

**Minutes of the Monday, December 10, 2018, 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 Terry Gray, Mike Hogan, and John Windley

**Members Absent:** Vacant Seat

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

**Call to Order**

At 5:32 p.m., Mayor Sheila Davies opened this meeting of the Kill Devil Hills Board of Commissioners and welcomed all present.

**Pledge of Allegiance and Moment of Silence**

Mayor Davies called on Commissioner John Windley, who shared that a First Flight Middle School athlete had broken both ankles severely. Additionally, local business owner Jennifer Wall, of Outer Banks Shipping Station, had lost her battle with cancer. The group was asked to keep those families in their thoughts.

**Agenda Approval**

Commissioner Hogan moved to approve the agenda for this meeting. Commissioner Gray seconded the motion, which passed by a unanimous, 4-0, vote.

**Public Comment**

**Patti Armistead, 1605 Wood Duck Lane, Kill Devil Hills** – Ms. Armistead expressed her support for Skip Jones to fill the Board vacancy, and noted he would be an invaluable addition to the Board of Commissioners.

**Marsha Johnson 1401 Harpoon Drive, Kill Devil Hills** – Ms. Johnson expressed her concern over the Water Oak Development project. She stated that the developer had stripped a large area of trees from the property, and had established a four-foot lot build-up of sand, which concerned her. She understood that there are time constraints on the work, and was worried that equipment operation and workers were not observing those limitations. Ms. Johnson stated that the developer had begun installation of a power box

and she understood that it is going to be very large. She would like it moved onto their property further as it is blocking access to turning from her driveway.

**Jack McCombs, 3118 Bay Drive, Kill Devil Hills** – Mr. McCombs stated both candidates, Colleen Almoney and Skip Jones, would be great additions to the Board of Commissioners, especially Ms. Almoney.

### **Response to Public Comment**

Mayor Davies thanked speakers who had expressed support for the candidates to fill the vacancy on the Board. She also thanked Ms. Johnson for presenting her concerns, and noted that there were various requirements and standards in place for any development, including a stormwater management plan, which does not permit runoff to surrounding property owners. The development will be held to the approved site plan. Planning Director Meredith Guns stated that the utility box was in the platted utility easement. She stated the utility easements run behind the development properties, rather than along Landing Drive. Town Attorney Casey Varnell stated that the electrical equipment was required to be located in the utility easement, and was within the bounds of the legal requirements. Town Manager Debora Díaz stated Staff would be happy to meet with Ms. Johnson on site, and noted that Planning and Public Services Staff were at the site on a regular basis. Ms. Guns stated the Town does not have an ordinance regulating clearing of vegetation in this instance; Ms. Diaz noted that was in contrast with properties located within the Maritime Forest zoning district. Ms. Guns stated the Town ordinance on development/construction work hours was 7:00 a.m. to 8:00 p.m. on Monday through Saturday, and from 9:00 a.m. until 6:00 p.m. on Sunday.

### **Introductions and Presentations**

#### **1. Dare County Motorcycle Toy Run presentation to KDH Police Department for assistance with the annual Toy Run**

Commissioner Terry Gray, coordinator of the Dare County Motorsports Charity Group, provided an overview of the organization and its activities. He stated that a fundraising car show was being developed, and introduced Michael Tillett, who is organizing the event, which will be held May 3 and 4, 2019.

Commissioner Gray stated the Toy Run is in its third year, and raised approximately \$32,000, and its proceeds are used for toys for Dare County children during the holidays. He also shared that three scholarships had also been established for high school students. He then presented a video, which highlighted the 2018 toy drive in Dare County. On behalf of the organization, he presented the Kill Devil Hills Police Department with a plaque recognizing its assistance with the 2018 Toy Run. Mayor Davies expressed her appreciation to Commissioner Gray for his continued work and the work of the organization, which better the lives of children in Dare County.

## **Old Business**

### **1. Possible appointment to vacant position on the Board of Commissioners**

Mayor Davies shared that at the November 14, 2018, meeting, the Board of Commissioners considered the applications that were submitted from persons desiring to be appointed to the seat left vacant by Brandi Rheubottom's resignation. It was agreed at that meeting, after two tie votes, that the Board would further consider two applicants, Skip Jones and Colleen Almoney, and come back to this meeting to see if either applicant could receive a majority vote. Mayor Davies then highlighted the work of both candidates to the community and noted that both candidates are well qualified and highly knowledgeable.

The Commissioners were asked whether any had determined a change in their support; there was no change. She inquired about a solution to the situation, including a coin toss, which is a standard resolution. Commissioner Windley supported a coin toss to resolve the issue. Commissioner Gray was not in favor of a coin toss or method of chance. Commissioner Hogan stated that he supported what was best for the Town, which was to have a fully constituted board.

Mayor Davies moved to proceed with a coin toss, to determine between Ms. Almoney and Mr. Jones. Commissioner Windley seconded the motion, which was approved by a 3-1 vote. Commissioner Gray voted in the negative.

Mayor Davies invited Ms. Almoney and Mr. Jones to the front of the dais, along with Mr. Varnell, who was asked to conduct the coin toss. Straws were drawn to select which candidate would call the coin toss, with Mr. Jones selecting the long straw. Mr. Jones won the coin toss. Mr. Jones will take his seat with the Board of Commissioners on January 14, 2019 after taking the Oath of Office.

Ms. Diaz highlighted the rationale for the use of drawing straws along with the coin toss, following the example of the Dare County Board of Elections, which had used the process to settle a tie vote in a municipal election. The straw drawing provided another step in the fairness process.

Mayor Davies moved to appoint Skip Jones as a Commissioner at the January 14, 2019, meeting. Commissioner Gray provided a second. The motion passed by a unanimous, 4-0 vote.

The Board thanked Ms. Almoney and Mr. Jones, along with all the candidates, for their dedication to the Town.

## **New Business**

### **1. Recommendations for acceptance of bids, and related matters, for the following capital projects (Attached NB-1A and 1B)**

**A. Elevated water tank replacement, including drainage improvements and dedication of new easement in front of the Fire Station at 1634 North Croatan Highway**

**B. Public/private partnership sidewalks and drainage improvements project at the Dare Centre, 1700 North Croatan Highway**

Town Engineer Pete Burkheimer provided an overview of the projects, which have been detailed in the meeting materials. The replacement of the 55 year-old elevated water tank at 1634 North Croatan Highway was recommended to include:

- drainage improvements in front of the Fire Station;
- abandonment of an NC-DOT drainage easement between the Fire Station and Meekins Field, and creation of a new variable-width drainage easement between the Town's property and US 158 on which the new drainage improvements will be constructed; and,
- sidewalk construction and drainage construction at the Dare Centre, which is adjacent to the 1634 North Croatan Highway property, through public/private partnership between the Town and Washington Prime Group, Inc., owner of the Dare Centre. Washington Prime Group has committed \$125,000 for this purpose.

Mr. Burkheimer's materials provided written information on the bids and construction costs and included a spreadsheet on the overall bid summary. Public Services Director Steve Albright included a memorandum in the meeting materials, which included a table sorting the recommended bids, engineering and construction oversight expenses, and improvements recommendations in an abbreviated manner, including which expenses will be Water Fund-related, and which will be General Fund/Streets-related.

Staff recommended the Board of Commissioners accept the bids for the elevated water tank replacement, and associated drainage improvements project in front of the Fire Station, the costs of which will be borne by the Water Fund, by approving the following motion to:

- Accept the bid from, and approve and authorize the Town Manager to execute the contract with, Landmark Structures for replacement of the elevated water tank at 1634 North Croatan Highway, as outlined, in the amount of \$2,855,000.00;
- Accept the bid from, and approve and authorize the Town Manager to execute the contract with Hatchell Concrete, Inc. for the Fire Station Drainage Relocation Project as outlined in the amount of \$423,533.00.
- Approve the engineering services agreement with American Engineering, and authorize its execution by the Town Manager, in the total amount of \$363,781.03 for construction oversight services (includes work by American \$77,500; Dewberry \$79,960; Quinn Consulting Services \$131,340.48; GET Solutions \$48,955; plus American's markup of sub-consultants for the grand total above);
- Approve a 10% not-to-exceed contingency for the elevated tank portions of the project in the amount of \$285,500 and 6% not-to-exceed contingency for the drainage portions of the project in the amount of \$25,411.98;
- Approve Budget Amendment #11 to provide funds for this project; and
- Approve abandonment of the existing drainage easement between the Fire Station and Meekins Field, and creation of a variable width easement between the Town's property and US 158, in front of the Fire Station, as presented in the engineer's attached drawing.

Staff further recommended approval of the US 158 Sidewalk Improvements Phase 3.

- Approve the contract with Hatchell Concrete, Inc. for US 158 Sidewalk Improvements Phase 3 Project in the amount of \$384,622.33 and authorize its execution by the Town Manager;
- Approve the engineering services agreement with American Engineering in the total amount of \$18,000 for construction oversight services;
- Approve a 6% not-to-exceed contingency for the streets and drainage portions of the project in the amount of \$23,077.34; and
- Authorize expenditure of \$100,000 from the Sidewalk Capital Reserve Fund and approve Budget Amendment #13 to provide additional funds necessary for the Dare Centre sidewalk project.

Commissioner Windley inquired about the size of the proposed water tank. Mr. Burkheimer noted the pedosphere would be approximately 33 percent larger than the current tank.

Commissioner Windley moved to accept the bids for the elevated tank replacement and associated drainage improvement projects in front of the Fire Department, as presented in the meeting packet. Commissioner Gray provided a second and the motion was approved by a unanimous, 4-0 vote.

Commissioner Hogan moved to approve the US 158 Sidewalk Improvements Phase 3, as presented in the meeting packet. Commissioner Windley provided a second and the motion was approved by a unanimous, 4-0 vote.

### **C. Final Phase of the Public Works Complex Capital Improvements Project (Attached NB-1C)**

Engineer Donald Booth and architect Julie Dunks of DJG, Inc., consultants for the Public Works Complex Improvements Projects, were present to address the Board on the recommendation to accept the bid from A. R. Chesson Construction for completion of the final phase of this project. The final phase includes construction of storage facilities for the Town's solid waste collection equipment; and, construction of state-mandated improvements at the Animal Control facility. The total bid from Chesson was \$4,084,250.00; engineering and contract administration will be \$65,710; and, the contingency amount is 10%, \$414,996, for a total project cost not to exceed \$4,564,956.

As this project is being funded through conventional financing, the Board of Commissioners took previous action on this project:

- Adoption of the Resolution Directing Staff to Request Financing Proposals from Banks.
- A public hearing was held on November 14, 2018 for the purpose of receiving public comment on the proposed financing contract for this project. BB&T submitted the recommended financing package: 4.07% fixed interest rate for the 15-year life of the loan.

- Adoption of the Resolution Approving Financing Terms [for the] Final Phase of the Public Works Complex Capital Improvements Project.
- Adoption of the Resolution Authorizing Staff to File an Application with the North Carolina Local Government Commission.
- Adoption of the Capital Project Ordinance for the Final Phase of the Public Works Complex Capital Improvements Project.

Staff recommended acceptance of this bid

Commissioner Windley moved to accept the bid for the Final Phase of the Public Works Complex Capital Improvements Project, as presented. Commissioner Hogan provided a second, and the motion passed by a unanimous, 4-0 vote.

## **2. Appointment**

### **A. Historic Landmarks Commission**

With the recent resignation of Jerry Farless from the Historic Landmarks Commission (HLC), a position is now available for appointment. All applications were previously copied to the Board of Commissioners.

Commissioner Windley moved to appoint Clyde Harrell, Jr. to the Historic Landmarks Commission for a term that will expire in August 2021. Commissioner Hogan provided a second, and the motion passed by a unanimous, 4-0 vote.

## **Committee Reports**

Government Education Access Channels Committee Mayor Davies highlighted the proposed changes to the operating budget of Current Television channels. The proposed change would provide permit latitude in the operations.

## **Commissioners' Agenda**

The members of the Board of Commissioners expressed their appreciation for everyone who had made the recent Santa at Town Hall event such a success. They also noted the very large crowd that visited the meeting room to visit with Santa Claus and enjoy refreshments and the opportunity to gather together this Christmas season.

### Commissioner Gray

Neighborhood Watch There has been a very positive response from the community walk outreach event, and he supported this neighborhood network.

## Commissioner Windley

Neighborhood Watch He thanked Colleen Almoney and Commissioner Gray for their work with Neighborhood Watch, along with everyone who had participated in the group's first community walk. There is another walk upcoming and everyone is welcome to participate.

Community Appearance Commission Commissioner Windley expressed his appreciation to CAC Chair Sue Kelly for being present at the Santa at Town Hall Event to distribute pocket ashtrays. The next CAC meeting is Thursday, December 13, at 8:30 a.m. and the Help KDH Kick Butt subcommittee will hold a meeting on January 16, 2019, at 6:00 p.m.

Seismic Testing He inquired whether another statement from the Town would be appropriate in response to the U.S. Government's support for offshore seismic testing.

## Commissioner Hogan

Aviation Park Christmas Decorations Commissioner Hogan shared that the Christmas decorations at Aviation Park, especially around the Frog Pond, were excellent. He stated that more are added each year and encouraged everyone to stop by to see them.

Local Business Maintenance and Litter He encouraged all businesses to continue to maintain their lots and sidewalks, and to be vigilant in collection of litter.

Commissioner Appointment Commissioner Hogan noted that although the Board of Commissioners may differ on issues, members did not differ on how they do their job.

## **Mayor's Agenda**

### **1. Proposed 2019 calendar meeting schedule**

Mayor Davies stated that at this time, it was appropriate for the Board of Commissioners to adopt its regular meeting schedule for the upcoming calendar year. Additional meetings can be scheduled at any time the Board determines necessary. Regular meetings are scheduled at 5:30 p.m. Two open comment public forums are included: Wednesday, April 24 and Monday, October 14. Regular meeting business may be scheduled for either. The schedule for regular meetings during the calendar year 2019 is proposed as follows:

Monday, January 14  
Wednesday, February 20  
Monday, March 11  
Monday, April 8  
Wednesday, April 24 (public forum)  
Monday, May 13  
Wednesday, May 22  
Monday, June 10

Wednesday, June 26  
Monday, July 8  
Monday, August 12  
Monday, September 9  
Monday, October 14 (public forum)  
Wednesday, November 13  
Monday, December 9

Commissioner Gray moved to adopt the 2019 meeting schedule as presented. Commissioner Windley provided a second, and the motion passed by a unanimous, 4-0 vote.

**2. Resolution Requesting North Carolina General Assembly to Pass Legislation to Address the Problems Associated with Increased Use of E-Cigarettes in the Youth Population (Attached MA-2)**

Mayor Davies shared that as Director of the Dare County Board of Health and Human Services, she had recently submitted a resolution to the Dare County Board of Commissioners to request North Carolina lawmakers to pass legislation to address the problems associated with increased use of e-cigarettes in the youth population.

The original resolution has been modified for adoption by Kill Devil Hills, and was suggested by Mayor Davies, along with Commissioner Windley, who serves on the Saving Lives Taskforce. Upon adoption it will be forwarded to our representatives in the General Assembly, and widely distributed among the Town's electronic lists, bulletin boards, social media, and other posting locations.

Mayor Davies moved to adopt the Resolution Requesting North Carolina General Assembly to Pass Legislation to Address the Problems Associated with Increased Use of E-Cigarettes in the Youth Population. Commissioner Windley provided a second, and the motion passed by a unanimous, 4-0 vote.

Mayor Davies also addressed the following items:

DARE Video Mayor Davies thanked the Police Department for Officer Christopher Keine's assistance with four students making a video series of skits highlighting decision making for youth. Through the consensus of the Board, she will invite the students to present their video at the January 14, 2019, meeting, and extend an invitation to Officer Keine.

Seismic Testing Mayor Davies asked for the Board's latitude to research and consult with Mr. Varnell and Ms. Díaz. She had recently received some information that organizations are challenging the legality of the process used to move the seismic testing forward. If it is in line with the Town's interest of continued opposition, a letter

challenging the legality of the process will be submitted. Through consensus, the Board gave its approval to the Mayor to move forward.

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

### **Town Attorney's Agenda**

#### **1. Request for removal of property from Municipal Service District (Attached TA-1)**

Mr. Varnell provided an overview of the October 8, 2018 meeting of the Board of Commissioners, when Randy Appleton, owner of 2024 North Virginia Dare Trail, submitted a written request to have his property removed from the beach nourishment Municipal Service District. He was asked to research this matter and to report to the Board, and his report was submitted in the meeting materials. Mr. Appleton was present at the meeting.

Mr. Varnell stated that on a procedural standpoint, the Board would need to schedule and hold a public hearing to address the request.

Mayor Davies moved to schedule a public hearing on the request for removal of a property located at 2024 North Virginia Dare Trail from the Municipal Service District at the January 14, 2019, Board of Commissioners meeting. Commissioner Windley seconded the motion, which was approved by a unanimous, 4-0 vote.

Tabling a Motion Mr. Varnell stated that at the November 10, 2018, meeting, a text amendment from Lake Drive Corporation resulted in a tie vote of 2-2. Mr. Varnell stated the question posed "if a motion fails, then the winning vote is supposed to be the only vote to move to table." He stated Commissioner Gray had made the original motion, which failed, and had also moved to table the item. Mr. Varnell planned to research the matter further. Ms. Díaz stated further clarification would be important.

### **Consent Agenda**

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

A. November 14, 2018

#### **2. October 2018 monthly report (Attached CA-2)**

#### **3. Modification to the 2018/2019 Fee Schedule – to add a fee for building permit reinstatement (Attached CA-3)**

Approval of the Consent Agenda will establish a permit reinstatement fee for building permits that have expired and for which no final inspection has been conducted. This has become a problem, particularly with trade (HVAC, electrical, plumbing) permits, and under the Town's current fee schedule there is no mechanism for a reinstatement permit, at a lesser cost, to

be issued; the original permit would have to be reissued at full cost. The proposal is for a reinstatement permit fee of half the cost of an original permit, or a \$100 minimum charge.

**4. Schedule public hearing on requested amendment to Chapter 153, Zoning (Attached CA-4A)**

- A. Eddie Goodrich – amend §153.002 Definitions to add *Zero Lot Line Development*; amend §153.096(L) Ocean Impact Residential Zone Permitted Uses and §153.176(FF) Commercial Zone Permitted Uses, to add *Zero Lot Line Development* as a permitted use in each section; and add a new section: §153.291 *Zero Lot Line Developments* – to create associated regulations

At its November 13, 2018 meeting, the Planning Board considered an amendment to Chapter 153, Zoning, which was requested by Eddie Goodrich. Ms. Guns’ memorandum, which was submitted with the meeting packet, provided details on the Planning Board’s review of and discussions on this amendment, which resulted in development of modifications to the request. The Planning Board voted to recommend approval of the modified ordinance amendment to the Board of Commissioners, and Mr. Goodrich has agreed to those modifications. The revised amendment appeared in full on page two of Ms. Guns’ memorandum. Approval of the Consent Agenda will schedule the public hearing for this amendment for Monday, January 14, 2019 at 5:30 p.m.

Town Clerk’s Note: Town Attorney Varnell’s January 9, 2019 memorandum addressing his opinion on the title of this amendment will be filed with these minutes.

**5. Replacement appointment to the Kill Devil Hills’ Local Firefighters’ Relief Fund Board**

A vacancy on the KDH Local Firefighters’ Relief Fund Board has been created with the resignation of long-time member Jerry Froehlich. The Fire Department recommended the Board of Commissioners appoint retired Police Captain Mark Evans to fill the position vacated by Mr. Froehlich.

Fire Chief Troy Tilley provided a great deal of information on the responsibilities and duties of Firefighters’ Relief Fund Boards in North Carolina and it has been placed on line for review with the packet materials for this meeting.

Approval of the Consent Agenda will record Mr. Evans’ appointment to the Relief Fund Board.

**6. Budget amendment (Attached CA-6)**

- A. #12 – to recognize contributions for Disc Golf received year-to-date during FY 2018/2019

**7. Interlocal Agreement for Government and Education Channels – draft revision (Attached CA-7)**

The Government Education Access Channel Committee, which Kill Devil Hills is a member of, recently voted to recommend an amendment to the Interlocal agreement that governs the group. This amendment would allow the GEACC to transfer funds between line items in its annual budget provided the total amount of the budget is not affected. The amendment further clarifies that funds in the contingency line item can be transferred to objects of expenditure as needed. The draft revised Interlocal agreement was included with the meeting materials; the amended agreement must be approved by all 10 participating entities before it can be implemented.

Ms. Díaz presented the Consent Agenda and recommended approval as presented. Commissioner Hogan moved to approve the Consent Agenda. Commissioner Windley provided a second, and the motion passed with a unanimous, 4-0 vote.

**Public Comment**

**Skip Jones, 1508 Captain’s Lane, Kill Devil Hills** – Mr. Jones expressed his support and appreciation for Ms. Almoney, along with the other individuals who had stepped forward to serve the Town on the Board of Commissioners. He also noted that the new project at the Dare Centre will be a great addition to the Town.

**Colleen Almoney, 900 Ninth Avenue, Kill Devil Hills** – Ms. Almoney thanked the Board for its service to the community and its consideration of her application to fill the vacancy on the governing board. She shared that the Neighborhood Watch was continuing to grow and was reaching out to the community.

**Response to Public Comment**

**Adjournment**

There being no further business appearing before the Board of Commissioners at this time, Commissioner Windley moved to adjourn the meeting. Commissioner Hogan seconded the motion and approval was by a unanimous, 4-0 vote. It was 7:10 p.m.

Submitted by:

James Michael O’Dell  
Deputy Town Clerk