Minutes of the Monday, September 13, 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:

Others Participating: Debora P. Diáz, Town Manager; Casey Varnell, Town Attorney; Meredith Guns, Planning Director; Cameron Ray, Assistant Planning Director; and Mary E. Quidley, 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

Mayor Sproul asked everyone to remember the tragic events that unfolded 20 years ago on September 11, 2001. Nineteen terrorists hijacked four commercial airplanes, which were destined for the North and South Towers of the World Trade Center, the Pentagon, and the Washington, DC, area. The Mayor asked all to remember the period after the attack when Americans came together to deal with the tragedy and support those who lost loved ones, those who responded, and our armed forces who continued protecting our country. Mayor Sproul hoped everyone would remember that no matter what is happening in the world that we can always come together for the good of all.

Agenda Approval

Commissioner Gray moved to approve the agenda as presented. Commissioner McAvoy seconded the motion, which passed by a unanimous, 5-0, vote.

1. Public Hearing

Town Attorney Casey Varnell conducted this public hearing. Prior to calling the hearing to order, he explained that notice of the hearing was published and distributed in a manner that met or exceeded statutory requirements. No written public comment had been received prior to the meeting.

A. Proposed Zoning Amendment – §153.227 Light Industrial One Zone Special Uses – Add "Tattoo Studio" (Attached PH-1A)

This proposed amendment is the result of an amendment submitted earlier this year which requested Chapter 153, Zoning, be amended to allow Tattoo Studios as conditional uses in the Town's commercial zoning districts. That request was denied; however, at the conclusion of discussion during the June 13, 2021 public hearing, the BOC directed Staff to draft an amendment to add Tattoo Studios as a special use within the Light Industrial One Zone (LI-1). The Planning Board reviewed the new amendment on July 20th at which time they voted unanimously to forward it to the BOC recommending favorable consideration.

There were no speakers for this public hearing item.

At the conclusion of brief comments of support by the BOC, after which the public hearing was closed, Commissioner Windley made a motion for the BOC to approve this amendment to Chapter 153, Zoning, and that the BOC finds that the amendment to §153.227 Light Industrial One Zone Special Uses – to add "Tattoo Studio" is consistent with all comprehensive plans and other official adopted plans of the Town of Kill Devil Hills that are applicable. The amendment is reasonable and in the public interest because it meets the intent of the light industrial one zoning district and provides additional business opportunities.

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

Public Comment

Response to Public Comment

Old Business

New Business

1. Recommendation for Bid Acceptance for 2021-2022 Street, Water Line, Drainage and Right-of-Way Improvements Project (Attached NB-1)

Initial design of the 2021-2022 street, drainage, and right-of-way improvements project was approved by the Board of Commissioners at its November 9, 2020, meeting. The Board then approved a modification of the project's scope that included Option C, replacing the water main, resurfacing, and adding a sidewalk to the entire length of West Third Street (US 158 to Bay Drive). Public Services Director Steve Albright's attached memorandum highlighted the approximately .67 mile project and its drainage, paving, sidewalk, water main, and related work.

Bids were received on September 2, 2021, and have been reviewed by Staff and the Town Engineer, Pete Burkhimer, on behalf of American Engineering. Staff and Mr. Burkhimer recommended award of the contract for the entire project to the low bidder, FSC II, LLC (dba Fred Smith Company). The bid tabulation sheet is included with the packet materials for this item. The project's associated cost breakdown as follows:

Project Breakdown	Base Bid			
2021/2022 West Third Street Project – US 158 to Bay Drive	Streets & Drainage	Sidewalk	Water	Total
FSC II, LLC – Base Bid + Unit Price Items	$1,156,663.60	$266,600.00	$1,216,112.00	$2,639,375.60
Contingency	$80,966.45	$18,662.00	$121,611.20	$221,239.65
Engineering	$32,000.00	$12,000.00	$39,800.00	$83,800.00
Grand Totals	$1,269,630.05	$297,262.00	$1,377,523.20	$2,944,415.25

Construction will begin in autumn, with the project's overall substantial completion scheduled for May 21, 2022, and substantial completion in the commercial area east of Creek Street being scheduled for April 21, 2022.

Staff recommended the Board of Commissioners accept the bid from FSC II, LLC (dba Fred Smith Company), and authorize the 2021-2022 Street, Water Line, Drainage, and Right-of-Way Improvements Project, base bid including unit price, using the following motion:

- Approval of the contract with FCS II, LLC for 2021-2022 Street, Water Line, Drainage, and Right-Of-Way Improvements Project in the amount of $2,639,375.60 and authorize its execution by the Town Manager;
- Approval of the engineering services agreement with American Engineering in the total amount of $83,800 for construction oversight services;
- Approval of a 7% not-to-exceed contingency for the streets and sidewalk portions of the project in the amount of $99,628.45 and a 10% contingency for the water portions of the project in the amount of $121,611.20; and
- Authorization of expenditure of $825,111.00 from the Street Construction Capital Reserve Fund; $197,262.00 from the Sidewalks Capital Reserve Fund ($100,000 approved with adopted budget); $972,300.00 from the Water Capital Reserve Fund ($405,223.20 approved with budget); $218,000 from the Powell Bill Fund; $226,519.05 from the fund balance, for a total of $2,944,415.25; and
- Approval of budget amendment #5 to appropriate funds from the Sidewalk Construction Capital Reserve Fund, Street Construction Capital Reserve Fund, and unassigned fund balance for the 2021-2022 street, drainage, and right-of-way improvements project.
- Approval of budget amendment #6 to appropriate funds from the Water Capital Reserve Fund for the 2021-2022 street, drainage, and right-of-way improvements project.

Commissioner Gray made a motion for the BOC to approve this item with the motion recommended in the Town Manager's memorandum, which is stated in full above. Commissioner Ingram seconded that motion and approval was unanimous, 5-0.

2. Appointments (Attached NB-2)

All applications on file from persons interested in serving in this capacity have been previously copied to the Board of Commissioners and no new applications for those purposes have been received. Appointment histories are included with this memorandum.

A. Historic Landmarks Commission

Toni Dorn's term expires October 2021, and she expressed a desire for reappointment.

B. Dangerous Animal Appeals Board (alternate member)

Jerry Farless' term expires October 2021, and he expressed a desire for reappointment.

C. Community Appearance Commission

Dr. Christine Damrose-Mahlmann, Billy Dorn, Sue Kelly, and Melinda Mogowski are currently serving terms that expire October 2021, and all have expressed a desire for reappointment.

The BOC reviewed each of these groups and the potential candidates for reappointment, and Commissioner Gray made a motion for the BOC to reappoint each of the individuals in NB-2A, 2B and 2C, all of whom desired to be considered for reappointment, for three-year terms that will expire in October 2024. Commissioner Windley seconded that motion and approval was unanimous, 5-0.

3. Beach nourishment (Attached NB-3A and 3B)

This item was addressed by the Town Manager. On Thursday, September 2, 2021 Dare County received three bids from dredge contractors for the 2022 Duck/Southern Shores/Kitty Hawk/Kill Devil Hills beach nourishment projects, which will be administered by Dare County on behalf of each entity. Engineers for the project, Coastal Protection Engineering, has recommended acceptance of the bid submitted by Weeks Marine, Inc. in the amount of $27,932,500 for the overall multi-jurisdiction, intergovernmental project. As with the overall bid, Kill Devil Hills' share, approximately $5,700,000, is within the estimated amount for the project.

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 $5,700,000 to finance Kill Devil Hills' portion of the beach nourishment project and pay the costs of issuing two series' of special obligation bonds for that purpose. 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.

Commissioner Ingram made a motion for the BOC to approve this resolution and Commissioner Gray seconded that motion. Approval was unanimous, 5-0.

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, Southern Shores and Duck on the issuance of bonds for the beach nourishment project for a fee not to exceed $50,000 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 as presented.

Commissioner Windley made a motion for the BOC to approve the agreement between KDH and Parker Poe Adams & Bernstein, LLP to serve as bond counsel for the beach nourishment project. Commissioner Ingram seconded that motion and approval was unanimous, 5-0.

4. Proposed amendment to the Town Code, Chapter 96, Seaside Regulations to amend beach driving requirements (Attached NB-4)

Assistant Town Manager Charlene Allen explained in the attached information, the Town of Nags Head has recently modified their beach driving ordinance to change the speed limit from 25 MPH to 15 MPH for vehicles operating on the oceanfront. We have had a reciprocal arrangement with Nags Head for more than several years that allows beach driving permit holders to drive on the beach in both municipalities and each entity works to cooperate on driving regulations, which makes implementation easier.

The attached amendment proposes to amend Kill Devil Hills' beach driving regulations as follows:

- By adding the requirement for one-wheeled vehicles to comply with the permitting process;
- By changing the speed limit for driving on the beach from 25 MPH to 15 MPH; and
- By adding language that establishes beach driving privileges for disabled persons (which is included in Nags Head's regulations).

Commissioner Windley asked Ocean Rescue Services Supervisor Dave Elder how often he observed vehicles going faster than 15 MPH and Mr. Elder responded that it happens quite often, and further, often people are not fully prepared as they drive out onto the oceanfront. Mr. Elder also responded to a question from Commissioner McAvoy, explaining that one-wheeled vehicles are present on the beach more often that one might think. Plus, he said, they have speeds of up to 19 MPH and using them on the beach presents the same type of hazards as vehicles when there is limited site range to see people playing, laying, or sitting on the beach.

Commissioner McAvoy made a motion for the BOC to approve the proposed amendment to Chapter 96, Seaside Regulations, amending beach driving requirements, as presented. Commissioner Gray seconded the motion, which was approved by a unanimous, 5-0, vote.

5. 2031 South Virginia Dare Trail – non-conformity reconstruction request (Attached NB-5)

On June 20, 2021 the structure located at 2031 South Virginia Dare Trail was substantially damaged by fire. It was an existing non-conforming structure due to changes in the Town Code regarding parking and access aisle requirements; side yard setbacks and fire suppression; and, landscaping requirements for dwellings greater than 6,000 square feet.

The owner, Amit Gupta, SAGA Realty and Construction, is requesting to reconstruct it exactly as shown on the as-built survey, which is included with Assistant Planning Director Cameron Ray's memorandum. This request includes installation of a fire suppression system which complies with Ordinance Amendment #17-19, Section 153.101, Setbacks [in the Ocean Impact Residential Zone], regarding side yard setbacks and fire suppression, and thus reduces the nonconforming status of the structure.

During reconstruction, SAGA could comply with landscaping requirements as outlined in Ordinance #17-20, Section 153.073 Landscaping Requirements, which would further reduce the nonconforming status of the structure. This is a reasonable requirement and Staff recommended the Board of Commissioners approve SAGA's request to reconstruct of the structure at 2031 South Virginia Dare Trail, as submitted, subject to including compliance with Ordinance #17-20, Section 153.073 of the Town Code.

Reconstruction of a non-conforming structure requires approval by the Board of Commissioners in accordance with Section 153.053(D) of the Town Code, which is fully explained in Mr. Ray's memorandum.

Engineer Mike Robinson represented the developer.

The BOC recognized the owner's agreement to comply with Ordinance #17-19, and they supported required compliance of Ordinance #17-20, also, to bring this site more into compliance with Chapter 153, Zoning.

Commissioner Ingram made a motion to approve the non-conformity reconstruction request for 2031 South Virginia Dare Trail, subject to compliance with Ordinances #17-19 (sideyard setbacks and fire suppression) and #17-20 (landscaping), Section 153.073 of the Town Code. Commissioner Gray seconded the motion, and approval was unanimous, 5-0.

Committee Reports

Community Appearance Commission (CAC)

- Commissioner Windley said that the CAC – upcoming meeting on September 23, 2021 at 8:30 a.m. in the Meeting Room, during which one of the discussion items will be the Community Appearance Award, which is one of the CAC's major annual initiatives.

Dare County Tourism Board

- Commissioner Ingram, the Town's representative on the Tourism Board, reported that she had recently attended a meeting of the Board's Grant Subcommittee which is responsible for recommending event grants to the full Board. She also stated that there would be a meeting of the full Board later this week, on which Commissioner Ingram will report at the next BOC meeting.

Commissioners' Agenda

Commissioner Gray

- Asked if the Town had received a response to its August 19th letter to NC-DOT requesting reconsideration of placing a signal light at the Lake Drive/US 158 intersection, including allocating funds for the light. No response has yet been received, he was told, and Commissioner Gray suggested that following the letter up with a phone call might be appropriate, and also suggested there could be other location options for light that could improve the safety of this area.

Commissioner Ingram

- Explained that discussions are being conducted to see if a flyover in commemoration of the Wright Brothers' first-heavier-than-air flight can be arranged for this year's celebration. She anticipates Kill Devil Hills will take the lead role in coordinating local governments and organizations in Dare County to make this request.
- Asked about the status of the flashing light on Colington Road at the intersection with Veterans Drive. Police Chief Gary Britt advised that he had spoken with NC-DOT and the light should have been fixed today, or will be fixed tomorrow.

There was also a question about the sidewalk along Helga Street. The sidewalk and the pedestrian signal button do not line up on the same side of the street. Town Engineer Pete Burkhimer has been working with NC-DOT for about a year to get the pedestrian button relocated to the north side of the intersection. Hopefully this will be resolved in the near future.

Mayor's Agenda

1. Proclamations and Resolutions (Attached MA-1A, MA-1B, MA-1C, and MA-1D)

- **A. Proclamation Declaring September 17 – 23, 2021, as Constitution Week**
- **B. Proclamation Declaring September as Suicide Prevention Awareness Month**
- **C. Proclamation of the Kill Devil Hills Board of Commissioners Declaring October 3-9, 2021, as Fire Prevention Week**
- **D. Resolution Opposing the United States Fish & Wildlife Service's Proposed Designation of Critical Habitat Unit NC-4 (Emerald Isle – Atlantic Beach) for the Red Knot Rufa Shorebird**

Mayor Sproul stated the above proclamations and resolutions highlight areas of importance for our citizens, including our constitutional form of government and recognizing the struggles faced by those considering or affected by suicide. Additionally, Fire Chief Tilley's attached memorandum shared information on "Learn the Sounds of Fire Safety," the theme for this year's Fire Prevention Week, set for October 3-9, 2021. The Fire Department encourages everyone to learn the sounds of their carbon monoxide and smoke alarms, which are vital in securing your safety.

Mayor Sproul also explained that area localities were asked by Dare County to consider the resolution regarding designation of a critical habitat area by the U.S. Fish and Wildlife Service for the Red Knot Rufa shorebird. Some beach areas of southern Dare County are included in this designation, and there is concern that such a designation could significantly impact summer construction windows and increase costs for future beach nourishment projects, if beach areas were to be closed for critical habitat areas.

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

Commissioner Gray reminded people of the need to check with the Fire Department to make sure the Open House is going to be conducted on October 6th, that COVID-19 hasn't caused a cancellation or rescheduling.

2. Ice Cream Social (Attached MA-2)

Mayor Sproul reported that the KDH Ice Cream Social is scheduled for Tuesday, September 28, 2021, from 5:30 – 7:00 p.m. Staff is preparing for a COVID-responsive event; music is planned and hot dogs, hamburgers and ice cream will be served.

Should it be necessary to change the event, Staff will inform the BOC and public as soon possible.

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

1. Minutes (Attached CA-1A)

A. August 9, 2021

2. Monthly report (Attached CA-2A)

A. July 2021

3. Budget amendments (Attached CA-3A and CA-3B)

A. # 3 – to appropriate Assistance to Firefighters Grant funds for the purchase of radios

B. # 4 – to appropriate funds for roof replacement of the fire station

4. State Employees' Credit Union ATM lease renewal (Attached CA-4)

As a result of improvements at the Meekins Field Complex, the State Employees' Credit Union (SECU) CashPoints automated teller machine (ATM) was removed in April 2021. The SECU requested the existing lease be modified to allow a reduction in monthly payments due to the overall costs of a new machine and on-site installation. Assistant Town Manager Charlene Allen's attached memorandum provided information from other local governments with ATM machines at their locations, including monthly lease amounts. Based on this information and the fact that the ATM machine at 1634 North Croatan Highway is used in other municipalities, and highlights the options available, along with the Staff recommendation of $1.00 per month for 60 months.

Approval of the Consent Agenda will approve a five-year lease between the Town and the SECU for its ATM at Meekins Field at a rate of $1.00 per month for a total of $60.00.

5. Schedule Public Hearing (Attached CA-5A)

A. Proposed Zoning Amendment – §153.077(D)(16) – Outdoor Dining / Activity Area(s) Lighting

At its August 17, 2021, meeting, the Planning Board reviewed a proposal to amend §153.077(D)(16) to allow strings of electric light bulbs for approved Outdoor Dining/Activity Area(s) for the purposes of supplementary lighting for patrons. Currently, strings of electric lights are allowed only from November 22 - January 7 and July 2 - July 6 per Town Code §153.077(B)(11).

The Planning Board voted unanimously to recommend this proposed amendment, with Staff restrictions approved by the applicant, to the Board of Commissioners, with a favorable

opinion for public hearing. Approval of the Consent Agenda will schedule this item for public hearing on Monday, October 11, 2021, at 6:00 p.m.

Ms. Diáz presented the Consent Agenda and recommended its approval.

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

The time was 6:55 p.m.

Submitted by:

Mary E. Quidley
Town Clerk