

**Minutes of the Monday, April 12, 2021, regular meeting of the Kill Devil Hills Board of Commissioners held at 6:00 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.**

**Members Participating:** Mayor Ben Sproul; Commissioners Terry Gray, Ivy Ingram, Bernard "B.J." McAvoy and John Windley

**Members Not Participating:** none

**Others Participating:** Debora P. Díaz, Town Manager; Casey Varnell, Town Attorney; Meredith Guns, Planning Director; Cameron Ray, Assistant Planning Director; and James Michael O'Dell, Deputy Town Clerk

**Call to Order**

At 6:02 p.m., Mayor Sproul opened this meeting of the Kill Devil Hills Board of Commissioners (BOC) and welcomed all present.

**Pledge of Allegiance and Moment of Silence**

**Agenda Approval**

Mayor Sproul moved to amend the agenda, placing Introductions and Presentations Item #2 A Resolution Thanking Citizens, Businesses, and Kill Devil Hills Employees For Their Help During the Pandemic and Declaring "Thanks, Outer Banks!" – A Week of Gratitude as the first item in the meeting's agenda. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote. Commissioner McAvoy then moved to approve the agenda as amended. Commissioner Gray seconded the motion, which passed by a unanimous, 5-0, vote.

**2. A Resolution Thanking Citizens, Businesses, and Kill Devil Hills Employees For Their Help During the Pandemic and Declaring "Thanks, Outer Banks!" – A Week of Gratitude**

The First Flight, Kitty Hawk, and Manteo Rotary Clubs and the Outer Banks Hospital have collaborated to initiate "*Thanks, Outer Banks!*" - *A Week of Gratitude* (May 9-15), an effort to highlight the Outer Banks community – its courage, compassion, and strength in making it through the pandemic together.

Rotary member Carl Classen highlighted the "Give Thanks, Outer Banks" theme, which aims to recognize and appreciate the efforts of everyone who has served throughout the COVID-19 pandemic.

Commissioner Gray moved to adopt *a Resolution Thanking Citizens, Businesses, and Kill Devil Hills Employees For Their Help During the Pandemic and Declaring “Thanks, Outer Banks!” – A Week of Gratitude*. Commissioner Windley seconded the motion, which was approved with a unanimous, 5-0, vote.

## **Public Hearings**

Mr. Varnell read aloud the rules for the public hearing and then opened each hearing. There were no speakers for either public hearing item.

### **1. Public Hearings (Attached PH-1A and 1B)**

#### **A. Zoning Amendment Request—Albemarle & Associates, Ltd— amend Chapter 153, Zoning, §153.076(A)(12)(d) Off-Street Parking and Loading to allow stacked employee parking for hotels and motels**

Albemarle & Associates, Ltd. has proposed an amendment to §153.076(A)(12)(d), Off-Street Parking and Loading, to allow stacked employee parking for hotels and motels. This proposed amendment would allow hotels and motels to arrange employee parking in a configuration currently permitted for restaurants, which allows stacked parking not exceeding 15% of required spaces, with signage and a maximum of two spaces deep. On February 16, 2021, the Planning Board reviewed the amendment and recommended approval. At its March 8, 2021, meeting, the BOC scheduled this public hearing.

Commissioner Ingram moved that the Board of Commissioners finds that the proposed amendment to §153.076(A)(12) (d) Off-Street Parking and Loading to allow stacked employee parking for hotels and motels is consistent with all comprehensive plans or other official adopted plans of the Town of Kill Devil Hills that are applicable and that the amendment is reasonable in the public interest because it allows for flexibility in parking. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

#### **B. Amended Conditional Use Site Plan – Leslie Hornfeck – Unit 808-E Eighth Avenue, Nature’s Walk, in the Light Industrial Two Zone – to modify site plan to remove workforce housing designation from Unit 808E**

Ms. Leslie Hornfeck, owner of 808-E Eighth Avenue, in the Nature’s Walk complex, has requested a change in the unit’s designation from workforce housing to a market rate unit.

Commissioner McAvoy moved to approve the amended Conditional Use Site Plan – Leslie Hornfeck – Unit 808-E Eighth Avenue, Nature’s Walk, in the Light Industrial Two Zone – to modify site plan to remove workforce housing designation from Unit 808-E. Commissioner Windley seconded the motion, which was approved by a unanimous, 5-0, vote.

## Public Comment

### 1. **Petition requesting changes to Chapter 111: Special Events – Charitable Events (Attached PC-1)**

Ami Hill, of Muse Originals OBX, has submitted a petition from local businesses requesting the Town consider adjustments to the Chapter 111: Special Events - Charitable Events on a range of areas, including the following: the permitted times of charitable events with for-profit itinerant vendors, the frequency of sponsor permits and commercial yard sales, and the removal of certain prohibitions for itinerant vendors and peddlers.

The Town Clerk has verified that nine of the businesses listed on the petition are based within Kill Devil Hills corporate limits; Ignite Films is based in Colington Harbor. Ms. Hill's petition, as presented, and the Clerk's verification will be included with the minutes and made a part of the meeting's record.

**Toby Gonzales, Ten O Six Restaurant, 1006 South Virginia Dare Trail, Kill Devil Hills** – as a restaurant owner, Mr. Gonzales supported the requests outlined in the petition, noting his business has a food truck, and elimination of any of the special events limitations would provide more flexibility for businesses. He stated that although he supported the removal of these limitations, the businesses that initiated the petition want to be respectful to all business owners and others in the community.

## Response to Public Comment

Following Commissioner Ingram's reading of the petition, Mayor Sproul noted that it requested the elimination of specific sections of the Town Code. He suggested that if the BOC considered moving in a direction to make changes, the Town could conduct an online poll for local restaurants and businesses to gauge where the business community stands. Commissioner Windley suggested that any changes to peddlers or itinerant vendors be considered only in the commercial zone, and not along the oceanfront or residential areas.

Planning Director Meredith Guns stated that the Town has never denied any business a special event due to the limitation on requests within a year. Although a business is limited to four events for the same charity in a year, it is not limited in the number of charities for which it can conduct events. Ms. Guns shared that the Town has never denied an event outside of the permitted season because the businesses are usually busy during the summer season and not interested in losing essential parking for an additional event. In July 2019, Kill Devil Hills overhauled the Peddlers/Itinerant Vendors section of Town Code to provide additional flexibility for businesses.

If a special event is charitable, it is permitted throughout the year; if non-charitable, it is available in the off-season. Additionally, if a business wishes to conduct a non-charitable event outside of the seasonal limitations, a submitted application would be taken directly to the Board of Commissioners for review and possible approval. Ms. Guns noted instances when a special event is being conducted in Town but the sponsor has not applied for a special event permit; she

added it was more of a public education issue on the process. Mayor Sproul recommended Staff develop a flyer or electronic mailing to provide local businesses with information in layman's terms on the special events application process and requirements.

Commissioner Gray shared about the history of the Town's original peddlers and itinerant vendors ordinance, which was established decades ago as a response to vendors selling food products door-to-door from the back of trucks and also a temporary carnival at a local restaurant parking lot.

Ms. Guns stated that the petitioners appeared to be requesting events with no limitations. She added that Muse Originals OBX had recently applied for a special events permit, which had been approved. Commissioner Ingram shared her concern that during the summer months, businesses that are usually busy with traffic would be dangerous with additional events.

Commissioner Windley asked Police Chief Gary Britt's opinion about potential increased activity in parking lots during the summer months if more special events were permitted. Chief Britt shared his concern that special events could increase activity at already busy parking areas, making them difficult to traverse.

It was the BOC's consensus to take no action at this time.

## **Introductions and Presentations**

### **1. Partnership organization annual report: Community Care Clinic of Dare (Attached IP-1)**

Lyn Jenkins, Executive Director of the Community Care Clinic of Dare, provided an annual report on the Clinic, its operations, and service to our community. Ms. Jenkins thanked the Town for its partnership contribution and noted that the clinic had provided over \$430,000 in medical services to 219 patients from Kill Devil Hills.

## **Old Business**

### **1. Offer received for purchase of Town-owned property and the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue (Attached OB-1)**

This winter, the Town took various steps to determine interest in the potential sale of the real property described listed above. This included obtaining an appraisal, returning a valid bid to the BOC, and the BOC's adoption of a resolution authorizing the Upset Bid Process on the original bid for the property amount of \$1,505,000, including the 5% bid bond.

Ms. Díaz reported no upset bids were submitted within the required 10-day timeframe; therefore, the sale price was set at \$1,505,000.

Mr. Varnell stated he reviewed the draft purchase agreement, and identified sections to discuss with the BOC. He provided an overview of his recommended changes, which included limitations to the examination period, changes to the entitlement section, removal of interest calculations, and preserving buyer's remedies in the event of a breach.

The Board concurred with Mr. Varnell's recommendations, noting that the buyers were not requesting standard items. Mayor Sproul said that all the legal remedies were available to the buyer if the transaction was cancelled.

Commissioner Ingram moved to approve the sale of the Town-owned property at 2011 South Croatan Highway and 0 South Croatan Highway adjacent thereto, and 2032 Wrightsville Avenue, for \$1,505,000, and authorize the Town Attorney to negotiate any outstanding terms of the Sale and Purchase Agreement, as directed. Commissioner Gray seconded the motion, which passed by a unanimous, 5-0, vote.

**2. Requested ordinance amendment: Community Appearance Commission update (Attached OB-2)**

Ms. Diaz noted that at its November 9, 2020, meeting, the BOC directed Staff to develop an ordinance amendment to eliminate the Planning Board's representative on the Community Appearance Commission (CAC) and replace it with a regular membership position. Staff provided the BOC with amendment language options that addressed replacement of the Planning Board position and also elimination of CAC requirements that members be selected from specific stakeholder categories, which would allow for more flexibility in the appointment process, and therefore, membership:

- Draft Amendment A: removal of membership requirements and replacement of the Planning Board representative with a regular member
- Draft Amendment B: replacement of the Planning Board representative with a regular member ONLY

Through consensus, the BOC directed the amendment options to the CAC for recommendation. Commissioner Windley noted that at its March 25, 2021, meeting, the CAC reviewed the draft amendments and unanimously recommended the BOC approve Draft Amendment A.

Commissioner Windley moved to approve draft amendment A - removal of membership requirements and replacement of the Planning Board representative with a regular member of the Community Appearance Commission. Commissioner Gray seconded the motion, which passed with a unanimous 5-0 vote.

The Mayor recessed the meeting at 7:06 p.m., and it was reconvened at 7:11 p.m.

**New Business**

**1. Pop-Up Events – Discussion (Attached NB-1)**

At the Board's January 27, 2021, meeting, Mayor Sproul highlighted concerns from local artists about the potential for pop-up events in the community, including farmer and artisan-style

markets, and the Town's current ordinances. Ms. Guns shared an overview of other local regulations, and presented a recommendation to develop a "Farmers Market" during summer months at Aviation Park and/or a "Seasonal Market" in the late-autumn and winter months at Meekins Field. She noted that when complete, the Meekins Field complex will contain 72 parking spaces. She recommended scheduling these events so they would not conflict with other towns' existing market events. Commissioner Ingram suggested the Seasonal Market also be held at Aviation Park. Ms. Guns said these events would also provide an opportunity for existing brick and mortar businesses to participate.

Mayor Sproul expressed an interest in including music and possible themes into the events. Commissioner Windley noted the Halloween Parade held in Town, which brought participants from out of the area. Noting that Nags Head had received funding for its market events, Commissioner Gray suggested the Town could approach the Visitors Bureau for grant funding for any needed items.

Through consensus, the BOC directed Staff to move forward with a small concept market event, with Aviation Park being the site for 2021 options. Staff will return at an upcoming meeting with additional plans.

National Park Service Partnership Mayor Sproul highlighted an option for a partnership event in December 17, 2021, to celebrate the anniversary of powered flight. He described a recent aerial drone event that included 3000 drones, as an example.

## 2. **Appointments**

### **A. Street Improvement and Special Projects Committee**

With the retirement of longtime member Jerry Froehlich, a regular member position for the Street Improvement and Special Projects Committee (SISPC) has become available. SISPC terms have no expiration. All applications on file from persons interested in serving have previously been copied to the Board of Commissioners and no new applications for those purposes have been received.

Commissioner McAvoy moved to appoint SISPC alternate member Billy Dorn to the SISPC regular member position and appoint Martin Dalton as a SISPC alternate member. Commissioner Gray seconded the motion, which passed by a unanimous, 5-0, vote.

### **Committee Reports**

Community Appearance Committee – Chairperson Sue Kelly highlighted the Town's virtual Trash Attack event, which is being conducted throughout the month of April. The public is encouraged to pick up litter and email photos, which will be placed on the Town's social media platforms.

Arbor Day Tree Planting The CAC will be planting a Live Oak tree, the Town's official tree, on this year's Arbor Day, which is Friday, April 30.

Help KDH Kick Butt campaign The CAC will be coordinating volunteers to construct additional cigarette butt containers for beach accesses.

Community Appearance Awards Ms. Kelly shared that the biennial Community Appearance Awards would be judged and awarded in 2021.

West-side Recreation Group Commissioner Gray stated the upcoming meeting is scheduled for April 14 at 5:30 p.m. The group will be discussing the Baum Tract property. He also noted that once the upgrades to the Meekins Field tennis courts are complete, the existing courts are going to be striped for pickleball use.

## **Commissioners' Agenda**

### Commissioner Windley

National Night Out Commissioner Windley inquired on the status of the National Night Out event, which is typically held on the first Tuesday in August. Ms. Díaz said Staff would inform the BOC once a decision had been made on whether the event would be held.

## **Mayor's Agenda**

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

- A. Child Abuse Prevention Month Proclamation**
- B. Earth Day Proclamation**

Mayor Sproul stated the proclamations honor the children and issues important to our community and vital to society. Upon the Board of Commissioners' adoption, they will be shared with the community, and posted on the Town's website and social media.

Commissioner Sproul moved to approve the proclamations as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

Utility / power poles transitioned to underground services Mayor Sproul shared the idea of burying existing utility / power infrastructure, noting that such a project would be monumental and could take many years.

## **Town Manager's Agenda**

## **Town Attorney's Agenda**

## Consent Agenda

### 1. Minutes

A. March 8, 2021

### 2. Monthly report

A. February 2021

### 3. Budget Amendments

- A. #15 - To increase rollout container sales and associated expenses due to increase in demand for rollout carts.
- B. #16 - To record wellness grant funds received from NCLM.
- C. #17 - To establish a budget in the AED supply line and increase crime prevention expenses due to donations received for each.
- D. #19 – To record funds needed to upgrade an existing solid waste truck for beach barrel service.
- E. #20 – To fund initial costs for permitting, sand search, and preconstruction services for the 2022 beach nourishment construction project

### 4. Recommendation for 2020/2021 Lease Purchase Agreement (Attached CA-4)

The Finance Department has researched available interest rates for the lease/purchase of equipment and vehicles. The total amount to be financed is \$505,612.94. BB&T / Truist Bank submitted the most favorable financing proposal at an annual interest rate not to exceed .92%; to be paid in eight semiannual payments. The loan is pre-payable at any time without penalty.

Approval of the Consent Agenda will record approval of the attached budget amendment #18 to record the annual lease for equipment and vehicles and the accompanying resolution. The Town Attorney will review and approve the lease agreement prior to its execution.

Ms. Díaz presented the Consent Agenda and recommended approval as presented.

Commissioner Gray moved to approve the Consent Agenda, as presented. Commissioner McAvoy seconded the motion, which was approved by a unanimous, 5-0, vote.

### Public comment

### Response to Public Comment




**Adjournment**

There being no further business appearing before the BOC at this time, Commissioner Windley moved to adjourn the meeting. Commissioner Ingram seconded the motion, which was approved by a unanimous, 5-0, vote.

The time was 7:54 p.m.



Submitted by:

  
James Michael O'Dell  
Deputy Town Clerk

These minutes were approved by the Board of Commissioners on April 28, 2021.

  
Ben Sproul  
Mayor