TOWN OF KILL DEVIL HILLS

Land Where Flight Began

NOTICE OF PUBLIC MEETING

NOTICE is hereby given that on Monday, February 8, 2016 at 5:30 o'clock p.m. the Kill Devil Hills Board of Commissioners will hold its only 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 Comment (Time limit of 3 minutes per person; 5 minutes per group)
Response to Public Comment
Introductions and Presentations

1. Presentation of NC League of Municipalities Commemorative Resolutions
2. 2015/2016 Community Appearance Awards presentations
3. Proclamation in Honor of Kill Devil Hills Fire Department's 60th Anniversary

Old Business

1. Crosswalk Study

New Business

1. Street improvement recommendation 2016/2017 FY
2. Appointments
   - A. Board of Adjustment – one regular position
   - B. Planning Board – one position
   - C. Personnel Board – one position
3. Proposed amendments to the Town Code
   - A. Chapter 130, General Offenses, *§130.02(F) Noise. Subsection (12) Exemptions*, to include beach nourishment services contractors
   - B. Chapter 153, Zoning, *§153.078(A) Access to US 158/Croatan Highway and NC 12/Virginia Dare Trail* – clarify regulations to apply only to corner lots - to schedule public hearing
4. Beach nourishment
   - A. Resolution Directing the Application to the Local Government Commission for Approval of Special Obligation Bonds; Requesting Local Government Commission Approval of the Town's Special Obligation Bonds and Certain Related Matters
   - B. Agreement Between KDH and Parker Poe Adams & Bernstein, LLP to serve as bond counsel
5. Outer Banks Chamber of Commerce lease agreement renewal

Commissioners Agenda
Mayor's Agenda
Town Manager's Agenda
Town Attorney's Agenda
Consent Agenda

Public Comment
Response to Public Comment
Adjourn

Posted this 4th day of February 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, February 8, 2016 regular meeting of the Kill Devil Hills Board of Commissioners held at 5:30 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Present:	Mayor Sheila F. Davies; Commissioners Mike Hogan, Michael Midgette, Brandi Rheubottom
Members Absent:	Commissioner Travis Appleman
Others Present:	Debora P. Diaz, Town Manager; Casey Varnell, Acting Town Attorney; Greg Loy, Planning Director; Mary E. Quidley, Town Clerk

Call to Order

At 5:33 p.m. Mayor Davies called this meeting to order and welcomed all present.

Pledge of Allegiance and Moment of Silence

Mayor Davies explained that David Henderson, a resident of the First Flight Village area in Town, experienced a home fire on Friday, in which, along with the damage to his home, he lost a pet. Mr. Henderson was very appreciative of the services provided by the Fire Department and emergency response personnel.

Mayor Davies also recognized the passing of Fire Sgt. Jack James' wife, Danielle, who had been a teacher at First Flight High School; and, that of former Finance Department staff member Betty Cozart-Hawkins who worked for the Town for many years prior to retirement.

Mayor Davies explained that Commissioner Appleman is not present this evening and that his was a planned absence.

Agenda Approval

Commissioner Rheubottom made a motion for the Board of Commissioners to approve the agenda for this meeting as presented. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

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

Jack Flythe, 407 Seagull Court, Kill Devil Hills: Mr. Flythe works with the Environmental Health Unit of the Dare County Health Department. He spoke about the free radon kits that were made available in January and were distributed among the Dare County municipalities and agencies of the County government, among other places, to be made available for the public. Mr. Flythe spoke about the success of this program this year, more than 65 kits

were distributed. Distribution of radon kits is a volunteer effort and he thanked everyone for their assistance and cooperation in this important safety, health and well-being effort.

Response to Public Comment

Mayor Davies thanked Mr. Flythe for volunteering his services for this program and for the widespread cooperation and support that has been displayed for this vital public service.

Introductions and Presentations

1. Presentation of NC League of Municipalities Commemorative Resolutions (Attached IP-1)

At the October 2015 North Carolina League of Municipalities Conference nine resolutions were adopted in honor of the retirement of Kill Devil Hills' employees.

Former Customer Services Supervisor Cathy Miller, Customer Service Representative Ruth Griffin and Fleet Maintenance Mechanic Louie Davenport were present to accept the League's resolutions from Mayor Davies.

A list of all who were recognized by the League follows and those not attending will be mailed their original resolutions:

- Don Brown – Senior Water Plant Operator
- Debbie Caton – Office Assistant
- Louie Davenport – Fleet Maintenance Mechanic
- Ruth Griffin – Customer Services Representative
- Mike Hunter – Fire Captain
- Cathy Miller – Customer Services Supervisor
- Nancy Miller – Office Assistant
- Lee Partridge – Code Enforcement Officer
- Jim Reilly – Sanitation Equipment Operator

Copies of all the certificates were included in the packet materials for this item.

2. 2015/2016 Community Appearance Awards (Attached IP-2)

CAC Chair Sue Kelly addressed this item and explained that there were two goals of the award: to recognize those businesses that contribute positively to the Town's appearance and the other to recognize those businesses who have improved their sites. Planning Director Greg Loy's packet memorandum also provided details on the goals and selection process applied by the Community Appearance Commission in choosing the commercial establishments that achieved recognition this year. The overall winners are:

- **2015/2016 Community Appearance Award Winner** – Shutters Hotel

- **2015/2016 Most Improved Site** – Rooster's Southern Kitchen (formerly Western Sizzlin')

Representatives of all nominees were invited to attend this meeting for recognition by the Board. Mayor Davies and CAC Chair Sue Kelly presented the winning awards and certificates to those who were present. CAC members were also invited to this meeting.

Mayor Davies expressed her congratulations to both Shutters Hotel and Rooster's Southern Kitchen, stating that they are both appealing and attractive businesses that embody qualities we hope will be standards for others to emulate.

3. Proclamation in Honor of Kill Devil Hills Fire Department's 60th Anniversary (Attached IP-3)

In 2016 the Kill Devil Hills Fire Department celebrates 60 years of service to the Town of Kill Devil Hills. This item included a proclamation for adoption by the Board of Commissioners, which recognized this important anniversary.

The Town's Fire Department, current and past members, volunteers and career officers, came to the front of the room and were recognized by the Board and audience.

Mayor Davies read aloud the proclamation and when she was finished, she made a motion for the Board of Commissioners to adopt the Proclamation in Honor of Kill Devil Hills Fire Department's 60th Anniversary as presented. Commissioner Hogan seconded that motion and approval was unanimous, 4-0.

Fire Chief Troy Tilley thanked the Board of Commissioners for their action and the proclamation. He stated that it is his honor to be a part of this hard-working group and stated that the Fire Department is following in the honored footsteps laid by its former members.

Old Business

1. Crosswalk Study (Attached OB-1)

In September 2015 the Board of Commissioners received a report from Town Engineer Pete Burkhimer of American Engineering, per the June 8, 2015 agreement directing him to prepare the study, on installation of additional signage at pedestrian crosswalks along Virginia Dare Trail/NC 12. Such signage would promote motorist awareness and both pedestrian and motorist safety at these busy areas.

The Board asked that the study be placed on a meeting agenda prior to budget preparation so that Staff could be advised on how this matter should be addressed.

A copy of the September 21st minutes was included in the packet materials, and the Board of Commissioners had previously been provided with a copy of the Crosswalk Study.

Board guidance was requested.

Primarily, the Board's discussion of this item was in support of installation of LED-signs, the potential of obtaining grant funding to assist with costs, whether or not pedestrians buttons

would be necessary at the crosswalks, and the need to approach the Towns of Kitty Hawk and Nags Head to determine their interest in treating crosswalks through all three Towns the same, with the same signage, markings, and, if successful, then public education including tips for crossing at marked crosswalks.

Mr. Burkhimer explained that each crosswalk would need two signs – one facing north and the other facing south; the basic cost per cross walk will be about $3,000 with 24-hour flashing lights; $5,000 per crosswalk if a pedestrian button is added; totaling approximately $85,000 for the distance of NC 12 in Kill Devil Hills.

While speaking about the possibility of having NC 12 crosswalks lit the length of Kitty Hawk, Kill Devil Hills and Nags Head, it was noted that driver expectancy is an established principle and drivers need to get used to road situations, such as crosswalks, being handled in a consistent manner. Mr. Burkhimer agreed with the concept of Kill Devil Hills reaching out to neighboring municipalities to determine their interest, and the possibility of all three towns making application for grant funding through the Dare County Tourism Board for these improvements as a citizen/visitor safety enhancement. Mr. Burkhimer explained that it would not take long for his company to work up definite proposals for the project; NC-DOT requires engineering costs for placement and installation be borne by the requesting agency.

The Board of Commissioners was in general agreement with this matter and the concept as outlined above. Staff will initiate discussions with Kitty Hawk and Nags Head and continue discussions with NC-DOT, as well as continue developing a comprehensive recommendation that includes estimated costs.

New Business

1. Street improvement recommendation 2016-2017 FY (Attached NB-1)

Before addressing this item, Mr. Burkhimer was very complimentary of the Board of Commissioners in their determination to continue the streets and drainage improvements program and for the progress that has been made. There are few "poor" condition streets left in Kill Devil Hills because of the Town's diligence and dedication to following through with the "pay as you go" method of streets and drainage improvements. Within about five years all the "poor" streets in Town that were constructed in a substandard manner will have been improved and only the "poor" streets that will be left are those that have experienced oxidation and need only a simple overlay.

On January 27, 2016 the Street Improvement/Special Project Committee (SISPC) voted to forward to the Board of Commissioners the recommendations outlined in Assistant Planning Director Meredith Guns' packet memorandum pertaining to streets and drainage improvements, and multi-use path projects. Originally, Phase III of the Bay Drive path was scheduled for the 2018-2019 FY and the SISPC, Staff, and the Town Engineer unanimously recommended both Phase III and Phase IV for completion in the 2017-2018 FY. Mr. Burkhimer explained that once these two phases of the multi-use path are completed there will be nearly five miles of this path from Colington Road north to the Kill Devil Hills/Kitty Hawk line.

American Engineering submitted a proposal totaling $54,400 for the preliminary streets and drainage engineering and design phases, and the bidding phase for the 2016-2017 FY project. In his printed materials, Mr. Burkhimer cited replacement of the aerial water tank at 1634 N. Croatan Highway as a pending project, slated for completion within less than five years. Mayor Davies questioned the tank's replacement. Public Services Director Steve Albright explained that a majority of the cost is projected to be financed, and water rates increases have been implemented in anticipation of the need for replacement. The Town Manager was asked to bring this forward during budget discussions as a reminder to the Board of Commissioners of the schedule and costs.

Staff recommended the Board of Commissioners:

1. Approve the 2016-2017 FY street recommendation as outlined in the Town Engineer's spreadsheet "FY 2016-2017 Project" for improvements to Mustian Street, West Clark Street, West Carlton Street, Cooke Place, Anchor Court and Schooner Court, and the accompanying engineering services agreement in the total amount of $54,400, including authorization for the Town Manager to execute this agreement, and approval of the necessary budget amendment.
2. Authorize Staff to apply for grant funding for construction of both Phase III and Phase IV of the Bay Drive Multi-Use Path in the 2017-18 FY, which will complete the path from Colington Road to the north end of Kill Devil Hills, as outlined by Ms. Guns in her December 17th memorandum to the Town Manager.

Commissioner Hogan made the motion as recommended and Commissioner Midgette seconded that motion. Approval was unanimous, 4-0.

Mr. Burkhimer introduced the President of American Engineering Associates of Charlotte, Scott Stone. Mr. Stone thanked Mr. Burkhimer and explained how pleased he was that Kill Devil Hills is one of his company's premier clients. American Engineering works quite a bit with small municipalities in very important ways and will continue to do so. He recognized Mr. Burkhimer's exemplary and dedicated service, adding that there is a lot of depth to the company to support and assist him. Also, American Engineering works closely on projects with NC-DOT in our region of the state. Mr. Stone assured the Board of Commissioners that he hoped American Engineering and the Town's relationship will continue for years and years to come.

2. Appointments (Attached NB-2)

Name	Appointment History
Dorn, Toni	*Historic Landmarks Commission* – appointed January 2015 to fill term; re-appointed October 2015 for a term ending October 2018
Buchanan, Howard	*Planning Board* – appointment July 2010 to fill term; re-appointed April 2013 for a term ending April 2016; Elected Vice-Chairman for 2016
Stafford, Christine	*Oceanfront Development Review Committee* – June 2006-January 2008 *Dangerous Animal Appeal Board* – appointed May 2012; re-appointed May 2015 for a term ending May 2018 *Personnel Board* – appointed April 2007; re-appointed April 2010; re-appointed April 2013 for a term ending April 2016

All applications currently on file in the Administration Department were previously copied to the Board of Commissioners.

Staff will continue seeking applications for consideration for appointment to all boards and committees thru advertisement, the website, Facebook, and electronic distribution.

A. Board of Adjustment – one regular position

Joe Agnew's recent resignation from the Board of Adjustment left a regular seat vacant, which Ms. Toni Dorn is interested in filling for the term that expires in June 2018.

Commissioner Midgette made a motion for the Board of Commissioners to appoint Toni Dorn to the Board of Adjustment for the remainder of Mr. Agnew's term, which will expire in June 2018. Commissioner Rheubottom seconded that motion and approval was unanimous, 4-0.

B. Planning Board – one position

Howard Buchanan's position on the Planning Board will expire in April 2016 and he expressed interest in being reappointed for another three-year term.

Commissioner Hogan made a motion to reappoint Howard Buchannan to the Planning Board for a three-year term that will expire in April 2019. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

C. Personnel Board – one position

Christine Stafford's position on the Town's Personnel Board will also expire in April 2016, and she also expressed a desire for reappointment.

Commissioner Hogan made a motion for the Board of Commissioners to reappoint Christine Stafford to the Personnel Board for a term that will expire in April 2019. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

3. Proposed amendments to the Town Code (Attached NB-3A and 3B)

A. Chapter 130, General Offenses, *§130.02(F) Noise. Subsection (12) Exemptions,* to include beach nourishment services contractors

As beach nourishment construction activities will be conducted 24-hours a day while the project is being completed, Staff recommended approval of this amendment to Chapter 130 to establish an exemption within the noise regulations for that purpose.

Commissioner Hogan made a motion for the Board of Commissioners to adopt the recommended amendment to *Chapter 130, General Offenses, §130.02(F) Noise. Subsection (12) Exemptions, to include beach nourishment services contractors*, as presented. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

B. Chapter 153, Zoning, *§153.078(A) Access to US 158/Croatan Highway and NC 12/Virginia Dare Trail* – clarify regulations to apply only to corner lots - to schedule public hearing

This recommendation to amend Chapter 153 Zoning was reviewed by the Planning Board at their January 5, 2016 meeting at which time they voted to recommend it to the Board of Commissioners for public hearing. The consistency statement for this amendment is attached.

As proposed, the amendment will remove the restriction that prohibits driveway cuts on either US 158 or NC 12 if there is ingress/egress from any other dedicated public right-of-way, and clarifies that the restriction is only applicable to corner lots, which had been the original intent of the ordinance.

Commissioner Midgette made a motion for the Board of Commissioners to schedule the proposed amendment to *Chapter 153, Zoning, §153.078(A) Access to US 158/Croatan Highway and NC 12/Virginia Dare Trail*, for public hearing on Monday, March 14, 2016 at 5:30 p.m. Commissioner Rheubottom seconded that motion and approval was unanimous, 4-0.

4. Beach nourishment (Attached NB-4A and 4B)

A. Resolution Directing the Application to the Local Government Commission for Approval of Special Obligation Bonds; Requesting Local Government Commission Approval of the Town's Special Obligation Bonds and Certain Related Matters

This resolution is required to be adopted by the Board of Commissioners in preparation for the issuance of a special obligation bond in an aggregate principal amount not to exceed $5,200,000 to finance the beach nourishment project and pay the costs of issuing the special obligation bonds. This resolution gives Town Staff the authority to submit an application to the Local Government Commission (LGC) for the financing of the beach nourishment project and makes the findings required by the LGC to support the Town's application.

Staff recommended approval of this resolution as presented.

Commissioner Hogan made a motion for the Board of Commissioners to adopt the *Resolution Directing the Application to the Local Government Commission for Approval of Special Obligation Bonds; Requesting Local Government Commission Approval of the Town's Special Obligation Bonds and Certain Related Matters,* as presented. Commissioners Midgette seconded that motion and it was approved unanimously, 4-0.

B. Agreement between KDH and Parker Poe Adams & Bernstein, LLP to serve as bond counsel

Parker Poe Adams & Bernstein, LLP will be serving as the bond counsel for Kill Devil Hills, Kitty Hawk and Duck on the issuance of bonds for the beach nourishment project for a fee of $35,000 plus associated expenses as detailed in the agreement. Parker Poe will also assist Kill Devil Hills in obtaining LGC approval of the project financing.

Staff recommended approval of the agreement between the Town of Kill Devil Hills and Parker Poe Adams & Bernstein, LLP for the purposes so stated in the agreement.

Commissioner Midgette made a motion for the Board of Commissioners to approve the Agreement between Kill Devil Hills and Parker Poe Adams & Bernstein, LLP to serve as bond counsel, as presented. Commissioner Hogan seconded that motion and approval was unanimous, 4-0.

Regarding beach nourishment, Mayor Davies explained that bids for the overall, multi-jurisdictional project would be opened on February 9th and, hopefully, a contract awarded by late March. Construction could then begin as early as April 2016. She added that there may be some flexibility in the original 1-year completion given the enormity of the project. Additional information will be forthcoming as soon as it becomes available.

5. Outer Banks Chamber of Commerce lease agreement renewal (Attached NB-5)

On April 22, 1986 the Town of Kill Devil Hills and the Outer Banks Chamber of Commerce entered into a lease agreement for the property that the Chamber building occupies. The first renewal was for a ten-year period beginning April 1, 1996, and the second in 2006. This will be the third of five renewals authorized by Paragraph 3 of the original agreement.

In accordance with the provisions of NCGS 160A-272 the Town must publish a notice of intent at least 10 days prior to action being taken to renew the lease agreement for another ten years, beginning April 1, 2016.

Commissioner Hogan made a motion for the Board of Commissioners to approve the public notice announcing the intent required by NCGS 160A-272 for renewal of the lease agreement between the Town and the Outer Banks Chamber of Commerce. Commissioner Midgette seconded that motion and approval was unanimous, 4-0.

The Resolution Renewing the Lease Agreement between the Town of Kill Devil Hills and the Outer Banks Chamber of Commerce, and the agreement, will be placed on the March 14, 2016 agenda for approval.

Commissioners Agenda

1. Trash Attack! (Attached CA-1)

Commission Midgette explained that this year's Trash Attack! event will be held at the north parking lot, at the Fire Department, 1634 North Croatan Highway, on Saturday, March 12, 2016 beginning at 9 a.m. for registration and strategizing and concluding from 12-1 p.m. with refreshments. The rain date is March 19th.

There is also a poster contest and information on this part of the event is available on the table at the back of the room and on behalf of the Community Appearance Commission, and the Trash Attack! Commissioner Midgette asked all to share the poster contest flyer with any interested Dare County students, grades K-12.

Commissioner Rheubottom

- Recognized the Fire Department for its long service history to the visitors and citizens of Kill Devil Hills and Dare County and congratulated its members, past and present, for their service.
- Pointed out the combined lengthy years of service, approximately 200 years shared by the nine recognized employees, and congratulated them for their services and the Town for having the benefits of their services for so many years.

Mayor's Agenda

- **January 15, 2016 hotel/motel worksession.** Mayor Davies reviewed this item to determine what the Board of Commissioners would like to do to either move the issue of hotel/motel development forward or wait until it is raised by a potential developer. Commissioner Hogan provided a brief history of past discussions on the subject and explained how development would not necessarily need to be within an established zone, but could be within a yet-to-be-defined overlay district. He added that he felt there wuld be opportunities for hotel/motel construction within the commercial zones, and could be opportunities for such development on the oceanfront Mayor Davies added that she knew of several persons who would be interested in participating in group discussions, both separately and with the Board of Commissioners. It was also pointed out that there is not great support from the Town's citizenry for hotel/motel development, particularly if that development includes a height increase on the oceanfront.

  Mayor Davies explained that she believed the Board of Commissioners had four available options:

  1. Take no action;

TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

February 8, 2016

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager

REF: New Business

3. Proposed amendments to the Town Code (Attached NB-3A and 3B)

A. Chapter 130, General Offenses, *§130.02(F) Noise. Subsection (12) Exemptions,* to include beach nourishment services contractors

As beach nourishment construction activities will be conducted 24-hours a day while the project is being completed, Staff recommends approval of this amendment to Chapter 130 to establish an exemption within the noise regulations for that purpose.

A motion will be in order to adopt the proposed amendment to Chapter 130, General Offenses to establish an exemption from noise regulations for beach nourishment service contractors.

B. Chapter 153, Zoning, *§153.078(A) Access to US 158/Croatan Highway and NC 12/Virginia Dare Trail* – clarify regulations to apply only to corner lots - to schedule public hearing

This recommendation to amend Chapter 153 Zoning was reviewed by the Planning Board at their January 5, 2016 meeting at which time they voted to recommend it to the Board of Commissioners for public hearing. The consistency statement for this amendment is attached.

As proposed, the amendment will remove the restriction that prohibits driveway cuts on either US 158 or NC 12 if there is ingress/egress from any other dedicated public right-of-way, and clarifies that the restriction is only applicable to corner lots, which had been the original intent of the ordinance.

Staff recommends the Board of Commissioners schedule this proposed amendment to Chapter 153, Zoning, §153.078(A) Access to US 158/Croatan Highway and NC 12/Virginia Dare Trail, for public hearing on Monday, March 14, 2016 at 5:30 p.m.

A motion will be in order.

Ordinance Number 15-11

AN ORDINANCE AMENDING CHAPTER 130 GENERAL OFFENSES

OF THE KILL DEVIL HILLS TOWN CODE

BE IT HEREBY ORDAINED by the Board of Commissioners of the Town of Kill Devil Hills that Chapter 130, General Offenses of the Kill Devil Hills Town Code shall be amended by removing current Section 130.02, Noise that appears and substituting therefore the following:

Section 130.02 Noise.

(F) *Exemptions*. This section shall not apply to the following sources:

(12) ~~Agencies of the United States government, law enforcement agencies, fire departments, ocean rescue services, emergency medical services, Kill Devil Hills refuse collection vehicles or apparatuses, engaged in their official duties are exempt from the provisions of this section.~~ Agencies of the United States, North Carolina, County of Dare, or Town of Kill Devil Hills, including but not limited to law enforcement agencies, fire departments, ocean rescue services, refuse collection vehicles or apparatuses, and beach nourishment service contractors engaged in their lawful duties are exempt from the provisions of this section.

This amendment to Chapter 130, Noise, shall be in full force and effect from and after the 8th day of February 2016. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the 8th day of February 2016, by a vote of 4 in favor and 0 opposed.

SEAL

Sheila F. Davies

Sheila F. Davies, Mayor

TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

February 8, 2016

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager

REF: New Business

4. Beach nourishment (Attached NB-4A and 4B)

A. Resolution Directing the Application to the Local Government Commission for Approval of Special Obligation Bonds; Requesting Local Government Commission Approval of the Town's Special Obligation Bonds and Certain Related Matters

This resolution is required to be adopted by the Board of Commissioners as we prepare for the issuance of a special obligation bond in an aggregate principal amount not to exceed $5,200,000 to finance the beach nourishment project and pay the costs of issuing the special obligation bonds. This resolution gives Town Staff the authority to submit an application to the Local Government Commission (LGC) for the financing of the beach nourishment project and makes the findings required by the LGC to support the Town's application.

Staff recommends approval of this resolution as presented and a motion will be in order.

B. Agreement Between KDH and Parker Poe Adams & Bernstein, LLP to serve as bond counsel

Parker Poe Adams & Bernstein, LLP will be serving as the bond counsel for Kill Devil Hills, Kitty Hawk and Duck on the issuance of bonds for the beach nourishment project for a fee of $35,000 plus associated expenses as detailed in the agreement. Parker Poe will also assist Kill Devil Hills in obtaining LGC approval of the project financing.

Staff recommends approval of the agreement between the Town of Kill Devil Hills and Parker Poe Adams & Bernstein, LLP for the purposes so stated in the agreement and a motion will be in order.

Parker Poe

January 20, 2016

VIA E-MAIL

Beverly Kissinger
Finance Director
Town of Kill Devil Hills, North Carolina
P.O. Box 1719
Kill Devil Hills, NC 27948
beverly@kdhnc.com

Town of Kill Devil Hills, North Carolina
Beach Nourishment Financing

Dear Beverly:

We are pleased to provide you with an engagement letter for Parker Poe Adams & Bernstein LLP to serve as bond counsel for the financing by the Town of Kill Devil Hills (the "*Town*") of its portion of a beach nourishment project (the "*Project*") to be undertaken jointly by the Town, Dare County, the Town of Duck and the Town of Kitty Hawk (collectively, the "*Project Participants*"). I apologize for the formality of this letter, but it will confirm our understanding regarding Parker Poe's representation of the Town in connection with the Project.

We understand that the Town will issue its Special Obligation Bonds (the "*Bonds*") in early 2016 to finance all or a portion of the Town's financial responsibility with respect to the Project, with the balance of the funding for the Project to be provided by the other Project Participants. We expect that the Bonds will be privately-placed with a financial institution selected through an RFP process to be coordinated by DEC Associates, Inc., as the Town's financial advisor. The Town has entered into an interlocal agreement (the "*Interlocal Agreement*") with the other Project Participants to coordinate each Project Participant's rights and obligations with respect to the financing and construction of the Project.

Parker Poe will perform the customary legal services as bond counsel, including, but not limited to, drafting the financing documents, tax certificate and other customary closing documentation and delivering customary legal opinions at closing. The scope of the services that Parker Poe will provide may be expanded during the course of the engagement pursuant to communications establishing a specific mutual understanding of the services Parker Poe is to perform. I have attached our Standard Terms of Engagement, which form a part of this engagement letter.

I will have general supervisory responsibility over the engagement. I expect that my partner, Mike Larsen, will assist me with respect to tax matters. The firm will provide services as bond counsel as outlined in this letter for a fixed fee of $35,000 plus disbursements for such items as photocopying, long distance telephone, travel, facsimile, express delivery and

ATTACHMENT NB-4A

Parker Poe Adams & Bernstein LLP Attorneys and Counselors at Law Three Wells Fargo Center 401 South Tryon Street Suite 3000 Charlotte, NC 28202
t 704.372.9000 f 704.334.4706 www.parkerpoe.com

preparation of the transcripts. If the financing fails to close, we will charge the Town on an hourly basis for the services we have performed through the date the financing is terminated. For this type of financing, Mike Larsen and I currently charge existing clients $425/hour and $375/hour, respectively.

As we have discussed, Parker Poe regularly serves as bond counsel to Dare County and will serve as bond counsel to the Town of Duck and the Town of Kitty Hawk in connection with the financing of their respective portions of the Project. To help achieve efficiencies for the Project Participants and because of our familiarity with the Project, the Town and each other Project Participant have asked Parker Poe to draft the Interlocal Agreement to memorialize their agreements with respect to the Project. Because the Town is represented separately by the Town Attorney, and each other Project Participant is similarly represented by its own counsel, we do not believe our engagement to draft the Interlocal Agreement creates a conflict of interest.

Similarly, we note that our firm represents most, if not all, of the financial institutions that will be asked to participate in the RFP process for the purchase of the Bonds. It is therefore likely that, in connection with matters unrelated to this engagement, we have represented, may currently represent and expect to represent in the future the financial institution that is selected through that process. Because the Town is separately represented by the Town Attorney with respect to negotiating with such financial institution the material terms of the financing, we do not believe our engagement as bond counsel creates a conflict of interest.

However, if a conflict of interest arises during the course of our representation, either as a result of our engagement to draft the Interlocal Agreement or our engagement as bond counsel, we will immediately inform you and work with the Town Attorney to resolve the matter in a satisfactory manner. The nature of any such conflict will dictate whether Parker Poe can continue to provide services to the Town or any other party. If representation is to continue, then the Town and each other affected party must consent to the arrangement after full disclosure of the conflict, which disclosure must include an explanation of the implications of the common representation and the risks involved.

Each Project Participant is entitled to confidentiality and the attorney-client privilege, but in a joint representation, there is no such entitlement from each other, meaning no Project Participant will have an independent claim to confidentiality. Because Parker Poe owes a duty to keep each Project Participant adequately informed, any relevant information revealed by one Project Participant will be discussed with all Project Participants. Additionally, while these shared confidences are protected from third parties, each Project Participant is entitled to be made aware of any information obtained from a third party source, including those revealed by one of the Project Participants. Finally, if a conflict arises between one or more Project Participants, information communicated during the course of this representation would not be privileged or confidential in any subsequent proceedings to resolve the dispute.

We believe that this letter satisfies our obligation under the rules of professional conduct, which govern our conduct as lawyers, to explain to the Town the implications and potential risks in situations involving joint representation and potential conflicts of interest. We encourage you to ask any questions that you may have and seek any further explanations or counsel you may deem necessary.

We sincerely appreciate your entrusting this matter to us and look forward to working with you on this engagement. If the provisions set forth in this letter are consistent with your understanding, please sign below, keep a copy of the letter for yourself and return the original to my attention.

Sincerely,

Scott E. Leo

ACCEPTED BY:

TOWN OF KILL DEVIL HILLS, NORTH CAROLINA

By: _____
Title: TOWN MANAGER

THIS INSTRUMENT HAS BEEN PREAUDITED
IN THE MANNER REQUIRED BY THE LOCAL
GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

_____
FINANCE OFFICER

PARKER POE ADAMS & BERNSTEIN LLP

STANDARD TERMS OF ENGAGEMENT REGARDING LEGAL REPRESENTATION

1. Scope of Work and Limitations. The scope of our work and the limitations on the services to be performed will be in accordance with the Engagement Letter.

2. No Guaranteed or Contingent Outcome. While we will perform our professional services on behalf of the client to the best of our ability under the circumstances, we cannot and have not made any guarantees regarding the outcome of our professional efforts. Any expressions about the possible outcome of the matter or the results achievable are our best professional estimates only, and are limited by our knowledge at the time they are expressed.

3. Communications. As requested, we will send to the client copies of pertinent correspondence, documents and other materials prepared or received by us in the course of the representation. The client is encouraged to contact us as to any questions or comments regarding the services, fees, or status of the matter or as to any pertinent facts or considerations which may come to the attention of the client. Material information and documents received by the client should be forwarded to the firm without delay.

4. Attorney Assignment. Each client will have an attorney who shall have primary responsibility for the client's matters. When appropriate, work on the client's matters may be assigned to other attorneys in the firm who have a sufficient level of experience and time availability to handle competently and efficiently portions or all of the client's matters. In addition, assistance of non-attorney support personnel under the direct supervision of firm attorneys may be required, as appropriate.

5. Confidentiality. The firm will protect the confidence of the client and will not divulge confidential information concerning the client's business or legal matters, as required by the Rules of Professional Conduct. However, we understand that, unless you advise us to the contrary, you do not object to our mentioning to others our representation of you or our listing of your name as one of our clients in professional literature or in material published about this law firm.

6. Termination. The firm reserves the right to withdraw from representing the client upon written notice at any time, with or without cause. Likewise, the client may terminate the firm's services prospectively upon written notice to the firm.

RESOLUTION OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA, DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF SPECIAL OBLIGATION BONDS; REQUESTING LOCAL GOVERNMENT COMMISSION APPROVAL OF THE TOWN'S SPECIAL OBLIGATION BONDS; AND CERTAIN RELATED MATTERS

WHEREAS, the Board of Commissioners (the "*Board*") of the Town of Kill Devil Hills, North Carolina (the "*Town*") hereby determines that it is necessary to provide beach nourishment for the purpose of beach erosion control and flood and hurricane protection works (the "*Project*");

WHEREAS, the Town has created a Municipal Service District (the *"MSD"*), in accordance with Article 23 of Chapter 160A of the North Carolina General Statutes, in which the Project will be located;

WHEREAS, the Board is considering the issuance of a special obligation bond (the "*2016 Bond*") in an aggregate principal amount not to exceed $5,200,000 to finance the Project and pay the costs of issuing the 2016 Bond;

WHEREAS, the Town has retained (A) Parker Poe Adams & Bernstein LLP, as bond counsel for the 2016 Bond and (B) DEC Associates Inc., as financial advisor for the 2016 Bond;

WHEREAS, the Board wants the Finance Director of the Town (1) to file with the North Carolina Local Government Commission (the "*Commission*") an application for its approval of the 2016 Bond, on a form prescribed by the Commission, (2) to request in such application that the Commission approve (a) the negotiation of the sale of the 2016 Bond to a financial institution (the *"Purchaser"*) to be determined by the Authorized Officers, as defined herein, through a private placement and (b) the financing team for the 2016 Bonds, (3) to state in such application such facts and to attach thereto such exhibits in regard to the 2016 Bond and to the Town and its financial condition, as may be required by the Commission, and (4) to take all other action necessary for the issuance of the 2016 Bond; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA, AS FOLLOWS:

Section 1. That the 2016 Bond is to be issued by the Town for the purpose of providing funds (1) to finance the costs of the Project and (2) to pay the costs of issuing the 2016 Bond, as set out fully in the documents attached to the Town's application to the Commission. The use of the proceeds of the 2016 Bond, as described, is necessary in order to provide for beach erosion control and flood and hurricane protection works in the MSD.

Section 2. That the Town Manager and the Finance Director (the *"Authorized Officers"*) are hereby authorized, directed and designated to file an application with the Commission for its approval of the issuance of the 2016 Bond and are hereby authorized to request bids from financial institutions for the purchase of the 2016 Bond.

Section 3. In addition to the bond counsel and the financial advisor, the Authorized Officers are each hereby authorized retain the services of other professionals as they deem necessary and appropriate to complete the transactions contemplated by this Resolution.

Section 4. The Finance Director, with advice from the Town Manager, the Town Attorney, bond counsel and the financial advisor, is hereby authorized, directed and designated to file an application with the North Carolina Local Government Commission for its approval of the issuance of the 2016 Bond.

Section 5. The Board finds and determines and asks the Commission to find and determine from the Town's application and supporting documentation:

(a) that the issuance of the 2016 Bond is necessary or expedient;

(b) that the not to exceed stated principal amount of the 2016 Bond will be sufficient but is not excessive, when added to other moneys available to the Town, for the proposed Project;

(c) that the Town's debt management procedure and policies are excellent; and

(d) that the 2016 Bond can be marketed at a reasonable interest cost to the Town.

Section 6. The Mayor, the Town Manager, the Town Attorney, the Finance Director and the Town Clerk are hereby authorized, individually and collectively, to do any and all other things necessary to complete the steps necessary for the issuance of the 2016 Bond.

Section 7. This Resolution is effective on the date of its adoption.

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

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 "**RESOLUTION OF THE TOWN OF KILL DEVIL HILLS, NORTH CAROLINA, DIRECTING THE APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR APPROVAL OF SPECIAL OBLIGATION BONDS; REQUESTING LOCAL GOVERNMENT COMMISSION APPROVAL OF THE TOWN'S SPECIAL OBLIGATION BONDS; AND CERTAIN RELATED MATTERS**" adopted by the Board of Commissioners of the Town of Kill Devil Hills, North Carolina, at a meeting held on the 8th day of February, 2016.

WITNESS my hand and the corporate seal of the Town of Kill Devil Hills, North Carolina, this the 12th day of February, 2016.

[Seal]

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

PPAB 3095847v1