel to the Purchaser that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability.

“*Date of Taxability*” shall mean the first date upon which interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

If at any time there is a Change in Deductibility (hereinafter defined), the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield which it would have received if there had not been a Change in Deductibility, taking into account any interest expense deductions lost by the Purchaser as a direct or indirect result of the Town's actions, such rate to be determined by the Purchaser. "Change in Deductibility" means any determination by the Internal Revenue service or any court of competent jurisdiction that this Bond is not a "qualified tax exempt obligation" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), as a result or as a consequence of (i) an action, or failure to act, by the Town or (ii) a breach of any representation or warranty made by the Town to the Purchaser relating to the status of this Bond as a qualified tax exempt obligation as described above.

This Bond is subject to mandatory redemption before maturity in part at the redemption price of 100% of the principal amount to be redeemed, without premium, on each December 15 in the years and in the amounts as follows:

PAYMENT DATE (DECEMBER 15)	PRINCIPAL PAYMENT
2017	\$1,007,338
2018	1,007,338
2019	1,007,338
2020	1,007,338
2021	1,007,339

\*Maturity

This Bond shall also be subject to optional redemption prior to its stated maturity at the option of the Town in whole (but not in part) on any date upon giving the Purchaser not less than 30 Business Days prior written notice thereof. The redemption price of such Bond shall be equal to 100% of the principal amount of this Bond, plus interest accrued to the redemption date, plus, if so required by the Purchaser as compensation for the costs of this Bond being prepaid, an amount equal to the Cost of Prepayment. "Cost of Prepayment" means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) "Selected Interest Rates." For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. A "Business Day" shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial lenders are authorized or required to be closed for business in Raleigh, North Carolina.

This Bond shall be a special obligation of the Town and the principal of, and interest and premium on, such Bond shall be secured solely by the sources set forth in the Bond Order (such sources be defined herein as the "Pledged Sources"), which are as follows:

- (i) that portion of the 1% local option sales and use tax levied by the County of Dare, North Carolina (the "County") pursuant to Article 39 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town;

(ii) that portion of the 1/2% local option sales and use tax levied by the County pursuant to Article 40 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town;

(iii) that portion of the two 1/2% local option sales and use tax levied by the County pursuant to Article 42 of Chapter 105 of the General Statutes of North Carolina which are distributed to the Town; and

(iv) one or more additional sources of funds identified by the Board in future proceedings of the Board, so long as (i) the pledge of such sources does not constitute a pledge of the taxing power of the Town and (ii) the pledge of such sources is first approved by the Local Government Commission of North Carolina as set forth in Section 159I-30(i) of the General Statutes of North Carolina.

The uses of the Pledged Sources do not constitute a pledge of the Town's taxing power and the Town is not obligated to pay the principal of, or interest or any premium on, this Bond except from the sources set forth in the Bond Order and above.

**NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST OR ANY PREMIUM ON, THIS BOND, AND NO OWNER OF THIS BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE TOWN IN CONNECTION WITH ANY DEFAULT THEREON.**

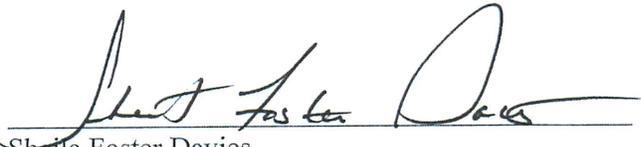
It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened.

This Bond is not valid or obligatory for any purpose until the certification hereon has been signed by an authorized representative of the Local Government Commission.

This Bond shall not be transferred to any person other than a bank, insurance company or similar financial institution unless such transfer is permitted pursuant to the Issuance Resolution.

*IN WITNESS WHEREOF*, the Town has caused this Bond to bear the original or facsimile of the signatures of the Mayor and the Town Clerk of the Town, each acting on behalf of the Town, and an original or facsimile of the seal of the Town to be imprinted hereon and this Bond to be dated as of the Dated Date above.

(Seal)  
  
Mary E. Quidley  
Town Clerk

  
Sheila Foster Davies  
Mayor

Date of Execution: June 10, 2016

The issue hereof has been approved by of Local Government Commission.

\_\_\_\_\_  
GREG C. GASKINS  
Secretary of the Local Government Commission

**CERTIFICATE OF AUTHENTICATION**

This is the Special Obligation Bond, Series 2016 is secured by the Pledged Sources (as defined in this Bond) and authorized by the Bond Order and Issuance Resolution.

**FINANCE OFFICER OF THE TOWN OF KILL DEVIL  
HILLS, NORTH CAROLINA, as Registrar**

Dated: June 10, 2016

By:  \_\_\_\_\_  
Beverly Kissinger  
Finance Officer

**FORM OF ASSIGNMENT**

**ASSIGNMENT**

*FOR VALUE RECEIVED* the undersigned hereby sells, assigns and transfers unto

---

(Please print or typewrite Name and Address,  
including Zip Code, and Federal Taxpayer Identification or  
Social Security Number of Assignee)

---

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

---

Attorney to register the transfer of the within Bond on the records kept for registration thereof,  
with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

**NOTICE:** Signature must be guaranteed by a Participant in the Securities Transfer Agent Medallion Program ("*Stamp*") or similar program.

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**NOTICE:** The signature to this assignment must correspond with the name as it appears on the face of the within Bond in every particular, without alteration, enlargement or any change whatever.

**TRANSFER FEE MAY BE REQUIRED**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF KILL  
DEVIL HILLS, NORTH CAROLINA, AUTHORIZING ACQUISITION BY  
CONDEMNATION OF BEACH NOURISHMENT EASEMENTS ON CERTAIN  
PROPERTIES LOCATED IN THE TOWN OF KILL DEVIL HILLS**

**WHEREAS**, for the purposes allowed by Section 40A-3(b1)(10) of the North Carolina General Statutes, and particularly in connection with a beach nourishment project to be undertaken by the Town pursuant to prior action by the Town Council (the "Project") is to protect structures of historic significance, to maintain the Town's tax and economic base, protect Town infrastructure including facilities for public recreational access, and for erosion control and flood and hurricane protection works providing protection, benefits and increasing value for private property and structures where the project will occur, via a beach nourishment project; the Board of Commissioners of the Town of Kill Devil Hills hereby determines that it is desirable, necessary and in the public interest to acquire a limited easement over certain portions of the properties described on Attached Exhibit "A" (the "Subject Properties") that are located in the nourishment project area, which extends from the northern boundary of Kill Devil Hills South to the North boundary of Prospect Road extended to the Atlantic Ocean (the "Project Area") and bordering the Atlantic Ocean; and

**WHEREAS**, the Town believes that the interest needed in each of the Subject Properties is of minimal or *de minimis* value, and is worth less than the amount by which work done in connection with the Project will preserve, enhance or increase the value of the Subject Properties; and

**WHEREAS**, the Town anticipates that it will be unable to acquire the needed easement rights in Subject Properties by the owners' voluntary conveyance; and

**WHEREAS**, it is necessary that the Town obtain the limited easement rights on the Subject Properties within the Project Area so that the Project may proceed without undue delay.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA, THIS 16<sup>th</sup> DAY OF MAY, 2016, AS FOLLOWS:**

1. For each of the Subject Properties in the Project Area, the Town shall acquire, by condemnation, for purposes allowed by Section 40A-3(b1)(10) of the North Carolina General Statutes and particularly as and to the extent needed in connection with the Project, an easement in each of the Subject Properties, described as follows:

The easement area shall be that portion of the Property located between the mean high water mark of the Atlantic Ocean, and the landward toe of the Frontal Dune or Primary Dune. In the absence of a discernable Frontal Dune or Primary Dune, the easement area shall be that portion of the Property located between the mean high water mark of the Atlantic Ocean, and the waterward edge of any Permanent Structure located on the Property as of the date of this Easement. In the absence of a discernable Frontal Dune or Primary Dune or a Permanent Structure, the

easement area shall be that portion of the Property located between the mean high water mark of the Atlantic Ocean, and a northern and/or southern extension of the Western boundary of the easement area for the property or properties adjoining the property on the north and/or south whose comparable easement areas have been established using either the Frontal Dune or Primary Dune or a Permanent Structure located on such adjoin property (the "Easement Area").

The capitalized terms as used in the description of the Easement Area for each of the Subject Properties shall have the following meanings:

Accessory Building: A subordinate Building consisting of walls and a roof, the use of which is clearly incidental to that of a Principal Building on the same lot

Building: Any structure enclosed and isolated by exterior walls and constructed or used for a residence or business. The word Building includes the word Structure.

Frontal Dune: The first mound of sand located landward of the Ocean Beach having sufficient vegetation, height, continuity and configuration to offer protective value.

Improved Dune Walkover Access: A raised walkway constructed for the purpose of providing access to the Ocean Beach from points landward of the dune system.

Ocean Beach: The lands consisting of unconsolidated soil materials that extend landward of the mean low water mark of the Atlantic Ocean to a point where either the growth of vegetation occurs or a distinct change in slope or elevation alters the configuration, whichever is farther landward.

Permanent Structure: A Building, including a Principal Building and any Accessory Building(s), covered decks, swimming pool, and improvements associated with a swimming pool, but not including any uncovered decks or any Improved Dune Walkover Access or any associated gazebos or other improved portions of an Improved Dune Walkover Access.

Primary Dune: The first mound of sand located landward of the Ocean Beach having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune toe).

Principal Building: A Building in which is conducted the principal use of the lot on which it is located.

2. The easement shall be effective immediately upon acquisition but shall expire On December 31, 2026.

3. Pursuant to Section 40A-11 of the North Carolina General Statutes, Town staff, and any agents, engineers, surveyors, appraisers, contractors and others employed or contracted by the Town or Dare County as the Town's agent, are authorized to enter upon any of the Subject Properties, but not structures, to make surveys, borings, examinations, and appraisals as may be necessary or expedient in carrying out and performing the Town's rights or duties under Chapter 40A of the North Carolina General Statutes, after the Town gives 30 days' notice in writing to the owner of each of the Subject Properties at his or her last known address and the party in possession of the land of the intended entry authorized by Section 40A-11 and this Resolution.

the Town or Dare County as the Town's agent, are authorized to enter upon any of the Subject Properties, but not structures, to make surveys, borings, examinations, and appraisals as may be necessary or expedient in carrying out and performing the Town's rights or duties under Chapter 40A of the North Carolina General Statutes, after the Town gives 30 days' notice in writing to the owner of each of the Subject Properties at his or her last known address and the party in possession of the land of the intended entry authorized by Section 40A-11 and this Resolution.

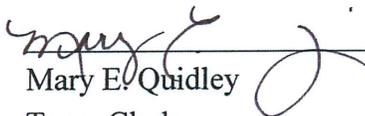
4. The attorneys representing the Town are authorized and directed to institute the necessary proceedings under Chapter 40A of the North Carolina General Statutes to acquire the easement rights or interests in the Subject Properties and take any actions as necessary in connection with the acquisition process.

Adopted this the 16<sup>th</sup> day of May, 2016.



  
\_\_\_\_\_  
Sheila F. Davies  
Mayor, Town of Kill Devil Hills

ATTEST:

  
\_\_\_\_\_  
Mary E. Quidley  
Town Clerk

## **Kill Devil Hills Legals**

1. **3317 N. Virginia Dare Trail – 000053000 (James & Maude Hawkins)**  
Being Lot 2, of Block 1, of the subdivision known as Orville Beach, as shown on map or plat thereof made by J.L. Foy, Registered Surveyor, dated August 1947, which said map or plat is duly recorded in Map Book 1, Page 138, Public Registry of Dare County, North Carolina.
  
2. **3215 N. Virginia Dare Trail – 000094000 (Hobbs-Stone, LLC)**  
All those certain lots of land having a frontage of seventy-five (75) feet on the Atlantic Ocean near Kill Devil Hills, Dare County, North Carolina, and being on the Southeast corner of the Virginia Dare Trail and Arch Street, and being Lot No. 1, and the North one-half of Lot No. 2, in Block 6, Orville Beach, map or plat of said subdivision made by J.L. Foy, Registered Surveyor, August 1947, and duly recorded in Map Book 1, Page 138, in the Office of the Register of Deeds of Dare County, North Carolina, reference to which is hereby made for a more particular description of the lands above-described.
  
3. **3123 N. Virginia Dare Trail – 000103000 (Robert L Holland)**  
Being Lot No. 6 of Block 7 of the subdivision known as Orville Beach as shown on map or plat thereof made by P.F. Crank, Surveyor, dated July 13-22, 1960 which said plat is duly of record in the Office of the Register of Deeds of Dare County, North Carolina in Map Book 2, at Page 144.
  
4. **No Address – 000106000 (Estate of Frances B. Rose)**  
Being Lot No. 9 of Block 7 of the subdivision known as Orville Beach, as shown on map or plat thereof, made by P.F. Crank, Surveyor, dated July 13-22, 1960 which said plat is duly of record in the Office of the Register of Deeds of Dare County, North Carolina, in Map Book 2 at Page 144.
  
5. **3115 N. Virginia Dare Trail – 000816000 (Charles Huffman & Robert Santiago)**  
All that certain lot or parcel of land together with all improvements situated thereon, lying and being in the Town of Kill Devil Hills, and known as Lot No 4 of the subdivision known as “Plat B of Virginia Dare Shores” as shown and delineated on a map or plat thereof recorded in Deed Book 17 at Page 105, in the Office of the Register of Deeds of Dare County, North Carolina, and said map or plat reference is expressly made thereto for a more particular description of the land herein conveyed.
  
6. **3113 N. Virginia Dare Trail – 000817000 (Joyce Fields Simpson, Elizabeth Fields Bishop, Lorna Fields Lyerly, and Cecelia Fields Hughes) (have 2 of 4 signatures)**  
All that certain lot or parcel of land together with all improvements situated thereon, lying and being in the Town of Kill Devil Hills, and known as Lot No 5 of the subdivision known as “Plat B of Virginia Dare Shores” as shown and delineated on a map or plat thereof recorded in Deed Book 17 at Page 105, in the Office of the Register of Deeds of Dare County, North Carolina, and said map or plat reference is expressly made thereto for a more particular description of the land herein conveyed.

**7. 3003 N. Virginia Dare Trail – 000820000 (James F. Perry)**

All that certain lot of land, together with improvements thereon known as, designated and being Lot No. 14 of the subdivision known as Virginia Dare Shores as shown on plat entitled “Virginia Dare Shores, Plat B” made by David Cox, Registered Engineer, dated October 10, 1935, and recorded in Book 17, Page 105, Public Registry of Dare County, North Carolina.

**8. 2907 N. Virginia Dare Trail – 000822000 (Christopher D. Lampman)**

Being Lot 16 on Plat B of the subdivision known as Virginia Dare Shores, as shown and delineated on a map of said subdivision designated “Virginia Dare Shores, Plat B”, made by David Cox, Registered Surveyor, dated October 10, 1935, and recorded in Book 17, Page 105 in the Office of the Register of Deeds of Dare County, North Carolina.

**9. 2801 N. Virginia Dare Trail – 000830000 (Lauren Raus & Ryan Lankford)**

Being Lot No. 24 as shown and delineated on Plat B of the subdivision known as Virginia Dare Shores, map or plat of said subdivision made by David Cox, Jr., Surveyor, dated October 10, 1935, and duly recorded in Book 17, Page 105 in the Office of the Register of Deeds of Dare County, North Carolina.

**10. 2705 N. Virginia Dare Trail – 000832000 (Kenneth Byron Waldrop & Lisa Lynn Waldrop)**

All that certain lot of land together with the houses and improvements thereon, lying and being in the Town of Kill Devil Hills, in Atlantic Township, Dare County, North Carolina, and known as, designated and being Lot No. 27 as shown on Plat “B” of the subdivision known as “Virginia Dare Shores”. Map or plat of said subdivision made by David Cox, Registered Engineer, October, 1935, and duly recorded in Book 17, Page 105, in the Office of the Register of Deeds of Dare County, North Carolina, reference to which is hereby made for a more particular description thereof.

**11. 2503 N. Virginia Dare Trail – 000840000 (123 Property Services, LLC)**

All those certain lots or parcels of land, together with the houses and improvements thereon, lying and being in the Town of Kill Devil Hills, in Atlantic Township, Dare County, North Carolina, and known as, designated, and being Lot Nos. 35 and 36, Plat B, map of Virginia Dare Shores, duly recorded in Deed Book 17, Page 105, Office of the Register of Deeds of Dare County, North Carolina.

**12. 2301 N. Virginia Dare Trail – 000847000 (Gary H & Susan M Tarpley & Betty K Carraway)**

All those certain lots or parcels of land, together with the houses and improvements thereon, lying and being in the Town of Kill Devil Hills, in Atlantic Township, Dare County, North Carolina, and known as, designated, and being Lot No. 47, Plat B, map of Virginia Dare Shores, duly recorded in Deed Book 17, Page 105, Office of the Register of Deeds of Dare County, North Carolina.

**13. 2209 N. Virginia Dare Trail – 003036000 (Calvin S & Latrelle S & Gary K & Terry W Hill)**

Being that certain lot or parcel of land situate in said Atlantic Township, Dare County, North Carolina, and located on the East side of Highway No 158, and being known and designated as Lot No 48, as delineated on the map of Virginia Dare Shores Subdivision, Plat “B”, said map

being duly of record in Deed Book 17, Page 105 in the office of the Register of Deeds of Dare County, North Carolina, to which plat reference is hereby made for a complete description of said land; said lot fronting on said highway a distance of 50 feet and extending back therefrom to the high water mark of the Atlantic Ocean; also reference is herewith made to deed of record in Book 34, Page 280, and particular reference is herewith made to deed of record in Book 45, Page 483 executed by W. H. C. White and wife to J. B. Rose and wife, Bell Gard Rose, and the deeds referred to therein, and being the same lot or parcel of land conveyed to A. Parker Midgett and Robert P. Midgett in that certain deed from C. A. Haggard and wife, Cora Haggard, of record in Book 93, Page 258 in said Public Registry.

**14. 2207 N. Virginia Dare Trail – 000848000 (Mary Lou Taylor)**

Lots 49 as shown on Plat B of Virginia Dare Shores, which plat is recorded in Book 17, Page 105, Dare County Public Registry.

**15. 2205 N. Virginia Dare Trail – 000849000 (Mary Lou Taylor)**

Lots 50 as shown on Plat B of Virginia Dare Shores, which plat is recorded in Book 17, Page 105, Dare County Public Registry.

**16. 2111 N. Virginia Dare Trail – 003070000 (Dare Resorts Inc—Avalon Pier)**

Beginning at an iron pipe set in the eastern right of way margin of US 158 Business (also known as Virginia Dare Shores), such point being the southwestern-most corner of Lot 51 on Plat "B" of the Subdivision of Virginia Dare Shores, said plat being duly recorded in Deed Book 17, Page 105, of the Public Registry of Dare County, North Carolina; thence from said point of beginning, in a line approximately perpendicular to said right-of-way, N 69 degrees 15 minutes East 137.75 seconds along the southern line of the said Lot 51, to an iron pipe set in the bulkhead crossing the within described property; thence continuing along the southern line of the said Lot 51, the same course of North 69 degrees 15 minutes East 70 +/- feet to the high water mark of the Atlantic Ocean a southerly course to the point of intersection of the said high water mark with northern line of a public beach access, which point lies North 69 degrees 15 minutes East approximately 80 +/- feet from a nail set in the southern end of the bulkhead of the within described property, a corner; thence along the northern line of the above referenced public beach access South 69 degrees 15 minutes West approximately 80 +/- feet through a groin to the above referenced nail set in the bulkhead; thence continuing South 69 degrees 15 minutes West along the northern line of the public beach access 137.32 feet to an iron pipe set in the eastern right of way margin of US 158 Business; thence along the eastern right of way margin of US 158 Business North 20 degrees 45 minutes West 349 seconds to the point and place of Beginning, as shown on survey entitled "Survey of the Avalon Pier Parcel for Dare Resorts, Inc.", by Wesley M. Meekins, Jr., Registered Land Surveyor, dated October, 1986, which said plat is duly recorded in the Office of the Register of Deeds for Dare County, North Carolina, in Deed Book 478, Page 285.

It being the same property conveyed to Dare Resorts, Inc., a North Carolina Corporation, by deed from Avalon Pier Associates, A North Carolina limited partnership, dated October, 1986, and filed for record in Deed Book 478, Page 282.

**17. No Address – 003069000 (Avalon Beach Improvement Association)**

All that certain parcel of land situated on U. S. Highway 158 Business, bounded on the North by Lot No. 3 and on the South by Lot No. 2, Avalon Beach, as shown on that map or plat recorded in Map Book 1, Pages 106 and 107, said parcel being bounded on the West by U.S. Highway 158 Business, otherwise known as Virginia Dare Trail, and on the East by the Atlantic Ocean.

**18. 1713 N. Virginia Dare Trail – 002791000 (Brian K & Elizabeth D Newman)**

Beginning at a point on the Atlantic Ocean at the Northeast corner of the lot and property now or formerly owned and occupied by Adelaide Harrison, running thence from the beginning point in a Northerly direction along the Atlantic Ocean 75 feet to the Southeast corner of the lot and property now or formerly owned by Roy Fuller; thence in a Westerly direction along the Fuller South line, and on a course at right angles to US Highway 158 Business, sometimes known as Virginia Dare Trail, to a point in and on the East margin or right of way of US Highway No 158 Business; thence in a Southerly direction along the aforesaid highway 75 feet to a point in the Northwest corner of the lands now or formerly owned by Adelaide Harrison, thence along the North line of the lands nor or formerly owned by Adelaide Harrison Easterly to the Atlantic Ocean.

Said lot fronting 75 feet on the Atlantic Ocean and extending back therefrom between parallel lines to the aforesaid highway, and also being known as Lot No 13 and the North one-half or 25 feet of Lot No 14 in Block C Section 2 of the subdivision known as Croatan Shores, as shown and delineated on a map or plat thereof duly recorded in Map Book 1, Page 164, in the Office of the Register of Deeds of Dare County, North Carolina.

**19. 1617 N. Virginia Dare Trail – 002777000 (1617 N. Virginia Dare Trail, LLC)**

All those certain lots of land lying and being in the subdivision known as Croatan Shores in Atlantic Township, Dare County, NC near Kill Devil Hills, bounded on the South by the lands of Charles H. Jenkins; on the east by the Atlantic Ocean; on the North by J.M. Coulbourn and on the West by the North Carolina State Highway designated as US Highway No 158, and generally known as Virginia Dare Trail and being 150 feet wide and extending between parallel lines from said Highway to the Atlantic Ocean, and also known as, delineated and being Lot No 11, Block "B", Section 1, of the subdivision known as Croatan Shores, Map or plat thereof made by J. L. Murphey Aug. 1939, and duly recorded in Map Book 1, Page 173, Office of the Register of Deeds of Dare County, NC, reference to which is hereby made for a more particular description of the lands above described. See also map or plat of said subdivision of record in Map Book 1, Page 161.

**20. 1613 N. Virginia Dare Trail – 002779000 (Walter & Teresa Ulickas)**

All those certain lots of land lying and being in the subdivision known as Croatan Shores in Atlantic Township, Dare County, NC near Kill Devil Hills, bounded on the South by the lands of Charles H. Jenkins; on the east by the Atlantic Ocean; on the North by J.M. Coulbourn and on the West by the North Carolina State Highway designated as US Highway No 158, and generally

known as Virginia Dare Trail and being 150 feet wide and extending between parallel lines from said Highway to the Atlantic Ocean, and also known as, delineated and being Lot No 13, Block "B", Section 1, of the subdivision known as Croatan Shores, Map or plat thereof made by J. L. Murphey Aug. 1939, and duly recorded in Map Book 1, Page 173, Office of the Register of Deeds of Dare County, NC, reference to which is hereby made for a more particular description of the lands above described. See also map or plat of said subdivision of record in Map Book 1, Page 161.

Same being the property conveyed to Kimberly H. Lane and husband, William J. Lane, by deed dated September 26, 2011 and recorded in Book 1876, Page 458, Public Registry of Dare County, North Carolina.