



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

January 14, 2019

TO: Mayor and Board of Commissioners
FROM: Casey C. Varnell, Town Attorney
REF: Town Attorney's Agenda

1. **Revival of Motion – Joe Lamb/Text Amendment Re: Chainlink/Fence (Attached TA-1)**

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January 9, 2019

MEMORANDUM

FROM: Casey C. Varnell, Town Attorney

TO: Kill Devil Hills Board of Commissioners

RE: REVIVAL OF MOTION
JOE LAMB/TEXT AMENDMENT RE: CHAINLINK FENCE

Dear Board:

At the last meeting of the Board of Commissioners, I brought an issue to your attention that was presented by town citizen, Mr. Michael Midgette. You requested that I research and report back to you on the matter. For the ease of reference and a more particular description of the aforesaid issue, I have attached Mr. Midgette's correspondence concerning the same.

In short, Mr. Midgette, who was in attendance at the relevant meeting, has posed the question of whether it is permissible under Robert's Rules of Order for the Board to further consider the above-referenced text amendment based on Commissioner Gray's motion to defer consideration of the issue for not more than 100 days from the date of the original motion. It was noted during the meeting that the idea behind Commissioner Gray's motion was to defer consideration until such time as the Town of Kill Devil Hills appointed a full Board of Commissioners. This inquiry is founded on the fact that the vote held on the initial motion to approve the proposed amendment resulted in a deadlock of the Board due to the absence of former Commissioner Rheubottom, generally amounting to a failed motion and death of the issue.

In reviewing this matter, it is my opinion that the motion to defer consideration made by Commissioner Gray is a valid motion and that the Board is entitled to reconsider the aforesaid text amendment. This opinion is based on the fact that I could find no controlling jurisprudence applicable to the specific facts of this situation. While it is generally true that a motion to defer consideration of an issue that has been voted upon is to be made only by a Board Member who casted a "prevailing" vote, my research only turned up scenarios that involved a much larger deadlocked Board, with said deadlock not being the result of a recent resignation by a former member of the Board. Further, there seemed to be a consensus amongst the Board that it was appropriate to defer consideration until a full Board was achieved, with the subsequent vote on Commissioner Gray's motion resulting in unanimous affirmation by the Board. Given the foregoing, it is feasible that any one member of the then-voting Board would have made the pertinent motion in the absence of Commissioner Gray doing so. Thus, I believe the Board is entitled to reconsider the subject text amendment.

In the event this is the pleasure of the Board, I would suggest that a motion to revive be made and voted upon by Board. I concur with the Town Clerk's proposal that said motion be made pursuant to Motion 13 of the Suggested Rules of Procedure for a City Council. I have attached that rule for your consideration.

Sincerely,



Casey C. Varnell

cc: Debora P. Diaz, KDH Town Manager
encl: E-mail from Michael Midgette; Copy of Motion 13

Motion 13. To Revive Consideration. The council may vote to revive consideration of any substantive motion that has been deferred pursuant to Motion 8, provided it does so within [100] days of its vote to defer consideration.

Comment: This motion replaces the motion to take from the table in *Robert's*.¹⁰¹ It has been renamed to make its connection with Motion 8 apparent. Unlike the motion to take from the table, this motion may be debated and amended.¹⁰² If the motion to revive consideration of a deferred motion is not adopted within the prescribed number of days, the deferred motion expires, though at that point the same issue presented by the deferred motion could be reintroduced in the form of a new substantive motion. The number of days specified in Motion 8 and Motion 13 should be the same.

Casey Varnell

From: Casey Varnell
Sent: Wednesday, January 09, 2019 10:39 AM
To: Casey Varnell
Subject: FW: Joe Lamb's fence

Sent: Friday, November 30, 2018 6:08 AM
To: Casey Varnell <varnell@ncobxlaw.com>
Subject: Joe Lamb's fence

Good morning sir!

I hope you had a good Thanksgiving, mine was nice and quit. I wanted to ask you about Terry's motion to table the fence request change at the end of the last BOC meeting but the meeting ran late. I might be incorrect, but I thought once the board voted on a motion and it failed that was it. They couldn't go back and make the motion to table. I looked at a slightly dated copy of Robert's Rules of order and what I found was that in order to bring a motion back for further consideration it would have to meet special criteria and only the prevailing side could do so. I assume in this case since the motion failed that would be the "nays" which would make Terry's motion out of order. The book also said anything the town already has in place supersedes Robert's Rules so maybe that's the case. I think this is pretty unique situation and the only reason I brought it up is because I thought I remembered a few times when I was on the board that we were warned ahead of time to table something before we vote because once we vote that was that.

Michael Midgette